



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 2022



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Table of content

List of abbreviations	6
Introduction	9
1. Evaluation of 2022 Recommendations	12
1.1 COVID-19 Vaccination	13
1.2 Impacts of the COVID-19 Pandemic on Selected Human Rights and Fundamental Freedoms	16
1.3 Women's Reproductive Rights	19
1.4 Promotion and Protection of Human Rights, Fundamental Freedoms and the Principle of Equal Treatment in Legislative Processes	27
2. Segregation in Education and Training – a Continuing Problem and an Evaluation of Proposed Solutions	32
2.1 On Efforts to Introduce a Legal Definition of Segregation	34
2.2 Discrimination in the Form of Excessive Inclusion of Roma Children in Special Classes	38
2.3 Access to Inclusive Education and Development Thereof	40
2.4 Cases of Segregation	45
2.5 On the status of Implementation of the Recommendations of the UN Committee on the Elimination of Racial Discrimination	49
Recommendation:	51
3. Rights of LGBTI+ People in Slovakia	52
3.1 Terrorist Attack on LGBTI+ People outside Tepláreň Bar in Bratislava	56
3.2 Legislative Proposals Impacting on the Status and Rights of LGBTI+ People	58
3.2.1 Draft Acts Stigmatising LGBTI+ People and Restricting their Rights	58
3.2.2 Legal Regulation of Same-sex Unions	61
3.3 Limitations of Legal and Medical Transition in Slovakia	65

3.4	Democratic Space for LGBTI+ Human Rights Defenders in Slovakia	71
	Conclusion	79
	Recommendation	81
4.	Fundamental Rights and Freedoms of Persons Fleeing the International Armed Conflict in Ukraine	82
4.1	General Background and Legal Framework	85
4.1.1	Provision of Accommodation for Persons Fleeing the International Armed Conflict in Ukraine	90
4.1.2	Access of Refugee Children who have Fled the International Armed Conflict in Ukraine to Education	94
4.1.3	Access to Employment	98
4.1.4	Human Trafficking	102
4.2	Compliance with the Principle of Equal Treatment under the Anti-Discrimination Legislation in Relation to the Arrival of Persons Fleeing the International Armed Conflict in Ukraine	105
4.2.1	Provision of Goods and Services	106
4.2.2	Education	107
4.2.3	Employment and Similar Legal Relations	108
	Conclusion	109
	Recommendation	110
	Conclusion	112
	List of recommendations	115

List of Abbreviations

2021 Report – Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the Year 2021

2022 Report – Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the Year 2022

Abortion – induced termination of pregnancy

Act on Asylum – Act No. 480/2002 Coll. on Asylum

Act on Employment Services – Act No. 5/2004 Coll. on Employment Services, and on the amendment and supplementation of certain Acts

Act on Health Insurance – Act No. 580/2004 Coll. on Health Insurance and on the amendment and supplementation of Act No. 95/2002 Coll. on Insurance, and on the amendment and supplementation of certain Acts

Act on Illegal Work and Illegal Employment – Act No. 82/2005 Coll. on Illegal Work and Illegal Employment, and on the amendment and supplementation of certain Acts

6

Act on Name and Surname – Act No. 300/1993 Coll. on Name and Surname

Act on the Residence of Aliens – Act No. 404/2011 Coll. on the Residence of Aliens

Act on State Symbols – Act No. 63/1993 Coll. on the State Symbols of the Slovak Republic and their Use

Act on Teaching and Professional Staff – Act No. 138/2019 Coll. on Teaching and Professional Staff, and on the amendment and supplementation of certain Acts

Anti-Discrimination Act – Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection Against Discrimination, and on the amendment and supplementation of certain Acts (the Anti-Discrimination Act)

CEDAW – Convention on the Elimination of All Forms of Discrimination Against Women

Centre – Slovak National Centre for Human Rights

Committee – United Nations Committee on the Elimination of Racial Discrimination

Committee for the Rights of LGBTI Persons – Committee for the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons of the Government Council of the SR for Human Rights, National Minorities and Gender Equality

Constitutional Act on State Security – Constitutional Act No. 227/2002 Coll. on State Security in Times of War, State of War, State of Extreme Emergency and State of Emergency, as amended

Constitutional Court of the SR – Constitutional Court of the Slovak Republic

Convention – European Convention on the Protection of Human Rights and Fundamental Freedoms

ECtHR – European Court of Human Rights

Education Act – Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, as amended

Government of the SR – Government of the Slovak Republic

HRBA approach – principles of the Human Rights-based Approach

7

ICERD – International Convention on the Elimination of All Forms of Racial Discrimination

ICESCR – International Covenant on Economic, Social and Cultural Rights

Inspection Centre – School Inspection Centre Prešov

IOM – International Organisation for Migration

Lex Ukraine – Act No. 55/2022 Coll. on Certain Measures in View of the Situation in Ukraine

Lex Ukraine 2 – Act No. 92/2022 Coll. on Certain Other Measures in View of the Situation in Ukraine

Lex Ukraine 3 – Act No. 199/2022 Coll. on Certain Social Measures in View of the Situation in Ukraine

Migration Office – Migration Office of the Ministry of Interior of the Slovak Republic

Ministry of Education of the SR – Ministry of Education, Science, Research and Sport of the Slovak Republic

Ministry of Health of the SR – Ministry of Health of the Slovak Republic
Supreme Administrative Court of the SR – Supreme Administrative Court of the Slovak Republic

Ministry of Interior of the SR – Ministry of Interior of the Slovak Republic

Ministry of Labour of the SR – Ministry of Labour, Social Affairs and Family of the Slovak Republic

Ministry of Transport of the SR – Ministry of Transport of the Slovak Republic

National Council of the SR – National Council of the Slovak Republic

National Unit – National Unit for Combating Illegal Migration of the Border and Aliens Police Office of the Presidium of the Police Force

NIP – National Labour Inspectorate

President of the SR – President of the Slovak Republic

8

Programme Statement – Programme Statements of the Government of the SR for the period 2021 – 2024

Public Health Authority of the SR – Public Health Authority of the Slovak Republic

SKP – Slovak Chamber of Psychologists

SKU – Slovak Chamber of Teachers

SR – Slovak Republic

Strategy – Strategy for an Inclusive Approach in Education

UNHCR – United Nations High Commissioner for Refugees

Introduction

The Slovak National Centre for Human Rights (hereinafter referred to as “the Centre”) is a national human rights institution a national equality body. The National Council of the Slovak Republic (hereinafter referred to as “the National Council of the SR”) was established the Centre by Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights (hereinafter referred to as “the Centre Act”), which came to effect on 1 January 1994. The Establishment Act of the Centre was subject to an Agreement between the Government of the Slovak Republic (hereinafter referred to as the “Government of the SR”) and the United Nations on the establishment of the Slovak National Centre for Human Rights published as Notification of the Ministry of Foreign Affairs of the SR No. 29/1995 Coll.

The Centre performs essential tasks in two important areas of social and legal relations. The first one is defined by its mission to protect and promote human rights and fundamental freedoms, while the second one is defined primarily by the provisions of Act

No. 365/2004 Coll. on Equal Treatment in Certain Areas and on Protection Against Discrimination, and on the amendment and supplementation of certain Acts (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. By 30 April of each calendar year, 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.

The aim of the Report on Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the Year 2022 (hereinafter referred to as the “2022 Report”) is to provide the public with a comprehensive assessment of the status of selected human

rights and fundamental freedoms in Slovakia. At the same time, the Centre aims to make recommendations to improve the protection and implementation of human rights and fundamental freedoms. For the first time, the Centre also reviewed the evaluation of the recommendations addressed to individual entities in the Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic for the Year 2021 (hereafter referred to as the “2021 Report”), and will continue evaluating the implementation of the recommendations in the following years.

10 The presented 2022 Report is divided into four chapters. The first chapter assesses the recommendations addressed in the 2021 Report, specifically in the area of COVID-19 vaccination and the impact of the COVID-19 pandemic on selected human rights and fundamental freedoms, in the area of women’s reproductive rights, and in the area of the promotion and protection of human rights, fundamental freedoms and the principle of equal treatment in legislative processes. The evaluation of recommendations is a tool for monitoring progress in making the protection and enjoyment of human rights and fundamental freedoms more effective.

The second chapter deals with segregation in the field of education, which is a persistent problem in the Slovak Republic (hereinafter referred to as “SR”) and finding the solution is a continuous challenge for all relevant and responsible in-

involved parties. School segregation affects not only socially deprived children but also children with disabilities. In the second chapter, the Centre evaluated the ongoing implementation of reforms of the Recovery and Resilience Plan of the Slovak Republic aimed at desegregation in the field of education, and it referred to those reforms that the Ministry of Education of the SR has not implemented within the set deadlines. The ongoing implementation of the recommendations by the United Nations Committee on the Elimination of Racial Discrimination addressed to the Slovak Republic in 2022, which concerned resolving the problem of unequal treatment of Roma children in the field of education, was also evaluated. The Centre supplemented its evaluation with its own findings in response to the State School Inspectorate warnings about segregation practices in specific schools.

The third chapter addresses the main challenges in the field of protection of LGBTI+ rights in Slovakia in the previous year. At the same time, the Centre follows up on the 2021 Report and also in 2022 it examined how human rights defenders perceive the civic space for their work and activities, thus reflecting the obligation of the SR to create a safe and supportive environment for society and an environment where every person should have access to exercise his or her human rights.

The fourth chapter deals with the impact of the armed conflict in Ukraine on the human rights of ref-

ugees. It reflects the Centre's monitoring and evaluation work on the issue. It aims to evaluate the topic in selected areas, namely housing, education, employment, and also

trafficking in human beings. The Centre also considers it important to identify the challenges which the SR must face accordingly.



12 1. Evaluation of 2022 Recommendations

The evaluation of recommendations is a tool for monitoring progress in making the protection and enjoyment of human rights and fundamental freedoms more effective.

1.1 COVID-19 Vaccination

In the 2021 Report, the Centre noted a significant increase in the use of the term “discrimination” by both professionals and the general public in relation to the COVID-19 vaccination. Being/not being vaccinated has become a criterion for having various rights and obligations in several spheres of life. Therefore, compliance with the principle of equal treatment in relation to the COVID-19 vaccination in the areas of employment and similar legal relations and the provision of goods and services protected by the Anti-Discrimination Act was assessed. The Centre provided a comprehensive view of the issue. As a national human rights institution, the Centre commented on the considerations on compulsory vaccination that were echoing throughout society at the end of 2021.

As regards employment and similar legal relations, the Centre has

registered cases of possible violation of the prohibition of discrimination of unvaccinated persons in terms of granting benefits to vaccinated persons and in terms of applying this criterion in the recruitment process in connection with the COVID-19 vaccination. In support of the vaccination campaign, suppliers of goods and services offered consumers a discount if they presented proof of COVID-19 vaccination. The Centre also assessed the impact of restricted access to establishments imposed by decrees of the Public Health Authority of the Slovak Republic (hereinafter referred to as the “Public Health Authority of the SR”). The chapter concludes by assessing whether the adoption of legislation introducing the institute of compulsory COVID-19 vaccination could be seen as a reasonable restriction on the right to inviolability of the person and his or her privacy.

The Centre recommended to:

1. Private-legal entities not to use the criterion of being or not being vaccinated 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 provision.
2. Labour inspectorates to focus their inspection activities on compliance with generally binding legislation governing compliance with the principle of equal treatment in employment and similar legal relations with both vaccinated and unvaccinated persons.
3. The Slovak Trade Inspection to focus its inspection activities on compliance with generally binding legislation governing the obligation to comply with the principle of equal treatment of both vaccinated and unvaccinated consumers.

4. The National Council of the SR, Government of the SR and Public Health Authority of the SR, to comprehensively assess the reasons for implementation in the case of the introduction of a general vaccination obligation or an obligation for selected groups of the population.

The Centre states that the implementation of the above recommendations in 2022 was largely influenced by the evolution of the COVID-19 pandemic. Restrictive measures regarding vaccination against this disease were only in effect in the months of January and February 2022. Subsequently, the measures taken to prevent the spread of this infectious disease in the population were eased by the state authorities and were not stricter until the end of 2022.

14

The Public Health Authority of the SR abolished the restriction of access to establishments by Decree No. 25/2022 V. v. of the SR with effect from 26 February 2022. The restriction on employee access to the workplace and other premises of the employer was also abolished.¹ With the withdrawal of measures linked to COVID-19 vaccination, the very subject of vaccination and the differentiation of persons on that basis by private-legal entities has gradually fallen into oblivion.

In its first recommendation, the Centre urged these entities not to use the COVID-19 vaccination criterion to impose different rights and obligations on persons in comparable situations, unless they are entitled or required to do so by a generally binding legal provision.

The Centre considers the recommendation to have been complied with. Private-legal entities complied with the obligation laid down in the Decrees to allow access to premises to vaccinated persons and persons complying with the established criteria. The Centre has not observed cases in which private-legal entities would arbitrarily make the exercise of certain rights conditional upon vaccination against COVID-19 or impose different obligations on unvaccinated persons. The above recommendation of the Centre proved reasonable also in the context of the ruling of the Constitutional Court of the SR (hereinafter referred to as “the Constitutional Court of the SR”), which reviewed the proposal of a group of deputies to declare the incompatibility of the provision of the law regulating the possibility of the Public Health Authority of the SR or a regional public health authority to adopt measures conditioning entry into establishments on proof of COVID-19 vaccination, by a negative test or a certificate of overcoming the COVID-19 disease, with the constitutional prohibition of discrimination. The Constitutional Court stated that: *„the unequal treatment of unvaccinated persons compared to persons who have a valid COVID-19 vaccination certificate or a certificate of*

1 The restriction of access of employees to the workplace and other employer's premises was abolished by Decree No. 16/2022 V. v. of the Public Health Authority of the SR with effect from 5 February 2022.

having overcome COVID-19 when entering the premises of establishments where people gather and when coming to mass events, which may occur based on the application of statutory authorisation contained in the contested provision of the Act on the Protection of Public Health, cannot be considered as a manifestation of constitutionally unacceptable discrimination. The contested statutory provision of the Act on the Protection of Public Health pursues a legitimate aim consisting (in addition to the protection of the business environment), in particular, of the protection of health, primarily of unvaccinated persons and, indirectly, of all other natural persons”² The legal opinion of the Constitutional Court of the SR corresponds with the recommendation of the Centre, which considered the distinction between vaccinated and unvaccinated persons to be lawful if private-law subjects in legal relations were entitled to such action or if they were required to do so by a generally binding legal regulation.

The second and the third recommendations were addressed by the

Centre to the inspection bodies, namely the Slovak Trade Inspection and the Labour Inspectorate. It recommended that they focused their control and inspection activities on compliance with the generally binding legislation governing the obligation to respect the principle of equal treatment in the provision of goods and services and in employment and similar legal relations with both vaccinated and unvaccinated persons. Given the COVID-19 pandemic evolution and the related retreat from the conditioning of various rights and obligations regarding vaccination that the Centre commented on at the beginning of this chapter, this recommendation has proven to be outdated.³ The Centre will insist on its implementation if the spread of COVID-19 worsens again and if restrictive measures related to vaccination are once again taken by the authorised persons. The above also applies to the fourth recommendation addressed to the National Council of the SR, Government of the SR and Public Health Authority of the SR concerning the possible introduction of a general vaccination obligation or an obligation for selected groups of the population.

² See Ruling of the Constitutional Court of the SR file No. PL. ÚS 14/202-107 of 16 February 2022, available in Slovak at: <https://bit.ly/4IADPnA>

³ The Centre's Report on Human Rights pursuant to Section 1, par. 4 of Act No. 308/1993 Coll. on the Establishment of the Slovak National Centre for Human Rights is published for the previous calendar year by 30 April each year.

1.2 Impacts of the COVID-19 Pandemic on Selected Human Rights and Fundamental Freedoms

In the 2021 Report, the Centre also evaluated the restrictions on the freedom of religious expression of believers in Slovakia imposed by the state authorities on the basis of the adopted restrictions, which were aimed at preventing the spread of COVID-19. It carried out a proportionality test, on the basis of which it did not arrive at a clear answer to the legal question whether

the interference with freedom of religious expression in accordance with Art. 24, par. 2 of the Constitution of the SR was in compliance with the Constitution. Based on the measures in force in other European countries at the time, the Centre stated that there were more considerate means of restricting freedom of religious expression.

The Centre recommended to:

1. The Government of the SR to place greater emphasis, when approving resolutions restricting freedom of residence and movement by curfews, on assessing the necessity of restrictions interfering with freedom of religious expression in accordance with Art. 24, par. 2 of the Constitution of the SR.
2. The Public Health Authority of the SR to place greater emphasis, when adopting decrees prescribing measures in the event of a threat to public health, on assessing the existence and appropriateness of more considerate means of restricting religious freedom of expression so that the purpose of the restriction can still be achieved.

The Government of the SR abolished the declared state of emergency with effect from 23 February 2022. According to Article 5 of Constitutional Act No. 227/2002 Coll. on State Security in Times of War, State of War, State of Extreme Emergency and State of Emergency, as amended (hereinafter re-

ferred to as the “Constitutional Act on State Security”) in connection with the implementation of certain economic mobilisation measures adopted by the Government of the SR to prevent the spread of the infectious disease COVID-19, the state of emergency was announced three times in total:

- from 16 March 2020 (Government Resolution No. 114 of 15 March 2020, published in the Collection of Laws No. 45/2020), terminated by expiry on 13 June 2020 (Government Resolution No. 366 of 10 June 2020, published in the Collection of Laws No. 147/2020);
- from 1 October 2020 (Government Resolution No. 587 of 30 September 2020, published in the Collection of Laws No. 268/2020), terminated by expiry on 14 May 2021 (Government Resolution No. 260 of 14 May 2021, published in the Collection of Laws No. 175/2021); and,

- from 25 November 2021 (Government Resolution No 695 of 24 November 2021, published in the Official Gazette No 428/2021), terminated by expiry on 22 February 2022.

During the state of emergency, the Government of the SR mainly restricted freedom of movement and residence by imposing curfews with specified exceptions. It also prohibited the exercising of the right to assemble peacefully in numbers of more than six persons, except for persons living in the same household. The lifting of the state of emergency has reduced the risk of serious interference with human rights and fundamental freedoms. However, the Public Health Authority of the SR could intervene by decrees, if necessary. However, with effect from 14 March 2022, Decree of the Public Health Authority of the SR No. 24/2022 V. v. of the SR, ordering measures in the event of a threat to public health in order to restrict mass events, was repealed. From 14 March 2022, all mass events could be held without any capacity or other organisational restrictions and conditions.⁴

Considering the evolution of the COVID-19 pandemic in 2022⁵ and the pandemic wave caused by the omicron variant, the Centre considers the recommendations to have been complied with.

The Public Defender of Rights does not have the competence to review restrictions on human rights and fundamental freedoms if they are decided about by the Government of the SR within the meaning of the Constitutional Law on State Security. Moreover, the right to file a petition to the Constitutional Court is also limited because the procedure concerning the compliance of the decision to declare the state of emergency is subject to a specific regime pursuant to Article 129, para.6 of the Constitution of the SR and in this case the legislator did not include the Public Defender of Rights among the actively legitimated subjects.⁶ The Centre stressed that the Public Defender of Rights enters the public debate in order to protect the rule of law and fundamental rights and freedoms. In case of their violation during the state of emergency, it should be the closest “partner” for the Constitutional Court of the SR, especially because of the importance of its active role in the protection of human rights and fundamental freedoms.

⁴ Decree of the Public Health Authority of the SR No. 29/2022, which prescribes measures in case of a public health threat in relation to the obligation of having the upper respiratory tract covered.

⁵ For more details see (available in Slovak): <https://bit.ly/41Rx0X9>

⁶ Report on the activities of the Public Defender of Rights for 2020, available in Slovak at: <https://bit.ly/3AnISNI>

The Centre recommended to:

1. The National Council of the SR to strengthen the competences of the Public Defender of Rights during a state of emergency so that he or she can assist effectively in the protection of fundamental rights and freedoms.

The National Council of the SR was not able to fill the vacant post of Public Defender of Rights from 29 March to 1 December 2022. The Office of the Public Defender of Rights was therefore unable to fulfil its mission – it could not, for example, settle complaints. The same applies to the right to apply to the Constitutional Court of the SR or to initiate proceedings on one's own initiative.

lation is to make the Office of the Public Defender of Rights functional; for example, if the National Council of the SR does not elect a new Public Defender of Rights before the expiry of the term of office of the current Public Defender of Rights. práv pred uplynutím funkčného obdobia aktuálneho verejného ochrancu práv.

However, the National Council of the SR ignored the Centre's recommendation to strengthen the competence of the Public Defender of Rights during the state of emergency. In view of the failure to implement this recommendation, the Centre **repeats its urge to the National Council of the SR to strengthen the competences of the Public Defender of Rights during the state of emergency so that he or she can provide effective assistance in the protection of human rights and fundamental freedoms.**

The National Council of the SR did not elect a Public Defender of Rights until 9 November 2022. He took office on the date of his oath of office, on 1 December 2022.⁷ One day before his election, the National Council of the SR amended the Constitution of the SR⁸ and thus reacted to the constitutionally unsatisfactory situation, when the post remained vacant for several months after the expiry of the Public Defender's term of office. As follows from the explanatory memorandum,⁹ the aim of the legis-

⁷ JUDr. Róbert Dobrovodský, PhD., LL.M. (Tübingen) holds the post of Public Defender of Rights in the fifth term of office since the existence of the institution of the Ombudsman in the Slovak Republic.

⁸ Constitutional Act No. 378/2022 Coll. supplementing Constitution of the SR No. 460/1992 Coll., as amended.

⁹ An explanatory memorandum is available in Slovak at: <https://bit.ly/3ApKUvu>

1.3 Women's Reproductive Rights

In the context of women's reproductive rights, in the 2021 Report the Centre referred to new attempts to change the legislation regulating access to abortion (hereinafter referred to as the "abortion"), which de facto limited the access to abortion compared to the current legislative status quo. In 2021 the Centre noted the restriction of access to abortion for a selected group of women by the effect of the amend-

ed Decree to 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 National Council of the SR to enact the Pregnant Women's Assistance Act.¹⁰ As regards women's and girls' access to abortion in Slovakia, the Centre also addressed the availability of safe forms of abortion.¹¹

The Centre recommended to:

1. Members of the National Council of the SR and Government of the SR to 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 SR and the Government of the SR to refrain from inappropriate interference with women's right to sexual and reproductive health, including access to safe legal forms of abortion.
3. The National Council of the SR and the Government of the SR to respect the principle of equal treatment when introducing legislative and non-legislative measures to help pregnant women.
4. The Ministry of Health of the SR to launch a transparent and participatory process for the development of a national strategy for sexual and reproductive health without any undue delay.
5. The Ministry of Health to maintain and publish a complete and up-to-date list of health facilities that perform abortion at the request of a woman.
6. The Ministry of Health to 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 some districts and regions of the SR.

¹⁰ Proposal by a group of members of the National Council of SR to enact the Pregnant Women's Assistance Act (Parliamentary press No. 665), available in Slovak at: <https://bit.ly/4izQlUn>

¹¹ For more details see: Report on the observance of human rights, including the principle of equal treatment in the Slovak Republic for the year 2021. Available at: <https://bit.ly/SpravaoLP>

7. Health care facilities performing abortion to adjust the fee for abortion in their price lists so that the fee covers all costs associated with the abortion and does not exceed the sum determined by the relevant measure of the Ministry of Health of the SR.
8. The Ministry of Health of the SR to prepare a draft of relevant legislative changes that would enable making abortion by pharmacotherapy, including the classification of the relevant medicines in the list of categorised medicines and the list of medicines with an officially determined price.

The Centre addressed several legislative recommendations to the National Council of the SR. In 2022, various MPs submitted four pro-

posals in the Parliament to restrict women's rights and access to abortion. Specifically:

- Proposal by Rastislav SCHLOSÁR and Magdaléna SULANOVÁ, members of the National Council of the SR, for the enactment of a law amending Act No. 73/1986 Coll. of the Slovak National Council on the Artificial Termination of Pregnancy, as amended (hereinafter referred to as "Proposal No. 1");¹²
- Proposal by Martin ČEPČEK, member of the National Council of the SR, for the enactment of a law amending Act No. 73/1986 Coll. on the Artificial Termination of Pregnancy, as amended, and amending and supplementing certain Acts (hereinafter referred to as "Proposal No. 2");¹³
- Proposal by Martin ČEPČEK, Member of the National Council of the SR, for the enactment of a law amending Act No. 576/2004 Coll. on Health Care, Services Related to the Provision of Health Care and on the amendment and supplementation of certain Acts, as amended, and amending certain Acts (hereinafter referred to as "Proposal No. 3");¹⁴
- Proposal by a group of members of the National Council of the SR for the enactment of a law about assistance to pregnant women (by means of a letter dated 19 October 2022 they requested to propose their proposal to the regular session of the National Council of the SR, which will start on 29 November 2022. By means of a letter dated 29 November 2022, they requested to propose their proposal to the first regular session of the National Council of the SR in 2023) (hereinafter referred to as Proposal No. 4").¹⁵

¹² Available in Slovak at: <https://bit.ly/41xlcQw>

¹³ Available in Slovak at: <https://bit.ly/3oCesTR>

¹⁴ Available in Slovak at: <https://bit.ly/3L5H3II>

¹⁵ Available in Slovak at: <https://bit.ly/4425IMn>

According to the explanatory memorandum¹⁶, the legislative objective of Proposal No. 1 was to restrict the performance of abortions in Slovakia by prohibiting them at the request of foreign women not having Slovak citizenship, which would allegedly resolve the vague situation in the area of “abortion tourism” in Slovakia. Although the draft act declared a resolution of the vague situation referred to as “abortion tourism” in Slovakia, the relevance of the issue was explained in the explanatory memorandum by linking it to Ukrainian women fleeing the war, who are allegedly “lured to have abortions in Slovakia”, which is unacceptable in the opinion of the Centre.

Proposal No. 2 sought fundamental changes to the conditions for access to abortion, for example by removing the possibility to perform it without giving a reason at the woman's request or by limiting its performance in cases where the woman's life or health is at risk, to cases where it is not possible to save the mother's life or it is not otherwise possible to prevent permanent and serious damage to her health. The explanatory memorandum¹⁷ specifies that all other medical options should be used to prevent abortion. However, this draft act also infringed upon the rights and legally protected interests of women with mental disorders which fall under the list of diseases, syndromes and conditions constituting medical grounds for

abortion under the current Abortion Act Decree. In fact, the explanatory memorandum states that the provisions allowing for abortion for threats to the mother's health have begun to be “misused in practice” in cases of “mental distress and discomfort of the mother”.

According to the Explanatory Memorandum¹⁸, the aim of Proposal No. 3 is to ensure that women are better informed about the current development of their pregnancy before undergoing such a serious procedure as abortion and to ensure that they have access to more information to make a free decision, as well as to prohibit advertising and promotion of abortion.

According to the explanatory memorandum¹⁹ to Proposal No. 4, the purpose was to create support measures for women considering applying for abortion. For example, financial help with the increased costs associated with the birth of a child with a disability.

None of the four proposals was approved by the National Council of the SR. Another of the unapproved draft acts was the Proposal by Anna ANDREJUVOVÁ and Eva HUDECOVÁ, members of the National Council of the SR, for the enactment of a law amending Act No. 131/2010 Coll. on Funeral Care, as amended, and on the amendment and supplementation of cer-

¹⁶ Explanatory memorandum available in Slovak at: <https://bit.ly/3mUDYDw>

¹⁷ Explanatory memorandum available in Slovak at: <https://bit.ly/41ViGEj>

¹⁸ Explanatory memorandum available in Slovak at: <https://bit.ly/3AmHbP0>

¹⁹ Explanatory memorandum available in Slovak at: <https://bit.ly/3n3jOCj>

tain Acts.²⁰ According to the Explanatory Memorandum²¹, the aim was to eliminate inconsistent access to and treatment of aborted or prematurely removed human fetuses in the context of ensuring piety, i.e. a way of treating human remains with dignity. In practice, this would mean that health facilities performing abortion would be obliged to bury or cremate all fetuses (this would include “foetal egg removed from the uterus without the foetus” and “uterine lining if histologically proven to be the remains of an abortion”) in a crematorium and deposit the urn in a burial site.

As evident from the submitted draft acts in the area of women's reproductive rights, the recommendations of the Centre were apparently not accepted by the National Council of the SR and the Ministry of Health of the Slovak Republic (hereinafter referred to as the “Ministry of Health of the SR”) and did not prepare the required legislative changes in 2022, which would allow for the performance of medication abortion. As the authors of the publication “Availability of Reproductive Health Services in Slovakia – Report on Health Care Providers” state, *„the introduction of medical abortion has long been in line with the efforts of the profes-*

*sional public. Medical abortion is more gentle for women, less risky, reduces the cost of abortion and partly addresses the shortage of specialist staff, such as anaesthetists. It also complies with women's right to quality health care and to enjoy the fruits of scientific progress.”*²²

The Centre addressed four recommendations to the Ministry of Health, none of which were implemented. Also in 2022, it did not increase the availability of information by introducing and publishing a register of health facilities that perform abortions at the request of a woman. Lack of access to information is a major barrier to women's access to reproductive health care. Similarly, a debate on the development of a national sexual and reproductive health strategy was not even started yet.

