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# Report on the Observance of Human Rights

Including the Principle of Equal Treatment  
in the Slovak Republic in 2023



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## List of Abbreviations

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

**2023 Report** – Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic in 2023

**Act on Asylum** – Act No. 480/2002 Coll. on Asylum, and on Amendments and Supplementations to Certain Acts, as amended

**Act on Compensation for Severe Disability** – Act No. 447/2008 Coll. on Monetary Allowances for Compensation for Severe Disability, and on Amendments and Supplementations to Certain Acts

**Act on the Residence of Foreigners** – Act No. 404/2011 Coll. on the Residence of Foreigners, and on Amendments and Supplementations to Certain Acts

**Amendment to the School Act No. 182/2023 Coll.** – Act No. 182/2023 Coll. amending Act No. 245/2008 Coll. on Education and Training (the School Act), and on Amendment and Supplementations to Certain Acts, as amended, amending and supplementing certain acts

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**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)

**Centre** – Slovak National Centre for Human Rights

**Constitution** – Constitution of the Slovak Republic

**Constitutional Court** – Constitutional Court of the Slovak Republic

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

**Council Directive 2001/55/EC** – Council Directive 2001/55/EC<sup>1</sup> 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

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<sup>1</sup> Art. 5 of Council Directive 2001/55/EC defines: "The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council."

**Council Directive 2000/43/EC** – Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

**Court of Justice of the EU** – Court of Justice of the European Union

**Council of the EU** - Council of the European Union

**ECHR** – European Court of Human Rights

**EU** – European Union

**Government** – Government of the Slovak Republic

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

**Ministry of Health** – Ministry of Health of the Slovak Republic

**Ministry of Interior** – Ministry of the Interior of the Slovak Republic

**Ministry of Justice** – Ministry of Justice of the Slovak Republic

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

**Ministry of Transport** – Ministry of Transport of the Slovak Republic

**National Council** – National Council of the Slovak Republic

**MRC** – Marginalised Roma Communities

**Recovery Plan** – Recovery and Resilience Plan for the Slovak Republic in connection with increasing access to and development of inclusive education

**Regulation No. 131/2022** – Regulation No. 131/2022 Coll. on Certain measures in the field of subsidies within the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic in times of an extraordinary and crisis situation, state of emergency or state of extreme emergency declared in connection with the mass influx of foreigners to the territory of the Slovak Republic caused by the armed conflict on the territory of Ukraine

**School Act** – Act No. 245/2008 Coll. on Education and Training (School Act), and on Amendments and Supplementations to Certain Acts

**UNHCR** – United Nations High Commissioner for Refugees



## Introduction

The Slovak National Centre for Human Rights (hereinafter “the Centre”) is a human rights institution and a national equality body. The National Council of the Slovak Republic 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 entered into force on 1 January 1994. The Establishment Act of the Centre was a result of the Agreement between the Government of the Slovak Republic 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 Slovak Republic 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 Protec-

tion 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 2023 (hereinafter referred to as the “2023 Report”) is to provide the public with a comprehensive assessment of the status of the selected human rights and fundamental freedoms in Slovakia. At the same time, the Centre aims to make recommendations to im-

prove the protection and implementation of human rights and fundamental freedoms. The Centre continuously evaluates 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 2022 (hereinafter referred to as the “2022 Report”), and will continue evaluating the implementation of the recommendations in the following years.

The presented 2023 Report is divided into four chapters. The first chapter focuses on evaluation of the recommendations addressed in the 2022 Report, specifically as regards to segregation in education, the rights of LGBTI+ people in Slovakia, and the fundamental rights and freedoms of persons who have fled the international armed conflict in Ukraine. The evaluation of recommendations is aimed at monitoring progress towards more effective protection and enjoyment of human rights and fundamental freedoms and reflects the European Union Agency for Fundamental Rights’ Opinion No. 7 of 2021, according to which European Union (“EU”) Member States could ensure systematic monitoring and public reporting on the follow-up and implementation of the recommendations of national human rights institutions. This could include reports on the recommendations that are still under discussion and on the progress thereof, as well as on recommendations explic-

itly rejected or left unaddressed by the competent national authorities.<sup>2</sup>

The aim of the second chapter is to point out the negative statements of public officials and at the same time to present the argumentative and interpretative background of the judicial authorities, which form the basis for the formulation of the Centre’s recommendations. Their aim is not only to prevent the occurrence of similar public statements, but above all to warn political figures that they are obliged to respect the constitutional and international limits on the legal admissibility of such action if any restrictions are placed on the right to information or freedom of association.

The third chapter monitors the challenges faced by those fleeing the international armed conflict in Ukraine and mirrors the human rights mandate of the Centre. The aim of this chapter is to point out other challenges faced by refugees from Ukraine in the Slovak Republic in 2023. At the same time, it aims to raise awareness of the issue of refugees and migration and thus respond to the negative and stereotypical perceptions that prevail in society and are often reinforced by the rhetoric of some public figures.

The fourth chapter deals with the discrimination against Roma in the individual areas protected by the anti-discrimination law, namely education,

<sup>2</sup> See: <https://fra.europa.eu/sk/publication/2021/silne-efektivne-narodne-institucie-pre-ludske-prava-vyzvy-slubne-postupy>

provision of goods and services, access to and provision of health care, and employment relations. Through the cases it handled in 2023, the Centre in-

roduces its mandate as a national anti-discrimination body and provides an insight into the daily work of the Centre.



# 12 1. Evaluation of 2022 Recommendations

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

## 1.1 Segregation in education

In the Report on the Observance of Human Rights Including the Principle of Equal Treatment in the Slovak Republic in 2022 the Centre evaluated the legal problems related to the segregated education of Roma and children with disabilities. It identified and advocated the need to introduce a general definition of segregation, which would not only apply to the field of education thanks to adding it to the forms of discrimination regulated by the anti-discrimination law. It also referred to the decision of the District Court Prešov on the illegal education of Roma children in special classes, which is the first decision of a nation-

al court in which the court concluded on discrimination (segregation) of the Roma children by educating them in special classes for children with mental disabilities. It evaluated the implementation of the Recovery and Resilience Plan of the Slovak Republic in the context of improving access to and development of inclusive education (hereinafter referred to as the "Recovery Plan"), approved by the Government of the Slovak Republic<sup>3</sup> (hereinafter referred to as the "Government"). The Centre also commented on the status of implementation of the Recommendations of the UN Committee on the Elimination of Racial Discrimination.

At the end of the chapter it recommended:

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1. To the Ministry of Justice of the Slovak Republic (hereinafter referred to as the "Ministry of Justice") to submit to the National Council of the Slovak Republic a draft amendment of Act No. 365/2004 on Equal Treatment in Certain Areas and on Protection against Discrimination, and on Amendments and Supplementation of Certain Acts (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 of the Slovak Republic (hereinafter referred to as the "Ministry of Education") to immediately meet the desegregation objectives of the Component 6 reform, which it have not yet been met.
3. To the Ministry of Education to submit a draft amendment of Act No. 596/2003 Coll. on State Administration in Education and School Self-Government, and on Amendments and Supplementation of Certain Acts, whereby the National Council of the Slovak Republic (hereinafter referred to as the "National Council") would add to Section 8, par. 1 the obligation of a municipality to take into account the ethnic composition of the population of the municipality or any part thereof when determining a school district.

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<sup>3</sup> The Recovery and Resilience Plan of the Slovak Republic was approved by the Government by its Resolution No. 221 of 28 April 2021

4. To the Ministry of Education to submit a draft amendment of Act No. 245/2008 Coll. on Education and Training (the Education Act), and on Amendments and Supplementation to Certain Acts (hereinafter referred to as the "Education Act"), which would introduce an obligation to ensure the integrated education of pupils with disabilities in so-called mainstream classes.

The Centre concludes that most of the recommendations have not been implemented by the recipients. The Ministry of Justice has not submitted to the National Council a draft amendment to the Anti-Discrimination Act that would introduce a legal definition of segregation as a form of discrimination. Its definition remained in the draft amendment to the School Act, which has been approved by the leg-

islature. By means of Act No. 182/2023 Coll., amending Act No. 245/2008 Coll. on Education and Training (the School Act), and on Amendments and Supplementation to Certain Acts, as amended, and amending and supplementing certain Acts (hereinafter referred to as "Amendment of the School Act No. 182/2023 Coll."), letters ah) and ai) were added to Section 2 of the School Act, as follows:

14 „ah) segregation in education and training (means) an action or failure to act which is contrary to the principle of equal treatment under a special regulation 2a) and which results or is likely to result in the spatial, organisational, physical or social exclusion or separation of a group of children, pupils, students or participants in education and training without a reason, arising from this Act,

ai) observing the prohibition of segregation in education and training, taking measures to prevent and eliminate it.“

The Centre has issued an opinion on the content of the above legal definition, the full text of which is available on its website.<sup>4</sup> Despite welcoming the adoption of the amendment, it pointed out some fundamental shortcomings and gaps in the adopted definition, which can have a significant negative impact and limit the assessment and resolution of cases of segregation in education and training. The biggest shortcoming in the new legislation is

the absence of a link between the definition of segregation in the School Act and the Anti-Discrimination Act.

Further recommendations were addressed to the Ministry of Education. The Ministry of Education has not fulfilled the third and fourth recommendations to submit draft amendments of Acts that would establish the obligation of a municipality to take into account the ethnic composition of the

<sup>4</sup> See <https://www.snslp.sk/aktuality/stanovisko-k-medzeram-a-nedostatkom-prijateho-znenia-definie-segregacie-vo-vychove-a-vzdelavani/>

municipality or a part of it when determining the school district and that would introduce the obligation to provide integrated education for pupils with disabilities in so-called mainstream classes.

The second recommendation to the Ministry of Education related to meeting the desegregation reform goals of Component 6 of the Recovery Plan, which the Department has not yet been met. In the 2022 Report, the Centre pointed out the delayed implementation of some of the objectives and the shortcomings accompanying their implementation (e.g. the designation of the separation of marginalised Roma children with disabilities in the Methodological paper on school desegregation for headmasters and school founders called “Together at the same school desk” as a “tolerated” form of segregation). In 2023, the National Council approved the aforementioned comprehensive amendment to School Act No. 182/2023 Coll., by which several desegregation objectives of the Component 6 reform were met.

As regards Reform 1 of Component 6, in its 2022 Report, the Centre stated that compulsory school education for children who turn five years of age by 31 August of the year preceding the first year of their compulsory schooling had been successfully introduced. The legislator was blamed for not approving in time the entitlement of

children from the age of three to a place in nursery school, for not extending the range of applicants eligible for allowances for dependent children attending pre-schools and secondary schools, and for not fulfilling in time the commitment to normative adjustment or changes in the financing of nursery schools. Only some of the reservations addressed by the Centre to the legislator have been removed. On the contrary, it considers as positive that the amendment of Act No 182/2023 Coll. introduced the right to admission to pre-primary education in nursery school for children from the school year following the school year in which the children turn three (Section 3(b) of the School Act). The legislator did not fulfil the commitment to change the pre-primary education funding with earmarked funds, which should replicate the current system of normative funding of primary schools through the delegated competences of the state to municipalities and through the funding of nursery schools from the state budget, in the evaluated year 2023<sup>5</sup>. Nor has it fulfilled the task of extending the entitlement for allowances for dependent children attending pre-school institutions and secondary schools, in Act No 417/2013 Coll. on Aid in Material Need.

Delayed achievement of some objectives was also noted by the Centre in its evaluation of the implementation of Reform 2 of Component 6. Correction

<sup>5</sup> Currently, it is planned to introduce the normative funding for nursery schools from 1 January 2025, see: <https://www.teraz.sk/slovensko/druckernormativne-financovanie-ms-bud/765642-cla-nok.html>

was made by the adoption of the amendment to the School Act No. 182/2023 Coll., as this amendment introduced a legal regulation for the definition of special educational needs of pupils and a vertical model of claimable support measures. At the same time, the legal definition of special educational needs has been amended.

The Centre identified persistent deficiencies in meeting the objectives of Reform 4, Component 6 of the Recovery Plan. The legislator did not proceed to regulate of “F” vocational fields neither of study by extending the obligation to draw up the performance plans of secondary schools to lower secondary vocational fields of study, nor by amending Act No. 61/2015 Coll. on Vocational Education and Training, despite the fact that the deadline was set for the first quarter of 2023. The Centre also sees no progress in meeting the objective of establishing an early warning system for early school leaving.

Reform 5 of Component 6 of the Recovery Plan is aimed at promoting school desegregation. One of the objectives was to introduce a legal defi-

inition of segregation, which was accomplished by amending the School Act No. 182/2023 Coll. The creation of a subsidy scheme to support pilot desegregation projects with a deadline until Q4 2023 has not been successful according to publicly available sources.

Following the above evaluation of the implementation of recommendations, the Centre urges the recipients to comply with those that have not yet been implemented. As regards to the recommendations related to the implementation of the desegregation objectives of the Component 6 Reform, they emphasise the importance of the implementation thereof, as they are linked to the disbursement of funds from the Recovery and Resilience Plan<sup>6</sup>. The Centre is aware of its primary role in monitoring the application practice of the definition of segregation, which was introduced into the School Act by Amendment No. 182/2023 Coll. In case of any problems, which the Centre pointed out in its opinion, it recommends considering the amendment thereof and a systematic inclusion of it in the Anti-Discrimination Act.

<sup>6</sup> Information on the Recovery and Resilience Facility is available at: [https://next-generation-eu.europa.eu/recovery-and-resilience-facility\\_sk](https://next-generation-eu.europa.eu/recovery-and-resilience-facility_sk)



## 1.2 Rights of LGBTI+ people in Slovakia

In its 2022 Report, the Centre stated that the Slovak Republic has long standing challenges in the area of the human rights of LGBTI+ people, while the gaps in the protection of their rights kept widening in 2022. The Centre notes that 2023 has not brought any positive change and, moreover, the human rights of LGBTI+ people have become the subject of a political campaign.<sup>7</sup> The National Council has not adopted any laws or meas-

ures to improve state of the human rights of LGBTI+ people.

In its 2022 Report, the Centre pointed out the terrorist attack on LGBTI+ people outside the Bratislava Tepláreň bar and community center, legislative proposals having an impact on the status and rights of LGBTI+ people, restrictions of legal and medical transition in Slovakia, and the democratic space for LGBTI+ human rights defenders in Slovakia.

### The Centre recommended:

1. To the Government to adopt an action plan for LGBTI+ people and to instruct the Ministry of Justice with its development in a participatory manner with LGBTI+ human rights defenders and LGBTI+ organisations, based on expertise, independence and partnership.
2. To the Government and the National Council to immediately implement the demands of the “Ide nám o život” (It’s About Our Lives) initiative.
3. To the Ministry of Justice to submit without any undue delay a draft act laying down a specific legal framework for the 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 Slovak Republic in relation to the right to respect for private life under Art. 8 of the Convention.
4. To the Members of the National Council to refrain from submitting legislative proposals that restrict the rights and stigmatise LGBTI+ people 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 Slovak Republic (hereinafter referred to as the “Ministry of Health”) 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

<sup>7</sup> S. Porubánová: The hateful statuses of politicians before the elections focused on three groups of people. Available at: <https://spravy.rtvs.sk/2023/10/s-porubanova-nenavistne-statusy-politikov-sa-pred-volbami-sustredovali-na-tri-skupiny-ludi/>

right to protection from torture and other cruel, inhuman or degrading treatment of transgender persons in Slovakia, which restrict the right to recognition of gender identity and legal transition.

6. To the Government to ensure a safe democratic space for human rights defenders and civil society organisations, including systematic and sustainable institutional and financial support.
7. To the Government, the ministries and the National Council to strengthen and support the active participation of LGBTI+ human rights defenders in the development of laws and policies, particularly those having a direct impact on the human rights of LGBTI+ people.
8. To the Government 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 and harmful myths and prejudices about LGBTI+ people.

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In relation to the first recommendation, the Centre notes that the Ministry of Justice has not started the preparation of an action plan or other strategic framework for the protection and promotion of the rights of LGBTI+ people in 2023, despite the commitment resulting from the National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic.

The second recommendation was related to the “Ide nám o život” (Our lives are at stake) initiative. Not a single one of its five main areas has been fulfilled.<sup>8</sup> The first was the need for a law on life partnership, including the possibility to adopt the child of one partner by the other partner. The second area was about ensuring dignified transition for transgender people without forced sterili-

zations. The third one called on politicians to reject the spread of hatred and to introduce disciplinary responsibility for hate speech in parliament. The fourth area focused on taking specific steps to make law enforcement more effective in prosecuting and preventing hate crimes, and the final area called for systematic support and the creation of safe spaces and support services in education and educational institutions.

Neither the third nor the fourth recommendation of the Centre have been met. In 2023, the National Council failed to push through the legislative drafts to recognize same-sex couples. In January 2023, the Minister of Justice introduced two drafts to address the living situations of unmarried couples. The proposed solutions concerned not

<sup>8</sup> See: <https://www.ta3.com/relacia/905639/tb-iniciativy-ide-nam-o-zivot-o-lgbti-komunite-rok-po-utoku>

only same-sex couples and unmarried couples in general, but any couples whatsoever. Under the draft act, unmarried persons could designate one another as their trustee. They would do so by making a declaration before a notary public. As a result, they would be entitled to be informed about their health status or to receive nursing benefits. However, the draft act did not grant couples the right to inherit or to own possessions in the form of joint ownership.

Via the inter-departmental commentary procedure, the Centre proposed to withdraw the draft act and to revise it in accordance with the obligations under Art. 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter the “Convention”), because it found it insufficient in terms of the positive obligations of the Slovak Republic in relation to the guarantees of the right to protection of private and family life. The draft act presented did not reflect the basic requirements for legal recognition of same-sex couples and their families, and thus did not fulfil the positive obligation of the state arising from the constitutional right to private and family life, the constitutional requirement of dignity and equality, and the international obligations of the Slovak Republic under the ratified human rights conventions.

In May 2023, a group of more

than 30 members of the National Council filed a petition with the Constitutional Court of the Slovak Republic (hereinafter referred to as the “Constitutional Court”) to consider whether the National Council’s lack of action in this area is in accordance with the Constitution. Through a submission to the Constitutional Court, the MPs demanded that the National Council fulfil the human right standards of recognition and protection of same-sex couples through the recognition of their unions.<sup>9</sup>

The Centre has submitted to the Constitutional Court its independent opinion on the above-mentioned draft to initiate proceedings for the compatibility of legislation under Art. 125 par. 1 (a) of the Constitution of the Slovak Republic (hereinafter referred to as the “Constitution”) concerning the lack of legal protection for same-sex couples due to the legislative inaction of the National Council. The aim of the submission was to present the Constitutional Court with arguments and information that could help it in its decision-making process, while fully respecting its independence and expertise. In the submitted opinion, the Centre concludes reasonably that the current absence of a legal framework for the recognition and protection of same-sex couples in the Slovak Republic means non-fulfilment of the positive obligation of the Slovak Republic under Art. 8 of the Convention and

<sup>9</sup> See: <https://domov.sme.sk/c/23170102/skupina-poslancov-sa-obratila-na-ustavny-sud-v-suvislosti-s-uznanim-prav-parov-rovnakeho-pohlavia.html>

unjustified interference with the right to protection of private and family life under Art. 19 (2) of the Constitution. At the same time, according to the legal opinion of the Centre, the current legal situation creates all the preconditions for concluding a violation of the prohibition of discrimination under Art. 12, par. 2 of the Constitution in conjunction with Art. 19 (2) of the Constitution and Art. 14 of the Convention in conjunction with Art. 8 of the Convention.<sup>10</sup>

In March 2023, despite the fifth recommendation by the Centre, members of the National Council approved in the first reading a draft amendment to the Birth Identification Number Act<sup>11</sup>, which constitutes a significant restriction on legal gender reassignment Slovakia and thus interference with the right to legal recognition of gender. The legal recognition of gender materialises the right of a transgender person for the conditions to reconcile his or her internal and external gender identity. Changing the birth number is crucial in the process of legal transition, as the current form of birth numbers assigned in Slovakia determine the sex of a person. According to the amendment, the birth number can only be changed after a medical opinion “*proving the correct determination of the person’s sex on the basis of a genetic test*”. This condition cannot be fulfilled, since medical transition does not

change the genetic code of a person. *De facto*, it thus constitutes a complete restriction on the change of the birth number, one of the components of the legal recognition of gender. According to the legal opinion of the Centre, such a restriction on legal transition is contrary to the right to the protection of private life under Art. 8 of the Convention and Art. 19 (2) of the Constitution

The second reading of the draft amendment to the Birth Identification Number Act was supposed to take place during the June session of the National Council; however, the session was terminated prematurely and the National Council did not meet again until the elections in September 2023. The amendment to the Birth Identification Number Act was resubmitted to the National Council by MPs in November 2023. Its approval would essentially render transitions, which have been legal in Slovakia for decades, impossible.. The draft act is expected to be on the agenda of the second ordinary session of the National Council in 2024.<sup>12</sup>

On March 3, 2023, the Minister of Health approved the Standard Practice for the Diagnosis and Comprehensive Health Care Management Of An Adult With Transsexualism (the “Standard Practice”). The guideline standardized the provision of health care for trans-

<sup>10</sup> Independent opinion available at: <https://www.snslp.sk/aktuality/podali-sme-nezavisle-stanovisko-ustavnemu-sudu-sr/>

<sup>11</sup> Details of the draft are available at: <https://bit.ly/4bfjXuC>

<sup>12</sup> Details of the draft act are available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9509>

gender people. The Centre welcomed the decision of the Ministry of Health. The approval of the standard procedure has also renewed the validity of the Expert Guideline of the Ministry of Health for the unification of health care procedures on gender reassignment prior to the issuance of a medical opinion on the change of gender of a person administratively registered in the registry office (hereinafter referred to as the “Expert Guideline”). In November 2023, the Ministry of Health announced on its website that it would repeal the Expert Guideline at the request of a coalition partner, pointing out that the issue would be comprehensively and expertly addressed within the new international classification of diseases.<sup>13</sup> The Centre evaluates negatively the intervention of the Ministry of Health in professional documents for political reasons, in order to declare the stability of the government coalition.

Based on the above information, it is evident that the Government, the National Council and the ministries involved are deliberately negating human rights of LGBTI+ people and treating them with disrespect. Instead of proposing acts that would effectively guarantee the rights and protection of LGBT+ people, they introduce proposals representing a regression in the field of human rights, or pay no attention at all to the issue. The Centre concludes that in such an environment, it is

not possible to expect that the recommendations addressed to the above-mentioned entities in the 2022 Report will be implemented. It again urges the recipients to follow up on the recommendations.

Also in 2023, the Government failed to implement the recommendations improving the status of CSOs, especially given the absence of a sustainable financial mechanism for CSOs, as well as the continued excessive use of the accelerated legislative process without the active participation of civil society in the process of lawmaking. In its 2023 Rule of Law Report, the European Commission noted that, despite some planned measures for improvement, the space for civil society in Slovakia is described as “narrow”, with a lack of systematic financial support and fragmented legal regulations.<sup>14</sup> Also in 2023, there were barriers to the involvement of NGOs and human rights defenders in national policymaking and consultation in the adoption of important legislation, including policies and legislation directly affecting the lives of minorities in the country.

The legislative proposals of the Ministry of Justice, which were intended to address the life situations of same-sex couples, have been criticized not only for contradicting the positive obligations of the Slovak Republic to guarantee the right to protection of private and family life, but also for limiting the active

<sup>13</sup> See: <https://www.health.gov.sk/Clanok?mzsr-usmernenie-pohlavie-zmena-zrusenie>

<sup>14</sup> The 2023 Rule of Law Report is available at <https://bit.ly/3WADeD1>

participation of the civil sector in the preparation of these legislative changes. The Plenipotentiary of the Slovak Government for the Development of Civil Society described the failure to invite CSOs to the preparatory consultations on the above-mentioned proposals as being unacceptable.<sup>15</sup> The subsequent consultations of the Ministry of Justice with the professional and general public could only be considered formal.

