



**Joint submission to the Committee on the Elimination of Discrimination Against Women
by Občan, demokracia a zodpovednosť (Citizen, Democracy and Accountability),
TransFúzia (TransFusion), and Ženské kruhy (Women's Circles)**

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Občan, demokracia a zodpovednosť (Citizen, Democracy and Accountability), TransFúzia (TransFusion), and Ženské kruhy (Women's Circles) present this submission to the Committee on the Elimination of Discrimination against Women (CEDAW Committee) for its consideration in the context of its examination of Slovakia's fifth and sixth periodic reports on compliance with the Convention on the Elimination of All Forms of Discrimination Against Women (the Convention).

This submission highlights a range of concerns regarding Slovakia's compliance with Articles 1, 2, 3, 5, 10, 11, 12 and 16 of the Convention. It draws on and reiterates some of the issues which were outlined in our organizations' PSWG submission presented to the Committee in January 2015 (PSWG submission),¹ and it also addresses concerns in new areas. Although in its Replies to the List of Issues (Replies to the LOIs) the government provided the Committee with supplementary information, its responses were often inadequate. Therefore, this submission seeks to supply the Committee with the most relevant information.

The sections below address each of the following concerns in some detail:

- (1) the deficits in legislative, institutional and procedural protection against discrimination,
- (2) the failure of state representatives and institutions to adequately respond to increasing attacks on gender equality,
- (3) discrimination against women in the labour market in relation to maternity and parenthood,
- (4) discrimination against women in some aspects of marital and other relationships including their dissolutions, and
- (5) discrimination against transgender persons.

A number of recommendations are outlined at the end of each section.

The organizations submitting this submission are also submitting, jointly with the Center for Reproductive Rights, a separate submission on Slovakia's failure to respect, protect and fulfil women's reproductive rights. The two submissions are complementary to each other and should be read conjunctively.

1. Articles 2(c) and 11: Legislative, institutional and procedural protection against discrimination

As outlined in the PSWG submission, although over the last few years there have been some legislative improvements to the Slovak Anti-discrimination Act² (which regulates the duty to observe the principle of equal treatment on various grounds including sex and gender³ in the fields of employment and occupation, social security, healthcare, provision of goods and services including housing, and education⁴) and related legislation, **the level of compliance with the Anti-discrimination Act in practice remains very low**, as does the frequency with which alleged violations are dealt with by the courts.⁵ Even in the small number of cases where courts decide in favor of plaintiffs and grant them financial compensation for non-pecuniary damage caused by discrimination, the amounts awarded are symbolic and strikingly low (usually not more than a few hundred euro).

There are a number of reasons for this:

- First, the degree to which persons who are discriminated against are able and willing to refer their cases to courts remains very low.⁶ This unwillingness and inability is rooted in a wide range of systemic problems including: a low level of trust in the judiciary, courts and other state institutions,⁷ a lack of affordable and qualified legal aid,⁸ a number of procedural barriers including judicial fees (which amount to 3% of the sum requested in claims of financial compensation for non-pecuniary damage⁹), and fear of potential stigma and victimization.¹⁰
- Second, with regard to the low amounts of financial compensation for non-pecuniary damage granted by courts, the problem derives from corresponding legislative provisions and the manner in which they are applied by the courts. In general, compensation for non-pecuniary damage may only be granted if the violation of the principle of equal treatment has considerably impaired the dignity, social status or social achievement of the person affected and the court must take into account the seriousness of the non-pecuniary damage and all underlying circumstances.¹¹ Although in principle the relevant legal provision allows courts to interpret it in a manner that would enable them to award adequate financial compensation, in practice persons affected by discrimination frequently have to “prove” how their dignity has been “considerably impaired”, instead of the discrimination suffered and the perpetrators’ behavior being considered to have inherently humiliated and impaired a person’s dignity.¹²
- Third, the lack of institutional protection against discrimination in Slovakia does not result exclusively from the ineffectiveness of judicial remedies. It is also the result of ineffectiveness in the design and functioning of other state institutions. Generally speaking, the state is not institutionally proactive (in the sense that it does not act on *ex officio* basis and actively seek to identify incidents of discrimination and sanction and remedy them). Instead, it waits for individuals to take the initiative to refer claims of discrimination to courts or other bodies (such as inspectorates). Moreover, problems with labor inspection, for example, are also due to the fact that legislation on labor inspection does not provide for clear investigating powers or for the possibility to shift the burden of proof in cases of discrimination, which means that in practice labor inspectorates face significant difficulties in identifying cases of discrimination. This is exacerbated by other factors inhibiting their examination of cases of discrimination, including their lack of appropriate training and methodology, and the generally low staff levels at inspectorates.¹³

Additionally, deficits in the position and functioning of the **Slovak National Centre for Human Rights** (“the Centre”) contribute to this situation. As the government has acknowledged in its Replies to the LOIs, the Centre is responsible for conducting various tasks, including the provision of legal aid to persons who have been discriminated against and for carrying out monitoring activities. However, the

Centre has faced repeated criticism from a range of stakeholders for its failure to adequately discharge these responsibilities.¹⁴