As regards the financial availability of services in relation to reproductive rights, the non-observance of the maximum fee for the performance of abortion set by the Regulation of the Ministry of Health of the SR is an issue.²³ Publicly available information shows that health facilities continue to publish price lists in such a way that the fee for abortion does not always include the ancillary costs associated with

²⁰ Available in Slovak at: <https://bit.ly/3LptYeN>

²¹ Explanatory memorandum available in Slovak at: <https://bit.ly/3Lndnly>

²² Holubová, B., Mesochoritsová, A., Jojart, P.: Availability of Reproductive Health Services in Slovakia, Report on Health Care Providers, Option to choose 2021. Available in Slovak at: <https://bit.ly/3V0jsxC>

²³ The maximum fee for the performance of an abortion at the request of a woman up to 12 weeks of pregnancy is set by Regulation of the Ministry of Health No. 07045/2003 – OAP of 30 December 2003, which establishes the scope of price regulation in the field of health care (Notification No. 588/2003 Coll.), as amended, at EUR 248.95.

the abortion.²⁴

Restricting abortions in Slovakia continued to resonate in society and parliament in 2022. According to the legal opinion of the Centre, the above-mentioned draft acts presented substantial barriers to access to safe abortion and negatively affected women living in poor economic and social circumstances in particular. At the same time, these draft acts could have implicitly affected women's access to legal abortion and created a hostile environment for women. Although the current legal framework regulating abortion is reasonable, efforts were made to make it stricter in the National Council of the SR also in 2022. The Centre reiterates that attempts to introduce stricter standards that would make 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 the Slovak Republic's international human rights obligations.²⁵

The Centre finds all of the above recommendations unfulfilled and adds that not only has the situa-

tion in the area of women's reproductive rights not improved but, on the contrary, the repeated legislative efforts of MPs contribute to the curtailment of the reproductive rights of women. At the same time, attempts to restrict women's reproductive rights go hand in hand with restrictions of other women's rights (e.g. those related to violence against women).

The Centre reiterates the need to adopt all the recommendations addressed in the chapter on *Reproductive Rights of Women of the 2021 Report*.

In the Report, the Centre further explored how selected journalists and activists,²⁶ who cover human rights and gender equality issues, including access to abortion, perceive the democratic space for their work in the context of repeated legislative attempts to restrict abortions. It has observed the limitation of democratic space for women human rights defenders engaged in women's sexual and reproductive rights, including in the context of repeatedly submitted legislative proposals aimed at restricting access to legal and safe abortion.

24 Holubová, B., Mesochoritsová, A., Jójárt, P.: Availability of Reproductive Health Services in Slovakia, Report on Health Care Providers, Option to choose 2021. Available in Slovak at: <https://bit.ly/3VQjsxC>

25 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://bit.ly/3nIVeWM>

26 The activists involved are also experts in human rights and women's rights.

The Centre recommended to:

1. The Government of the SR to ensure a safe democratic environment for women human rights defenders, including long-term institutional and financial support for civil society organisations dedicated to human rights and gender equality, built on partnership, independence and expertise.
2. Ministries responsible for individual grants to civil society to refrain from interfering with the availability of financial resources for organisations and activists dealing with access to legal and safe forms of abortion.
3. The Government of the SR, individual ministries and to the National Council of the SR to strengthen and promote the active participation of women human rights defenders in the development of laws and policies having an impact on human rights, including women's rights.
4. The Government of the SR and central state administration bodies to implement and support awareness-raising activities, including education of the general public, with the aim of eliminating sexism and misogyny in the public space.

24

The first recommendation by the Centre was to ensure a safe democratic environment for women human rights defenders. In Slovakia in 2022, they continued to be under threat, including journalists.²⁷ In the context of the attack on Zámocká Street²⁸, the attacks and the polarisation of society have deepened even further. There has been a proliferation of hate narratives against civil society, where members do not receive special legislative protection.²⁹ Hate nar-

ratives were regularly encountered by both male and female journalists. They were spurred on by public attacks on politicians or by the particular topics with which they were dealing.³⁰

In its second recommendation, the Centre focused on the availability of financial resources. NGOs working in the field of promoting gender equality and women's human rights have faced problems with the financial sustainability of

²⁷ For more details, see subsection 3.4 *Democratic space for LGBTI+ human rights defenders in Slovakia*.

²⁸ For more details see subsection 3.2 *Terrorist attack on LGBTI+ people in front of Bratislava's Tepláreň bar*.

²⁹ VIA IURIS: *Liberties Rule of Law Report 2023 SLOVAKIA*. Report available in Slovak at: <https://bit.ly/3H8RSbV>

³⁰ Safe journalism.sk initiative. For more details see (available in Slovak): <https://bezpecna.zurnalistika.sk/>

their activities in the long term. In the Slovak Republic, no financial mechanism has yet been established to provide systemic, long-term financial backing for the work of these organisations, which directly undermines efforts to tackle discrimination against women and other disadvantaged groups and to eliminate gender inequalities. NGOs that have been supporting gender equality and women's rights for a long time have lost access to financial support from the state in the form of subsidies under the Ministry of Labour, Social Affairs and Family of the SR since 2021.³¹ There has been no change in 2022.³²

The third recommendation concerned the development of laws and policies with human rights implications. The Centre finds problematic the increasingly frequent parliamentary draft acts,³³ which do not pass through inter-ministerial comment procedure or any public debate, which makes the legal environment unpredictable. Unpredictable legislative changes can have a profound impact on human rights, including women's

rights. Parliamentary draft acts should be a tool used in exceptional cases, as the public, including women human rights defenders, lose the opportunity to actively participate in the drafting procedure, as demonstrated by the 2022 parliamentary draft acts on women's reproductive rights. The participation of both the general public and the professional public is often only a formal element.

The adoption of acts in the abridged legislative procedure is also noteworthy. According to VIA IURIS *„during this election period, politicians have circumvented the law on law-making up to five times more often than the two previous governments.“*³⁴ The abridged legislative procedure is an exceptional legislative procedure. The Act on the Creation of Legal Regulations states that the mandatory commenting on the proposed act by public authorities or the public may only be omitted in the event of extraordinary circumstances, in particular a threat to human rights and fundamental freedoms or security, where the country is threatened with

31 Act No. 417/2020 Coll., which amends Act No. 544/2010 Coll. on Subsidies within the competence of the Ministry of Labour, Social Affairs and Family of the SR, as amended, 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 involving “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 involving “promotion of equality between women and men and equal opportunities” as of 1 January 2021. Available in Slovak at: <https://bit.ly/3UYjsyp>

32 For more details see subsection 3.4 *Democratic space for LGBTI+ human rights defenders in Slovakia*.

33 The creation of legislation by MPs and committees is regulated by Act No. 350/1996 Coll. on the Rules of Procedure of the National Council of the SR, and Legislative Rules of Law-making is regulated by Act No. 19/1997 Coll. (adopted by the Resolution of the National Council of the SR of 18 December 1996).

34 For more details see the VIA IURIS blog, available in Slovak at: <https://bit.ly/3L2PQeH>

significant economic damage, if a state of emergency is declared or measures to deal with an extraordinary and crisis situation are taken.³⁵ The Centre stresses that the circumvention of the basic rules of the legislative process makes it absolutely impossible for women human rights defenders to participate in the development of laws and policies.

As regards the fourth recommendation – to implement and promote awareness-raising activities to eliminate sexism and misogyny – it should be noted that none of the action plans or strategies deal with these concepts. The Action Plan for Equality between Women and Men and Equal Opportunities for 2021-2027 in the field of Education, Science, Research uses

the term “equality between women and men and equal opportunities”, i.e. the tasks of the Ministry of Labour, Social Affairs and Family of the SR, the State Pedagogical Institute, and the Centre fulfil the Centre's recommendation only indirectly. Also, the tasks of the National Action Plan for Women's Employment 2022-2027 only partially reflect the above-mentioned recommendation, focusing on partial problems (e.g. sexual harassment in the workplace) or the pursuit of gender equality in society.

The Centre assesses the above recommendations as remaining unfulfilled and **reiterates the need to adopt all the recommendations addressed in the 2021 Report, chapter *Reproductive Rights of Women*.**

³⁵ Act No. 400/2015 Coll. on the Creation of Legal Regulations and the Collection of Laws of the SR and on the amendment and supplementation of certain acts..

1.4 Promotion and Protection of Human Rights, Fundamental Freedoms and the Principle of Equal Treatment in Legislative Processes

In the 2021 Report, the Centre assessed the monitoring of legislative initiatives and processes in the context of the promotion and protection of human rights, fundamental freedoms and the principle of equal treatment. The inclusion of this topic reflects on the “legislative challenge” addressed by the Centre in the introduction of the 2020 Report to the legislature. Therein, the Centre indirectly accused the legislature of neglecting the legislative process in the area of protection and promotion of minority rights and explicitly drew attention to the status of foreigners and members of national, ethnic or sexual minorities.

It was evident from the monitoring of draft acts submitted to the National Council of the SR in 2021 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. On the contrary, draft acts bills were regularly submitted with content contradicting, or even explicitly denying, basic human right principles or established human rights standards. The exception was the adoption of so-called anti-pandemic measures. In par-

ticular, the Centre assessed positively the submission of the draft act on life partnership, and on the amendments and supplementation of certain Acts, and the act intended to amend the Anti-Discrimination Act.

A significant group of draft acts adopted in 2021 were those intended to have a positive impact on the state of the environment or to ensure the right to a favourable environment. On the contrary, the Centre was particularly critical of the fact that the need to promote and protect the rights of minorities was again absent. The only positive aspect in this context was the extension of the scope of assets which are not taken into account for persons with severe disabilities when assessing their entitlement to a financial allowance to compensate for a severe disability. Other draft acts adopted in 2021 relating to the protection and promotion of human rights were an amendment to the Act on the Use of Languages of National Minorities and amendments regulating the conditions of collusion detention, the institute of compensation for non-pecuniary damage to victims of crimes, and the conditions of exercising the right to vote.

The Centre recommended to:

1. Entities entitled to submit draft acts to increase activities in submitting drafts, the purpose of which will be the equalisation of minorities living in the territory of the Slovak Republic.
2. Entities entitled to submit draft acts not to abuse their position to push for legislative amendments that are in clear contradiction to

the international human rights obligations to which the Slovak Republic is bound.

3. The National Council of the SR, not to ignore the international human rights obligations of the Slovak Republic in relation to legally recognised civil unions of persons regardless of their gender.

The protection and promotion of human rights and fundamental freedoms was not a priority of the legislative bodies in the assessed year 2022 either. In light of the negative events and the increasing radicalisation of society that accompanied this year, and which culminated in hate crimes committed against LGBTI+ people,³⁶ this is the evidence of the indifferent approach of most responsible entities to this issue.

28

Of the draft acts aimed at eradicating inequities faced by minorities living in the territory of the SR, it is worth mentioning only the draft act on accessibility of products and services for persons with disabilities, and on the amendment and supplementation of certain Acts, and the draft act amending Act No. 245/2008 Coll. on education and training (the School Act), and on the amendment and supplementation of certain Acts, as amended (hereinafter referred to as the "School Act"), which has been submitted to the inter-ministerial comment procedure. Another draft act that could bring about positive change in the protection and promotion of the rights of sexual minorities was the draft act amending and supplement-

ing Act No. 40/1964 Coll. of the Civil Code, as amended, amending certain Acts. This law should have introduced the institution of partner cohabitation.³⁷

With the draft law on accessibility of products and services for persons with disabilities and on the amendment and supplementation of certain Acts, the Government of the SR transposed Directive (EU) 2019/882 of the European Parliament and of the Council of 17 April 2019 on Requirements for accessibility of products and services. The aim of the Slovak government was to contribute to the proper functioning of the internal market, focusing on the accessibility of certain products and services and increasing availability thereof. This would contribute to better inclusion in society and facilitate independent living for persons with disabilities. It would promote equality of access to goods and services which would, thanks to their original design or subsequent adaptation, address the specific needs of persons with disabilities. The transposition of the Directive has also contributed to the fulfilment of obligations of the SR under the UN Convention on the Rights of Persons with Disabilities,

³⁶ For further details see subsection 3.4 *Terrorist attack on LGBTI+ people in front of Bratislava's Tepláreň bar.*

³⁷ For more details, see subsection 3.2.2 *Legal regulation of same-sex unions.*

which obliges the parties to take measures to ensure that persons with disabilities have access to the physical environment, transport, information and communication, including information and communication technologies and systems, as well as to other facilities and services available or provided to the public, on an equal basis with others. The draft act defined the scope of accessibility requirements for services and set out obligations for service providers. It further regulated compliance with accessibility requirements as well as the presumption of compliance in relation to harmonised standards and technical service specifications. At the same time, it established supervision over the fulfilment of the service provider's obligations, the control of the compliance of services, and regulated the fines for administrative offences. The draft act was adopted by the National Council of the SR on 4 October 2022 and promulgated in the Collection of Laws on 29 October 2022 under No. 351/2022. However, it will only come to effect on 28 June 2025.

Amendments to Act No. 447/2008 Coll. on Monetary Contributions for Compensation of Severe Disabilities and Act No. 5/2004 Coll. on Employment Services also brought positive changes in relation to persons with disabilities. They concerned the care allowance and the regulation of sheltered workshops.³⁸

The draft act amending and supplementing the Education Act, which was submitted by the Ministry of Education of the SR to the inter-ministerial comment procedure, was intended to meet some of the objectives of the Recovery and Resilience Plan of the SR approved by Government Resolution No. 221 of 28 April 2021. These reforms and investments were intended to reduce the proportion of pupils who do not reach the basic skill levels, to reduce the social-economic impact on pupils' educational outcomes, and to promote equality of educational opportunity. The ambition was also to increase the proportion of pre-school age children participating in pre-primary education, to reduce the drop-out rate with a special focus on medically and socially disadvantaged children, to adapt education to the individual needs of each child and to reduce the rate of transfer of disadvantaged children from mainstream education to special education. In the inter-ministerial comment procedure, the evaluation of which had not yet been completed as of 31 December 2022, 366 comments were made on the draft act, 77 of which were substantial. Also the Centre has commented on the draft and it sees it positively in terms of putting inclusive education into practice. However, the question is: what will be the final form in which it will be submitted to the National Council of the SR?³⁹

³⁸ Details of the adopted legislation are available in Slovak at: <https://bit.ly/40BwZge>

³⁹ For more details see subsection 2.1 *On the futile efforts to introduce a legal definition of segregation*.

Considering the minimal number of acts submitted by the eligible entities with the aim of securing equality for minorities living in the territory of the SR, the Centre considers the recommendation mentioned in point 1 as not having been fulfilled. **Therefore it again recommends to entities entitled to submit draft acts to increase their activities in submitting such draft acts with the purpose of eradicating inequalities faced by minorities living in the territory of the SR.**

The second recommendation of the Centre addressed to the entities entitled to submit draft acts was that they should not misuse their position to promote legislative amendments that are in clear contradiction to the international human rights obligations to which the Slovak Republic is bound.

Contrary to this recommendation, draft acts have been repeatedly submitted to the National Council of the SR with the ambition to narrow the guaranteed scope of women's rights in the area of sexual and reproductive health. The Centre addressed these proposals in the previous subchapter 1.3.

Another draft act contrary to the Centre's recommendation was the draft act to ban the display of "symbols of movements, organisations, communities and ideologies promoting any kind of sexual orientation" on buildings and in buildings

of state bodies and institutions, including the headquarters of the Public Defender of Rights, which are marked with state symbols by law.⁴⁰ By Resolution No. 1704 of 6 October 2022, the National Council of the SR decided not to proceed with the debate on this draft act after debating it in the first reading.

In light of the above draft acts, the Centre considers Recommendation 2 to have not been implemented. **Therefore, it continues to recommend to entities entitled to submit draft acts to not misuse their position to promote legislative amendments that are in clear contradiction to the international human rights obligations to which the Slovak Republic is bound.**

The last recommendation to the National Council of the SR was to not ignore the international human rights obligations of the SR in relation to legally recognised unions of persons regardless of their sexual orientation and gender identity.

The Centre addresses the issue of human rights in relation to unions of same-sex partners in a separate chapter on the Rights of LGBTI+ people in Slovakia. Given that no progress was made in this area in 2022, the Centre considers its recommendation to have not been implemented. It also regrets the missed opportunity for equal rights for LGBTI+ people in the

⁴⁰ Proposal by Tomáš TARABA and György GYIMESI, the Members of the National Council of the SR, to issue an act amending and supplementing Act No. 63/1993 Coll. of the National Council of the SR on the State Symbols of the SR and their Use, as amended.

wake of the aforementioned tragedy. **To the National Council of the SR it recommends again not to ignore the international human rights obligations of the SR**


in relation to legally recognized unions of persons regardless of their sexual orientation and gender identity.



32

2. Segregation in Education and Training – a Continuing Problem and an Evaluation of Proposed Solutions

Segregation is a persistent problem in the Slovak Republic and finding the solution is a continuous challenge for all relevant and responsible involved parties. School segregation affects not only socially deprived children but also children with disabilities.



The Slovak education system has been facing the problem of separate education of Roma children and children with disabilities for a long time.⁴¹ Its relevance is confirmed by the results of the Centre's monitoring at selected primary schools, as well as by the decision of the Prešov District Court on the unlawful education of Roma children in special classes. By

adopting the draft Recovery and Resilience Plan of the SR (hereinafter referred to as the "Recovery Plan"), the Government of the SR responded to repeated calls from independent monitoring mechanisms aimed at improvement of the quality of education, increasing inclusiveness and ensuring equality in access to quality education.

⁴¹ In 2015, the European Commission initiated infringement proceedings against the Slovak Republic for an alleged breach of the prohibition of discrimination in access to education on grounds of race and ethnicity laid down in the Racial Equality Directive. The UN Committee on the Rights of the Child pointed out in its final recommendations to the Slovak Republic in 2016 that Roma children are still victims of *de facto* segregation within the education system. It drew attention to the disproportionately high number of Roma children placed in special classes for children with mild mental disabilities. Similarly, the Committee on Economic, Social and Cultural Rights, in its Concluding Observations on the 2019 Third Periodic Report on Slovakia, drew attention to the persistent segregation of Roma children in education, including the high number of Roma children placed in special classes and schools. In its fifth opinion on the Slovak Republic of February 2022, the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities warns that the number of Roma children in special classes and schools for pupils with mild mental disabilities remains alarming. The fact that the Slovak Republic has not yet been able to deal with the problem of separate education is also shown by the results of the current EU SILC_MRK specialised survey carried out in autumn 2020.

2.1 On Efforts to Introduce a Legal Definition of Segregation

The Ministry of Education, Science, Research and Sport of the SR (hereinafter referred to as “the Ministry of Education of the SR”) submitted a draft act to the inter-ministerial comment procedure, by which it intended to amend the Education Act.⁴² It was intended to meet selected objectives from the Recovery Plan.⁴³ The draft amendment to the Education Act was also based on the Programme Declaration of the Government of the SR for the period 2021 – 2024 (hereinafter referred to as the “Programme Declaration”).⁴⁴ The purpose of the legislative material was to introduce a legal framework for the special educational needs of children and pupils, the adoption of a normative model of eligible support measures in the field of education and training with guaranteed funding, and standards eliminating segregation in education. The goal of the Government of the SR is to support projects aimed at desegregation in this area and it has committed itself to adopt a strategy to promote inclusion in education and training, including the provision of professional and support staff. The submitted proposal included the definitions of a child and a pupil with special educational needs and segregation, the proposal to introduce specific support

measures, or measures to eliminate cases of early termination of compulsory school attendance by not including the repeated grades in the legally required number of years of compulsory school attendance while, at the same time, in these cases the age limit of 16 years of age would not apply.⁴⁵ The aim of the measures to be implemented by schools and educational establishments was to fully involve pupils in the educational process and to develop their abilities, skills and knowledge. At the same time, the measures should take into account the characteristics, individual needs and health status of the children.

The supporting measures were divided into general, targeted and specific. The general were about to be applied across all schools; the targeted and specific ones should have been applied to specific children and pupils. The Centre welcomes the fact that it should be possible to implement support measures in every school and for every pupil. At the same time, it will be possible to respond to the special needs and more severe disadvantages of pupils with a more targeted and individualised form of support. The introduction of a statutory exception, accord-

42 LP/2022/502 Act amending and supplementing Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, as amended, available in Slovak at: <https://bit.ly/3ovcRz4>

43 Component 6 of the Recovery Plan, titled Accessibility, Development and Quality of Inclusive Education at All Levels, available in Slovak at: <https://bit.ly/41Rc5uS>

44 Programme Statement of the Government of the SR for 2021-2024, available in Slovak at: <https://bit.ly/3As6W0B>

45 According to the valid and effective wording of Section 19, par. 2 of the Education Act, “*compulsory school attendance shall be ten years and shall last until the end of the school year in which the pupil reaches the age of 16, unless otherwise provided for in this Act.*”

ing to which a pupil may only repeat one year in the first stage of primary school, one in the second stage of primary school and one in secondary school, can in principle be regarded positively. Given that grade repetition is also one of the reasons for school dropout, limiting the possibility of repeating a grade may contribute to reducing early school leaving. In this respect, however, this restriction must be linked to specific instruments for the prevention of early school leaving, since the proposed regulation does not address the causes, only the consequences of the failure of pupils mainly from socially disadvantaged backgrounds.⁴⁶ During the inter-ministerial comment procedure, the Centre raised fundamental comments on the proposed definition of segregation and the possibility of implementing a so-called introductory year.

According to the proposal of the Ministry of Education of the SR, school segregation is „*an act or a failure to act directly or indirectly resulting in unjustified spatial, organisational or physical exclusion or separation from other children, pupils or students in education and training or in less favourable education or less favourable*

education“⁴⁷ In its comments, the Centre stressed the need to introduce a general definition of segregation applying not only to the field of education, by adding it among the forms of discrimination provided for in the Anti-Discrimination Act. Segregation can also occur in other areas of legal relations to which the prohibition of discrimination applies. For example, in the areas of health care or housing. In the context of systematics, it would be more appropriate to define segregation in the general part of anti-discrimination legislation – the basic provisions of the Anti-Discrimination Act. Another pitfall for potential interpretation disagreements in the future may be the adjective “*unjustified*” exclusion and separation of persons, which is an atypical anti-discrimination term. The Centre has therefore proposed omission of the word from the definition. It also referred to the lack of legislative link between the proposed definition and the prohibited grounds for discrimination.⁴⁸

The submitted draft amendment to the Education Act also modified the authorisation of primary schools to establish a so-called introductory grade. It would be at-

⁴⁶ There are significant differences between the general population and persons from marginalised Roma communities at the level of completed highest level of education in the Slovak Republic. While the share of early school leavers within the total population is 10%, the share of adults from marginalised Roma communities who left school early is as high as 83% – based on data published in the publication *Income and living conditions in marginalised Roma communities: Selected indicators from the EU SILC_MRK 2020 survey*, p. 39. Available in Slovak at: <https://bit.ly/41AeM3Z>

⁴⁷ Art. I., para. 2. of own material, LP/2022/502 of the Act amending and supplementing Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, as amended, available in Slovak at: <https://bit.ly/3oGEp16>

⁴⁸ See the provisions of Section 2, par. 3 of the Anti-Discrimination Act.

tended by children with temporarily impaired communication skills and developmental disorders, not having the prerequisites for successful completion of the first year of primary school,⁴⁹ and gifted children.⁵⁰ The aim of this legislation was to improve educational conditions and create a wider range of educational opportunities for pupils with special educational needs. The author assumed that this would create the conditions for the above-mentioned groups of pupils to successfully complete not only the first year of primary school, but also the further educational process. The introductory year would not be included in so-called compulsory school attendance.⁵¹ However, the Centre believes that the proposal to authorise the implementation of an introductory grade creates the pre-conditions for the creation of unlawful segregation of Roma children and children with disabilities. Not to mention the absence of legal guarantees to eliminate potential segregation after the completion of the introductory grade or any follow-up mechanisms to pre-primary education. In this context, the Centre made further fundamental comments on the draft amendment to the Education Act.

A similar definition was made for the proposed special measures aimed at removing exclusively the physical barriers in schools and educational establishments. The draft amendment to the Education Act did not provide solutions to potential segregation resulting from specific modifications to the educational process. In its previous reports⁵² the Centre has already monitored and evaluated forms of organisational and spatial exclusion of pupils, i.e. potential prohibited less favourable treatment within the meaning of anti-discrimination legislation. These included, for example, segregationist organisation of entry to the school, regime for the use of sanitary facilities, location of changing rooms, composition and numbers of pupils in classes, the way they are divided during split lessons, provision of lunches, organisation of joint educational and upbringing activities, and so on. Therefore, the author of the draft amendment of the Education Act was recommended to aim specific measures at removing the so-called spatial and organisational barriers.

The Centre also made a fundamental comment on the generally defined supporting measure

49 For both groups, the author proposed a condition of turning 6 years old by 1 September, which is the approximate school year beginning date.

50 For this group of children, the author intended to introduce a condition of turning 5 years old by 1 September, which is the approximate school year beginning date. In the explanatory memorandum to the draft act, the author defined gifted children by their above-average intellectual abilities or extraordinary results and performances in the field of arts or sports.

51 From the Explanatory Memorandum to draft act LP/2022/502, amending and supplementing Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, as amended, available in Slovak at: <https://bit.ly/3oGEpi6>

52 See reports on the observance of human rights, including the principle of equal treatment in the Slovak Republic for the years 2014-2019; authors' note.

prohibiting all forms of discrimination in admission to schools or school establishments. In its opinion, the support measure thus formulated was duplicative of the already valid and effective provisions of the Anti-Discrimination Act and the Education Act. The Centre suggested in its comment that the problematic supporting measure should apply not only to the processes of admission of children to

schools and educational establishments, but also to the educational and training processes as a whole.

Finally, during the debate, the author notified the Centre about deleting the originally proposed definition of segregation and the authorization for the implementation of an introductory class from the draft act.

2.2 Discrimination in the Form of Excessive Inclusion of Roma Children in Special Classes

The judgement issued by the Prešov District Court (hereinafter referred to as “the Court”) in 2022 regarding the defendant’s legal case of segregation of Roma pupils attending the Primary School with Kindergarten in Hermanovce was a major event in 2022. The court concluded that the school and the private special educational counselling centre in Prešov (hereinafter referred to as “the defendants”) discriminated two Roma boys and one Roma girl by placing them in special classes for children with mental disabilities on the basis of their Roma ethnicity. The significance of this court decision is multiplied by the fact that it was the first decision of a national court in Slovakia in which the court confirmed discrimination (segregation) of Roma children in the field of education in special classes for children with mental disabilities.⁵³

The school educated the three Roma pupils according to the educational programme designed for pupils with mild mental disabilities in special classes.⁵⁴ One of the victims of discrimination completed her entire primary education in this way. The second plaintiff was placed by the defendants in the first year in a mainstream class after completing the zero year, in the second year he was educated according to an individual study plan and, from the third year onwards

he attended classes designed for children with mild mental disabilities. The girl plaintiff was placed in a special education class by the defendants from the first year of her studies. When placing the pupils in classes, the defendants proceeded according to psychological examinations aimed at diagnosis and re-diagnosis of pupils carried out by the aforementioned private special-pedagogical counselling centre in Prešov. However, the results of independent psychological re-examinations of the applicants in other establishments⁵⁵ showed that there were no grounds for including them in special classes and they should have been educated in mainstream classes. In the school year 2015/2016, 96.99 % of the pupils of the Primary School with Kindergarten Hermanovce with diagnosed mental disabilities were of Roma origin. The so-called spatial segregation was also present at the school. The school has placed special and zero year classes in two separate buildings outside the main building. They were taught in two shifts. Another negative consequence of the unlawful enrolment of the plaintiffs in the special classes was the fact that, after completing the primary school studies, they could only continue in vocational schools or so-called practical schools, which limited their future choice of profession in the labour market.

⁵³ In 2011, the Prešov District Court ruled in another legal case on the segregation of Roma in mainstream classrooms. For more details see Judgment of the District Court in Prešov, file: 25C/133/2010, available in Slovak at: <https://bit.ly/3LhHlyS> and the subsequent Judgment of the Regional Court Prešov, file No: 20C/126/2012, available in Slovak at: <https://bit.ly/3V3WtBV>

⁵⁴ Pursuant to Section 94, para. 1 (b)(l) of the Education Act, education and training of children with disabilities and pupils with disabilities is carried out in other schools according to this Act in special classes.

⁵⁵ Private Educational and Psychological Counselling and Prevention Centre in Košice and the Children’s Centre of the Research Institute of Child Psychology and Pathopsychology in Bratislava.