In December 2023, the Centre published a thematic report on democratic space for human rights defenders in Slovakia, based on interviews with 26 defenders of the rights of women, LGBTI+ people, Roma, and people with disabilities.<sup>16</sup> It reported on key challenges, including the need to prevent and combat hate speech, harassment and intimidation, as well as the lack of sustainable funding and transparent participatory processes, administrative and bureaucratic burdens, and the impact of such barriers on the mental health of human rights defenders. The findings of the Centre showed that especially women and LGBTI+ rights defenders are victims of persistent hate speech by political and religious leaders.

The Centre also registered intense hate speech during the election campaign. Before the

start of the official pre-election campaign, it analysed the incidence of hate speech on the profiles of the most popular Slovak political representatives on the Facebook social network.<sup>17</sup> During the monitoring of hate statuses, it also focused on hate attacks against human rights activists and NGOs, which included associating them with “liberal extremism” or undermining their credibility and trustworthiness, in particular by labelling human rights NGOs as “Soros” organisations.

The negative narratives about NGOs already present during the pre-election campaign have increasingly escalated since the elections, whether in the form of verbal attacks or attempts to limit financial resources for the NGO sector. In October, the Prime Minister announced his intention to adopt legislation that would label NGOs that receive funding from abroad as “foreign agents.”<sup>18</sup>

The Centre welcomes the initiatives implemented in 2023 under the auspices of the The Plenipotentiary of the Slovak Government for the Development of Civil Society, such as the national conference of non-governmental non-profit organizations “Spájame sa za demokraciu” (Joining for Democracy) organized in cooperation with the Chamber of

<sup>15</sup> See: <https://bit.ly/3Qk7C0l>

<sup>16</sup> „I see myself as an ordinary person.” *Human rights defenders in Slovakia*. Available at: <https://www.snsip.sk/wp-content/uploads/Obhajcovia-a-obhajkyne-ludskych-prav-na-Slovensku.pdf>

<sup>17</sup> Hate speech on political Facebook profiles. Hate speech monitoring report. Available at: [https://www.snsip.sk/wp-content/uploads/Nenavistny-jazyk-na-politickych-fb-profiloch-2023\\_web.pdf](https://www.snsip.sk/wp-content/uploads/Nenavistny-jazyk-na-politickych-fb-profiloch-2023_web.pdf)

<sup>18</sup> See: <https://spravy.rtvs.sk/2023/10/r-fico-chce-niektore-mimovladky-oznacovat-ako-zahranicnych-agentov-odvolava-sa-na-americky-zakon/>

Non-Governmental Non-Profit Organizations.<sup>19</sup> It also welcomes the continuation of the activities of the Plenipotentiary of the Slovak Government for the Development of Civil Society within the national project “Promotion of Partnership and Dialogue in the Field of Participatory Public Policymaking.”

Based on the above, it can be concluded that the proliferation of attacks against CSOs and hu-

man rights defenders, the continuous politicisation and polarisation of human rights topics and the hateful statements made by top politicians towards LGBTI+ people, including the spreading of myths and lies, are in direct contradiction to the recommendations of the Centre emphasising the need to create a safe democratic environment for human rights defenders and CSOs.

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<sup>19</sup> See [https://www.minv.sk/?ros\\_vsetky-spravy&sprava=sprava-z-konferencie-o-obcianskej-spolocnosti-spajame-sa-za-demokraciu](https://www.minv.sk/?ros_vsetky-spravy&sprava=sprava-z-konferencie-o-obcianskej-spolocnosti-spajame-sa-za-demokraciu)

## 1.3 Fundamental rights and freedoms of persons fleeing the international armed conflict in Ukraine

The armed conflict in Ukraine has caused the largest displacement of people in Europe since World War II. The National Council reacted to the arrival of refugees by adopting legislation to facilitate their integration into Slovak society. Temporary refuge holders have faced, and continue facing, a number of challenges and risks, despite

the efforts of the state and aid in the form of allowances. In the 2022 Report, the Centre provided an overview of Slovakia's obligations and commitments as a party to several international human rights documents and identified the challenges faced by those who have left the country.

### The Centre recommended:

1. To the Ministry of Interior of the Slovak Republic (hereinafter referred to as the "Ministry of Interior") and the Ministry of Transport of the Slovak Republic (hereinafter referred to as the "Ministry of Transport") to establish specific mechanisms for screening and control of accommodation providers for refugees.
2. To the Ministry of Education to introduce compulsory school attendance for the children of foreigners.
3. To kindergartens, primary and secondary schools, to provide sufficient support to the 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.

In the 2022 Report, the Centre concluded that the provision of allowances by the Ministry of Interior and the Ministry of Transport is an effective way of securing the right to housing for the temporary refugees. At the same time, however, it stressed that the Slovak Republic should establish mechanisms to increase the protection of refugees and ensure their right to adequate housing, which should be safe and dignified. The Ministry of Trans-

port paid more than 57 million EUR in accommodation allowances from Ukrainian temporary refugees in 2023, and around 15 million EUR in 2022.<sup>20</sup>

In December 2023, the Government approved the draft regulation,<sup>21</sup> responding to the need to provide accommodation for those who have left Ukraine due to the ongoing conflict. This regulation follows seamlessly on the provision of assistance for the accommodation

<sup>20</sup> See: <https://www.mindop.sk/media/tlacove-spravy/ministerstvo-dopravy-upravuje-prispevok-za-ubytovanie-odidencov-1>

<sup>21</sup> Detail of the document available at: <https://rokovania.gov.sk/RVL/Material/29069/1>



of temporary refugees,<sup>22</sup> both in terms of the amount of the allowance and the conditions for obtaining the allowance. However, the allowance was only provided at the same rate until 31 March 2024. The person providing accommodation received 10 EUR per night for the accommodation of a temporary refugee over 15 years of age and 5 EUR for a temporary refugee below 15 years of age.<sup>23</sup> In the context of the first recommendation, the Centre emphasises that in 2023 no systemic measures or specific mechanisms for the verification and control of accommodation providers have been adopted.

The second recommendation of the Centre was on compulsory school attendance for the children of foreigners. As a result of the Russian invasion, many Ukrainian children of school-age arrived in Slovakia. According to the Ministry of Education, compulsory school attendance does not apply to these children.<sup>24</sup> As of 31 December 2023, 11,818 children from Ukraine were attending some type of school,<sup>25</sup> according to media estimates, while another five to eight thousand children are outside the edu-

cation system.<sup>26</sup> In June 2023, the Minister of Education announced that compulsory school attendance for children of temporary refugees from Ukraine and other foreigners living in Slovakia will be introduced from the school year 2024/2025. In the school year 2023/2024, the Minister of Education promised to strengthen the capacities and intensify teaching of the Slovak language to children of foreign nationals during classes and to involve children in leisure-time activities.<sup>27</sup>

The Centre draws attention to the fact that no legislation establishing compulsory school attendance for the children of foreign nationals has been adopted in 2023. By contrast, the Czech Republic introduced compulsory schooling immediately after the start of the war in Ukraine. The Centre urges the Ministry of Education to take the necessary steps as soon as possible to ensure that all children of the appropriate age in the territory of the Slovak Republic are subject to compulsory school attendance and that adequate support is provided to schools so that they are able to admit and fully integrate

<sup>22</sup> See: <https://www.minv.sk/?prispevok-za-ubytovanie>

<sup>23</sup> See: <https://www.minv.sk/?tlacove-spravy-8&sprava=prispevok-za-ubytovanie-odidencov-z-ukrajiny-sa-bude-poskytovat-do-konca-marca-2024>

<sup>24</sup> Guideline on Special Means of School Attendance available at: <https://www.minedu.sk/data/att/20237.pdf>

<sup>25</sup> Data on the number of temporary refugees from Ukraine (December 2023). Available at: <https://ukrajina.minedu.sk/vseobecne-informacie/>

<sup>26</sup> See: <https://spravy.rtvs.sk/2023/06/skolska-dochadzka-bude-povinnostou-aj-pre-deti-z-cudziny-skoly-budu-mat-na-pripravu-cely-buduci-rok/>

<sup>27</sup> See: <https://spravy.rtvs.sk/2023/06/skolska-dochadzka-bude-povinnostou-aj-pre-deti-z-cudziny-skoly-budu-mat-na-pripravu-cely-buduci-rok/>

these children into the process of education and upbringing.<sup>28</sup>

Recommendation number 3 concerned the removal of the language barrier. 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. According to the findings of the State School Inspectorate, in the school year 2021/2022 more than half of schools (54.3%) and in 2022/2023 less than a third of schools (31.4%) organised courses in the state language. The most common reasons for schools stopping the courses were that pupils had already taken the course in the previous school year (33.3%) and the lack of interest from pupils from Ukraine (28.5%). The data also showed that a significant number of schools failed to run state language courses although there was a need. Only a minimum of schools organised Ukrainian language classes. It also turned out that only a small number of schools that needed it managed to provide first (mother tongue) language courses for pupils

from Ukraine.<sup>29</sup>

In May 2023, the National Council approved an amendment of the School Act,<sup>30</sup> which introduced a system of support measures in education and training. Together with a catalogue of support measures, which represent a system-wide naming of needs, it is an inclusive education implementation tool. Until now, special educational needs have only been granted to children and pupils with disabilities, those from socially disadvantaged backgrounds or to those who are gifted. The aim of the modification was to extend these by other categories of difficulties and specifics in the child's development, such as language and cognitive abilities, motivation and emotionality, or skills.<sup>31</sup> As regards the children of the temporary refugees, the support measure in section 145a par. 2 (e) of the School Act applies.<sup>32</sup> It aims to support the learning of the school's language of instruction by children/pupils whose mother tongue is different from their school language of instruction and by children/pupils whose knowledge of the school language of instruction is below

28 Open letter to the Ministry of Education on ensuring compulsory school attendance for children from Ukraine. Available at: [https://www.vzdelavacieanalyzy.sk/otvoreny-list-ministers-tvu-skolstva-k-zabezpeceniu-povinnejskolskej-dochadzky-pre-deti-z-ukrajiny/#\\_ftn1](https://www.vzdelavacieanalyzy.sk/otvoreny-list-ministers-tvu-skolstva-k-zabezpeceniu-povinnejskolskej-dochadzky-pre-deti-z-ukrajiny/#_ftn1)

29 Report on the state and level of education and training in schools and school facilities in the Slovak Republic in the school year 2022/2023. Available at: <https://www.ssi.sk/sprava-o-stave-a-urovni-vychovy-a-vzdelavania/>

30 Details of the draft are available at <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9170>

31 See: <https://www.minedu.sk/podporne-opatrenia-pre-vsetkych-ziakov-ci-pravo-na-miesto-v-materskej-skole-sa-stanu-realityou-nr-sr-schvaila-novelu-skolskeho-zakona/>

32 In 2023, the National Institute of Education and Youth published the support material *Možnosti podpory pri osvojovaní si vyučovacieho (slovenského) jazyka školy - slovenský jazyk ako druhý jazyka (Options for Supporting the Acquisition of the School's Language of Instruction – Slovak as the Second Language)*. Available at: [podporneopatrenia.minedu.sk/data/att/27387.pdf](http://podporneopatrenia.minedu.sk/data/att/27387.pdf)

the age-appropriate knowledge of the school language of instruction. Language support is designed to ensure that children/pupils learn the language of instruction more quickly and subsequently complete the educational process more successfully.<sup>33</sup> The Centre evaluates the recommendation as having been fulfilled.

The last recommendation concerned the prevention of the creation of separate classes for the children of temporary refugees. The Centre reiterates that it is necessary to think about

the integration of children of the temporary refugees into the educational process and to prevent the creation of separate Ukrainian classes. According to the findings of the State School Inspectorate, only 3 schools out of 608 (0.5%) had a separate classroom for pupils from Ukraine. In most schools, pupils from Ukraine did not have a modified curriculum, i.e. they did not have different subjects or more subjects (86.2%).<sup>34</sup> The fourth recommendation of the Centre can thus also be considered to have been fulfilled.

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<sup>33</sup> See: <https://podporneopatrenia.minedu.sk/zabezpecenie-poskytovania-kurzu-vyučovacieho-jazyka-skoly-alebo-inej-podpory-pri-osvojovaní-si-vyučovacieho-jazyka-skoly/>

<sup>34</sup> Ibid.



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## 2. Indications of power-based restrictions of political rights in relation to constitutional and international law guarantees of their protection

By pointing out the negative public manifestations of public officials the aim is to warn them that they are obliged to respect the constitutional and international limits of the legal admissibility of such actions.

In 2023, government officials addressed public messages to the media and the non-profit or non-governmental sector, the content of which, and in particular the possible practical implementation of which, could in the future be inconsistent with international legal standards in the area of treaty guarantees ensuring the protection of the right to information and freedom of association. That is why the interpretation of the limits of legitimate restrictions on the above-mentioned human rights and fundamental freedoms, which originated with the Constitutional Court and the ECHR, should be reminded and addressed to the representatives of the public authorities and the members of the National Council. It is advisable to keep this in mind when publicly presenting similar intentions in the future. The following text includes information about negative public manifestations and also the argumentation and interpretation background of the mentioned judicial authorities, based on which the recommendations of the Centre are formulated. Their aim is not only to prevent the occurrence of similar public statements, but above all to warn political figures that they are obliged to respect the constitutional and international limits on the legal admissibility of such action if

any restrictions are placed on the right to information or freedom of association.

The Centre also addressed the issue of legal protection of journalists and ensuring media freedom in its 2023 Rule of Law Report.<sup>35</sup> It was critical about the fact that the then coalition MPs did not discuss with the expert public the draft act which could have had a negative impact on the level of media freedom, and tried to approve it in the so-called accelerated legislative procedure.<sup>36</sup> Moreover, journalists<sup>37</sup> of the selected media in Slovakia have been targets of hate speech by public officials for a long time. In its report, the Centre criticized not only the verbal hateful and populist statements of politicians towards journalists of selected media, but also the absence of legal regulation of the so-called strategic litigation against public participation, which would ensure the protection of journalists against this type of actions.<sup>38</sup> Despite the fact that in 2021 the Ministry of Culture of the Slovak Republic published information about the beginning of legislative work on the so-called Constitutional Act on Media Freedom, which was supposed to strengthen the guarantee of protection of the free and safe exercise of the journalistic profession, the act has not yet

<sup>35</sup> *Slovak National Centre for Human Rights – 2023 Rule of Law Report*, available online at: <https://www.snslp.sk/wp-content/uploads/Rule-of-Law-report.pdf>.

<sup>36</sup> Cf. the Proposal by the Member of the National Council of the Slovak Republic Kristián Čekovský to issue an Act amending Act No. 532/2010 Coll. on Radio and Television of Slovakia, and on Amendments and Supplementations to Certain Acts, as amended, available online at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&MasterID=9107>.

<sup>37</sup> In the following, the use of the masculine noun for journalists includes female journalists, too.

<sup>38</sup> *The Slovak National Centre for Human Rights – 2023 Rule of Law Report*, pp. 22-23, available online at: <https://www.snslp.sk/wp-content/uploads/Rule-of-Law-report.pdf>.

been adopted. The above intention was eventually implemented by the Ministry only as a presentation of the intention to include journalistic protection in its strategic documents, which the Centre also considers a shortcoming in the work of the Ministry in this respect.<sup>39</sup>

In the above context and in light of the events described above, the Centre has undertaken a variety of outreach activities to ensure the protection of the freedom of journalists, the right of individuals to receive information<sup>40</sup>, as well as to create conditions for the development of the space for civil society under the rule of law.<sup>41</sup> For example, the Executive Direc-

tor of the Centre has become a member of the Platform for the Promotion of Press Freedom and the Protection of Journalists, established by the Minister of Culture on 16 October 2023.<sup>42</sup>

In view of all the above, the Centre considers it important to keep reminding the public officials of the judicial interpretation of the right to free dissemination and reception of information and the need to support and create conditions for the implementation of guarantees for the non-profit sector's activities. In both cases, these are basic prerequisites for a healthy and functional democracy.

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39 Ibid, p. 24.

40 Invitation to the event entitled Protection of Journalists as an Essential Element of the Rule of Law; available online at: <https://www.snslp.sk/aktuality/festival-pravneho-statu-pozvanka-2/>.

41 Invitation to the event entitled Space for Civil Society in the Rule of Law; available online at: <https://www.snslp.sk/aktuality/festival-pravneho-statu-pozvanka/>.

42 Briefing Paper/Establishment of the Platform for the Promotion of Press Freedom and the Protection of Journalists, available online at: [https://www.minv.sk/?ros\\_monitoring\\_aktuality&sprava=informativny-material-zriadenie-platfomy-na-podporu-slobody-tlace-a-ochranu-novinarov](https://www.minv.sk/?ros_monitoring_aktuality&sprava=informativny-material-zriadenie-platfomy-na-podporu-slobody-tlace-a-ochranu-novinarov).

## 2.1 Interpretations of the content of the right to information and the confrontation thereof with publicly presented intentions

„Freedom of expression, which includes the freedom to hold opinions and to receive and impart information or ideas, must be regarded as a constitutive feature of a democratic, pluralistic society and as one of the basic conditions for its functioning and for the individual's (self-)realisation.“<sup>43</sup> The right to disseminate information and the right to receive information are two of the three basic content components of the political right to freedom of expression. The exercise of these rights is guaranteed in the Constitution, through Article 26 par. 1 of act No. 460/1992 Coll. of the Constitution of the Slovak Republic. The content is so-called three-fold, i.e. made up of constitutional guarantees of reception, search and dissemination of information regardless of territorial boundaries. The aim of constitutional regulation is to achieve and maintain a state of affairs in which every individual has the opportunity to learn information and has it at his or her disposal for his or her own purposes. It is also a constitutional guarantee of the possibility to obtain information from previously known sources. Every individual is an eligible subject under the Constitution, i.e. every natural person is guaranteed the key po-

litical right to information by the Constitution. In this context, and also in relation to the publicly presented intentions of public political figures to restrict access to information, it is essential to emphasise that this is a requirement of the constitutional guarantee of the protection of the individual's political right. „The Constitution leaves it to the discretion of each eligible subject to decide how to exercise the right to receive, seek and disseminate information on public affairs and whether to use technical devices designed to produce a visual, audio-visual or audio recording.“<sup>44</sup> Article 10, par. 1 of the Convention deals with guarantees of protection of the freedom to hold opinions or to receive and impart information or ideas.<sup>45</sup> Legal doctrine interprets the freedom to receive information in two ways: Negatively, i.e. as a negative right prohibiting the state and other entities from preventing individuals from receiving information that others (journalists) want to share with them; and positively, i.e. as an obligation of the state to comply with an individual's request for access to information and to provide it to them.<sup>46</sup>

43 From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. US 439/2016, dated 27 October 2016, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

44 From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. US 28/96 of 12 May 1997; also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

45 KOSAŘ, D., In: KMEC, J., KOSAŘ, D., KRATOCHVÍL, J., BOBEK, M.: *European Convention on Human Rights. Comment. Volume 1*. Prague: C. H. Beck, 2012, p. 997.

46 Ibid, p. 1009; authors' note.

## On the role and functions of the media in a democratic society

In a democratic, free and modern society, the media play an important and unquestionable role in the context of systematic guarantees for the healthy functioning of democracy, which includes the scrutiny of decisions, actions and omissions of government authorities through the prism of public opinion and the promotion of citizen participation in the process of decision-making about the matters of public interest.<sup>47</sup>

„Freedom of expression is essential for democracy and for the formation of free public opinion in an open society; it is a fundamental pillar of a democratic society in which everyone is allowed to comment on public affairs and make value judgements about them.“<sup>48</sup>

„One of the purposes of this constitutional regulation is to allow free debate, generally on matters of public interest, and thus to provide some informal control on power in the state.“<sup>49</sup>

The media is the public most convenient means of obtaining information and for forming one's own idea of the intentions and attitudes of political

leaders.<sup>50</sup> They also exchange information on so-called matters of public interest. It is this kind of information that plays an important opinion-forming role in shaping the views of the general public and individuals on public affairs and policies. Thanks to the media, individuals have access to information about social events, trends and development in state politics. This increases the diversity and directness of the public debate and also promotes the implementation of the principle of plurality of views on public affairs. This directly contributes to the formation of so-called general opinion. The media are a special category of subjects of freedom of expression. The ECHR has repeatedly emphasised to the High Contracting Parties to the Convention the obligation to ensure a high level of legal protection for journalists when providing information on matters of public interest, even if the manner of reporting might appear to be exaggerated or shocking.<sup>51</sup> The legal protection of journalistic freedom also includes a certain degree of exaggeration or provocation, primarily because

<sup>47</sup> Ibid, p. 1031; authors' note.

<sup>48</sup> From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. 326/09, of 4 March 2010, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

<sup>49</sup> KRUNKOVÁ, A., In: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic. Comment. Volume I*. Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 334.

<sup>50</sup> Paragraph 58 of the reasoning of the judgment of the ECHR in *Özgur Gündem v. Turkey*, dated 16 March 2000, Complaint No.: 23144/93, also available online at: <https://hudoc.echr.coe.int/eng?i=001-58508>.

<sup>51</sup> Paragraph 46 of the grounds of the ECHR judgment in *Hrico v. Slovak Republic*, dated 20 July 2004, Complaint No.: 49418/99, also available online at: <https://hudoc.echr.coe.int/eng?i=001-61930>; or Paragraph 48 of the reasoning of the ECHR judgment in *Handyside v. the United Kingdom*, dated 7 December 1976, Complaint No.: 5493/72, available online at: <https://hudoc.echr.coe.int/eng?i=001-57499>.



of the link between this freedom and the so-called concept of democracy.<sup>52</sup> However, guarantees to protect the dissemination of information from the point of view of human rights have certain limits, in particular to ensure legal protection of the reputation and rights of other legal entities<sup>53</sup> or in preventing the unauthorised dissemination of confidential information.

The role of the media is to disseminate information and ideas on all matters of public interest. Not only do they have a duty to disseminate such information, but the public also has a right to get or receive it.<sup>54</sup> „The purpose of keeping citizens informed about public power is an essential feedback for the power itself, having a qualitative factor and being a guarantee against its misuse at the same time. Another undeniable importance of the subjective and thus enforceable right to information is its control function in relation to the functioning of public authority. Sufficiently broad, yet easy and quick access to information also has a positive impact on citizens' trust in democratic institutions and their willingness to participate in public life. Situa-

*tions in which the mere act of obtaining background information is difficult for citizens are demotivating, as it makes them feel unable to effectively influence governance.*“<sup>55</sup>

*„Thus, the media are a decisive factor in the permanent process of opinion formation and the formation of individuals and social groups, as well as political institutions. The media are also entitled to freedom of expression. This refers in particular to the communication of information, as well as the dissemination of news, ideas and opinions that are not only positive or neutral, but also those that carry negative connotations, offend, shock or disturb the state, the political elites or any part of the population, which is due to the requirements of pluralism, tolerance, openness and permanent discourse, without which we cannot speak of a democratic free society. Freedom of expression in relation to the media provides protection not only for the chosen topics that are communicated by the media, but also for the type and manner of processing and dissemination thereof. Thus, the broad boundaries set for the*

52 Paragraph 39 of the reasoning of the judgment of the ECHR in *Perna v. Italy*, 06 May 2003, Complaint No.: 48898/99, available online at: <https://hudoc.echr.coe.int/eng/?i=001-141442>; Paragraph 37 of the reasoning of the ECHR judgment in *Radio France and Others v. France*, dated 30 March 2004, Complaint No.: 53984/00, also available online at: <https://hudoc.echr.coe.int/fre/?i=001-61686>.

53 Paragraph 67 of the reasoning of the judgment of the Grand Chamber of the ECHR in *Lindon, Otchakovsky-Laurens and July v. France*, dated 22 October 2007, Complaint No.: 21279/02 and 36448/02; available online at: <https://hudoc.echr.coe.int/eng/?i=001-82847>.

54 *Ibid.*, from the reasoning of the judgment.

