



**REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC**

COUNTRY REPORT 2011

SLOVENIA

DR. NEŽA KOGOVŠEK ŠALAMON

State of affairs up to 1st January 2012

This report has been drafted for the **European Network of Legal Experts in the Non-discrimination Field** (on the grounds of Race or Ethnic Origin, Age, Disability, Religion or Belief and Sexual Orientation), established and managed by:

Human European Consultancy
Maliestraat 7
3581 SH Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the website of the European network of legal experts in the non-discrimination field:

<http://www.non-discrimination.net/law/national-legislation/country-reports-measures-combat-discrimination>.

This report has been drafted as part of a study into measures to combat discrimination in the EU Member States, funded by the European Community Programme for Employment and Social Solidarity – PROGRESS (2007-2013). The views expressed in this report do not necessarily reflect the views or the official position of the European Commission.



TABLE OF CONTENTS

INTRODUCTION	4
0.1 The national legal system	4
0.2 Overview/State of implementation	4
0.3 Case-law.....	7
1 GENERAL LEGAL FRAMEWORK.....	17
2 THE DEFINITION OF DISCRIMINATION	19
2.1 Grounds of unlawful discrimination.....	19
2.1.1 Definition of the grounds of unlawful discrimination within the Directives	23
2.1.2 Assumed and associated discrimination	26
2.2 Direct discrimination (Article 2(2)(a))	27
2.2.1 Situation Testing	28
2.3 Indirect discrimination (Article 2(2)(b))	29
2.3.1 Statistical Evidence	31
2.4 Harassment (Article 2(3)).....	32
2.5 Instructions to discriminate (Article 2(4)).....	33
2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78).....	34
2.7 Sheltered or semi-sheltered accommodation/employment	42
3 PERSONAL AND MATERIAL SCOPE.....	44
3.1 Personal scope	44
3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)	44
3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43).....	44
3.1.3 Scope of liability	45
3.2 Material Scope.....	46
3.2.1 Employment, self-employment and occupation.....	46
3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?.....	47
3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))	48
3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))	49
3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d)).....	49

3.2.6	Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)	50
3.2.7	Social advantages (Article 3(1)(f) Directive 2000/43)	52
3.2.8	Education (Article 3(1)(g) Directive 2000/43)	52
3.2.9	Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)	57
3.2.10	Housing (Article 3(1)(h) Directive 2000/43)	58
4	EXCEPTIONS	61
4.1	Genuine and determining occupational requirements (Article 4)	61
4.2	Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)	61
4.3	Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)	62
4.4	Nationality discrimination (Art. 3(2)	63
4.5	Work-related family benefits (Recital 22 Directive 2000/78)	65
4.6	Health and safety (Art. 7(2) Directive 2000/78)	66
4.7	Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)	66
4.7.1	Direct discrimination	66
4.7.2	Special conditions for young people, older workers and persons with caring responsibilities	68
4.7.3	Minimum and maximum age requirements	69
4.7.4	Retirement	69
4.7.5	Redundancy	71
4.8	Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)	72
4.9	Any other exceptions	73
5	POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78) ..	74
6	REMEDIES AND ENFORCEMENT	79
6.1	Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)	79
6.2	Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)	85
6.3	Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78) ..	90
6.4	Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78) ..	90
6.5	Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)	91
7	SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)	96



8	IMPLEMENTATION ISSUES	104
8.1	Dissemination of information, dialogue with NGOs and between social partners	104
8.2	Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)	105
9	CO-ORDINATION AT NATIONAL LEVEL	107
	ANNEX	108
	ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION...	109
	ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS	114



INTRODUCTION

0.1 The national legal system

Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed among different levels of government.

According to the Constitution of the Republic of Slovenia, Slovenia is a democratic republic, governed by the rule of law. Laws, regulations and other general legal provisions must be in conformity with the Constitution. Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal provisions must also be in conformity with other treaties ratified by the Government. Regulations and other general legal provisions must be in conformity with the Constitution and laws. All legislation in Slovenia may be subjected to revision by the Constitutional Court.

The legislation relevant to the field of anti-discrimination consists of Act Implementing the Principle of Equal Treatment, covering the grounds such as gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance; Employment Relationship Act covering the grounds of ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance; Vocational Rehabilitation and Employment of Persons with Disabilities Act covering the ground of disability; Act on Equal Opportunities for People with Disabilities covering reasonable accommodation for people with disabilities; Penal Code covering the grounds of ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other circumstance; and Protection of Public Order Act covering ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation.

0.2 Overview/State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.



This could also be used to give an overview on the way (if at all) national law has given rise to complaints or changes, including possibly a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

Please bear in mind that this report is focused on issues closely related to the implementation of the Directives. General information on discrimination in the domestic society (such as immigration law issues) are not appropriate for inclusion in this report.

Please ensure that you review the existing text and remove items where national law has changed and is no longer in breach.

Considering findings of this report the Slovenian law may be in breach of the directives on the following points:

- The national designated body (Advocate of the Principle of Equality) is not independent as it functions within the Government Office for Equal Opportunities¹ (particularly in cases of alleged discrimination committed by the Government).² The Advocate is nominated by the Government (and not the National Assembly) upon the proposition of the director of the Government Office for Equal Opportunities;³ it consists only of one person which does not ensure effective protection; furthermore, the budget for Advocate's activities is determined by the Government Office. The fact that the Advocate can be dismissed by the Government before his or her mandate is complete could also amount to a lack of independence.
- NGOs do not have legal standing to engage in judicial proceedings on behalf of the victim (as mentioned in the European Commission's reasoned opinion of 2007).

¹ Note that on 1 April 2012 the Office of Equal Opportunities was abolished due to government saving scheme. The employees in the Office, including the Advocate of the Principle of Equality, were transferred under the scope of the Ministry of Labour, family and Social Affairs.

² An example which indicates the situation concerning independence and objectivity of the Advocate in cases of alleged discrimination perpetrated by the Government is a much publicized case where a Roma family from Ambrus in Dolenjska region in Slovenia was removed from their land upon the demands expressed through protests of 300 local residents. Removal was facilitated by the Minister of Interior. After the removal, the family was escorted by the police to a formed refugee centre. The family was later also prevented from returning to their land by the police. In this case Legal Information Centre for Non-Governmental Organizations and Peace Institute filed a complaint to the Advocate of the Principle of Equality in January 2007. The case was decided 26 months after the complaint was filed. In this case the Advocate of the Principle of Equality found no racial or ethnic discrimination. Further, in 2009 doubts in the independency of recruitment procedure of the Advocate of the Principle of Equality were raised twice following two official inspection procedures: first, when the Labor Inspectorate found that discrimination occurred in the nomination procedure of the Advocate, and second, when the Inspectorate for the system of public servants found the nominated Advocate did not fulfill the employment conditions. As a consequence, the Advocate's contract was terminated.

³ As the Government Office for Equal Opportunities was abolished on April 1, 2012 it is not clear who will nominate the Advocate for the principle of Equality in the future.

- Article 67 of the Police Act states that employment in the police is not possible if a person invoked conscientious objection in the armed forces (indent 6), which might unjustifiably exclude people on the grounds of religion or belief.
- The provision that permits direct discrimination is quite confusing and allows for contradicting interpretations. The law in general does not permit direct discrimination, however Article 2.a of the Act Implementing the Principle of Equal Treatment states that the provisions of this Act do not exclude difference of treatment on the basis of certain personal circumstance, if such treatment is justified by a legitimate goal and if the means for achieving this goal are appropriate and necessary (§1).
- Further, §2 and §3 of Article 2.a absolutely prohibit any discrimination, regardless of the provision of §1, except for specifically defined exceptions, related to genuine and determining occupational requirements in the area of employment; religion in religious organizations; age in recruitment, employment and vocational training; beneficial treatment of women during pregnancy and motherhood; availability of goods and services for people of one gender; in the area of insurance; or in other cases defined by laws adopted pursuant the European Union law. In conclusion, this provision is quite confusing since § 1 indicates that race or ethnicity-based direct discrimination can also be justified by reasons other than positive action and genuine and determining occupational requirement.
- The legal provision concerning the definition of indirect discrimination is not identical to the one in the directives since it requires a person to be in 'equal or similar situation and conditions', whereas this condition is not included in the Directive's definition of indirect discrimination. Slovenian law seems more restrictive in this respect.
- Contrary to directives, the competency to conduct surveys is not awarded to any of the state bodies.
- The Social Care Act is discriminatory in the area of equal access to employment, since adults who obtain the status of a person with disabilities under this Act have the right to receive social benefits, but are automatically presumed as unable to live independently or unable to be employed regardless of their actual ability to work. The Act creates an obligation of persons who wish to work to renounce the disability status and consequently lose their eligibility for social benefits. Some of these people would be able to take up some form of employment even though they have a status of a person with disabilities under this act.
- According to the Vocational Rehabilitation and Employment of Persons with Disabilities Act, the term "persons with disabilities" applies to a person who has obtained the status of a person with disabilities according to the Pension and Disability Insurance Act, or according to any other regulation, and to a person for whom consequences of a permanent physical or mental malfunction or disease have been ascertained by an administrative decision, and whose chances of obtaining or retaining a job or obtaining promotion are substantially reduced. The definition of disability under this law therefore differs from the one adopted by the European Court in Chacon Navas, as the definition in this law

connects the impairments to medical treatment which cannot reverse the damages. Such requirements in the national law may restrict people who have not obtained disability status from claiming reasonable accommodation in employment.