The court ruled in favour of the plaintiffs. The defendants were ordered to apologise and each of them was ordered to pay compensation for non-pecuniary damage in the amount of EUR 5000. In the rationale of the court's decision, the Centre identified inspiration in the interpretation and reasoning of the ECtHR in cases of possible violation of Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention"). That statement is particularly true in relation to the consideration of the supporting statistical indicators put forward by the plaintiffs to prove discrimination,⁵⁶ as well as to the finding that the parents of children must not, by their decision-making, deny them the right to equality of access to education.⁵⁷ Similarly, the court dealt with the school's argument about the lack of financial resources to address spatial segregation in line with the reasoning of the ECtHR, which has rejected financial rea-

sons as being insufficient justification for unequal treatment in the past.⁵⁸ The court stated that lack of funds could not be an excuse and exoneration from liability for the unlawful state of affairs. It also based the grounds of its decision on the finding that the defendants failed to discharge their burden of proof and failed to rebut the legal presumption about the discrimination against the plaintiffs on the grounds of their ethnic origin. At the same time, the court criticised the school for accepting the placement of a high number of Roma children in special classes over a long period and for failing to remedy the situation.

The Centre not only welcomes the verdict, but also believes that it is one of the fundamental steps towards the gradual elimination of segregationist practices against Roma children in Slovakia, also in the context of the long-standing appeal by international monitoring mechanisms calling on us to address the unlawful state of affairs.⁵⁹

56 See, for example, the judgment of the ECtHR in *D.H. and others v. Czech Republic*, Complaint No: 57325/00, available at: <https://bit.ly/3H889Oe>; even though that case involved the consideration of statistical data to prove indirect discrimination.

57 See, for example, the judgment of the ECtHR in *D.H. and others v. Czech Republic*, Complaint No: 57325/00, available at: <https://bit.ly/3H889Oe>; in which the ECtHR rejected the State's argument that the inclusion of the child (in this case in a special class) was subject to the parent's consent, stating that a waiver of the right not to be subjected to racial discrimination could not be accepted.

58 See the judgment of the ECtHR in the case: *Yocheva and Ganeva v. Bulgaria*, Complaint No: 18592/15 and 43863/15, available at: <https://bit.ly/41AHOk2>

59 Slovakia faced a new wave of criticism in 2022 for the high proportion of Roma children in special classes. In its fifth opinion on the Slovak Republic of February 2022, the Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities warns that the representation of Roma children in special classes and schools for pupils with mild mental disabilities remains alarming. For more details see: COE Advisory Committee on the Framework Convention for the Protection of National Minorities – Fifth Opinion on the Slovak Republic, available at: <https://bit.ly/3oCAmGy>

2.3 Access to Inclusive Education and Development Thereof

The Government of the SR approved the draft Recovery Plan with Resolution No. 221 of 28 April 2021. The main objectives of its Component 6 are to reduce the proportion of pupils who do not reach the basic skill levels, to reduce the social-economic impact on pupils' educational outcomes and to promote equality of educational opportunities. Its other objectives include increasing the proportion of pre-school age children in pre-primary education, reducing the drop-out rate with a special focus on medically and socially disadvantaged children, adapting education to the individual needs of each child, and reducing the transfer rate of disadvantaged children from mainstream to special education.⁶⁰ The Component 6 includes six reforms and one invest-

ment.⁶¹ In the context of implementation thereof, it is necessary to monitor the fulfilment of the basic requirements of the right to inclusive education, i.e. availability, accessibility and quality of education, as well as the principles of the Human Rights-based Approach (HRBA).⁶² The aim is to monitor the status of provision of quality education that respects and supports the personality and development of each child. The basic interpretive framework for such monitoring is based on international human rights conventions, which guarantee the right to education to individuals and oblige the states, the parties, to guarantee the protection and promotion of this right. HRBA to education is built on three pillars: the right of access to education, the right to quality educa-

60 Component 6 responds to country-specific recommendations (CSRs) in 2019 and 2020 calling for improvement of quality and inclusiveness of education at all levels and ensuring equitable access to quality education. The reforms and investments in the Component 6 are in line with the proposals of the National Programme for the Development of Education and Training, as well as other national strategic documents aimed at social inclusion of disadvantaged groups and the fight against poverty and social exclusion. Reforms and investments are also in line with the UN Convention on the Rights of Persons with Disabilities and the EU Charter of Fundamental Rights. Source: Component 6: Accessibility, development and quality of inclusive education at all levels, p. 1, available in Slovak at: <https://bit.ly/41Rc5uS>

61 Reform No. 1 of the Component 6 is "Ensuring the conditions for the implementation of compulsory pre-primary education for children aged 5 years and above and the introduction of a legal entitlement to a place in kindergarten or at other pre-primary education providers from the age of 3." Reform No. 2 of the Component 6 is "Definition of the concept of special educational needs of children and pupils and development of a model of eligible support measures in education and training, including the funding system." Reform No. 3 of the Component 6 is "Reform of the guidance and prevention system and provision of systematic data collection in the field of mental health support for children, pupils and students." Reform No. 4 of the Component 6 is "Implementation of ESL prevention tools and modification of F-Sections." Reform No. 5 of Component 6 is "Promoting school desegregation." Reform No. 6 of the Component 6 is "Compensatory measures to mitigate the impact of the pandemic in education for primary and secondary school students." Investment 1 of the Component 6 is "Desegregation of school buildings at all levels of the education system." Ibid, pp. 1-2.

62 Babačová, B.: *Analysis of Component 6 of the Recovery and Resilience Plan of the SR in the context of human rights and sustainable recovery*. Danish Institute for Human Rights, 2021, p. 39. Available in Slovak at: <https://bit.ly/34LV7WN>

tion, and respect for human rights in education.⁶³

The right of access to education correlates with the State's obligation to ensure universal access to education for everybody, including by taking measures to make education accessible to particularly vulnerable groups of children, such as those with socially excluded backgrounds, excluded Roma communities or children with disabilities. Access to education is conditional on the commitment of the state to ensure sufficient capacities in schools, including sufficient numbers of qualified teaching and non-teaching staff. The state must provide sufficient financial resources and technical equipment in schools. School buildings, including their accessibility in terms of distance, and the content of educational materials and curricula, must be accessible to all children. The quality and relevance of curricula or programmes, the status of teachers, as well as the overall culture of the educational environment determine the content of the right to quality education. Under HRBA, school curricula and learning materials should be relevant, broad-based and inclusive. In line with the inclusiveness requirement, they should not contain gender stereotypes or negatively portray ethnic groups or other minorities.

Respect for human rights in education refers to respect and reverence for the identity and integrity of the individual, or his/her right to participate in the learning process. Respect for every child and guiding them to respect human rights and fundamental freedoms, tolerance, equality, understanding and the values of friendship and peace are fundamental.⁶⁴

In relation to the implementation of the Component 6 of the Recovery Plan, in this subchapter the Centre focuses on assessing the implementation of reforms intended to achieve desegregation. The aim of Reform 1 of the Component 6 is to make legislative changes that will adjust the financing of kindergartens and allow equal access to compulsory pre-primary education for children aged 5. The founders of kindergartens will be able to apply for funding to add the missing capacities so that every child from the age of three until the start of compulsory school attendance can participate in pre-primary education.⁶⁵

The Centre states that the first part of Reform 1⁶⁶ of the Component 6 (hereafter referred to as "the reform") has been met. From 1 September 2021, pre-primary education is compulsory for every child who turns five by 31 August of the year preceding the school year of compulsory school attendance.

⁶³ Ibid, pp. 23-24.

⁶⁴ Ibid, pp. 24-26.

⁶⁵ Component 6: Accessibility, development and quality of inclusive education at all levels, pp. 1-2, available in Slovak at: <https://bit.ly/41Rc5uS>

⁶⁶ Officially titled: "Ensuring the conditions for the implementation of compulsory pre-primary education for children aged 5 and above."

From 1 September 2021 to 31 August 2024 the compulsory pre-primary education can be fulfilled also in a pre-primary education establishment pursuant to Section 161l of the Education Act.⁶⁷ The State Pedagogical Institute has created supplementary material for the State Educational Programme for Pre-primary Education in Kindergartens.⁶⁸ The Centre also welcomes the fact that the founders of kindergartens can apply for funding for projects to complete the missing capacities of their schools from 24 August 2022.⁶⁹ However, the legislature did not approve in time⁷⁰ the right of children from the age of three to a place in kindergarten. At the same time, there has been no extension of the range of eligible applicants for allowances for dependent children⁷¹, in pre-school institutions and secondary schools, despite the amendment to Act No. 417/2013 Coll. on Assistance in Material Need, and on the amendment and supplementation of certain Acts, which was approved in

2022. The legislator did not even fulfil the task of normative setting or changing the funding of kindergartens in time, i.e. by the end of 2022.⁷² The Centre both notes and assesses negatively the fact that substantial parts of this reform are not being implemented on time. The reservations are particularly justified in view of the objective of the reform, i.e. to increase the proportion of pre-school children participating in pre-primary education. At the same time, there is a justified concern that the right of access to education is violated by the State's failure to carry out these activities. The State has a duty to act proactively and effectively to ensure access to education for all children.⁷³

The creation of desegregation methodical materials for founders and school headmasters and headmistresses is one of the objectives of the Reform 5 of Component 6.⁷⁴ The Centre therefore welcomes the methodological material on school desegregation for found-

67 Pre-primary education, available in Slovak at: <https://bit.ly/440k3DO>

68 Publications to assist in the introduction of compulsory pre-primary education, available in Slovak at: <https://bit.ly/3AoxSyd>

69 Call for increase of kindergarten capacities, available in Slovak at: <https://bit.ly/3N7Dbtq>

70 The measure was supposed to be adopted in the Q4 2022.

71 The commitment to adopt the extension of the Dependent Child Allowance entitlement to children, who are in pre-schools and secondary schools stems from the Component 6 of the Recovery Plan. The commitment was due to be fulfilled in the Q4 2022.

72 The measure was supposed to be adopted in the Q4 2022.

73 See e.g. Art. 26 of the Universal Declaration of Human Rights, Art. 13 of the International Covenant on Economic, Social and Cultural Rights, Art. 28 of the Convention on the Rights of the Child, Art. 42 of the Constitution of the SR.

74 Babačová, B.: *Analysis of Component 6 of the Recovery and Resilience Plan of the SR in the context of human rights and sustainable recovery*. Danish Institute for Human Rights, 2021, Annex 1 Breakdown of components by term, p. 97. Available in Slovak at: <https://bit.ly/34LV7WN>

ers and headmasters “Together at one desk”⁷⁵ (hereinafter referred to as the “methodological material”). In it, the Ministry states that the inclusion of children from marginalised Roma communities in special primary schools, or in special classes of primary schools, usually diagnosed with a mild mental disability, constitutes a special form of segregation. Since this is based on medical disability, which is a form of segregation that is socially tolerated, there is still a belief that quality education for children with disabilities can only be provided in separate specialised school settings.⁷⁶ However, the Centre does not identify itself with the interpretation of a specific form of segregation in the methodological material, namely that the separation of children from marginalised Roma communities with health disadvantages constitutes a “tolerated” form of segregation. It also had a critical reaction to the same in the Alternative Report of the Slovak National Centre for Human Rights on the 13th Periodic Report of the SR on the Implementation of the International Convention on the Elimination of Racial Discrimination.⁷⁷ This part of the reform

should have included the legislative introduction of a definition of segregation, which did not happen for reasons already known.⁷⁸ The main requirement of this part of the reform, which was the creation of desegregation methodological materials for founders and headmasters and headmistresses of schools, was formally fulfilled by the creation of the methodological material. However, in the Centre's legal opinion, the previously mentioned Ministry's interpretation of “tolerated” segregation referred to therein is inconsistent with one of the goals of the Component 6 of the Recovery Plan, namely, to reduce the rate at which disadvantaged children are reassigned from mainstream to special schools

The main objective of Reform 2 of the Component 6 was to legislate the definition of special educational needs of pupils and to support the creation of a vertical model of eligible support measures.⁷⁹ Within the framework of the above-mentioned proposed amendment to the Education Act, the legal definition of a child and a pupil with special educational was about to be changed.⁸⁰ Again,

⁷⁵ Ministry of Education, Science, Research and Sport of the SR: *Together at one desk. School desegregation guidance material for founders and headmasters*, 2022, available in Slovak at: <https://bit.ly/440Lv44>

⁷⁶ Ibid, p. 10.

⁷⁷ Slovak National Centre for Human Rights: *Observations of the Slovak National Centre for Human Rights in relation to the thirteenth periodic report of Slovakia to the Committee on the Elimination of Racial Discrimination*, July 2022, p. 18, available at: <https://bit.ly/3LAbU1P>

⁷⁸ For more details, see the introductory part of the chapter; authors' note.

⁷⁹ Component 6: Accessibility, development and quality of inclusive education at all levels, p. 2, available in Slovak at: <https://bit.ly/41Rc5uS>

⁸⁰ LP/2022/502 Act amending and supplementing Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, as amended, available in Slovak at: <https://bit.ly/3oGEpI6>

the task was not completed within the deadlines set.⁸¹ On the contrary, the Centre welcomes the Catalogue of Supporting Measures published by the Ministry of Education,⁸² which contains support measures in the field of education and training. Thus, the State has partially met Reform 2's objective of Component 6 in terms of supporting the creation of a vertical model of eligible supporting measures.

In Reform 4 of the Component 6, the state has undertaken to amend the relevant legislative provisions in order to expand higher education opportunities for young people without completed primary education and to optimize education at the lower secondary vocational education level, the so-called F-apprenticeship fields of study⁸³, in response to labour market needs. The required legislative change was introduced by an amendment in 2021.⁸⁴ The required legislative change was introduced by an amendment in 2021.⁸⁵ This part of the reform

also requires the establishment of an early warning system of early school leaving and the promotion of mentoring and tutoring.⁸⁶ The Ministry of Education has launched a Recovery Plan call for the creation of regional teams of mentors to train female and male teachers.⁸⁷ On the other hand, the requirements for the modification of teaching F-apprenticeship fields of secondary vocational schools and the establishment of an early warning system of early school leaving have not fulfilled the set tasks and thus the undesirable drop-out rate with a special focus on disabled and socially disadvantaged children has not been reduced. Thus, the state is fulfilling insufficiently its commitment to ensure universal access to education for all, which may result in further reservations by monitoring and evaluation mechanisms at national and supranational levels in relation to ensuring a positive engagement by the state in making education accessible to all children.

81 Babačová, B.: *Analysis of Component 6 of the Recovery and Resilience Plan of the SR in the context of human rights and sustainable recovery*. Danish Institute for Human Rights, 2021, Annex 1 Breakdown of components by term, p. 97. Available in Slovak at: <https://bit.ly/34LV7WN>

82 Ministry of Education, Science, Research and Sport of the SR: *Catalogue of supporting measures in education and training*, 2022, available in Slovak at: <https://bit.ly/3n2vkCT>

83 Ministry of Education, Science, Research and Sport of the SR: *Catalogue of supporting measures in education and training*, 2022, available in Slovak at: <https://bit.ly/3ApvY09>

84 Component 6: Accessibility, development and quality of inclusive education at all levels, p. 2, available in Slovak at: <https://bit.ly/41RcSuS>

85 Section 16, para. 3, Section 22, para. 2, Section 31a, Section 57 para. 1(j), Section 62 para. 4 of Act No. 415/2021 Coll., amending and supplementing Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, as amended, available in Slovak at: <https://bit.ly/3n2xSkw>

86 Component 6: Accessibility, development and quality of inclusive education at all levels, p. 2, available in Slovak at: <https://bit.ly/41RcSuS>

87 40 regional teams of mentors will be created in Slovakia to train teachers, available in Slovak at: <https://bit.ly/43QddR4>

2.4 Cases of Segregation

Following warnings from the State School Inspectorate about the application of segregationist practices in the education of Roma pupils, the Centre carried out independent investigations at the Primary School with Kindergarten in Jakubany and the Primary School in Sačurov. It focused on inspec-

tion of school premises, monitoring the teaching process and interviewing teaching staff and representatives of the community centre and local authorities. It also continued to monitor the situation at the Primary School in Ostrovany,⁸⁸ which is attended exclusively by Roma pupils..

Primary School with Kindergarten in Jakubany

In June 2022, the School Inspection Centre Prešov (hereinafter referred to as the “Inspection Centre”) notified the Centre of possible deficiencies in education and training at the Primary School with Kindergarten in the municipality of Jakubany. The Inspection Centre carried out an inspection at this school in November 2019, during which it investigated the state of ensuring the implementation of the national testing of pupils of the 5th grade. It was discovered that in three of five grades, the school had classes labelled “B” that were attended almost exclusively by Roma pupils.⁸⁹ The Inspection Centre stated that the division of pupils into classes within each grade showed signs of segregation. The school was ordered to eliminate the problematic practice by 2 September, 2020. Following a re-inspection in May 2022, the Inspection Centre found that the school

had not eliminated the segregationist practices.⁹⁰ Immediately after receiving the above warning, the Centre monitored the situation on site. They confronted the mayor of the municipality and the headmaster of the school with questions, inquiring in particular about the reasons for the existence of classes in which only pupils of Roma origin are educated. Inspection findings of possible segregationist practices at the school were confirmed. The school justified the situation in 1 C class by putting together the pupils with delays in pre-primary education due to the constraints caused by the COVID-19 pandemic.

During the monitoring, the Centre found that only Roma pupils are educated in special classes at the school. In this context, the school headmaster was asked to provide additional written information on

⁸⁸ The Centre has been regularly monitoring the situation at this school since 2020.

⁸⁹ Based on the estimation of the ethnic structure of pupils, the share of Roma pupils in 1 A class was approximately 39%, in 3 A class approximately 26% and in 5 A class 0%. Information from the Warning of the State School Inspectorate, School Inspection Centre Prešov dated 10 June 2022.

⁹⁰ At the time of the follow-up inspection there were 323 pupils in mainstream classes, of whom 179 were Roma pupils. The Inspectorate found that the share of Roma pupils in 3 classes was as follows: 1st grade classes – 1A – 45%, 1B – 45%, 1C – 100%; 3rd grade classes – 3A – 43%. 3B – 100%; 5th grade classes – 5A – 22%, 5B – 94.8%; and 7th grade classes – 7A – 0%, 7B – 100%. Information from the Warning of the State School Inspectorate, School Inspection Centre Prešov dated 10 June 2022.

the numbers of pupils educated in special classes and the process of their inclusion in such classes.

Given that it is a primary school connected with a kindergarten, the only positive finding was that it was involvement in the Kindergarten Inclusion Project. In this context, it employs two Roma employees in the kindergarten.

Four months later, the Centre carried out a second on-site monitoring, assessing the school's reflection on the recommendations arising from the first monitoring. Primarily, the school was asked to eliminate confirmed segregation as quickly as possible. The school has taken only partial remedial action, despite the reservations presented by the Centre. Segregation has been eliminated in only one grade. However, they presented efforts to gradually and systematically eliminate the illegal situa-

tion with the promise that in the school year 2023/2024 there would be no so-called segregated classes. In connection with the process of assigning pupils to special classes, the Centre also asked the special educator for information.

Spatial segregation was also detected at the school during the second monitoring. Classes with exclusively Roma pupils were spatially separated from other classes, or the school located them in one part of the building. The school headmaster presented the Centre with school reconstruction plans with the intention to remove the so-called spatial segregation. The Centre will not only continue monitoring the situation at the school, but will also actively contribute to the goal – elimination of desegregation – in the school year 2023/2024 at the latest through consultations and recommendations.

Primary School in Sačurov

In July 2022, the same Inspection Centre sent a warning about segregation at the Primary School in the village of Sačurov to the Centre. This school has also been re-inspected, as the Inspection Centre ordered the school to desegregate and arrange for re-diagnostic psychological and special education examination of pupils with alleged intellectual disabilities in May 2019. The Centre has imposed an obligation on the School to ensure that

these pupils are re-diagnosed in the designated facilities⁹¹ and to take action in accordance with anti-discrimination legislation following the results of the re-diagnostics.

Of the 62 re-diagnosed pupils, the facilities ruled out their originally diagnosed intellectual disability in 6 pupils, and only 6 pupils out of the total number were confirmed to have an intellectual disability.

⁹¹ Specifically, the Centre for Educational and Psychological Counselling and Prevention in Banská Bystrica and the Centre for Educational and Psychological Counselling and Prevention in Zvolen were involved.

For as many as 50 pupils, the facilities were unable to reliably determine the accuracy of the initial diagnostic results. The school did not accept these conclusions and only 3 children out of 50, whose mental disability could not be reliably ruled out or confirmed by a psychological examination, were placed in so-called mainstream classes. The other 47 children, including the six with reliably excluded intellectual disability, were further educated in special classes. The headmistress commented on this fact during the follow-up inspection that she would place all pupils whose mental disability was excluded or could not be reliably confirmed or excluded by the re-diagnostics in specialised classes.⁹² However, during the follow-up inspection on 13 June 2022, the specialised classes had not been established.

The Centre has been monitoring the situation at the school since the Inspection Centre's warning in November 2022. It found that there were 8 special classes where the school educated exclusively Roma pupils. At the time of the monitoring, the school had already set up

the specialised classes mentioned above, the purpose of which was to facilitate the transition from special to mainstream classes. The Centre also found that there has been a decrease in the number of pupils in special classes compared to the inspection results, from 91 pupils in the 2021/2022 school year to 63 pupils in the 2022/2023 school year. A total of 48 pupils attended the specialised classes.

In the school year 2022/2023, the school arranged an adequate form of education in accordance with the conclusions of the re-diagnostic examinations for 18 pupils only.⁹³ The other 16 pupils, including four pupils whose mental handicap was excluded by the facilities, were reassigned to mainstream classes, but were educated through school integration⁹⁴ according to an individual education programme⁹⁵ as pupils with intellectual disabilities.

In particular, the Centre informed the school of the need to eliminate the high number of pupils in special classes or the need for urgent

92 Pursuant to Section 29, para. 11 of the Education Act *"a specialised class may be opened in a primary school with the consent of the founder. Pupils who are not expected to successfully master the educational content of the grade in question shall be educated in a specialized class to compensate the missing educational content."*

93 Of these, 14 were educated in special classes, 3 pupils in mainstream classes and 1 pupil in a special class. Information from the Report on the Results of the State Inspection carried out on 16 November 2022.

94 School integration, as defined in Section 2(s) of the Education Act, means *"the education and training of children or pupils with special educational needs in classrooms of schools and educational establishments designated for children or pupils without special educational needs"*.

95 Pursuant to Section, 7 para. 5 of the Education Act states that *"if a school educates children with special educational needs or pupils with special educational needs, it shall create conditions for them in accordance with the recommendations of the counselling and prevention establishment through an individual educational programme or through educational programmes designed for schools educating children with special educational needs or pupils with special educational needs."*

desegregation. The school has taken only minor steps in this regard so far. For this reason, the Centre

Primary School in Ostrovany

The building of the primary school in Ostrovany is situated near the local Roma settlement and is attended exclusively by Roma pupils. The Centre has been monitoring the situation at the school since 2020. In November 2022, school representatives informed the Centre of the total number of 297 Roma pupils in grades 1 to 6 taught in double shifts⁹⁶. The Roma population makes up approximately 80% of the total population of the municipality. The Centre asked a social worker who works in the municipality about the reasons for the unsuccessful integration of non-Roma pupils. She stated that non-Roma residents of the municipality prefer to enrol their children in schools in the municipalities where they work, and some of the non-Roma school-age children who are registered permanent residents of the municipality do not live there in reality. In this context, the Centre states that segregation is also an unintentional de facto state of over-representation of pupils of a

will not only monitor the situation, but will also actively contribute to the elimination of segregation.

certain ethnic or national group in a school.⁹⁷ Neither can it be justified by the freedom of choice of parents to place their children in schools with a lower representation of pupils of a certain nationality or ethnicity⁹⁸ or the ethnic structure of the population.⁹⁹

The Centre asked the school and the municipality to demonstrate specific measures aimed at increasing the interest of non-Roma minority parents in enrolling their children in the school. The school referred to the steps taken towards improving the quality of education provided, which could lead to an required increase of interest. The municipality plans to build more classrooms and a school canteen. In spite of these steps, which the Centre evaluates positively, the situation is critical and therefore it will continue monitoring it and continuously evaluate the implementation of partial recommendations that it addresses to the municipality on a regular basis.

⁹⁶ The school has a long-standing intention to create the conditions of a fully organised school for grades 1 to 9.

⁹⁷ The over-representation of Roma pupils in a school constitutes segregation, which is contrary to the prohibition of discrimination. Even if there is no discriminatory intent on the part of the state, the segregation of Roma children cannot be considered as objective and reasonable and justified by a legitimate aim. More details in: Judgment of the ECtHR in *Elmazova and Others v. Northern Macedonia*, Complaints No. 11811/20 and 13550/20; available at: <https://bit.ly/3mQEGSf>

⁹⁸ More details can be found in the Judgment of the ECtHR in *Lavida and Others v. Greece*, Complaint No. 7973/10, available at: <https://bit.ly/3mZbrg4> of the ECtHR in *Elmazova and Others v. Northern Macedonia*, Complaint No. 11811/20 and 13550/20; available at: <https://bit.ly/3mQEGSf>

⁹⁹ See ECtHR Judgment in *X. and Others v. Albania*, Complaint No. 73548/17 and 45521/19; available at: <https://bit.ly/3L4oMLP>

2.5 On the status of Implementation of the Recommendations of the UN Committee on the Elimination of Racial Discrimination

The UN Committee on the Elimination of Racial Discrimination (hereinafter referred to as “the Committee”) addressed the Slovak Republic a list of recommendations aimed at improving the implementation of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination in response to the Thirteenth Periodic Report of the SR on the Implementation

of the International Convention on the Elimination of All Forms of Racial Discrimination.¹⁰⁰ In recommendations¹⁰¹ adopted at its meeting on 26 August 2022, the Committee expressed concern about the persistent, widespread and systemic discrimination and segregation affecting Roma children in the education system. Recommendations to the SR:

- to take the necessary measures to address the key causes of discrimination and segregation of Roma children in the education system, taking into account that the conditions of racial segregation are not necessarily created by government policies, but may arise as an unintended by-product of the actions of individuals leading to social exclusion (hereinafter referred to as the “Recommendation 1”);
- to ensure the effective implementation of the Education and Anti-Discrimination Act to eliminate the over-representation of Roma children in specialised classes and special schools and to take appropriate steps to integrate them into mainstream education (hereinafter referred to as the “Recommendation 2”);
- to increase efforts to ensure that Roma children have equal opportunities in access to quality education in order to prevent their future segregation in the education system (hereinafter referred to as the “Recommendation 3”).

The analysis of the causes of the continuing unlawful segregation of Roma children in the field of education was addressed by the Centre, most recently in July 2022 as part of the so-called alternative report, and one of them is the absence of a legal definition of segregation.¹⁰²

The draft amendment to the Education Act analysed at the beginning of the chapter,¹⁰³ the initial response of the SR to the Committee’s recommendations, originally contained a proposal of the required definition, however, due to the aforementioned shortcom-

100 Thirteenth Periodic Report of the SR on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; available in Slovak at: <https://bit.ly/4ODE-9ka>

101 Recommendations of the UN Committee on the Elimination of All Forms of Racial Discrimination; available at: <https://bit.ly/43VPhf3>

102 Recommendations of the Slovak National Centre for Human Rights on the Thirteenth Periodic Report of the SR to the Committee on the Elimination of All Forms of Racial Discrimination; available at: <https://bit.ly/3LAbU1P>

103 Available in Slovak at: <https://bit.ly/3ovcRz4>

ings, it was eventually deleted from the legislative material by the author of the draft act. The absence of a legal definition of segregation can lead to a lack of prevention or remediation thereof. A similar preliminary conclusion can be drawn in relation to the legal failure to define the concept of inclusive education.

In 2021, the Ministry of Education of the SR adopted the Strategy for Inclusive Approach in Education and Training (hereinafter referred to as the “Strategy”).¹⁰⁴ Its fourth part focused on the issue of desegregation in education. Following the Recommendation 1, the Centre assesses the adoption of the Strategy positively. At the same time, however, all entities involved in the field of education and training are prompted to implement it properly in practice, especially in view of the results of the Centre’s independent surveys and monitoring of selected school establishments presented in the previous subchapter.

Recommendation 1 overlaps in part with Objective 5 of the Component 6 of the Recovery Plan, which is to issue desegregation guidance materials for founders, headmasters and headmistresses of schools. The

methodological material of the Ministry of Education¹⁰⁵ is another of the partial results of the implementation of Recommendation 1. However, in this context too, the Centre stresses the need for proper implementation by entities to which it prescribes concrete procedures aimed at inclusion in the field of education and training. Another important document in the context of the implementation of the Recommendation 1 may be the methodology of the Ministry of Education of the SR Mapping the status of removing barriers in kindergartens, primary and secondary schools and prioritisation of schools.¹⁰⁶

Recommendation 2 aims to eliminate the excessive number of Roma children in specialised classes and special schools. In 2019, Slovakia had the highest proportion of primary school pupils in specialised education in the EU.¹⁰⁷ The above-mentioned draft amendment of the School Act partly reflects Recommendation 2 by the planned introduction of supporting measures, which the author has formulated in terms of obligations.