55 From the reasoning of the judgment of the Supreme Court of the Slovak Republic, file No.: 5 SŽi 1/2011, dated 15 December 2011, also available online at: <https://www.nsud.sk/rozhodnutia/5szi12011/> and from the reasoning of the judgment of the Supreme Court of the Slovak Republic, file No.: 8 SŽi 16/2013, dated 20 March 2014, also available online at: <https://www.nsud.sk/rozhodnutia/8szi162013/>.

freedom of expression of media and broadcasters are a manifestation of (and the foundation of) a modern democratic society and are essential to the possibility of characterising a state as being democratic and free. In relation to political and social issues, as well as the exercise of public authority and the implementation of real state politics, the media play the role of an information broker and a so-called “watchdog”.<sup>56</sup>

The Constitutional Court complements the interpretative considerations from ECHR case law by referring to the social duty of journalists „to provide information and ideas on all matters of public interest and the public has the right to receive such information. In its case law, the ECHR provides journalists with an increased level of protection compared to other subjects of freedom of expression. The Constitutional Court emphasises the above approach.”<sup>57</sup> Finally, neither journalists nor publishers can be held „responsible for disseminating informa-

tion provided by the organs of the State, since that is their role and mission.”<sup>58</sup> In light of the increasingly frequent verbal attacks on journalists by representatives of political power, the Centre welcomes the information about the preliminary agreement between the Council of the European Union and the European Parliament on the preparation of legislation at the European Union level aimed at ensuring a greater degree of legal protection for journalists and human rights defenders.<sup>59</sup> Transnational legal regulation at the European Union level is not only welcomed, but, in the Centre’s view, it is a necessary step towards ensuring the required legal protection for journalists, especially in the context of power attacks and politicians’ intentions to restrict the activities of their chosen media at the national level.

Following the statements of government representatives about their intention to restrict the access of journalists to the premises of the Government Office of the Slovak Republic, the Centre draws the attention to the European Act on Free-

56 KRUNKOVÁ, A., In: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic. Comment. Volume I*. Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 338 (secondary source) Primary source: Paragraph 59 of the reasoning of the judgment of the ECHR in *Financial Times Ltd and Others v. United Kingdom*, dated 15 December 2009, Complaint No.: 821/03, also available online at: <https://hudoc.echr.coe.int/fre/?i=001-96157>.

57 From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. ÚS 152/08, dated 15 December 2009, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia); see also the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. ÚS 340/09, dated 18 September 2012, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia); and the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. ÚS 307/2014, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

58 Legal sentence from the ruling of the Constitutional Court of the Slovak Republic, file No.: IV. ÚS 284/2012-35, dated 6 June 2013, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

59 Available online at: <https://bit.ly/4ddsaBt>.

dom of the Media, on which the European Commission adopted its opinion under the legislative process in 2022 and the European Parliament in October 2023<sup>60</sup>. As regards the evaluated statements, in the opinion of the Centre, it is necessary to emphasize in particular the requirement that the Member States ensure and take care to preserve the so-called plurality of media, protecting their independence, including from governmental and political interference. The European Parliament has vouched to ensure compliance with the ban on all forms of interference in the editorial decisions of media service providers and to prevent external pressure being exerted

on journalists. The implementation of the European Media Freedom Act aims to create a common framework for media services in the internal market and to introduce measures to protect journalists and media service providers from political interference, which should help to make it easier for them to operate throughout the internal borders of the European Union. Another intention of the EU standard-setter is to introduce safeguards „to combat political interference in the editorial decisions of both private and public media service providers, to protect journalists and their sources, and to ensure media freedom and pluralism“<sup>61</sup>.

### Activities of the public authorities in the context of the prohibition of censorship and the permissibility of restrictions on the right to information

The position of the state was aptly and accurately characterised by the Constitutional Court by comparing it to the mission of a night watchman.<sup>62</sup> It is the duty of the state, represented not only by members of the National Council and members of the Government, but also by the Constitution-

al Court itself, to protect journalists in relation to the constitutional guarantees of the protection of their right to disseminate information and to ensure the protection of the right of every individual to have access to it. However, the content of this constitutional obligation is not absolute, but is subject to

<sup>60</sup> Information on the adoption of the European Parliament's position on the European Commission's proposal is available online at: <https://www.europarl.europa.eu/news/sk/press-room/20230929IPRO6111/akt-o-slobode-medii-poslanci-posilnili-pravidla-na-ochranu-novinarov-a-medii>. More (preliminary) information on the European Media Freedom Act is also available online and on the European Commission website: <https://digital-strategy.ec.europa.eu/en/library/european-media-freedom-act-proposal-regulation-and-recommendation>.

<sup>61</sup> European Council/Council of the European Union: Media freedom in the EU; available online at: <https://www.consilium.europa.eu/sk/policies/media-freedom-eu/>.

<sup>62</sup> From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. US 174/17, dated 24 January 2018, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia). Primary sources of interpretation of the role of the night watchman in the context of the protection of the right to information: BERLIN, I.: *Čtyři eseje o svobodě (Four essays on freedom)*. Prague: Prostor, 1999, p. 225; NOZICK, R.: *Anarchy, State, and Utopia*. New York: Basic Books, 1974, 2013, pp. 25-27.

the fulfilment of the hypotheses of the strict qualifying criteria laid down in Article 26, par. 4 of the Constitution and Article 10, par. (2) of the Convention. The requirement to ensure an increased level of legal protection for journalists in order to create space for a pluralism of opinions, the basic essence of a democratic society, is also emphasised by the eminent constitutional lawyer prof. Svák.<sup>63</sup> At the same time, the case law of the ECHR balances the so-called privileged level of legal protection for journalists with the requirement to comply with strict rules of journalistic ethics and an increased level of control in relation to the so-called tabloid media.<sup>64</sup>

On the contrary, the Court emphasizes the obligation of the governmental authorities in those states that are High Contracting Parties to the Convention to refrain from adopting restrictive measures with respect to the freedom of dissemination of information, which could have a discouraging effect and a negative impact on the development of public debate on political action.<sup>65</sup> Any seemingly legitimate pre-emptive prohibitions on the disclosure of information of public authori-

ty performance cannot serve as a cover for the repression of the media labeled by politicians as anti-governmental.<sup>66</sup>

Neither Article 10 of the Convention nor Article 26 of the Constitution guarantee the freedom to receive and impart information in absolute terms, even when it concerns information on matters which may be considered to be of public interest. The constitutional guarantee of freedom of the press is linked to the duty of journalists to inform the public in good faith by providing information that is accurate, reliable and consistent with the requirements of journalistic ethics. Restrictions on the freedom to disseminate information, and thus on the individual's right of access to it, are permitted only where necessary and for legitimate reasons. The necessity assessment should not be the concern of politicians and government officials, but of the Constitutional Court, as national authorities enjoy a certain degree of discretion within the limits of the power to restrict the right to information.<sup>67</sup>

The exercise of political rights is generally closely linked to the constitutional imperative

63 Cf. KRUNKOVÁ, A., In: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic. Comment. Volume I*. Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 348.

64 From the reasoning of the judgment of the ECHR in *Ringier Axel Springer Slovakia, a. s., v. Slovak Republic*, 26 July 2011, complaint number 41262/05, available online at: <https://hudoc.echr.coe.int/eng?i=001-105825>.

65 Paragraph 46 of the reasoning of the judgment of the ECHR in *Castells v. Spain*, 23 April 1992, Complaint No.: 11798/85, also available online at: <https://hudoc.echr.coe.int/eng?i=001-55686>.

66 KOSAR, D., In: KMEC, J., KOSAR, D., KRATOCHVIL, J., BOBEK, M.: *European Convention on Human Rights. Comment. Volume I*. Prague: C. H. Beck, 2012, p. 1032.

67 Cf. In: SVÁK, J., GRÜNWARD, T.: *Národné systémy ochrany ľudských práv. (National systems for the protection of human rights) Volume I. Štruktúra systémov a ochrana politických práv. (The structure of systems and the protection of political rights)* Bratislava: Wolters Kluwer, 2019, p. 257.

against censorship.<sup>68</sup> There is no legal definition of censorship within Slovak legal order. Nevertheless, for the purposes of this Report, it would be useful to mention its content from Section 17, par. 1 of Act No. 81/1966 Coll. on the Periodical Press and Other Mass Information Media, according to which *„any interference by the state authorities against the freedom of speech and image and dissemination thereof by mass information media.”* was considered censorship. However, this did not affect the powers of prosecutors and judges. *“Censorship in the constitutional law means, in particular, politically motivated interference by the public authorities with the freedom of expression of the subject concerned, consisting in assessing the content of opinions, thoughts, ideas and facts, as well as the form of dissemination and representation thereof, which the media or the publisher intends to disseminate in the future or which have already been made available in the past, primarily for political reasons, with the aim of modifying or completely negating such opinions, thoughts, ideas or facts or the form of dissemination and representation thereof. “The nature of direct censorship may also be an interference with the freedom of expression consisting of a prohibition of dissemination*

*or an additional prohibition of dissemination of a certain type of information that has been disseminated in the past without restrictions for reasons relating to the subject concerned or the content of the disseminated ideas, thoughts that the subject concerned has disseminated or wanted to disseminate in the past or at a given moment, unless the prohibition or reasons are justifiable under the Constitution or the Convention, or the prohibition or reasons are politically motivated and the subject concerned or the certain type of information is found to be politically “inappropriate.”*<sup>69</sup>

The restriction of the right to information shall be subject to the formal and material conditions laid down in Article 26, par. 4 of the Constitution, which must be interpreted restrictively. In other words, the right to information may be restricted only by law, i.e. not on the basis of so-called implementing legislative acts, and provided that the exhaustively defined conditions laid down in the aforementioned article of the Constitution are met. The justifiability of the restriction of access to information must be demonstrated in a convincing manner, given that it is the right which reinforces the *„spirit of tolerance in a democratic society“*,<sup>70</sup> and, at the same time, such re-

68 The legal definition of censorship was part of the legal order from 28 June 1968 to 25 September 1968. Cf. online at: <https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1966/81/19680628.html>.

69 From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. US 307/2014, of 18 December 2014, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

70 From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: III. US 385/2012, dated 21 January 2014, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

striction must be demonstrably necessary in a democratic society for the protection of the rights and freedoms of others, the security of the state, public order, public health or morals.<sup>71</sup> The Convention extends these grounds by the protection of the so-called preservation of authority and ensuring the impartiality of the exercise

of judicial power. The public interest, on the basis of which the right to information on the exercise of public authority is to be restricted, is determined under the supervision of the Constitutional Court and the ECHR and includes the answer of the court to the question whether the restriction is lawful, legitimate and necessary.<sup>72</sup>

### Public statements by politicians in the context of constitutional and international law protection of the right to information

In November 2023, information appeared in the media about the alleged decision of the Prime Minister to review the permissions of selected media to enter the premises of the Office of the Government of the Slovak Republic. Specifically, they were journalists and editors from the Markíza television station, Denník SME daily, Denník N daily and the web portal aktuality.sk.<sup>73</sup> The above statement should be seen in the light of the Prime Minister's repeated<sup>74</sup> negative signal to the selected media. The Office of the Government of the Slovak Republic has not issued any specific legal act by which the Office or the Prime Minister would restrict the right of individuals to information, or the right of the media to disseminate information, or their jour-

nalistic freedom. Nevertheless, the content of such statements and the public presentation of intentions to restrict human rights and fundamental freedoms are extremely disturbing, not only in relation to similar statements in recent years, but also in relation to the reluctant reaction of other political representatives in Slovakia.<sup>75</sup>

Should the Government of the Slovak Republic or members of the National Council formalize their intention to restrict the access of the media selected by them to information about their activities in a specific legislative act of power in the future, they should take into account several basic constitutional requirements to justify such intervention.

<sup>71</sup> Cf. KRUNKOVÁ, A., In: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic*. Comment. Volume I. Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 356.

<sup>72</sup> From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. ÚS 174/17, dated 24 January 2018, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

<sup>73</sup> Information is available online at: <https://www.ta3.com/clanok/910565/hezelani-hostia-na-urade-vlady-niektore-media-su-k-nam-nepriatelske-obmedzime-im-pristup-oznamil-fico>

<sup>74</sup> Compare the politicians' statements in 2022, available online for example at: <https://domov.sme.sk/c/22842547/fico-robot-matovic-igor-utoky-novinari.html>.

<sup>75</sup> Cf. online at: <https://www.sme.sk/minuta/23244121/sef-hlasu-pellegrini-sa-nevyjadril-k-zakazu-vstupu-novinarov-do-budovy-urady-vlady?ref=mnt>.

The government representatives and members of the National Council should be responsibly aware of their constitutional obligation to ensure the protection of the right to disseminate and receive information, which is based on the so-called principle of pluralism, before making any public statement evaluating the activities of the media from their own subjective point of view. According to the interpretative opinions of the ECHR and the Constitutional Court, they are obliged by virtue of their position of power to refrain from interfering with the so-called enhanced level of protection of journalists and shall not give signals by their public statements of their intentions to restrict journalists' freedom, for example, by denying them access to the building of the Government Office of the Slovak Republic. This would undoubtedly be a restrictive measure, and the ECHR addresses a clear obligation to the High Contracting Parties to the Convention to refrain from adopting such measures. They do not contribute to the development of so-called political debate on matters of public interest. Preliminary prohibitions which appear legitimate in the context of the publicly stated intentions in relation to the justifiability of prohibiting journalists from entering premises, in which public authorities are based and where they inform the public about their activities, must under no circumstances constitute a justifiable interference with the journalists' freedom of expression and the right of individuals to re-

ceive information. Representatives of these bodies and political figures shall not select the spectrum of society or media subjects to which they wish to report on the performance of the public service. On the contrary, they are obliged to inform all citizens in accordance with the universal nature of the right to receive information.

The legitimacy and other qualified conditions of the restriction of the right to disseminate and receive information in the form of a law should be reviewable under all circumstances by the Constitutional Court in the context of assessing the compatibility of such a restriction with the Constitution. The determination and specification of the public interest, based on which the right to information on the exercise of public authority is to be restricted, is also subject to supervision by the judicial authorities – the Constitutional Court and the ECHR. Moreover, if government officials prevented selected journalists from entering the premises of the Office of the Government of the Slovak Republic, the basic constitutional condition for restricting the right to information, which is the requirement for adopting a generally binding legal standard with the force of law, would not be fulfilled, either. Politically motivated interference in the Constitutionally guaranteed freedom of dissemination and reception of information may constitute a violation of the prohibition of censorship pursuant to Article 26, par. 3 of the Constitution. The identification of such motives is directly linked to the

public statements of public officials, who evaluate the activities of the media in the context of their own political interests and attitudes. The justification and justifiability of an interference with the freedom to disseminate information must always be demonstrated in a convincing manner, and such an extraordinary interference with fundamental freedoms must not be abused for the political goals of specific political parties or their marketing.<sup>76</sup>

Despite the intentions of the members of the legislature and the government representatives, which have been presented verbally and repeatedly in advance, no conclusions can be drawn at the moment regarding the unconstitutionality of their actions. This is because no act of power<sup>77</sup>, has been issued by a public authority to restrict the right of journalists to disseminate information and the right of individuals to have access to it. Given the intensity and recurrence of extremely worrying public statements, or the real threat that the holders of public power could in the future enact legislation that could cause such an interference with these rights, it is undoubtedly appropriate to highlight and make visible the positions of the watchdogs of constitutionality and the observance of international human law standards - the Constitu-

tional Court and the ECHR - and to remind the legislators and the members of the government of these positions. Last but not least, the power-mongering and populist statements used by politicians to attack the activities of media can have a negative impact on the implementation of the principles of pluralism in the society-wide debate on matters of so-called public interest.

The Centre evaluates the public statements negatively also in the context of intensifying legislative activity of the European Union calling for strengthening the protection of journalists in its Member States. „*Media freedom and pluralism are an important part of democracy and the fundamental rights of European Union citizens. True democracy is not possible without a free media checking those in power. The media is a key pillar of the system of checks and balances that underlines the democratic order. Therefore, the decline into an authoritarian form of ruling often begins with an attack on independent media.*“<sup>78</sup>

It is evident from the ECHR's jurisprudence and interpretation that the functions of a free media and a functioning free civil society are intertwined. According to the court's interpretation, the activity of the me-

<sup>76</sup> Cf. the interpretative grounds from the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: II. ÚS 307/2014, dated 18 December 2014, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

<sup>77</sup> Cf. online at: <https://dennikn.sk/3687850/mediam-nezakazali-vstup-na-urad-vlady-fico-nebude-odpovedat-markize-denniku-n-sme-a-aktualitam/>.

<sup>78</sup> European Council/Council of the European Union: Media freedom in the EU; available online at: <https://www.consilium.europa.eu/sk/policies/media-freedom-eu/>.



dia includes the active creation of a space for public debate. These activities not only involve the media and professional journalists: NGOs are involved to a great extent, too. According to the ECHR, civil society makes an important contribution to the development of debates on matters of public interest. In the next section of this chapter of the Report, the Centre discusses the sig-

nificance and potential impact of public statements made by public officials about the activities of NGOs. If implemented, they could have a significant impact on the guarantees of protection of freedom of association in the context of the activities of non-profit sector entities, including the NGOs, which government representatives describe as being political.<sup>79</sup>

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<sup>79</sup> Cf. BOKOVÁ, T.: *Svoboda médií jako právní koncept. (Media freedom as a legal concept.) Jak definuje ESPLP "médiu"?* (How does the ECHR define „media“?), In: *Časopis pro právní vědu a praxi* (Journal of Legal Science and Practice), No. 4, 2022, p. 671.

## 2.2 On the content of constitutional and international law guarantees of freedom of association

Guarantees to protect freedom of association are an essential and unquestionable part of any democratic society. Civil society also acts as an intermediary between the state and the individual, thus contributing to democratising debate and building consensus on so-called matters of public interest. The democratisation of society reaches the desired level only if individuals are not mere

passive recipients of democratic principles, but active participants in implementation thereof and also participants in debates on matters of public interest.<sup>80</sup> The quality of democracy is directly proportional to the way in which individual legal orders regulate freedom of association and the way in which public authorities “behave” in relation to the guarantees of its legal protection.<sup>81</sup>

### Roles and functions of civil society and the non-profit sector

Civil society should offer a space for the development of specific interests and self-realisation of individuals, or their free choices. It should also create space for individuals to advance their own interests in the public interest.<sup>82</sup> The external guarantor of the legal protection of the freedom of association is the Constitution and, together with it, the relevant provisions of international treaties by which the Slovak Republic is bound. “*The state of democracy depends*” crucially on the constitutional guarantees of

this freedom, “*because it ensures the bridging of the imaginary gap between the state and the individual.*”<sup>83</sup> “*The essence of the right of association is the constitutional guarantee to the possibility to establish legal entities for the purpose of joint promotion of the interests of citizens without interference by the state power.*”<sup>84</sup> The promotion of common or collective interests constitutes one of the essential elements of the freedom of association.<sup>85</sup>

80 Cf. In: HUSSEINI, F., BARTOŇ, M., KOKEŠ, M., KOPA, M. et al: *Listina základných práv a svobod. (Charter of Fundamental Rights and Freedoms.) Comment.* 1st edition. Prague: C. H. Beck, 2021, p. 628.

81 Cf. paragraph 100 of the reasoning of the ECHR judgment in *Moscow Jehovah's Witnesses v. Russia*, 10 June 2010, Complaint No.: 302/02, also available online at: <https://hudoc.echr.coe.int/fre?i=001-99221>.

82 ŠTULAJTEROVÁ, A., VRBICKÝ, L., BROZMANOVÁ GREGOROVÁ, A.: *Občianska spoločnosť a tretí sektor. (Civil society and the third sector.)* In: BROZMANOVÁ GREGOROVÁ, A. et al.: *Tretí sektor a mimovládne organizácie. (Third sector and NGOs.)* Matej Bel University in Banská Bystrica, Faculty of Education, 2009, p. 8.

83 From the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: PL. ÚS 11/2010, dated 23 November 2011, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

84 KRUNKOVÁ, A., In: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic. Comment. Volume I.* Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 384.

85 Paragraph 40 of the reasoning of the judgment of the ECHR in *Sidiropoulos v Greece*, 10 July 1998, Complaint No.: 26695/95, also available online at: <https://hudoc.echr.coe.int/eng?i=001-58205>.

According to the interpretative conclusions of the ECHR, NGOs enjoy a higher level of legal protection right after journalists and opposition MPs, provided that „they act in matters of public interest and if they fulfil the function of the so-called watchdogs of democracy.“<sup>86</sup> In the view of the Committee of Ministers of the Council of Europe, the activities of NGOs constitute „an essential contribution to the development and implementation of democracy and human rights, in particular by raising social awareness of participation in public life, increasing the transparency and accountability of public authorities, and an equally important contribution to cultural life and social well-being in a democratic society.“<sup>87</sup> In the opinion of the ECtHR, the association of individuals in order to achieve publicly beneficial objectives is to a large extent the manifestation of their participation in the democratisation of society.<sup>88</sup> This Court interprets the nature of associations as part of human rights and fundamental freedoms and as a means of implementing and deepening the so-called principle of pluralism in the context of the freedom to freely dis-

seminate democratic ideas and opinions. Therefore, freedom of association is closely linked to freedom of expression.<sup>89</sup> If the dissemination of evaluative opinions on matters of public interest, i.e. political public debate, results in tension, we can still speak of support for the implementation of pluralism, the basic building block of democracy. State authorities, or public authorities, are obliged to create space for tolerant political debate and to eliminate the causes of tension in society and not the other way around, to contribute to the escalation of these social tensions through their actions.<sup>90</sup>

The freedom of association is based on the implementation of the principles of the separation of free associations from the state, member self-governance without state interference and self-governance in relation to the internal structure with due regard to legal limits. The Constitutional Court has repeatedly stated in the past that Article 29, par. 1 of the Constitution obliges the state or the public authorities not to interfere with the freedom of association, i.e. with the fundamental freedom of every

86 SVÁK, J., GRÜNWARD, T.: *Národné systémy ochrany ľudských práv. (National systems for the protection of human rights) Volume I. Štruktúra systémov a ochrana politických práv. (Structure of systems and protection of political rights)* Bratislava: Wolters Kluwer, 2019, p. 261.

87 Recommendation CM/REC(2007)14 by the Committee of Ministers of the Council of Europe on the legal status of NGOs in Europe, dated 10 October 2007, also available online at: <https://www.osce.org/odihr/33742>.

88 Cf. paragraph 92 of the reasoning of the judgment of the ECHR in *Gorzelik and Others v. Poland*, dated 17 February 2004, Complaint No.: 44158/98, also available online at: <https://hudoc.echr.coe.int/fre?i=001-61637>.

89 Cf. paragraph 36 of the reasoning of the ECHR judgment in *Zhechev v. Bulgaria*, dated 21 June 2007, Complaint No.: 57045/00, also available online at <https://hudoc.echr.coe.int/eng?i=001-81209>.

90 Cf. paragraph 40 of the reasoning of the judgment of the ECHR in the case of *Ouranio Toxo and Others v. Greece*, dated 20 October 2005, Complaint No.: 74989/01, also available online at: <https://hudoc.echr.coe.int/eng?i=001-70720>.

individual.<sup>91</sup> An integral part of this freedom is not only the guarantee of the possibility of forming associations, but also the protection of their subsequent existence, i.e. the continuation of the activities they have started.<sup>92</sup> The decision-making and interpretative practice of the Constitutional Court clearly shows that the interpretation of the freedom of association emphasizes the political nature of the freedom of association and its separation from public power, or the exercise thereof.<sup>93</sup> The principle of separation from the State is also to be externally manifested by respecting the principle of equal access to public finance, to which, however, the associations cannot be „directly linked“<sup>94</sup>. The constitutional principles of freedom of association are complemented by the principle of voluntariness and common purpose.<sup>95</sup> Every individual, including foreigners, is the subject of the constitutional guarantee of freedom of association, despite the fact that the Act on the Association of Citizens uses the term „citizen“.<sup>96</sup>

Freedom of association is not absolute. However, it may only be limited by law and only if the so-called material conditions for permissibility of limitation are fulfilled. In addition to the condition of concluding that „the restriction is necessary to protect democratic society in the context of a pressing social need“ the restriction must pursue one of the specified purposes of the restriction, namely the preservation of the security of the state, the protection of public order, the prevention of crime or disorder, the protection of the rights and freedoms of others, and the protection of health and morals. Associations aimed at limiting or denying the rights of individuals because of their innate or other personal characteristics are not permitted. In a democratic society, associations that violate the Constitution or the law in order to achieve their own objectives are generally not allowed to operate. Finally, armed associations or associations whose object may contribute to an armed conflict are also illegal.<sup>97</sup>

91 See, for example, the reasoning of the resolution of the Constitutional Court of the Slovak Republic, file No.: III. ÚS 205/07, dated 21 August 2007, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia); or the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: PL. ÚS 11/2010, dated 23 November 2011, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

92 Cf. the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No.: PL. ÚS 3/2016, dated 14 June 2017, also available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

93 Cf. KRUNKOVÁ, A., In: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic. Comment. Volume I*. Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 385.