- There is no definition of intellectual disability in Slovenian law, which means that it is not clear which persons with intellectual disabilities are recognized as persons with disability and are consequently protected from discrimination under the national non-discrimination law.

0.3 Case-law

Provide a list of any important case law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

Name of the court

Date of decision

Name of the parties

Reference number (or place where the case is reported).

Address of the webpage (if the decision is available electronically)

Brief summary of the key points of law and of the actual facts (no more than several sentences).

→ Please use this section not only to update, complete or develop last year's report, but also to include information on important and relevant case law concerning the equality grounds of the two Directives (also beyond employment on the grounds of Directive 2000/78/EC), even if it does not relate to the legislation transposing them - e.g. if it concerns previous legislation unrelated to the transposition of the Directives.

Please describe trends and patterns in cases brought by Roma and Travellers, and provide figures – if available.

Name of the court: Constitutional Court of the Republic of Slovenia

Date of decision: 2 July 2009

Reference number: U-I-425/06

Brief summary: The complainants were a gay couple who registered their same-sex partnership in Slovenia, in accordance with the Registration of Same Sex Partnerships Act. As they considered this act discriminatory, they decided to file for review of one of the provisions of the law – Article 22 which regulates inheritance rights. In the complaint they stated that since they registered their partnership, Article 22 of this act would apply to them in case of death of one of them. They claimed that Article 22 was discriminatory since it regulates different inheritance regimes for common possessions and special possessions (while the Inheritance Act in place for heterosexual partners and spouses regulates only one regime for the entire legacy of the deceased), since the surviving partner is excluded from inheritance of special possessions, and since the Act does not regulate obligatory share for the surviving partner in case the deceased leaves him out of the will.

The court found with a unanimous vote that Article 22 of the Registration of Same Sex Partnership Act is contrary to the Constitution and that the National Assembly has to remove the established inconsistencies in six months after the publication of this decision in the Official Journal of the Republic of Slovenia. Until the inconsistencies are removed, the same rules are valid for inheritance between registered same sex partners as for inheritance between spouses in accordance with the Inheritance Act. The court justified its decision by stating that the situation of partners in a registered same sex partnership is, in relation to the right to inheritance after the deceased partner, in its basic actual and legal elements comparable with the situation of spouses. The difference in regulation of inheritance between spouses and partners in registered same sex partnerships are not based on objective non-personal circumstance, but on sexual orientation. Sexual orientation is, however, one of the personal circumstances from paragraph 1 of Article 14 of the Constitution on which discrimination is prohibited. Since there is no constitutionally justifiable reason for differentiation, such regulation is contrary to paragraph 1 of Article 14 of the Constitution. The decision is important since for the first time the Constitutional Court of Slovenia confirmed that sexual orientation is one of the protected grounds on which discrimination is prohibited – namely, paragraph 1 of Article 14 of the Constitution does not specifically mention sexual orientation as a protected ground, but includes a general clause “or any other personal circumstance”. The decision is also important since in its reasoning the Constitutional Court argues on the general level that the social, legal, emotional and ethical elements of both types of partnerships are similar and comparable. The decision was cited as a legal resource in the Draft Family Code which foresaw full equality of same-sex partnerships with their opposite-sex counterparts. The Family Code, was however, rejected at a referendum on 25 March 2012 and did not enter into force. There are no indications yet whether the Family Code will be re-submitted to the National Assembly and/or modified.

Name of the court: Higher Labour and Social Court

Date of decision: 14 May 2009

Reference number: Pdp 915/2008

Brief summary: A victim of discrimination on the grounds of disability (visual impairment) was awarded compensation in the amount of 3.500 EUR. In this case discrimination occurred at workplace where the employer did not provide reasonable accommodation to the victim with visual impairment. The victim was provided with a computer with Braille, however, that computer did not enable working on Windows and Internet. The victim – a teacher – was not able to use the more modern computer as that one was intended for pupils. The court established that the defendant (a school) should enable the victim to use a modern computer with Braille and enable him to get acquainted with news and messages via e-mail. Since that was not provided by the defendant the first instance court found that the defendant treated the victim in a discriminatory manner. This decision was confirmed by the second instance court.



Name of the court: Higher Labour and Social Court

Date of decision: 2 April 2008

Reference number: Pdp 1193/2007

Brief summary: In the dispute the plaintiff stated that at his retirement he obtained a retirement payment on the basis of Collective Agreement, while other employees of the defendant that retired obtained the payment in the amount as stipulated in the Government Decree on the reimbursement of expenses in relation to employment that do not count towards tax base. Since this payment was consequently lower comparing to the payments received by other employees, the plaintiff claimed he was discriminated against. The plaintiff did not specify what the grounds of discrimination were. In accordance with the rule of the shift of burden of proof the court found that the employer did not provide any justification for the fact that the payments to the plaintiff were calculated on another legal basis than in the case of other employees. The court stated that it is wrongful for the employer to claim that retirement payments on the basis of different legal bases without a justified reason do not constitute discrimination in the meaning of Article 6 of the Employment Relationship Act. Consequently, arbitrary decisions on which employee will be paid his retirement payments on the basis of the Collective Agreement that stipulates minimum rights of workers, and which on the basis of the Decree that stipulates the maximum payments that are excluded from tax base, constitutes discrimination. A general observation from the judicial decisions finding discrimination (compare e.g. the last one listed in this chapter, judgment No. Pdp 1193/2007) is that courts in the field of labour and civil law very rarely deliberate on the ground of discrimination, from which it seems that for the courts establishing the discrimination ground is not obligatory to decide in favour of the plaintiff. These cases are decided in accordance with the general principle of equality which is defined as a requirement that similar situations are treated similarly, while different situations are treated differently. Establishing the personal ground on which discrimination occurred is not necessary for establishing the breach of the general principle of equality.

Name of the court: Higher Labour and Social Court

Date of decision: 19 March 2008

Reference number: Pdp 402/2007

Brief summary: The employer decided to terminate the employment contract of a few employees, including the plaintiff, who was at the same time offered a new, but less favourable employment contract. The number of these employees was smaller than the number specified in the Employment Relationship Act, for which special rules for selection of employees whose contract will be terminated, apply. While the Employment Relationship Act does not specify conditions for selection of a smaller number of employees for termination of contract, the plaintiff claimed that the employer should have taken into account the Collective Agreement for doctors and dentists, which defines such conditions. However, the Collective Agreement was not taken into account and the employer decided to terminate the contract to an employee due to her up-coming retirement. The first instance Labour and Social Court found that since the Employment Relationship Act does not specify rules for selection of employees whose employment contract would be terminated, the

employer was free to choose these employees. The court rejected the lawsuit of the plaintiff and confirmed the lawfulness of termination of the contract, as well as the lawfulness of new, however, less favourable contract that the plaintiff was offered. The plaintiff appealed at the Higher Labour and Social Court, which found that the first instance court wrongfully assessed that the selection of the plaintiff for termination of the employment contract due to up-coming retirement does not constitute discrimination. The court found that the assessment of the plaintiff as an employee that will soon retire puts the plaintiff in an unequal position due to her age. Termination of employment with an offer of new contract is therefore unlawful due to breach of the prohibition of discrimination. The court judgment does not contain any specific reference to the directive, it only invokes the prohibition of discrimination on the grounds of age (inter alia) in the Article 6 of the Employment Relationship Act.