By Recommendation 3, the Committee urges the SR to intensify its

¹⁰⁴ Ministry of Education, Science, Research and Sport of the SR: Strategy for an Inclusive Approach in Education; available in Slovak at: <https://bit.ly/40BaOqL>

¹⁰⁵ Ministry of Education, Science, Research and Sport of the SR: *Together at one desk. School desegregation methodological material for founders and headmasters*, 2022; available in Slovak at: <https://bit.ly/440Lv44>

¹⁰⁶ Ministry of Education, Science, Research and Sport of the SR: *Mapping the status of removing barriers in kindergartens, primary and secondary schools and prioritisation of schools*; available in Slovak at: <https://bit.ly/3H99Xqc>

¹⁰⁷ HALL, R., DRÁL, P., FRIDRICHOVÁ, P., HAPALOVÁ, M., LUKÁČ, S., MIŠKOLCI, J., VANČÍKOVÁ, K.: *Analysis of findings on the state of education in Slovakia*: That makes sense, Bratislava: MESAIO, 2019. Available in Slovak at: <https://bit.ly/3ot7Cjp>

efforts to ensure equality of opportunity for Roma children in their access to quality education and to prevent their segregation. This recommendation is preventive and calls for system solutions. In this context, the Centre refers to provision 3, par. 2 of the Anti-Discrimination Act, under which compliance with the principle of equal treatment includes the adoption of measures to protect against discrimination. The Centre notes that in 2022 the SR intensified its efforts to address the segregation of Roma children in education through the adoption of strategic and methodological documents at

the level of the Ministry of Education, while emphasising the need for measurable and independent monitoring of the implementation of strategic procedures and ongoing evaluation of results. However, the evaluation of the implementation of the Recommendation 3 will also depend on the monitoring of the setup of school districts, the repetition of grades in compulsory school attendance or the solution to the problem of truancy, etc. The Centre will continue to play its role as an independent monitoring and evaluation mechanism in the context outlined.

Recommendations

The Centre recommends that

- 1 The Ministry of Justice of the SR submit to the National Council of the SR a draft amendment to the Anti-Discrimination Act, which will, inter alia, introduce a legal definition of segregation as one of the forms of discrimination.
- 2 The Ministry of Education immediately meet the desegregation targets of the Component 6 reform, which have not yet been met.
- 3 The Ministry of Education of the SR submit a draft amendment to Act No. 596/2003 Coll. on State Administration in Education and School Self-Government, and on the amendment and supplementation of certain Acts, whereby the National Council of the SR would add to Section 8, para. 1 a municipality's obligation to take into account the ethnic composition of the population living in the municipality's territory or a part thereof when determining the school district.
- 4 The Ministry of Education of the SR submit a draft amendment to the Education Act, by which the National Council of the SR would introduce an obligation to ensure integrated education of pupils with disabilities in so-called mainstream classrooms.



3. Rights of LGBTI+ People in Slovakia

The Centre expressed its belief that despite the terrorist attack on LGBTI+ people outside Tepláreň bar and community space in Bratislava, this situation has not led to the adoption of measures at the level of legislation and policies to strengthen the protection of and access to the enjoyment of fundamental rights by LGBTI+ people.

The Slovak Republic has been facing challenges in the area of human rights for LGBTI+ people for a long time,¹⁰⁸ while gaps in the protection of their rights have deepened further in 2022. The aim of this part of the Report is to highlight the main challenges in the area of protection of the rights of LGBTI+ people that have resonated in the past year in Slovakia. At the same time, similarly as in 2021, the Centre examined how human rights defenders perceive the civic space for their work and activities, thus reflecting the obligation of every country, including the SR, to create a safe and supportive environment for civil society, where everybody can exercise their human rights. Creating an open and democratic space also means protecting human rights defenders from persecution and creating a favourable institutional and legal framework, in which they can operate.¹⁰⁹

Even 7 years after the adoption of

the National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic, no action plan or other strategic framework¹¹⁰ for the protection and promotion of the rights of LGBTI+ people has yet been adopted in Slovakia.¹¹¹ This was also highlighted in 2022 by the European Commission against Racism and Intolerance, which assessed the recommendation to develop and implement an action plan for LGBTI+ people in close cooperation with civil society as remaining unfulfilled. It was aimed to raise public awareness of the conditions in which LGBTI+ people live, to promote a better understanding of their situation, to protect them from hate crimes, hate speech and discrimination, and to ensure the effective exercise of their right to equal treatment.¹¹²

In its 2022 Rule of Law Report, in the country chapter on Slovakia, the European Commission expressed its concern about the

108 The LGBTI+ acronym covers people who identify as lesbian, gay, bisexual, transgender, intersex or other identities that are part of the spectrum. For a definition of related terms, see below: Rainbow Compass, Glossary, available in Slovak at: <https://www.duhovykompas.sk/#slovník>

109 UN Special Rapporteur on the situation of human rights defenders: *Report of the Special Rapporteur on the situation of human rights defenders*, A/HRC/25/55, 2013, available at: <https://bit.ly/43VMPW6> and the Office of the United Nations High Commissioner for Human Rights: *Joint statement by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the UN Special Rapporteur on the situation of human rights defenders*, 2022, available at: <https://bit.ly/3ArlNrW>

110 In 2019, the UN Committee on Economic, Social and Cultural Rights recommended to the Slovak Republic to adopt policies and programmes to ensure protection against discrimination on the basis of sexual orientation and gender equality. See: UN Committee on Economic, Social and Cultural Rights: *Concluding observations on the third periodic report of Slovakia*, E/C.12/SVK/CO/3, para. 15, available at: <https://bit.ly/3Lvz3Ba>

111 Slovakia was also recommended to re-initiate the preparation and adoption of an action plan on equality for LGBTI+ people in the 3rd cycle of the Universal Periodic Review in 2019. See: Recommendations addressed to the Slovak Republic during the third round of the Universal Periodic Review of the UN Human Rights Council, UPR/77, available in Slovak at: <https://bit.ly/4426AeO>

112 European Commission against Racism and Intolerance: ECRI Report on the Slovak Republic (Sixth Monitoring Cycle), 2020, para. 29, available at: <https://bit.ly/3Ncm21J>

funding of civil society organisations and their activities in the field of gender equality and LGBTIQ rights, and about verbal attacks against human rights defenders active in these areas.¹¹³

Legislative gaps in the protection of human rights of LGBTI+ people and the passivity of the legislator and the Slovak government in this area were partially remedied in 2022 by national judicial authorities, making case law a key factor in the protection of the rights of LGBTI+ people in Slovakia. The Regional Court in Žilina and the Supreme Administrative Court of the SR (hereinafter referred to as the “Supreme Administrative Court of the SR”),¹¹⁴ have contributed to this through their decisions, which have implemented European standards for the protection of the rights of LGBTI+ people to remedy decisions and practices of administrative authorities.

The Regional Court in Žilina annulled the decision of the Border and Foreign Police Directorate Banská Bystrica as well as the decision of the Foreign Police Department of the Žilina Police Force and returned the case for further proceedings¹¹⁵ on the grounds that the Foreign Police Department, as the first-instance administrative authority, rejected the application

of a national of the Argentine Republic for permanent residence for five years on the grounds that his marriage was not contracted within the meaning of the Slovak Family Act, as required by Section 48, para. 2(e) of Act No. 404/2011 Coll. on the Residence of Aliens, and on the amendment and supplementation of certain Acts.¹¹⁶ The administrative authority considered, among other things, that the Slovak legislation does not permit the recognition of a partner’s cohabitation with or marriage to a party to the proceedings as a basis for granting permanent residence in the territory of the SR.¹¹⁷ In this regard, the plaintiff pointed to the important fact that the Constitutional Court of the SR has repeatedly stated that *“the general court is not at all bound by the literal wording of a statute, but may and must deviate from it if the purpose of the statute, the history of its creation, its systematic coherence, or one of the principles of constitutional principles requires so.”*¹¹⁸ The Regional Court in Žilina stated that the administrative authority should have examined the application comprehensively, should have focused on the close relationship between the applicant and his partner as a possible ground worth special consideration, and should have interpreted the Aliens Residence Act in ac-

¹¹³ European Commission: 2022 Rule of Law Report, Chapter on the Rule of Law Situation in Slovakia, 2022, p. 22-23, available at: <https://bit.ly/41vsWUd>.

¹¹⁴ The decision of the Supreme Administrative Court is dealt with in the second subchapter of this part of the report.

¹¹⁵ Judgment of the Regional Court in Žilina dated 31 October 2022, file No. 30S/168/2020.

¹¹⁶ Ibid., para. 1.

¹¹⁷ Ibid., para. 1.

¹¹⁸ Ibid., para. 2.

cordance with Article 14 in conjunction with Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “the Convention”). At the same time, it referred to the ECtHR judgment in the de facto identical case of *Taddeucci and McCall v. Italy*, according to which “*the granting of permanent residence exclusively to different-sex spouses discriminates unmarried same-sex couples against unmarried different-sex partners*”.¹¹⁹ The Court also referred to the judgment of the Court of Justice of the European Union in Case C-673/16 *Coman*, according to which the obligation of a Member State to recognise same-sex marriages for the purposes of granting a residence right to a national of a non-member state does not affect the very institution of marriage in the recognising Member State, which that Member State may define entirely autonomously and which may also be protected without the need to disadvantage other ways of life. State administration authorities must respect and recognise the rights of same-sex couples under EU law, otherwise the SR could be held liable for violating EU law. From the Court’s argumentation, the Centre highlights the emphasis on the values of human

dignity¹²⁰ and the fact that in balancing the protection of the family and the protection of the rights granted by the Constitution to “*sexual minorities*”, the State should “*take into account the evolution of society and the fact that there is not only one way in which an individual can lead his or her family (private) life.*”¹²¹

As regards the social acceptance of LGBTI+ people and their rights in Slovakia, the 2021 and 2022 nationwide survey of the civil society organisation Initiative Otherness (Iniciatíva Inakosť) showed that 6.54 % of respondents feel no acceptance of LGBTI+ people in the municipality or town where they live, 33.44 % feel little acceptance and 43.62 % feel some acceptance. Also, 9.68 % of respondents cited better social acceptance of LGBTI+ people as the main reason for changing their residence and 22.19 % as one of the reasons for moving. Almost half of the respondents (49.03 %) think that issues concerning LGBTI+ people in Slovakia are not changing and more than a third (35.95 %) think that they are going in the wrong direction, i.e. that the situation of LGBTI+ people in Slovakia is getting worse.¹²²

¹¹⁹ Ibid., para. 12-14.

¹²⁰ Ibid., para. 15.

¹²¹ Ibid., para. 15.

¹²² The report from the national LGBTI+ survey had not yet been published at the time of writing this report. Data provided to the Centre by the civil society organisation Iniciatíva Inakosť (Initiative Otherness).

3.1 Terrorist Attack on LGBTI+ People outside Tepláreň Bar in Bratislava

The national LGBTI+ survey also showed that LGBTI+ people in Slovakia do not feel safe and up to 40.92 % of them avoid certain locations or areas for fear of being attacked, threatened or harassed because of being LGBTI+. The places where they feel most at risk are the streets (public spaces), public transport, parks and rural areas. On the contrary, they consider their home to be a safe space.¹²³

In this context, the perception of security was exacerbated by the terrorist attack¹²⁴ on LGBTI+ people on 12 October 2022 outside the Tepláreň community space in Bratislava, which LGBTI+ people considered to be a safe space for gathering. Two LGBTI+ people died and one person was injured in the terrorist attack. The Centre considers this attack to be a threat to the safety of LGBTI+ people in Slovakia and immediately after the attack expressed its support for LGBTI+ people and called for a thorough investigation of this crime.¹²⁵

In response to the terrorist attack, NGOs sent a public call to action to

the Government of the SR and the National Council of the SR called *It's About Our Lives*,¹²⁶ which the Centre joined. The initiative's demands include specific steps to improve the safety and human rights of LGBTI+ people, their families and children in a number of areas, including education, support services for LGBTI+ people, effective monitoring of extremist crimes, the spread of misinformation, or legislative recognition of LGBTI+ couples and their families.

In addition to the statements of the President of the SR (hereinafter referred to as "the President of the SR"),¹²⁷ the Prime Minister of the SR¹²⁸ and individual members of the Slovak Parliament, on 18 October 2022 the National Council of the SR adopted a Resolution on the growing manifestations of hatred against minorities and communities, especially the LGBTI+ community and the Jewish community, living in Slovakia.¹²⁹ On 20 October 2022, the European Parliament adopted a Resolution on the rising number of hate crimes against LGBTIQ+ people across Europe in light of the recent homo-

¹²³ Data provided by the civil society organisation Initiative Otherness (Iniciatíva Inakosti).

¹²⁴ On 17 October 2022, the offence investigated as a hate crime was reclassified as a particularly serious crime of terrorist attack under Section 419 of the Criminal Code. The investigation was still ongoing at the time of writing this report.

¹²⁵ Slovak National Centre for Human Rights: "Standing with the LGBTI+ community", 13 October 2022, available in Slovak at: <https://bit.ly/3ArmOLK>

¹²⁶ The text of the appeal is available in Slovak at: <https://idenamozivot.sk/vyzva>

¹²⁷ Office of the President of the SR: President honours victims of Bratislava shooting, 13 October 2022, available in Slovak at: <https://bit.ly/43W1Ln9>

¹²⁸ Office of the Government of the SR: PM calls for an end to hatred, appeals to the public and politicians, 13 October 2022, available in Slovak at: <https://bit.ly/3Ln1IAk>

¹²⁹ Resolution of the National Council of the SR of 18 October 2022 on the growing manifestations of hatred against minorities and communities, especially the LGBTI+ community and the Jewish community, living in Slovakia, available in Slovak at: <https://bit.ly/41wfzTC>

phobic murder in Slovakia,¹³⁰ condemning the terrorist act against LGBTI+ people and expressing deep concern about discrimination against LGBTI+ families and children in Slovakia.¹³¹

In response to the terrorist attack on 21 November 2022, the Committee on the Rights of Lesbian, Gay, Bisexual, Transgender and Intersex Persons of the Government of the SR Council for Human Rights, National Minorities and Gender Equality (hereinafter referred to as the "Committee on the Rights of LGBTI+ Persons") adopted a resolution in which it strongly condemned the terrorist act and also welcomed the statements and speeches of the members of the Government of the SR condemning this unprecedented act and expressed solidari-

ty with LGBTI+ people in Slovakia. The resolution is also accompanied by the call to action It's About Our Lives, with which the Committee on the Rights of LGBTI+ Persons supported, while it urged the Government of the Slovak Republic to implement the steps requested in the call, including the submission of proposals for legislative changes to the National Council of the SR as a matter of urgency.¹³²

After the terrorist attack, the Police Force became more active in gathering information on hate speech. At the same time, both the Police Force and the Special Prosecutor's Office announced that they would prosecute any attacks on LGBTI+ people in a number of negative publicised cases involving LGBTI+ people.¹³³

¹³⁰ European Parliament Resolution of 20 October 2022 on the rising number of hate crimes against LGBTIQ+ people across Europe in light of the recent homophobic murder in Slovakia, 20 October 2022, available at: <https://bit.ly/41SUDGh>

¹³¹ Ibid.

¹³² Resolution of the Committee on the Rights of LGBTI+ Persons No. 31 of 21 November 2022 on the call to the Government of the SR and the National Assembly of the SR to take measures after the terrorist attack on LGBTI+ people outside Tepláreň, available in Slovak at: <https://bit.ly/440mBSs>

¹³³ See, e.g. Special Prosecutor's Office, Facebook status, Dec. 15, 2022, available in Slovak at: <https://bit.ly/40HZ9GM>; Police of the SR, Facebook status, 31 October 2022, available in Slovak at: <https://bit.ly/40C0r5M>

3.2 Legislative Proposals Impacting on the Status and Rights of LGBTI+ People

The rights of LGBTI+ people were also discussed at the legislative level in 2022. The draft acts, which limited or stigmatized LGBTI+ people or, on the contrary, created preconditions for the realization of their equal rights in society, are analysed in the following sections of the Report. The Centre states

that all of them were submitted as parliamentary draft acts without a participatory drafting process that would have allowed for the effective participation of LGBTI+ people, their representative organisations or experts in human rights and non-discrimination.

3.2.1 Draft Acts Stigmatising LGBTI+ People and Restricting their Rights

Legislative proposals aimed at restricting the rights of LGBTI+ people repeatedly occurring in the current parliamentary term were also presented in 2022. The resubmitted draft amendment to Act No. 63/1993 Coll. on the State Symbols of the Slovak Republic and their Use (hereinafter referred to as the “Act on State Symbols”)¹³⁴ and the draft amendment to the School Act¹³⁵ were ultimately not approved in 2022.

The ban of displaying symbols of movements, organisations, communities and ideologies promoting any kind of sexual orientation (e.g. the rainbow flag) on buildings and in buildings of state bodies and institutions, including the headquarters of the Public Defender of Rights, which are marked with state symbols by law, was justified

by its proponents as the need to preserve the neutrality of views of state bodies and institutions. From a legal point of view, they also relied on the rule that state authorities should act only on the basis of the Constitution of the SR, within its limits and within the scope and in the manner determined by the law, and if the law does not oblige them to display a certain symbol then they should refrain from doing so. However, the Centre agrees with the legal opinion that this rule cannot be absolutized and that state bodies, including the National Council of the SR, the Government of the SR and the Public Defender of Rights, have a specific position and in their activities they shape and express value decisions and can also express them externally in the form of symbols. The role of the Public Defender of

¹³⁴ Draft by Tomáš TARABA and György GYIMESI, the Members of the National Council of the SR, to adopt an act amending Act of the National Council of the SR No. 63/1993 Coll. on the State Symbols of the SR and their Use, as amended, Parliamentary Press 1059. Available in Slovak at: <https://bit.ly/4lxxlWx>

¹³⁵ Draft by Štefan KUFFA and Filip KUFFA, the Members of the National Council of the SR, to adopt an Act amending Act No. 245/2008 Coll. on Education and Training (School Act), and on the amendment and supplementation of certain Acts, as amended, Parliamentary Press 1249. Available in Slovak at: <https://bit.ly/4lydE12>

Rights, who had triggered the debate in the past by displaying the rainbow flag, is to protect people's fundamental rights and freedoms, and the display of the symbols of a particular minority expresses its support for the protection of their rights.¹³⁶ Efforts to ban the display of support for LGBTI+ people by flying the rainbow flag further underscore the social exclusion and stigmatisation of LGBTI+ people in Slovakia.

The draft amendment to the Education Act was aimed at “prohibiting the presentation and teaching of sexuality promoting homosexuality, gender reassignment or *“deviation from the gender identity assigned at birth”* and *“the activities of associations and the implementation of lectures and training aimed at promoting homosexuality, gender reassignment or deviation from the gender identity assigned at birth”* in schools and school facilities on the grounds of *“violation of the child's right to healthy social, psychological and physical development”*. The explanatory memorandum to the act referred to traditional Christian

family values, the sanctity of marriage as a union between a man and a woman and the right of parents to raise their children.¹³⁷ The draft act also aimed to amend other acts¹³⁸ by enshrining *“the prohibition of presentation of homosexuality and gender reassignment”* for persons under the age of 18 and *“the protection of a child's right to his or her own gender identity assigned at birth”*. The drafters were inspired by the Hungarian law on protection against paedophilia (which is also referred to in the explanatory memorandum), which has been strongly criticised as discriminatory on the basis of sexual orientation and which was the reason for the European Commission to bring an action against Hungary before the Court of Justice of the European Union.¹³⁹ In its opinion on this act, the Venice Commission said that it was contributing to creating an unsafe environment in which LGBTI+ children can be exposed to health risks, bullying and harassment. It added that the provision of information on sexuality and gender, for example, in schools and public media must be done in an objective, critical and plural-

¹³⁶ More details: *Research on the legal protection of state symbols, national symbols and other symbols* (interview), In: PROJUSTICE, 29 November 2022, available in Slovak at: <https://bit.ly/3oDV-NHr>

¹³⁷ Explanatory note to the draft by Štefan KUFFA and Filip KUFFA, members of the National Council of the SR, to issue the act amending Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, as amended and supplemented by certain Acts, as amended, Parliamentary Press 1249. Available in Slovak at: <https://bit.ly/42dn5mc>

¹³⁸ Act No. 305/2005 Coll. on Social Legal Protection of Children and Social Guardianship, and on the amendment and supplementation of certain Acts, Act No. 36/2005 Coll. on Family, and on the amendment and supplementation of certain Acts, Act No. 147/2001 Coll. on Advertising, and on the amendment and supplementation of certain Acts, Act No. 308/2000 Coll. on Broadcasting and Retransmission and on the amendment of Act No. 195/2000 Coll. on Telecommunications.

¹³⁹ Action brought on 19 December 2022 – European Commission v. Hungary, Case C-769/22, available at: <https://bit.ly/3Lr8xdr>

istic manner and that the right to information includes information on sexual orientation and gender, which must not be discriminatory, taking into account the rights of parents to raise their children.¹⁴⁰

The ECtHR has also taken a position on the prohibition of “*promotion of homosexuality*” in its jurisprudence, stating that legislative prohibition of the promotion of homosexuality among minors does not serve the protection of morals, health or rights of others, and that the adoption of such laws reinforces stigma and prejudice and encourage homophobia, which is incompatible with the notion of equality, pluralism and tolerance inherent in a democratic society.¹⁴¹ At the same time, the ECtHR has repeatedly stated in its rulings that no scientific evidence suggests that the mentioning of homosexuality or open discussion of the social status of LGBTI+ people would in any way adversely affect children.¹⁴² Such legislative restrictions not only affect freedom of expression, but also stigmatise LGBTI+ people regardless of their age, limit the right of parents to ensure that their children are brought

up in accordance with their beliefs, and the right of children to comprehensive and age-appropriate information about sexuality and sexual and reproductive health.¹⁴³ The ECtHR ruled that restrictions of children’s access to information about same-sex relationships based solely on consideration of sexual orientation, where there is no basis in any other respect to consider such information to be inappropriate or harmful to children’s growth and development, are incompatible with the right to freedom of expression under Article 10 of the Convention.¹⁴⁴ The Centre therefore considers the drafters’ argumentation that the “promotion of homosexuality” endangers the healthy social, psychological and physical development of the child to be unfounded. On the contrary, the adoption of the amendment would deepen discrimination and social exclusion of LGBTI+ people and stigmatise them, in violation of the State’s obligation to ensure equal treatment and protection against discrimination on the grounds of sexual orientation and gender identity and the right to freedom of expression under Article 10 of the Convention.

140 European Commission for Democracy through Law (Venice Commission): *Hungary – Opinion on the compatibility with the international human rights standards of Act LXXIX amending certain Acts for the protection of children*, paras. 39-40, available at: <https://bit.ly/41VVar8>

141 Judgment of the ECtHR in *Bayev and Others v. Russia*, 20 July 2017, Complaint No. 67667/09, available at: <https://bit.ly/3L6eUI3>

142 Judgment of the ECtHR in *Macatė v. Lithuania*, 23 January 2023, Complaint No. 61435/19, para. 210, available in English at: <https://bit.ly/41x8Tov> and Judgment of the ECtHR in *Alekseyev v. Russia* of 21 October 2010, Complaint No. 4916/07, 25924/08 and 14599/09, para. 86, available at: <https://bit.ly/3HATqvE>

143 Judgment of the ECtHR in *Macatė v. Lithuania*, 23 January 2023, Complaint No. 61435/19, para. 170, available at: <https://bit.ly/41x8Tov>

144 *Ibid.*, para. 216.

3.2.2 Legal Regulation of Same-sex Unions

In 2022, two draft acts were submitted to the National Council of the SR, which aimed to guarantee legal recognition of same-sex unions to various degree, in the form of the institution of cohabitation, through an amendment to Act No. 40/1964 Coll. of the Civil Code, as amended¹⁴⁵ (hereinafter referred to as the “partner cohabitation draft”) or through the institution of a life partnership under a separate life partnership act¹⁴⁶ (hereinafter referred to as the “life partnership draft”). Both proposals were unsuccessful.

Same-sex partners may currently be granted the status of a “close person” or “cohabitant in a shared household” under certain statuto-

ry provisions, but it is in many cases unclear and difficult to prove. Therefore, the rights arising from the status of a close person or cohabiting person in a shared household are a guarantee of rights neither for same-sex couples, nor for different-sex couples who do not wish to marry, unlike married couples to whom the law grants a full range of rights. In the table below, the Centre provides a comparison of the key rights and obligations of same-sex couples under the partner cohabitation draft and the life partnership draft, to which they are entitled to by virtue of their civil partnership, and the rights and obligations of married persons under the current legislation.¹⁴⁷

¹⁴⁵ Draft by Jarmila HALGAŠOVÁ, Jana BITTÓ CIGÁNIKOVÁ, Tomáš LEHOTSKÝ, Petr OSUSKÝ and Vladimíra MARCINKOVÁ, Members of the National Council of the SR, to adopt an act amending Act No. 40/1964 Coll. of the Civil Code as amended, amending and supplementing certain Acts, Parliamentary Press 1097, available in Slovak at: <https://bit.ly/3Ha8Giy>

¹⁴⁶ Draft by Tomáš VALÁŠEK, Member of the National Council of the SR, to adopt an Act on Life Partnership, and on the amendment and supplementation of certain Acts, Parliamentary Press 1124, available in Slovak at: <https://bit.ly/41AVsnt>

¹⁴⁷ The rights of children living in families of same-sex couples, who are also affected by the current lack of legislation in this area, were not subject to the comparison.

Form of life union	Partner cohabitation	Life partnership	Marriage
Rights and obligations			
Formal conclusion by a declaration of consent before the registry office	✗	✓	✓
Formal conclusion by declaration of consent before the church	✗	✗	✓
Shared surname	✗	✓	✓
Mutual maintenance obligation ¹⁴⁸	✗	✓	✓
Adoption by the partner of the child's parent	✗	✓	✓
Joint adoption	✗	✗	✓
Mutual representation	✗	✓	✓
Maintenance allowance after dissolution of the union	✗	✓	✓
Status of close persons ¹⁴⁹ and associated entitlements	✓	✓	✓
Joint ownership	✓	✓	✓
Partner tax bonus ¹⁵⁰	✗	✓	✓
Family business ¹⁵¹	✓	✓	✓
Continuation of a trade after the death of a spouse ¹⁵²	✓	✓	✓
Criminal protection against bigamy/double partnership ¹⁵³	✗	✓	✓
Compensation for committing a violent crime ¹⁵⁴	✓	✓	✓

¹⁴⁸ Section 71, para. 1 of Act No. 36/2005 Coll. on the Family, and on the amendment and supplementation of certain Acts.

¹⁴⁹ Section 116 of Act No. 40/1964 Coll. of the Civil Code, as amended.

¹⁵⁰ Section 11, para. 3 of Act No. 595/2003 Coll. on Income Tax, as amended

¹⁵¹ Section 2a of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment, and on the amendments and supplementation of certain Acts, as amended.

¹⁵² Section 13 of Act No. 455/1991 Coll. on Trade Business (Trade Licensing Act), as amended.

¹⁵³ Section 204 of Act No. 300/2005 Coll. of the Criminal Act.

¹⁵⁴ Section 2, para. 1(d)(l) of Act No. 274/2017 Coll. on Victims of Crimes, and on the amendment and supplementation of certain Acts.

Time off work to accompany a sick partner ¹⁵⁵	✓	✓	✓
Injury benefits ¹⁵⁶	✓	✓	✓
Nursing a sick partner ¹⁵⁷	✓	✓	✓
Access to medical records ¹⁵⁸	✓	✓	✓
Inheritance by law ¹⁵⁹	✓	✓	✓
Adoption of a child by the surviving spouse/partner	✗	✓	✓
Monetary entitlements after the death of an employee ¹⁶⁰	✓	✓	✓
Time off work on the death of a spouse/partner ¹⁶¹	✓	✓	✓
Widow's pension and widower's pension ¹⁶²	✓	✓	✓

The partner cohabitation draft was based on the programme declaration of the Government of the SR,¹⁶³ in particular the commitment to improve legislation in the area of property rights concerning cohabitants. This institution was conceived in a gender-neutral manner, i.e. it was intended to enable persons of different sexes living in long-term non-marital unions, as well as persons of the same sex whose relationship is currently under no legal protection, to enter into a life

union from which they would derive a number of rights, particularly in the area of property law. The draft was criticised by civil society for failing to comprehensively address the unequal status of same-sex couples and their families, the undignified and unclear form of civil partnership and the insufficient scope of rights and obligations, pointing to the need to lay down the mutual obligations of partners (e.g. maintenance obligations).¹⁶⁴ The Centre agrees with the above reservations.

¹⁵⁵ Section 40, para. 5 of Act No. 311/2001 Coll. of the Labour Code.

¹⁵⁶ Section 17, para. 3 of Act No. 461/2003 Coll. on Social Insurance, as amended.

¹⁵⁷ Section 39, para. 1 et seq. of Act No. 461/2003 Coll. on Social Insurance, as amended.

¹⁵⁸ Section 25, para. 1(b) of Act No. 576/2004 Coll. on Health Care, Services Related to the Provision of Health Care, and on the amendment and supplementation of certain Acts.

¹⁵⁹ Section 473, para. 1 of act No. 40/1964 Coll. of the Civil Code, as amended.

¹⁶⁰ Section 35, para. 1 of Act No. 311/2001 Coll. of the Labour Code.

¹⁶¹ Section 141, para. 2 (d) of Act No. 311/2001 Coll. of the Labour Code.

¹⁶² Section 74, para. 1 of Act No. 461/2003 Coll. on Social Insurance, as amended.