Particular criticism has been levied at its lack of independence, transparency and at a lack of staff capacity and competence that prevent it from discharging its role in accordance with international and national legal obligations.¹⁵ For example, the lack of Centre's independence and transparency is demonstrated in the fact that a couple of its Board members are members of the Parliament representing the governing political party (SMER-SD),¹⁶ and another one is known for providing legal representation to the Prime Minister in private disputes.¹⁷ Moreover, neither names nor profiles of the Centre's employees are publically available, making it difficult to know who implements the Centre's tasks. Another issue is the lack of Centre's financial independence. It is financed through the state budget, and its annual budget is being proposed by the Ministry of Finance and adopted by the Parliament. It is thus the political decision-making that determines the amount of funds the Centre receives, pointing to yet another mechanism of subordinating the Centre to the state power. Furthermore, the Centre does not effectively implement its statutory tasks in practice. Out of approximately 1000 complaints of discrimination received by the Centre annually,¹⁸ it provided legal representation before courts only in a very small number of cases, and among those there were very few cases of alleged discrimination based on sex or gender.¹⁹ In addition, despite being authorized by law to file public interest petitions (*actio popularis*),²⁰ the Centre has not done so.²¹ Its monitoring and research activities are scarce and rarely focus on women's rights,²² and its overall strategy concerning its functioning is unclear.²³ Although the Centre may be doing some activities with minor impacts on a number of individuals (such as educating pupils in elementary schools and high schools),²⁴ it is not a proactive and vocal actor with a systemic approach that would criticize and challenge the human rights violations and be critical of the state's (in)actions.

The current government had committed to address this situation by August 2013, including by adopting relevant legal changes that would ensure proper functioning of the Centre.²⁵ However, such legislative amendments have not been introduced²⁶ and the government has postponed their introduction until after the end of its electoral period.²⁷

Recommendations

- Take effective measures to improve women's access to justice and use legal mechanisms to enforce their entitlements to non-discrimination and equality, including by guaranteeing qualified and affordable legal aid, reducing judicial fees, and eliminating obstacles to obtaining adequate remedies, including financial compensation, in proceedings concerning violations of the principle of equal treatment.
- Take effective measures to ensure that state authorities act proactively to enforce the prohibition of discrimination against women in practice, including by amending legislation on labor inspection to clarify its investigative powers in cases of discrimination and to shift the burden of proof in these cases.
- Take prompt and effective legislative and other measures to ensure the independence and transparent and effective functioning of the Slovak National Centre for Human Rights.

2. Articles 1, 2, 3, 5, 10 and 16: Increasing attacks on gender equality

As outlined in the PSWG submission, over recent years there has been an **increasing backlash against gender equality**, sexual minorities and reproductive rights in Slovakia. This is fostered not only by Catholic Church hierarchies who have traditionally sought to influence social discourse and decision-making on issues considered to be morally controversial, but also by a number of organizations and newly-emerging "civic" initiatives that are focused on promoting "traditional family" values. Among other things these organizations actively contest the principle of gender equality (and the concept of gender as such, calling it "gender ideology"), promote traditional roles for women and men, dispute the

fact that violence against women is a form of gender discrimination and advocate for the restriction of women's reproductive rights.

In its Replies to the LOIs, the government asserts that it has undertaken a range of activities in order to respond to efforts to undermine the principle of gender equality. In particular, it points to an opinion issued by the Committee for Gender Equality of the Government's Council for Human Rights, National Minorities and Gender Equality (hereinafter "Committee for Gender Equality"), a press conference of the Slovak Academy of Sciences, and a range of educational activities, press releases and other initiatives by the Slovak National Centre for Human Rights.²⁸ However, these bodies are not state authorities and instead are (or should be) independent institutions or advisory committees²⁹ and there has been a lack of consistent or systemic action by the government and state officials to address attacks on gender equality and to challenge the proponents of "gender ideology".

This reticence and unwillingness on the part of state officials and authorities to publicly defend gender equality also extends to human rights principles more generally. In February 2015, a **national referendum was held "on the protection of family"** as a result of a citizens initiative by one of these "civic" organizations. The referendum sought to confirm the existing constitutional definition of marriage as a union of one man and one woman,³⁰ to prevent same-sex couples from obtaining adoption rights, and to contest the rights of children to sexuality education.³¹ Although the referendum was eventually declared invalid (due to a turnout of only 22% of the voting population, with 50% turnout required for a referendum to be valid), the pre-referendum campaign and the post-referendum debates revealed a troubling unwillingness on the part of state representatives to speak out in support of human rights principles and values endangered by this referendum.

Similar dynamics emerged in connection with the recent "**National March for Life**" which took place in September 2015 and was initiated by the Conference of Bishops of Slovakia, and supported by numerous conservative civil society organizations. The march was intended to advocate for restrictions to Slovakia's abortion law and to undermine women's reproductive decision-making.³² At no time in relevant public and media discourse surrounding the march did any official state representative articulate support for gender equality and women's reproductive rights.

It is also noteworthy in this context that the Slovak Republic has still not ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence, and that ratification is being vigorously opposed by conservative groups in public campaigns.

Recommendations

- Take effective measures to ensure that women's human rights are not undermined or infringed by state or non-state actors, including church affiliated civil society organizations.
- Take effective measures to ensure that state officials are vocal in support of gender equality and women's rights principles.
- Expeditiously ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence.

