

FRA

Thematic Legal Study on Homophobia  
and Discrimination on Grounds of  
Sexual Orientation

Slovakia  
April 2008

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# Executive Summary

- [1.] Slovak legislation correctly transposed the provisions of the Council Directive 2000/78/EC (27.11.2000) concerning prohibition of discrimination based on sexual orientation in **employment and occupation**. Later legislation amended the regulations on **education** and **health care**. Sexual orientation was added as an additional explicit ground of non-discrimination also in these two areas. This legislation is quite favourable in the area of employment /occupation, education and health care, however the Directive 2000/78/EC was transposed only formally correctly and there are still provisions (especially in the Labour Code) causing factual discrimination of LGBT individuals.
- [2.] There is no equality body dealing exclusively with discrimination on the ground of sexual orientation. Besides general authorities protecting lawfulness of the state authorities (such as Prosecutors office, Public Defender of Rights) the **Slovak National Centre for Human Rights** deals with all kinds of discrimination; however, this body has no judicial or executive authority and within the field of anti-discrimination it has the competence to, among other things, monitor and assess the observance of human rights; gather and provide upon request information on racism, xenophobia and anti-Semitism; provide legal assistance to the victims of discrimination and represent them in court.
- [3.] According to the Anti-discrimination Act, any person (natural or legal) can claim judgement of the civil court stating breach of rights caused by the discriminatory demeanour. Such a person may, under specific circumstances, plead for compensation of pecuniary damage or non-pecuniary harm. The plaintiff can be represented by a non-governmental organisation or by the Slovak National Centre for Human Rights.
- [4.] **Freedom of movement** is basically regulated by the Act on Residence of Aliens according to which 'family member' only applies to spouses, dependants, including direct relatives and other dependant family members or members of the household.
- [5.] Although Slovak legislation does not recognise registered partnerships or other formalised form of relationship of LGBT individuals there are some provisions granting freedom of movement for LGBT partners of EU citizens, e.g. if such a partner can be considered as member of his/her household.
- [6.] Foreigners with no connection to EU citizens have a different status and do not enjoy the same rights in respect to freedom of movement. Slovak legislation presumes that such a person shall have some kind of relational ties; however, according to some special provisions in the Act on Residence of Aliens, a permanent residence can be granted if it is **in the interest of the Slovak Republic**.

- [7.] Furthermore, foreigners are subject of so-called '**tolerated residence**', a special and exceptional type of residence within Slovakia which may be granted if it is necessary for foreigners' private or family life, or if there are obstacles for his/her administrative expulsion.
- [8.] **Affiliation to the particular social group** based on the common characteristic of sexual orientation is recognised as a ground for granting **asylum status**. In other words, a person claiming existence of well-founded fear of being persecuted as a member of a particular group may obtain asylum status if due to such fear he/she is unable and/or unwilling to return to the country of origin.
- [9.] However, such a person must fulfill all the relevant conditions as an individual because Slovak legislation does not recognise an LGBT partner of a refugee as a family member. The only way an LGBT partner of a refugee can be granted asylum without being persecuted in his/her country of origin is asylum for **humanitarian reasons**. Otherwise, such a person has to prove his/her marital status or direct kinship.
- [10.] **Family reunification** is not applicable for LGBT partners under Slovak legislation. LGBT partnerships are not recognised as family ties. There are no alternatives (like being a member of household of a person) for an LGBT individual to seek residence based on clause of family reunification.
- [11.] **The Right to freedom of assembly** is granted to LGBT individuals on the same basis as it is to anyone else. Pride parades, marches and demonstrations can be realised under the Act on the Right of Assembly and shall not be subject to any permission proceedings. Public authorities such as police and/or municipalities are obliged (together with the organisers) to provide assistance during the assembly to ensure that the constitutional right to the freedom of assembly is not threatened or infringed upon.
- [12.] Between 2000-2007, only a few public gatherings in favour or tolerance of LGBT individuals took place, but the number of public gatherings has increased slightly in recent years. This is unofficial data gained from interviews with active members of the community and responses to the information request sent to eight county municipalities.
- [13.] LGBT individuals facing **hate speech** are partially protected by the **Criminal Code** or by the **Act on Minor Offence**; however, none of these laws recognise any crime or offence and specifically protect LGBT individuals. There are only general provisions applicable, unlike those applicable to members of national, ethnic or racial minorities; however, LGBT individuals can be considered as members of a specific group and thus object of the criminal act 'Violence against group of people and the individuals'.
- [14.] Provisions concerning defamation and libeling stipulated in **Civil Code** might be more relevant in the case of hate speech of LGBT individuals. According to

theoretical statements and general judicial rulings concerning defamation law, **statements which are truthful but which deal with private and intimate life of a person aggrieved, can be published (in general terms) only with consent of such person** (with certain exception to the public persons). Spreading information about sexual orientation of LGBT individual against his/her will can be thus considered illegal under the defamation provisions of the Civil Code.

- [15.] There is no reference about real defamation case of LGBT individual brought to the court; however, there have been many cases of hate speech presented by the **public officials**. These are more or less cases of abuse and/or humiliation and are examples of hostility towards LGBT individuals in Slovakia.
- [16.] Legislation regarding **transgender individuals** stipulates that discrimination due to their sexual or gender identification is considered as **discrimination on the ground of sex**.
- [17.] There are clear legislative provisions relating to the administrative issues concerning the surgical change of sex/gender, like change of name and change of identification number; however, **legislation concerning medical aspects is practically absent**. There is no proper legislative environment regulating changes of sex/gender and this might be one of the reasons why transgender individuals prefer to undergo operations in the Czech Republic.

## A. Implementation of Employment Directive 2000/78/EC

- [18.] The principle of equal treatment is guaranteed under Article 12 of the Constitution of the Slovak Republic<sup>1</sup>, which states in paragraph 1 that ‘people are free and equal in dignity and rights’. Paragraph 2 of Article 12 states that ‘fundamental rights and freedoms are guaranteed in the territory of the Slovak Republic to every person regardless of sex, race, skin colour, language, belief, religion, political affiliation or conviction, national or social origin, nationality or ethnic origin, property, lineage or any other status. No person shall be harmed, favoured or discriminated against on any of these grounds’. Sexual orientation as a ground of non-discrimination is not explicitly mentioned in the Constitution, so complaints regarding such discrimination shall be based on ‘other status’ of possible victim.
- [19.] Council Directive 2000/78/EC (27.11.2000) establishing a general framework for equal treatment in employment and occupation was transposed into Slovak legislation primarily by the Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination (Anti-discrimination Act)<sup>2</sup> adopted by Národná rada Slovenskej republiky (NRSR) [National Council of the Slovak Republic] (Slovak Parliament) on 20.05.2004 and came into force on 01.07.2004.
- [20.] According to the Anti-discrimination Act, discrimination on the ground of sexual orientation is prohibited in employment relationships, similar legal and related legal relationships. The principle of equal treatment shall apply only in combination with the rights of natural persons provided by law and in the following areas:
- access to employment, occupation, other profit-making activities or functions, including recruitment requirements and selection criteria and modalities,
  - employment and working conditions of work including remuneration, promotion and dismissal,
  - access to vocational training, professional upgrading and participation in active labour market policy programmes including access to vocational guidance services, or
  - membership and activities in employees’ organisations, employers’ organisations and organisations associating persons of certain occupations, including the benefits that these organisations provide to their members.

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<sup>1</sup> Slovakia/Ústava Slovenskej republiky 460/1992 Zb. (01.09.1992)

<sup>2</sup> Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

- [21.] The Labour Code<sup>3</sup> and other acts in the field of employment within specific areas (such as prosecutors, public services, military services, etc.) were amended accordingly.
- [22.] The Slovak Republic did not explicitly recognise sexual orientation as a matter of discrimination within other areas mentioned in the Racial Equality Directive 2000/43/EC, like social security, education, health care, access to goods and services and housing; however, this has been changed by amending some acts in the area of education. The Act on Higher Education<sup>4</sup> as well as the School Act<sup>5</sup> were amended<sup>6</sup>. Sexual orientation is stipulated as one of the grounds of discrimination explicitly prohibited by these acts.
- [23.] Similarly, the Act on Providers of Health Care<sup>7</sup>, in the Annex 4 – Ethical Codex of Medical Servant, states that it is a duty of any medical servant to protect life, support and restore health, prevent from diseases, lighten suffering regardless of nationality, race, belief, **sexual orientation**, political affiliation, social status, moral or intellectual level and reputation of the patient.
- [24.] Slovak Parliament has just approved the amendment of the Anti-discrimination Act on 14.02.2008.<sup>8</sup> According to this amendment discrimination on the ground of sexual orientation is prohibited also within other areas such as **social care, medical treatment, access to goods and services and education**.
- [25.] Although the Anti-discrimination Act<sup>9</sup> prohibits any kind of discrimination based on sexual orientation in employment and occupation, there are certain provisions in the Labour Code which can be considered disadvantageous for members of a same sex couple compared to a married couple.<sup>10</sup> Here are the most visible ones:
- in case of death of the employees' husband or wife the employer is obliged to grant to the employee two days off paid by the employer; however, in case of death of a person who lived with the employee in the same household the employer is obliged to grant to the employee only the minimum necessary amount of time, maximum one day off paid by the employer.<sup>11</sup> Moreover, it can be more unpleasant for such a partner to prove their relationship.