94 VALLOVÁ, J.: *Ústavné princípy združovacieho práva a význam participácie verejnosti. (Constitutional principles of the right of association and the importance of public participation.)* In: GAJDOŠOVÁ, M., KOŠČIAROVÁ, S.: *Združenia osôb ako prvok demokracie a sloboda združovania (Associations of persons as an element of democracy and freedom of association)*. University of Trnava, Faculty of Law, 2019, p. 140. Also available online at: <https://www.truni.sk/sites/default/files/uk/f000227.pdf>.

95 Ibid, p. 137.

96 Cf. KRUNKOVÁ, A., In: OROSZ, L., SVÁK, J. et al.: *Constitution of the Slovak Republic. Comment. Volume I*. Bratislava: Wolters Kluwer SR s. r. o., 2021, p. 386.

97 Ibid, p. 395.

Despite the fact that the terms “third sector” or “non-governmental organizations” have been established in Slovak society since the 1990s, the legislator has neither defined them, nor specified their content.<sup>98</sup> Act No. 346/2018 on the Register of Non-Governmental Non-Profit Organisations, and on Amendments and Supplementations to Certain Acts, as amended by Act No. 390/2019 Coll., in effect from October 2020, can be partially considered as a certain formal source of legal regulation of the non-profit sector.<sup>99</sup>

In the past, the Committee of Ministers of the Council of Europe has referred to NGOs as voluntary self-governing bodies or organisations set up to pursue essentially the non-profit-making objectives of their founders or members.<sup>100</sup> „The core activities of NGOs focus on the values of social justice,

*human rights, democracy and the rule of law. In these areas, the aim of NGOs is to promote causes of general interest and improve people’s lives.*“<sup>101</sup> Public authorities and NGOs should work together in society in accordance with the principles of participation, trust, accountability, transparency and independence „In order to ensure that the essential role of NGOs in political decision-making is enshrined in a non-discriminatory manner, a supportive environment must be created. “The conditions of a supportive environment include the rule of law, respect for fundamental democratic principles, political will, favourable legislation, clear and precise procedures, long-term support and resources for a sustainable civil society, and space for dialogue and cooperation.”<sup>102</sup>

98 Cf. BROZMANOVÁ GREGOROVÁ, A.: *Základná charakteristika tretieho sektora a mimovládnych organizácií. (Basic characteristics of the third sector and NGOs.)* In: BROZMANOVÁ GREGOROVÁ, A. et al.: *Tretí sektor a mimovládne organizácie. (Third sector and NGOs.)* Matej Bel University in Banská Bystrica, Faculty of Education, 2009, p. 90. Also available online at: [https://www.dobrovolnickecentra.sk/images/stories/files/18\\_kniha\\_treti\\_sektor.pdf](https://www.dobrovolnickecentra.sk/images/stories/files/18_kniha_treti_sektor.pdf). Alternatively, cf. also MAGUROVÁ, Z., MAGUROVÁ, H.: *(Ne)ziskové právnické osoby. ((Non-)profitable legal entities.)* Institute of State and Law, Slovak Academy of Sciences, 2018, pp. 27-30, also available online at: <https://usap.sav.sk/documents/publications/magurova-z-magurova-h-ne-ziskove-pravnicke-oso-by-2018.pdf>.

99 Cf. HMÍŘOVÁ, L.: On the legal regulation of non-profit sector entities. Available online In: <https://www.epi.sk/clanok-z-titulky/k-pravnej-uprave-subjektov-neziskoveho-sektora-akt.htm>.

100 From Recommendation CM/Rec(2007) 14 of the Committee of Ministers of the Council of Europe, also available online at <https://www.osce.org/odihr/33742>.

101 Code of Good Practice for Civil Participation in the Decision-Making Process, adopted at the Conference of International NGOs on 1 October 2009, p. 5, also available online at: <https://rm.coe.int/16802eedd6>.

102 Ibid, p. 6.

## The importance of the 2% of personal and corporate income tax for the activities of the non-profit sector

46 „The most important instrument of indirect support of intergovernmental organisations is the 2% of personal and corporate income tax, which is regulated by the Income Tax Act. Since 2001, this Act has allowed individuals to give a percentage of the tax they pay to a public purpose. The Income Tax Act defines the purposes for which the 2% can be used as follows: protection and promotion of health, prevention, treatment, re-socialisation of drug addicts in the field of health and social services, promotion of sport of children, youth and disabled citizens, provision of social assistance, preservation of cultural values, promotion of education, protection of human rights, protection and creation of the environment, science and research.“<sup>103</sup> NGOs can be divided into several groups according to their mission or the objectives they aim to achieve through their activities. „A separate and very similar group of NGOs are the “watchdogs”, organisations monitoring compliance with the law, human rights and ethical rules over a

long period of time. They examine individual cases, publish their findings and propose not only accountability for specific actions but also systematic solution.“<sup>104</sup>

According to the initiators of the petition called “Don’t take away our 2 percent” as a response of the non-profit sector to the public statements of the Minister of Labour, Social Affairs and Family of the Slovak Republic (the Centre’s assessment of these is discussed below), in 2022, “almost 17 thousand organisations received 2 percent of personal and corporate income tax, while the non-profit sector was supported in this way by more than 900 thousand citizens. The total amount by which companies and individuals supported the work of non-profit organisations was almost 88 million euros, of which 43 million were contributions from citizens.“<sup>105</sup>

Public statements presenting the intention to relativise or even restrict the possibility to donate 2% of personal income tax to NGOs, politically disguised by the intention to

103 ADOLFOVÁ, I.: Funding of non-governmental organisations. In: BROZMANOVÁ GREGOROVÁ, A. et al.: *Tretí sektor a mimovládne organizácie. (Third sector and NGOs.)* Matej Bel University in Banská Bystrica, Faculty of Education, 2009, p. 90. Also available online at: [https://www.dobrovolnickecentra.sk/images/stories/files/18\\_kniha\\_treti\\_sektor.pdf](https://www.dobrovolnickecentra.sk/images/stories/files/18_kniha_treti_sektor.pdf).

104 HIRT, B.: Third sector in Slovakia after 1989. In: BROZMANOVÁ GREGOROVÁ, A. et al.: *Tretí sektor a mimovládne organizácie. (Third sector and NGOs.)* Matej Bel University in Banská Bystrica, Faculty of Education, 2009, p. 46. Also available online at: [https://www.dobrovolnickecentra.sk/images/stories/files/18\\_kniha\\_treti\\_sektor.pdf](https://www.dobrovolnickecentra.sk/images/stories/files/18_kniha_treti_sektor.pdf)

105 Cf. online at: <https://domov.sme.sk/c/23246761/heberte-nam-dve-percenta-vyzyvaju-vladu-neziskove-organizacie.html>.

promote the freedom of choice between donating the 2% to parents – retirees or to non-profit organisations, may undoubtedly have a negative impact on the positive side<sup>106</sup> of the freedom of association based on the possibility to freely associate for the purpose of promoting collective interests. This is despite the legal interpretation of the Constitutional Court, which the Centre considers polemical, overgeneralizing and static, that the establishment of non-profit organizations is not an example of the “right of association” within

the meaning of Article 29 of the Constitution.<sup>107</sup> The intended change in the legislation, evaluated by the Centre in the next subchapter, could have a significantly negative impact not only on the non-profit sector as the result of the constitutional freedom within the meaning of the above-mentioned article of the Constitution, but also on NGOs, irrespective of the nature and legal force of the provisions, based on which the exercise of the rights associated with the establishment, formation and operation of NGOs may be derived.

The intention of the government officials, presented as charitable, to discuss a possible intent to restrict the activities of so-called non-governmental organization labeled as political

In November 2023, statements were made in the media by government representatives about their intention to modify the rules of the 2% of personal and corporate income tax, an important instrument of indirect support for NGOs, in the framework of a change in the legal regulation of the sources of payment of the so-called parental pension.<sup>108</sup> The change was supposed to consist of the legislative introduction of a choice for individuals and legal entities to decide whether to

donate 2% of their income tax to the so-called non-profit sector or to their parents at retirement age. The Deputy Chairman of the Government Council for Non-Governmental Organisations and the Chairman of the Chamber of Non-Governmental and Non-Profit Organisations<sup>109</sup>, reacted to this intention by pointing out the risks of adopting the new legislation, which would be reflected in a significant decrease in the sources of funding of NGOs. He also pointed out that

<sup>106</sup> See the reasoning of the ruling of the Constitutional Court of the Slovak Republic, file No. PL. ÚS 10/08, of 3 February 2010, available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

<sup>107</sup> Cf. legal sentences from the ruling of the Constitutional Court of the Slovak Republic, file No. PL. ÚS 11/2010, of 23 November 2011, available online at: [https://www.ustavnysud.sk/rozhodovacia\\_cinnost/rozhodnutia](https://www.ustavnysud.sk/rozhodovacia_cinnost/rozhodnutia).

<sup>108</sup> Cf. media coverage, online at: <https://e.dennikn.sk/minuta/3664869>, also at: <https://index.sme.sk/c/23241203/erik-tomas-rodicovsky-bonus-dve-percenta.html>, or at: <https://sita.sk/vofinanciach/pracujuci-maju-dat-podla-tomasa-dve-percenta-z-dani-nadalej-mimovladkam-nie-svojim-rodicom-na-penzie/>; or at: <https://ekonomika.pravda.sk/ludia/clanok/687761-tomas-priviera-kohutik-mimovladkam-vyberte-si-komu-date-svoje-peniaze-odkazuje-ludom-minister/>.

<sup>109</sup> Cf. media coverage, online at: <https://e.dennikn.sk/minuta/3665250>.

the government officials themselves had not discussed their intention with the above-mentioned government advisory body. As the Centre has already mentioned above, NGOs also reacted to the presented intention to change the legislation by publishing a petition entitled “*Don’t take away our 2 percent*”.<sup>110</sup>

The Minister of Labour, Social Affairs and Family eventually abandoned the publicly presented intention and kept in force the established method of payment of the so-called parental pension through the system of social contributions of employees,<sup>111</sup> yet, in a modified mechanism of the funding sources of this social allowance to retired parents.<sup>112</sup> The Centre believes that he did so primarily due to the significant level of negative criticism directed towards him, not only from the media and NGO sector representatives, but also from representatives of the political opposition.

If adopted, the original intention could have an undoubtedly negative impact on the freedom of association and on the activities of NGOs, including those whose object and purpose is to control the exercise of public authority. The ECtHR (European Court for Human Rights) stresses to the High Contracting Parties to the Convention a rather clear

call to comply with the obligation to guarantee increased legal protection to the organisations of the so-called non-governmental sector, as they constitute part of the guarantees of protection and promotion of human rights and fundamental freedoms and, at the same time, a means of implementing and strengthening the principle of pluralism in the context of the freedom to disseminate democratic ideas and opinions. The obligation of normative guarantees of enhanced legal protection applies in particular to already “defined” so-called “*watchdog*” organisations. With regard to the above, the Centre identifies the substantial interpretation of the freedom of association from the decision-making practice of the Constitutional Court, according to which not only the protection of the existence of already established organisations, but also the guarantee and support of the continuation of their already started activities by the state are its essential characteristics. In other words, representatives of public authorities should refrain from any action that could have a negative impact on the activities of NGOs or on the formation of such organisations, regardless of the subject of their activities. The above statement does not apply absolutely. The state shall be entitled to interfere with the freedom of association, however only if the le-

<sup>110</sup> The content of the petition and its objectives is available online at: <https://www.mojapeticia.sk/campaign/heberte-nam-2-percenta/b7423142-b807-46fa-bd92-b5c2aa9fc79e>.

<sup>111</sup> Cf. online at: <https://ekonomika.pravda.sk/ludia/clanok/693662-dve-velke-davky-aj-vyssie-penzie-ake-zmeny-cakaju-dochodcov-v-roku-2024/>.

<sup>112</sup> Cf. online at: <https://ekonomika.pravda.sk/ludia/clanok/690853-dochodcov-cakaju-na-buduci-rok-vyrazne-zmeny-k-penziam-dostanu-dve-velke-davky-navyse/>



gal standard hypotheses of so-called legitimate grounds for interference, related primarily to the so-called illegal object of the activity of associations, are fulfilled. Nor can we speak of an illicit object of activity in the case of so-called non-governmental organisations described by government officials as political, whose aim is to promote pluralism in the context of the free dissemination of democratic ideas and opinions or to control the exercise of public authority. Restrictions on freedom of association must under no circumstances serve the aims of political populism or the objectives of particular political parties.

Public statements by a government representative about the intention to adopt legislation that could have a significant negative impact on funding and thus on the activities of NGOs, and the failure to discuss such an intention with the government advisory body, are undoubtedly not in line with the recommendation of the Confederation of NGOs. It calls for public authorities and NGOs to work together in society in accordance with the principles of participation, trust, accountability, transparency and independence. State authorities should be aware of their direct responsibility for co-creating a supportive environment for the work of NGOs.

At the same time, government representatives, or in general representatives of public authorities and politicians – members of the legislature, are obliged to respect the princi-

ple of equal access of NGOs to the so-called public sources of funding. This means that they must not, in the context of their power and their own political party's interests, choose organisations which they will favour or, on the contrary, disadvantage in their access to these resources, if these are in a comparable position to so-called "politically convenient organisations". Otherwise, their actions could result in an impermissible restriction of freedom of association, which is subject to strict constitutional conditions and obligations under international treaties for the protection of human rights and fundamental freedoms. Even public statements by public authorities indicating possible, even indirect, restrictions on the sources of funding for the non-profit sector can have a negative impact on the activities and reputation of these entities, including the creation of a negative public opinion about the activities of NGOs, in particular those the primary activity of which is the control of the exercise of public authority.

The non-profit sector, including the entities monitoring the exercise of public authority and contributing to the implementation of so-called democratic principles, is an important part of public politics. The activities of the entities in this sector must not be restricted by the standard-setter. On the contrary, the state, through both its legislative and executive powers, should promote and deepen the legal guarantees of its legal protection. Considering the negative signals that the Cen-

tre has noted in 2023, it is advisable that the public authorities implement the recommendations addressed to them, which will be duly monitored and evaluated in the future.

## Recommendations

The Centre recommended<sup>113</sup>:

- 1 To the members of the Government of the Slovak Republic to refrain from any legislative or other initiatives that could negatively restrict the freedom to disseminate information as well as the freedom to receive it;
- 2 To the Members of the National Council of the Slovak Republic to refrain from any legislative initiatives that could negatively restrict the freedom to disseminate information as well as the freedom to receive it;
- 3 To members of the Government of the Slovak Republic and members of the National Council of the Slovak Republic to behave respectfully towards journalists during their public appearances and not to contribute to the creation of a negative image of free and democratic media;

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<sup>113</sup> In addition to the recommendations contained in the **2023 Rule of Law Report**, where the Centre recommends:

- **To State authorities with a nationwide competence** to focus on complementing legislative measures aimed at increasing the support and safety of journalists and human rights defenders, as well as civil society organisations, by taking further measures to raise awareness and information about the work of human rights defenders, as well as to better monitor cases of threats.
- **To all public figures** to refrain from unjustified attacks and threats against civil society, human rights defenders and media.
- **To the Ministry of Labour, Social Affairs and Family of the Slovak Republic and other public bodies administering grant schemes for civil society organisations (CSO)** to ensure that CSO funding available from grant schemes administered at the national level is equally accessible to all CSOs, regardless of the focus of their activities.
- **To the Ministry of Culture of the Slovak Republic** to complete without any undue delay the preparation and adoption of the Constitutional Act on Enhancing the Safety of Journalists, as well as to extend the participatory process of drafting the Constitutional Act.
- **To the proponents of the draft legislative measures** – to focus on strengthening legislative measures aimed at increasing the support and safety of journalists and human rights defenders, as well as civil society organisations, by adopting additional measures aimed at raising awareness and information about the work of human rights defenders, and better monitoring of cases of threats.

- 4 To the members of the Government of the Slovak Republic to refrain from any legislative or other initiatives that could negatively restrict the activities of the non-profit sector, including the so-called political NGOs;
- 5 To the members of the National Council of the Slovak Republic to refrain from any legislative initiatives that could negatively restrict the activities of the non-profit sector, including the so-called political NGOs;
- 6 To the members of the Government of the Slovak Republic and Members of the National Council of the Slovak Republic to behave respectfully towards representatives of the non-profit sector during their public appearances and not to contribute to the creation of a negative image of their activities.



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### 3. Identified problems faced by refugees and migrants in the Slovak Republic

We keep monitoring the challenges faced by those fleeing the international armed conflict in Ukraine. We aim to raise awareness of the issue of refugees and migration and thus respond to the negative and stereotypical perceptions that prevail in society and are often reinforced by the rhetoric of some public figures.

This section of the Report builds on previous monitoring of the challenges faced by those fleeing the international armed conflict in Ukraine. The shortcomings identified by the Centre in the 2022 Report,<sup>114</sup> persisted in 2023<sup>115</sup> and this chapter also points out other problems faced by Ukrainian refugees in the Slovak Republic during this period. At the same time, it aims to raise awareness of the issue of refugees and migration and thus respond to the negative and stereotypical perceptions that prevail in society

and are often reinforced by the rhetoric of some public figures.

The chapter uses the terms refugee<sup>116</sup> and migrant,<sup>117</sup> and the Centre stresses that, despite frequent confusion, the terms are not identical.<sup>118</sup> The generally applicable definition of refugee is set out in the 1951 UN Convention Relating to the Status of Refugees. The term migrant is not a legal term; its definition is provided by various international organisations mainly for their own work.<sup>119</sup>

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<sup>114</sup> *Report on the Observance of Human Rights, including the Principle of Equal Treatment, 2022*, Chapter 4, Fundamental Rights and Freedoms of Persons fleeing the International Armed Conflict in Ukraine, available at: <https://www.snslp.sk/nasa-cinnost/monitoring-a-reporting/sprava-o-dodrzavani-ludskych-prav/>

<sup>115</sup> Office of the Public Defender of Rights, comment for the Denník SME daily on the article: "Compulsory school attendance does not apply to children from Ukraine with temporary residence. A lost generation may grow up here", 2023, available at: <https://bit.ly/3xSr0v8>

<sup>116</sup> The UN Convention relating to the Status of Refugees defines a refugee as a person who is outside his or her own country owing to a well-founded fear of being persecuted for racial, religious or national reasons or because he or she belongs to a particular social group or holds certain political opinions. This is a person who is unable to enjoy the protection of his or her State or refuses to accept it as a result of the above concerns; or, it is a stateless person outside the State of his or her former residence as a result of such events, who is unable or unwilling to return there due to the above-mentioned concerns.

<sup>117</sup> "However, Slovak law does not use the term migrant, but foreigner. International migration can take different forms. The simplest division of international migration is into legal and illegal. Legal migration means entering a country (crossing a border) with valid documents, a visa or the appropriate residence permit. Illegal migration means entering a country without valid documents, a valid visa or a residence permit." Available at: <https://www.employment.gov.sk/sk/informacie-cu-dzincov/zakladne-pojmy/>

<sup>118</sup> UNHCR Opinion: "Refugee" or "Migrant" – Which is correct?, available in English at: <https://unis.unvienna.org/unis/en/pressrels/2015/unisinf513.html>

<sup>119</sup> The International Organisation for Migration (hereinafter "IOM") defines a migrant as a person who, for whatever reason, has left his or her home and is living temporarily or permanently outside his or her place of habitual residence in the same country (internal migrant) or across the border (international migrant)

## 3.1 General Background and Legal Framework

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According to the Section 29, par. 1 of Act No. 480/2002 Coll. on Asylum, and on Amendments and Supplementation to Certain Acts, as amended (hereinafter referred to as the “Asylum Act”): *„Temporary refuge shall be granted for the purpose of protecting foreigners from war, endemic violence, the consequences of a humanitarian disaster or persistent or massive human rights violations in their country of origin (...).“* According to the Section 29, par. 2 of the Asylum Act: *„The Government shall, in accordance with a decision of the Council of the European Union, declare the provision of temporary refuge and shall also determine the beginning, conditions and termination of the provision of temporary refuge and shall allocate funds to cover the expenses related to the provision of temporary refuge; the Government may declare the provision of temporary refuge without a decision by the Council of the European Un-*

*ion.“* By Resolution No. 144 of 28 February 2022, the Government of the Slovak Republic declared the provision of temporary refuge to Ukrainian nationals and their family members.<sup>120</sup>

The Government of the Slovak Republic declares the provision of temporary refuge in accordance with the decision of the Council of the European Union (hereinafter referred to as “the Council of the EU”). The declaration of temporary refuge can also be made without such a decision; this possibility has been added to the Asylum Act by an amendment effective since 26 February 2022.<sup>121</sup> The declaration of the Government of the Slovak Republic constitutes a prerequisite for the initiation of the procedure for granting temporary refuge.

Implementing Decision of the Council (EU) 2022/382 of 4 March 2022 established the fact that there has been a mass influx of<sup>122</sup> displaced persons from Ukraine within the meaning of Art. 5 of Council Directive

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120 Resolution of the Government of the Slovak Republic No. 144 of 28 February 2022 on the Proposal to declare the provision of temporary refuge pursuant to Section 29, par. 2 of Act No. 480/2002 Coll. on Asylum, and on Amendments and Supplementation to Certain Acts, as amended, to citizens of Ukraine and their family members.

121 Act No. 50/2022 Coll. on Certain Measures in View of the Situation in Ukraine came into effect on 26 February 2022. The aim of the Act was to define a mass influx of foreigners as an event allowing for the declaration of an extraordinary and crisis situation in the Act on the Civil Protection of the Population; to allow the Government to declare the provision of temporary refuge without a decision of the Council of the European Union in the Asylum Act; to modify the clauses relating to the provision of temporary refuge in the territory of the Slovak Republic; and in the Cybersecurity Act to prevent the spread of harmful content on the Internet through the new instrument of “blocking”. Later, Act No. 92/2022 Coll. on Certain Other Measures in View of the Situation in Ukraine was adopted, and finally the third act – “Lex Ukraine 3” – Act No. 199/2022 Coll. on Certain Measures in the Social Sphere in View of the Situation in Ukraine was adopted. This Act deals in particular with the social sphere of refugees’ lives.

122 Both national documents and official translations of European documents use the word “influx” (“prílev”). Unless such documents are cited in this document, this chapter uses the more appropriate term “arrival”

2001/55/EC<sup>123</sup> 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 (hereinafter “Council Directive 2001/55/EC”) and temporary protection has been introduced. This is the first time that Council Directive 2001/55/EC has been activated.