¹⁶³ Programme Declaration of the Government of the SR for the period 2021 – 2024, available in Slovak at: <https://bit.ly/41Q6VPG>

¹⁶⁴ See, e.g., Facebook post by the civil society organisation Initiative Otherness (Iniciatíva Inakost'), 18 October 2022, available in Slovak at: <https://bit.ly/3oCG3v9>

On the other hand, the life partnership draft was to introduce a comprehensive institution of life union of same-sex couples, the conclusion of which was about to be effected by a declaration of consent of the partners before the civil registry authority. The draft of a special law, in addition to a more detailed regulation of rights relating to cohabitation, mutual maintenance and the exercise of parental rights, was intended to improve the situation of children growing up with same-sex parents and who, due to the legal situation, are unable to exercise many of their rights compared to children of different-sex parents.¹⁶⁵

Based on a comparative analysis of the two drafts, the Centre concluded that the life partnership draft met the requirements of international law to provide a specific legal framework to allow same-sex couples to have their life union adequately recognised and protected in accordance with the ECtHR judgment in *Fedotova and Others v. Russia*.¹⁶⁶ On the contrary, the partner cohabitation draft could not be considered sufficient in the light of that judgment, taking into account the need to allow same-sex couples to regulate matters relating to property, maintenance and inheritance not as private individuals entering into contracts under the ordinary law but as couples officially recognised by the state.¹⁶⁷

¹⁶⁵ For example, they have the right to inherit from only one parent, the maintenance obligation by the other parent is not guaranteed as well as the right to an orphan's pension in the event of the death of the other parent, etc.

¹⁶⁶ Judgment of the Grand Chamber of the ECtHR in *Fedotova and Others v. Russia*, 17 January 2023, Complaint No. 40792/10, 30538/14 and 43439/14, para. 164, available at: <https://bit.ly/4011zi>

¹⁶⁷ *Ibid.*, para. 159.

3.3 Limitations of Legal and Medical Transition in Slovakia

Gender transition as a process of social, physical and legal changes that lead to the reconciliation of the internal and external gender identity of a transgender person includes social transition, medical transition and legal transition.¹⁶⁸ Legal gender recognition (legal transition) means the legal recognition of a person's gender identity, including his or her name, sex or gender markers, and other related information that may be reflected in surnames, social security or birth identification numbers, titles, etc., public registers, records and identification documents, and other similar documents (e.g. certificates of educational attainment, etc).¹⁶⁹

The legal system of the SR has not yet defined the concept of legal gender recognition and the process of legal transition. Partial regulation is contained in Section 6 and Section 7 of Act No. 300/1993 Coll. on Name and Surname (hereinafter referred to as the "Act on Name and Surname"), Section 8, para. 2(b) of Act No. 301/1995 Coll. on the Birth Identification Number and Section 68, para. 12 of Act No. 131/2002 Coll. on Higher Education, and on the amendment and supplementation of certain Acts. Thus,

only the change of the name and surname, the change of birth identification number and the change of documents of higher education graduation (but not the documents of primary or secondary education graduation) are regulated among the individual prerequisites for the legal gender recognition according to the definition of the Council of Europe. The change of the related identification documents (e.g. ID card, driving licence, etc.) is based on the legal facts of change of name, change of surname and change of birth identification number.

The legal gender recognition materialises the right of a transgender person for the conditions to reconcile his or her internal and external gender identity.¹⁷⁰ An individual's gender identity is subject to guaranteed protection under the right to respect for private life under Article 8 of the Convention. The right to self-determination in relation to gender is an individual expression of the right to respect for private life, and states have a positive obligation to ensure the exercise of such right, i.e. to implement options for the recognition of gender reassignment, e.g. by

¹⁶⁸ METEŇKANYČ, O. M.: *Forced castration as a compulsory condition for gender transition in the Slovak Republic*. In: COMENIUS Journal, 2021, No. 02, p. 10.

¹⁶⁹ The Council of Europe's Committee for the Control of Non-Discrimination, Diversity and Inclusion (CDADI): *Implementation of the Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity – Topic Report on Legal Gender Recognition in Europe*, 2022, para. 2 and annex, available at: <https://bit.ly/41vaxH0>

¹⁷⁰ PAVLIČKOVÁ, Z.: (Attempts to) restrict the legal gender recognition Slovakia. In: *The Status of Transgender People in Slovakia – Interdisciplinary Perspectives*, 2022, Faculty of Law, Comenius University in Bratislava, p. 66, available in Slovak at: <https://bit.ly/3ozabAC>

changing civil status information.¹⁷¹ In line with the case law of the ECtHR, the scope of the right to privacy under Article 19, para. 2 of the Constitution of the SR¹⁷² and the creation of conditions for the exercising of the right to recognition of gender identity is also an obligation of the SR.

In Slovakia, there are several practices and shortcomings in the legislation that constitute violations of the fundamental rights of transgender persons. These practices include forced sterilizations¹⁷³ and forced divorces of marriages concluded prior transition as a condition for legal gender recognition, as well as shortcomings in the legal recognition process, which is supposed to be quick, transparent and accessible.¹⁷⁴

The issue of forced sterilizations of transgender persons in Slovakia as

a prerequisite for issuing a medical opinion necessary for the change of name and surname due to gender reassignment, or the issue of having the opinion recognized by the registry office, has been reported for a long time by human rights organisations and civil society organisations.¹⁷⁵ Although sterilization is made in the context of medical transition on the basis of the informed consent of the transgender person concerned, the Centre stresses that such interventions cannot be considered voluntary. If sterilization is a precondition of legal gender recognition, such medical procedure is not performed on the basis of genuine consent, since its refusal *de facto* denies the person the right to fully exercise his or her right to gender identity¹⁷⁶ and he or she is therefore compelled to consent to the procedure.¹⁷⁷ Unwanted or forced sterilizations as a precondition for exer-

171 See e.g.: Judgment of the ECtHR in *Christine Goodwin v. the United Kingdom*, dated 11 July 2002, Complaint No. 27527/03, par. 56, available at: <https://bit.ly/4iO9iIQ>; Judgment of the ECtHR in *Van Kück v. Germany*, dated 12 September 2003, Complaint No. 35968/97, paragraphs 69-71 and 75-85, available at: <https://bit.ly/3n2qvt6>; Judgment of the ECtHR in *Case X v. the former Yugoslav Republic of Macedonia* of 17 April 2019, Complaint No. 29683/16, par. 38, available at: <https://bit.ly/43Wx4i5>; Judgment of the ECtHR in *Y.Y. v. Turkey*, 10 June 2015, Complaint No. 14793/08, paras. 58-59, available at: <https://bit.ly/3N9ECYh>

172 SVÁK, J.: *Article 19*. in: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic*. Comment. Volume I. Bratislava: Wolters Kluwer SR Ltd, 2021, p. 235.

173 See ECtHR Judgment in *Y.Y. v. Turkey*, 10 June 2015, Complaint No. 14793/08, available at: <https://bit.ly/3N9ECYh>; Judgment of the ECtHR in the joined case of *A. P., Garçon and Nicot v. France* of 6 April 2017, Complaint No. 79885/12, 52471/13 and 52596/13, available at: <https://bit.ly/3nglttq>; Judgment of the ECtHR in *X and Y v. Romania*, 19 April 2021, Complaint No. 2145/16 and 20607/16, available in French at: <https://bit.ly/3N9DzaJ>

174 Committee of Ministers of the Council of Europe: *Recommendation CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity*, 2010, para. 21, available at: <https://bit.ly/3LrmFmO>

175 See e.g.: Office of the Public Defender of Rights: *Report on the activities of the Public Defender of Rights for the period 2018, 2019*, pp. 38-40, available in Slovak at: <https://bit.ly/3Nd8cw2>

176 Judgment of the ECtHR in *A.P., Garçon and Nicot v. France* of 6 April 2017, Complaint No. 79885/12, 52471/13 and 52596/13, para. 130, available at: <https://bit.ly/3KZEKrf>.

177 Decision of the European Committee of Social Rights in *Transgender Europea ILGA-Europe v. Czech Republic*, 15 May 2018, Complaint No. 117/2015, para. 54, available at: <https://bit.ly/3oJyVpG>

cising the right to legal gender recognition are considered a form of violence against transgender people in the health care sector,¹⁷⁸ they can lead to severe or lifelong physical and mental pain and suffering and may therefore be considered as torture or other ill-treatment,¹⁷⁹ as well as a violation of the right to health.¹⁸⁰

At the same time, the requirement of sterilisation for the purpose of legal gender recognition is contrary to the right to protection of private life under Article 8 of the Convention and Article 19, para. 2 of the Constitution of the SR, as it interferes with the physical and moral integrity of the person concerned.¹⁸¹

In the absence of a specific regulation applicable to transgender persons, if they are married, in the Slovak practice, the medical opinion for the purposes of legal transition is conditioned by the divorce of a valid marriage, although the law does not directly impose such an

obligation.¹⁸² The ECtHR has thus far only considered making legal transition conditional on the dissolution of a valid marriage of a transgender person in situations where the state in question had an alternative form of legal recognition of same-sex unions comparable in scope of rights and obligations to the institution of marriage. In such case, the ECtHR did not consider the obligation to dissolve the original marriage to be contrary to Article 8 of the Convention.¹⁸³ It is not possible to predict how the ECtHR would rule in the case of Slovakia as a country that does not allow any form of legal recognition of same-sex partnerships. In this regard, however, the Centre refers to the 2017 decision of the UN Human Rights Committee, according to which the right to private life and the prohibition of discrimination under articles 17 and 26 of the International Covenant on Civil and Political Rights are also violated in such a case.¹⁸⁴ The Centre also points out that the lack of legal recognition of same-sex couples in

178 The UN Independent Rapporteur on protection from violence and discrimination based on sexual orientation and gender identity: *Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity*, 2018, A/HRC/38/43, para. 44, available at: <https://bit.ly/3Nytmol>

179 The UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 2016, A/HRC/31/57, para. 48, available at: <https://bit.ly/3n87yVU>

180 Decision of the European Committee of Social Rights in *Transgender Europea and ILGA-Europe v. Czech Republic*, dated 15 May 2018, Complaint No. 117/2015, paras. 82-86, available at: <https://bit.ly/3oJyVpG>

181 Judgment of the ECtHR in the joined case of *A. P., Garçon and Nicot v. France* of 6 April 2017, Complaint No. 79885/12, 52471/13 and 52596/13, available at: <https://bit.ly/3KZEKRF>

182 Central portal of public administration slovensko.sk: *Rules on the recognition of gender reassignment*, available in Slovak at: <https://bit.ly/43ZcKMn>

183 Judgment of the Grand Chamber of the ECtHR in *Hämäläinen v. Finland*, dated 16 July 2014, Complaint No. 37359/09, available at: <https://bit.ly/3L2Y3jO>

184 Decision of the UN Human Rights Committee on the individual complaint in the case of *G. v. Australia*, dated 28 March 2017, Complaint No. 2216/2012.

Slovakia brings uncertainty about the legal status of a pre-transition marriage of a transgender person.¹⁸⁵

For example, the different application practices of national courts in deciding on matters of legal gender recognition, or the lack of clarity of the legal framework for the gender recognition, are contrary to the requirement for a rapid, transparent and accessible process of legal gender recognition.¹⁸⁶ The vague regulation of the submission of certificates and opinions confirming the ongoing or completed medical transition, the absence of regulation of procedures of health professionals taking care of a person in transition caused by the lack of standards and the suspension of the validity and effectiveness of the Expert Guideline of the Ministry of Health of the SR on the unification of procedures for the provision of health care for gender reassignment prior to issuing a medical opinion on the gender reassignment of a person registered in the registry office (hereinafter referred to as the “Expert Guideline of the Ministry of Health

of the SR”) cause legal uncertainty. The Centre is of the opinion that the lack of legislative regulation of legal and medical transitioning, as well as the inconsistent procedure of registries, especially in the situation of suspended validity and effectiveness of the Expert Guideline of the Ministry of Health of the SR¹⁸⁷ are contrary to the requirement for a fast, transparent and accessible process of transition.¹⁸⁸

The inconsistency of the regulation of legal transition in Slovakia was also pointed out in 2016 by the UN Human Rights Committee, which called on Slovakia to develop and implement processes for the legal recognition of gender in accordance with the International Covenant on Civil and Political Rights, specifically pointing out the requirement of sterilization of transgender persons as a condition for the legal gender recognition.¹⁸⁹

In March 2022, the Ministry of Health of the SR adopted the Expert Guideline of the Ministry of Health of the SR, which should have addressed the shortcomings caused by the insufficient le-

¹⁸⁵ More details: DUFALOVÁ, L.: *Legal consequences of the gender transcription of one of the spouses on a validly contracted marriage*. In: *The Status of Transgender People in Slovakia – Interdisciplinary Perspectives*, 2022, Faculty of Law, Comenius University in Bratislava, pp. 166-176. Available in Slovak at: <https://bit.ly/3ozabAC>

¹⁸⁶ Judgment of the ECtHR in the case of *X and Y v. Romania* dated 19 April 2021, Complaint No. 2145/16 and 20607/16, available in French at: <https://bit.ly/3N9DzaJ>. See also the Judgment of the ECtHR in *Case X v. the former Yugoslav Republic of Macedonia* of 17 April 2019, Complaint No. 29683/16, available at: <https://bit.ly/43Wx415>.

¹⁸⁷ See e.g.: Statement of counselling centres on the efforts to reintroduce forced castration of transgender people in Slovakia dated 1 May 2022, available in Slovak at: <https://bit.ly/3N4LupX>

¹⁸⁸ PAVLIČKOVÁ, Z.: *(Attempts to) restrict the legal gender recognition in Slovakia*. In: *The Status of Transgender People in Slovakia – Interdisciplinary Perspectives*, 2022, Faculty of Law, Comenius University in Bratislava, pp. 72-73, available in Slovak at: <https://bit.ly/3ozabAC>

¹⁸⁹ UN Human Rights Committee: *Concluding observations on the fourth periodic report of Slovakia*, CCPR/C/SVK/CO/4, paras. 14-15, available at: <https://bit.ly/42hDVQX>

gal regulation of medical and legal transitioning and was regulating the procedure for the provision of related health care. It also contained sample instructions and informed consent for individual diagnostic and therapeutic procedures and risks associated with gender reassignment, as well as a sample medical opinion on gender reassignment required for the purpose of changing a person's name, surname and birth identification number.¹⁹⁰ The validity and effectiveness of the Expert Guideline of the Ministry of Health of the SR was suspended by the announcement of the Ministry of Health of the SR due to the need to define "standard procedures for the proper provision of health care to a person with a diagnosis of transsexualism (F 64.0)" in accordance with the provision of Section 4, par. 3 of Act No. 576/2004 Coll. on Health Care, Services Related to the Provision of Health Care, and on the amendment and supplementation of certain Acts, as amended.¹⁹¹

A landmark decision confirming the illegality of conditioning legal transition in Slovakia on surgical intervention (sterilization) was adopted in 2022 by the Supreme Administrative Court of the SR.

The court was ruling on a cassation complaint against the judgment of the Regional Court in Banská Bystrica, which upheld the decision of the Zvolen Registry Office refusing to register a change of the transgender woman's name, birth identification number and gender in the civil registry on the grounds that she had not submitted a medical report stating that her gender had been "changed by a medical procedure".¹⁹² The Supreme Administrative Court of the SR confirmed that there is no statutory provision in the national legislation linking the registration of a new name of a transgender person under Section 7, para. 3 of the Act on Name to a surgical procedure.¹⁹³ The Supreme Administrative Court of the Slovak Republic evaluated the request for a certificate of surgical gender reassignment for the purposes of name change by the registry office as an incorrect procedure, also referring to the case law of the ECtHR, namely its decisions in *A.P., Garçon and Nicot v. France* and *X. and Y. v. Romania*, which interferes with the right to privacy.¹⁹⁴ In the decision to annul the contested decision and return the case for further proceedings, the Supreme Administrative Court of the SR directed

190 Expert Guideline of the Ministry of Health of the SR No. 16/2022 on the unification of procedures for the provision of health care for gender reassignment prior to issuing a medical opinion on the gender reassignment of a person registered in the registry office, Bulletin of the Ministry of Health of the SR No. 18-20 dated 6 April 2022

191 Bulletin of the Ministry of Health of the SR No. 28-29 of 18 May 2022, Notification part.

192 Judgment of the Regional Court in Banská Bystrica of 7 October 2020, Case No. 24S/227/2019-60 in conjunction with the corrective order of the Regional Court in Banská Bystrica of 14 April 2021, Case No. 24S/227/2019-86, paras. 25-28.

193 Judgment of the Supreme Administrative Court of the SR of 19 October 2022, Case No. 15Žk/38/2021, para. 49.

194 *Ibid.*, paras. 40-41.

the Regional Court in Banská Bystrica to define in its decision the term “medical opinion”, the submission of which is a prerequisite for the registration of a change of name pursuant to Section 7, para. 3 of the Act on Name and Surname, whether it must prove the applicant’s gender reassignment solely by undergoing a surgical procedure and, if not, in what other way the gender reassignment can be proved, taking into account the case-law of the ECtHR.¹⁹⁵ The Centre also considers the reference to the Expert Guideline of the Ministry of Health of the SR, the effectiveness of which had already been suspended at the time of the decision in the case, to be an important argument. Despite the suspension, the Supreme Administrative Court of the SR described its existence as *“a relevant indication that even in the legal reality of the SR it was possible – although only for a period of a few weeks – to prove a gender reassignment otherwise than by a surgical intervention.”*¹⁹⁶

In November 2022, the Committee on the Rights of LGBTI Persons called on the Ministry of the Interior of the SR to instruct registry offices not to require any additional conditions beyond a medical opinion on a person’s gender reassignment without a legislative basis. It also called on the Ministry of Health of the SR to adopt a standard procedure for the diagnostics and treatment of a person with F64.0 diagnosis¹⁹⁷ developed by an expert society.¹⁹⁸

Although at the time of writing the 2022 Report, the Ministry of Health had published the Standard Practice for the Diagnostics and Comprehensive Management of Health Care for Adults with Transsexualism (F64.0), thus bringing the Ministry of Health’s Expert Guidance back into force and effect, the legal uncertainty that arose in 2022 caused a restriction on the exercise of the right to legal gender recognition in conflict with the obligations in the area of the right to health and the right to protection of private life.

¹⁹⁵ Ibid., para. 48.

¹⁹⁶ Ibid., para. 42.

¹⁹⁷ Diagnosis F64.0 is categorised, based on the International Health Organization’s International Classification of Diseases, as ICD-10 rather than ICD-11, in effect from January 2022.

¹⁹⁸ Resolution of the Committee on the Rights of LGBTI+ Persons No. 32 of 21 November 2022 on the current status of health care provision for transgender persons, available in Slovak at: <https://bit.ly/4ISWllt>

3.4 Democratic Space for LGBTI+ Human Rights Defenders in Slovakia

Human rights defenders (in the past more often referred to as activists¹⁹⁹) are persons who, alone or together with others, promote and protect human rights in a peaceful or non-violent manner.²⁰⁰ In the context of the situation of the rights and status of LGBTI+ people in Slovakia in 2022, the Centre examined how LGBTI+ human rights defenders perceive the civic space for their work and activities. The theoretical human rights framework of the status, specific challenges and needs of human rights defenders formed the starting point for the interviews with eight LGBTI+ human rights defenders.²⁰¹

The aim of the interviews was mainly to obtain personal experiences, evaluations, opinions and recommendations. The findings are limited by the small sample of respondents and are therefore not representative and may not reflect the experiences of all LGBTI+ human rights defenders. However, based on the interviews, the Centre received important assessments, suggestions and recommendations on what an open and democratic space for human rights defenders in Slovakia should look like.

Despite their indispensable role in defending democratic values, human rights defenders face multiple obstacles, including: (a) legal and administrative obstacles, including access to funding; (b) excessive bureaucratic burdens; (c) judicial harassment; (d) hate campaigns; (e) threats and intimidation; (f) abusive control and surveillance; (g) restrictions on freedom of expression or freedom of assembly; or (h) the absence of effective investigations when their human rights are violated.²⁰²

In addition, LGBTI+ human rights defenders face specific challenges based on who they are or whose rights they defend. Globally, they are among the most targeted defenders and face the greatest danger after environmental human rights defenders.²⁰³ The specific challenges they face are, in particular: (a) attacks due to their real or alleged identity; (b) harassment and physical assaults; (c) online threats and social media hacking; (d) attacks by far-right movements; (e) intense smear campaigns; (f) political manipulation, dissemination of homophobic and transphobic narratives; (g) restrictions and attacks against LGBTI+ activists

199 The Centre uses both terms in the report.

200 Office of the UN High Commissioner for Human Rights: *About human rights defenders*, available at: <https://bit.ly/3L5ovbt>

201 For a theoretical human rights framework of the status human rights defenders, see SNCHR: *Report on the observance of human rights, including the principle of equal treatment in the Slovak Republic for the year 2021*, pp. 88-91, available at: <https://bit.ly/42cs32X>

202 Commissioner for Human Rights of the Council of Europe: *Human Rights Defenders*, available at: <https://bit.ly/3Nbb0d8> and the UN Special Rapporteur on the situation of human rights defenders: *Challenges faced by Human Rights Defenders*, available at: <https://bit.ly/43UmUy2>

203 Office of the UN High Commissioner for Human Rights: *Joint statement by the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the UN Special Rapporteur on the situation of human rights defenders*, 24 March 2022, available at: <https://bit.ly/3AriNrW>

based on religious beliefs or cultural norms, increased influence of anti-gender and ultra-conservative actors; (h) impunity for attacks and stigmatizing statements by public officials that create an environment conducive to violence against LGBTI+ human rights defenders; (i) burnout, the impact of persistent attacks on mental health; (j) specific intersectional barriers (e.g. for women human rights defenders, trans human rights defenders, or members of ethnic and national minorities).²⁰⁴

Several of these barriers are also present in the specific context of the work of LGBTI+ human rights defenders in Slovakia. The questions for respondents therefore followed seven topics to gain information on barriers and ways of overcoming them, namely: perceptions of activism and motivation; the climate in the country; responses to work and activities; access to decision-making, participation and collaboration; access to funding and grant schemes; support mechanisms; and, needs and recommendations.

Perceptions of Activism and Motivation

Individual respondents differed in their perceptions of whether they considered themselves to be human rights defenders or activists and what this meant to them

and for them. Most perceived the two terms as being synonymous, but one respondent found it easier to identify with the term human rights defender:

72



„I don't like the word activist. I am simply trying to help people who are worse off than I am, and especially my motivation is also personal, because I grew up in Slovakia and I suffered from internalized homophobia for a long time because of the way otherness is perceived in Slovakia, so I went through it myself. And that's why I'm trying give back now, so those young people don't have to go through what I went through.“²⁰⁵

Despite the importance of engagement of all people in advocating for the human rights of LGBTI+ people (and thus the perception that this is not just a defined “minority” issue), two respondents who are not LGBTI+ and consider themselves “straight allies” felt a great responsibility and

necessity to give space to LGBTI+ people themselves for representation, visibility and discussion of important issues affecting them.

Respondents identifying as LGBTI+ were more likely to be personally motivated for activism, which is an integral part of their everyday ex-

²⁰⁴ Ibid and the 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*, 8 December 2021, available at: <https://bit.ly/3LOBtYd>

²⁰⁵ Research interview, respondent No. 1.

istence and thus they cannot “take a break from it outside of working hours”. When asked whether ac-

tivism can be “separated from ordinary life”, one respondent answered as follows:

“No, it's very complicated because like I said, it's not a topic for me, I live it every day, so it's like...it's not like I'm going to be an activist from 9 a.m. to 5 p.m., that I'm going to go do eight hours of activism.”²⁰⁶

Despite the fact that their human rights activism is fulfilling, two respondents also expressed the idea that if the rights of LGBTI+ people were guaranteed in Slovakia, they would not actually have to do any activism, but could, for example, spend time in their gardens and with their families or pursue their dreams.

The motivation for all respondents was primarily the advancement and implementation of human rights and dignity for LGBTI+ people, equality of their rights (including the legislative framework) and the fight against historical oppression, violence and discrimination. Another strong motivation was the need to raise the visibili-

ty of LGBTI+ people, to promote a positive perception of LGBTI+ relationships and families in society, to bring their own (also successful) stories and thus offer role models or support for young queer people.

Nevertheless, most respondents felt fatigue and frustration that, due to the continuous attacks on the human rights of LGBTI+ people, and the politicisation and polarisation of the issue, they are often forced to repeatedly react, maintain and defend the (unsatisfactory) status quo instead of investing their time and capacities in progressive activities and policies. When asked what it means to her to be an activist, the respondent answered as follows:

“It probably means a lot to me, because since it is personal, it is a very emotional issue for me, because I have made my own choice and I have put myself at risk by being visible and fighting for our rights. And sometimes it takes a lot of my energy because if you try very hard and you don't see any significant progress in Slovakia, it's quite frustrating”²⁰⁷

Climate for the Work of Human Rights Defenders

The Centre was also interested in the respondents' perception of the climate in the country for the work of human rights defenders and whether they have seen any change in recent years. Respond-

ents with many years of experience saw the 2015 referendum on the family as an important turning point for the overall climate in the country regarding LGBTI+ rights and for LGBTI+ activism itself.

²⁰⁶ Research interview, respondent No. 2.

²⁰⁷ Research interview, respondent No. 2.

According to the respondents, various interconnected myths, including the topics of so-called juvenile justice, gender ideology, sex education, vaccination, and the so-called LGBT agenda, have moved from fringe ultraconservative or religious forums into the main-

stream because of the referendum, and have been taken up by state administration employees, politicians, and policymakers. Respondents also perceived the links of these movements to foreign countries and their strong financial and political background:

“(...) there is also a lot of counter-pressure from the whole disinformation scene and various radical movements, whether neo-Nazis or ultra-conservative movements. And in this respect, we really face the odds, which are much better organized, much better funded, and their structures are much more solid.”²⁰⁸

According to the respondents, the overall climate in the country for LGBTI+ human rights activism was changing for the worse on the one hand (in the context of strong and aggressive counter-pressure and anti-campaigns), but on the other

it was also changing in some ways for the better. One example is that the overall polarisation, according to respondents, has also brought a greater amount of support from the general public and some public figures:

“(...) I just feel that the situation has deteriorated politically, in the way the referendum has absolutely polarised the issue, in the way this so-called LGBT agenda has emerged and the huge attacks, it's all just absolutely 'messed up' (...) with terrible myths and prejudices (...). But at the same time, I think that it's shifting anyway, that we're just feeling more support from young people, from the community, from some of those opinion leaders, that's changed.”²⁰⁹

Respondents also perceived in a very positive way the fact that more LGBTI+ people themselves

are now joining campaigns and raising their visibility:

“(...) this has changed in recent times; previously just a few people from the community were heard across the whole of Slovakia. Now many people, regardless of whether they have any affiliation with activism at all, whether they like it or not, they stand up for themselves.”²¹⁰

Some respondents were also positive about the strengthening and improvement of the overall capacity of the LGBTI+ human rights

movement – the greater number of people and diversity of civic associations, the expansion to towns outside of Bratislava and

208 Research interview, respondent No. 4.

209 Research interview, respondent No. 7.

210 Research interview, respondent No. 7.

Košice, as well as the overall improvement in the sustainability of civil society and the perception that activist structures are stronger and more stable. The organisations themselves are also contributing through building capacities and community organising.

Another turning point in the overall climate of the country was the terrorist attack in October 2022,

after which respondents felt further polarisation of society, fear for LGBTI+ people, but also a greater determination and urge to be engaged. The reaction from public figures has been perceived sensitively – either positively (e.g. the actions of and support by the President of the SR) or hurtfully (in case of many politicians and church leaders).

Responses to the Work and Activities of LGBTI+ Human Rights Defenders

In the context of the changing climate for the work of human rights defenders in the country, the interviews also looked more closely at positive (supportive statements, expressions of gratitude, acknowledgements) or negative (hate speech, organised social me-

dia campaigns, threats) responses or expressions to their work and activities. The respondents mainly mentioned negative **reactions on social networks** (comments, posts) or articles in the media as negative manifestations. One respondent stated:



“(...) while in the past some of our activities may not have evoked such a strong reaction, now they do. That at the beginning we didn't have to face so much hate speech, whether on social media and so on, so this is where it actually kind of got worse, that we ran into some structures in society that kind of felt threatened by our work. And they are very active to make sure that the issue that we are talking about and the social justice that we are asking for cannot actually become a reality.”²¹¹

However, a number of respondents assessed that they receive far more positive than negative comments on social media. Two respondents commented that it is also possible that such posts have gone unnoticed due to the fact that social media discussions are much more moderated than in the past, or that their authors have moved to other (less mainstream) networks. Some respondents also interpreted the lower number of hateful

comments against themselves by the fact that they were not publicly known, or that reactions to their work were sporadic (e.g. when they campaigned or were interviewed in the media).

Three respondents also mentioned that they **experienced threats or harassment**, and two other activists said they had witnessed such threats or hate campaigns against their colleagues.

²¹¹ Research interview, respondent No. 4.