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3 Slovakia/zákon 311/2001 (02.07.2001).

4 Slovakia/zákon 131/2002 (21.02.2002).

5 Slovakia/zákon 29/1984 (22.03.1984).

6 Slovakia/zákon 363/2007 (03.07.2007).

7 Slovakia/zákon 578/2004 (21.10.2004).

8 This last amendment did not come into force yet. It was not published in the official journal of the collection of laws. The approved version is available at:  
[http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/Tmp/N%E1vrh%20z%E1kona\\_474.doc](http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/Tmp/N%E1vrh%20z%E1kona_474.doc)  
 (25.02.2008).

9 Slovakia/ Zákon 365/2004 (20.05.2004).

<sup>10</sup> There is no legislation on registered partnership or other officially recognised relationship of people of the same sex in Slovakia.

<sup>11</sup> Art. 141, paragraph 2(d) of the Labour Code.

- in case of childbirth, the employee (husband) is guaranteed necessary amount of time to transport his wife to hospital and back paid by the employer. This benefit is guaranteed only to husband of a wife.<sup>12</sup>

[26.] However, no official or non-official data is available to support whether the above mentioned provisions caused some kind of discriminatory performance. There is no case law related to alleged discrimination based on sexual orientation within labour law either.

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

[27.] There is no equality body or other authority in Slovakia dealing solely or primarily with discrimination, not to mention discrimination on the ground of sexual orientation. Apart from general authorities protecting legality (general courts, constitutional court, prosecutors offices), there is also an Ombudsman office so called Verejný ochranca práv [Public Defender of Rights], dealing with breach of law conducted by the public authorities.

[28.] The only body which can be considered an equality body dealing with all kinds and forms of discrimination is Slovenské národné stredisko pre ľudské práva (SNSLP) [the Slovak National Centre for Human Rights (SNCHR)]. SNCHR was founded by the agreement between the United Nations and the government of the Slovak Republic. The SNCHR is a legal entity engaged in activities relating to the promotion and protection of human rights in Slovakia.

[29.] Established by the Act on Establishment of the Slovak National Centre for Human Rights,<sup>13</sup> it has no arbitrament competencies. It is more a supervising authority with advisory competence.

[30.] The duties of SNCHR were extended by the Anti-discrimination Act<sup>14</sup> to include monitoring and assessment of the observance of the principle of equal treatment. SNCHR has become the specialised body for the promotion of equal treatment for all grounds of discrimination.

[31.] The Competences of SNCHR are defined quite broadly and in quite unspecified general language. SNCHR shall monitor and assess the observance of human rights and the observance of the principle of equal treatment according to a separate law, gather and provide upon request information on racism, xenophobia and anti-Semitism in the Slovak Republic, carry out research and surveys on the provision of information in the area of human rights, and to

<sup>12</sup> Art. 141, paragraph 2(b) of the Labour Code.

<sup>13</sup> Slovakia/zákon 308/1993 (15.12.1993).

<sup>14</sup> Slovakia/ Zákon 365/2004 (20.05.2004).

gather and disseminate information in this area, provide educational activities, take part in public information campaigns, provide library services and other services in the field of human rights. SNCHR publishes an annual report on the respect for human rights in Slovakia.

[32.] Within the field of anti-discrimination activities SNCHR shall:

- provide for legal assistance for victims of discrimination and expressions of intolerance,
- prepare expert opinions on compliance with the principle of equal treatment.<sup>15</sup>

[33.] According to the newest amendment<sup>16</sup> of the Act on Slovak National Centre for Human Rights<sup>17</sup> approved on 14.02.2008 by the Parliament, SNCHR shall also:

- execute independent ascertainment regarding discrimination,
- develop and publish reports and recommendations in matters regarding discrimination.

[34.] It is not clear, however, how to interpret the provision „providing for legal assistance to victims of discrimination“. This competence can cover legal counselling to the victims, representation of them in the court proceedings or cooperation with attorneys and/or with non-governmental organisations providing legal aid in the field of equal treatment.

[35.] SNCHR is also authorised to represent parties free of charge in the proceedings concerning discrimination on any ground.<sup>18</sup> There is no data available on which forms of discrimination were claimed; however, from existing activities of the SNCHR it seems that the Centre provides consultations rather than legal representation of victims. These are only assumptions of the author of this study since there are no official reports, evaluations or other data providing with thorough information concerning their activities. SNCHR publishes reports on observance of human rights annually.<sup>19</sup> These reports, however, deal with selected examples on the state of human rights in Slovakia, including activities of SNCHR in the field, but do not provide a comprehensive picture of the

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<sup>15</sup> Art 1, paragraph 2. Slovakia/zákon 308/1993 (15.12.1993).

<sup>16</sup> This amendment did not come into force yet. It was not published in the official journal of the collection of laws. The approved version is available at:  
[http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/Tmp/N%E1vrh%20z%E1kona\\_474.doc](http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/Tmp/N%E1vrh%20z%E1kona_474.doc)  
(25.02.2008)

<sup>17</sup> Slovakia/Zákon 308/1993 (15.12.1993)

<sup>18</sup> Art. 1, paragraph 3. Slovakia/zákon 308/1993 (15.12.1993).

<sup>19</sup> These reports are available in English only for years 2004 and 2005 at:  
[http://www.snslp.sk/rs/snslp\\_rs.nsf/0/CBDA5EC6B49A84E0C125718E004036EC?OpenDocument&ID=PAR012395760467&TYPE=S&LANGUAGE=E&LENGTH=S](http://www.snslp.sk/rs/snslp_rs.nsf/0/CBDA5EC6B49A84E0C125718E004036EC?OpenDocument&ID=PAR012395760467&TYPE=S&LANGUAGE=E&LENGTH=S) (13.02.2008).  
Reports in Slovak for years 2004-2006 are available at:  
[http://www.snslp.sk/rs/snslp\\_rs.nsf/0/F048C56CB73E748BC1256FC600380C2F?OpenDocument](http://www.snslp.sk/rs/snslp_rs.nsf/0/F048C56CB73E748BC1256FC600380C2F?OpenDocument) (13.02.2008).

activities of SNCHR or of the state of human rights in the field of equal treatment.

- [36.] Apart from above mentioned reports, SNCHR publishes annual reports on its activities, which do not provide comprehensive list of activities concerning discrimination either.<sup>20</sup> According to the Annual report for year 2006, SNCHR dealt with 198 written petitions claiming violation of equal treatment and provided 630 individuals with telephone assistance in this field. Most of the petitions were complaints about discrimination related to employment and based on grounds of lineage and age. Three complainants claimed violation of equal treatment in employment based on their sexual orientation.
- [37.] No complaints objecting to discrimination based on sexual orientation were mentioned in the annual reports for the years 2004 and 2005. The data for the previous years is not available at all.