The persons who may apply for temporary refuge are specified in Government Resolution No. 185 of 16 March 2022 on the Proposal for the declaration of temporary refuge in accordance with Council Implementing Decision (EU) 2022/382 of 4 March 2022. In accordance with Section 31, par. 1(c) of the Asylum Act, persons with Ukrainian citizenship and family members of a Ukrainian citizen or a person who was granted international protection or equivalent national protection in Ukraine before 24 February 2022 (if the family member resided in Ukraine before 24 February 2022) may apply for temporary refuge. At the same time, the spouse of such a person, minor children or minor children of the spouse of such a person, parents of a child under the age of 18 who is a citizen of Ukraine and other close relatives who have lived in the same household with a citizen of Ukraine or with a person

granted protection and have been wholly or partially dependent on his or her relative may apply for temporary refuge. Persons who do not have Ukrainian citizenship but were granted permanent residence in Ukraine before 24 February 2022 and who are unable to return to their home country under safe and stable conditions may also apply for temporary refuge. The Asylum Act defines a temporary refugee as an foreigner who has been granted temporary refuge by the Ministry on the basis of a decision of the Government of the Slovak Republic.<sup>124</sup>

By adopting Council Implementing Decision (EU) 2023/2409 of 19 October 2023 extending the temporary protection introduced by Implementing Decision (EU) 2022/382, the temporary protection was extended until 4 March 2025. At its meeting held on 21 February 2024, the Government of the Slovak Republic adopted Resolution No. 102/2024, pursuant to which Government Resolution No. 185 of 16 March 2022 on the Proposal to declare the provision of temporary refuge in accordance with Council Implementing Decision (EU) 2022/382 of 4 March 2022 was amended. According to the approved proposal, the provision of temporary refuge has been extended for another year, until 4 March 2025.

<sup>123</sup> Art. 5 of Council Directive 2001/55/EC defines: “The existence of a mass influx of displaced persons shall be established by a Council Decision adopted by a qualified majority on a proposal from the Commission, which shall also examine any request by a Member State that it submit a proposal to the Council.”

<sup>124</sup> Section 2(j) of the Asylum Act.

Since the beginning of the armed conflict in Ukraine in February 2022, more than 1.9 million Ukrainians and other third-country nationals have arrived in Slovakia. Approximately 135,000 of them have requested temporary refuge here. It was granted to 114,000 persons together with a tolerated residence in the territory of the Slovak Republic, of whom almost 83% were women and children.<sup>125</sup>

In addition to temporary refuge, persons fleeing the armed conflict in Ukraine can also apply for international protection – asylum or subsidiary protection, including permanent or temporary residence if they meet the legal conditions for it. International protection and temporary shelter are different instruments affecting the status of an foreigner in the territory of the Slovak Republic, his/her rights and obligations.

Pursuant to Section 2(b) of the Asylum Act, asylum is the protection of an foreigner<sup>126</sup> from persecution on the grounds specified in an international treaty (the Convention relating to the Status of Refugees) or in a special provision (the Constitu-

tion). According to Section 2(c) of the Asylum Act, subsidiary protection is protection from serious harm in the country of origin. Once asylum is granted, the person acquires permanent residence in Slovakia.<sup>127</sup> A person who has been granted subsidiary protection is granted temporary residence.<sup>128</sup>

An asylum application must be examined within six months of its submission; this period may be extended under some circumstances specified in the law. In such cases, the time limit may be extended for a maximum of nine months in each case, however the application must be reviewed within 21 months of receipt.<sup>129</sup> An applicant for asylum or subsidiary protection may not enter into an employment relationship or similar employment relationship or engage in business, however the applicant is entitled to enter into an employment relationship six months after the commencement of the proceedings, except in those cases defined by law.<sup>130</sup>

Out of the total number of first instance decisions in the asylum procedures<sup>131</sup> concerning thirty-five nationals of Ukraine

125 UNHCR, Stylianos Kostas, Situation in Ukraine, Regional Refugee Response Plan (RRP), January-December 2024, Country chapter – Slovakia, p. 3.

126 According to Section 2, par. 404/2011 Coll. on the Residence of Foreigners, and on Amendments and Supplementation to Certain Acts (hereinafter referred to as the “Act on the Residence of Foreigners”): “A foreigner is anyone who is not a citizen of the Slovak Republic.”

127 Section 24, par. 1 of the Asylum Act.

128 Section 27a, par. 1 of the Asylum Act.

129 Section 20, par. 1 of the Asylum Act.

130 Section 23, par. 6 of the Asylum Act.

131 Section 3, par. 1 of the Act on Asylum: “The asylum procedure shall be initiated by the foreigner’s declaration at the competent police department that he or she applies for asylum or for subsidiary protection in the territory of the Slovak Republic, unless otherwise provided for in this Act.”



in 2023,<sup>132</sup> asylum was granted to one person and subsidiary protection was granted to twenty-three persons<sup>133</sup>.

The Centre considers temporary refuge to be the simplest form of protection for persons fleeing the armed conflict in Ukraine, in particular due to the absence of lengthy administrative procedures. Temporary refuge allows quick and unrestricted access to the labour market, to health care, as well as access to education. Although a number of European countries have faced challenges related to the mass arrival of foreigners into their territory in the past, it was after the mass

arrival of persons displaced from Ukraine as a result of the armed conflict that Council Directive 2001/55/EC was activated for the first time.<sup>134</sup> Pursuant to Section 29, par. 2 of the Asylum Act, the Government may declare the provision of temporary refuge without a decision of the Council of the European Union. The Slovak Republic should actively respond to the need to protect foreigners in its territory and in the event of war, endemic violence, the aftermath of a humanitarian disaster or persistent or massive human rights violations in the country of origin of such foreigners, declare the provision of temporary refuge.

### 3.1.1 Problematic aspects related to the operation of a trade

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The Centre points out that persons who have been granted temporary refuge cannot operate a trade in Slovakia because of the tolerated residence.<sup>135</sup>

A natural person may operate a trade in Slovakia either as a Slovak natural person if he or she has permanent residence in Slovakia or as a foreign

<sup>132</sup> Ministry of Interior of the Slovak Republic, Statistics, available at: <https://www.minv.sk/?statistika-20>

<sup>133</sup> As regards the cases of other Ukrainian nationals, the proceedings were discontinued or the decisions were negative.

<sup>134</sup> A. Brzozowski, EU should have used the Temporary Protection Directive before Ukraine, says Johansson, Euractiv, 2023, available in English at: <https://www.euractiv.com/section/europe-s-east/interview/eu-should-have-used-temporary-protection-directive-before-ukraine-says-johansson/>

Ylva Johansson regarding temporary refuge: "I also remember the refugee crisis we had in 2015 when we did not activate the Temporary Protection Directive, which was the wrong decision in my opinion."

<sup>135</sup> National Entrepreneurship Centre, Entrepreneurship of foreigners in Slovakia – who can and who cannot? Available at: <https://www.npc.sk/sk/ukrajina/podnikanie-cudzincov-na-slovensku-kto-moze-a-kto-nemoze/>

person if he or she has permanent residence outside Slovakia.<sup>136</sup> Act No. 455/1991 Coll. on Trade Business (the Trade Licensing Act) provides that a foreign person may operate a trade in Slovakia under the same conditions and to the same extent as a Slovak natural person.<sup>137</sup>

An foreigner who has been granted international protection in the form of asylum in Slovakia and has also acquired permanent residence may therefore operate a trade as a Slovak natural person.<sup>138</sup> An foreigner granted subsidiary protection obtains temporary residence and thus can operate a trade in Slovakia as a foreign person.<sup>139</sup>

The right to operate a trade (trade licence) arises for a natural person on the date of the trade notification to the trade licensing authority locally competent according to the residence<sup>140</sup> of the natural per-

son.<sup>141</sup> In this context, it should be emphasised that natural persons residing in a state which is not a member state of the EU, a contracting party to the Agreement on the European Economic Area or a contracting state of the Organisation for Economic Co-operation and Development, who have not been granted a residence permit in the territory of the Slovak Republic, may be granted a trade licence not sooner than being granted a residence permit in the territory of the Slovak Republic.<sup>142</sup> An foreigner who has been granted temporary refuge is granted a tolerated residence.<sup>143</sup> A person cannot operate a trade in the Slovak Republic with this type of residence.<sup>144</sup>

In practice, this means that such a person will first obtain a trade licence which will not specify the date of commencement of the trade. To do so, he or she must obtain a temporary residence permit for the pur-

<sup>136</sup> According to Section 5, par. 3 of the Trade Licensing Act: "A natural person residing or a legal person with its registered office outside the territory of the Slovak Republic (hereinafter referred to as a "foreign person") may operate a trade in the territory of the Slovak Republic under the same conditions and to the same extent as a Slovak natural person or a Slovak legal person, unless stated otherwise in this Act or in another special regulation. For the purposes of this Act, a Slovak natural person means a natural person residing in the territory of the Slovak Republic and a Slovak legal person means a legal person with its registered office in the territory of the Slovak Republic."

According to the Section 5, par. 4 of the Asylum Act: "Residence in the territory of the Slovak Republic for the purposes of this Act means permanent residence in the territory of the Slovak Republic or permanent residence in the territory of the Slovak Republic on the basis of a permit granted pursuant to a special regulation."

<sup>137</sup> Sections 6 to 8 of the Trade Licensing Act set out the general and special conditions for the operation of trades by natural persons.

<sup>138</sup> Section 24, par. 1 of the Asylum Act.

<sup>139</sup> Section 27a, par. 1 of the Asylum Act.

<sup>140</sup> According to Section 5, par. 4 of the Asylum Act: "Residence in the territory of the Slovak Republic for the purposes of this Act means permanent residence (...)."

<sup>141</sup> Section 45 of the Trade Licensing Act. The provision in question defines the requirements for starting a trade

<sup>142</sup> Section 10, par. 1 of the Trade Licensing Act.

<sup>143</sup> Section 36, par. 2 of the Asylum Act.

<sup>144</sup> IOM, Business of Persons by Type of Residence, available at: <https://www.mic.iom.sk/sk/podnikanie/zakladne-informacie/291-podnikanie-osob-podla-typu-pobytu.html>

pose of business pursuant to Section 22 of Act No. 404/2011 Coll. on the Residence of Foreigners, and on Amendments and Supplementations to Certain Acts (hereinafter referred to as the “Act on the Residence of Foreigners”).<sup>145</sup> He or she can then run the trade as a foreign person.

Although the Act on the Residence of Foreigners allows persons who have been granted temporary refuge in Slovakia to operate a trade, it is in fact a rather complicated procedure, and the applicant needs to meet extensive statutory requirements. Language barriers can make the process more difficult.

The Centre refers to Art. 35 of the Constitution, according to which 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. The law may lay down conditions and restrictions on the exercise of certain professions or activities and, at the same time, provide for derogations from the rights referred to in paragraphs 1 to 3 of Art. 35 of the Constitution for foreigners. Both citizens of the Slovak Republic and foreigners can operate a trade if they have a permanent or a temporary residence. According to the legal opinion of the Centre, the fact that an foreigner with a tolerated residence is subject to a different regime than a person with a permanent or a temporary residence is not contrary to the Constitution. Nevertheless, the Centre emphasizes that a change in the legal regulation so that also persons with tolerated residence could operate a trade would clearly contribute to their faster integration and simplification of their life in the Slovak Republic.

### 3.1.2 Refugees with disabilities

Refugees with disabilities are a particularly vulnerable group. The Slovak Republic does not collect statistical data on the number of such persons crossing the borders or receiving temporary refuge. Therefore, it is not clear how many refugees with disabilities were in the ter-

ritory of the Slovak Republic in 2023.

Profile interviews conducted with refugees in 2022 by staff of the United Nations High Commissioner for Refugees (“UNHCR”) revealed that 12% of respondents lived in a house-

<sup>145</sup> Section 32 of the Act on the Residence of Foreigners defines the legal requirements of an application for temporary residence. The documents that the foreigner is obliged to submit together with the application for temporary residence are: a completed application form, two identical colour photographs (3 x 3.5 cm), a duty stamp (the value depends on the purpose of the stay), a valid passport, a document confirming the purpose of the stay, proof of integrity, proof of accommodation, and proof of financial security of the stay.

hold with at least one family member with a disability.<sup>146</sup> In 2023, UNHCR drew attention to the specific problems of the most vulnerable groups of refugees from Ukraine, including those with disabilities.<sup>147</sup> In 2023 the Commissioner for Persons with Disabilities also pointed to a number of issues, in particular the provision of education or the provision of necessary care, compensatory and medical aids or health care.<sup>148</sup>

The rights of persons with disabilities are enshrined in the UN Convention on the Rights of Persons with Disabilities. The Slovak Republic, as a State Party, has undertaken to refrain from any act or practice inconsistent with this document and to ensure that public authorities and institutions act in conformity with it.<sup>149</sup>

According to Art. 5 1 of the UN Convention on the Rights of Persons with Disabilities, „*States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.*” and accord-

ing to art. 19 “*States Parties recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community.*”

Act No. 447/2008 Coll. on Monetary Contributions To Compensate For Severe Disability, And On Amendments And Supplementation To Certain Acts (hereinafter referred to as the “Act on Compensation for Severe Disability”) regulates legal relations in connection with the provision of cash benefits to compensate for the social consequences of severe disability. In addition, it also regulates legal relations in connection with the issue of a card for a severely disabled natural person, a card for a severely disabled natural person with a guide, a parking card for a disabled natural person and legal relations in connection with assessing the need for special care provided under a special regulation.<sup>150</sup>

146 The UNHCR conducted 4,227 profile interviews with persons fleeing the international armed conflict from Ukraine to the territory of the Slovak Republic between May and October 2022. UNHCR, Slovakia : Protection Brief – May – October 2022. Report available at: <https://data.unhcr.org/en/documents/details/97764>

147 Households with people with specific needs – such as the elderly, people with disabilities and people with serious health problems report worse access to various rights, especially long-term housing, health care and employment. UNHCR, Displacement Patterns, Protection Risks and Needs of Refugees from Ukraine – Regional Protection Analysis 2023, available at: <https://bit.ly/3WjUqwe>

148 Office of the Commissioner for Persons with Disabilities, Year 2023 in the Office of the Commissioner for Persons with Disabilities – Part Two, available at: <https://www.komisarprezdravotnepostihnutych.sk/Aktuality/Spravy/Rok-2023-v-Urade-komisara-pre-osoby-so-zdravotnym>

149 Art. 4 1(d) of the Convention.

150 Section 1, par. 1 of the Act on Compensation for Severe Disabilities.

The parties to legal relations under this Act are:

1. citizens of the Slovak Republic,
2. citizens of the European Union who have permanent residence in the Slovak Republic,
3. third-country nationals:
  - whose right to compensation is guaranteed by an international treaty to which the Slovak Republic is bound and which has been published in the Collection of Laws of the Slovak Republic,
  - who are family members of a citizen of the Slovak Republic or a citizen of the European Union having a permanent residence in the Slovak Republic and who have permanent residence in the territory of the Slovak Republic,
  - who have been granted asylum pursuant to Act No. 480/2002 Coll. on Asylum, and on Amendments and Supplementation to Certain Acts, as amended,
  - ktorým sa poskytla doplnková ochrana podľa zákona o azyle.<sup>151</sup>

Persons with temporary refugee status, asylum seekers and applicants for subsidiary protection are not covered by this law.

At the beginning of the international armed conflict in Ukraine caused by the Russian Federation and the mass arrival of refugees into the territory of the Slovak Republic, the state was not prepared to provide cash assistance to refugees with severe disabilities. Since 1 May 2022, UNHCR, the United Nations Children's Fund (UNICEF), the Slovak Red Cross with the support of the International Federation of Red Cross and Red Crescent Societies (IFRC) and the International Organization for Migration (IOM) have been temporarily providing financial assistance to such persons on the basis of a con-

tract concluded with the Ministry of Labour, Social Affairs and Family (MoLSAF).<sup>152</sup>

On 2 December 2022, Regulation No. 416/2022 Coll., supplementing Regulation of the Slovak Government No. 131/2022 Coll. on Certain measures in the field of subsidies within the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic in times of extraordinary and crisis situation, state of emergency or state of extreme emergency declared in connection with the mass influx of foreigners onto the territory of the Slovak Republic caused by the armed conflict on the territory of Ukraine, as amended, was codified. This Regulation was adopted on the basis of the empowering provisions of Section 15a of Act No. 544/2010 Coll.

<sup>151</sup> Section 3, par. 1 of the Act on Compensation for Severe Disabilities.

<sup>152</sup> The Central Office for Labour, Social Affairs and Family: Thanks to international organisations, the state has saved more than 11 million euros in helping refugees from Ukraine, available at: <https://bit.ly/3wfQphN>

on Subsidies within the competence of the Ministry of Labour, Social Affairs and Family of the Slovak Republic as amended by Act No. 89/2020 Coll. On the basis of this regulation, the state began to provide cash assistance to persons with severe disabilities.

Pursuant to the supplemented Section 3n of Regulation No. 131/2022 Coll. on Certain

measures in the field of subsidies within the competence of the MoLSAF of the Slovak Republic in times of extraordinary and crisis situation, state of emergency or state of extreme emergency declared in connection with the mass influx of foreigners to the territory of the Slovak Republic caused by the armed conflict on the territory of Ukraine (hereinafter referred to as "Regulation No. 131/2022")

*„a subsidy for the support of humanitarian aid may be provided to an applicant who is a person subject to special protection in the following amounts during a crisis:*

*(a) EUR 300 per month if the assessment according to the annex shows the severity of the applicant's disability to be between 40 % and 59 %,*

*(b) EUR 508 per month if the assessment according to the annex shows the severity of the applicant's disability to be 60 % or more.“*

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The subsidy will be granted to the applicant for a full calendar month. The authority responsible for assessing and approving the application is the competent labour, social affairs and family office in the district of residence of the applicant.<sup>153</sup> The subsidy cannot be grant-

ed to an applicant who is provided with one of the social services,<sup>154</sup> its provision is linked to the duration of the crisis situation. For the purposes of Regulation 131/2022, a natural person is considered to be a person subject to special protection:

*a) „who is provided with temporary refuge in the context of a crisis situation,*

*b) who, in the context of a crisis situation, is an applicant for asylum or subsidiary protection and the temporary refuge provided under point (a) has ceased after applying for asylum or subsidiary protection,*

*c) who has acquired temporary residence and has therefore ceased to be provided with temporary refuge under point a).“<sup>155</sup>*

<sup>153</sup> Section 3n, par. 9 of Regulation 131/2022.

<sup>154</sup> According to Section 3b(a)(1j) to (1p) of Regulation 131/2022, such social services include: supported living facility, facility for the elderly, nursing facility, rehabilitation centre, social services home, specialised facility, day care centre.

<sup>155</sup> Provision of Section 2 of Regulation 131/2022.

This subsidy is an alternative to compensation for the social consequences of severe disability, to which neither refugees nor asylum seekers or applicants for asylum or subsidiary protection are entitled under the Act on Compensation for Severe Disability. The competent Labour, Social Affairs and Family Office carries out the assessment of the severity of the disability for the purposes of the subsidy according to the list of activities drawn up for this purpose and included in the Annex to Regulation No. 131/2022.<sup>156</sup>

In 2023, the Disability Commissioner's Office dealt with 27 complaints relating to disabled temporary refugees, of which 20 related to the review of the Labour, Social Affairs and Family Office's procedure for not awarding a subsidy. Among these complaints, the Disability Commissioner's Office identified violations of rights in 14 cases and proposed retroactive repayment of the subsidy in 4 cases.<sup>157</sup>

The Office of Labour, Social Affairs and Family issues a written notice of approval or dis-

approval of the subsidy.<sup>158</sup> As the Labour, Social Affairs and Family Office does not issue any administrative decision on the non-awarding of the subsidy, it is not possible to appeal against it.<sup>159</sup> If the Office assesses the severity of the disability incorrectly and does not approve the subsidy, the applicant cannot legally object to this assessment and can only submit a new application for a subsidy 3 months after the disapproval of the application.

The impossibility of reviewing a notice of disapproval of a subsidy may mean in practice that if the Labour, Social Affairs and Family Office assessed the severity of the disability incorrectly, the disabled person may be left without any financial assistance. The Centre also sees as problematic the fact that there is no possibility of retroactive payment of the subsidy in the event of a re-application and correction of the non-approval of the subsidy.

In addition to compensation allowances, the Act on Compensation for Severe Disabilities regulates the<sup>160</sup> cards of persons with severe disabili-

<sup>156</sup> This list consists of 12 questions, e.g. what are the abilities of a person with disabilities? i.e. to stand for a longer period of time, e.g. 30 minutes, to take care of household chores, to learn something new, e.g. how to get to a new place, what are the difficulties in engaging in social activities? etc.

<sup>157</sup> Information provided by the Disability Commissioner's Office on 7 March 2024 in response to the Centre's request dated 14 February 2024.

<sup>158</sup> Central Labour, Social Affairs and Family Office: Grant to support humanitarian assistance to a person under special protection in connection with such person's severe disability, available at: <https://bit.ly/49YCSci>

<sup>159</sup> Pursuant to Section 53 of Act No. 71/1967 Coll. on Administrative Procedure (Administrative Procedure Code), "a party to the proceedings shall be entitled to lodge an appeal against a decision of the administrative authority, unless otherwise provided by law or unless the party to the proceedings has waived the appeal in writing or orally on the record."

<sup>160</sup> According to Section 16 of the Act on Compensation for Severe Disabilities, "The competent authority will issue a card to a severely disabled natural person if a final decision on a cash allowance for compensation or a final decision on a card shows that such person is a severely disabled natural person."

ties and parking cards of a person with severe disabilities.<sup>161</sup> As this law does not apply to temporary refugees, asylum seekers or applicants for subsidiary protection, these groups of persons can obtain neither the card of a person with a severe disability nor the parking card in the Slovak Republic. At the same time, the Slovak Republic does not accept disability cards of persons with disabilities issued outside the European Union.

The card of a person with severe disabilities is used to apply for a number of discounts and benefits under special regulations<sup>162</sup> e.g. in the field of transport,<sup>163</sup> local taxes and local fees for municipal waste and small construction waste<sup>164</sup> or in the field of culture.<sup>165</sup> Temporary refugees, asylum seekers and applicants for subsidiary protection are not entitled to the discounts and benefits provided to severe disability card

holders. In the Centre's opinion, the state should consider the possibility of refugees obtaining the disability card and the parking card, once they meet the qualifying criteria.

As regards transport, the free transport for all temporary refugees with Ukrainian citizenship, including persons with disabilities, on the day of obtaining temporary refugee status and for the following 4 days, remained in force in 2023.<sup>166</sup> This option applies exclusively to Ukrainian citizens with temporary refugee status. It does not apply to asylum seekers or applicants for subsidiary protection, nor to persons with temporary refugee status with other than Ukrainian nationality. In the Centre's opinion, persons with temporary refugee status should be subject to the same regime regardless of their nationality.

<sup>161</sup> According to Section 17 of the Act on Compensation for Severe Disabilities „the competent authority will issue a parking permit to a natural person with a severe disability if

(a) a final decision on a parking permit such that such person has a disability listed in Annex 18, (b) according to the comprehensive assessment which was the basis for the final decision on the financial allowance for compensation, the natural person with a severe disability is dependent on individual transport in a private motor vehicle.“

<sup>162</sup> Section 16, par. 3 of the Act on Compensation for Severe Disabilities.

<sup>163</sup> In the field of rail transport, railway carriers that have concluded a contract for public transport services provide a 60% discount on the normal fare in Slovakia for severe disability card holders. Ministry of Labour, Social Affairs and Family, List of discounts for holders of disability/disability-S cards, available at: <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/tazke-zdravotne-postihnutie/kontaktne-miesto-prava-osob-so-zdravotnym-postihnutim/>

<sup>164</sup> According to Section 17, par. 3(d) and 3(e) of Act No. 582/2004 Coll. on Local Taxes And Local Fee For Municipal Waste And Small Construction Waste, as amended, the tax administrator may, by a generally binding regulation according to local conditions in the municipality or a part of it, provide for a tax reduction or exemption from the tax on buildings or from the tax on apartments, such residential buildings, apartments, garages and non-residential premises in apartment buildings that are owned by severe disability card holders.