3. Articles 2, 5, 11, 12 and 16: Discrimination against women in the employment sphere

Although many women face multiple layers of discrimination in employment in Slovakia, the situation of women with children gives rise to particular concerns. In the period of 2010-2014, an average prevalence of men on parental leave was 0,7%.³³ Research undertaken in 2014 reveals that on average women spend 48 months on parental leave in comparison with only 3 months for men.³⁴ Official data also confirms that after parental leave many women face difficulties in re-entering the labor market. For example, their

working positions are often abolished while being on maternity or parental leave, or they are made redundant shortly after return. They also regularly have to take up lower-paid or lower-status jobs.³⁵

Although male employment rates are higher than employment rates for women across all age groups, the gender gap is the highest when it comes to women of reproductive age. For example, in 2012, the employment rate among women aged between 25-29 was 21,1% lower than the rate among men of the same age, and in the case of women between 30-34 the difference was even higher – 26,9%.³⁶ The gendered impact of parenthood on employment, clearly disadvantaging women, is also confirmed by other figures: a recent comparison of employment rates among women and men with and without children aged between 20-49 showed that while the employment rate of women with children falls by 30% (as compared to women without children), the employment rate of men with children rises by 12% (as compared to men without children).³⁷

These figures point to a variety of systemic and structural issues that combine to undermine equality not only in the field of employment, but also in other fields. The reasons for such figures include: (i) an absence of autonomous paternity leave entitlements that would be covered by social security allowances; (ii) a big gender pay gap;³⁸ (iii) the inability of parents to share statutory maternity leave entitlements;³⁹ (iv) the law prohibiting persons to carry out any earning activity while being on maternity leave; (v) the lack of affordable good quality childcare; (vi) strongly rooted social and cultural beliefs about the “roles” of women and men, and the “needs” of children under the age of 3; (vii) the lack of effective mechanisms to combat, prevent, and remedy discrimination against women in employment. While the government alleges it has established programs providing financial or other incentives to employers that would encourage them to employ women with young children,⁴⁰ these *ad hoc* measures serve only to mitigate some of the impacts of the existing regulatory and social framework and do not challenge the systemic and structural roots of discrimination against women.

Recommendations

- Reform employment and social security laws and policies so as to ensure men and women can share their parental responsibilities equally and enjoy equal employment opportunities regardless of their parental status.

4. Article 2, 5 and 16: Discrimination against women in family relations

In its Replies to the LOIs the government has failed to address the Committee’s question regarding the different economic consequences for women and men of the dissolution of marriages or *de facto* unions.⁴¹ It is also notable in this regard that the state does not collect any data regarding the socio-economic situation of women in marital relationships and *de facto* unions and the gendered impacts which dissolution has on women.

Currently under Slovak law the personal and property rights and obligations related to couples’ cohabitation only apply to marriage which, pursuant to the Slovak Constitution, can only be concluded between a man and a woman.⁴² Such rights include a special regime of joint property ownership,⁴³ mutual maintenance obligations between spouses,⁴⁴ the possibility to collect widow/er’s pensions,⁴⁵ and the possibility to statutorily inherit property in the first group of heirs, jointly with the children of the deceased partner.⁴⁶ The state’s failure to provide legal recognition to unmarried cohabiting couples (same-sex or different sex) has a disproportionate effect on women in these relationships, as more women than men engage in unpaid work in the home and thus have a lower earning capacity and more limited career opportunities. As a result, for example, a woman whose non-marital partner has died cannot inherit property from her partner if that partner had a minor child, even if a will or testament leaving property to the woman exists.⁴⁷

Meanwhile, even married women face discrimination in relation to the division of marital property upon divorce. For example, in most situations company shares or company property does not fall within property subject to joint marital ownership regime, and therefore is not subject to equitable division upon divorce.⁴⁸ As a result, although many women contribute significantly to businesses owned by their spouses, they are not legally entitled to receive a share of the company's property upon divorce.⁴⁹

Additionally the future earning capacity of spouses is not taken into consideration when marital property is being divided.⁵⁰

Although the law stipulates that a divorced partner may claim maintenance from the other partner, as the government also notes in its Replies to the LOIs,⁵¹ the possibilities to make this claim are limited and are conditioned upon the claimant being “unable to make the living by herself/himself.”⁵² Thus, the maintenance that can be requested from the divorced partner is in principle not a tool for the division of marital property. Moreover, the different earning potentials of the spouses and their contributions to each other's earning potential are as such not the departure point for determining maintenance.⁵³ Additionally, maintenance for a divorced partner can usually only be required for a period not exceeding 5 years after divorce.⁵⁴

Recommendations

- Take comprehensive effective measures, including through civil and family law reform, to guarantee the personal and socio-economic rights of women living in marital and *de facto* unions, and to ensure the fair distribution of property upon dissolution of these relationships, including by taking into consideration the future earning capacity of each of the partners.