One respondent mentioned that not only human rights organisations but also state administration

employees are confronted with **organised anti-campaigns:**



(...) and we also feel from the side of many officials, who are kind of neutral, that they are facing pressure, a whirlwind of e-mails, phone calls and so on, if a topic concerning LGBTI+ people is discussed.”²¹²

Hateful statements by top politicians about LGBTI+ people (including the spreading of myths and lies and support for anti-transgender campaigns) were also a frequently mentioned topic. Some respondents also mentioned **negative statements from church leaders**, which proved to be very hurtful, especially in the context of the terrorist attack in Bratislava in October 2022. Respondents also cited the strong influence of the Catholic Church as an obstacle to the implementation of LGBTI+ rights.

On the other hand, and equally importantly, respondents were very positive about **supportive statements** and several mentioned that such responses outweighed the negative ones. They also perceived a change over time – while in the

past support was mostly from academic and the civic sector, in recent years they feel more support from the general public and public figures. They also mentioned the increased public interest in supporting or joining LGBTI+ organisations and the support from some state authorities following the terrorist attack in Bratislava, but expressed disappointment that the support expressed by state representatives did not translate into actual implementation of human rights for LGBTI+ people.

In relation to the support from some politicians, two respondents mentioned that they also encounter ‘pinkwashing’, where some politicians try to use the proclaimed support for LGBTI+ rights for their own political gain and visibility.

Access to Decision-making, Participation and Cooperation

Human rights defenders expressed general dissatisfaction regarding participation in the development of laws and policies on human rights of LGBTI+ people. Although such laws and policies are almost absent, even when they are proposed and tabled, respondents are mostly not given the opportunity to participate meaningfully in their development or their participation has

no real impact. One respondent also considered it a failure that the expertise of LGBTI+ organisations is constantly underestimated and the opportunity to influence public policies is given to people who are not experts on the subject. When asked how the respondent perceived opportunities to participate in law or policy making, she answered as follows:

“*„To sum it up in one word: inadequate. (...) All of a sudden something just appears, something is whispered in the background, something is being worked on, but they just don't involve NGOs in any way. They don't really ask those persons, so they are actually talking about us, without us.(...) And we rarely get to comment on it at all, and when we do, it's only afterwards.“*²¹³

Respondents also expressed disappointment at the lack of interest from politicians or civil servants. The fluctuation in leadership positions in the state was also perceived as being problematic by several people, as it brings changes in approach, and thus a change in leadership in specific ministries, for ex-

ample, changes the approach to LGBTI+ issues. As regards the co-operation or at least the accessibility of state actors, several respondents considered the support of the President of the SR in connection with the terrorist attack in Bratislava, as well as in the previous period, to be very important:

“*(...) after the President took office, for example, the communication started to be much better. Right, we felt like the President broke the ice and then some of the other government bodies or state institutions reacted in such a way that, since the President had already met with them, it would be a shame not to at least have some sort of meeting.“*²¹⁴

Some activists also positively assessed the work of individual police forces, for example in the framework of preventive activities and efforts to systematically tackle hate speech or in the organization of events.

Respondents also evaluated the

cooperation with individual employees of the state administration, towns and municipalities in a positive way. However, it was mentioned in this regard that despite the sincere interest of staff to support queer issues, in some cases they meet with resistance from other colleagues:

“*(...) It would help a lot if their leadership was courageous. (...). I worked with [note: name of the institution] and those women working in the communications department had to sort out how to communicate, fortunately not with the management, because the management was OK, but with many other people and staff, that they would display a flag, that they would express a position, that they would actually clearly communicate this topic (...) And this is simply what I am missing, that I think it is perfectly OK for state public institutions to speak out about human rights, about violations of human dignity (...).“*²¹⁵

213 Research interview, respondent No. 3

214 Research interview, respondent No. 7.

215 Research interview, respondent No. 7.

Access to Funding and Grant Schemes

When discussing the possibilities of funding and grant schemes for human rights defenders or for LGBTI+ organisations, respondents particularly highlighted the lack of a long-term and sustainable funding system for the civil society sector. In general, they have access to grant schemes or other financial support, however these are more for individual projects or technical support for events, rather than for long-term structures and building of capacities and development of LGBTI+ organisations. Respondents also mentioned the use of campaigns and fundraising from the public or foreign partners, or the funding of activities through European Union programmes. The fact that a number of respondents engage in activities on a voluntary basis alongside their work in other

sectors may also be an indicator of the inadequate funding of the important work of LGBTI+ organisations and human rights defenders.

Some respondents also mentioned the complicated conditions and administrative set-up of funding and expressed the need for liaison points or persons (for example in the Government of the SR or at ministries) who could provide advice to LGBTI+ organisations and also to direct any suggestions and needs that relate to the human rights of LGBTI+ people. On the other hand, according to one respondent, the bureaucratic burden has been reduced in recent years and the conditions and quantity of grant schemes have improved.

Conclusion

The year 2022 negatively affected LGBTI+ people in Slovakia, as after years of stigmatization, intolerance and homonegative and trans-negative speech, including by public officials, an unprecedented terrorist attack on LGBTI+ people took place outside the Tepláreň bar and community space in Bratislava. Despite the outpouring of public support and sympathy, this event has not led to action to strengthen protection and access to the exercise of fundamental rights by LGBTI+ people.

With regard to the overall respect for the rights of LGBTI+ people in Slovakia, including the right to equal treatment regardless of sexual orientation or gender identity, the Centre considers it crucial for Slovakia to urgently resume the process of preparing and adopting an action plan or other strategic document for the rights of LGBTI+ people. It is imperative for the Government of the SR to commit to comprehensively address the persistent violations of LGBTI+ people's rights in violation of international human rights obligations, and to set out measures to increase tolerance and social acceptance of LGBTI+ people. The number of frequently repeated legislative attempts to restrict the rights of LGBTI+ people and their support across the political spectrum is considered alarming by the Centre. These attempts contribute to the stigmatisation of LGBTI+ people in society and create a hostile or intimidating environment for

LGBTI+ people. Attempts to introduce institutes guaranteeing fundamental rights and protection of private life and legal recognition of same-sex unions in such context have not been successful. Thus, at the legislative level, no progress was made in 2022 towards equal rights for LGBTI+ people and the creation of a legal framework for the exercising of their fundamental rights and freedoms.

The legal uncertainty in 2022 that was created by the adoption and subsequent suspension of the Ministry of Health's Expert Guideline has resulted in a restriction on the exercising of the right to legal gender recognition in violation of the obligations on the right to health and the right to protection of private life. Thus, in 2022, the same situation continued in Slovakia, while registry offices continued to require confirmation of sterilisation of a transgender person as part of a medical transition in order to change their name during or after the end of the transition. Together with inadequate health care capacities needed for medical transition care, this practice has also had a negative impact on the availability of legal and medical transition. The politicization of the topic of transitions does not contribute to tolerance towards transgender people in Slovakia, where a large part of the population still thinks that transgender people should not be able to change their identity documents in accordance with their self-as-

signed gender identity.²¹⁶

Violations of the human rights of LGBTI+ people due to insufficient legal regulation have been partially remedied by the ground-breaking decisions of the Regional Court in Žilina in the case of recognition of same-sex partnerships concluded abroad for the purpose of granting permanent residence in Slovakia and the Supreme Administrative Court of the SR in the case of conditioning the transcription of a transgender person's name in the civil registry with sterilisation.

In order to provide a comprehensive picture of the state of the exercise of human rights of LGBTI+ people, the Centre also examined the impact of obstacles and barriers on the work of LGBTI+ human rights defenders. Respondents referred to a number of bar-

riers to their work, including barriers to participation in the development of laws and policies relating to the human rights of LGBTI+ people, lack of long-term and sustainable administrative and financial support, and a negative climate in society, including strong anti-gender actors. LGBTI+ activists also face hate speech on social media or in other media. Regardless of whether the respondents encountered hate speech and hateful language directly and personally, such hate speech can have a chilling effect and create a hostile environment for the work of activists. However, they also referred to the strong and important support from the public and some public figures, which has been increasing in recent years, and which they also see as an important motivation for their work.

²¹⁶ Among respondents of the European Commission's 2019 Special Barometer, only 25% of Slovak respondents answered positively to this question, while 56% were opposed and 19% were not sure. See: European Commission: *Eurobarometer on Discrimination 2019 – The Social Acceptance of LGBTI People in the EU*, 2019, p. 4, available at: <https://bit.ly/3HAnnvP>

Recommendations

The Centre recommends that:

- 1 The Government of the SR adopt an action plan for LGBTI+ people and instruct the Ministry of Justice of the SR to prepare it through a participatory process with LGBTI+ human rights defenders and LGBTI+ organisations on the basis of expertise, independence and partnership.
- 2 The Government of the SR and the National Council of the SR immediately implement the requirements of the It's About Our Lives initiative.
- 3 The Ministry of Justice of the SR submit without any undue delay a draft act laying down a specific legal framework of rights and obligations of same-sex couples and ensure adequate and dignified recognition and protection of their life union in accordance with the obligations of the SR in relation to the right to respect for private life under Art. 8 of the Convention.
- 4 The members of the National Council of the SR refrain from submitting legislative proposals that restrict the rights of LGBTI+ people and stigmatize them, and respect the principle of equal treatment and the prohibition of discrimination on the basis of sexual orientation and gender identity when introducing legislative measures.
- 5 The Ministry of Health of the SR refrain from retrogressive actions and measures in the area of the right to health, as well as the right to respect for private life and the right to protection from torture and other cruel, inhuman or degrading treatment of transgender persons in Slovakia and restricting the right to recognition of gender identity and legal transitio.
- 6 The Government of the Slovak Republic ensure a safe democratic space for human rights defenders and civil society organisations, including systematic and sustainable institutional and financial support.
- 7 The Government of the SR individual ministries and the National Council of the SR, strengthen and support the active participation of LGBTI+ human rights defenders in the development of laws and policies, especially those that have a direct impact on the human rights of LGBTI+ people.
- 8 The Government of the SR and central public administration bodies implement and support awareness-raising activities and education of the general public on the human rights of LGBTI+ people and systematically dispel misinformation and harmful myths and prejudices about LGBTI+ people.



4. Fundamental Rights and Freedoms of Persons Fleeing the International Armed Conflict in Ukraine

We identified the challenges which the SR must face due to the impact of the armed conflict in Ukraine on the human rights of refugees. We stated that the SR should establish mechanisms to increase the protection of refugees and ensure their right to adequate housing and right to education.

On 24 February 2022, the Russian Federation launched an armed attack against Ukraine. Since the beginning of the international armed conflict, there have been violations of international humanitarian law²¹⁷ and gross violations of the human rights of people in Ukraine.²¹⁸ This situation has forced many people to leave their homes and seek safety in other countries. The number of people who have fled the international armed conflict in Ukraine to European countries has exceeded 8,000,000.²¹⁹ Refugees are at risk of trafficking, exploitation or abuse, and receiving states have also had to address accommodation, employment and education issues. At the same time, international authorities stress that countries should pay special attention to particularly vulnerable groups.²²⁰

The number of persons who crossed the Slovak-Ukrainian border by 31 December 2022 reached 1,058,581.²²¹ The people who arrived

were mainly women, children, the elderly and people with disabilities.²²² On 26 February 2022, the Government of the SR declared an extraordinary and crisis situation in connection with the mass influx of foreigners onto the territory of the SR caused by the international armed conflict in Ukraine.²²³ Subsequently, the National Council of the SR adopted a number of acts which, among other things, regulated the issue of temporary refuge, financial allowance for accommodation of refugees, education, access to health care and employment.

The Centre responded to the armed attack against Ukraine with a declaration of solidarity and referred to the frequent downplaying and overlooking of the meaning and content of the right to peace. On 2 March 2022, the Centre addressed a letter of support to the Ukrainian Parliamentary Commissioner for Human Rights. It also addressed

²¹⁷ International humanitarian law is a branch of public international law that applies in armed conflicts. It aims to limit the consequences of armed conflict. International humanitarian law applies to international armed conflicts as well as to domestic armed conflicts. The armed conflict between the Russian Federation and Ukraine constitutes an international armed conflict, the definition of which is expressed in Common Article 2 of the Geneva Conventions as follows: *"all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them."*

²¹⁸ The Council of Europe Commissioner for Human Rights published a Memorandum on the human rights consequences of the armed conflict in Ukraine, 8 July 2022, available at: <https://bit.ly/40AXSRD>

²¹⁹ Number of refugees in Europe, available at: <https://bit.ly/41U0yLI>

²²⁰ The Council of Europe Commissioner for Human Rights published a Memorandum on the human rights implications of the armed conflict in Ukraine, 8 July 2022, available at: <https://bit.ly/40AXSRD>

²²¹ The number of people who crossed the Slovak-Ukrainian border between 24 February 2022 and 31 December 2022, available at: <https://bit.ly/3H7LLy4>

²²² Slovakia : Regional Refugee Access Plan – 2023 Slovakia, p. 228, available at: <https://bit.ly/3oGCS8f>

²²³ Resolution of the Government of the SR No. 142 of 26 February 2022 on the Proposal to declare an extraordinary and crisis situation in connection with the mass influx of foreigners to the territory of the SR caused by the armed conflict on the territory of Ukraine.

the Prime Minister of the SR and asked information to be shared in connection with the arrival of refugees at the Slovak-Ukrainian border and offered cooperation in promoting respect for the fundamental rights and freedoms of persons at the border.

The chapter on the fundamental rights and freedoms of persons who have fled the conflict in

Ukraine reflects the Centre's monitoring and evaluation work on the issue. It aims to provide an assessment of the topic and identify the challenges to which the SR needs to respond adequately. The Centre, as the national equality body, also considers it relevant to comment on compliance with the principle of equal treatment under anti-discrimination legislation.

4.1 General Background and Legal Framework

Slovakia allowed entry onto its territory to all persons fleeing the international armed conflict in Ukraine and, after an individual assessment, also to persons who did not have a valid travel document, i.e. a biometric passport. It recommended such persons to carry another document confirming their identity.²²⁴ Under the visa-free regime, foreigners with a biometric passport may enter and stay in the territory of the SR without a visa for a maximum of 90 days in any 180-day period.²²⁵

If a minor child crosses the Slovak-Ukrainian border unaccompanied by a parent or another adult natural person to whom he/she could be entrusted in personal care, the social protection authority for children and social guardianship, which is informed by the Border and Foreign Police about the unaccompanied child, must immediately submit a proposal to the court to issue an urgent measure, to ensure that the basic needs of the minor are met, and to ensure that the child is admitted to a Centre for Children and Families.²²⁶ Unaccompanied children cannot be placed with families without a court decision and a prior examination of the conditions of their care.²²⁷ As of 10 November 2022, the SR has registered 45 unaccompanied

children.²²⁸

If refugees wish to stay in the territory of the SR for a longer period of time, they can apply for temporary refuge or international protection (asylum or subsidiary protection). Temporary refuge is the simplest means of legal protection for people fleeing the conflict in Ukraine. Pursuant to the provisions of Section 29, para. 1 of Act No. 480/2002 Coll. on Asylum (hereinafter referred to as “the Asylum Act”), it is granted in order to protect foreigners from war, endemic violence, the consequences of a humanitarian disaster or mass human rights violations in their country of origin. Temporary refuge in the context of the conflict in Ukraine may be applied for by Ukraine citizens, persons who had international or equivalent national protection in Ukraine, family members of Ukraine citizens and persons granted protection (if the family resided in Ukraine prior to 24 February 2022) and foreigners who are not citizens of Ukraine, but who are permanently residing in the territory of Ukraine and are unable to return to their country or region of origin under safe and stable conditions.²²⁹ The procedure for granting temporary refuge begins with the declaration of the alien at the competent police department.

224 Press release dated 25 February 2022, available in Slovak at: <https://bit.ly/3LOABTp>

225 IOM Migration Information Centre, Information and assistance in the context of the war in Ukraine, available in Slovak at: <https://bit.ly/3L39zee>

226 Provision of Section 29 of Act No. 305/2005 Coll. on Social and Legal Protection of Children and on Social Guardianship, and on the amendment and supplementation of certain Acts.

227 Ministry of Labour of the SR, Assistance to Children from Ukraine - basic information, available in Slovak at: <https://bit.ly/3UXLoSV>

228 Data from the Ministry of Labour of the SR according to the minutes of the working group on inclusion of 10 November 2022.

229 IOM Migration Information Centre, Information and assistance in the context of the war in Ukraine, available in Slovak at: <https://bit.ly/3L39zee>

If the foreigner has a travel document, identity document or other valid document, temporary refuge is granted immediately, otherwise the Migration Office of the Ministry of Interior of the SR (hereinafter referred to as the “Migration Office”) shall decide on granting temporary refuge within 30 days. The granting of temporary refuge entitles the refugee to a tolerated stay in the territory of Slovakia. This is a short-term type of stay and is normally granted for stays of up to 180 days.²³⁰ Temporary refuge is currently provided until 4 March 2024. As of 31 December 2022, 95,486 people have been granted temporary refuge or other type of legal protection in the territory of the SR.²³¹

Asylum is a type of international protection of an alien from persecution for the reasons²³² set out in the Convention on the Legal Status of Refugees and in Art. 53 of the Constitution of the SR.²³³ The Ministry of the Interior of the Slovak Republic (hereinafter referred to as “the Ministry of the Interior of the

SR”) may also grant asylum on humanitarian grounds. According to the provisions of Section 2(c) of the Asylum Act, subsidiary protection is protection from serious harm²³⁴ in the country of origin. The asylum procedure also starts with a declaration at the competent police department that the person is applying for asylum or subsidiary protection in the territory of the SR.²³⁵ The police department sends the declaration to the Migration Board, which decides on the asylum application within 90 days. If the Migration Board concludes that there are no grounds for granting asylum, it examines whether the foreigner can be granted subsidiary protection. By granting asylum, the asylum seeker acquires permanent residence in the territory of the SR.²³⁶ Supplementary protection is granted for a period of 1 year and can be extended repeatedly, always by 2 years,²³⁷ and the holder thereof obtains temporary residence in the territory of the SR.²³⁸ In 2022, the Ministry of the Interior of the SR registered 154 applications for asy-

230 The provision of Section 59, par. 1 of the Aliens Residence Act.

231 The number of persons having temporary refuge or other type of legal protection in the Slovak Republic as of 31 December 2022, available at: <https://bit.ly/3H7LJy4>

232 If, under the Convention on the Legal Status of Refugees, there are well-founded fears of persecution on account of race, nationality, religion, political opinion or membership of a particular social group and, owing to such fears, the person is unable or unwilling to return to such country, or if the person is persecuted for exercising political rights and freedoms.

233 According to Art. 53 of the Constitution of the SR “*The Slovak Republic grants asylum to foreigners persecuted for exercising political rights and freedoms.*”

234 According to Section 2(f) of the Asylum Act, serious injustice means the imposition or execution of the death penalty, torture or inhuman or degrading treatment or punishment, or a serious and individual threat to the life or integrity of a person as a result of arbitrary violence during an international or internal armed conflict.

235 The provision of Section 3, para. 1 of the Asylum Act.

236 The provision of Section 24, para. 1 of the Asylum Act.

237 Ministry of Labour of the SR, Asylum and Supplementary Protection, available in Slovak at: <https://bit.ly/4ISEsn>

238 The provision of Section 27a, para. 1 of the Asylum Act.

lum of Ukrainian nationals and issued decisions in 151 proceedings. Asylum was not granted to any Ukrainian national, subsidiary protection was granted in 13 proceedings, negative decisions were issued in 2 cases and 136 asylum proceedings were discontinued.²³⁹

In relation to the arrival of people fleeing the international armed conflict in Ukraine, the of the European Council unanimously adopted on 4 March 2022 the European Commission's proposal to activate Directive 2001/55/EC of 20 July 2001 on Minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. This Directive contains recommendations for Member States on the management of refugee arrivals to the European Union.

Following the declaration of the extraordinary and crisis situation, the National Council of the SR first adopted Act No. 55/2022 Coll. on Certain Measures in Connection with the Situation in Ukraine

(hereinafter referred to as the "Lex Ukraine"), which, in particular, regulated the status of temporary refugee in the Asylum Act in order to facilitate the stay of persons fleeing the conflict in Ukraine in the territory of the SR. In addition, the Lex Ukraine introduced into the Asylum Law the provision of allowances for the accommodation of the refugee. Following the declaration of the extraordinary and crisis situation, the National Council of the SR first adopted Act No. 55/2022 Coll. on Certain Measures in Connection with the Situation in Ukraine (hereinafter referred to as the "Lex Ukraine"),²⁴⁰ which, in particular, regulated the status of temporary refugee in the Asylum Act in order to facilitate the stay of persons fleeing the conflict in Ukraine in the territory of the SR. In addition, the Lex Ukraine introduced into the Asylum Law the provision of allowances for the accommodation of the refugee.

Subsequently, the National Council of the SR adopted Act No. 92/2022 Coll. on Certain Other Measures in Connection with the Situation in Ukraine (hereinafter referred to as the "Lex

²³⁹ Ministry of the Interior, Statistics, available in Slovak at: <https://bit.ly/4410Lyc>

²⁴⁰ Act No. 55/2022 Coll. on Certain Measures in Connection with the Situation in Ukraine entered into force on 26 February 2022 and amended Act of the National Council of the SR No. 42/1994 Coll. on Civil Protection of the Population, Act No. 480/2002 Coll. on Asylum, and on the amendment and supplementation of certain Acts, Act No. 69/2018 Coll. on Cyber Security, and on the amendment and supplementation of certain Acts, and Act No. 575/2001 Coll. on the Organisation of Government Activities and the Organisation of the Central State Administration.

Ukraine”),²⁴¹ which amended several acts in order to facilitate the everyday life and access to the labour market of those who have left Ukraine. The Lex Ukraine 2 regulates the details of the provision

of accommodation allowances in the Asylum Act. An allowance for accommodation facilities for accommodating refugees has also been laid down in Act No. 91/2010 Coll. on the Promotion of Tourism.

241 Act No. 92/2022 Coll. on Certain Other Measures in Connection with the Situation in Ukraine entered into force on 30 March 2022 and amended Act No. 483/2001 Coll. on Banks, and on the amendment and supplementation of certain Acts, Act No. 49/2002 Coll. on the Protection of the Monument Fund, Act No. 131/2002 Coll. on Higher Education, and on the amendment and supplementation of certain Acts, Act No. 321/2002 Coll. on the Armed Forces of the SR, Act No. 480/2002 Coll. on Asylum, and on the amendment and supplementation of certain Acts, Act No. 461/2003 Coll. on Social Insurance, Act No. 552/2003 Coll. on the Performance of Work in the Public Interest, Act No. 5/2004 Coll. on Employment Services, and on the amendment and supplementation of certain Acts, Act No. 578/2004 Coll. on Health Care Providers, Health Care Workers, Professional Organisations in Health Care, and on the amendment and supplementation of certain Acts, Act No. 579/2004 Coll. on Emergency Medical Services, and on the amendment and supplementation of certain Acts, Act No. 580/2004 Coll. on Insurance and on the amendment and supplementation of Act No. 95/2002 Coll. on Insurance Industry, and on the amendment and supplementation of certain Acts, Act No. 582/2004 Coll. on Local Taxes and Local Fees for Municipal Waste and Small Construction Waste, Act No. 245/2008 Coll. on Education and Training (Education Act), and on the amendment and supplementation of certain Acts, Act No. 447/2008 Coll. on Monetary Contributions to Compensate for Severe Disabilities, and on the amendment and supplementation of certain Acts, Act No. 448/2008 Coll. on Social Services, and on the amendment and supplementation of Act No. 455/1991 Coll. on Trade Enterprise (Trade Licensing Act), as amended, Act No. 516/2008 Coll. on the Audio-visual Fund, and on the amendment and supplementation of certain Acts, Act No. 206/2009 Coll. on Museums and Galleries and on the Protection of Objects of Cultural Value, and on the amendment of Act No. 372/1990 Coll. of the Slovak National Council on Offences, as amended, Act No. 207/2009 Coll. on the Conditions of Export and Import of Objects of Cultural Value and supplementing Act No. 652/2004 Coll. on State Administration Bodies in Customs, and on the amendment and supplementation of certain Acts, as amended, Act No. 91/2010 Coll. on the Promotion of Tourism, Act No. 179/2011 Coll. on Economic Mobilisation, and on the amendment and supplementation of Act No. 387/2002 Coll. on the Management of the State in Crisis Situations Outside Times of War and Martial Law, as amended, Act No. 362/2011 Coll. on Medicinal Products and Medical Devices, and on the amendment and supplementation of certain Acts, Act No. 404/2011 Coll. on the Residence of Foreigners, and on the amendment and supplementation of certain Acts, Act No. 406/2011 Coll. on Volunteering, and on the amendment and supplementation of certain Acts, Act No. 153/2013 Coll. on the National Health Information System, and on the amendment and supplementation of certain Acts, Act No. 417/2013 Coll. on Aid in Material Need, and on the amendment and supplementation of certain Acts, Act No. 474/2013 Coll. on the Collection of Tolls for the Use of Specified Sections of Land Roads, and on the amendment and supplementation of certain Acts, Act No. 488/2013 Coll. on the Motorway Vignette, and on the amendment and supplementation of certain Acts, Act No. 284/2014 Coll. on the Fund for the Promotion of the Arts, and on the amendment and supplementation of Act No. 434/2010 Coll. on the Provision of Subsidies within the Scope of the Ministry of Culture of the SR, Act No. 126/2015 Coll. on Libraries and on the amendment and supplementation of Act No. 206/2009 Coll. on Museums and Galleries and on the Protection of Objects of Cultural Value, and on the amendment of Act No. 372/1990 Coll. of the Slovak National Council on Offences, as amended, Act No. 281/2015 Coll. on the State Service of Professional Soldiers, and on the amendment and supplementation of certain Acts, Act No. 18/2018 Coll. on the Protection of Personal Data, and on the amendment and supplementation of certain Acts, Act No. 138/2019 Coll. on Pedagogical Employees and Professional Staff, and on the amendment and supplementation of certain Acts.

Other selected legislative changes related to Act No. 404/2011 Coll. on the Residence of Foreigners (hereinafter referred to as the “Act on the Residence of Foreigners”), which also regulates the status of third-country nationals who are not citizens of Ukraine,²⁴² and Act No. 580/2004 Coll. on Health Insurance, and on the amendment and supplementation of Act No. 95/2002 Coll. on the Insurance Industry, and on the amendment and supplementation of certain Acts (hereinafter referred to as the “Act on Health Insurance”).²⁴³

The social sphere of refugees is regulated by Act No. 199/2022 Coll. on Certain Measures in the Social Sphere in Connection with the Situation in Ukraine (hereinafter referred to as the “Lex Ukraine 3”).²⁴⁴

The Lex Ukraine 3 also allows for an allowance for providing meals to a refugee free of charge. As regards temporary refuge, it has been specified that it is granted to a third-country national pursuant to a special regulation.²⁴⁵

The aim of the above-mentioned amendments was mainly to enable the integration of persons coming from Ukraine into everyday life in Slovakia. The Centre states that successful integration needs continuous responses by the state to the challenges faced by refugees. Interviews conducted by the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as “UNHCR”)²⁴⁶ revealed that the most urgent challenges for refugees in the SR included employment (41% of respondents)

242 Pursuant to the provisions of Section 131k, paras. 7 and 8 of the Act on the Residence of Aliens, these persons may, after entering the territory of the SR, apply for return to their home country within the framework of assisted voluntary return, while the Foreign Police may issue them an alien's passport for this purpose, if necessary

243 Pursuant to Section 9h, para. 2 of the Health Insurance Act, the provision of health care to foreigners with the status of temporary refuge gave rise to the right to reimbursement of urgent health care. Pursuant to Section 9h, par. 9 of the Health Insurance Act, the Ministry of Health of the SR may also determine the scope of medical procedures reimbursed beyond emergency care.

244 Act No. 199/2022 Coll. on Certain Measures in the Social Sphere in Connection with the Situation in Ukraine entered into force on 7 June 2022 and amended: Act No. 480/2002 Coll. on Asylum, and on the amendment and supplementation of certain Acts, Act No. 305/2005 Coll. on Social Protection of Children and on Social Guardianship, and on the amendment and supplementation of certain Acts, Act No. 447/2008 Coll. on Monetary Contributions for Compensation of Severe Disability, and on the amendment and supplementation of certain Acts, Act No. 448/2008 Coll. on Social Services, and on the amendment and supplementation of Act No. 455/1991 Coll. on Trade Enterprise (Trade Licensing Act), as amended, Act No. 561/2008 Coll. on Child Care Allowance, and on the amendment and supplementation of certain Acts, Act No. 417/2013 Coll. on Assistance in Material Need, and on the amendment and supplementation of certain Acts, Act No. 215/2021 Coll. on Support During Short-term Working, and on the amendment and supplementation of certain Acts.

245 Within the meaning of Section 2, para. 4 of the Act on the Residence of Aliens, a third-country national is anyone who is neither a citizen of the SR nor a citizen of the European Union; a third-country national is also a stateless person.

246 Between 17 May 2022 and 11 October 2022, UNHCR conducted interviews with refugees as part of the monitoring of the profile, primary needs and intentions of refugees from Ukraine on the territory of the SR. Monitoring available at: <https://bit.ly/3ov7O1C>

and housing (39% of respondents). A large proportion of respondents (14%) also cited the education of refugee children as an urgent need. Therefore, the following

chapter focuses on the main challenges in accessing accommodation, education and employment for those who have fled the international armed conflict in Ukraine.