<sup>165</sup> E.g. discounts provided by organisations under the jurisdiction of the Ministry of Culture of the Slovak Republic. Ministry of Labour, Social Affairs and Family, List of discounts for holders of disability/disability-S cards, available at: <https://www.employment.gov.sk/sk/rodina-socialna-pomoc/tazke-zdravotne-postihnutie/kontaktne-miesto-prava-osob-so-zdravotnym-postihnutim/>

<sup>166</sup> Information for Ukrainians arriving in Slovakia, Ukraine and free transportation (BP) – changes from 1 July 2022, available at: [https://ua.gov.sk/attachments/Bezplatna\\_preprava\\_UA\\_migrantov\\_od\\_1\\_7\\_2022\\_pavidla.pdf](https://ua.gov.sk/attachments/Bezplatna_preprava_UA_migrantov_od_1_7_2022_pavidla.pdf)



## 3.2 Identified challenges faced by migrants in the Slovak Republic

In 2023, certain information related to the topic of migration appeared in the media. The Ministry of Interior urged political parties to refrain from spreading misinformation and from misleading the public on the issue of illegal migration.<sup>167</sup>

On 31 October 2023, the Ministry of Interior organised a police operation at the border with Hungary. In his statement, the Minister of Interior said: „*With the preventive operation we wanted to make it clear to all illegal migrants, but especially to smugglers, that Slovak migration policy is changing and that there is no longer any space for smugglers and their business in Slovakia.*“ He added that no migrants were apprehended during the preventive action, but two groups were deterred from crossing the border.<sup>168</sup>

In the autumn of 2023, there were reports of possible violations of human rights and fundamental freedoms of foreigners in the Police Detention Centre for Foreigners in Medvedov.<sup>169</sup> According to published information, the foreign-

ers went on hunger strike, complained about poor sanitary conditions, complained about being denied access to the outdoors, did not understand the reason for their detention, and pointed to the lack of access to adequate social and legal services. Two persons mentioned humiliation, coercion and physical violence.<sup>170</sup> In this regard, the police said that foreigners have access to all legal entitlements, including contact with a social worker, psychologist, doctor or family. The police stated that, due to capacity and material capabilities, it was natural for them to subjectively experience insufficient access to services. The police rejected the comparison of the institution of detention of foreigners with imprisonment.<sup>171</sup> Also the Public Defender of Rights, who made an unannounced visit to the Police Detention Unit for Foreigners in Medvedov, dealt with the complaints filed by the foreigners. As he wanted to wait for the proper completion and evaluation of the ongoing inspection, he has not indicated yet whether human rights and fundamental freedoms might have been violated in the facility.<sup>172</sup>

<sup>167</sup> During the period of the caretaker Government of the Slovak Republic (from 15 May to 25 October 2023).

<sup>168</sup> M. Štrákal, Press Release, Slovakia is ready to deploy in full force in fighting illegal migration, 2023, available at: <https://www.minv.sk/?tlacove-spravy&sprava=slovensko-je-pripravene-na-nasadenie-v-plnej-sile-v-boji-proti-legalnej-migracii>

<sup>169</sup> M. Zduť, It's worse than in a Turkish prison, say foreigners in Medvedov, where the ombudsman came for inspection, 2023, available at: <https://dennikn.sk/3641202/je-to-horsie-ako-v-tureckom-vazeni-hovoria-cudzinci-v-medvedove-kam-prisiel-ombudsman-na-kontrolu/?ref=inm>

<sup>170</sup> Available on: <https://dennikn.sk/minuta/3641518/>

<sup>171</sup> Police: No serious violations of the Act on Foreigners were found in Medvedov, available at: <https://www.teraz.sk/slovensko/policia-v-medvedove-sa-nezistili-zav/749888-clanok.html>

<sup>172</sup> Available on: <https://dennikn.sk/minuta/3641518/>

### 3.2.1 General background and legal framework

Depending on whether the migration process takes place in accordance with the laws of a particular state, we can speak of legal and illegal migration. „Legal migration is therefore a process in which a person complies with the rules that a particular state sets for the departure, transit and arrival and settlement of foreigners; illegal migration is the opposite.“<sup>173</sup> The Centre draws attention to the incorrect labelling of migrants as illegal. A person's actions can be illegal, not the person.<sup>174</sup>

Administrative expulsion of foreigners from the territory of the Slovak Republic is regulated by the Act on the Residence of Foreigners. According to section 77 of the Act on the Residence of Foreigners: „Administrative expulsion is a decision of the police department that a foreigner does not have or has lost the entitlement to stay in the Slovak Republic territory and is obliged to leave the Slovak Republic territory with the option of determining the time by when he/she has to depart back to his/her country of origin, country of transit

or any third country, to which the third-country national voluntarily decides to return and which would accept him/her or to the territory of a Member State in which he/she has been granted the right of residence or provided with international protection. A decision on administrative expulsion shall also contain the country into which the foreigner was expelled if such a country may be defined.“ The expulsion procedure is an assessment of the foreigner's legitimacy of stay in the territory of the Slovak Republic, the grounds for administrative expulsion and prohibition of entry are set out in Section 82 of the Act on the Residence of Foreigners.<sup>175</sup> The result of the procedure is a decision on expulsion, which imposes an obligation to leave the territory of the Slovak Republic. If the expulsion proceedings against the foreigner were initiated before the asylum application was lodged, lodging an asylum application shall always result in the suspension of such proceedings until the asylum proceedings have been concluded.<sup>176</sup> If an foreigner submits an application for asylum after a decision on administra-

<sup>173</sup> Z. Številová, *Utečenci a migrácia (Refugees and Migration): Dojmy a pojmy (Impressions and concepts)*, EURACTIV, 2017, available at: <https://euractiv.sk/section/spravodlivost-a-vnutro/opinion/uteenci-migracia-dojmy-pojmy/>

<sup>174</sup> Ibid.

<sup>175</sup> Section 82, par. 1 of the Act on the Residence of Foreigners provides the following grounds: “The police department shall administratively expel a third-country national if

(a) he or she has unlawfully crossed the external border or deliberately evades or refuses to submit to border control when crossing the external border,  
(b) his or her residence in the territory of the Slovak Republic is unauthorised.

Further grounds are defined in section 82, par. 2 of the Act on the Residence of Foreigners.

<sup>176</sup> Section 77, par. 5 of the Act on the Residence of Foreigners.

tive expulsion or a decision on the prohibition of entry has become enforceable, the police department shall not enforce the decision until the decision on the foreigner's application for asylum has been taken.<sup>177</sup>

The detention of a third-country national is defined in Section 88 of the Act on the Residence of Foreigners. A third-country national may only be detained in administrative expulsion proceedings if there is a risk of his or her absconding or if the third-country national evades or obstructs the process of preparation for his or her administrative expulsion. A person may also be detained in order to ensure the execution of an administrative expulsion or the execution of an expulsion sentence, to prepare or execute his or her transfer if there is a significant risk of him or her fleeing, or for the purpose of his or her return pursuant to an international treaty if he or she has illegally crossed the external border or is residing unlawfully in the territory of the Slovak Republic. In cases provided for by law, a third-country national may be required to report his or her residence or to lodge a financial guarantee in lieu of detention.<sup>178</sup> With regard to the presented issue, the provisions of the Act on the Residence of Foreigners concerning the facility itself, catering and health care are also relevant.<sup>179</sup>

With regard to the presented issue, the provisions of the Act

on the Residence of Foreigners concerning the facility itself, catering and health care are also relevant.

Considering the identified challenges related to the issue of irregular migration within the Slovak Republic for the year 2023, the Centre draws attention to the importance of the use of correct language by public officials. At the same time, it assesses as unacceptable the abuse of this topic to create or strengthen negative attitudes in society. In relation to the publicized case of foreigners in the Police Detention Centre for Foreigners in Medvedov, who went on hunger strike due to poor conditions and objected to other facts, the Centre cannot assess whether human rights and fundamental freedoms of these persons may have been violated in this case. Given its legal mandate, it cannot pay visits to places where persons deprived of their liberty by public authorities are or may be present. The Public Defender of Rights performs the tasks of the National Preventive Mechanism.<sup>180</sup> Within its mandate the Centre monitors and evaluates respect for human rights and fundamental freedoms, and therefore considers it important to remind public authorities of their national as well as international human rights obligations.

Therefore, in the following subsection it focuses on the relevant case law of the European

<sup>177</sup> Section 77, par. 7 of the Foreigners Residence Act.

<sup>178</sup> Section 89, par. 1 of the Act on the Residence of Foreigners.

<sup>179</sup> Section 91 to Section 100 of the Act on the Residence of Foreigners.

<sup>180</sup> Section 3, par. 2 Act No. 564/2001 Coll. on the Public Defender of Rights.

Court of Human Rights, which relates in particular to the conditions of detention, the provi-

sion of information or the justification for detention.

### 3.2.2 Case law of the European Court of Human Rights

The rights defined in the Convention and further interpreted in the case law of the ECHR constitute a source of common standards for all Member States. In relation to the issue of illegal migration, or the challenges identified in the introduction to Chapter 2, the Centre has selected relevant ECHR decisions, focusing on the general principles. The relevant entities must act in accordance with human rights standards when taking individual actions related to foreigners or when making decisions.

judicial authority stated that Art. 3 of the Convention requires the state to ensure that the individual's detention is under conditions compatible with respect for human dignity, that the manner in which the measure is carried out does not subject him or her to distress or hardship exceeding the necessary degree of suffering inherent in deprivation of liberty, and that, having regard to the practical requirements of imprisonment, his or her health and well-being are adequately safeguarded.<sup>182</sup> In *Khlaifia and Others v Italy*, the Court stated that under Art. 5 2 of the Convention, every person who has been arrested must be informed in plain language which he or she can understand of the fundamental rights and factual grounds for the deprivation of his or her liberty, so that he or she may apply to the courts to object to its lawfulness in accordance with Art. 5 4 of the Convention.<sup>183</sup> In *Saadi v. the United Kingdom*, the ECHR stated that compliance with national legislation is not sufficient and that deprivation of liberty may also be arbitrary in accordance with national legislation.<sup>184</sup>

In *A and Others v. the United Kingdom*, the European judicial authority stated that in order for a detention not to be arbitrary in accordance with Art. 5 1(f) of the Convention it must be made in good faith; it must be closely related to the reason for detention to which the government refers; the place and conditions of detention should be appropriate; and the length of detention should not exceed the period reasonably necessary to achieve the aim pursued.<sup>181</sup> In the decision in *M.S.S. v. Belgium and Greece*, the ju-

<sup>181</sup> *A and Others v. the United Kingdom*, Complaint No. 3455/05, GC, 2009, section 164, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-91403%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-91403%22]})

<sup>182</sup> *M.S.S. v. Belgium and Greece*, Complaint No. 30696/09, 2011, section 211, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-91403%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-91403%22]})

<sup>183</sup> *Khlaifia and Others v. Italy*, Complaint No. 16483/12, GC, 2016, section 115, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-170054%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-170054%22]})

<sup>184</sup> *Saadi v. the United Kingdom*, Complaint No. 13229/03, GC, 2008, section 67, available at: [http://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-84709%22\]}](http://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-84709%22]})

### 3.3 Risk of trafficking in human beings

In 2023, human trafficking continued to be one of the biggest challenges related to the arrival of refugees not only from Ukraine but also from other countries. According to the 2021 EU Serious and Organised Crime Threat Assessment, trafficking in human beings is one of the key activities within serious and organised crime that represents a continuing threat in the upcoming period.<sup>185</sup> The international armed conflict in Ukraine caused by the Russian Federation is one of the causes that have increased people's vulnerability to abuse.<sup>186</sup> The largest group of persons fleeing to the territory of the Slovak Republic to escape the conflict in Ukraine are women and children.<sup>187</sup> Owing to the importance of the issue of trafficking in human beings and the persistent challenges in this area, the Centre continued to monitor this issue in 2023.

Given that trafficking in human beings is often committed across borders, persons who do not legally reside in the territory of the Slovak Republic may also become victims. A victim of trafficking in human beings who is, at the same time, a third-country national, will be granted a tolerated residence by the police department, un-

less there are grounds for refusal of the application pursuant to Section 59, par. 12 of the Act on the Residence of Foreigners.<sup>188</sup> Tolerated residence is granted to a person for a maximum period of 90 days „*during which the third-country national who is a victim of trafficking in human beings and is at least 18 years of age shall decide whether to cooperate with law enforcement authorities in the clarification of a crime related to trafficking in human beings; this period may be extended by 30 days at the request of a person authorised by the Ministry of Interior.*“<sup>189</sup>

The police department may also grant a tolerated residence to a third-country national who has been illegally employed under particularly exploitative working conditions, upon the request of a law enforcement authority. „*Tolerated residence for 180 days will be granted by the police department. The police department may extend the tolerated stay by 180 days, even repeatedly, until the final conclusion of the criminal proceedings or until the remuneration due to the third-country national for the work per-*

<sup>185</sup> Europol, 2021 EU Serious and Organised Crime Threat Assessment, available at: [https://www.europol.europa.eu/cms/sites/default/files/documents/socta2021\\_1.pdf](https://www.europol.europa.eu/cms/sites/default/files/documents/socta2021_1.pdf)

<sup>186</sup> Art. 1 Report by the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Progress Report on Combating Trafficking in Human Beings (Fourth Report), published on 19 December 2022, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022DC0736>

<sup>187</sup> According to UNHCR data, 60% of all persons who fled Ukraine and remained in the territory of the Slovak Republic are women and 32% are children. UNHCR, Multisectoral assessment of needs, 2023, available at: <https://data.unhcr.org/en/documents/details/106244>

<sup>188</sup> Section 58, par. 1(c) of the Act on the Residence of Foreigners.

<sup>189</sup> Section 58, par. 3 of the Residence Act.

formed has been paid.”<sup>190</sup> After obtaining a tolerated residence, the person is included in the support and protection programme for victims of trafficking in human beings.<sup>191</sup> The tolerated residence of a person who has been a victim of trafficking in human beings will be revoked by the police department if the victim voluntarily resumes contacts with persons suspected of having committed a crime related to trafficking in human beings, pretends to cooperate with law enforcement authorities, or has ceased to cooperate with law enforcement authorities.<sup>192</sup>

National Unit for Combating Illegal Migration of the Border and Foreigners Police Office (hereafter referred to as the “National Unit”) does not have any records of refugee victims of trafficking in human beings in 2023. It has investigated approximately 30 cases of suspected human trafficking in connection with Ukrainian citizens fleeing the armed conflict in Ukraine; no suspicions have been confirmed thus far.

The Centre warns that the number of reported and confirmed cases of trafficking in human beings may not reflect the actual number of cases. At regular meetings of the UNHCR-led Anti-Trafficking

Working Group during 2023, representatives of several institutions and organizations raised allegations of trafficking in human beings that they were investigating. A representative of the Slovak Catholic Charity, which provides assistance to victims of trafficking in human beings, reported that the number of phone calls from foreigners to the hotline for victims of trafficking in human beings regarding labour exploitation had increased.<sup>193</sup> He also reported on the investigation of two cases of foreigners forced to beg.<sup>194</sup> A representative of the Crime Prevention Department of the Ministry of Interior provided information that 9 persons were consulted in 2023 in relation to the risk of trafficking in human beings, of which 5 cases involved women.<sup>195</sup> The representative of the National Unit reported an increased number of identified child victims (14).<sup>196</sup>

In 2023, the National Labour Inspectorate monitored illegal employment in various sectors. According to its findings, illegal employment in 2023 was most common in the construction sector (often through temporary employment agencies) and also in accommodation and catering services. In 2023, the National Labour Inspectorate carried out 4 special in-

<sup>190</sup> Section 58, par. 2 of the Act on the Residence of Foreigners.

<sup>191</sup> Ministry of Interior of the Slovak Republic, Support and protection programme for victims of trafficking in human beings, available at: [https://www.minv.sk/?program\\_podpory\\_a\\_ochrany\\_obeti](https://www.minv.sk/?program_podpory_a_ochrany_obeti)

<sup>192</sup> Section 61, par. 1(d) of the Act on the Residence of Foreigners.

<sup>193</sup> Minutes of the meeting of the Anti-Trafficking Working Group of 20 April 2023, available at: <https://data.unhcr.org/en/working-group/378>

<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

spections, each lasting several months. During an inspection carried out in April and May, violations of the provisions on illegal employment were detected.<sup>197</sup>

Due to the low numbers of reported and detected cases of trafficking in human beings, the state has taken several measures in 2023 to raise awareness of this issue<sup>198</sup> and has also prepared the National Programme to Combat Trafficking in Human Beings for 2024-2028. One of the strategic objectives of this document is to improve

the identification of potential victims, with specific focus paid to vulnerable groups.<sup>199</sup>

The Centre emphasises that the detection and identification of victims of trafficking in human beings among third-country nationals remains a challenge in the area of trafficking in human beings. The low number of detected victims of trafficking in human beings may be due to the transit nature of the country, as well as the distrust of third-country nationals in state authorities.

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<sup>197</sup> Minutes of the meeting of the Anti-Trafficking in Persons Working Group of 24 November 2023, available at: <https://data.unhcr.org/en/working-group/378>

<sup>198</sup> The Anti-Trafficking in Human Beings and Crime Prevention Information Centre has carried out a number of trainings on the identification of victims of trafficking, discussions with Ukrainian refugees, etc.

<sup>199</sup> An evaluation of the inter-ministerial comment procedure is currently underway, available at: <https://www.slov-lex.sk/legislativne-procesy/SK/LP/2023/534>

### 3.4 Conclusion

Despite the state's efforts to create conditions for the integration of persons fleeing the conflict in Ukraine into society, a number of shortcomings persist.

The state has assumed the obligation to provide a subsidy to refugees with severe disabilities in December 2022, however the Centre points out that it is not possible to appeal against a notification of non-approval of the subsidy. If the Labour, Social Affairs and Family Office assesses the severity of the disability incorrectly, the disabled persons may find themselves without any financial assistance. At the same time, refugees, asylum seekers or applicants for subsidiary protection are not covered by the Act on Compensation for Severe Disabilities. Refugees with disabilities are therefore not able to obtain a severe disability card or a parking card.

In the context of running a trade, it is a problem that it cannot be run by persons who have been granted temporary refuge and thus have acquired tolerated residence in the territory of the Slovak Republic. The Centre assesses that allowing these persons to operate a trade would also contribute to

their faster integration within the country.

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One of the major challenges related to displacement is the issue of trafficking in human beings. This serious crime affects especially refugees, who are in a particularly vulnerable situation. Victims of trafficking in human beings can be both persons who acquire legal residence in the territory of the state and persons who enter the territory of the state illegally as victims of crime. In 2023, the responsible authorities have not identified a single confirmed case of trafficking in human beings involving third-country nationals. The low number of reported cases of trafficking in human beings may be due to the transit nature of the country, but also due to the fear of third-country nationals to turn to state authorities.



## Recommendations

### Recommendations of the Centre:

- 1 To the Ministry of Interior of the Slovak Republic to consider introducing the possibility of obtaining a trade licence for persons who have been granted tolerated residence.
- 2 To the Ministry of the Interior of the Slovak Republic to actively participate in raising awareness in connection with the operation of a trade – leaflets at trade offices, or at departments of the Foreigners Police with simple instructions on how to operate a trade (various language versions).
- 3 To the Ministry of Labour, Social Affairs and Family of the Slovak Republic to introduce the possibility of reviewing a notification of non-approval of a subsidy to support humanitarian aid to a person under special protection in connection with his or her severe disability.
- 4 To the Ministry of Labour, Social Affairs and Family of the Slovak Republic to consider introducing the possibility for refugees with disabilities to obtain a card of a person with severe disabilities and a parking card.
- 5 To public authorities and public officials to contribute to adequate information on migration and refugee issues. To avoid spreading disinformation about the issue and not to create fear in society.



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## 4. Discrimination against Roma with emphasis on the the Centre's cases

This chapter deals with the discrimination against Roma in the individual areas protected by the anti-discrimination law, namely education, provision of goods and services, access to and provision of health care, and employment relations. Through the cases we handled in 2023, we introduce our mandate as a national equality body and provide an insight into the daily work of the Centre.

Surveys conducted at the turn of April and May 2023 by the MNFORCE research company, the Sesame communication agency, the Institute of Sociology of the Slovak Academy of Sciences and the Institute of Social Communication Research of the Slovak Academy of Sciences under the title “Ako sa máte?” (*How are you doing?*), showed that 61.9% of respondents consider Roma to be the minority most at risk of discrimination.<sup>200</sup>

Despite the fact that a large part of Slovak society is aware of the vulnerability of Roma to discrimination,

discrimination continues to occur in areas where the legal prohibition of discrimination applies, i.e. education, provision of and access to health care, employment and similar legal relations (including pre-contractual employment relations), and the provision of goods and services (including housing). The reasons for persistent discrimination may be the prejudice of the majority, the lack of preventive measures by the state, but also the fact that only a small number of the persons concerned make legal claims for breaches of the prohibition of discrimination against the person violating the prohibition.<sup>201</sup>

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200 Available on: [https://www.sav.sk/?lang=sk&doc=services-news&source\\_no=20&news\\_no=11316](https://www.sav.sk/?lang=sk&doc=services-news&source_no=20&news_no=11316)

201 Meanwhile, the latest EU SILC\_MRK 2020 findings show that 97% of Roma who felt discriminated because of their complexion or their Roma origin during the year before the survey neither reported the discrimination nor filed a complaint In: MARKOVIČ, F., PLACHÁ, L.: *Príjmy a životné podmienky v marginalizovaných rómskych komunitách: (Income and living conditions in marginalised Roma communities): Vybrané ukazovatele zo zisťovania EU SILC\_MRK 2020. (Selected indicators from the EU SILC\_MRK 2020 survey.)* p. 20. Available online at: [https://www.romovia.vlada.gov.sk/site/assets/files/1563/analyticka\\_sprava\\_eu\\_silc\\_mrk\\_2020\\_elektronicka\\_final.pdf?csrt=13957621838014948854](https://www.romovia.vlada.gov.sk/site/assets/files/1563/analyticka_sprava_eu_silc_mrk_2020_elektronicka_final.pdf?csrt=13957621838014948854)

## 4.1 Field of education

Discrimination against Roma pupils in education is a long-monitored problem in the Slovak Republic,<sup>202</sup> which is most clearly manifested in segregation of Roma pupils and their often unjustified education in the special education system. The Centre regularly refers to this legal problem<sup>203</sup> and emphasises that segregation of Roma in education is a structural problem that requires systemic solutions. Synergistic measures are needed both from the state and from within society in order to educate and sensitise society.

If a Roma pupil is educated in a

special class or school for children with mild mental disabilities, it is likely that there will be a majority of Roma children in such a class. This not only exacerbates the unlawful segregation, but also makes it much more difficult for them to complete a full primary education and reduces their chances of continuing their secondary education.<sup>204</sup>

The Slovak Republic has failed to address the problem of discrimination against Roma children in education in the long term. It is one of the EU countries with the highest levels of segregation of Roma in educa-

202 Findings of the State School Inspection on segregation, for example in the Report on the state and level of education and training in schools and school facilities in the Slovak Republic in the school year 2019/2020, available online at: [https://www.ssi.sk/wp-content/uploads/2020/12/sprava20\\_web.pdf](https://www.ssi.sk/wp-content/uploads/2020/12/sprava20_web.pdf) or the Report on the state and level of education and training in schools and school facilities in the Slovak Republic in the school year 2021/2022, available online at: [https://www.ssi.sk/wp-content/uploads/2022/12/sprava\\_2022.pdf](https://www.ssi.sk/wp-content/uploads/2022/12/sprava_2022.pdf)

*Analýza zistení o stave školstva na Slovensku (Analysis of findings on the state of education in Slovakia)*, a publication issued within the "To dá rozum" (It makes sense) project, which presented findings on the segregation of Roma pupils in education. Publication available online at <https://analiza.todarozum.sk/analiza-zisteni-o-stave-skolstva-na-slovensku.pdf>

203 The Centre has addressed segregation in education, e.g. in its Report on the Observance of Human Rights, including the Principle of Equal Treatment, 2022, pp. 32-52, available online at: <https://www.snslp.sk/wp-content/uploads/Sprava-o-LP-za-rok-2022-na-web.pdf> in the Report on the Observance of Human Rights, including the Principle of Equal Treatment, 2019, pp. 181-228, available online at: <https://www.snslp.sk/wp-content/uploads/Sprava-o-LP-v-SR-za-rok-2019.pdf> or in the publication Segregation in education – an analysis of known evidence, 2022, available online at: <https://www.snslp.sk/wp-content/uploads/Analiza-segregacia-vo-vzdelavani-2.pdf>.