5. Articles 1, 2, 5, 10, 11, 12 and 16: Discrimination against transgender persons

This section outlines a range of pressing concerns regarding the situation of transgender persons in Slovakia. It focuses on: (a) legal and other barriers to legal gender recognition, and (b) discrimination in education, employment and social security.

a. Legal and other barriers to legal gender recognition

In order to gain legal recognition of their preferred gender, transgender persons in Slovakia are required to undergo forced castration (hysterectomy⁵⁵, adnexectomy⁵⁶, orchiectomy⁵⁷), hormonal therapy and other interventions, with the view of losing their reproductive function and obtaining a “sufficiently persuasive appearance of a person of the other sex.”⁵⁸ This medical practice, bearing many signs of torture and other cruel, inhuman or degrading treatment,⁵⁹ does not have any basis in Slovak law and is the result of official practice and outdated guidelines issued by the Ministry of Health.⁶⁰

In order to issue a new birth certificate with a change of gender, registry offices require confirmation of castration from a sexologist. The Ministry of Health and the Ministry of Interior have recently confirmed that they insist on the implementation of the forced medical interventions, including castration, in order to provide transgender people with legal recognition of their preferred gender.⁶¹ The law indirectly contributes to requiring forced castrations, since in order to change a person's birth number (the basic identifier of every Slovak citizen containing a numerical gender marker) the law requires a submission of a “medical certificate of change of a person's sex.”⁶²

In addition, transgender persons who are legally married are forced to undergo divorce if they wish to access health care related to the transition. This is due to medical providers' insistence that as same-sex couples in Slovakia cannot marry, medical providers cannot help legally married transgender persons to gain the legal recognition of their preferred gender.

b. Discrimination in education, employment and social security

Obtaining legal recognition of their preferred gender enables transgender individuals to change their names and the gender markers on almost all identification documents, except for previously obtained certificates of education and employment.⁶³ Transgender persons thus often have to choose between using old school and employment certificates which provide their previous name and gender marker, and not using those documents at all. Many transgender persons will not use their previous certificates due to fear of stigma, harassment, discrimination and invasion of privacy and as a result they face a range of barriers in accessing educational or employment opportunities which in turn can have grave impacts on financial status and social security (e.g. pension and sick leave entitlements). Moreover, these restrictions often compel transgender persons to undergo forced castration and other involuntary interventions in order to gain the legal gender recognition before they complete their education, only to get a diploma or certificate with their preferred name and gender.

Recommendations

- Amend laws and policies to explicitly eradicate requirements that transgender persons undergo forced castration and other involuntary medical and non-medical interventions before they can obtain legal recognition of their preferred gender.
- Adopt effective measures to ensure transgender persons have access to good quality health care in practice and free from discrimination.
- Amend laws so as to enable transgender persons obtain changes to their legally recognized gender in all identification documents, including those that are archived.

¹ Center for Reproductive Rights, Citizen, Democracy and Accountability and Women's Circles, *Supplemental Information on Slovakia, Adoption of List of Issues by the Committee on the Elimination of Discrimination against Women During its Pre-Sessional Working Group Meeting*, March 9-13, 2015, available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/SVK/INT_CEDAW_NGO_SVK_19477_E.pdf.

² Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (Antidiskriminačný zákon) [Act No. 365/2004 Coll. of Laws on Equal Treatment in Certain Areas and Protection against Discrimination, amending and supplementing certain laws (Anti-discrimination Act)], as amended (Slovk.) [hereinafter Anti-discrimination Act].

³ *Id.*, sec. 2(1).

⁴ *Id.*, sec. 3(1), 5 & 6.

⁵ Poradňa pre občianske a ľudské práva, a Slovak NGO, found that between 1 July 2004 and 31 January 2012, there had been about 120 proceedings related to discrimination which had been concluded (although the number may not be very accurate, as not all the courts approached with a request for information on the proceedings provided this information, and the Ministry of Justice does not collect the corresponding statistics properly). See DURBÁKOVÁ, V., HOLUBOVÁ, B., IVANCO, Š., LIPTÁKOVÁ, S., HLADANIE BARIÉR V PRÍSTUPE K ÚČINNEJ PRÁVNEJ OCHRANE PRED DISKRIMINÁCIOU [SEEKING BARRIERS TO ACCESS TO EFFECTIVE LEGAL PROTECTION AGAINST DISCRIMINATION] 131-333, *Poradňa pre občianske a ľudské práva* (2012), available at <http://poradna-prava.sk/wp-content/uploads/2012/11/Publikáciu-si-môžete-stiahnuť-tu-105-MB.pdf> [hereinafter DURBÁKOVÁ, HOLUBOVÁ, IVANCO & LIPTÁKOVÁ].

⁶ A survey published by Poradňa pre občianske a ľudské práva in 2012 showed that just a tiny percent (4.7%) of respondents, who subjectively feel they have been discriminated against [on any ground], have sought legal assistance or sought to lodge a claim against discrimination by legal means. Over 92% have not taken any steps to defend themselves. See *id.* at 36 & 129.

⁷ See DURBÁKOVÁ, HOLUBOVÁ, IVANCO & LIPTÁKOVÁ, *supra* note 5, at 37 & 129.

⁸ See *id.* at 37 and 130, dealing with a lack of financial means to secure legal aid.

⁹ Zákon č. 71/1992 Zb. o súdnych poplatkoch a poplatku za výpis z registra trestov v znení neskorších predpisov, *Sadzovník súdnych poplatkov* (príloha k zákonu), položka 7d písm. b) [Act No. 71/1992 Coll. on judicial fees and on the fee for excerpts from the Registry of penalties, as amended], *Scale of Judicial Charges* (supplement to the act), item 7d(b)) (Slovk.).

¹⁰ See also DURBÁKOVÁ, HOLUBOVÁ, IVANCO & LIPTÁKOVÁ, *supra* note 5, at 38.

¹¹ See Anti-discrimination Act, *supra* note 2, sec. 9(3).