4.1.1. Provision of Accommodation for Persons Fleeing the International Armed Conflict in Ukraine

The right to housing is laid down in several international conventions.²⁴⁷ Housing for refugees is defined by the Convention on the Legal Status of Refugees in Art. 21.²⁴⁸ The International Covenant on Economic, Social and Cultural Rights (hereinafter referred to as “ICESCR”) in Art. 11 lays down the obligation of States or Parties to recognize the right of every individual to an adequate standard of living, which includes adequate food, clothing and housing. The parties are obliged to act to ensure that this right is fulfilled. The Committee on Economic, Social and Cultural Rights has adopted a general recommendation on Art. 11 of ICESCR (hereinafter referred to as the “Recommendation No. 4”), in which it stated that the right to housing cannot be defined restrictively, but must be seen as a right to live in security, peace and digni-

ty. Adequate shelter includes adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure, and adequate location in relation to work and basic equipment that is reasonably priced.²⁴⁹ With regards to Art. 2, para. 2 the Committee on Economic, Social and Cultural Rights adopted a General Recommendation No. 20 (hereinafter referred to as the “Recommendation No. 20”), which regulates the prohibition of discrimination. Pursuant to the Recommendation No. 20, States Parties recognize that the rights defined in ICESCR belong to every person regardless of his or her nationality. Including refugees, asylum seekers, and others.²⁵⁰ Under Art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as “ICERD”),

²⁴⁷ Art. 17 of the International Covenant on Civil and Political Rights, art. 11 of the International Covenant on Economic, Social and Cultural Rights, art. 27 of the Convention on the Rights of the Child, art. 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

²⁴⁸ According to Art. 21 of the Convention Relating to the Status of Refugees with regard to housing, States Parties shall, within the context of regulation by law or other regulations, or within the context of control by public authorities, grant to refugees lawfully present in the territory of the State Party treatment as favourable as possible, however, in any event not less favourable than that granted to aliens in general under the same circumstances.

²⁴⁹ Committee on Economic, Social and Cultural Rights, General Recommendation No. 4, par. 7, available at: <https://bit.ly/3V6BLkP>

²⁵⁰ Committee on Economic, Social and Cultural Rights, General Recommendation No. 20, par. 30, available at: <https://bit.ly/3n8kYkK>

the Parties undertake to prohibit and eliminate racial discrimination in all its forms. This includes prohibiting discrimination in the exercise of the right to housing. In General Recommendation No. 30 (hereinafter referred to as the “Recommendation No. 30”), the Committee on the Elimination of Racial Discrimination stated that States parties are under an obligation to guarantee the right to adequate housing for all persons, regardless of their nationality, and are obliged to prevent segregation and discrimination in relation to the enjoyment of the right to adequate housing.²⁵¹

The amendment to the Asylum Act regulated, among other things, the provision of an allowance for accommodation of refugees, which is paid to accommodation providers by municipalities from the funds transferred from the Ministry of the Interior of the SR.²⁵² Pursuant to the provisions of Section 36 of the Asylum Act, the Ministry of the Interior of the SR shall

place the refugee in a humanitarian centre²⁵³ after the end of the stay in the detention camp.²⁵⁴ If the refugee cannot be accommodated in a humanitarian centre or other asylum facility and no allowance is provided pursuant to Section 36a, the refugee will be provided the means to obtain accommodation at the level of a humanitarian centre. The accommodation allowance for refugees is regulated by the Asylum Act, Section 36a.²⁵⁵

The provision of Section 27k of Act No. 91/2010 Coll. on the Promotion of Tourism governs the contribution to accommodation facilities for the accommodation of refugees, which is provided by the Ministry of Transport of the SR (hereinafter referred to as “the Ministry of Transport of the SR”). On 16 March, the Ministry of Transport of the SR, in cooperation with the Association of Towns and Municipalities of Slovakia, launched an information system for booking accommodation for those who have fled the international armed conflict in

251 UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, par. 32, available at: <https://bit.ly/3NgvoJI>

252 Ministry of the Interior of the SR, Information on the allowance for accommodating a foreigner under the Asylum Act, available in Slovak at: <https://bit.ly/3LpY0IT>

253 In response to the Request for a Statement, the Ministry of the Interior of the SR stated that the only detention camp administered by the Migration Office of the Ministry of the Interior of the SR is in the town of Humenné, while its capacity is 530 beds primarily intended for applicants for international protection.

254 Press release of the Ministry of the Interior of the SR dated 2 January 2023, “The Ukrainian refugees accommodated in the facility of the Ministry of Interior of the SR in Gabčíkovo were visited by Irina Vereshchuk, the Deputy Prime Minister of Ukraine”, available in Slovak at: <https://bit.ly/3otlMjq>

255 Pursuant to Section 36a of the Asylum Act, the authorised person is obliged to submit to the municipality a contract on the provision of accommodation to the refugee. The refugee is obliged to notify the municipality in person once a month during the provision of accommodation and confirm he/she is accommodated by an authorised person. The allowance shall be granted per night of the refugee's accommodation. The details and the procedure for the payment of the accommodation allowance to refugees are governed by Regulation No. 218/2022 of the Government of the SR on the Provision of the accommodation allowance to refugees.

Ukraine.²⁵⁶ The information system lists state-owned facilities, registered hotels, guesthouses and private accommodation providers²⁵⁷ and provides a unified system for the provision of accommodation for refugees. In practice, a refugee could also receive short-term accommodation for 24 hours²⁵⁸ in a large-capacity centre. Then the refugee was sent to so-called emergency accommodation in the region for a maximum of 10 days.²⁵⁹ Those interested could apply for temporary refuge during this period and subsequently for accommodation through the information system.

By monitoring the provision of accommodation to refugees from Ukraine and the provision of legal assistance for 2022, the Cen-

tre identified a number of risks that such persons may have faced in exercising their right to housing. The persons providing accommodation or authorised persons to whom the Ministry of Transport or the Ministry of the Interior of the SR provided allowances for the accommodation of refugees could have treated the refugees unfavourably and thus misuse their vulnerable position. The Centre states that members of the Roma ethnic group are also among the vulnerable groups. Upon arrival in the Slovak Republic, they faced several obstacles. Often families of several members came and wanted to stay together in one facility, and due to the capacity of some hotels²⁶⁰ it was in some cases difficult to accommodate them to-

256 The Ministry of Transport of the SR stated that since the beginning of the international armed conflict in Ukraine it has been actively preparing the website pomocpreukrajinu.sk and also the booking system of booking.com, BOOKIO. This is a non-public database of government and commercial accommodation providers who registered at their own discretion. It is used by the district authorities as an intermediary for accommodation of refugees who request this form of accommodation. Private persons providing accommodation are not registered with BOOKIO. Accommodation allowances for private persons are provided by the Ministry of the Interior of the SR. The provision of allowances through the Ministry of Transport is not conditional on the provision of free accommodation for refugees. Accommodation provided by private persons under the responsibility of the Ministry of the Interior must be free of charge if the accommodation provider wishes to claim the allowance for accommodating refugees.

257 Ministry of Transport press release dated 11 March 2022 and Accommodation Booking Information System, available in Slovak at: <https://bit.ly/43Y0Ke3> and at: <https://pomocpreukrajinu.sk/sk>

258 Ministry of the Interior, Information for Foreigners, contact details for large capacity centres, available in Slovak at: <https://bit.ly/3AqTiuC>

259 The Ministry of the Interior of the SR announced in an information leaflet on the provision of temporary refuge and accommodation in the SR that emergency accommodation for 10 days would be provided to any person who requested it. Refugees interested in temporary refuge in the territory of the SR must apply for it, otherwise they must leave the emergency accommodation. Available in Slovak at: <https://bit.ly/3oJUItC>

In response to the Request for a Statement, the Ministry of the Interior specified that the emergency accommodation would be provided for 11 days. This is accommodation provided by the crisis management departments. There have been individual cases when refugees have stayed in emergency accommodation for more than a month.

260 Iva Zigová: Where will they go? The problem with accommodation of refugees from Ukraine is growing in both hostels and guesthouses, 7 April 2022, available in Slovak at: <https://bit.ly/3NeIMgp>

gether.²⁶¹ Such persons often faced prejudice. Such happened also in the well-publicised case of bus drivers who refused to drive to the border when they found out that they had to pick up Ukrainian Roma.²⁶²

The Centre contacted the Ministry of the Interior of the SR and the Ministry of Transport of the SR with requests to comment on issues related to the provision of accommodation. It wondered whether the ministries in question had registered any complaints from persons in emergency accommodation facilities or any adverse actions by authorised persons or persons providing accommodation receiving the allowances. The Centre was also interested in the procedure followed by the authorities in the case of registration of any such complaint. It was also curious whether the Ministry of the Interior of the SR or the Ministry of Transport of the SR had established a mechanism for screening or controlling such persons. The Ministry of Transport of the SR stated that it had not received any complaints from refugees regarding unfavourable treatment by accommodation providers. The public administration Section and the crisis management Section of the Ministry of the Interior of the SR did

not register any complaints concerning unfavourable treatment of refugees accommodated by private persons. As regards the control of authorised persons, the Ministry of the Interior of the SR stated that, according to Section 36a, para. 8 of the Asylum Act, the municipality is entitled to carry out checks on compliance with the conditions for receiving the allowance, which includes dealing with any complaints of unfavourable treatment of refugees.

The Centre stresses that Slovakia has ratified a number of international conventions defining the right to housing, which entail specific obligations and duties. It also points out that accommodation provided to persons who have fled the international armed conflict in Ukraine must meet the standards defined in Art. 11 of ICESCR.²⁶³ Therefore, they cannot therefore be granted any accommodation and the condition of appropriateness must be complied with. The provision of allowances by the Ministry of the Interior of the SR or the Ministry of Transport of the SR is one of the ways in which the SR has exercised the right to housing. As persons in a particularly vulnerable situation, refugees may face unfavourable treatment by authorised persons or accommodation

261 Zuzana Havířová, Former Roma Commissioner: Some Ukrainian Roma don't even have enough money to get to the border, 20 April 2022, available in Slovak at: <https://bit.ly/3N8W27E>

262 Vojtěch Svěrák and Tereza Vlčková, Racism on the Slovak border. The Ukrainian Roma were kept waiting for several days, 11 March 2022, available in Slovak at: <https://bit.ly/3oBBGtt>

263 According to Art. 11, para. 1 of ICESCR, the States Parties recognize the right of everyone to an adequate standard of living for himself/herself and his/her family, including adequate food, clothing, housing, and to the continuous improvement of living conditions. States Parties shall take appropriate steps to ensure the fulfilment of this right, recognizing the vital importance of international cooperation based on free consent for the achievement of this objective.

providers. The authorisation of the municipality to carry out checks on the fulfilment of the conditions for the receipt of allowance under the provisions of Section 36a para. 8 of the Asylum Act or the authorisation of the Ministry of Transport of the SR to carry out checks on the provision of the accommodation allowance pursuant to the provisions of Section 27k, para. 7

of the Tourism Promotion Act, was assessed by the Centre as being insufficient. It stated that the SR should establish mechanisms to increase the protection of refugees and ensure their right to adequate housing that is safe and dignified. The SR is obliged to prevent segregation and discrimination against persons in relation to their right to housing.

4.1.2 Access of Refugee Children who have Fled the International Armed Conflict in Ukraine to Education

The right of everyone to education is defined by a set of international treaties ratified by Slovakia. ICESCR defines it in Art. 13, para. 1 and the Convention on the Rights of the Child in Art. 28, para. 1. In order to fulfil this right, basic education should be compulsory and accessible to all,²⁶⁴ moreover, the Convention grants free elementary education. The international treaties governing the prohibition of discrimination in education are, in particular, ICERD²⁶⁵ and the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as "CEDAW").²⁶⁶ The individual right to education is laid down in Art. 2 of Addi-

tional Protocol No. 1 to the Convention.²⁶⁷ The Constitution of the SR defines the right to education in Art. 42, para. 1 and establishes everyone's right to education (regardless of nationality). School attendance is compulsory. *"Article 42, par. 1 of the Constitution of the SR contains a positive obligation of the State, while the right to education by its nature requires regulation by the State, which may vary in time and place according to the needs and resources of society and individuals in the meaning of Art. 51, par. 1 of the Constitution of the SR."*²⁶⁸ The right to education must also be guaranteed in accordance with the constitutional principle of equality.

²⁶⁴ Art. 13, para. 2(a) ICESCR.

²⁶⁵ According to Art. 7 ICERD, States Parties must take appropriate and effective measures, especially in the areas of teaching, education, culture and information, to combat prejudice leading to racial discrimination.

²⁶⁶ According to Art. 10 CEDAW States Parties shall take appropriate measures to eliminate discrimination against women to ensure that they enjoy the same rights as men in the field of education.

²⁶⁷ According to Art. 2 of Additional Protocol No. 1 to the Convention: *"No one shall be denied the right to an education."*

²⁶⁸ OROSZ, L., SVÁK, J. et al: *Constitution of the Slovak Republic*. Comment. Volume I. Bratislava: Wolters Kluwer s. r. o., 2021, p. 550

The education of children of foreigners in Slovakia is regulated by the Education Act. Children of foreigners²⁶⁹ shall, pursuant to the provisions of Section 146 para. 2 of the Education Act, be provided education and training under the same conditions as citizens of the SR. Upon outbreak of the conflict in Ukraine, the SR had to ensure conditions for the refugee children so that they could exercise their right to education, and the Ministry of Education of the SR responded promptly to the specific needs of the refugees.²⁷⁰ The State Pedagogical Institute has developed a manual for the inclusion of children of foreigners in the educational process, and has also published methodological recommendations, materials, forms and translation dictionaries for schools.²⁷¹

The most important role in guaranteeing the right to education has been played directly by schools and their founders. Schools have made their best effort to assist the refugee children to integrate into the educational process. Despite which, a relatively small number of refugee children were enrolled in the Slovak education system.

As of 19 May 2022, there were 31,301 children in the territory of the SR with an application for temporary refuge, of whom 22,511 were of the age of compulsory pre-primary education and compulsory school attendance. As of 20 May 2022, only 10,852 refugee children were enrolled in the Slovak education system,²⁷² as of 31 December 2022, the number of children enrolled in the Slovak education system has fallen to 8,877.²⁷³ One of the reasons for the lower enrolment of refugee children in the Slovak education system is the fact that some of them were being educated remotely by Ukrainian schools. The Centre requested for a statement by the Ministry of Education of the SR about whether it keeps records on the number of refugee children educated remotely outside the Slovak education system in 2022. The answer was negative, so the state has no knowledge of how many children were educated remotely and how many refugee children did not attend compulsory school at all.

The fact that they are not subject to compulsory schooling may also hinder the integration of refu-

269 Foreigners pursuant to the provisions of Section 146 para. 1 of the School Act are children of: persons who are citizens of another state or stateless persons holding a residence permit in the territory of the SR, applicants for asylum in the territory of the SR pursuant to a special regulation, Slovaks living abroad, as asylum applicants pursuant to a special regulation, as foreigners who are in the territory of the SR without being accompanied by a legal representative.

270 The Ministry of Education of the SR has set up a new website <https://ukrajina.minedu.sk/> which contains all relevant information and materials on education of refugee children for schools and for parents of children.

271 All the materials of the State Pedagogical Institute on the education of foreigners are available in Slovak at: <https://www.statpedu.sk/sk/cudzinci/>

272 State School Inspectorate, School readiness for education of refugee children from Ukraine, Topic Report, 2021/2022, p. 10, available in Slovak at: <https://bit.ly/4iz1o0c>

273 Ministry of Education, Data on the number of refugees from Ukraine, available in Slovak at: <https://bit.ly/41WftV1>

gee children into the educational process. Pursuant to the provisions of Section 20, para. 5 of the Education Act, a primary school pupil fulfils compulsory school attendance in the school district in which he or she resides (the so-called catchment school). The legal representative may also choose a school other than the catchment school for the child. The headmaster shall primarily admit those children having permanent residence in the school district.²⁷⁴ A decision on the admission/non-admission of a pupil to the school is issued in an administrative procedure, which may be appealed against. However, this regime does not apply to the children of refugees, as the temporary refuge only entitles them to so-called tolerated stay in the territory of the SR. As they do not have permanent residence in the territory of the SR, there is no so-called catchment school for them and they are not subject to compulsory school attendance.

Children of foreigners are not admitted to school, but placed.²⁷⁵ There is no administrative decision on their inclusion in the school and

therefore there is no right of appeal against non-inclusion. As regards to refugee children from Ukraine, the State Pedagogical Institute advised school headmasters to place such children in schools without any undue delay, rather than within the statutory period of 3 months.²⁷⁶ The topic report of the State School Inspectorate shows that the majority of school headmasters have complied with this recommendation.²⁷⁷ Following an inquiry by the Centre, the Ministry of Education of the SR stated that even temporary residence is not sufficient to meet compulsory school attendance requirements. If the school capacity is full after the priority admission of those children with permanent residence, the refugee children will not be admitted to such school and have to look for another school. In this respect, Poland is a good example, as it ensures access to free compulsory education for every child up to the age of 18.²⁷⁸ The Centre assesses that, from the point of view of the long-term integration of refugees in the SR, it would be reasonable to regulate compulsory school attendance of refugee children, too.

²⁷⁴ The provision of Section 20, para. 6 of the Education Act.

²⁷⁵ Pursuant to Section 146, para. 4 of the School Act, children of asylum seekers, children of asylum holders and children of foreigners who have been granted subsidiary protection shall be enrolled in the appropriate grade by the school headmaster after ascertaining the level of their previous education and their command of the state language not later than three months after the commencement of the asylum procedure, and refugee children not later than three months after the commencement of the procedure for granting the temporary refuge.

²⁷⁶ National Institute of Education, Inclusion of Alien Children in Grade, available in Slovak at: <https://bit.ly/3LrVPLy>

²⁷⁷ "The majority of schools (91.2%) followed the recommendation of the Ministry of Education and Science of the SR and placed the refugees in school without delay." See State School Inspectorate, School readiness for the education of children of Ukrainian refugees, Topic Report, 2021/2022, p. 7, available in Slovak at: <https://bit.ly/41z1o0c>

²⁷⁸ UNESCO: Poland's education responses to the influx of Ukrainian students, available at: <https://bit.ly/3L3O2In>

Language courses are an essential part of the successful integration of the refugee children into the educational process, as they serve to overcome the language barrier of the children of expatriates. Pursuant to the provisions of Section 146, para. 3 of the Education Act: *“basic and extension national language courses shall be organised for children of foreigners in order to remove language barriers.”* Language courses are usually provided by the school internally, but the school may also use another natural or legal person accredited to provide such courses.²⁷⁹ The organisation and financing of language courses is the responsibility of the relevant regional school authorities in cooperation with the local authorities.²⁸⁰ From 1 April 2022, the number of hours in the basic language course has been increased to 6 hours per week. The schools offer basic 8-week language courses with 48 lessons in total. After completing the basic language course, the refugee children can also take an extension language course of 4 hours per week. The 12-week extension language course has 48 lessons in total.²⁸¹

A telephone survey conducted by the State School Inspectorate between 18 April 2022 and 13 May 2022 in 47 kindergartens, 240 primary schools and 41 secondary

schools showed that 75% of the schools surveyed had opened the language courses. At the time of the survey, a total of 2,724 refugee children were attending language courses at the schools surveyed.²⁸² According to information from the Ministry of Education, EUR 721,391 has been provided to school founders for language courses for 15,375 refugee children from March 2022 to January 2023. Neither the Slovak Ministry of Education nor the State School Inspectorate have any information about any primary or secondary school failing to provide language courses for the refugee children.

The most frequent problem for which the children of expatriates did not attend language courses was that they were held in the afternoon. For several pupils, the timetable of the language course clashed with the online classes in Ukraine.²⁸³ The organisation of language courses outside the main teaching process in the afternoon can cause an increased burden on the refugee children. The Centre states that a language course alone is not sufficient to overcome the language barrier and effectively integrate the refugee children into the educational process, and that schools need to provide additional support in learning the Slovak language in order to make the

279 The provision of Section 146, para. 6 of the Education Act.

280 The provision of Section 10, para. 596/2003 Coll. on State Administration in Education and School Self-Government.

281 State Pedagogical Institute: Organisation and funding of state language courses, available in Slovak at: <https://bit.ly/3LmGLOv>

282 State School Inspectorate: Schools' readiness to educate children of Ukrainian refugees, Topic Report, 2021/2022, available in Slovak at: <https://bit.ly/41z1o0c>

283 Ibid, pp. 29.

integration successful. The Centre welcomes the fact that the State Pedagogical Institute has prepared a number of methodological recommendations and aids for this purpose, intended to help with the teaching of state language during courses, but also in the context of the regular teaching process.

Another area to keep in mind when integrating refugee children into the educational process is their integration among Slovak children and avoiding the creation of separate Ukrainian classes. The State School Inspectorate has informed the Centre that it has no knowledge of the creation of separate Ukrainian classes. As of 15 September, 10,534 Ukrainian refugee children were educated in over 6,500 different classes, 91% of whom were in classes where refugees made up less than a quarter of the pupil population. Refugee

children were educated in separate classes in 10 cases,²⁸⁴ 134 students in total. The Centre states that it is essential to gradually integrate the refugee children with other pupils in these classes as well.

Schools play a primary role in the integration of refugee children into the education system. However, the Centre states that in order to provide quality and accessible education for the refugee children, it is essential to provide sufficient support to schools by all relevant actors in the field of education. It also stresses that the Ministry of Education, regional school administration offices and school founders need to implement systematic and comprehensive measures that respond to the needs of the refugee children, as well as those of the individual schools and teachers involved in their education.

4.1.3 Access to Employment

The right to work is defined in Art. 6 and Art. 7 of ICESCR. The provisions in question include the right to the opportunity to earn a living by work which a person chooses or accepts, and establish the right of everyone to fair and satisfactory work conditions. Art. 2, para. 2 ICESCR lays down the prohibition of discrimination. According to Art. 5 of ICERD, the Parties undertake to prohibit and eliminate racial discrimination in all its forms, including the prohibition of discrimination in the exer-

cise of the right to work, free choice of employment, fair and satisfactory work conditions, protection against unemployment, equal pay for equal work, and fair and satisfactory remuneration for work. The Recommendation No. 30 states that the Parties are obliged to take measures to eliminate discrimination against non-nationals and requires the elimination of discrimination in relation to work conditions, employment practices or re-

²⁸⁴ There were 6 such classes in kindergartens, 2 classes in primary schools and 2 classes in secondary schools.

quirements.²⁸⁵

According to Art. 35 of the Constitution of the SR, everyone has the right to free choice of profession and training for it, as well as the right to engage in business and other gainful activity. In accordance with Art. 35, para. 2, citizens have the right to work, however the positive obligation of the state to create instruments to enable them to obtain and perform work applies only to citizens of the SR. In this context, it should be noted that although the State may also create support mechanisms for the employment of foreigners, it cannot be perceived as a positive obligation in such a case. If a citizen of the SR wants to work but, through no fault of his/her own, he/she cannot exercise the right to work, he/she is guaranteed material security to a reasonable extent and the state has a positive obligation to establish a system of social assistance.²⁸⁶ The State may also provide social assistance to foreigners and according to para. 4 of the same Article, the law may provide for derogations from the rights referred to in paras. 1 to 3. The right to fair and satisfactory work condi-

tions under Art. 36 of the Constitution of the SR is enjoyed by every employee regardless of nationality.

Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter referred to as the “Ministry of Labour of the SR”) has announced that refugees can apply for benefits in material need.²⁸⁷ The Slovak Republic has regulated the access of refugees to the labour market in a number of legal acts. Pursuant to Section 23a (k) of Act No. 5/2004 Coll. on Employment Services, and on the amendment and supplementation of certain Acts (hereinafter referred to as the “Employment Services Act”), an employer may employ a third-country national who has been granted temporary refuge. As the provisions of Section 21(1) of the Employment Services Act do not apply to refugees, the employer can conclude both an employment relationship and an agreement outside the employment relationship with them.²⁸⁸ As regards access to work in the public interest, which requires proof of integrity by means of a criminal record certificate, it shall be sufficient for refugees to prove so by means of an affidavit if it is not possible for

²⁸⁵ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 30, par. 33-35, available at: <https://bit.ly/3NgvoJI>

²⁸⁶ Orosz, L., Svák, J. et al. Constitution of the Slovak Republic. Comment: Volume I. Bratislava: Wolters Kluwer SR Ltd, 2021, p. 471.

²⁸⁷ Ministry of Labour of the SR: We have simplified the application forms for material need assistance for citizens of Ukraine, 10 March 2022, available in Slovak at: <https://bit.ly/3Atsx8E>

²⁸⁸ Pursuant to Section 23b of the Employment Services Act, the employer is obliged to provide employment data in a prescribed form, the so-called information card, to the relevant labour office according to the place of work not later than seven working days from the date of commencement of employment and date of termination of employment. The employer shall attach to the information card a copy of the proof of employment relationship and a copy of the document of tolerated stay in the territory of the SR marked with “REFUGEE”, and from 30 March 2022 marked with “TEMPORARY REFUGE”.

objective reasons to produce a criminal record certificate.²⁸⁹ The possibility for health professionals to undertake temporary internships in all health professions in all health facilities has been extended.²⁹⁰

The legislature has introduced the possibility of submitting an affidavit also in the case of pedagogical employees or retired employees who for objective reasons cannot prove their integrity according to the provisions of Section 15, par. 4 of Act No. 138/2019 Coll. on Pedagogical Employees and Professional Staff, and on the amendment and supplementation of certain Acts (hereinafter referred to as the “Act on Pedagogical Employees and Professional Staff”). In addition to the affidavit, the legislature also introduced the obligation to submit a psychological assessment of psychological competence not older than one year.²⁹¹ In connection with the Act on Teach-

ing and Professional Staff, the Slovak Chamber of Teachers and the Slovak Chamber of Psychologists (hereinafter referred to as “SKU” and “SKP”) drew attention to the possible discriminatory character of the provision. *“The requirements for employees from Ukraine may also be discriminatory, as our employees do not have to undergo such comprehensive psychological examinations.”*²⁹² In its statement, SKU and SKP stressed the necessity of including Ukrainian teachers in the assistance, support and education of children from Ukraine. Their inclusion is a key aspect of helping children and families from Ukraine integrate into school and social life.

SKU and SKP objected to the possible discriminatory nature of Section 90e of the Act on Teaching and Professional Staff. In this context, the Centre stresses that integrity is a prerequisite for employment as a teach-

289 The provision of Section 14b, par. 1 of Act No. 552/2003 Coll. on the Performance of Work in the Public Interest.

290 Act No. 578/2004 Coll. on Health Care Providers, Health Care Workers, Professional Organisations in Health Care, and on the amendment and supplementation of certain Acts.

291 According to Section 90e, para. 1 and 2 of Act. No. 138/2019 Coll. on Pedagogical and Professional Staff, and on the amendments and supplementation of certain Acts, a refugee who is a citizen of Ukraine or a family member of a citizen of Ukraine, and for objective reasons cannot prove his/her integrity pursuant to Section 15, par. 4, may, during the extraordinary & crisis situation declared in connection with a mass influx of foreigners onto the territory of the SR caused by an armed conflict on the territory of Ukraine (hereinafter referred to as the “extraordinary & crisis situation”), prove his/her integrity pursuant to Section 15, para. 4 also by an affidavit submitted to the employer before the employment relationship commences. If the refugee has proved his/her integrity by an affidavit pursuant to paragraph 1, the employer shall also require the submission of a psychological assessment of psychological competence not older than one year before the employment relationship is established. Psychological competence shall be assessed by a psychological examination, which may only be carried out by a psychologist specialising in clinical psychology who is a medical professional. The purpose of the psychological examination is to assess whether the refugee is fit to work as a teaching staff member or as a professional staff member.

292 SKU: The State will not allow Ukrainian teachers and psychologists to be employed, 1 April 2022, available in Slovak at: <https://bit.ly/3Ap24JK>

ing or professional staff member²⁹³ and the requirement to demonstrate integrity applies to all of them. Pursuant to the provisions of Section 15, para. 3 of the Act on Teaching and Professional Staff, integrity shall be proved by a criminal records certificate not older than three months. The foreigner may prove his/her integrity by a certificate of integrity similar to a criminal records certificate.²⁹⁴ The legislator allows a refugee, who is a Ukrainian national or a family member of a Ukrainian national, who cannot prove his/her integrity in accordance with Section 15, para. 4, to submit an affidavit and a psychological assessment of psychological competence not older than one year.²⁹⁵ The Centre assesses that the provision of the Act in question does not discriminate teaching and professional staff from Ukraine and constitutes an additional way of proving integrity if the refugee does not have such an option in accordance with Section 15, para. 4 of the Act in question. At the same time, on 27 April 2022, SKU published a procedure to facilitate employment of teaching and professional staff from Ukraine. The criminal records certificate could already

be obtained online from the Ministry of Internal Affairs of Ukraine,²⁹⁶ and the affidavit and the expert opinion by a clinical psychologist were thus no longer necessary.²⁹⁷

The Centre stresses that when drafting legislation, the legislator should adequately respond to the current situation and communicate with experts so that the adopted regulations reflect the real state of affairs. At the same time, the Centre refers to Art. 1, para. 1 in conjunction with Art. 2, para. 2 of the Constitution of the SR, which define the basic principles of action of the state bodies of the SR, including the National Council of the SR. The legislature is obliged to respect constitutional principles, including the principle of equality laid down in Article 12, para. 1 of the Constitution of the SR and the principle of non-discrimination regulated in Art. 12, para. 2. The National Council of the SR may create, amend or repeal the Constitution of the SR, constitutional Acts and other Acts, but may not act contrary to them. The Art. 2, para. 2 of the Constitution of the SR implies that public authorities are bound not only by the Constitution of the SR and Acts, but by the whole legal

²⁹³ According to Section 9, para. 1(b) of Act No. 138/2019 Coll. of the Act on Teaching and Professional Staff.