Name of the court: Higher Court Ljubljana

Date of decision: 15 June 2011

Reference number: II Kp 5357/2010

Brief summary: On 25.6.2009 a group of perpetrators dressed in black hoods, caps, and masks attacked a gay friendly café in Ljubljana with torches, stones and parts of asphalt. At the attack they screamed homophobic slogans. At the attack one man obtained several bodily injuries and the bar was damaged. Three of about eight perpetrators were identified and prosecuted, while others remain unknown. The court found the three defendants guilty as accomplices to a crime of public incitement of hatred, violence or intolerance, in accordance with Article 297, paragraphs IV and I of the Criminal Code, in connection with Article 20 of the Criminal Code. Each defendant was sanctioned to 1 year and six months of imprisonment by the first instance court, while the Higher Court reduced these sentences to seven months in prison for two defendants, and five months for the third one. The Court justified lowering the sentences by stating that i) the facts of the case corresponded to the definition of the crime in the Criminal Code and cannot be considered aggravating circumstances that would justify such high sentences; ii) the defendants had no prior criminal record, and iii) they expressed remorse and apologised to the victim. The evidence for the case comprised of witness testimonies, DNA forensic evidence and phone call reports. The court however, did not find the defendants guilty of the crime of violence (Article 296 of the Criminal Code) as the elements of this crime are already subsumed in the crime of public incitement of hatred, violence and intolerance. They were also not found guilty of the crime of causing of general danger as it was not possible to establish that it was one of the defendants who threw the torch into the bar.

Name of the court: Administrative Court of the Republic of Slovenia

Date of decision: 5 May 2011

Reference number: I Up 35/2011

Brief summary: The case concerns reasonable accommodation for people with disabilities and their voting rights. Article 79.a of the National Assembly Elections Act states that the county election commission shall appoint at least one polling station that is accessible for people with disabilities. The voters who wish to vote at this

polling station as their disabilities do not permit them to vote at the polling station in the area of their residence, are required to inform the county election commission three days in advance about their intention to vote at the adapted polling station. The plaintiff claimed that such treatment constitutes discrimination on the grounds of disabilities. The Administrative Court disagreed and stated that the possibility for people with disabilities to choose the polling station which is accommodated to them is an option that they have at their disposal, by which the state is carrying out a duty of positive discrimination (this is the term that the Administrative Court actually used instead of the term 'reasonable accommodation'). The duty to inform the commission about the intention to vote does not interfere with the right to vote as the state has the right to this information in order to prepare the polling station accordingly.

Name of the body: Ministry of Labour, Family and Social Affairs

Date of decision: 14 July 2011

Reference number: 12030-7/2011/4

Brief summary: The case concerns a second-parent adoption carried out in a lesbian family. The same-sex partner of a mother who gave birth to a child conceived with donor insemination, lodged an application for second-parent adoption at the local social services office. The application was filed on the basis of the 1976 Marriage and Family Relations Act which in Article 135 states that no one can be adopted by more than one person except in the case when he or she is adopted by two spouses. The social services office refused the application stating that the law did not provide for the right of a same-sex partner of the parent to adopt the partner's biological child. The same-sex partner lodged an appeal to the Ministry of Labour, Family and Social Affairs. The Ministry ruled in favour of the applicant and approved the application for second-parent adoption. It stated that in the law there were no limitations concerning sex or marital status of a person adopting a child, if all the other conditions were met, i.e. that the adoption is in the best interest of the child and that the mother agrees with the adoption. It further stated that refusing the application would violate the prohibition of discrimination on the ground of sexual orientation, contained in the Article 14 of the Constitution. The case clarified the issue which until then has only been debated in the academic papers, that according to the existing 35-year old Marriage and Family Relations Act second-parent adoption is possible also in case of same-sex couples.

Name of the court: Advocate of the Principle of Equality

Date of decision: 31 January 2011

Reference number: UEM – 0921-36/2009/6

Brief summary: The applicant complained because the insurance company Adriatic Slovenica refused to provide insurance services for an accident to persons with health diagnosis of depression. Article 11, § 3 of the General Conditions for Accident Insurance states that a person who suffers from damage of brain vascular system, epilepsy, alcoholism, drug abuse, intellectual disability, schizophrenia, depression or paranoia is not entitled to accident insurance. The insurance company claimed that for these groups of persons there was a greater insurance risk. In addition to the issue of discrimination on the grounds of health status invoked by the applicant, the



Advocate of the Principle of Equality also examined the effect of these insurance policies on people with intellectual disabilities. The Advocate found that these policies constituted direct discrimination on the grounds of health status and disability. The Advocate found that the insurance company did not provide any particular explanations on which legitimate goals these exclusion provisions are pursuing. It is not possible to generalise that there is an equally strong causal relationship between accidents and the stated health and disability conditions. The decision had no impact as the insurance company has not changed its general conditions.

Name of the court: Advocate of the Principle of Equality

Date of decision: 25 January 2011

Reference number: 0921-42/2009/7

Brief summary: The advocate examined a complaint filed by an applicant whose application to work for the Police was rejected due to coeliac disease (inability to digest gluten protein). When the applicant first applied for the job, he did not pass the medical test. The doctor who examined if he was fit for the job mentioned that this diagnosis could represent a problem. The written notification on failing to pass the test did not mention this among reasons. When the applicant applied for the same job again, he was immediately (without attending the medical exam) refused with a justification that he did not pass the medical test before. The Advocate found that the treatment of the applicant constituted direct discrimination on the grounds of health status. Genuine occupational requirements to perform the job of the police officer do not include the ability to digest gluten proteins. If the applicant was otherwise healthy, provided that he abided to a certain diet, the sole diagnosis of this kind may not be a reason for rejection of the applicant. The opinion had no effect in the case.

Name of the court: Advocate of the Principle of Equality

Date of decision: 6 June 2010

Reference number: UEM – 0921-22/2010-7

Brief summary: The Advocate examined a complaint concerning the campaign of the Ministry of Education and Sports titled “Ponosen na svoj (s)pol” (proud of my sex/pole⁴). The aim of the campaign was, according to the Ministry, to encourage young people to think about safe sex, which they would confirm by signing a declaration stating that they are proud of their (biological) sex. The Advocate found that the campaign basically calls upon the students to publicly take a position about both their sex and their sex life. Even though the campaign’s main aim was, according to the Ministry, raising awareness on the importance of safe sex, it has not been accompanied by any educational activities on this content, therefore its effect with regard to increasing safe sex was highly questionable. The Advocate found from the complementary materials that the campaign was based on the assumption that humanity consists of two sexes which jointly maintain civilization, which requires the students to be “proud” of classic heterosexual orientation. The Advocate found that the campaign constitutes direct discrimination based on sex identity, as well as

⁴ Meaning “proud of my sex”, or “proud of my pole” – the title uses a game of words which insinuates that one’s sex is at the same time another person’s opposite sex, and that two persons create two different poles and complement each other.

indirect discrimination on the ground of sexual orientation, as it disregards the students with past, current and/or future experience of homosexual, bisexual or transsexual orientation and/or change of their sex identity.

The Ministry of Education and Sports repeated the campaign in 2011. Consequently, the Advocate issued another opinion in 2011 again finding discrimination for the same reasons (opinion no. 0921-41/2011-UEM/10 of 25 July 2011).

Name of the court: Advocate of the Principle of Equality

Date of decision: 25 May 2010

Reference number: UEM – 0921-15/2010-9

Brief summary: The Veterinary Office of the Republic of Slovenia issued an announcement on veterinarian concessions, specifying the criteria that the candidates had to meet, which included years of experience and candidates' work capacity. The Advocate requested more information from the Office, which explained that candidates (concessionaries) older than 55 represent a certain risk since as vulnerable group they are additionally protected under the Employment Relationship Act. The Office also stated that older workers are less inclined to learn and less adaptive to new legislation. The Office explained that for these reasons they prefer concessionaries who have between 5 to 15 years of work experience. The Advocate found that such treatment constitutes discrimination on the grounds of age as the employer did not state a legitimate goal that is pursued by such treatment. It recommended that the office changes its criteria in a way not to put older candidates in a less favourable situation.

Name of the court: Advocate of the Principle of Equality

Date of decision: 23 March 2009

Reference number: UEM – 0921-3/2007-43

Brief summary: The complaint claimed alleged discrimination on grounds of race or ethnicity of Roma family. The Roma family consisting of more than 30 members lived on their own land in barracks and tents. On 22 October 2006 a non-Roma man who also lived with the family, in presence of other Roma caused severe physical injuries to one local in their village near Ambrus. This incident provoked turmoil and fear among the locals and on 28 October 2006, about 200 of them gathered in front of the land of the Roma family and demanded they leave the village. Numerous police officers and government representatives were also present for security reasons. The agreement was that the Roma family will be resettled in the former abandoned refugee centre until the permanent location for their residence is found. The family was escorted to the centre by police vehicles. On 25 November 2006 the Roma family (still living in the refugee centre) wanted to return to their land but they were stopped by the police. Locals gathered again and set up barricades in order to prevent the family to return. Members of the family met the government representatives again and on their recommendation returned to the refugee centre.