¹² See, e.g., JANKA DEBRECÉNOVÁ, JARMILA LAJČÁKOVÁ, ZUZANA MAGUROVÁ, IMPLEMENTÁCIA ZÁSADY ROVNAKÉHO ZAOBCHÁDZANIA PROSTREDNÍCTVOM ANTIDISKRIMINAČNÉHO ZÁKONA: PROBLÉMY, BARIÉRY A VÝZVY [IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT THROUGH THE ANTI-DISCRIMINATION ACT: PROBLEMS, BARRIERS AND CHALLENGES]. Bratislava: *Občan, demokracia a zodpovednosť* (2013), available at http://odz.sk/wp-content/uploads/Implem_ZRZ_ADZ_analyza.pdf, at 28-42. There has been an exception where a district court (i.e. lowest in the Slovak courts' hierarchy) has seen (ethnic) discrimination as objectively impairing the dignity of a person (but still has not reflected this in the amount of financial compensation granted for the non-pecuniary damage). See *Poradňa pre občianske a ľudské práva, Súd odškodnil Rómov za diskrimináciu [A Court Has Compensated the Roma for Discrimination]* (2014), available at <http://poradna-prava.sk/wp-content/uploads/2014/06/PDF-321-KB.pdf>.

¹³ Generally see JANKA DEBRECÉNOVÁ, ŠARLOTA PUFFLEROVÁ, INŠPEKTORÁTY PRÁCE A ICH PÔSOBNIE PRI PLNENÍ ZÁVÄZKOV SR TÝKAJÚCICH SA PRESADZOVANIA DODRŽIAVANIA ZÁSADY ROVNAKÉHO ZAOBCHÁDZANIA V PRACOVNOPRÁVNÝCH A ŠTÁTNOZAMESTNANECKÝCH VZŤAHOCH: VÝSTUPNÝ MATERIÁL Z PROJEKTU „ZLEPŠENIE SITUÁCIE V OBLASTI ANTIDISKRIMINÁCIE SO ZAMERANÍM NA VYBRANÉ ASPEKTY DODRŽIAVANIA ZÁSADY ROVNÉHO ZAOBCHÁDZANIA NA TRHU PRÁCE“ [LABOR INSPECTORATES AND THEIR ACTING IN FULFILLING THE OBLIGATIONS OF THE SLOVAK REPUBLIC CONCERNING PROMOTING THE OBSERVANCE OF THE PRINCIPLE OF EQUAL TREATMENT IN PRIVATE AND PUBLIC EMPLOYMENT RELATIONSHIPS: AN OUTCOME OF THE PROJECT “IMPROVING THE SITUATION IN THE FIELD OF ANTI-DISCRIMINATION WITH THE FOCUS ON SELECTED ASPECTS OF THE OBSERVANCE OF THE PRINCIPLE OF EQUAL TREATMENT ON THE LABOR MARKET], *Občan, demokracia a zodpovednosť* (2011), available at <http://diskriminacia.sk/inspektoraty-prace-a-dodrziavanie-zasady-rovnakeho-zaobchadzania/#more-1388>. See also LUCIA BERDISOVÁ, JANKA DEBRECÉNOVÁ, BARBORA HOLUBOVÁ, DANIELA LAMAČKOVÁ, ZUZANA MAGUROVÁ, ĽUBICA TRGIŇOVÁ, MARGARÉTA VOZÁRIKOVÁ, INŠPEKCIA PRÁCE A ZÁSADA ROVNAKÉHO ZAOBCHÁDZANIA S DÔRAZOM NA POHLAVIE A ROD: PRÁVNE RÁMCE, BARIÉRY, PRÍKLADY DOBREJ PRAXE A ODPORÚČANIA PRE LEGISLATÍVU, POLITIKY A PRAX V SR, [LABOR INSPECTION AND THE PRINCIPLE OF EQUAL TREATMENT WITH THE EMPHASIS ON SEX AND GENDER: LEGAL FRAMEWORK, BARRIERS, GOOD PRACTICE EXAMPLES AND RECOMMENDATIONS FOR THE LEGISLATION, POLICIES AND PRACTICE IN THE SLOVAK REPUBLIC], chapter 3, Bratislava: Centrum vzdelávania MPSVR (2014), <http://www.gender.gov.sk/wp-content/uploads/2015/09/Analýza-súčasného-stavu-vykonávania-inšpekcie-práce.pdf>.

¹⁴ See e.g. DURBÁKOVÁ, HOLUBOVÁ, IVANCO & LIPTÁKOVÁ, *supra* note 5, at 110-112.

¹⁵ For example, the Committee on Economic, Social and Cultural Rights (ESCR Committee) recommended in 2012 that Slovakia “amend its legislation in order to increase the scope and independence of the Slovak National Centre for Human Rights [.]” See Committee on Economic, Social and Cultural Rights (ESCR Committee), *Concluding Observations: Slovakia*, para. 7, U.N. Doc. E/C.12/SVK/CO/2 (2012). In 2014, during the Universal Periodic Review (UPR) of Slovakia, several states recommended that Slovakia ensure that the Center is independent and in compliance with the Paris principles. See Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Slovakia*, paras. 110.14-110.19, U.N. Doc. A/HRC/26/12 (2014).