## A.2. Judicial review and implementation of Article 9(2) of the Directive 2000/78/EC

- [38.] According to the Anti-discrimination Act, any natural person or legal entity can be considered a victim if claiming that his/her rights and interests protected by law were harmed because the principle of equal treatment was not applied to him/her. The victim can file a lawsuit in civil court (district court) claiming that the discriminator shall refrain from discriminating activities, and if possible the victim can require the rectification of the illegal situation and an adequate compensation. When the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the victim, the victim may also seek non-pecuniary damages in cash. The amount of non-pecuniary damage shall be determined by the court, taking into account seriousness of non-pecuniary damage and all related circumstances. The total amount of compensation is not limited and besides the legal conditions it is dependant mostly upon discretion of the court.
- [39.] The Anti-discrimination Act introduced also the possibility for a victim (plaintiff) to be represented in a judicial proceeding concerning equal treatment by a legal entity which is authorised by a separate law,<sup>21</sup> or which goal or object of activities is protection against discrimination. There are no restrictions as to the number of claimants (plaintiffs) represented by the association. If such an

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<sup>20</sup> The annual reports 2004 and 2005 on activities of SNCHR are available in english at: [http://www.snslp.sk/rs/snslp\\_rs.nsf/0/B76DD2FB0C07822CC1257237004D9666?OpenDocument](http://www.snslp.sk/rs/snslp_rs.nsf/0/B76DD2FB0C07822CC1257237004D9666?OpenDocument) (17.02.2008). Reports in Slovak for years 2004-2006 are available at: [http://www.snslp.sk/rs/snslp\\_rs.nsf/0/DAD33B76D16AFB2FC1256FEF00491B8E?OpenDocument](http://www.snslp.sk/rs/snslp_rs.nsf/0/DAD33B76D16AFB2FC1256FEF00491B8E?OpenDocument) (17.02.2008).

<sup>21</sup> According to the Act No. 311/2001 SNCHR is authorised by law to represent the plaintiff in the proceedings concerning violation of the principle of equal treatment.

NGO takes up representation of a victim/victims, it shall authorise one of its members or employees to act on behalf of the person represented.

[40.] As far as the author of this study is concerned, there was no case before judicial bodies objecting discrimination on ground of sexual orientation, not to mention such plaintiff represented by a legal entity in terms of Art. 9(2) of the Directive 2000/78/EC; however, there are a few active NGOs within the LGBT community in Slovakia which fulfill the conditions and can represent victims at the court trials:

- Civic association Altera in Bratislava,<sup>22</sup>
- Civic association Ganymedes based in Bratislava, Kosice, Prievidza,<sup>23</sup>
- Civic association Iniciatíva Inakosť [Initiative Difference] based in Trnava,<sup>24</sup>
- Civic association MUSEION – združenie lesbických žien a sympatizujúcich občanov [MUSEION – association of lesbian women and sympathising citizens] based in Bratislava.<sup>25</sup>

[41.] There are more non-governmental organisations operating within the LGBT community, but in their statutes it is not explicitly stated that their goal/object is protection against discrimination as stated in the Anti-discrimination Act.

[42.] The law does not provide any details on how the aim or content of activities of a non-governmental organisation shall be proved. It can only be assumed that the court will examine the statutes of such legal entity to search for its goal, aim or mission.

### A.3. Other remedies and sanctions

[43.] Besides civil court procedure in the area of private employment there are also other remedies available. Concerning private employment, bodies exercising control over the observance of the employment legislation (Labour Code<sup>26</sup>) have the authority to impose a fine of up to 1.000.000 SKK (approximately 30.300 EUR). Relevant controlling bodies are Národný inšpektorát práce [National Labour Inspectorate] and Inšpektoráty práce [District Labour Inspectorates].<sup>27</sup> Similar controlling entities are established also for some other areas providing with education - Štátna školská inšpekcia [State School Inspection]<sup>28</sup>, goods and services - Slovenská obchodná inšpekcia [Slovak Trade Inspection].

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<sup>22</sup> [www.altera.sk](http://www.altera.sk)

<sup>23</sup> [www.ganymedes.info](http://www.ganymedes.info)

<sup>24</sup> <http://www.spatrick.info/phprs/index.php>

<sup>25</sup> <http://www.lesba.sk/design/showpage.php?name=musion>

<sup>26</sup> Slovakia/zákon 311/2001 (02.07.2001).

<sup>27</sup> Slovakia/zákon 125/2006 (02.02.2006).

<sup>28</sup> Slovakia/zákon 596/2003 (05.11.2003).

## B. Freedom of movement

[44.] Directive 2004/38/EC (29.04.2004) on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States was transposed into Slovak legislation primarily by the Act on Residence of Aliens<sup>29</sup>.

### B.1. Right to entry

[45.] Family members of EU citizens who are not EU citizens are not required to present valid visa when entering the Slovak Republic if they can identify themselves with a valid residence card which clearly states their family tie.

[46.] EU citizens and family members can be denied from entry to Slovakia only if:

- he/she is an undesirable person,
- there is reasonable suspicion that such a person shall threaten state security, public order or public health, or
- he/she cannot provide passport or visa, if required.

[47.] When a n EU citizen or a family member does not have the necessary travel documents, such a person shall be allowed to, during reasonable time period, acquire travel documents or prove by other means that he/she has the right of free movement and residence.

[48.] Pursuant to Act on Residence of Aliens a **'family member'** of EU citizen means:

- the spouse<sup>30</sup> and his/her child under the age of 21 or the dependants,
- the child under the age of 21 or the dependants,
- dependant direct relatives,
- dependant direct relatives of the spouse,
- other dependant family members or members of his/her household.<sup>31</sup>

[49.] The Act on Residence of Aliens does not distinguish between family members who are EU citizens and those who are third country nationals.

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<sup>29</sup> Slovakia/zákon 48/2002 (13.12.2001).

<sup>30</sup> According to Family Law (Slovakia/zákon 36/2005 (19.01.2005)) only a man and a woman can be married. The term „spouse“ shall be interpreted in these terms as a marital partner of opposite sex. And vice versa: a couple of the same sex cannot be married and „a spouse“ cannot be a partner of the same sex. Same sex spouses cannot be thus qualified as family members.

<sup>31</sup> Art 45b(2). Slovakia/zákon 48/2002 (13.12.2001).

- [50.] The Slovak definition of a ‘family member’ is equivalent to the wording of the Directive 2004/38/EC (29.04.2004)<sup>32</sup>; however, Slovak legislation does not recognise same sex couples nor registered partners as family members. Slovak legislation does not constitute registered partnership nor other form of registered cohabitation of the partners of the same sex, neither it provides partners living in such partnership (arranged in another country) with similar rights as marital couples. For this reason, LGBT partners cannot claim to be family members based on a marital relationship.
- [51.] However LGBT partners of EU citizens can claim to be considered ‘family members’ on the basis of being ‘**other dependant family members**’ or ‘**members of his/her household**’. There are no details stating how this relationship can be proved. The Act on Residence of Aliens provides analogous provisions regarding special provisions for EU citizens. According to these provisions, the declared relationship can be proved by a certificate or by ‘honest statement’ confirming that the person is a dependant family member or member of the household of the relevant person<sup>33</sup>. Neither relevant data nor findings demonstrating the application of the quoted provisions in practice are available, however.

## B.2. Temporary residence

- [52.] Temporary residence permission<sup>34</sup> allows a foreigner to stay within Slovakia and travel abroad and return. Temporary residence permission is granted for certain purposes like business, employment, studies, special activities (lecturing, arts, sports, etc.), family reunification, or civil units of armed forces services.
- [53.] Detailed conditions and provisions dealing with family reunification are described further in this study, under item D on Family reunification. Apart from provisions regulating family reunification, there is no other relevant legislation regarding temporary residence in relation to LGBT partners.
- [54.] Slovak law does not explicitly stipulate any specific legal status permitting LGBT partners of Slovak citizens freedom of movement in other EU countries. According to the Residence of Aliens Act, any individual who is not a Slovak citizen shall be considered an alien. If an alien (including the LGBT partner of a Slovak citizen) acquires any kind of residence permit, he/she can enjoy freedom of movement outside of Slovakia based on this permission; however, without permission to reside in Slovakia (temporary or permanent) each alien is considered to be present in Slovakia either on short-term residence (less than three months), or without required permission.

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<sup>32</sup> Art. 2 and 3 of the Directive 2004/38/EC (29.04.2004).

<sup>33</sup> Art. 45b(3)c of the Act No. 48/2002 Coll.

<sup>34</sup> Art. 17-29 of the Act No. 48/2002 Coll.

## B.3. Permanent residence

[55.] Permanent residence permission shall entitle foreigners to stay within the territory of Slovakia and to travel abroad and return for a time limit granted by the police. Permanent residence permission is issued in two stages:

- ‘first permission’ for five years, and
- ‘further permission’ for an unlimited period.

### B.3.1. ‘First permission’

[56.] The Act on Residence of Aliens<sup>35</sup> distinguishes between the residence of foreigners-EU citizens and their family members, and of foreigners-third country nationals.