The complaint filed by two NGOs claimed that the act of removal of the family, their settlement in the former refugee centre and prevention of their return to their own land constituted discrimination on the grounds of race. They claimed that the family

agreed to leave their land only due to fear and that their consent to leave was not informed or voluntary. The complainants also claimed that if the family was of Slovenian ethnicity in a similar situation, they would not be treated this way. The Advocate found that the former minister of interior talked with both the locals and the family, who allegedly voluntarily asked him to be resettled to another location. The Advocate stated that the complainants did not present some concrete examples of Slovenian families in the similar situation so it was not possible to evaluate how the state authorities would act in the case of Slovenian families. He also stated that if the family remained in this village, other people could be endangered and in his opinion the resettlement was the best solution. He found there was no discrimination in this case since the living conditions were not worsened after the resettlement in the former refugee centre. Further the Advocate decided that the family was not treated less favourably when resettled to former refugee centre and there was no alleged discrimination on the grounds of ethnicity, claiming the state authorities would probably act the same if the family was Slovenian. Regarding the prohibition of return to their land, the Advocate again found there was no discrimination on grounds of ethnicity, since everyone was prohibited from accessing this piece of land, therefore the family could not have been treated less favourably.

The case was not decided until two years and two months after the complaint was lodged. The opinion was criticized by the anti-discrimination experts, who assessed the decision as biased. Also, the opinion differs from the assessment of the Human Rights Ombudsman⁵ and the Commissioner of Human Rights of the Council of Europe at the time, that the removal of the family was unacceptable and discriminatory. There is no appeal possible against the opinion of the Advocate of the Principle of Equality. Later the family with the assistance of the attorney negotiated the legal settlement in which they received a new piece of land with a house near Ljubljana (previously owned by the state), while their land near Ambrus became property of the state. There was a third party involved that paid the difference between the price of the estates in Ambrus and Ljubljana, however, their identity was not revealed to the public.

Name of the court: Advocate of the Principle of Equality

Date of decision: 28 August 2008

Reference number: UEM – 0921-10/2008-3

Brief summary: The applicant, who is a Muslim, is employed by a company which offers organized warm meals to its employees. As a Muslim the applicant does not eat pork or dishes made on the basis of pork fat. Instead of warm meals the employees can receive a dry meal, which, however, also often includes pork.

Due to his religion the applicant wanted to make use of the possibility of monthly allowance offered to the employees in order to buy food, in accordance with his religion. However, this possibility is only available to employees who submit a medical certificate confirming that they require dietary food. It is noteworthy that the

⁵ Human Rights Ombudsman, Annual Report 2006, p. 36.

company adapted the menus to Catholic religion which requires fasting on Fridays. The Advocate found that since all employees are treated equally in the area of food provision, regardless of their religion, the applicant as a Muslim is put in a less favourable position than other employees. Muslims working for the company are in the position where they can either chose to eat food which is contrary to their religion, or are left without a meal and without an appropriate monetary substitute for a meal. Such treatment leads to discrimination on the grounds of religion. The Advocate found that reasonable accommodation is already provided for a certain group of employees, who belong to the Catholic religion, and the company should simply extend this rule to employees of a different religion. The Advocate decided this way even though there are no provisions in the law on reasonable accommodation for people because of their religion.

Name of the court: Advocate of the Principle of Equality

Date of decision: 8 July 2008

Reference number: UEM – 0921 -11/2008-4

Brief summary: The applicant submitted a complaint over a job advertisement of a company searching for young managers. The advertisement did not state reasons for searching for young managers. The Advocate decided that such job advertisement constitutes direct discrimination on the grounds of age. The Advocate rejected the justification of the company that the wording “young managers” does not mean they wish to employ people who are younger by age, but that this wording describes people who do not have managerial experience, in the sense of junior managers. The Advocate stated that the company failed to provide sufficient information to prove the absence of unequal treatment of candidates on the grounds of their age. If the company intended to attract “junior” managers but used a word “young” this is discriminatory. It should have been translated in a way to show that people with no experience in management are invited to apply. By publishing an advertisement which included a word “young” the company created an impression they are attracting people who are young by age while older people were deterred from applying, and were consequently put in a less favourable situation.

Name of the court: Advocate of the Principle of Equality

Date of decision: 16 April 2008

Reference number: UEM – 0921-1/2008-2

Brief summary: The applicant, a blind person, accompanied by her dog, specially trained to lead blind people, entered a restaurant. The waiter refused to serve her due to the fact that she had a dog with her, although her dog was wearing all visible signs confirming he was specially trained, in accordance with the Animal Protection Act, which stipulates that trained dogs accompanied by their blind owners are allowed access to all public places and means of public transport.

The applicant filed a complaint to the Market Inspectorate due to alleged violation of Article 25/2 of the Consumer Protection Act, which stipulates that all consumers are entitled to access to services under equal conditions. The Market Inspectorate assessed that the waiter’s treatment constitutes discrimination, and wanted to obtain



an opinion on this from the Advocate. The Advocate found that the waiter's treatment constituted indirect discrimination.

The prohibition of entry of dogs into restaurants or other public facilities, although valid for all persons, disproportionately affects people with visual impairments, who are assisted by dogs. To avoid indirect discrimination the owner of such public facility has to accommodate such prohibition to a concrete situation. The assessment of what accommodation is reasonable in such cases has already been conducted by the legislator with the adoption of Article 13 of the Animal Protection Act.

Since the state bodies, including courts, do not keep data on ethnic background of plaintiffs and complainants, it is not possible to provide data and trends on complaints brought by Roma and Travellers.



1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

- a) *Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?*

The Constitution of the Republic of Slovenia⁶ contains a general anti-discrimination provision in Article 14 §1, which states that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability or any other personal circumstance.⁷ Consequently, the constitutional protection from discrimination in Slovenia is wider than required by the directives since it includes additional grounds and a general clause (“any other personal circumstance”). Although sexual orientation and age are not stated among various grounds on which the discrimination is prohibited, this can be derived from the general clause. This means that formally the inclusion of these two grounds among the constitutionally protected grounds of discrimination is subject to the interpretation of the Constitutional Court. The fact that sexual orientation is a protected ground in the meaning of Article 14 of the Constitution was confirmed by the unanimous Decision of the Constitutional Court No. U-I-425/06 of 2 July 2009. The exclusion of sexual orientation from the grounds explicitly listed in the Constitution was in 1991 a consequence of homophobic viewpoint of the political actors.⁸

Article 63 further stipulates that any incitement to ethnic, racial, religious or other discrimination, as well as inflaming of ethnic, racial, religious or other hatred or intolerance, shall be unconstitutional. Prohibition of harassment is also included in the Constitution of the Republic of Slovenia. Article 34 stipulates the right to personal dignity and safety, and Article 35 stipulates the protection of the right to privacy and personality rights. Everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on their rights, duties or legal interests (Article 22).

In addition, there are numerous provisions in the constitution stipulating equal rights and judicial protection of equal rights, elaboration of which, however, exceeds the

⁶ *Ustava Republike Slovenije* [The Constitution of the Republic of Slovenia], Official Journal of the Republic of Slovenia, No. 33/1991, 42/1997, 66/2000, 24/2003, 69/2004.

⁷ This rule must be respected even in cases of the temporary suspension and limitation of human rights in case of war or emergency, Article 16 of the Constitution.

⁸ See SiQRD – Slovenian Queer Resource Directory, Škuc Magnus, at <http://www.ljudmila.org/siqrd/dosje.php>.



purpose of this report. Constitutional provisions apply to all areas covered by the Directives.

b) Are constitutional anti-discrimination provisions directly applicable?

Constitutional anti-discrimination provisions are directly applicable as it derives from Article 15 of the Constitution, which states that human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.

c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

Article 14 of the Constitution on the prohibition of discrimination can be invoked against private actors (for example employers).⁹

⁹ The equality clause is nuanced enough to allow different situations to be treated differently.



2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.

On 22 April 2004 the Government of Republic of Slovenia adopted the Act Implementing the Principle of Equal Treatment, which entered into force on 7 May 2004. This act was amended on 22 June 2007; the amendments entered into force on 25 July 2007. According to the Official Consolidated Version of this act,¹⁰ equal treatment is guaranteed irrespective of personal circumstances such as gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance. Discriminatory acts shall be prohibited in every area of social life, and in particular in relation to:

- conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion;
- access to all types and to all levels of career orientation, vocational and professional education and training, advanced vocational training and retraining, including practical work experience;
- employment and working conditions, including dismissals and pay;
- membership of and involvement in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations;
- social protection, including social security and healthcare;
- social advantages;
- education;
- access to and supply of goods and services which are available to the public, including housing.

Before the adoption of the amendments in June 2007, the Act Implementing the Principle of Equal Treatment also enumerated grounds of discrimination not covered by anti-discrimination directives (language, financial status, education and social status). After the adoption of amendments these circumstances are no longer specifically mentioned, but can be covered by the general clause “any other personal circumstance”, subject to court interpretation. The reason for excluding these personal circumstances was to define personal circumstances as required by the directives, while at the same time the general clause opens up the possibility to take into account other personal circumstances not explicitly mentioned by the law.