¹⁶ The Board's President and Vice-President are MPs for the governmental party SMER-SD (currently the only governing party, without a need for a coalition partner). In 2015, the Board's President got re-elected for his third term of service in the Board, immediately following two previous consecutive terms, although the law only allows for two such terms. The President used an obstruction to the law which stipulates that the same member of the Board can be appointed for maximum two terms of service (with one term of service lasting three years) that immediately follow each other (zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva v znení neskorších predpisov [Act No. 308/1993 Coll. on Establishing the Slovak National Centre for Human Rights, as amended], sec. 3a (3)). The President resigned shortly before his second term of service was supposed to come to an end, and got re-elected again, arguing that his terms of service were not consecutive, and hence there was no breach of the law. See *Škandalózný ťah na hrane zákona: Poslanec Smeru Martvoň si poistil flek bielym koňom*, Topky.sk, Aug. 5, 2015, available at <http://www.topky.sk/cl/100535/1489929/Skandalozny-tah-na-hrane-zakona--Poslanec-Smeru-Martvon-si-poistil-flek-bielym-konom> (last visited Sept. 27, 2015). The list of the Centre's Board members can be found at <http://www.snslp.sk/SnslpWeb.html#menu=103>.

¹⁷ Mgr. Zuzana Weberová, PhD.

¹⁸ Response from the Centre of 31 March 2011 to a request for information of 18 February 2011, of 19 March 2012 to a request for information of 5 March 2012, of 11 March 2013 to a request of 1 March 2013, of 24 March 2014 to a request of 15 March 2014, and of 13 April 2015 to a request of 1 April 2015 (all requests for information were filed by Citizen, Democracy and Accountability). On the file with Citizen, Democracy and Accountability.

¹⁹ In 2009, the Centre filed three lawsuits. In 2010, it did not file any new lawsuit but continued with four pending cases. In 2011, the Centre represented six clients in court who were claiming unequal treatment in employment. By the end of 2011, it had been (partly) successful in one of the cases at the first-instance level (see case No. 10C 110/09, submitted to the District Court in Humenné). In 2012, the Centre represented victims of discrimination in court in six cases. Out of these, two cases concerned discrimination on the grounds of gender combined with parental status (see case No 10C 110/09 submitted to the District Court in Humenné, case No 10C 137/09 submitted to the District Court in Humenné), one case concerned discrimination on the grounds of ethnicity (see case No. 11C 137/2011 submitted to the District Court in Spišská Nová Ves), one case concerned discrimination on the ground of political opinion (see Case No. 9C 263/2011 submitted to the District Court in Banská Bystrica), and two cases concerned discrimination on the ground of "other status" (see case No 13C 8/2011 submitted to the District Court in Čadca, case No 5C 105/2011 submitted to the District Court in Ružomberok). In 2013, the Centre continued legal representation in only one of the earlier initiated cases (case No. 10C 137/09 submitted to the District Court in Humenné) and filed one new lawsuit where it represented a person discriminated against on the ground of "other status", in particular being a "full-time student" at a university. In 2014, the Centre represented claimants in discrimination-related proceedings in four cases (case No. 8C/102/2014 submitted to the District Court in Michalovce, case No 10C/219/2013 submitted to the District Court Bratislava III, case No. 12C/150/2014 submitted to the District Court Bratislava III, case No. 7Cpr/2/2014 submitted to the District Court in Prešov), out of which one was finalised and decided in favour of the claimant (see the case decided by the District Court in Michalovce, ref. No. 8C/102/2014). In all cases that the Centre dealt with in 2014 the ground for discrimination was "other status". The information on these cases was provided by the Centre in responses to the requests for information filed by Citizen, Democracy and Accountability in 2011-2015, *supra* note 18. On the file with Citizen, Democracy and Accountability.

²⁰ A petition filed by the Centre on its own initiative against a perpetrator of alleged discrimination usually involving grave or systemic violations. See *Anti-discrimination Act*, sec. 9a, *supra* note 2.

²¹ See the Centre's responses to the requests for information filed by Citizen, Democracy and Accountability in 2011-2015, *supra* note 18.

²² For example, the only monitoring and research outcomes presented on the Centre's website for years 2010-2014 were on media monitoring carried out annually, with special focus on demonstrations of racism, xenophobia and anti-Semitism. See section *Monitoring and research* on the Centre's website, available at <http://www.snslp.sk/SnslpWeb.html#menu=1419>.

²³ The section "Strategic documents" on the Centre's website contains only a few legislative and internal documents governing the functioning of the Centre, available at <http://www.snslp.sk/SnslpWeb.html#menu=105>.

²⁴ See Committee on the Elimination of Discrimination against Women (CEDAW Committee), *List of issues and questions in relation to the combined fifth and sixth periodic reports of Slovakia, Addendum - Replies of Slovakia*, paras. 49-50, U.N. Doc. CEDAW/C/SVK/Q/5-6/Add.1 (2015), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fSVK%2fQ%2f5-6%2fAdd.1&Lang=en [hereinafter CEDAW Committee: *Replies of Slovakia*].

²⁵ See the Resolution of the Government of the Slovak Republic No. 478/2012 of 19 September 2012, available at http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-12811?prefixFile=u_. The deadline set in this resolution for the submission of the bill on the Centre was a postponement of an earlier deadline (31 October 2011), set by the Resolution of the Government of the Slovak Republic No. 347/2011, available at http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-11761?listName=Uznesenie&prefixFile=u_.