[57.] A foreigner (third country national with no ties to the EU) shall be granted first permission for permanent residence, if he/she is:

- the spouse of a Slovak citizen with permanent residence in Slovakia,
- a dependant direct relative of the Slovak citizen with permanent residence in Slovakia,
- an unmarried child under the age of 18 in personal care of a foreigner, who is married with a Slovak citizen with permanent residence in Slovakia,
- an unmarried child under the age of 18 years of a foreigner with permanent residence in Slovakia,
- a child under the age of 18 in personal care of a foreigner with permanent residence in Slovakia,
- a dependant above the age of 18 of a foreigner with permanent residence in Slovakia, or
- if granting permanent residence permission is in the interest of the Slovak Republic.<sup>36</sup>

[58.] A foreigner shall be granted a first permission if he/she is a **family member of an EU citizen** with first permission and will not become a burden for the health-care or social system. As stated above, a family member is also a person to be ‘**other dependant family member**’ or a ‘**member of his/her household**’. This provision can apply also to LGBT partners of EU citizens.

[59.] The right to a ‘first permission’ for such a person then shall be granted also when the foreigner is economically safe (is entrepreneur, employee or has sufficient amount of finance to cover his/her stay), and:

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<sup>35</sup> Slovakia/zákon 48/2002 (13.12.2001)

<sup>36</sup> Art. 35. Slovakia/zákon 48/2002 (13.12.2001).

- his/her residence had lasted at least one year before the EU citizen's death
- his/her marriage was terminated and had lasted for at least three years including at least one year of residence, or out of which a dependant child was in his/her personal care, or due to special regards, or this foreigner has the right to contact the dependant child within the territory of the Slovak Republic,
- is studying and his/her parent, an EU citizen, has died or has terminated his/her residence in Slovakia.<sup>37</sup>

[60.] The first residence permission for a family member of an EU citizen cannot be terminated if consequences of such termination would be inappropriate with regards to his/her private and family life.

### B.3.2. 'Further permission'

[61.] A foreigner shall be granted further permission if he/she was granted the first permission and his/her temporary residence has lasted for at least five years. Such a person is called an 'advantaged alien'. His/her residence rights are connected to rights of EU citizens, members of his/her family. In other words, when a person can prove that he/she is member of household of an EU citizen and is fulfilling other conditions (duration of stay in Slovakia, ...), can obtain a further permission.

### B.3.3. Tolerated residence

[62.] The Slovak Act on Residence of Aliens<sup>38</sup> also recognises so called 'tolerated residence'. A person shall be granted status of tolerated residence, if:

- there is an obstacle to his administrative expulsion (alien cannot be expelled to the country where his life or freedom could be in danger on the ground of his/her race, nationality, religion, affiliation to a certain social group or for political persuasion),
- he/she was granted temporary refuge according to the Act on Asylum<sup>39</sup>,
- departure is impossible (and his/her detention is inexpedient),
- he/she is an underage child found within the territory of the Slovak Republic,
- he/she is a victim of human trafficking,
- it is necessary for his/her private and family life.<sup>40</sup>

[63.] Tolerated residence is an exceptional provision covering unexpected situations where it is impossible to expel the alien concerned. This provision, especially

<sup>37</sup> Art. 45b. Slovakia/zákon 48/2002 (13.12.2001)..

<sup>38</sup> Slovakia/zákon 48/2002 (13.12.2001)

<sup>39</sup> Slovakia/zákon 480/2002 (20.06.2002).

<sup>40</sup> Art. 43. Slovakia/zákon 48/2002 (13.12.2001).

its last section relating to private and family life or a person, can also be used for cases of LGBT partners of EU citizens living within the territory of the Slovak Republic; however, the situation for LGBT partners would be easier and clearer if the Slovak legislation would recognise their status (registered or non) as a member of family of an EU citizen.

## B.4. Statistics and case law

- [64.] There are no relevant statistical data available, since the Migration Office of the Ministry of Interior does not keep such statistics. Neither relevant data nor findings demonstrating the application of the quoted provisions in practice are available.
- [65.] The same applies to case law. Several efforts were made in order to obtain such information however, as it is explained in Annex I, according to the response of the Ministry of Justice of the Slovak Republic to an information request,<sup>41</sup> judicial statistics do not provide specific data on the type of discrimination claimed. Slovak courts are obliged to publish certain judicial decisions through internet; however, this court cases register is limited only to some civil cases and trade law cases. Another official source of information concerning case law were replies of the county courts and some district courts to the information requests filed by the author of this study; however, since the courts do not keep detailed statistics concerning parties of the proceedings and/or comprehensive information regarding the merits of the dispute, county court officers were unable to track any cases related to LGBT individuals. Members of the LGBT community were interviewed and they also confirmed that during the years 2000-2007, there were no judicial proceedings claiming protection against discrimination based on sexual orientation.

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<sup>41</sup> Personal communication via e-mail on 08.02.2008.

## C. Asylum and subsidiary protection

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

[66.] Asylum procedure is regulated by the Act on Asylum<sup>42</sup>. Pursuant to this act a person is granted asylum, if:

- the applicant has well-founded fear of being persecuted for reasons of race, nationality, religion, political opinion or membership of a particular social group, and is unable or unwilling to return to his/her country of origin due to such fear, or
- is being persecuted for claiming his/her political rights and freedoms in the country of origin.<sup>43</sup>

[67.] Besides these conditions, the Ministry of Interior can grant asylum for **humanitarian reasons** without proving existence of any reason stated above.<sup>44</sup> This is an exception from the asylum procedure and its conditions and the Act on Asylum does not provide more detailed information about granting asylum for humanitarian reasons.

[68.] When assessing the reasons for persecution, a '**group**' shall be understood as a particular social group whose group members share innate features or common background which cannot be changed, or share characteristic or belief which are so significant for their identity or conscience that such a person should not be forced to repudiate it and is perceived by surrounding society as being different; depending on the circumstances in the country of origin, a particular social group **can also include a group based on the common characteristic of sexual orientation. Such** orientation cannot include criminal acts as stated by a special law.<sup>45</sup>

[69.] The Asylum Act almost literally implemented relevant provisions of the Directive 2004/38/EC considering the definition of reasons for asylum. On this basis, asylum seekers objecting to persecution due to their sexual orientation can be granted asylum status.<sup>46</sup>

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<sup>42</sup> Slovakia/zákon 480/2002 (20.06.2002).

<sup>43</sup> Art. 8, Slovakia/zákon 480/2002 (20.06.2002).

<sup>44</sup> Art. 9, Slovakia/zákon 480/2002 (20.06.2002).

<sup>45</sup> Art. 19a (4), Slovakia/zákon 480/2002 (20.06.2002).

<sup>46</sup> However, according to the response to an information request filed by the author of this study, the Migration Office of the Ministry of Interior stated, that well-founded fear of being persecuted for different sexual orientation is not considered as a separate reason for granting

[70.] It cannot be proved by any relevant statistics or other information, neither official or non-official, whether such applicant was ever granted asylum. Neither the Ministry of Interior of Slovak Republic nor other relevant authorities (such as Migračný úrad [Migration Office]) gather such data. The available statistics considering asylum seekers and refugees monitor only number of asylum seekers per month, based on their nationality, country of origin, gender, age, the outcome of the procedure and separate data concerning number of juveniles coming without guide.<sup>47</sup> None of the respective authorities monitor the **reasons** for asylum seeking by the applicants.

## C.2. Family members in the context of asylum procedure

[71.] The Asylum Act does not provide definition of ‘family member’ as such. The act stipulates the eligibility scope of family reunification as follows:

- the spouse of a refugee, if their marital status is still existing and was existing in time when the refugee left his/her country of origin,
- unmarried children of a refugee or his/her spouse under the age of 18, or
- parents of an unmarried refugee under the age or 18.

[72.] „Spouse“ of a refugee is meant to be a marital partner of opposite sex. This interpretation is based on Family Law<sup>48</sup> according to which spouses are marital partners while marriage is relationship between a man and a woman. Same-sex spouses do not qualify as family members according to Slovak law.