¹⁰ *Zakon o uresničevanju načela enakega obravnavanja – Uradno prečiščeno besedilo* [Act Implementing the Principle of Equal Treatment – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 93/2007.

Although the proposed changes of legislation were sent to public debate, there were no remarks expressed concerning the changes in the scope of personal grounds. Personal circumstances other than those listed by the directives have already been used in court (e.g. family, marital status, criminal record).

The Employment Relationship Act regulates employment relations and is *lex specialis* in relation to the Act Implementing the Principle of Equal Treatment. However, an individual who has faced discrimination in the field of employment can rely on the latter act if it is more favourable or exact in his case (which is a general principle of law). The Employment Relationship Act¹¹, adopted on 24 April 2002 (entry into force: 1 January 2003) and amended on 29 October 2007 (entry into force: 28.11.2007), explicitly prohibits discrimination. In accordance with Article 6, §1 of this Act, an employer has to ensure equal treatment of a job candidate in recruitment procedure, or equal treatment of an employee in the course of employment and in relation to termination of employment contract, irrespective of ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance.

Discrimination on the ground of disability is additionally prohibited. Namely, Article 5 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act¹² explicitly prohibits direct and indirect discrimination during the recruitment and employment of persons with disabilities, in relation to the termination of employment and also in the procedures in place for defining the status of a person with disabilities and the procedure for acquiring the right to vocational rehabilitation. Equal treatment of people with disabilities is also prescribed by the Act Ratifying the Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities, adopted on 2 April 2008 (entry into force: 16 April 2008).¹³ According to Article 8 of the Constitution, signed and ratified international treaties are directly applicable.¹⁴ Convention defines discrimination on the basis of disability as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. However, there is no indication yet of the extent to which individual articles of the convention will be regarded as directly applicable in Slovenia.

¹¹ *Zakon o delovnih razmerjih* [Employment Relationship Act], Official Journal of the Republic of Slovenia, No. 42/2002 and 103/2007.

¹² *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov* [Vocational Rehabilitation and Employment of Disabled Persons Act], Official Journal of the Republic of Slovenia, No. 63/2004.

¹³ *Zakon o ratifikaciji Konvencije o pravicah invalidov in Izbirnega protokola h konvenciji o pravicah invalidov* [Act ratifying the Convention on the Rights of persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities], Official Journal of the Republic of Slovenia, No. 10/2008.

¹⁴ *Ustava Republike Slovenije* [The Constitution of the Republic of Slovenia], Official Journal of the Republic of Slovenia, No. 33/1991, 42/1997, 66/2000, 24/2003, 69/2004.



In 2010 a new Act on Equal Opportunities for People with Disabilities¹⁵ was adopted. The purpose of this act is to prevent and eliminate discrimination of people with disabilities, and to encourage equal opportunities of people with disabilities in all areas of life. In addition to already existing legal provisions in other laws, this act additionally prohibits any discrimination on the grounds of disability in procedures before state bodies, bodies of local government, holders of public authorities and other bodies authorized or carrying out public services. It also specifically prohibits discrimination in access to goods and services available to the public and sets out an obligation to provide appropriate accommodation and remove physical, information and communication barriers that prevent access of people with disabilities to goods and services. The law uses the inaccurately translated term 'appropriate accommodation' instead of 'reasonable accommodation'. Since the adoption of the Act, the UN Convention on the Rights of People with Disabilities is operational in practice.

Unequal treatment is also prohibited by criminal legislation. On 20 May 2008 a new Penal Code¹⁶ was adopted (entry into force: 1 November 2008), that included the non-discrimination aspect in several provisions. On 2 November 2011 the Act Amending the Penal Code was adopted, and will enter into force on 5 May 2012.

In accordance with the provisions of Article 131, §1 of the Penal Code, whoever prevents or restricts another person's enjoyment of any human right or fundamental freedom recognized by the international community or laid down by the Constitution or legislation, or grants another person a special privilege or advantage on the grounds of ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other circumstance, shall be punished by a fine or sentenced to imprisonment for a maximum of one year. The notion of special privilege or advantage is interpreted by the court. Special privilege or advantage means unjustified more favourable treatment comparing to other persons, which can result in financial gains, rights, permissions etc. that are not available to other persons. This does not mean that persons implementing positive measures for e.g. ethnic groups commit a crime. However, should such argument be invoked the decision will be in the competence of the court. Article 131, § 2 of the Penal Code prescribes the same punishment for one that persecutes an individual or organization due to their standing for equal treatment of people. If the act from § 1 or 2 is committed by an official with the abuse of official position or official competencies, he or she is punished with imprisonment up to three years. The provision of Article 116 of the Penal Code specifically defines criminal act of murder committed due to violation of the equality and prescribes a sentence of imprisonment of at least 15 years. In the field of torture, the Penal Code in Article 265 states that one who intentionally causes severe pain or suffering for a reason based on violation of equality, shall be sanctioned with imprisonment from one to ten years. If this is caused by a person in official capacity, the sanction foreseen is

¹⁵ *Zakon o izenačevanju možnosti invalidov [Act in Equal Opportunities for People with Disabilities]*, Official Journal of the Republic of Slovenia, No. 94/2010.

¹⁶ *Kazenski zakonik [Penal Code]*, Official Journal of the Republic of Slovenia No. 55/2008.

imprisonment from three to twelve years. These articles have not yet been used in practice, not even in relation to police forces.

Hate speech is defined in Article 297 of the new Penal Code. This provision is among those that were amended with the 2011 amendments to the Penal Code.¹⁷ Since the amendments have not yet entered into force, both current and changed definition of hate speech are described in this report. Article 297 before the amendment states that one who publicly encourages or incites ethnic, racial, religious or other hatred or intolerance, or incites to another type of intolerance due to physical or intellectual deficiencies or sexual orientation, shall be sanctioned with imprisonment up to two years (in 2010 three people have been convicted of this crime, each was sanctioned to 1,5 years of prison sentence; see above case law; the judgment is not final yet). The same punishment is foreseen for those who publicly spread ideas of prevalence of one race over another or cooperate at any racist activity, or deny, diminish the meaning of, approve of, ridicule or advocate for genocide, holocaust, crime against humanity, war crime, aggression or other criminal acts against humanity. If these acts are published in public media, the editor or his deputy are also punished, except in case of a live transmission and the lack of possibility to prevent these acts. The Penal Code also stipulates two aggravated forms of these crimes – if they were committed in official capacity or with coercion, threat etc.

After the 2011 amendments the Article 297, § 1 states that one who publicly encourages or incites hatred, violence or intolerance, based on national, racial, religious or ethnic origin, sex, skin colour, origin, property status, education, social status, political and other opinion, disability, sexual orientation or any other personal ground, and the act is committed in a manner that may endanger or disturb public order and peace, or by use of threat, abuse or insult, shall be sanctioned with imprisonment of up to two years.

In addition, Article 20 of the Protection of Public Order Act¹⁸ foresees punishment for inciting to ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation.

Slovenian legislation regulates the status of autochthonous minorities. Historical or autochthonous minorities in Slovenia, which include Hungarians and Italians, are legally protected in a relatively integrative manner – protection is extended by several constitutional provisions and about 80 pieces of legislation which deal with various issues for minorities.

¹⁷ *Zakon o spremembah in dopolnitvah kazenskega zakonika* [Act Amending the Criminal Code], Official Journal of the Republic of Slovenia No. 91/2011.

¹⁸ *Zakon o varstvu javnega reda in miru* [Protection of Public Order Act], Official Journal of the Republic of Slovenia, No. 70/2006.



2.1.1 Definition of the grounds of unlawful discrimination within the Directives

- a) *How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation? Is there a definition of disability at the national level and how does it compare with the concept adopted by the European Court of Justice in Case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?*

It is not clear whether the definition of disability, encompassed in Article 60 of the Pension and Disability Insurance Act,¹⁹ is also used for the purposes of defining disability in the Act Implementing the principle of Equal Treatment and others laws prohibiting discrimination.