204 The EU SILC\_MRK 2020 research shows that Roma from marginalised communities receive less education, both in terms of quantity (number of years) and quality (type of school attended). Two thirds of people from the marginalised Roma community (MRC) aged 16-24 neither study nor work, compared to 12% of the general population. As many as 80% of graduates of special schools/classes and disciplines without a vocational certificate are from the MRC. In: MARKOVIČ, F., PLACHÁ, L.: *Prijmy a životné podmienky v marginalizovaných rómskych komunitách: (Income and living conditions in marginalised Roma communities): Vybrané ukazovatele zo zisťovania EU SILC\_MRK 2020 (Selected indicators from the EU SILC\_MRK 2020 survey)*, p.17. Available online at: [https://www.romovia.vlada.gov.sk/site/assets/files/1561/analyticka\\_sprava\\_eu\\_silc\\_mrk\\_2020\\_elektronicka\\_final.pdf](https://www.romovia.vlada.gov.sk/site/assets/files/1561/analyticka_sprava_eu_silc_mrk_2020_elektronicka_final.pdf)

Amnesty International Slovakia in cooperation with the European Roma Rights Centre published a research report in 2017 "*Lessons from discrimination*", which focuses on the segregation of Roma pupils in the mainstream education system, but also in special education. The research report points out that Roma pupils in special and segregated classes and schools receive education of such a low quality that only a few of them can continue their education after completing compulsory schooling. Research report available online at: <https://www.amnesty.sk/wp-content/uploads/2017/02/Amnesty-report-Slovak-WEB.pdf>

tion, which has even increased over the past five years.<sup>205</sup> That is why<sup>206</sup> the European Commission announced its decision to refer the Slovak Republic to the Court of Justice of the EU on 19 April 2023.<sup>207</sup>

In the action<sup>208</sup> filed with the Court of Justice of the European Union on 22 December 2023, the applicant pleads infringement of Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ("Council Directive 2000/43/EC") due to the systematic and persistent incorrect administrative practice of the authorities of the Slovak Republic with regard to indirect discrimination

against the Roma community in the field of education. The Commission believes that the disproportionate and excessive placement of Roma children in special schools or special classes for children with mental or other disabilities systematically and persistently violates Article 2, par. 1 in conjunction with Article 2, par. 2(b) of Council Directive 2000/43/EC.<sup>209</sup>

On 4 October 2023, the European Parliament adopted a Resolution on Segregation and Discrimination of Roma Children in Education,<sup>210</sup> in which it welcomed the Commission decision to initiate a number of infringement procedures against selected Member States, including the Slovak Republic

<sup>205</sup> In 2022, the European Union Agency for Fundamental Rights published the findings of the Roma Survey 2021. The findings show that 65% of Roma pupils aged 6 to 15 in Slovakia attend schools where all or most of the pupils are Roma. Compared to 2016, this number is now 5 percent higher, which is why Slovakia was assessed as the EU Member State with the highest level of segregation of Roma in education. FRA: Roma Survey 2021 – Main results. 2022. p. 16. Available online at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2022-roma-survey-2021-main-results\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-roma-survey-2021-main-results_en.pdf)

<sup>206</sup> In 2015, the European Commission initiated legal proceedings against the Slovak Republic for suspected violation of the prohibition of discrimination in access to education on the grounds of race and ethnicity under Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin. In 2019, after assessing the measures taken and monitoring the situation on the spot, the Commission concluded that the measures and the steps taken by the Slovak Republic since 2015 have not been sufficient. On 10 October 2019, the European Commission sent a reasoned opinion to the Slovak Republic asking it to comply with the EU rules on equal treatment of Roma pupils.

Reasoned opinion available at: [https://ec.europa.eu/commission/presscorner/detail/SK/INF\\_19\\_5950](https://ec.europa.eu/commission/presscorner/detail/SK/INF_19_5950)

<sup>207</sup> European Commission: Press release – European Commission decided to refer SLOVAKIA to the Court of Justice of the European Union for failing to adequately address discrimination against Roma children in schools, 19 April 2023. Available online at: <https://bit.ly/4decFtI>

<sup>208</sup> European Commission v. Slovak Republic, Case C-799/23. Available online at: <https://bit.ly/3xXR7Rn>

<sup>209</sup> Pursuant to Art. 2, par. 1 "For the purposes of this Directive, the principle of equal treatment shall mean that there shall be no direct or indirect discrimination based on racial or ethnic origin."

In accordance with Art. 2, par. 2(b) "Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary."

<sup>210</sup> European Parliament resolution dated 4 October 2023 on segregation and discrimination against Roma children in education (2023/2840(RSP)). Available online at: [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0342\\_SK.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0342_SK.html)

lic, and the subsequent intention to bring an action before the Court of Justice of the EU on the matter. It also called on Member States to “eliminate the practice of persistent segregation of Roma children, implement comprehensive desegregation strategies with clear targets and sufficient resources with clear and ambitious timetables, adopt inclusive education methods, guarantee Roma children full access to school activities and implement anti-discrimination campaigns in schools.”<sup>211</sup>

In 2023, the Centre did not register any new proposals for the required system solutions.

In its Programme Statement of 12 June 2023, the so-called “technocratic government” committed itself to “expand and improve early childhood care services, especially for children from socially disadvantaged backgrounds, and to promote activities to make quality education more accessible and to desegregate mainstream education.”<sup>212</sup> The Programme Declaration of the Government of the Slovak Republic for 2023-2027 does not mention at all the issue of seg-

regation or desegregation, within the short-term horizon of priorities; the government only presented the intention to „improve the quality of education of children from the background of generational poverty, children with disabilities, or otherwise disadvantaged pupils. The implementation of inclusive measures will also respect the needs of the national education system.” Funding for support measures was included among the systemic measures. “A sustainable system of funding of the support measures will be an essential part of inclusive education for pupils and students.” In a separate section titled “Government and Marginalised Communities”, the Government does not take a closer look at the field of education.<sup>213</sup>

As part of the implementation of Component 6<sup>214</sup> of the Recovery and Resilience Plan of the Slovak Republic focused also on supporting school desegregation<sup>215</sup> some targets were met in 2023. These include, for example, the publication of the Methodological Guide to Desegregation in Education and Training, the preparation of the concept of monitoring desegregation<sup>216</sup> or the legal en-

211 Ibid.

212 Programme Statement of the Government of the Slovak Republic “Len spoločne môžeme čeliť výzvam 21. storočia” (Only together we can face the challenges of the 21st century), available online at: <https://rokovania.gov.sk/RVL/Material/28526/1>

213 Programme Statement of the Government of the Slovak Republic 2023 – 2027 “BETTER, CALMER AND SAFER LIVING” available online at: <https://rokovania.gov.sk/RVL/Material/28969/1>

214 Component 6: Accessibility, development and quality of inclusive education at all levels, pp. 1-2, available online at: [https://www.planobnovy.sk/site/assets/files/1045/2021-k6\\_-\\_dostupnost\\_-\\_rozvoj\\_a\\_kvalita\\_inkluzivneho\\_vzdelavania\\_na\\_vsetkych\\_stupnoch.pdf](https://www.planobnovy.sk/site/assets/files/1045/2021-k6_-_dostupnost_-_rozvoj_a_kvalita_inkluzivneho_vzdelavania_na_vsetkych_stupnoch.pdf)

215 Reform 5: Support of school desegregation.

216 The methodological guide and the monitoring concept are available online at: <https://www.minedu.sk/desegregacia/>.

shrinement of the definition of segregation within the framework of the amendment to Act No. 245/2008 Coll. on Education and Training (the School Act), and on the Amendment and Supplementation of certain acts. However, the Centre criticises the above definition for a number of shortcomings and doubts whether it will contribute to addressing the cases of segregation in education and effective prevention.

Under Section 2(ah) of the Education Act „*segregation in education and training means an act or failure to act which is contrary to the principle of equal treatment under special regulation 2a)<sup>2</sup> and which results or is likely to result in the spatial, organisational, physical or social exclusion or separation of a group of children, pupils, students or participants in education and training without a reason arising from this Act.*” According to Section 2(ai), “*compliance with the prohibition of segregation in education and training means taking measures to prevent and eliminate it.*”

The legal opinion of the Centre is that the definition of segregation in education and training as direct and indirect discrimination is considerably restrictive in the context of the possible future definition of segregation as a specific form of discrimination in the Anti-Discrimination Act. At the same time, linking segregation

to direct and indirect forms of discrimination does not reflect the jurisprudence of the Supreme Court of the Slovak Republic, which refers to segregation as a “special form of discrimination”.<sup>217</sup>

At the same time, the definition of the obligation to take preventive measures and measures to eliminate segregation under Section 2(ai) is, according to the Centre, not sufficient to comply with the prohibition of segregation. There are concerns on the part of the Centre that the adoption of measures to prevent or eliminate segregation – including those insufficiently effective, non-specific or even explicitly formal – might not be interpreted as compliance with the prohibition of segregation.

The Centre points out the possibility that a school with a long history of segregation may argue that the adoption of a desegregation plan complies with the prohibition of segregation within the meaning of section 2(ai) of the School Act, even though the segregation still persists in practice. According to the Centre, the provision in question does not sufficiently reflect the fact that segregation is an unlawful condition contrary to the anti-discrimination law and that, as long as it persists, the school is breaching the prohibition of discrimination, irrespective of the measures taken to prevent or eliminate segregation.

<sup>217</sup> Resolution of the Supreme Court of the Slovak Republic, File No. 4Cdo/112/2021.

## 4.1.1 A selection of the Centre's cases

The fact that discrimination against Roma children in education is a persistent problem is confirmed by the Centre's cases in this area in 2023. Throughout the course of the year, the Centre dealt with cases of segregated education of Roma children in specific schools, which will be presented in this subchapter. Furthermore, in the context of segregation in education, it also focused on the issue of expanding the capacity of primary schools attended exclusively by Roma pupils with the intention of eliminating double-shift operation or financing the construction of schools within excluded communities.

ter for Civil and Human Rights and Amnesty International Slovakia, addressed the European Commission on the matter in 2023. In an open letter<sup>218</sup> dated December 2023, they called for intervention against the expansion of segregated Roma schools with double-shift operation. Such a solution to the elimination of double-shift operation creates conditions for the persistence of segregation of Roma children in education, which is in clear contradiction not only with national anti-discrimination legislation and existing case law of Slovak courts, but also with the law of the European Union.

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Considering that the elimination of double-shift primary schools attended only by Roma pupils by expanding their spatial capacities poses a risk of deepening the already existing segregation, the Centre, together with the Cen-

ter for Civil and Human Rights and Amnesty International Slovakia, addressed the European Commission on the matter in 2023. In an open letter<sup>218</sup> dated December 2023, they called for intervention against the expansion of segregated Roma schools with double-shift operation. Such a solution to the elimination of double-shift operation creates conditions for the persistence of segregation of Roma children in education, which is in clear contradiction not only with national anti-discrimination legislation and existing case law of Slovak courts, but also with the law of the European Union.

### Intention to build a new Primary School on Jesenná ulica Street in Trebišov

In June 2023, the Centre received a complaint regarding the planned construction of a new primary school in an excluded locality in the town of Trebišov. The client stated in the complaint that the Town Council in Trebišov approved on 17 March 2023<sup>219</sup> the provision of funds for co-financing of the implemented pro-

ject "Project documentation – Primary School on Jesenná Street in Trebišov under the call IROP-PO7-SC76-2021-80". The project envisaged the construction of a new primary school with a capacity of 800 – 850 pupils, to be located in close proximity to the already existing fully organised primary school of Ivan Krasko attended

<sup>218</sup> Call on the European Commission to intervene against the proliferation of segregated Roma schools with two-shift operation available online at <https://bit.ly/47Z8deB>

<sup>219</sup> Resolution of the Town Council in Trebišov, dated 17 March 2023 available online at: [https://www.trebisov.sk/userimages/files/msz\\_uznesenia/2023/uznesenie\\_2023\\_060.pdf](https://www.trebisov.sk/userimages/files/msz_uznesenia/2023/uznesenie_2023_060.pdf)



by 1,080 pupils of exclusively Roma ethnicity, where more than 360 go to school in two shifts. The client argued that this intention of the town is in direct contradiction with the Anti-Discrimination Act and breaches the rules of desegregation, deghettoization and destigmatization, and pointed out that other primary schools in the jurisdiction of the town of Trebišov have free capacities, which are sufficient to eliminate the problem of two-shift operation of the existing primary school on Ivan Krasko Street.

After contacting the town of Trebišov and obtaining more information about the construction plan and the capacity of other primary schools in the jurisdiction of the town of Trebišov, which confirmed that these primary schools have certain free capacities, the Centre focused more closely on the method of financing the construction of the Primary School on Jesenná Street in Trebišov. In connection with the construction of a new primary school, the town applied for a non-repayable financial contribution under the call for proposals issued by the Ministry of Investment, Regional Development and Informatization of the Slovak Republic as the managing authority for the Integrated Regional Operational Programme with the code

IROP-PO7-SC76-2021-80 with a focus on the preparation of projects of the Catching-up Regions initiative. The town stated that if the application for a non-repayable financial contribution is approved, they will receive the funds to prepare the project documentation, which can then be used in the public procurement for the contractor of the work.<sup>220</sup> In this context, the Centre contacted the Department of Horizontal Principles of the Ministry of Labour, Social Affairs and Family of the Slovak Republic, which guides the subjects of implementation of Union funds and enters into the processes of implementation, monitoring, evaluation and control. The Department of Horizontal Principles informed the Centre that the Ministry of Investments, Regional Development and Informatization of the Slovak Republic had already dealt with a complaint regarding this issue and closed it as having been unfounded.

The Centre believes that the construction of a new primary school within the excluded community will worsen the already existing segregation of Roma children in the town. Since the construction is to be co-financed by EU funds, the Centre started preparing a complaint to the European Commission alleging a breach of EU law at the end of 2023.<sup>221</sup>

<sup>220</sup> Material for the Trebišov Town Council meeting dated: 17 March 2023. Explanatory report. Available online at: <https://bit.ly/44hTsiY>

<sup>221</sup> The open letter to the European Commission, sent by the Centre together with the Civil and Human Rights Advice Centre and Amnesty International Slovakia, is available online at: <https://www.snsip.sk/aktuality/list-europskej-komisii/>

## Primary School in Ostrovany

During 2023, the Centre had been monitoring the situation at the primary school in Ostrovany, where, due to its location in a locality inhabited by persons of Roma ethnicity, only Roma pupils had been educated for a long time. The Centre's findings show that the Primary School in Ostrovany failed to introduce or implement measures to increase the interest of non-Roma parents in enrolling their children in the school in 2023. During the school years 2022/2023 and 2023/2024, the primary school has been attended exclusively by pupils of Roma ethnicity.

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In October 2023, the primary school was approved to apply for funds from the Recovery and Resiliency Plan of the SR to eliminate two-shift operation of primary schools.<sup>222</sup> The Centre is concerned about the expansion of the capacity of the school, which is cur-

rently attended only by pupils of Roma ethnicity. Given the demographic development in the municipality, it is likely that without adequate mechanisms to ensure attendance of non-Roma pupils, only Roma children will continue to attend the school. These measures will require cooperation of various stakeholders at both regional and national level.<sup>223</sup> It is obvious that double-shift education is an undesirable state of affairs, but expanding the capacity of the primary school, without finding means and mechanisms in the sense mentioned above, will only lead to deepening the existing segregation of Roma pupils and pupils from the given community. At the same time, expanding the capacity of the school is not in line with the principles of desegregation, deghettoization and destigmatisation, according to the Centre<sup>224</sup>.

<sup>222</sup> The Recovery and Resilience Facility Grant Agreement is available online at: <https://crp.gov.sk/00612023/>

<sup>223</sup> Given that school segregation is often a reflection of residential segregation, it is imperative that school districts make adjustments that take into account the ethnic composition of the residents of a municipality or part of a municipality. One of the primary goals in designating school districts should be to ensure that school districts are socially and ethnically diverse and do not replicate the residential segregation. An example of desegregation practices from abroad is, for example, the merging of several school districts and catchment areas and the "distribution" of pupils within them. In such cases, school buses transporting pupils to more distant schools can be used.

<sup>224</sup> The principles of desegregation, deghettoization and destigmatisation (also referred to as "3D") were defined in the Methodological Interpretation for the Effective Application of the Principles of Desegregation, Deghettoization and Destigmatisation, issued by the Office of the Government Plenipotentiary for Roma Communities in 2015 and 2018, which was based on the draft Methodological Guidance on the Use of the European Structural and Investment Funds to Address Segregation in Education and Residential Segregation and the National Strategic Framework for the Integration of Roma up to the year 2020.

Methodological Interpretation for the Effective Application of The Principles of Desegregation, Deghettoization and Destigmatisation in the calls of the Slovakia 2021-2027 programme, which follows the Methodological Interpretation for the Effective Application of the Principles Of Desegregation, De-Segregation And Destigmatisation, available online at: <https://bit.ly/4aKHVYB>

## Primary school with nursery school Podskalka 58, Humenné

In 2023, the Centre received a complaint regarding the Primary School with Nursery School at Podskalka 58, Humenné (hereinafter referred to as “Podskalka Primary School with Nursery School”) attended exclusively by Roma pupils. The primary school only has classes in the first two grades, with pupils in the upper grades joining other primary schools in the town.

The Centre contacted the founder and the management of the Podskalka Primary School with Nursery School in order to obtain further information for a proper assessment of the matter. The information obtained shows that there are several nursery schools and primary schools in the town's jurisdiction.<sup>225</sup> In accordance with General Binding Regulation No. 163/2020 on school districts for primary schools in the jurisdiction of the town of Humenné, the school district for the Podskalka Primary School with Nursery School is designated only for Podskalka Street.<sup>226</sup> The information provided by the town of Humenné to the Centre shows that other nursery schools and primary schools have sufficient free capacities to educate pupils currently attending the Podskalka Primary School and Nursery School. The vacant capacities of nursery schools under the jurisdiction of

the town of Humenné exceed the number of preschoolers attending the Podskalka Primary School and Nursery School. Also, the classes within the first grade of primary schools in the jurisdiction of the town of Humenné have sufficient free capacity to accommodate pupils attending the first two years of Podskalka Primary School and Nursery School. According to the information provided to the Centre by the founder, the primary school in question is the only primary school within the town's jurisdiction that currently has a full capacity of pupils.

The Centre was informed by the headmaster of the Podskalka Primary School and Nursery School about the intention to start the third grade at the primary school, too. According to the Centre, the above procedure leads to purposeful prolongation of separation of Roma pupils from majority pupils and has no objective justification.

The separate education of Roma pupils in the Podskalka Primary School and Nursery School constitutes a clear contradiction to the prohibition of segregation in accordance with the School Act<sup>227</sup> and, at the same time, meets the defining features of direct discrimination in the field of education on the grounds of ethnicity. Responsibility for the ex-

<sup>225</sup> 10 nursery schools and 8 primary schools.

<sup>226</sup> General Binding Regulation No. 163/2020 on school districts for primary schools under the jurisdiction of the town of Humenné is available online at: <https://www.humenne.sk/Samosprava-mesta/Dokumenty-mesta/Vseobecne-zavazne-nariadenia/>

<sup>227</sup> Section 3(f) of the School Act prohibits all forms of discrimination, in particular segregation.

isting unlawful situation in this case lies primarily with the city as the founder, which created a

school attended by Roma pupils exclusively by setting up a school district for this purpose.

## Árpád Feszty Primary School with Nursery School with Hungarian language of instruction, Hurbanovo

At the end of 2022, the State School Inspectorate, School Inspection Centre Nitra (hereinafter referred to as “the State School Inspectorate”) delivered to the Centre the Report on the results of the inspection carried out on 29 November 2022 at the Árpád Feszty Primary School with Nursery School with Hungarian language of instruction, Hurbanovo. The conclusions of the inspection at the primary school in question revealed shortcomings concerning the signs of segregation in education and training caused by the segregation of classes with a majority of pupils from the MRC.

In the school year 2022/2023, 70 pupils were admitted to the 1st year of primary school, 35 of them from the MRC. Pupils were placed in classes based on their level of proficiency in the school’s language of instruction. Pupils from the MRC predominantly communicated in the Roma language, which led to a disproportionate representation of Roma and non-Roma pupils in individual classes. Non-Roma pupils were educated in 1. A class and Roma pupils in other classes.<sup>228</sup> In the second half of the 2021/2022 school year, class

teachers were monitoring the performance and development of pupils’ abilities and, in collaboration with the school’s special education expert, proposed to reassign 3 pupils from Class 1. B and 1. C to 1.A class from 1 September 2022, which was finally accomplished in 1 case only. The legal representatives of other 2 pupils refused the reassignment of their children to other classes because of strong kinship relations in the original class.

During the inspection, the headmaster stated that due to the disagreement of the legal representatives of pupils from the MRC with the reassignment to other classes, pupils from the MRC were predominantly only in classes B and C in the 1<sup>st</sup> level of primary school. The Headmaster also commented that the large age gap between pupils in Year 3 and Year 4 classes made it difficult to move them from B classes to A classes, as several pupils were multiple repeaters.

The findings of the State School Inspectorate also pointed to the low success rate of pupils in advancing to the second level of primary school. The Primary school had only one class

<sup>228</sup> In 1. A there were 19 pupils, none of whom were from the MRC, in 1. B were 17 pupils, of which 14 from MRC, in 1. C were 16 pupils, of which 8 from MRC, in 1. D were 18 pupils, of which 13 from MRC, while the other pupils in classes 1. B, C and D belonged to the Roma ethnic group.

in each grade at the second level. At the same time, only three pupils from the MRC progressed from primary to lower secondary education in the school year 2022/2023, increasing the number of pupils from the MRC from 6 to 9 (in 5. A – 3 pupils, 6. A – 1 pupil, 7. A – 5 pupils).

In response to the imposed measures, according to which the primary school had to eliminate the signs of segregation by drawing up and implementing a five-year plan, the headmaster submitted to the State School Inspectorate a multi-year action programme for the effective inclusion of pupils from socially disadvantaged and marginalised backgrounds. The developed strategy envisaged the gradual desegregation of pupils from the MRC. However, as the findings of the State School Inspectorate showed, the signs of segregation in the primary school continued to persist in the school year 2022/2023.

Following a warning from the State School Inspectorate, the Centre initiated a meeting with the primary school's headmas-

ter in 2023. During the meeting, the headmaster informed the Centre that the motivation of parents of children from the MRC to enrol their children in a primary school with Hungarian as the language of instruction, despite the fact that they do not speak the language and that there is also a primary school with Slovak as the language of instruction in Hurbanovo, may be the financial contribution by the Hungarian government to parents of children attending schools with Hungarian as the language of instruction.

The Centre took a closer look at the financial contribution to parents of pupils attending primary school with Hungarian as the language of instruction and identified the entities involved in the system of financial contributions. The Centre was able to discover that the current amount of the allowance is 100 thousand forints per year per pupil and the financial contribution is paid directly into the applicants' account.<sup>229</sup> No public administration body of the Slovak Republic is involved in this procedure.

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<sup>229</sup> The procedure of granting the allowance involves class teachers collecting completed applications from pupils or legal representatives and handing them in a marked envelope to the Association of Hungarian Teachers in Slovakia (of which the teacher is a member). The Association then reviews, processes and sends the applications to the Bethlen Gabor Foundation in Hungary for approval and a decision on the applications. The Foundation then sends a decision on the subsidy to the individual applicants. The money is sent together with a list of beneficiaries of the subsidiary in Slovakia.