[73.] Another form of protection for aliens is ‘**temporary refuge**’. For its purpose, the Ministry of Interior of the Slovak Republic shall grant refuge to:

- the spouse of a person with temporary refuge status, if the two parties are still married and were married at the time when the foreigner left his/her country of origin,
- unmarried children or persons with temporary refuge status and unmarried children of a spouse of such a person under the age of 18, or
- other close relatives of persons listed above, if they were living in the same household with a person with temporary refuge status and were fully or partly dependant on him/her.<sup>49</sup>

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asylum. (The decision of Migration Office, Ministry of Interior of Slovak Republic, on non-disclosure of requested information (06.03.2008))

<sup>47</sup> Statistics of Migration Office of Ministry of Interior are available at:  
<http://www.minv.sk/mumvsr/STAT/statistika.htm>

<sup>48</sup> Slovakia/zákon 36/2005 (19.01.2005)

<sup>49</sup> Art. 31a. Slovakia/zákon 480/2002 (20.06.2002).

[74.] Based on quoted relevant provisions of the Asylum Act, it is evident that LGBT partners are not recognised as family members in the context of asylum and/or subsidiary protection. Slovak legislation recognises only persons who have contracted marriage or who have direct kinship (ascending or descending) as family members. LGBT partners of the refugees or asylum seekers can be granted asylum only based on humanitarian reasons.

### C.3. Statistics and case law

[75.] The Migration Office does not keep statistics of the refugees including the reasons of asylum seeking; however, based on the reply of the Migration office provided to the author of this study there were no cases of asylum granted for the reason of persecution based on sexual orientation of applicant.

[76.] The same applies to case law. Several efforts were made in order to obtain such information however, as it is further explained in Annex I however no case law was assessed by the author of this study.

## D. Family reunification

[77.] Family reunification is regulated principally by legislation dealing with aliens and with refugees.

### D.1. Aliens

[78.] According to the Act on Residence of Aliens<sup>50</sup> a temporary residence permit is granted for the sake of family reunification to:

- the spouse of a foreigner with temporary residence permit or permanent residence permit, if both of them are above the age of 18,
- an unmarried child under the age of 18 of foreigner/foreigners with temporary residence permit, the spouse of such foreigner or refugee, or the spouse of a refugee who personally cares for this child due to special law or decision of a relevant authority,
- a dependant child above the age of 18 of a foreigner with temporary residence permit or his/her spouse,
- a relative in direct ascending line of the refugee above the age of 18,
- a single parent dependant on a foreigner with temporary residence permit or with permanent residence permit, or
- a dependant according to an international treaty.<sup>51</sup>

[79.] Such a treaty is for example the agreement among parties of North Atlantic Treaty Organization (NATO) and other countries participating in the partnership for peace related to state of their armed forces<sup>52</sup>. In terms of this treaty, a 'dependant person' is to be understood as spouse of a member of the armed forces or civil units, or child of such member dependant on his/her support.

[80.] A „spouse“ is to be understood as a married partner of the opposite sex. It is clear that partners of LGBT individuals are not covered by the above quoted legal provisions; only children of LGBT individuals can enjoy advantages of temporary residence in Slovakia.

### D.2. Refugees

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<sup>50</sup> Slovakia/zákon 48/2002 (13.12.2001).

<sup>51</sup> Art. 23. Slovakia/zákon 48/2002 (13.12.2001) .

<sup>52</sup> The NATO treaty became part of Slovak legislation by Notice of Ministry of Foreign Affairs of Slovak Republic. Slovakia/oznámenie 324/1997 (13.01.1996).

[81.] Pursuant to the Asylum Act<sup>53</sup> the Ministry of Interior of the Slovak Republic shall grant asylum for the purpose of family reunification to:

- a spouse of a refugee, if their marital status still exists and did exist at the time when the refugee left his/her country of origin,
- unmarried children of a refugee or his/her spouse under the age of 18, or
- the parents of an unmarried refugee under the age or 18.

[82.] For the purpose of temporary refuge the Ministry of Interior of the Slovak Republic shall grant refuge to:

- a spouse of a person with temporary refuge status, if their marital still exists and did exist at the time when the foreigner left his/her country of origin,
- an unmarried child or a person with temporary refuge status and the unmarried children of a spouse of such a person under the age of 18, or
- other close relatives of persons above listed, if they were living in the same household with the person with temporary refuge status and were fully or partly dependant on him/her.<sup>54</sup>

[83.] It can be noted that the Slovak Republic did not adopt the provisions enabling the entry and residence of the unmarried partner being a third country national, with whom the sponsor is in a duly attested stable long-term relationship or of a third country national who is bound to the sponsor by a registered partnership. As stated above, Slovak legislation does not regulate registered partnership of people of the same sex and does not grant legal status to them. In these terms, the right to family reunification is granted only to spouses of the opposite sex (whose relationship is based upon marital status) or to direct relatives in ascending or descending line. The same applies also to refugees and asylum seekers.

[84.] There is only one possibility for people outside of direct relative kin or marital status to gain entry and residence in Slovakia based on right to family reunification. This applies to a single parent dependant on a foreigner with temporary or permanent residence permit. The conditions that must be fulfilled under this provision are as follows:

- such person must be single in terms of Slovak legislation: i.e. since Slovakia does not recognise registered partnership as legal relationship, this can apply to a single LGBT individual as well as to a person living in a registered partnership,
- such person must have a child/children: this excludes large number of possible applicants of LGBT individuals without descendants,
- such person must be dependant (economically, socially) on another alien with temporary or permanent residence permit: this might be difficult to

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<sup>53</sup> Slovakia/zákon 480/2002 (20.06.2002).

<sup>54</sup> Art. 31a. Slovakia/zákon 480/2002 (20.06.2002).

prove for people of the same sex – it can be assumed that the original provision was meant for a person taking care of a single parent and his/her child, e.g. single parents taking care of each other and of their child/children; however, it can be difficult for a LGBT individual to prove that he/she is dependant on a person of the same sex.

- [85.] None of these assumptions can be confirmed by statistical or other data since there is no official or unofficial source. Based upon restrictive legislation, it can be presumed that there are no LGBT partners of third country nationals residing in the Slovak Republic who have benefitted from family reunification.

### D.3. Statistics and case law

- [86.] There are no relevant statistical data available, since the Migration Office of the Ministry of Interior does not keep such statistics. The same applies to case law. Efforts to obtain case law is further explained in Annex I.

## E. Freedom of assembly

- [87.] The right to freedom of assembly is guaranteed by Article 28 of the Constitution of the Slovak Republic.<sup>55</sup> Conditions for exercising this right are set out in the Act on Right of Assembling.<sup>56</sup> Parades, marches and demonstrations are also considered assemblies.
- [88.] Assemblies may not be conditioned by the permission of public administrative authority. The organiser of an assembly shall only notify the respective municipality about time and place of assembly, its purpose, estimated number of people, estimated ending time of gathering and relevant precautions to ensure that the assembly will be conducted within legal limits. If a parade or march is in question, starting point, itinerary and ending point shall be communicated. The municipality shall be notified five days prior to assembly.
- [89.] The municipality **shall ban** the assembly if the notified purpose of the assembly would mean:
- repudiating or restricting personal, political or other citizens' rights due to their nationality, gender, race, origin, political or other persuasion, religious belief and social status, or evoking hatred and intolerance due to these reasons,
  - violence or offensive incivility, or
  - any other violation of constitutional or other legal provisions.
- [90.] The municipality shall ban the assembly also in case of conflict of other interests (conflict with other assembly at the same time and place, danger to participants' health).<sup>57</sup> The assembly can be halted if it becomes clear during the gathering that the assembly has violated any of the above points.
- [91.] The person calling for assembly is responsible to assign a sufficient number of organisers. If there is well-founded fear that the assembly might be interrupted or otherwise bothered, the organiser of a meeting can ask the municipality or respective police unit to assist during the assembly. The same applies to the unexpected interruption of the assembly, in which case organisers can also ask for necessary police assistance or help of the municipality.<sup>58</sup>
- [92.] Any person violating a legally called assembly can face minor offence procedure according to the Act on Assembling. If any person shall infringe somebody else's right to free assembly by violence or by threat of violence,

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<sup>55</sup> Slovakia/ústava 460/1992 (01.09.1992).

<sup>56</sup> Slovakia/zákon 83/1990 (27.03.1990).

<sup>57</sup> Art. 10. Slovakia/zákon 83/1990 (27.03.1990).