²⁶ The amendments have not been introduced despite constant pressure from relevant governmental advisory bodies such as the Council of Government on Human Rights, National Minorities and Gender Equality (sessions held on 17 October 2012 and on 9 April 2014), and the Council's Committee on Gender Equality (session held on 21 October 2013). In 2014, the Ministry of Justice drafted two bills that would be amending the legislation on the Centre (see *supra* note 15); however, the bills were criticized by NGOs and other stakeholders representing the civil society for not resolving the main problems of the Centre (such

as the lack of independence and transparency) and for having the potential to even perpetuate the existing deficiencies (e. g. independence from the state). These shortcomings were not eliminated from the bills and the bills were never released into the legislative process.

²⁷ In February 2015, the National Strategy for the Protection and Promotion of Human Rights in the Slovak Republic was adopted (available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=24253>). Pursuant to the governmental resolution by which the government adopted the Strategy (Resolution of the Government of the Slovak Republic No. 71 of 18 February 2015; available at http://www.rokovania.sk/File.aspx/ViewDocumentHtml/Uznesenie-14678?prefixFile=u_), the government entrusted the Minister of Justice with the task of submitting a new complex law on the Centre by 30 June 2016 (Point B.11 of the Resolution).

²⁸ See CEDAW Committee: *Replies of Slovakia*, *supra* note 24, paras. 46-49.

²⁹ The Committee for Gender Equality is an advisory body to the government, composed of representatives of various societal segments including NGOs; the Slovak Academy of Sciences is an independent academic institution, and the Centre is supposed to be an independent institution in the field of human rights.

³⁰ This definition was added into the Constitution in 2014, by a constitutional amendment No. 161/2014 Coll. of Laws. See Act No. 460/1992 Zb. Ústava Slovenskej republiky v znení neskorších predpisov [Act No. 460/1992 Coll. Constitution of the Slovak Republic, as amended], Art. 41(1).

³¹ Originally, the initiators of the referendum also sought to prevent rights that Slovak law currently attaches exclusively to (heterosexual) marital relationships (such as legal recognition or adoption rights, special regime of joint ownership, special regime of inheritance of property) from being granted to non-marital forms of (same sex or different sex) cohabitation. However, in October 2014, the Constitutional Court declared that this question cannot be put to a vote in a referendum. See Finding of the Constitutional Court of the Slovak Republic, No. PL. ÚS 24/2014-90 (28 October 2014).

³² *Pochod za život: Zákaz potratov či registrovaných partnerstiev* [March for life: Prohibition of abortion or registered partnerships], SME, Sept. 20, 2015, available at <http://www.sme.sk/c/8008041/pochod-za-zivot-zakaz-potratov-ci-registrovanych-partnerstiev.html> (last visited Sept. 29, 2015).

³³ Statistical Office of the Slovak Republic, 2015, Databáza Slovstat [Databasis “Slovstat”]. This figure is confirming a long-term trend.

³⁴ Representative research undertaken by the Institute for Labour and Family Research. The data was presented on 19 June 2014 by Jarmila Filadelfiová at the conference *Konferencia v rámci NP Národná rámcová stratégia podpory sociálneho začlenenia a boja proti chudobe* [Conference in Framework of the National Program “National Framework Strategy for the Support of Social Inclusion and Fight against Poverty”].

³⁵ See, e.g., SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS, REPORT ON THE OBSERVANCE OF HUMAN RIGHTS INCLUDING THE PRINCIPLE OF EQUAL TREATMENT AND THE RIGHTS OF THE CHILD IN THE SLOVAK REPUBLIC FOR THE YEAR 2013 (2014), at 129 (referring to information that had been provided by the National Labour Inspectorate), available at http://www.snslp.sk/CCMS/files/REPORT_ON_THE_OBSERVANCE_OF_HUMAN_RIGHTS_INCLUDING_THE_PRINCIPLE_OF_EQUAL_TREATMENT_AND_THE_RIGHTS_OF_THE_CHILD_IN_THE_SLOVAK_REPUBLIC_FOR_THE_YEAR_2013.pdf. See also Filadelfiová J., *Ženy a muži na slovenskom trhu práce*, in Gyárfášová G. (ed.), MECHANIZMY PORUŠOVANIA RODOVEJ ROVNOSTI A ZÁKAZU DISKRIMINÁCIE NA ZÁKLADE POHLAVIA A RODU PRI PRIÍMANÍ DO ZAMESTNANIA A VO VZŤAHU K PRACOVNÝM PODMIENKAM (VÝSKUMNO-ANALYTICKÁ ŠTÚDIA), Centrum vzdelávania Ministerstva práce, sociálnych vecí a rodiny SR (2014), at 24, 26, 29, 30, available at <http://www.gender.gov.sk/wp-content/uploads/2015/09/3.-V%C3%BDskumno-analytick%C3%A9-C5%A1t%C3%BAdie.pdf>.

³⁶ See Filadelfiová J., *Ženy a muži na slovenskom trhu práce*, *supra* note 35.

³⁷ See Filadelfiová J., *Ženy a muži na slovenskom trhu práce*, *supra* note 35.

³⁸ In Slovakia, women’s average gross hourly earnings are about 20% less than that of men. The gender pay gap was 20,9% in 2008, 21,9% in 2009, 19,6% in 2010, 20,5% in 2011, 21,5% in 2012 and 19,8% in 2013). See European Commission, *Report on equality between women and men 2014*, available at http://ec.europa.eu/justice/gender-equality/files/annual_reports/150304_annual_report_2014_web_en.pdf, at 54. Women’s lower earnings are often the reason why it is mostly women who take leave to conduct unpaid work (care for children during parental leave – which can be taken for a period of 3, and in some instances 6 years – is currently subsidized by the state with a symbolic monthly sum of 203,20 EUR).