## 4.2 Field of provision of goods and services

According to the findings of the EU SILC\_MRK 2020 survey, which also recorded the perception of discrimination of Roma in particular areas, 12% of Roma had experienced discrimination in the provision of services in the last 5 years and 11% of Roma had experienced discrimination in the provision of services in the last

year prior to the survey.<sup>230</sup>

Over the course of 2023, a number of clients turned to the Centre in connection with alleged discriminatory conduct in the provision of goods and services, including housing, on the grounds of belonging to the Roma ethnic group.

### 4.2.1 A selection of the Centre's cases

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In 2023, at the request of the Center for Civil and Human Rights, the Centre issued an expert opinion on the violation of the principle of equal treatment by a bus driver towards Roma women. A group of Roma women activists sat near the driver on the bus. He began to make inappropriate remarks directed at the Roma women related to their belonging to the Roma ethnic group. The Roma women politely objected to these inappropriate remarks, which led to vulgar insults from the bus driver directly towards the women and the entire Roma community.

The Roma activists filed a criminal complaint for suspicion of committing the crime of defamation of nation, race and beliefs and also a complaint to the transport company, which assessed it as being justified and apologized for the driver's behaviour.

In its expert opinion, the Centre concluded that in this legal case there had been a violation of the prohibition of discrimination in the field of provision of goods and services in the form of harassment on the grounds of belonging to the Roma ethnic group.<sup>231</sup>

#### Case of alleged discrimination on grounds of ethnicity in access to housing

In 2023, the Centre also dealt with a case of alleged discrimination on the grounds of ethnicity in the area of housing;

the complaint concerned the procedure followed by the municipality of Záhorská Ves in connection with the leasing

<sup>230</sup> MARKOVIČ, F., PLACHÁ, L.: *Príjmy a životné podmienky v marginalizovaných rómskych komunitách: (Income and living conditions in marginalised Roma communities)*; Selected indicators from the EU SILC\_MRK 2020 survey, pp. 88-89.

<sup>231</sup> Available online at: <https://www.snsfp.sk/wp-content/uploads/OS-Diskriminacia-v-oblasti-pokrytovania-tovarov-a-sluzieb.pdf>

of unused municipal property. The property that the Centre's client was interested in renting had been used as a tourist hostel until 2023. With effect from 1 January 2023, the municipality had by resolution abolished the operation of the tourist hostel. The Social, Housing and Education Committee of the municipality subsequently proposed to the municipal council to convert the facility into two low-cost social housing units.

In order to solve his housing situation, the Centre's client wanted to rent the property in question and planned to adapt it for housing at his own expense. The client first applied to the municipality to lease the property in March 2023. The municipality did not respond to his request until August 2023, when it decided to put the property up for tender and informed him of its intention to do so. The municipality has put the property out to tender for lease three times between August and the end of November 2023. During this period, the Centre's client delivered another application for the rental of the property to the municipality and applied for a public tender.

At the end of November 2023, the municipality stated that it anticipates renting the hostel in question in the third commercial tender, starting in January 2024. The municipality did not provide facts in its statement that would sufficiently justify its inaction in dealing with the client's requests to rent the property.

The fact that the municipality is seeking to lease the property is confirmed by the repeated announcement of a commercial tender and also by the position of the municipality itself. Despite these efforts, the municipality has repeatedly refused the client's request to rent the property. This raises a presumption of the municipality's intention to deliberately not rent the property to the Centre's client. This presumption is reinforced by the position of the municipality, which in its reply to the Centre directly refers to reasons on the side of the client. The municipality stated that the Centre should also *"enquire with the current owners of the apartments, where the Centre's client lives"* in order to get a *"complete picture of the family's situation"*. The above statement suggests that the rejection of the Centre's client by the municipality is not the result of an impartial assessment and objective procedure, but is directed against the person of the client.

In view of the fact that the client belongs to a protected discriminatory group, namely the Roma ethnic group, the Centre assessed whether the municipality's action could have been motivated by that ground. The municipality has not stated any facts to the Centre that would conclusively dispel any doubt that the reason for its action was not the client's ethnicity. The above led the Centre to conclude that the municipality had not complied with the principle of equal treatment in this case.

### 4.3 Field of access to and provision of healthcare

Roma have a relatively poorer quality of health compared to the majority population in the Slovak Republic; for example, the incidence of infectious and chronic diseases is more frequent among socially excluded Roma. One of the reasons for the poor health status of persons from the Roma minority in Slovakia may be their limited access to health care, in many cases also caused by discrimination in access to health care. Racial discrimination in health care is manifested as different and less favourable treatment of patients because of race and ethnicity. People from marginalised Roma communities even use health services a third less frequently than the general population in Slovakia.<sup>232</sup>

Earlier data already pointed to the fact that a part of the Roma community still distrusts Slovak institutions and health care providers due to fears of discriminatory behaviour. Roma also face

hostile behaviour from health workers, making it difficult for them to access healthcare.<sup>233</sup>

In 2023, as part of the national project Monitoring and Evaluation of Inclusive Policies and their Impact on Marginalized Roma Communities, the Institute of Public Policy, Faculty of Social and Economic Sciences of Comenius University in Bratislava and the Office of the Government Plenipotentiary for Roma Communities published a publication describing the research activities carried out in the months February 2023 – June 2023.<sup>234</sup> These research activities identified barriers on the part of the MRC and the health care system, such as Roma fear of and mistrust towards doctors or fear of receiving poor quality health care. These barriers are related to the negative experience of Roma with health professionals, which often show signs of discriminatory behaviour.<sup>235</sup>

232 Framework Document Strategy for Roma Equality, Inclusion and Participation 2030, available at: <https://www.romovia.vlada.gov.sk/strategie/strategia-pre-rovnost-inkluziu-a-participaciu-romov-do-roku-2030/>

233 KAŇUKOVÁ, L., RIMÁROVÁ, K.: *Diskriminácia minoritných skupín obyvateľov vo vzťahu k zdraviu, zdravotnej gramotnosti a prístupu k zdravotnej starostlivosti (Discrimination against minority populations in relation to health, health literacy and access to healthcare.)* 2021. Available online at: <https://www.prohuman.sk/zdravotnictvo/diskriminacia-minoritnych-skupin-obyvateľov-vo-vztahu-k-zdraviu-zdravotnej-gramotnosti>

234 SLOBODA, M., SIČÁKOVÁ-BEBLAVÁ, E., ŠMERINGAIOVÁ, M., BAYEROVÁ, P., SLAVÍKOVÁ, N.: *Tematické zisťovanie zamerané na identifikáciu bariér rómskych žien pri poskytovaní zdravotnej starostlivosti (A thematic survey aimed at identifying barriers for Roma women in the provision of health care.)* 2023. Available online at: [https://www.romovia.vlada.gov.sk/site/assets/files/1276/barieri\\_romskych\\_zien\\_analyticka\\_sprava.pdf?csrt=10692151301428004851](https://www.romovia.vlada.gov.sk/site/assets/files/1276/barieri_romskych_zien_analyticka_sprava.pdf?csrt=10692151301428004851)

235 They identified the following barriers: the Roma fear of and mistrust towards doctors, fear of being provided with poor quality service, fear of possible hospitalization and diagnosis, language barrier (especially in the context of understanding professional language in health care), low health literacy and awareness of prevention, health and hygiene habits, different approaches to dealing with health problems, not being able to leave work or home (not only) because of caring for children, physical distance from health facilities, lack of documents and health insurance, fear of unreimbursed health care (when not registered), high financial barriers, and the terms of financial transfers.



### 4.3.1 A selection of the Centre's cases

The Centre received a complaint from the Center for Civil and Human Rights, which, as part of its monitoring activities, received a number of complaints describing the conduct of the Košice Ambulance Service (hereinafter referred to as the "Ambulance Service") in connection with the provision of emergency medical care. It concerned marginalised Roma communities in three municipalities in the Prešov Region – Svinia, Hermanovce and Jarovnice. The complaint described the practice of the ambulance service whereby residents of the aforementioned communities were supposed to contact the operations centre and request emergency medical care.

The discriminatory conduct complained about consisted in the refusal of the ambulance workers to come near or inside their homes, even in obviously acute cases and in the need to provide urgent first aid. Residents of the affected communities described that the ambulance staff refused to come to the community even when a woman needed urgent medical care due to impending childbirth, saying that they should arrange their own transport to the hospital.

At the same time, in some cases, residents of all three communities described derogatory and defamatory language used by ambulance service staff in communication with them, related to their Roma ethnic origin, as well as mistreatment

during the provision of emergency medical care.

In the case under review, the Centre found that there was a difference in treatment by the ambulance staff of MRC individuals requesting emergency medical care and non-MRC individuals requesting emergency medical care. On the basis of the legal assessment of the facts of the case, the Centre came to the reasonable conclusion that the ambulance staff did not comply with the principle of equal treatment within the meaning of the Anti-Discrimination Act in conjunction with Section 11, par. 2 of the Health Care Act, on the grounds of belonging to an ethnic group in conjunction with other status, which is determined by the socio-economic status of persons belonging to the MRC.

The Centre together with the Center for Civil and Human Rights attended a meeting in Košice with representatives of the Košice Ambulance Service. At the beginning of the meeting, the representative of the ambulance service described the operation of the emergency medical care and explained that the dispatching of the ambulance to the place of intervention is under the responsibility of the relevant operations centre. It is the operations centre that receives the call and dispatches the nearest available ambulance to the place of intervention. Since the situation was clarified with the representatives of the ambulance service,

only the provision of emergency medical care on the spot in the communities has been addressed, and thus the fact that the ambulance service parks the ambulance at the beginning of the community and the residents of the community have to get to the ambulance themselves. Ambulance service representatives said that upon arrival at the place of intervention, the ambulance driver always assesses how far it is possible to arrive with the vehicle so as not to endanger the safety of the crew and at the same time not to cause damage to the vehicle. If it is not possible to get the vehicle to the patient, the crew should take the necessary equipment and move to the patient. However, the ambulance staff does not proceed in this way during interventions, especially in the village of Svinia, which the Centre has informed the ambulance service about. All ambulance workers are trained how to proceed in particular interventions, and if they do not in a certain situation, it is often the failure of an individual, or of the whole ambulance crew.

Following the meeting, the Centre commented positively on the ambulance service's acceptance of the invitation to attend the meeting. At the same time, they did not deny many of the allegations raised by the

Centre and the Center for Civil and Human Rights; on the contrary, they showed their interest in resolving the situation.

After the meeting, it was established in cooperation with the Advice Centre that a certain correction has been made in the villages of Jarovnice and Hermanovce and now the ambulance arrives directly at the patient's house. However, no correction has been made in the village of Svinia and the ambulance continues to stop at the beginning of the community, where the patient has to arrive on his or her own.

Based on the findings after the meeting, the Centre contacted the emergency service. The representative of the ambulance service stated that the access road to the settlement in the village of Svinia is in a poor condition, and thus access directly to the residential area is supposed to be very difficult in terms of safety, according to the ambulance service. All health workers of the Košice Ambulance Service were also informed about the content of the meeting with the Centre and the representatives of the Center for Civil and Human Rights. They have been warned to avoid any action that could potentially be discriminatory in the provision of emergency medical care.

## 4.4 The field of individual employment and similar legal relationships

Employment of Roma has long lagged behind the majority population.<sup>236</sup> One of the factors that may be behind this undesirable state of affairs is discrimination against Roma in the labour market.

The Centre most often encounters cases where Roma are discriminated against in the recruitment process. It is common for employers to behave differently during telephone communication and personal interviews after finding out that a job seeker is Roma. When communicating by telephone, the employer states

that the position is vacant, but when the jobseeker attends the interview in person, the employer states that the position is not suitable or has already been filled.

When other factors are added to such employer behaviour, which may include low education, lack of qualifications and negative stereotypes of Roma, the Centre concludes that unemployment and exclusion from the labour market is an insurmountable problem for many Roma, and not just those of working age.

### 4.4.1 A selection of the Centre's cases

The Centre received a complaint when a client took part in a selection procedure announced by the municipality of Raslavice (hereinafter referred to as the "employer") for the position of a community centre worker. The client and two other candidates took part in the selection procedure. The selection procedure was held as a part of the project Field Social Work and Community Centres with the support of the Implementing Agency and the Ministry of Labour, Social Affairs and Family of the Slovak Republic. The client was interviewed in person, on the basis of which the client ended up

in last place. He believes that his last position in the selection procedure was related to his ethnicity, as he was the only Roma applicant. His conviction is also based on the fact that he has sufficient experience for the job, knows the Roma community in the municipality and was the only one of the applicants who spoke the Roma language. The client further stated that the successful applicant did not come from the municipality and did not know the local Roma community.

The Centre contacted the Employer to request a statement

<sup>236</sup> Framework Document Strategy for Roma Equality, Inclusion and Participation 2030, Available at: <https://www.romovia.vlada.gov.sk/strategie/strategia-pre-rovnost-inkluziu-a-participaciu-romov-do-roku-2030>

of the facts alleged by the client. In its statement, the Employer stated that it had complied with the applicable legislation and did not require information concerning, e.g. race or information contrary to good morals and personal data not necessary for the performance of the Employer's duties as laid down by a specific regulation when selecting an employee. The criteria for selecting an employee should guarantee equality opportunity for all applicants. During the personal interview, the candidates' qualifications for the position of community worker were examined, and the candidates answered the questions of the recruitment committee. After personal interviews, the recruitment committee determined the final ranking of the candidates, which was decided by a joint vote. As regards the recruitment committee, the municipality stated that it was composed of three persons who met for the first time and were delegated by three independent institutions (the municipality of Raslavice, IMPLEA and the Labour, Social

Affairs and Family Office of Bardejov). The recruitment committee unanimously agreed that the successful candidate met the qualification and personality requirements to work as the community worker at the Community Centre.

As regards the Employer's claim that the information about racial or ethnic origin was not requested by the Employer in the selection procedure, the Centre stated that the client's ethnic Roma background was evident and therefore not disputed between the parties. In its statement, the Employer gave only general information on the conduct of the selection procedure, without commenting on what criteria were decisive for the selection of the successful candidate. Based on the available documents and the legal assessment of the facts, the Centre found that there may have been a violation of the prohibition of discrimination on the grounds of belonging to the Roma ethnic group in the legal case under consideration.<sup>237</sup>

### Case of alleged discrimination on grounds of ethnicity in access to housing

In 2023, the Centre received a complaint from a client who alleged discrimination by her former employer. The client stated that her fixed-term employment ended at the end of August 2022. In her complaint, she argued that the employer had not extended the duration of her employment for an indefinite period because of her Ro-

ma ethnicity.

Before the expiry of the client's agreed period of employment, the employer advertised a competition for her position. The client argued that the person selected did not meet the required qualifications, was of retirement age and was not of Roma ethnicity.

<sup>237</sup> As agreed with the client, at the time of publication of the Report, the Centre is preparing an invitation to settle the anti-discrimination dispute.

In her complaint, the client pointed out the fact that since the employer's management changed, employees of Roma ethnicity with fixed-term contracts of employment have ended their employment upon the expiry of the fixed-term contract. According to her, only employees of Roma ethnicity who had been employed for an indefinite period of time before the change of management remained with the employer.

Since the Centre does not have the competence to request the former employer for documents confirming the client's allegations and to obtain information on the number of employees whose employment ended at the end of the period agreed in the employment contract or whose employment relationship was extended for an indefinite period, the Centre submitted a complaint to the competent Labour Inspectorate to carry out a labour inspection of the client's former employer.

The Labour Inspectorate informed the Centre of the results of the investigation, which did not lead to the conclusion that the employer had violated labour law. The Labour Inspectorate stated that from the documents submitted by the employer it was not possible to assess the discriminatory conduct of the inspected entity on the grounds of race. As regards selection procedure objected to by the client, the Inspectorate stated that it was conducted in accordance with the relevant legislation.

Considering the results of the inspection, the fact that the client did not have evidence proving her allegations and, above all, following the finding that the employment with the employer in question had ended at the end of the fixed term in the period under consideration also for an employee who was not Roma, the Centre could not conclude in this case that there had been a violation of the prohibition of discrimination on the grounds of ethnicity.

## 4.5 Conclusion

From the above findings and the presented cases it is clear that persons from the Roma minority encounter discrimination in various areas of life in the Slovak Republic. In addition to individual cases, structural discrimination against Roma is a persistent problem.

In this chapter, the Centre identifies, in particular, cases in the field of education, where Roma men and women encounter systemic failures at the level of the state leading to structural discrimination manifested not only in segregationist practices, but also in the overall lower quality of the education provided and received. Although not as extensive, but certainly very serious, are the findings of discriminatory practices in the provision of health care, which can

undoubtedly have very dangerous effects on the community concerned. Discrimination in employment law can create one of the most significant barriers to accessing and retaining employment and affects not only the persons concerned but their relatives, too. Discrimination in the field of provision of goods and services could contribute to further deepening the social exclusion of Roma.

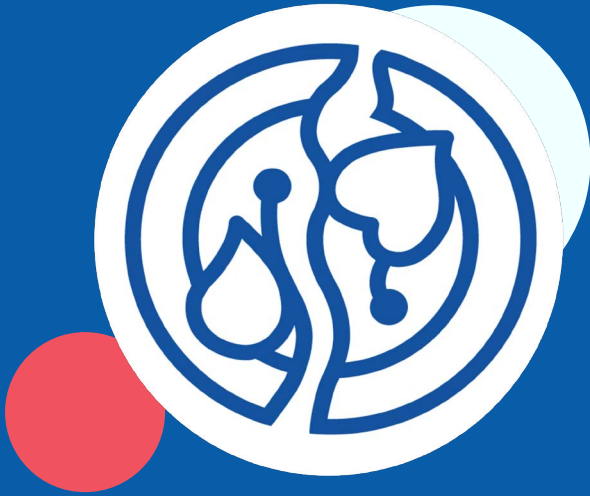
The cases examined by the Centre confirm that discrimination on the grounds of belonging to the Roma ethnic group, often in connection with other status consisting of the socio-economic status of persons belonging to the MRC, is a continuing and ever-present problem affecting a large group of the population.

## Recommendations

### Recommendations of the Centre:

- 1 To the Ministry of Investment, Regional Development and Informatization of the Slovak Republic and the Ministry of Education, Research, Development and Youth of the Slovak Republic to define non-compliance with the principles of desegregation, deghettoization and destigmatization as an exclusion criterion from applying for funding for the construction and expansion of school premises and facilities.
- 2 To the National Council of the Slovak Republic to submit a draft amendment to Act No. 596/2003 Coll. on State Administration in Education and School Self-Government, and on Amendments and Supplementation to Certain Acts, whereby the National Council of the Slovak Republic would add to the provisions of Section 8, par. 1 the obligation of a municipality to take into account the ethnic composition of the population of the municipality or any part thereof when determining a school district.





# Conclusion



The presented 2023 Report provides an objective and up-to-date picture of the state of respect for 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 Chapter 1, the Centre evaluated the implementation of the recommendations addressed to individual entities in the 2022 Report, specifically in the areas of segregation in education, the rights of LGBTI+ people in Slovakia, and the fundamental rights and freedoms of persons who have fled the international armed conflict in Ukraine. The Centre concludes that most of the recommendations have not been implemented by their addressees. Following the evaluation of the implementation of the individual recommendations, the Centre urges the addressees to implement those that have not yet been implemented. Given the fact that the Centre has seen almost no progress in streamlining the protection and implementation of human rights and fundamental freedoms in the area of segregation in education and has identified several challenges related to the fundamental rights and freedoms of migrants/refugees on an ongoing basis during 2023, the Centre has paid attention to these topics in the 2023 Report again. In relation to the rights of LGBTI+ people, the Centre notes that 2023 has not brought any

positive change and the National Council has not adopted any laws or measures to improve the human rights situation of LGBTI+ people.

In Chapter 2, the Centre focused its attention on the indications of power limitations of political rights in relation to constitutional and international-law guarantees of their protection. In this chapter, the Centre points out interpretations of the right to information and confronts them with publicly presented intentions, and discusses the content of constitutional and international-law guarantees of freedom of association. The Centre concludes by stressing the importance of constantly reminding public officials of the judicial interpretation of the right to freely disseminate and receive information and the need to support and create conditions for the implementation of guarantees for non-profit sector activities.

In Chapter 3, the Centre focused on monitoring the challenges faced by refugees in the territory of the Slovak Republic, including those of the particularly vulnerable group of refugees with disabilities. In identifying challenges, the Centre has addressed the problematic aspects associated with operating a trade. Within the third chapter, the report drew attention to the obliga-

tions of the Slovak Republic under the Convention, which the state is obliged to respect in connection with those foreigners who find themselves in the territory of the state illegally. At the same time, the Centre pointed out one of the biggest challenges related to the arrival of refugees not only from Ukraine, but also from other countries: namely human trafficking.

In Chapter 4, the Centre assessed that, in addition to individual cases, structural discrimination against Roma is a persistent problem. In this chapter,

the Centre gave examples from the field of education in particular, where Roma pupils and students face systemic failures at the state level leading to structural discrimination manifested not only in segregationist practices, but also in the overall lower quality of the education provided and received. The Centre illustrated by means of specific cases that discrimination on the grounds of belonging to the Roma ethnic group is a problem that is not receding; on the contrary, is still very topical, affecting a large group of the population.

## List of recommendations

### **Indications of power-based restrictions on political rights in relation to constitutional and international law guarantees of their protection**

- 1 To the members of the Government of the Slovak Republic to refrain from any legislative or other initiatives that could negatively restrict the freedom to disseminate information as well as the freedom to receive it;
- 2 To the Members of the National Council of the Slovak Republic to refrain from any legislative initiatives that could negatively restrict the freedom to disseminate information as well as the freedom to receive it;
- 3 To members of the Government of the Slovak Republic and members of the National Council of the Slovak Republic to behave respectfully towards journalists during their public appearances and not to contribute to the creation of a negative image of free and democratic media;
- 4 To the members of the Government of the Slovak Republic to refrain from any legislative or other initiatives that could negatively restrict the activities of the non-profit sector, including the so-called political NGOs;
- 5 To the members of the National Council of the Slovak Republic to refrain from any legislative initiatives that could negatively restrict the activities of the non-profit sector, including the so-called political NGOs;
- 6 To the members of the Government of the Slovak Republic and Members of the National Council of the Slovak Republic to behave respectfully towards representatives of the non-profit sector during their public appearances and not to contribute to the creation of a negative image of their activities.

### **Identified challenges faced by refugees and migrants in the Slovak Republic**

- 1 To the Ministry of the Interior of the Slovak Republic to consider introducing the possibility of obtaining a trade licence for persons who have been granted tolerated residence.
- 2 To the Ministry of the Interior of the Slovak Republic to actively participate in raising awareness in connection with the operation of a trade – leaflets at trade offices, or at departments of the Foreigners Police with simple instructions on how to operate a trade (various language versions).

- 3 To the Ministry of Labour, Social Affairs and Family of the Slovak Republic to introduce the possibility of reviewing a notification of non-approval of a subsidy to support humanitarian aid to a person under special protection in connection with his or her severe disability.
- 4 To the Ministry of Labour, Social Affairs and Family of the Slovak Republic to consider introducing the possibility for refugees with disabilities to obtain a card of a person with severe disabilities and a parking card.
- 5 To public authorities and public officials to contribute to adequate information on migration and refugee issues. To avoid spreading disinformation about the issue and not to create fear in society.

#### **Discrimination against Roma with emphasis on the cases of the Centre**

- 1 To the Ministry of Investment, Regional Development and Informatization of the Slovak Republic and the Ministry of Education, Research, Development and Youth of the Slovak Republic to define non-compliance with the principles of desegregation, deghettoization and destigmatization as an exclusion criterion from applying for funding for the construction and expansion of school premises and facilities.
- 2 To the National Council of the Slovak Republic to submit a draft amendment to Act No. 596/2003 Coll. on State Administration in Education and School Self-Government, and on Amendments and Supplementation to Certain Acts, whereby the National Council of the Slovak Republic would add to the provisions of Section 8, par. 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.