<sup>58</sup> Art. 6. Slovakia/zákon 83/1990 (27.03.1990).

such person can be held responsible for crime. The same applies to a person who resists to measures of the organisers of the assembly.<sup>59</sup>

- [93.] There are no special provisions concerning assembling of LGBT individuals. Any meetings, gay pride parades or demonstrations in favour of tolerance of LGBT individuals are subject of general legal regulations which generally do not put up any obstacles for LGBT individuals to execute their right to freedom of assembly. As stated above, the assembly cannot be in any case the subject of permission proceedings, so public authorities have no power to ban such event unless it is subject of any of the exemptions mentioned above.
- [94.] Moreover, public authorities such as police and/or municipalities are obliged (together with the organisers) to provide necessary assistance during the assembly to ensure that the right to freedom of assembly is not threatened or infringed upon.
- [95.] There were just a few meetings or other public gatherings over the years 2000-2007 in favour of tolerance of LGBT individuals. Slovakia is not a traditional locality of gay pride parades and, according to unofficial sources, there was only one mini-gay pride parade in 1993 in Bratislava.<sup>60</sup> Among other activities there were 'marches of difference' in three county cities in 2000 (Bratislava, Banska Bystrica, Kosice), a few petition campaigns (over the years 2006-2007), information spots in summer open-air music festivals (over the years 2005-2007) and public expositions on occasion of the year of equal opportunities in 2007 (Bratislava, Banska Bystrica, Kosice).
- [96.] Official statistical data on assemblies is missing. The author of this study submitted a request for information to the responsible authorities of municipalities of eight county cities. These requests are so far the only data on this issue. Out of eight county cities (plus three city areas of Bratislava, the capital of Slovakia) only one county city did not reply to the request.
- [97.] There is even less information and data available concerning demonstrations against tolerance of LGBT individuals. The Act on the Right of Assembly prohibits violent, offensive meetings, as well as assemblies restricting or denying personal and other citizens' rights due to their specific status (gender, race, origin, political or other persuasion, social status). Calling for an assembly to deny or restrict an individual's rights would be illegal and an assembly would be prohibited; however, agendas hostile towards LGBT individuals can be found on programmes of illegal or semi-legal meetings of ultra-rightwing extremists. Activists of such groups organised also a march against registered partnership of LGBT individuals which took place in Nitra. The municipality was duly informed about this march and it was monitored by the police.<sup>61</sup>

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<sup>59</sup> Art. 195 of the Criminal Code

<sup>60</sup> Interview with Hana Fabry.

<sup>61</sup> Information available at: <http://www.sme.sk/c/3303573/Protestny-pochod-proti-homosexualom-bol-riadne-ohlaseny.html>

Despite posters stating that „homosexuals have no rights“, this march was not banned.

- [98.] There are no official reports of violence during LGBT marches known. This does not mean, however, that such antagonistic performance would not occur.

## E.1. Statistics and case law

- [99.] There are no available statistics on number of demonstrations in favour or against tolerance of LGBT individuals. Statistics of the number of demonstration is based on an interview conducted with members of the LGBT community and subsequently on responses of eight county cities to requests of information filed by the author of this study.
- [100.] Moreover, there are no official information on the existence of case law in what concerns the freedom of assembly and the rights of LGBT individuals. Several efforts were made in order to obtain such information however, as it is explained in Annex I, according to the response of the Ministry of Justice of the Slovak Republic to an information request,<sup>62</sup> judicial statistics do not provide specific data on the type of discrimination claimed. Furthermore, slovak courts are obliged to publish certain judicial decisions through internet; however, this court cases register is limited only to some civil cases and trade law cases.

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<sup>62</sup> Personal communication via e-mail on 08.02.2008.

## F. Criminal law, hate speech

### F.1. Hate speech

- [101.] The Slovak Constitution guarantees the right to dignity and private life: ‘Everybody shall have the right to maintain his/her dignity, personal honour, reputation and good name. Everyone shall have the right to be protected from unjustified interference with his/her private and family life.’ (Art. 19, Section 1 and 2 of the Constitution). This is a baseline for protection from hate speech on any ground. These general provisions are then reflected in certain provisions of criminal and civil law.
- [102.] There are no verbal crimes referring explicitly to LGBT individuals stipulated by the Criminal Code<sup>63</sup>. If any hate speech against LGBT individuals occurs and can be considered a crime, it shall be assessed under the general provisions of the Code.
- [103.] Art. 423 of Criminal Code states that ‘Any individual who calumniates in public
- [104.] any nation, its language, any race or ethnic group, or
- [105.] a group of people due to its confession or due to its lack of confession,
- [106.] shall be liable to imprisonment up to one year.’
- [107.] Art. 424 of Criminal Code states: ‘Any individual who publicly:
- menaces a person or a group of persons due to its affiliation to a nation, nationality, race or ethnic group or for their skin colour, by suppressing his/her rights and freedoms, or who conducted such suppress, or
  - aggravates to suppress rights and freedoms of some nation, nationality, race or ethnic group,
  - shall be liable to imprisonment up to three years.’
- [108.] Criminal Code in Art. 359 ‘Violence against a group of people and individuals’ states: ‘Any individual who shall threaten with death, severe harm to health or other severe harm, or by causing damage of great extent, or who shall use violence against a group of people is liable to imprisonment up to two years.’
- [109.] Similarly, factual substance of ‘Supporting and promoting of the groups tending to suppress fundamental rights and freedoms’ (Art. 421 of Criminal Code) is specified as follows: ‘Anybody who shall support or promote a group of people, which by violence, threat of violence or threat of other severe harm tends to

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<sup>63</sup> Slovakia/zákon 300/2005 (20.05.2005).

suppress fundamental rights and freedoms of people is liable to imprisonment from one to five years.’

- [110.] There are no special provisions protecting LGBT individuals from hate speech. Thus LGBT individuals can be protected only by general provisions of Criminal Code (as stated in Art. 421 or Art. 359).
- [111.] The most frequent tool to protect an individual from verbal attacks is the Civil Code.<sup>64</sup> Pursuant to the Civil Code, a ‘natural person has the right to protect his/her personality, in particular life and health, civil honour and human dignity, as well as privacy, good name and expressions of personal nature’ (Art.11). Art. 13 of Civil Code provides a remedy in case of breach of these personal rights: ‘Natural persons have, in particular, rights to request that any unlawful interference with their personality rights shall be discontinued, that the consequences of such interference shall be eliminated, and they also have the right to adequate satisfaction’. If another form of satisfaction is not sufficient (like apology), notably due to serious degrading of dignity and/or respect in society, a natural person can seek also pecuniary satisfaction. The amount of pecuniary satisfaction shall be determined by the court, taking into account the seriousness of the damage and circumstances of the relevant situation.
- [112.] Good will and/or name of a legal entity is protected by Civil Code accordingly.
- [113.] A victim of defamation can seek protection at civil court not only in case of false statements, but also in case of offending, or unfounded, unsubstantive critique. Moreover, such a person can successfully bring an action against the perpetrator also if published statements were truthful but were related to private life of a person. In other words, information from private, intimate life cannot be published or publicly released without the consent of a respective person. Also if a person has a justified interest that some information is not spread, and this interest prevails upon the interest of releasing it, such information cannot be published.<sup>65</sup>
- [114.] It can be assumed that (depending on the circumstances) spreading information about a person’s sexual orientation, if such a person is not willing to make this information public, could be judged as illegal in civil proceedings. Unfortunately, due to a lack of defamation cases brought by LGBT individuals this assumption cannot be proved by case law.

## F.2. Homophobic motivation of crime

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<sup>64</sup> Slovakia/zákon 40/1964 (26.02.1964)

<sup>65</sup> K. Knap, J. Švestka, O. Jehliška, P. Pavlík, V. Plecítý (1996) Ochrana osobnosti podle občanského práva, Praha: Linde, pp. 265-266.

