



Open Society Foundation

Bratislava



Anti-discrimination workshop

Slovakia is a party to the European Convention on Human Rights as well as the International Convention on the Elimination of all Forms of Racial Discrimination

- Its basic law being the Constitution (the Constitution of the SR No. 460/1992 Coll. as amended) which lays down the scope of guaranteed fundamental rights,
- Along with the Constitution, the Act on Equal Treatment in Certain Areas and Protection Against Discrimination (so called, Anti-discrimination Act) adopted by the Slovak Parliament on May 20, 2004 (as amended), has established the basic legal framework of the Slovak anti-discrimination law.

- Along with the Constitution, the Act on Equal Treatment in Certain Areas and Protection Against Discrimination (so called, Anti-discrimination Act) adopted by the Slovak Parliament on May 20, 2004, has established the basic legal framework of the Slovak anti-discrimination law.

- The AD Act came into force on July 1, 2004 it was significantly amended on 2008 – and is in effect from April 1, 2008
- The latest amendment of the AD Act was a reaction to the European Commission's communication to the government demanding it to bring its provisions into compliance with EU Directives. Moreover, an initiative of NGOs filed collective comments to the amendment of the Act that was almost completely incorporated to the legislative proposal

- the adoption process of the AD Act in 2004 brought lots of controversies. The Act was finally adopted after three years long discussions on a necessity to adopt the act of this kind. Two former attempts to adopt the Act in 2002 and 2003 were not successful. In 2002, the proposed law was rejected by the Parliament thanks to a cooperation of a coalition Christian Democratic Movement and an opposition Movement for a Democratic Slovakia. One of the most cited reasons was the inclusion of a *sexual orientation* into the grounds of discrimination. The second attempt in 2003 opened extent public discussion on the topic; the law was reviewed by international experts, civil society organized a petition in support of the law and the governmental office responsible for the agenda (led by the representative of the Party of Hungarian Coalition) prepared a public campaign promoting the law.

- The Christian Democratic Movement present in the governing coalition of the period argued that antidiscrimination measures are sufficiently covered by the Constitution and the Labor Code. Other coalition partners, namely the Party of Hungarian Coalition whose representative was a vice premier responsible for the agenda of human rights and the EU accession, maintained the position favorable for the adoption of the separate antidiscrimination legislation using the arguments of commitments towards the transposition of the EU legislation. In 2004, the proposal of the Antidiscrimination Act was several times amended until it reached the coalition consensus. As a result of the consensus, the protection against discrimination on the basis of sexual orientation is not covered in all areas of concern (it is covered in the area of labor relations but not in the area of social security, health care and access to services).

The full legal protection against discrimination on the ground of sexual orientation was finally achieved in 2008. Disputes concerning other grounds of discrimination were not present during the adoption of the AD Act or its amendment.

More info on the process of approving AD Act in the SR see at:
www.8.mensiny.vlada.gov.sk, elaborated by Piroska Gyuricsek,
2004

Act No. 365/2004 Coll.

- Prohibits discrimination on the grounds of: sex, religion or belief, nationality or ethnicity, disability, age, sexual orientation, marital and family status, race, language, political opinion, national or social origin, property, gender or other status.

Discrimination on all above mentioned grounds is prohibited in employment and other similar legal relations as well as in social security, healthcare, provision of goods and services and in education.

The Amendment, 2008

- The amendment broadened existed grounds of discrimination and expanded their application to both employment and supply of services. Newly included grounds of discrimination comprise marital and family status, national or social origin, political opinion, property and gender^[1]. Up to 2008 the protection against discrimination on the basis of religion and belief, disability, age and sexual orientation did not include areas of social security, healthcare, provision of goods and services and education; the protection against discrimination on the abovementioned grounds was restricted only to employment related issues. In addition, the amendment introduced sexual harassment and affirmative actions to the Slovak legal system.
- ^[1] Before February 2008 the Act used only term “sex”.

The Amendment, 2008

- Up to 2008 the protection against discrimination on the basis of religion and belief, disability, age and sexual orientation did not include areas of social security, healthcare, provision of goods and services and education; the protection against discrimination on the abovementioned grounds was restricted only to **employment related issues.**

The Amendment, 2008

- In addition, the amendment introduced sexual harassment and *affirmative actions* to the Slovak legal system.

Positive Action

(Art.5 Directive 2000/43, Art. 7 Directive 2000/78)

- The debate on the positive action has started by the adoption of the AD Act, Section 8 titled: Admissible different treatment – introduced a general positive action regulation in relation to the racial and ethnic minorities.

“with a view to ensuring full equality in practice and compliance with the principle of equal treatment, specific positive actions to prevent disadvantages linked to racial or ethnic origin may be adopted.” The Government represented by the Minister of Justice (coming from the Christian Democratic Movement) initiated a court procedure on the Constitutional Court on the consistence of the provision of affirmative action in the Antidiscrimination Act with the Slovak Constitution. In 2005, the Constitutional Court ruled by a close vote that the concerned article is inconsistent with the Constitution.

- **Art.1, § 1 of the Constitution (The SR is a sovereign, democratic state governed by rule of law. It is not bound to any ideology or religion),**
- **Art.12, first sentence of the § 1 of the Constitution (All human beings are free and equal in dignity and in rights.) and**
- **Art.12, § 2 – fundamental rights shall be guaranteed**

A dispute on affirmative actions occurred again during the amendment of the Act in 2008. The governmental proposal suggested affirmative measures in order to eliminate disadvantages linked to racial or ethnic origin, age or disability.

During the adoption process in the Parliament the wording “racial or ethnic origin” has been changed and replaced by “forms of social and economic disadvantages”.



Valentina Petrus

Open Society Foundation
Bratislava, Slovak Republic

valentina@osf.sk

www.osf.sk