In accordance with Article 60 of the Pension and Disability Insurance Act, employees with disabilities are categorised in three categories according to their remaining capability to work. 1st category are not capable of work, 2nd and 3rd category are able to work but subject to certain limitations or after rehabilitation. With regard to defining disability, the Act Ratifying the Convention on the Rights of People with Disabilities will also be relevant in courts and other bodies invoking the directive in legal proceedings before them. The issue of definition of disability in connection with non-discrimination has not arisen in the courts so far, therefore also the relevance of the system of three categories to protection from discrimination has also not developed yet. The status of a person with disabilities is granted if the impairment in the insured individual's health cannot be reversed by medical treatment or medical rehabilitation, such impairments have been determined according to the Pension and Disability Insurance Act, and result in decreased ability to get or to retain a job or be promoted. According to the Vocational Rehabilitation and Employment of Persons with Disabilities Act, the term "persons with disabilities" applies to a person who has obtained the status of a person with disabilities according to the Pension and Disability Insurance Act, or according to any other regulation, and to a person for whom consequences of a permanent physical or mental malfunction or disease have been ascertained by an administrative decision, and whose chances of obtaining or retaining a job or obtaining promotion are substantially reduced. The definition of disability under this law therefore differs from the one adopted by the European Court in Chacon Navas, as the definition in this law connects the impairments to medical treatment which cannot reverse the damages. It presumes that disability could also be seen as a disease (resulting from a disease), while the Court makes a strict distinction between the disease and disability. A part of Slovenian legislation (e.g. Vocational Rehabilitation and Employment of Persons with Disabilities Act) continues to use out-dated terms both with respect to people with disabilities in general and to

¹⁹ *Zakon o pokojninskem in invalidskem zavarovanju – Uradno prečiščeno besedilo* [The Pension and Disability Insurance Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 20/2004, 54/2004 (56/2004, 62/2004, 63/2004 - corr.).

people with intellectual disabilities. There is no common definition of intellectual disability.

However, under the 2010 Act on Equal Opportunities for People with Disabilities²⁰ which sets out obligations concerning reasonable accommodation (or appropriate accommodation, as the law calls it), the definition of a person with disabilities is more comprehensive and follows the UN Convention on the Rights of People with Disabilities – people with disabilities are those who have long-term physical, mental or sensory impairments and disturbances in their mental development which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

This law therefore extends the meaning of disability to people who have not been officially recognized one of the categories of disability. It is not likely though that this extended meaning of disability would influence the meaning of the three categories of disability under the Pension and Disability Insurance Act. But it is likely that the extended meaning will influence the interpretation of disability under the Act Implementing the Principle of Equal Treatment.

In terms of disability there is another act – the Social Care Act²¹ – which is relevant for the status of people with disabilities. It is discriminatory with regard to access to employment in that adults given a status of a person with disabilities under this act have the right to receive social benefits, but are automatically presumed as unable to live independently, or to be employed regardless of their actual abilities. If they wish to work, they must renounce the status of a person with disabilities and consequently lose their eligibility for social benefits. Adults with status of a person with disabilities under the Social Care Act (including people with mild, moderate and severe intellectual disabilities) are entirely excluded from the provisions of the Vocational Rehabilitation and Employment of Persons with Disabilities Act. They are automatically determined as being incapable of paid employment, and cannot even register at an Employment Office as job-seekers. They only have the right to “guidance, care and employment under special conditions”, and receive social security benefits.

Concerning sexual orientation, a law on same-sex partnerships, which regulates the registration of same-sex partners, was adopted in July 2005, but it does not include a definition of sexual orientation.

Concerning ethnicity the Constitution only defines the two ethnic minorities (Italian and Hungarian) and the special Roma ethnic community that does not have a status of a minority. The definition of ethnicity in general does not exist. Definitions of the other grounds listed in the two Directives do not exist in legislation or in case law.

²⁰ *Zakon o izenačevanju možnosti invalidov [Act in Equal Opportunities for People with Disabilities]*, Official Journal of the Republic of Slovenia, No. 94/2010.

²¹ *Zakon o socialnem varstvu – uradno prečiščeno besedilo [Social Care Act – Official consolidated text]*, Official Journal of the Republic of Slovenia, No. 23/2007.

- b) *Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law (e.g. the interpretation of what is a 'religion' for the purposes of freedom of religion, or what is a "disability" sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national anti-discrimination legislation?*

There is no definition of religion, however the Religious Freedom Act²² adopted on 2 February 2007, defines that religious freedom encompasses freedom of expression of religious belief, renouncement of its expression, and freedom of everyone alone or in group, with others, privately or publicly, to express their religion at a mass, class, practice or religious rituals or in another way.

Religious freedom includes conscientious objection against an obligation required by law that seriously contradicts religious belief of a person, if this does not impede the rights of other people, in cases defined by law.

Recital 17 of the Directive 2000/78/EC is not reflected in the national law.

- c) *Are there any restrictions related to the scope of 'age' as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

Equal treatment law does not contain any restrictions related to the ground of age.

- d) *Please describe any legal rules (or plans for the adoption of rules) or case law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination. This includes the way the equality body (or bodies) are tackling cross-grounds or multiple grounds discrimination. Would national or European legislation dealing with multiple discrimination be necessary in order to facilitate the adjudication of such cases?*

There are no legal provisions dealing with multiple discrimination. According to available information, so far there was only one judgment issued related to multiple discrimination where a plaintiff claimed discrimination on the grounds of gender, age and family status in access to non-profit apartment, and lost. In this case the court rejected the claim of the applicant on discrimination on the grounds of gender, age and family status in the area of access to public non-profit housing. The plaintiff applied for public housing. Since the number of applicants exceeded the number of available apartments, the applicants were evaluated and enlisted on a preference list if, inter alia, they could be considered a "young family" (a family with one or more children out of which at least one is pre-school, and when none of the parents is over 35, as defined with the Rules on allocating non-profit apartments) in accordance with the implementing act. Since the applicant's husband was over 35, her family did not

²² *Zakon o verski svobodi* [Religious Freedom Act], Official Journal of the Republic of Slovenia, No. 14/2007.

receive the necessary points and was not enlisted on the preference list. The court stated that since the opposite party (Municipality of Ljubljana) respected the implementing act, its decision was in accordance with the law and was therefore correct. It stated that the conditions for public housing were set by law and implementing acts, and were equal for all; according to the court, the decision of the opposite party was not a consequence of discrimination but a consequence of the lack of fulfilment of the conditions.²³ In this case the plaintiff should have used all available remedies and finally challenge the law and implementing acts before the Constitutional Court.

Considering the available data, the Advocate of the Principle of Equality has not yet dealt with cases of multiple discrimination.

National or EU legislation on multiple discrimination would facilitate awareness raising of both the population and the courts that such discrimination exists.

- e) *How have multiple discrimination cases involving one of Art. 19 TFEU grounds and gender been adjudicated by the courts (regarding the burden of proof and the award of potential higher damages)? Have these cases been treated under one single ground or as multiple discrimination cases?*

According to the available information, only one case has been adjudicated by the courts in Slovenia that concerned multiple grounds.

However, the court did not even treat it as discrimination on one ground, let alone multiple discrimination, but assessed it as the lack of fulfilment of conditions for obtaining non-profit housing.

2.1.2 Assumed and associated discrimination

- a) *Does national law (including case law) prohibit discrimination based on perception or assumption of what a person is? (e.g. where a person is discriminated against because another person assumes that he/she is a Muslim or has a certain sexual orientation, even though that turns out to be an incorrect perception or assumption).*

National law does not explicitly state that discrimination based on assumed characteristics shall be prohibited. However, in the opinion of the author a judge could interpret the provision of the Act Implementing the Principle of Equal Treatment which states “equal treatment shall be guaranteed, irrespective of personal circumstances such as gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance”, using the argument a maiori ad minus (that is, “what includes more, also covers less”), to cover assumed characteristics. The law namely does not specifically state that the person

²³ Administrative Court of the Republic of Slovenia, Judgment No. U 947/2007-12 of 20 March 2008.



who is discriminated against actually has to have the personal circumstance on grounds of which discrimination allegedly occurred.

- b) *Does national law (including case law) prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group or the primary carer of a disabled person)? If so, how? Is national law in line with the judgment in Case C-303/06 Coleman v Attridge Law and Steve Law?*

National law does not explicitly prohibit discrimination based on association with persons with particular characteristics either. However, in the opinion of the author a judge could interpret the provision contained in the Act Implementing the Principle of Equal Treatment in a similar manner as stated in Section 2.1.2. a) to cover association (which is also the case for indirect discrimination under Slovenian law), as required by the Coleman v Attridge Law and Steve Law case. This act namely does not state that the victim has to have the personal circumstance on grounds of which discrimination allegedly occurred. So far, there has been no case law interpreting prohibition of discrimination by association.

2.2 Direct discrimination (Article 2(2)(a))

- a) *How is direct discrimination defined in national law?*

Article 4, §2 of the Act Implementing the Principle of Equal Treatment defines direct discrimination by stating that direct discrimination on grounds of personal circumstance occurs if a person due to such personal circumstance has been, is or would be treated less favourably than another person in an equal or comparable situation. Article 1, §1 of this act lists grounds of discrimination, which include gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance. Employment Relationship Act also defines direct discrimination; in Article 6, §3 it states that “direct discrimination occurs if a person due to personal circumstance is, was or could have been treated less favourably than another person in equal of similar situations.”