- [115.] The Criminal Code does not explicitly mention LGBT individuals in any of its provisions. Crimes against LGBT individuals (based on their sexual orientation) can be covered only by general provisions. Affiliation to the group of LGBT individuals is not explicitly covered by aggravating circumstances, albeit prohibiting or hindering the enforcement of an individual's fundamental rights and freedoms is considered as one of them (Art. 37 of Criminal Code).
- [116.] The Criminal Code recognises also so called 'special motives', which are used to define more serious acting of relevant crimes. Among them there are also national, ethnic or racial hatred and hatred due to skin colour (Art. 140 of Criminal Code); however, hatred due to affiliation with a certain social group, like the group of LGBT individuals, is not covered by special motives either.
- [117.] Affiliation to LGBT individuals can be recognised only as a motivation of a crime.
- [118.] Crimes against LGBT individuals are covered mostly by general provisions of the Criminal Code. There might be certain circumstances when attacks due to sexual orientation might be considered as more severe, especially if they can be considered as an attack against the enforcement of fundamental rights and freedoms or if the offence is assaulting the group of LGBT individuals. The use of only general provisions would make it more difficult to seek fair satisfaction and remedy for a victim of such crime.
- [119.] It is very difficult to assess how such an act would be judged in reality due to total absence of such cases. According to a statement by Generálna prokuratúra Slovenskej republiky [the General Prosecution Office of the Slovak Republic], there is no relevant statistical data concerning convictions regarding homophobic hate speech, nor number of criminal court cases concerning this issue filed by the General Prosecution Office. Hence, it can be presumed that there have been no such cases. This conclusion is supported by the expression of members of the LGBT community who confirmed that LGBT individuals tend not to report such cases to the police due to a hostile social environment in Slovakia.
- [120.] Some of the attacks against LGBT individuals might be judged as minor-offences in accordance with the Act on Minor Offences,<sup>66</sup> like harm to honour by insulting or ridiculing, threat to health, or threat by harm to health. Similarly like in criminal law there are no special provisions explicitly protecting LGBT individuals.

### F.3. Hate speech by public officials

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<sup>66</sup> Slovakia/zákon 372/1990 (28.08.1990) (Zákon č. 372/1990 Zb. o priestupkoch v znení neskorších predpisov).

- [121.] As mentioned above, there are no court cases concerning hate speech against LGBT individuals. This does not mean, however, that there have been no hate speech cases. On the contrary, there are many hostile public expressions humiliating LGBT individuals, expressed in particular by politicians or Christian representatives.
- [122.] Such politicians are generally either members of Christian parties or of the Slovak Nationalistic Party. Some of them state that homosexuality is a disease: ‘An increasing number of homosexuals in society is detrimental because they do not have an easy life. It [homosexuality] is at least a defect, if not a disease’ (Jan Carnogursky, former Minister of Justice, representative of Kresťansko-demokratické hnutie (KDH) [Christian-democratic Movement (CDM)]<sup>67</sup>. Similarly, according to Alojz Rakús, physician, member of CDM, homosexuality is a mental defect which can be cured; ‘many psychological studies prove 52 per cent success in treatment of homosexuals’.<sup>68</sup> Another member of CDM, Peter Muransky (Member of Parliament) stated: ‘In my opinion, homosexuality is social exhibitionism’.<sup>69</sup>
- [123.] Generally, the worst statements have been made by Jan Slota, the leader of Slovenská Národná Strana [Slovak Nationalist Party]. There are many hateful and degrading statements made by Slota in the media, where he declares to consider homosexuals abnormal, deviants akin to pedophiles. He has also mentioned a ‘disgusting sexual orgy’ when talking about LGBT individuals.
- [124.] None of his statements were subject to criminal prosecution or civil court trial yet; however, in 2007 the association Iniciatíva Inakost [Initiative Difference] has turned to the Slovak National Centre for Human Rights asking for a statement on the speech of another Member of Parliament, Peter Gabura (CDM). In January 2007 Gabura was supposed to say that homosexuals are ‘perverse and sick people’.<sup>70</sup> SNCHR has issued a statement (12.03.2007) observing that the statement of Gabura does not represent a violation of the Anti-discrimination Act<sup>71</sup> because his words were neither addressed nor related to identifiable persons. SNCHR has stated that it respects the freedom of expression of Mr. Gabura, but considers him an example of a person with prejudices who insults and degrades groups of people.<sup>72</sup>

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<sup>67</sup> Praca (18.08.2000), [http://www.ganymedes.info/qarchiv\\_2002/blackbox/vyroky.html](http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html) (07.02.2008).

<sup>68</sup> Praca (18.08.2000), [http://www.ganymedes.info/qarchiv\\_2002/blackbox/vyroky.html](http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html) (07.02.2008).

<sup>69</sup> Praca (01.03.2001), [http://www.ganymedes.info/qarchiv\\_2002/blackbox/vyroky.html](http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html) (07.02.2008).

<sup>70</sup> Available at <http://diskriminacia.altera.sk/view.php?cislocianku=2007020201> (15.02.2008)

<sup>71</sup> Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

<sup>72</sup> Available at [http://www.snslp.sk/rs/snslp\\_rs.nsf/0/DF1B208B1C6DCB2CC125729C002DA608?OpenDocument](http://www.snslp.sk/rs/snslp_rs.nsf/0/DF1B208B1C6DCB2CC125729C002DA608?OpenDocument) (15.02.2008)

## F.4. Statistics and case law

- [125.] There are no relevant statistics available. None of the relevant authorities (courts, Ministry of Justice) keep statistics on case law distinguishing cases of hate speech against LGBT individuals.
- [126.] The same applies to case law. Several efforts were made in order to obtain such information however, as it is explained in Annex I, according to the response of the Ministry of Justice of the Slovak Republic to an information request,<sup>73</sup> judicial statistics do not provide specific data on the type of discrimination claimed. Moreover, Slovak courts are obliged to publish certain judicial decisions through internet; however, criminal law cases are not obligatorily published.

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<sup>73</sup> Personal communication via e-mail on 08.02.2008.

## G. Transgender issues

- [127.] The Slovak legal system does not recognise transgender individuals as a special group which should be granted specific protection.
- [128.] Apart from laws regarding name and surname, registry office and identification number, only the Anti-discrimination Act<sup>74</sup> partly touches on the issue of transgender individuals. The Anti-discrimination Act stipulates that discrimination in employment matters on the ground of sexual or gender identification is to be understood as discrimination on the ground of sex.<sup>75</sup> This is also a guideline on how to deal with discrimination of transgender individuals.

### G.1. Change of name

- [129.] The Procedure concerning changes of name and surname after genital change is regulated by the Act on Name and Surname,<sup>76</sup> according to which a change of name and/or surname is usually conditioned by a permission procedure; however, there are a few exceptions when permission is not needed, like in case of the change of name and/or surname due to change of gender.<sup>77</sup> Such change is made by the registry office and it is based on written declaration of the person concerned or his/her legitimate substitute. A medical statement shall be presented by the transgender person also. According to the Act on Administrative Fees, this administrative change is free of charge.<sup>78</sup>

### G.2. Change of identification number

- [130.] According to the Act on Identification Number<sup>79</sup>, each person born in Slovakia must acquire an identification number. Each number is unique and different for male and female.
- [131.] The Ministry of interior shall change the identification number of a transgender person upon receipt of a relevant medical statement. Such change is free of administrative charges.<sup>80</sup>

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<sup>74</sup> Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

<sup>75</sup> Art. 6 (3)a. Slovakia/ Antidiskriminačný Zákon 365/2004 (20.05.2004).

<sup>76</sup> Slovakia/zákon 300/1993 (24.09.1993).

<sup>77</sup> Art. 7. Slovakia/zákon 300/1993 (24.09.1993).

<sup>78</sup> Annex, Item 19. Slovakia/zákon 145/1995 (22.06.1995).

<sup>79</sup> Slovakia/zákon 301/1995 (14.12.1995).

<sup>80</sup> Art. 9. Slovakia/zákon 301/1995 (14.12.1995).

- [132.] Subsequently, transgender persons shall change (due to change of identification number) his/her birth certificate, ID, travel document, and change information in other public registers (Social insurance register, Health insurance register...).

### G.3. Other legislative issues

- [133.] The legislation regarding practical medical issues of transgender individuals in Slovakia is basically non-existent. There are missing laws or legislative provisions concerning surgery of transgender individuals. According to Slovak sexologists, new types of operations (including change of gender) have decreased since the 1990s. As a result, fewer workplaces provide comprehensive medical assistance and doctors tend to send their patients to the Czech Republic for operations. There is also a problem with the expense of such surgeries, since they are not covered by health insurance. Due to this fact there are fewer surgical operations on transgender individuals.<sup>81</sup>
- [134.] The same applies to legislation dealt with in remainder of this study. Apart from the Anti-discrimination Act<sup>82</sup>, transgender individuals are, in principle, not mentioned in the respective legislation at all. As stated above, only the Anti-discrimination act transposing provisions of the employment directive deals specifically with transgender individuals. If any kind of discrimination occurs in the field of employment it should be considered (according to the Anti-discrimination Act) discrimination based on sex.
- [135.] Slovak law is silent concerning consequences of gender operation leading towards change of sex of a person. For example, the Slovak Family Act<sup>83</sup> stipulates that marriage is a relationship between man and woman, it does not allow marriage between people of the same sex; however, there are no provisions regulating the situation if one of the marital partner undergoes change of his/her gender. According to Slovak law, such couple should be divorced. The Family Act states that a marriage can be terminated by divorce only if the relationship is seriously damaged and broken in perpetuity, marriage cannot fulfill its role and it is inconceivable to expect renewal of the marital relationship. Based on these legal prerequisites, a transgender person who is still married (since it can take a few months for court to decide on divorce) shall be considered a family member in terms of freedom of movement, asylum protection or family reunification issues.
- [136.] However, it is more likely that a transgender person is not living in a marriage anymore and his/her position is then comparable with the position of LGB individuals in regard to family reunification, or freedom of movement and asylum protection. There are no special provisions protecting transgender

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<sup>81</sup> <http://www.translide.cz/transsexuali-ako-si-zmenit-pohlavie> (19.02.2008).