²⁹⁴ According to Section 15, para. 3 and par. 4 of Act No. 138/2019 Coll. of the Act on Teaching and Professional Staff, integrity is proved by a criminal records certificate not older than three months. In the case of a foreigner, integrity is proven by a certificate of integrity similar to the criminal records certificate issued by the competent authority of the state of which he/she is a national or by the competent authority of the state of his/her permanent residence or habitual residence, not older than three months, submitted to the employer together with the officially certified translation into Slovak language.

²⁹⁵ Section 90e of the Act on Teaching and Professional Staff.

²⁹⁶ Available at: <https://bit.ly/4IS2Vye>

²⁹⁷ SKU, Procedure to facilitate the employment of Teaching and Professional Staff from Ukraine, 27 April 2022. available in Slovak at <https://bit.ly/4Oyvz6n>

order, which also includes international treaties and legally binding Acts of the European Union.²⁹⁸

As regards the approach to the employment of refugees, the Centre contacted the National Labour Inspectorate²⁹⁹ (hereinafter referred to as “NIP”) with a request to provide a statement about illegal work and illegal employment under the provisions of Section 2, paras. 1, 2 and 3 of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment, and on the amendment and supplementation of certain Acts (hereinafter referred to as the “Act on Illegal Work and Illegal Employment”). In its response, the NIP informed the Centre that the results of the extraordinary task of the labour inspection authorities from 1 March 2022 to 29 April 2022 showed a minimum number of cases of illegal employment of third-country nationals in connec-

tion with their arrival onto the territory of the SR as a consequence of the conflict in Ukraine. The inspection authorities registered 4 illegally employed persons, three men and one woman, in the sectors of construction, administration and support services. The second special task had been fulfilled from 3 March to 31 October 2022 and consisted of inspecting violations of the prohibition of illegal employment and selected provisions of labour legislation. It focused on the employment of third-country nationals in the context of the mass influx of persons onto the territory of the SR. The inspection authorities registered 4 illegally employed persons, four women, in the sectors of construction, accommodation and catering.³⁰⁰ NIP stated that the results showed that employers do misuse the situation of third-country nationals.

4.1.4 Human Trafficking

Among other problems, refugees face the risk of human trafficking. This is a dangerous form of criminal activity that causes serious violations of human dignity. A com-

mon tactic for gaining the trust of refugees, especially women and children in the case of Ukraine, is often the promise of accommodation, free transport, employment or

298 Orosz, L., Svák, J. et al. *Constitution of the Slovak Republic. Comment. Volume I*. Bratislava: Wolters Kluwer SR Ltd, 2021, pp. 43 and 44.

299 In 2022, the labour inspection authorities organised 2 extraordinary nationwide tasks aimed at controlling compliance with the ban on illegal employment of third-country nationals in connection with their mass influx onto the territory of the SR caused by the armed conflict in Ukraine.

300 Within the second extraordinary task, the inspection authorities detected 117 violations of Act No. 311/2001 Coll. of the Labour Code, as amended, including 28 breaches of the particulars of the employment contract, 20 breaches in relation to agreements on work performed outside the employment relationship, 17 breaches in relation to the recording of working time, and 13 breaches in relation to minimum wage entitlements. They identified 6 cases of violation of Act No. 125/2006 Coll. on Labour Inspection and 3 cases of violation of Act No. 124/2006 Coll. on Occupational Safety and Health at Work, and on the amendment and supplementation of certain Acts, as amended.

other forms of assistance.³⁰¹ States that have accepted refugees have an obligation to identify and respond adequately to such risks.

The trafficking in persons is defined in the 2000 UN Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the UN Convention against Transnational Organized Crime.³⁰² The International Covenant on Civil and Political Rights, Art. 8 provides that “No one shall be held in slavery; all forms of slavery and the slave trade shall be prohibited,” and “No one shall be held in servitude”. Art. 4 of the Convention provides for the prohibition of slavery and forced labour as follows: “No one shall be held in slavery or servitude.”³⁰³ According to Art. 18 of the Constitution of the SR, para. 1 “No one may be sent to forced labour or forced service.” In national legislation, the offence of trafficking in human beings

is defined in Section 179 of Act No.300/2005 Coll. of the Criminal Code, as amended.

The Centre stresses that the positive obligation of a State Party to the Convention to protect the right in Art. 4 was defined by the ECtHR as the obligation of the State to criminalize conduct involving enslavement, servitude or forced labour, to take precautionary measures to prevent violations of Art. 4 of the Convention, as well as specific measures to protect potential victims. It has further stated in this regard that appropriate national legislation is not enough; it is also necessary to put in place effective measures to protect potential victims of trafficking in human beings.³⁰⁴ The positive obligation of a Party includes the obligation to investigate a credible allegations of violations of Art. 4 of the Convention.³⁰⁵

The Centre asked the Information Centre for Combating Trafficking

301 Press Release, Victims of Trafficking – Ukrainian Refugees – Increased Risk of Exploitation, 24 March 2022, available at: <https://bit.ly/3V2GFzd>

302 Available at: <https://bit.ly/3LmP3qf>

303 In *Rantsev v. Cyprus and Russia*, the ECtHR stated that trafficking in human beings is, by its very nature, exploitation based on the exercising of rights associated with property rights. Human beings are treated as commodities for sale and purchase and for forced labour, often for little or no pay, often in the sex industry. It also includes monitoring the victim's activities, while their movements are often restricted. Another example is the use of violence and threats against victims who live and work in poor conditions. The Strasbourg authority concludes that trafficking in human beings as defined in Art. 3a of the Palermo Protocol and Art. 4a of the Council of Europe Convention on Action against Trafficking in Human Beings, constitutes an interference which may be objected against under Art. 4 of the Convention. However, this does not exclude the possibility that, under particular circumstances, a particular form of conduct related to trafficking in persons may fall within the scope of another provision of the Convention. The ECtHR stresses that the safeguards set out in the national legislation of the Contracting States must guarantee practical and effective protection of the rights of victims of trafficking in human beings.

304 *Rantsev v. Cyprus and Russia*, (Application No. 25965/04), 2010, para. 296, available at: <https://bit.ly/40va7z3>

305 Orosz, L., Svák, J. et al. *Constitution of the Slovak Republic. Comment. Volume I*. Bratislava: Wolters Kluwer SR Ltd, 2021, pp. 223 and 224.

in Human Beings and Prevention of Crime of the Ministry of the Interior of the SR for a statement. As of 14 October, 2022, there was only one refugee in the Victims of Trafficking in Persons Assistance and Support Programme³⁰⁶ After examining the circumstances of the case, it was not possible to establish facts that would meet the elements of the offence of trafficking in human beings. During 2022, the National Unit for Combating Illegal Migration of the Border and Foreign Police of the Presidium of the Police Force (hereinafter referred to as the “National Unit”), as a specialised unit with selective jurisdiction to investigate criminal activities within the meaning of Section 179 of the Criminal Code, investigated 35 suspected cases of trafficking in human beings in relation to Ukrainian nationals in total. Suspicion of human trafficking has not been confirmed in any of the cases. In September 2022, the National Unit received a criminal complaint with the suspicion of human trafficking of a person of Ukrainian nationality and her daughter. After verification of the suspicion, there were no findings that the offence

of trafficking in human beings was fulfilled. The National Helpline for Victims of Trafficking in Human Beings recorded 3 reports of suspected trafficking in human beings. The suspicions were not confirmed.

In relation to the issue of trafficking in human beings, the Centre refers to the initiative of UNHCR and the United Nations Children's Fund, which have set up 26 *blue dots*³⁰⁷ in six countries: Czech Republic, Hungary, Moldova, Poland, Romania and Slovakia. *Blue Dots* are centres at border crossings or other refugee arrival points that provide immediate services for women and other vulnerable people. This includes rest stops, provision of food, hygiene supplies, psychological support and basic legal advice.³⁰⁸ The provision of assistance through *blue dots* is preventive in nature and is intended to eliminate the risk of human trafficking. The Centre evaluates such an initiative as an example of good practice to eliminate the risks of this dangerous phenomenon.

306 The Programme of Assistance and Support for Victims of Trafficking in Human Beings is a specialised programme of the Ministry of the Interior of the SR aimed specifically and only at victims of trafficking in human beings. It aims to provide services consistent with the protection of human rights and freedoms and the reintegration of victims of trafficking in human beings, while the victim is motivated to cooperate with law enforcement authorities so that the perpetrators of the crime of trafficking can be punished. If there is a suspicion that a person may have been trafficked, he or she may voluntarily decide to join the programme.

307 Maryanne Buechner, UNICEF BLUE DOTS provide critical support to refugees from Ukraine, 7 March 2022, available at: <https://bit.ly/3N75YhK>

308 Press release of the Ministry of the Interior of the SR of 29 July 2022, The first *Blue Dots* integration centres in Central Europe have been established in Michalovce and Košice, available at: <https://bit.ly/3N8HiFz>

4.2 Compliance with the Principle of Equal Treatment under the Anti-Discrimination Legislation in Relation to the Arrival of Persons Fleeing the International Armed Conflict in Ukraine

The arrival of people fleeing the international armed conflict in Ukraine is also linked to the need to protect them from discrimination. Everyone must comply with the principle of equal treatment in all areas of the material scope of the Anti-Discrimination Act. There have been some well-publicised cases of possible discrimination or hate speech against people arriving from Ukraine.³⁰⁹ There have been negative reactions in parts of society to the provision of assistance to refugees.³¹⁰ The unacceptability of discrimination against third-country nationals coming from Ukraine to neighbouring countries has been stressed by the Director-General of the International Organisation for Migration (hereinafter referred to as "IOM").³¹¹ Those fleeing the conflict in Ukraine are in a particularly vulnerable situation and many of them may be subject to multiple forms of discrimination.

During 2022, the Centre monitored compliance with the principle of equal treatment in relation to persons arriving from Ukraine and provided them with legal assistance. In order to facilitate access to legal aid, the Centre has set up a spe-

cial e-mail address,³¹² and has prepared an information leaflet in four languages on providing legal aid to refugees who may face discrimination.³¹³ People arriving from Ukraine have mainly contacted the Centre about employment and temporary refuge issues and were provided general guidance by the the Centre.

Most frequently, the Centre registers complaints in the areas of the provision of goods and services, education and employment and similar legal relations. However, the Centre has not observed a high increase in cases of discrimination against persons arriving from Ukraine. This chapter provides a brief analysis of the cases and assesses whether the principle of equal treatment has been or may have been violated.

The Anti-Discrimination Act is a fundamental part of national legislation which, according to Section 1, regulates the application of the principle of equal treatment and provides for legal remedies if this principle is violated. Not all less favourable treatment is discrimination. A reasonable conclusion of dis-

309 M. Nemec, A merchant from Svit forbade Ukrainians from entering his shop: I'll contract HIV or tuberculosis from them, available in Slovak at: <https://bit.ly/441CA2G>

T. Krauszová, "Ukraine must be destroyed, Ukrainians massacred." DJ from Partizánske under investigation by police for hate speech, available in Slovak at: <https://bit.ly/40zJbyO>

310 Survey on refugees from Ukraine: Almost 90 percent of Slovaks think the state should care more about its own citizens, available in Slovak at: <https://bit.ly/41TsQW9>

311 "Discrimination based on race, ethnicity, nationality or immigration status is unacceptable. I condemn any such acts and call on States to investigate and address this matter immediately."

See IOM, Discrimination and racism against third-country nationals fleeing Ukraine must end: IOM Director-General António Vitorino, available at: <https://bit.ly/3oBBL04>

312 pravnapomocutecencom@snslp.sk

313 Information leaflet available at: <https://bit.ly/3wRIMMF>

crimination may be reached based on the cumulative identification of the area of legal relations protected by anti-discrimination act,³¹⁴ the prohibited ground of discrimination³¹⁵ and the form of discrimination.³¹⁶

The existence of a comparator is necessary for some forms of discrimination. At the same time, Section 8 of the Anti-Discrimination Act regulates the conditions of permissible differential treatment.

4.2.1 Provision of Goods and Services

The Centre dealt with the case of a client who is a national of Ukraine. Together with her mother and minor daughter, she decided to use a taxi for transport. Upon the arrival of the taxi driver, the client loaded the pushchair into the boot of the vehicle. When the client, her mother and daughter got into the vehicle, she noticed that the driver had already switched on the meter, even though the vehicle was still standing. The client asked the driver to reset the meter and turn it on the moment the vehicle moved. The driver objected to the client, made inappropriate remarks about Ukrainian men and women, and then told them forcefully to get out of the vehicle. As the client was exiting the vehicle, she slammed the door harder, the driver exited the vehicle and started scolding the client and her mother. He hit the client's mother, who fell. The client's case clearly involved

the area of provision of goods and services. Considering the hateful comments against Ukrainians and Ukrainian women, being of a Ukrainian nationality can be identified as a reason for discriminatory behaviour. When identifying the form of discrimination, the taxi driver's conduct would meet the definition of direct discrimination, which is *"an act or omission that treats a person less favourably than another person in a comparable situation is, has been or could be treated."*³¹⁷ In the client's case the potential comparable person could be a person or group of persons of Slovak nationality.

Discrimination within the meaning of the Anti-Discrimination Act cannot be unequivocally established without the existence of evidence. As the hateful comments by the taxi driver were made inside the vehicle and there is no

314 According to Section 3, para. 1 of the Anti-Discrimination Act, this applies to employment and similar legal relationships, social security, health care, the provision of goods and services, and education.

315 According to Section 2, para. 1 of the Anti-Discrimination Act, compliance with the principle of equal treatment consists of the prohibition of discrimination on the grounds of sex, religion or belief, race, nationality or ethnic group, disability, age, sexual orientation, marital or family status, colour, language, political or other opinion, national or social origin, property, birth or other status, or on the grounds of notification of a crime or other anti-social activity.

316 According to Section 2a, para. 1 of the Anti-Discrimination Act, discrimination can be direct or indirect, it can be harassment, sexual harassment and unjustified discrimination; also instruction to discriminate and incitement to discriminate are perceived as discrimination.

317 Section 2a, para. 2 of the Anti-Discrimination Act.

evidence proving these allegations, it cannot be evaluated with certainty that there was a causal connection between the hateful comments against the client and her mother and the physical assault. There is also no evidence proving that the taxi driver did not have the taximeter set correctly. However, this does not mean that there was

no other unlawful conduct. In the client's case, the taxi driver may have committed a hate crime. The physical assault on the client's mother was witnessed by the present witnesses. The legal representation of the client was subsequently taken over by the Human Rights League, with whom the Centre coordinated further action.³¹⁸

4.2.2 Education

The Centre was evaluating a complaint from a client in which she asked whether it was a violation of the principle of equal treatment if the client, as a parent, was paying for meals at a kindergarten, while the Ukrainian children had free meals. For the child of an alien pursuant to Section 146, para. 1 of the Education Act, who will be attending a kindergarten or primary school and meets the conditions³¹⁹ for receiving a subsidy for meals, this can be provided. This subsidy can be granted to children from households receiving material hardship assistance or attending a kindergarten or primary school with at least 50 % of the children from households receiving material hardship assistance.³²⁰ In the Centre's legal opinion, subsidies for the children of foreigners can be

considered justified. They apply to eligible groups of children with socially disadvantaged backgrounds and meeting the conditions for the subsidy. The subsidies in question constitute a legitimate means of redressing material inequalities in relation to the children of foreigners pursuant to Section 146, para. 1 with socially disadvantaged backgrounds. The mechanism of school meals for children from Ukraine is the same as for pupils with Slovak citizenship, who can get free meals if they are in material need or have a socially disadvantaged background.³²¹ In the contested case, there was no less favourable treatment and the provision of food subsidies to the children of foreign nationals did not constitute discrimination within the meaning of the Anti-Discrimination Act.

³¹⁸ The Human Rights League is an accredited body providing free legal representation of victims of hate crimes. See Human Rights League: We have launched accredited support for victims of hate crime, available in Slovak at: <https://bit.ly/3olSgr2>

³¹⁹ He/she attends an educational process in kindergarten or in primary school, takes meals and belongs to some of the eligible groups of children.

³²⁰ Labour Office of Social Affairs and Family Bratislava, Useful information for citizens of Ukraine, available in Slovak at: <https://bit.ly/41NrAUK>

³²¹ A meals subsidy may also be granted to a child attending kindergarten or primary school if the child is from a household with income not more than the minimum subsistence level in the month prior to the application for the food subsidy. Available in Slovak and Ukrainian at: <https://bit.ly/41NrAUK>

4.2.3 Employment and Similar Legal Relations

An employer contacted the Centre to ask whether it would be a breach of the prohibition of discrimination if it offered employees who are foreign nationals and have the status of temporary refuge the possibility of free accommodation in a hostel or similar accommodation facility, or provided them with an earmarked financial contribution for accommodation. The employer would not provide such a benefit to other employees.

The provision of free accommodation or a financial accommodation allowance constitutes an employee benefit. The prohibition of discrimination under Section 6, para. 2(b) of the Anti-Discrimination Act also applies to *“the performance of employment and conditions of employment, including remuneration, promotion and dismissal”*. This legal question therefore falls within the field of employment relations. In assessing the existence of a discriminatory ground, it is important to note that the status of a refugee cannot be identified with any clearly identifiable characteristic. In the legal opinion of the Centre, refugee status could be consid-

ered as the discriminatory ground of “other status”.³²² When assessing the form of discrimination, one may consider direct discrimination. It presupposes the existence of a person or group of persons who are in a comparable situation to the person or group of persons concerned. As regards the legal issue under consideration, employees with temporary refuge status and all other employees who do not have such status are in a comparable position. As regards the exercising of the rights and obligations arising from the employment relationship, all staff are in a comparable position and the refugee status has no impact on their performance. If benefits were provided exclusively to employees with temporary refuge status, the employer's actions would satisfy the elements of direct discrimination. The Centre considers the provision of accommodation to refugees under the Lex Ukraine to be an appropriate alternative to the above benefits. The legal regulation of support for the integration of refugees is the primary task of the state, not of private law entities.

³²² In this context, it is necessary to refer to the judicial interpretation of the European Court of Human Rights in *Bah v. the United Kingdom*, in which the ECtHR subsumed immigration status under the protected ground of other status, due to the legal status of the person it concerned. From the decision of the ECtHR on Complaint No. 56328/07 of 27 September 2011 in *Bah v. the United Kingdom*, parra. 46, available at: <https://bit.ly/3osSr9V>

Conclusion

The international armed conflict in Ukraine has caused the largest displacement of people in Europe since the Second World War. Refugees are in a particularly vulnerable situation and receiving States are obliged to guarantee their fundamental rights and freedoms. Slovakia has responded to the arrival of refugees by introducing legislation to facilitate their integration into the Slovak society. Despite state efforts and assistance in the form of benefits, refugees face a number of challenges and risks. In this chapter, the Centre has provided an overview of the obligations and commitments that Slovakia has as a party to a number of international human rights instruments and identified the challenges that refugees face.

The Centre assesses that the provision of allowances by the Ministry of the Interior of the SR and the Ministry of Transport of the SR is an effective way to ensure the right to housing for those who fled Ukraine. However, they may face less favourable treatment from accommodation providers. The Centre stresses that the SR should establish mechanisms to increase the protection of refugees and ensure their right to adequate housing, which should be safe and dignified. It must prevent the creation of overcrowded accommodation and is obliged to prevent segregation and discrimination against persons in relation to the right to housing.

As regards the right to education, the biggest challenge is access to

education for children of refugees. One of the reasons for the problematic inclusion in the Slovak education system is the fact that they are not subject to compulsory school attendance. From the point of view of the successful integration of refugee children of into the Slovak education system, the Centre considers it desirable to introduce compulsory school attendance for the children of foreigners as well. In ensuring the right to education for such children, the state must also bear in mind the language barrier that children from Ukraine face. To overcome this, schools provide basic and extension courses in the national language, while the Centre understands that language courses alone are not sufficient. It is therefore imperative that all actors in the field of education take systematic and comprehensive measures to achieve the full inclusion of children of refugees in the educational process.

The Centre has also focused on the access of refugees to the labour market, which is a key aspect of their integration into society. Refugees' access to the labour market has been regulated by the SR in several regulations through the package of laws called Lex Ukraine. The Centre stresses that the right to work includes, inter alia, the prohibition of discrimination or the right to fair and satisfactory working conditions. The Centre assesses positively the activity of the authorities in carrying out checks on compliance with labour law regulations in response to the arrival of foreigners onto the territory

of the SR as a result of the conflict in Ukraine. It also drew attention to the risk of trafficking in human beings faced by refugees while it sees effective right to work as an effective prevention.

The Centre, as the national equality body, has considered cases in which clients have challenged violations of the prohibition of discrimination under national anti-discrimination legislation in relation to refugees. These were in the

areas of provision of goods and services, education and employment. It stated when inappropriate comments and actions by a taxi driver and subsequent physical assault may meet the elements of direct discrimination and assessed that providing benefits to refugees may constitute a violation of the principle of equal treatment and providing food subsidies to children of foreigners is not a violation of the prohibition of discrimination under the Anti-Discrimination Act.

Recommendation

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The Centre recommends that:

- 1 The Ministry of the Interior of the SR and the Ministry of Transport of the SR establish specific mechanisms for screening and control of accommodation providers for refugees.
- 2 The Ministry of Education of the SR introduce compulsory school attendance for children of foreigners.
- 3 Kindergartens, primary and secondary schools provide sufficient support to the refugee children in order to eliminate the language barrier to inclusion in the educational process.
- 4 Kindergartens, primary and secondary schools prevent creating separate classes for the education of refugee children.



The presented 2022 Report provides an objective and up-to-date picture of observance of human rights and fundamental freedoms and presents specific and targeted recommendations aimed at improving the level of protection and promotion of human rights and fundamental freedoms in the territory of the SR, including the requirement to respect the principle of equal treatment.

In the first chapter, the Centre assessed the implementation of the recommendations addressed to individual entities in the 2021 Report, specifically in the area of COVID-19 vaccination and the impact of the COVID-19 pandemic on selected human rights and fundamental freedoms, in the area of women's reproductive rights, and in the area of the promotion and protection of human rights, fundamental freedoms and the principle of equal treatment in legislative processes. The Centre concludes that, in view of the evolution of the COVID-19 pandemic, some recommendations have been implemented without external interference and some have proven to be outdated. In the area of women's reproductive rights and the promotion and protection of human rights, fundamental freedoms and the principle of equal treatment in legislative processes, the Centre has not recorded any progress in improving the protection and implementation of human rights and fundamental freedoms - instead, quite the contrary.

In the second chapter, the Centre focused on the Slovak educa-

tion system, which has long faced the problem of separate education of children of Roma ethnicity and children with disabilities. The Centre stressed the need to introduce a general definition of segregation not applying to the field of education only, by adding it among the forms of discrimination provided for in the anti-discrimination law. It also referred to the decision of the Prešov District Court on the illegal education of Roma children in special classes. Its significance is multiplied by the fact that it is the first decision of a national court in Slovakia in which the court concluded that Roma children are discriminated against (segregated) by being educated in special classes for children with mental disabilities. It also presented specific cases of segregation at Elementary School with Kindergarten in Jakubany, Elementary School in Sačurov and the Elementary School in Ostrovaň. In the second chapter, the Centre also commented on the status of implementation of the recommendations of the UN Committee on the Elimination of Racial Discrimination.

In the third chapter, the Centre expressed its belief that despite the terrorist attack on LGBTI+ people outside Tepláreň bar and community space in Bratislava, this situation has not led to the adoption of measures at the level of legislation and policies to strengthen the

protection of and access to the enjoyment of fundamental rights by LGBTI+ people. Attempts to introduce the institutes guaranteeing fundamental rights and protection of private life and legal recognition of same-sex unions have not been successful, so there has been no move towards equal rights for LGBTI+ people at the legislative level, even in 2022. The legal uncertainty in 2022 that was created by the adoption and subsequent suspension of the Ministry of Health's Expert Guideline has resulted in a restriction on the exercising of the right to legal gender recognition in violation of the obligations on the right to health and the right to protection of private life. Thus, even in 2022, the same situation continued in Slovakia, and registry offices continued to require confirmation of sterilisation of a transgender person as part of a medical transition in order to change their name during the transition or after completion thereof. The Centre is positive about the ground-breaking decision of the Regional Court in Žilina in the case of recognition of same-sex partnerships concluded abroad for the purpose of granting permanent residence in Slo-

vakia and the decision of the Supreme Administrative Court of the SR in the case of conditioning the transcription of a transgender person's name in the registry office with sterilization. In Chapter Three, the Centre explored the impact of barriers and obstacles to the work of LGBTI+ human rights defenders. In the fourth chapter, the Centre provided an overview of the obligations and commitments of the SR as a party to a number of international human rights instruments and identified the challenges faced by refugees. The Centre pointed out that Slovakia should establish mechanisms to increase the protection of refugees and ensure their right to adequate housing. In the field of education, the Centre stated that language courses alone are not sufficient to overcome the language barrier and that it is necessary to take systemic and comprehensive measures to achieve the full integration of refugee children into the educational process. The Centre also focused on the access of refugees to the labour market and made a brief analysis of the suggestions that had been addressed to it.

List of recommendations

Segregation in Education – a Continuing Problem and an Evaluation of Proposed Solutions

- 1 To the Ministry of Justice of the SR, to submit to the National Council of the SR a draft amendment to the Anti-Discrimination Act, which will, inter alia, introduce a legal definition of segregation as one of the forms of discrimination.
- 2 To the Ministry of Education, to immediately meet the desegregation targets of the Component 6 reform, which has yet not been met.
- 3 To the Ministry of Education of the SR, to submit a draft amendment to Act No. 596/2003 Coll. on State Administration in Education and School Self-Government, and on the amendment and supplementation of certain Acts, whereby the National Council of the SR would add to Section 8, para. 1 a municipality's obligation to take into account the ethnic composition of the population living in the municipality territory or a part thereof when determining the school district.
- 4 To the Ministry of Education of the SR, to submit a draft amendment to the Education Act, by which the National Council of the SR would introduce an obligation to ensure integrated education of pupils with disabilities in so-called mainstream classrooms.

Rights of LGBTI+ People in Slovakia

- 1 To the Government of the SR, to adopt an action plan for LGBTI+ people and to instruct the Ministry of Justice of the SR to prepare it through a participatory process with LGBTI+ human rights defenders and LGBTI+ organisations, on the basis of expertise, independence and partnership.
- 2 To the Government of the SR and the National Council of the SR, to immediately implement the requirements of the *It's About Our Lives* initiative.
- 3 To the Ministry of Justice of the SR, to submit without any undue delay a draft act laying down a specific legal framework of rights and obligations of same-sex couples and ensure adequate and dignified recognition and protection of their life union in accordance with the obligations of the SR in relation to the right to respect for private life under Art. 8 of the Convention.

- 4 To members of the National Council of the SR, to refrain from submitting legislative proposals that restrict the rights of LGBTI+ people and stigmatize them, and to respect the principle of equal treatment and the prohibition of discrimination on the basis of sexual orientation and gender identity when introducing legislative measures.
- 5 To the Ministry of Health of the SR, to refrain from retrogressive actions and measures in the area of the right to health, as well as the right to respect for private life and the right to protection from torture and other cruel, inhuman or degrading treatment of transgender persons in Slovakia and restricting the right to recognition of gender identity and legal transition.
- 6 To the Government of the Slovak Republic, to ensure a safe democratic environment for human rights defenders and civil society organisations, including systematic and sustainable institutional and financial support.
- 7 To the Government of the SR, to individual ministries and to National Council of the SR, to strengthen and support the active participation of LGBTI+ human rights defenders and advocates in the development of laws and policies, especially those that have a direct impact on the human rights of LGBTI+ people.
- 8 To the Government of the SR and central public administration bodies, to implement and support awareness-raising activities and education of the general public on the human rights of LGBTI+ people and to systematically dispel misinformation about harmful myths and prejudices about LGBTI+ people.

Fundamental Rights and Freedoms of Persons Fleeing the International Armed Conflict in Ukraine

- 1 To the Ministry of the Interior of the SR and the Ministry of Transport of the SR, to establish specific mechanisms for screening and control of accommodation providers.
- 2 To the Ministry of Education of the SR, to regulate the introduction of compulsory school attendance for children of foreigners.
- 3 To kindergartens, primary and secondary schools, to provide sufficient support to refugee children in order to eliminate the language barrier to inclusion in the educational process.
- 4 To kindergartens, primary and secondary schools, to prevent creating separate classes for the education of refugee children.