- b) *Are discriminatory statements or discriminatory job vacancy announcements capable of constituting direct discrimination in national law? (as in Case C-54/07 Firma Feryn).*

Discriminatory job vacancies announcements are capable of constituting discrimination under national law, which is confirmed by the case decided by the Advocate of the Principle of Equality. In this case the Advocate found that by advertising a job opening for “young managers” the company created an impression they are attracting people who are young by age while older people were deterred

from applying, and were consequently put in a less favourable situation.²⁴ There are, however, no court-decided cases on this matter in Slovenia yet.

- c) *Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).*

The law in general does not permit direct discrimination, however Article 2.a of the Act Implementing the Principle of Equal Treatment states that the provisions of this Act do not exclude difference of treatment on the basis of certain personal circumstance, if such treatment is justified by a legitimate goal and if the means for achieving this goal are appropriate and necessary (§1).

Further, §2 and §3 of Article 2.a absolutely prohibit any discrimination, regardless of the provision of §1, except for specifically defined exceptions, related to genuine and determining occupational requirements in the area of employment; religion in religious organizations; age in recruitment, employment and vocational training; beneficial treatment of women during pregnancy and motherhood; availability of goods and services for people of one gender; in the area of insurance; or in other cases defined by laws adopted pursuant the European Union law.

In conclusion, this provision is quite confusing since §1 indicates that race or ethnicity-based direct discrimination can also be justified by reasons other than positive action and genuine and determining occupational requirement.

This will not likely be the case since § 2 and 3 absolutely prohibit any discrimination, except for the listed examples. The provision, however, remains very unclear and allows for contradicting interpretations.

- d) *In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?*

There is no specification in the law on how a comparison is to be made.

2.2.1 Situation Testing

- a) *Does national law clearly permit or prohibit the use of ‘situation testing’? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court? For what discrimination grounds is situation testing permitted? If not all grounds are included, what are the reasons given for this limitation? If the law is silent please indicate.*

The national law does not contain any provision that would clearly allow or prohibit the use of “situational testing” or indicate whether or not evidence obtained by such

²⁴ National equality body (Advocate of the principle of equality), Decision No. UEM – 0921 -11/2008-4 of 8 July 2008.

testing would be admissible as evidence in courts. There are only two procedural provisions regarding evidence in the Act Implementing the Principle of Equal Treatment: Article 22 generally states that in cases of violation of the ban on discrimination persons facing discrimination shall have the right to request a hearing of a case in judicial and administrative proceedings. Further, the Civil Procedure Act²⁵ only defines the following evidence: hearing of witnesses; hearing of experts; hearing of the parties to the case; and documents. The Civil Procedure Act contains only one provision explicitly mentioning a court's option to reject evidence which is not important for the decision, namely evidence which does not serve to establish legally relevant facts. As to other types of inadmissible evidence, Article 3 of the Civil Procedure Act should be taken into account, as it states that the court shall reject evidence which would be contrary to the law or moral rules. Admissibility of situational testing as evidence will therefore be subject to judicial interpretation.

b) *Outline how situation testing is used in practice and by whom (e.g. NGOs, equality body, etc).*

In Slovenia, according to the available information, situation testing has not yet been used in practice.

c) *Is there any reluctance to use situation testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

The evidence obtained through situation testing was not debated much, however some points have been made on the fact that it is a sensitive evidence to use and could easily be abused. The use of such evidence in other countries did not influence the national law so far.

d) *Outline important case law within the national legal system on this issue.*

There is still no case law on situation testing.

2.3 Indirect discrimination (Article 2(2)(b))

a) *How is indirect discrimination defined in national law?*

Article 4, §3 of the Act Implementing the Principle of Equal Treatment states that indirect discrimination on grounds of personal circumstance occurs when a seemingly neutral provision, criterion or practice in equal or comparable situations and under similar conditions, puts a person with a certain personal circumstance in a less favourable position compared to other persons, unless that provision, criterion or practice is objectively justified by a legitimate objective and the means of achieving

²⁵ *Zakon o pravdnem postopku – Uradno prečiščeno besedilo* [Civil Procedure Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 73/2007.



that objective are appropriate and necessary. Indirect discrimination is also defined in the Employment Relationship Act, which states that indirect discrimination exists when a person with a certain personal circumstance was, is or could have been due to seemingly neutral provision, criterion or practice in equal or similar situations and conditions, in a less favourable situation than other persons, unless this provision, criterion or practice are objectively justified by a legitimate objective and if means to achieve such objective are appropriate and necessary (Article 6, §3).

- b) *What test must be satisfied to justify indirect discrimination? What are the legitimate aims that can be accepted by courts? Do the legitimate aims as accepted by courts have the same value as the general principle of equality, from a human rights perspective as prescribed in domestic law? What is considered as an appropriate and necessary measure to pursue a legitimate aim?*

According to the definition of indirect discrimination, there must be an objective justification by a legitimate aim and the means of achieving that aim need to be appropriate and necessary. So far there is no case law which would further define the test of proportionality.

- c) *Is this compatible with the Directives?*

The definition of indirect discrimination in Slovenian law is broader than definitions in the EU directives. Slovenian law refers to indirect discrimination on personal circumstances, and not on the grounds of being a person with a particular personal ground, e.g. disability.

Also, the relevant legal provision concerned is not identical since it requires a person to be in 'equal or similar situation and conditions', whereas this condition is not included in the Directive's definition of indirect discrimination. Slovenian law seems more restrictive in this respect.

- d) *In relation to age discrimination, does the law specify how a comparison is to be made?*

The law does not specify how a comparison is to be made in relation to age discrimination.

- e) *Have differences in treatment based on language been perceived as potential indirect discrimination on the grounds of racial or ethnic origin?*

The law does not specify language as a ground for potential indirect discrimination on the grounds of race or ethnicity. Since the list of grounds in Slovenian legislation is open-ended, language could therefore be invoked as a ground both in terms of direct or indirect discrimination. So far there is still no case law regarding this issue.



2.3.1 Statistical Evidence

- a) *Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court?*

Complainants have a right to require or request the respondents to provide statistical data, but they are limited by the Personal Data Protection Act.²⁶

- b) *Is the use of such evidence widespread? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

The use of statistical data is not widespread but they have already been admitted as evidence by courts.

- c) *Please illustrate the most important case law in this area.*

In the case No Pdp 1283/2010 decided by the Higher Labour and Social Court on 5 May 2011, the court found that the dismissal of the worker was unlawful because the plaintiff was dismissed because of her personal circumstances, i.e. because she was on sick leave, and by this the defendant violated Article 6 of the Employment Relationship Act which prohibits discrimination at workplace. Among other evidence the court relied on statistics, gathered by the Labour Inspectorate in the same case, showing that among 27 workers who have been dismissed by the defendant 18 of them were on sick leave.

- d) *Are there national rules which permit data collection? Please answer in respect to all five grounds. The aim of this question is to find out whether or not data collection is allowed for the purposes of litigation and positive action measures. Specifically, are statistical data used to design positive action measures? How are these data collected/ generated?*

Data collection is regulated by the Personal Data Protection Act, which determines that data can be collected only if permitted by law. It sets special conditions for collecting sensitive personal data. According to this law, sensitive personal data are data on racial, national or ethnic origin; political, religious or philosophical beliefs; trade union membership; state of health; sex life; and criminal records (Article 6, §19). Biometric characteristics are also sensitive personal data if their use makes it possible to identify an individual in connection with any of the aforementioned circumstances. (Note need be taken that data on marriages and registered partnership are collected separately as these are two separate institutions, therefore, one's same-sex orientation can easily be detected from the fact that he or she

²⁶ *Zakon o varstvu osebnih podatkov* [The Personal Data Protection Act], Official Journal of the Republic of Slovenia, No. 86/2004.



entered into a registered partnership.) To summarize, the data protection law generally prohibits the processing of sensitive data but it does allow, under necessary and special circumstances, the data to be processed in order to assert or oppose a legal claim (one of the possibilities when data collection is allowed is if this is necessary in order to assert or oppose a legal claim, as stipulated by Article 13, §7 of this Act).

An implementing act titled the Rules on Methodology of Keeping the Register of Personal Data Collections²⁷ further regulates the procedures concerning administering personal data collections.

As regards disability and age, data concerning these two grounds are commonly collected. There is no relevant case law related to data collection for the purposes of strategic litigation yet. Statistical data, when gathered, are used to design positive measures (e.g. in the area of employment of people with disabilities).