³⁹ Maternity leave in Slovakia is currently 34 weeks, and in some instances it is slightly longer, with financial coverage provided from the social insurance scheme. The maternity leave allowance can be paid only to one parent caring for the child on a full-time basis.

⁴⁰ See CEDAW Committee: *Replies of Slovakia*, *supra* note 24, paras. 40-42, 92-93.

⁴¹ See CEDAW Committee: *Replies of Slovakia*, *supra* note 24, paras. 124-128.

⁴² Constitution of the Slovak Republic, see *supra* note 30, Art. 41(1). See also zákon č. 36/2005 Z. z. o rodine v znení neskorších predpisov [Act No. 36/2005 Coll. of Laws Family Act, as amended], sec. 1(1) [hereinafter Family Act].

⁴³ Zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov [Act No. 40/1964 Coll. Civil Code, as amended], sec. 143-151 [hereinafter Civil Code].

⁴⁴ Family Act, *supra* note 42, sec. 71.

⁴⁵ Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov [Act. No. 461/2003 Coll. of Laws Social Insurance Act, as amended], sec. 74-75.

⁴⁶ According to the Slovak law, a minor child is a non-omittable heir who cannot receive less than its statutory share. See Civil Code, *supra* note 43, sec. 473.

⁴⁷ Civil Code, *supra* note 43, sec. 479.

⁴⁸ Unless the spouse owning the company is a freelancer, and except for marital resources used to buy a company/share.

⁴⁹ This legal setting also enables men – entrepreneurs to exclude women from legally sharing the property earned in business by not paying off trading profits to themselves as company owners/shareholders, but instead buying property on behalf of the company (as a separate legal entity) and subsequently using it for private, including family, purposes.

⁵⁰ Civil Code, *supra* note 43, sec. 150.

⁵¹ See CEDAW Committee: *Replies of Slovakia*, *supra* note 24, para. 128.

⁵² Family Act, *supra* note 42, sec. 72(1).

⁵³ Although it could be argued that once the “inability to make the living” by the ex-partner requesting the claim is established, the court could be able to look at the earning potential of the defendant, the law does not make a clear demand in this regard. The law stipulates that “[a] divorced wife or husband who is unable to make the living by herself/himself may request from the ex-spouse that he or she contributes to adequate maintenance [of the divorced wife or husband making the request] according to his or her abilities, capabilities and property conditions.” See Family Act, *supra* note 42, sec. 72(1).

⁵⁴ Family Act, *supra* note 42, sec. 72(3).

⁵⁵ Hysterectomy is a removal of the uterus. Unless otherwise specified, hysterectomy usually denotes complete removal of the uterus (corpus and cervix). See MEDILEXICON INTERNATIONAL LTD, available at <http://www.medilexicon.com/medicaldictionary.php?t=43162>.

⁵⁶ Adnexectomy is an excision of the uterine tube and ovary if unilateral, and excision of both tubes and ovaries (adnexa uteri) if bilateral. See MEDILEXICON INTERNATIONAL LTD, available at <http://www.medilexicon.com/medicaldictionary.php?t=1361>.

⁵⁷ Orchiectomy is a removal of one or both testes. See MEDILEXICON INTERNATIONAL LTD, available at <http://www.medilexicon.com/medicaldictionary.php?t=63143>.

⁵⁸ See Vestník MZ SSR 1981, *Liečebné zákroky u intersexuálov, transsexuálov, sexuálnych deviantov a postup pri vydávaní posudku pre zápis v matrike u transsexuálnych osôb*, Volume 3-4, at 23, part I [hereinafter Vestník MZ SSR 1981, *Liečebné zákroky u intersexuálov, transsexuálov, sexuálnych deviantov*].

⁵⁹ In its report on abusive practices in health care settings, the United Nations Special Rapporteur on Torture called upon states to “repeal any law allowing intrusive and irreversible treatments, including forced genital-normalizing surgery, involuntary sterilization, unethical experimentation, medical display, “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned. He also calls upon them to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.” See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, para. 88, U.N. Doc. A/HRC/22/53 (2013), available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf.

⁶⁰ See Vestník MZ SSR 1981, *Liečebné zákroky u intersexuálov, transsexuálov, sexuálnych deviantov*, *supra* note 58.

⁶¹ Meeting of representatives of TransFúzia with representatives of the Ministry of Health held on 11 September 2015 at the Ministry of Health. A response of the Ministry of Interior of 19 February 2013, No SVS-OVVS1-2013/007417, on a request for information from NGO Iniciatíva Inakosť. On the file with Iniciatíva Inakosť.

⁶² Zákon č. 301/1995 Z. z. o rodnom čísle v znení neskorších predpisov [Act No. 301/1995 Coll. of Laws on the birth number, *as amended*], sec. 8 (2)(b).

⁶³ Zákon č. 395/2002 Z. z. o archívoch a registratúrach a o doplnení niektorých zákonov v znení neskorších predpisov [Act No. 395/2002 Coll. of Laws on archives and registries and on supplementing other laws, *as amended*], sec.12(2). Sec. 12(2) indicates indirectly that it is not possible to make any changes to the already archived documents (it is only possible to make various types of copies, abstracts and extracts).