<sup>82</sup> Slovakia/zákon 365/2004 (20.05.2004).

<sup>83</sup> Slovakia/zákon 36/2005 (19.01.2005)

individuals or providing them with a more favourable position. Such absence of legal regulation can lead to discriminatory proceedings concerning transgender individuals.

- [137.] As far as the author of this study is concerned, there were no marches or assemblies of transgender individuals in the observed period. Otherwise concerning freedom of assembly transgender individuals are in the same legal position as LGB individuals.
- [138.] From a legal point of view, transgender individuals have the same position as LGB individuals in regard to criminal law and hate speech. There are no special provisions protecting transgender individuals in the Criminal Code. Each hate speech against transgender individuals shall be considered by general provisions of the Civil Code; however, as stated above, information regarding intimate life of a person revealed in public can be considered as defamation and this applies also to transgender individuals.
- [139.] If sexual orientation is discussed only marginally in today's Slovak society, transgender issues are practically taboo. There is no statistic information available concerning neither name changes nor number of persons who changed their sex. According to an official employee of the registry office (the Department of General Internal Administration in Bratislava), there might be a maximum of 10 cases a year.<sup>84</sup>

## G.4. Statistics and case law

- [140.] There are no relevant statistics available. The author of this study filed requests for information to the Statistic Office of the Slovak Republic, to the Ministry of Public Health of the Slovak Republic as well as to National Centre Medical Information. None of these institutions had any information concerning transgender issues at their disposal. The same applies to case law, as further explained in Annex I

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<sup>84</sup> L. Sobotová (2007) 'Zmena mena', in: SME ženy (02.01.2007). Available at: <http://zena.sme.sk/c/3076717/Zmena-mena.html> (19.02.2008).

## H. Miscellaneous

- [141.] Legislative and judicial research showed that there are few provisions or good practices towards LGBT individuals. Not only law provisions, but also social attitude, are frequently unfavorable toward LGBT individuals. Society has a tendency toward hostile practices against LGBT individuals and politicians either openly oppose their rights or, in the best case, pay no attention at all. As a matter of fact, no political party has incorporated the promotion of rights of LGBT people into their political programmes.<sup>85</sup>
- [142.] There is no official statistical data and almost no unofficial statistical data on discrimination on the grounds of sexual orientation available. This does not necessarily prove the absence of discrimination based on sexual orientation, but rather, indicates a low rate of reported cases.
- [143.] The first extensive research on discrimination within the gay and lesbian community was carried out in 2002.<sup>86</sup> Of 251 participants, 87 were women and 164 were men. The main findings are below:
- Sixty per cent of respondents hide their sexual orientation at least from one of the parents (46 per cent hide from both parents, 14 per cent from one parent, mostly the father), while 60 per cent of the respondents hide their sexual orientation from other relatives,
  - Fifty per cent of respondents would not reveal their sexual orientation to public; 52 per cent of the respondents conceal their sexual orientation in their working environment,
  - Fifteen per cent of respondents had suffered aggravated assault due to their sexual orientation; 43 per cent of respondents had been harassed; however only two per cent of victims reported the attacks to the police.
- [144.] The above mentioned findings are a small portion of the outcomes of this research. They reinforce that due to social hostility, LGBT individuals do not reveal their sexual orientation and remain invisible to the majority of the population. This might also explain why very few victims of discrimination on the grounds of sexual orientation have claimed their rights in court. LGBT individuals often prefer to stay invisible and away from unwanted publicity.

Due to the lack of interest on the rights of LGBT individuals, the environment is not favourable to the approval of the law guaranteeing registered partnership. This disregard also causes the absence of official statistical data.

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<sup>85</sup> H. Fábry (2007) 'Diskriminácia gejev a lesieb – existuje?' Available at: <http://www.lesba.sk/view.php?cislocianku=2007011801> (14.01.2008).

<sup>86</sup> M.Šípošová, P. Jójart, A. Daučíková (2002) Správa o diskriminácii lesbických žien, gejev, bisexuálov a bisexuálok na Slovensku, Bratislava: Q archív.

# I. Good practice

[145.] There are few examples of good practices in Slovak legislation concerning the rights of LGBT individuals.<sup>87</sup> Actually, the only thing that can be considered as 'good practice' are the latest amendments of the Anti-discrimination Act,<sup>88</sup> which was recently approved on 14.02.2008<sup>89</sup> and prohibits discrimination in employment (as required by the Employment Directive) as well as in other areas of social life, such as equal access to medical treatment, to goods and services as well as to education.

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<sup>87</sup> As stated in item H, there is no case law regarding discrimination based on sexual orientation.

<sup>88</sup> Slovakia/zákon 365/2004 (20.05.2004).

<sup>89</sup> This amendment did not come into force yet. It was not published in the official journal of the collection of laws. The approved version is available at:  
[http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/Tmp/N%E1vrh%20z%E1kona\\_474.doc](http://www.nrsr.sk/exeIT.NRSR.Web.Webclass/Tmp/N%E1vrh%20z%E1kona_474.doc)  
(25.02.2008).

# Annexes

## Annex 1 – Presentation of case law

- [146.] There is no official data on case law on discrimination based on sexual orientation available. According to the response of the Ministry of Justice of the Slovak Republic to an information request,<sup>90</sup> judicial statistics do not provide specific data on the type of discrimination claimed, i.g. there is no statistical data on the number of complaints of discrimination based on sexual orientation.
- [147.] Slovak courts are obliged to publish certain judicial decisions through internet; however, this court cases register is limited only to some civil cases and trade law cases. Criminal law cases or administrative law cases are not obligatorily published. The scope of published case law is limited by the ministerial instruction of the Ministry of Justice of the Slovak Republic.<sup>91</sup> It is important to highlight that obligation to publish case law by the courts was established only in 2005. Moreover, courts do not follow this responsibility consistently and thoroughly and only a part of the case law has been published so far.
- [148.] Another official source of information concerning case law were replies of the county courts and some district courts to the information requests filed by the author of this study; however, since the courts do not keep detailed statistics concerning parties of the proceedings and/or comprehensive information regarding the merits of the dispute, county court officers were unable to track any cases related to LGBT individuals. Despite this, many county courts replied that no such cases were dealt by them.
- [149.] This information was confirmed by the members of the LGBT community. According to their statements during the years 2000-2007, there were no judicial proceedings claiming protection against discrimination based on sexual orientation. This is particularly due to the hostile social environment against LGBT individuals which causes many not to reveal their sexual orientation unless they are certain that they are in safe surroundings.

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<sup>90</sup> Personal communication via e-mail on 08.02.2008

<sup>91</sup> Slovakia/inštrukcia 21/2005 (28.11.2005)

## Annex 2 – Statistics

### Implementation of Employment Directive 2000/78/EC

[150.] Statistics by Slovenské národné stredisko pre ľudské práva (SNSLP) [Slovak National Centre for Human Rights (SNCHR)] were provided on the basis of the request of the author of this study as follows:

	2000	2001	2002	2003	2004	2005	2006	2007
Complaints filed to the Slovak National Centre for Human Rights concerning discrimination based on sexual orientation	Data not available	Data not available	Data not available	Data not available	0	0	3	Data not available

### Freedom of assembly

[151.] The statistics of the number of demonstration is based on replies from the authorities of eight county municipalities, after information request filed by the author of this study and interviews conducted with members of the LGBT community:

	2000	2001	2002	2003	2004	2005	2006	2007
Number of demonstrations in favour of tolerance of LGBT individuals, gay pride parades, etc.	3	1	0	0	0	0	0	0

Number of demonstrations against tolerance of LGBT individuals	0	0	0	0	0	0	0	1
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