2.4 Harassment (Article 2(3))

- a) *How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.*

The prohibition of harassment has its basis in the Constitution; Article 34 stipulates the right to personal dignity and safety and Article 35 stipulates the protection of the right to privacy and personality rights. Article 5, §1 of the Act Implementing the Principle of Equal Treatment defines harassment as unwanted conduct, based on any personal circumstance, which creates an intimidating, hostile, humiliating or offensive environment for a person or offends their dignity. Article 6.a of Employment Relationship Act prohibits sexual or other harassment. Harassment is defined as any unwanted conduct, related to any personal circumstance with an effect or purpose to hurt the dignity of a person or create intimidating, hostile, humiliating or offensive environment. Refusal of conduct considered as harassment should never constitute a legitimate reason to discriminate, which means that if a job candidate refuses to be harassed he or she should not suffer any adverse consequences in a form of discrimination.

In accordance with Article 45 of this act, the employer is obliged to guarantee the working environment without harassment. If necessary, the employer has to adopt necessary measures to protect employees subject to harassment. If the employers do not comply with this obligation they are liable to the employee in accordance with the general principle of law on obligations (Article 45, § 2 and §3 of the Employment Relationship Act).

²⁷ *Pravilnik o metodologiji vodenja registra zbirk osebnih podatkov* [Rules on Methodology of Keeping the Register of Personal Data Collection], Official Journal of the Republic of Slovenia, No. 28/2005.



As a result of unequal treatment or sexual or other harassment, the employee may terminate the employment contract without notice after notifying the employer and the labour inspectorate about the breach in writing (Article 112 of the Employment Relationship Act). Harassment at workplace is also prohibited under the Penal Code, consequently constituting harassment as a crime. The provision of Article 197 of the Code sanctions harassment in workplace, stating that one causing humiliation or fear to another employee by sexual harassment, psychological violence, mobbing or unequal treatment, is sanctioned with imprisonment up to two years.

b) *Is harassment prohibited as a form of discrimination?*

Article 5, §2 of the Act Implementing the Principle of Equal Treatment states that harassment referred to in §1 shall be considered discrimination under the provisions of this Act.

c) *Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?*

The Government Office for Equal Opportunities²⁸ recommends good practice for employers in the field of gender discrimination that could as well be used in cases of harassment based on grounds listed in both EU directives.

The recommendations include adoption of policy against sexual harassment, providing information on policy against sexual harassment, training, advice and assistance for employees.²⁹ However there are no official codes of good practice.

2.5 Instructions to discriminate (Article 2(4))

Does national law (including case law) prohibit instructions to discriminate? If yes, does it contain any specific provisions regarding the liability of legal persons for such actions?

Article 4, §4 of the Act Implementing the Principle of Equal Treatment states that instructions with similar effect to that referred to in the provision which defines equal treatment, direct and indirect discrimination, shall also be deemed direct or indirect discrimination. The law, however, contains no specific provisions on liability of legal persons for such actions. In this respect general provisions on liability of legal persons for damages would apply. There is no case law on this matter.

²⁸ The Government Office for Equal Opportunities was abolished on April 1, 2012. See <http://www.uem.gov.si/en/>.

²⁹ See <http://www.uem-rs.si>.



2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

- a) *How does national law implement the duty to provide reasonable accommodation for people with disabilities? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. For example, does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*
- Please also specify if the definition of a disability for the purposes of claiming a reasonable accommodation is the same as for claiming protection from non-discrimination in general, i.e. is the personal scope of the national law different (more limited) in the context of reasonable accommodation than it is with regard to other elements of disability non-discrimination law.*

The duty to provide reasonable accommodation for people with disabilities is defined in 2010 Act on Equal Opportunities of People with Disabilities. In this act the term reasonable accommodation is replaced by the term appropriate accommodation, which in accordance with Article 3, § 3 means “necessary legislative, administrative and other measures which do not represent an unreasonable burden, that are needed in a specific case in order to ensure people with disabilities enjoyment and realization of the rights and freedoms”. In accordance with this act, measures of appropriate accommodation can include:

- accepting and making available the writings for a person with sensory impairments in a manner that is appropriate for and chosen by a person with disabilities (e.g. Braille system, enlarged script, audio tape or in electronic version) (Article 7, § 2);
- ensuring access to information, communication and other services in urgent cases, removal of construction barriers in buildings where goods and services are made available to the public (Article 8, § 3);
- adjustment of public buildings with construction solutions and technical gadgets, sound and sensory indicators, written information and other reasonable adjustments (Article 9, § 2),
- appropriate accommodation measures for inclusion into educational and study processes, including the adjustment of educational and study needs of an individual with disabilities (Article 11, § 2);
- the duty of local government to ensure that adjusted non-profit apartments are made available to people with disabilities who applied and were granted non-profit apartments (Article 13);
- the duty of appropriate accommodation in terms of accessibility of information by different types of scripts and technologies appropriate for different types of disabilities (Article 14);
- the duty of appropriate accommodation in terms of access to public cultural events by eliminating communication and construction barriers (Article 15, § 2);



- the duty to make accessible the means of public transport for people with physical and sensory impairments, and the prohibition to charge extra for a wheel chair or a guidance dog (Article 16).

In the Act there are no specific rules on what accommodation is considered to be unreasonable. In order to assess that, the size and sources of funding of the public and private entity that has this duty, its nature and estimated expenses of the appropriate accommodation, possible benefits of an improved access for people with disabilities, as well as historical, cultural, artistic and architectural value of the estate have to be taken into account (Article 8).

With this Act, there was also a system established for people with disabilities to obtain state funding for technical equipment (additional to those available under other pieces of disability legislation) which they require outside the area of employment for overcoming the communication or physical barriers with an aim of safe and independent life, access to information, communication and adjustment of living conditions and adjustments of their car (Article 17-24). This act does not constitute a reasonable accommodation duty in the field of employment (employment area is governed by the Vocational Rehabilitation and Employment of Persons with Disabilities Act, see below).

There are also other related provisions which could constitute measures to provide reasonable accommodation under the Vocational Rehabilitation and Employment of Persons with Disabilities Act, Employment Relationship Act and in other pieces of legislation. The provisions of Vocational Rehabilitation and Employment of Persons with Disabilities Act protect only those whose disability is attested by a medical certificate in accordance with the Pension and Disability Insurance Act and are categorized in three categories according to their remaining capability to work (1st category are not capable of work, 2nd and 3rd category are able to work but are subject to certain limitations or after rehabilitation).

The Vocational Rehabilitation and Employment of Persons with Disabilities Act was adopted in 2004 and amended in 2005, 2006 and 2011.³⁰ Article 2 states that the aim of the act is to increase the opportunities for people with disabilities to be employed and to create the circumstances for them to equally participate in the labour market by eliminating obstacles and creating equal opportunities.

The act, inter alia, regulates the employment of people with disabilities. Article 36, §1 states that people with disabilities can be employed either in an ordinary working environment, in companies for people with disabilities or in supported and sheltered employment (see also Section 2.7). All of these relate to work that fit their capabilities.

³⁰ *Zakon o spremembah in dopolnitvah Zakona o poklicni rehabilitaciji in zaposlovanju invalidov* [Act Amending the Vocational Rehabilitation and Employment of Disabled Persons Act], Official Journal of the Republic of Slovenia, No. 100/2005, 114/2006 and 87/2011.



Article 15 states that services promoting employment rehabilitation include, inter alia: compiling a report on the level of working ability, knowledge, working habits and professional interests; helping people to accept their disability and informing them about opportunities for training for work; helping to identify appropriate professional goals; developing social skills; assistance in searching for a suitable job; and analysing particular position and working environment of a person with disabilities, in order to produce a plan for adapting the position and working environment. This plan includes: necessary equipment; training for a job or profession; expert assistance with training and education; shadowing the person with disabilities at work after they have been employed; evaluating the success of the rehabilitation process; evaluating the extent to which employment goals have been reached; and providing other employment rehabilitation services. The minister responsible for the disability decides the amount payable for these services. They are financed from the national budget, the Fund for Promoting the Employment of People with Disabilities and from other sources.

Article 72 states that the employer lodges an application to get a refund for costs entailed in adapting a work station to meet the needs of a person with disabilities from the Fund. A plan detailing the necessary adaptations and a statement of intention to conclude an employment contract for an indefinite time has to be attached to it. The Fund decides whether to refund the costs, and appeals are decided by the ministry responsible for disability. Also, the employers are not sufficiently using the available funds for costs deriving from reasonable accommodation.

In Slovenia the majority of employers prefer to pay the allowances to the Fund than to employ people with disabilities according to mandatory quotas, which is a choice they have at their disposal in accordance with the law. The option of paying into the fund instead of following the mandatory quotas is by nature a type of sanction for those employers who do not meet the quota. Namely, if the employer does not meet the quota nor pays to the Fund, the Fund issues a decision which can be enforced against the employer.

The costs of supporting employment are also decided in the same way. The employer has to produce an individual plan of support for the person with disabilities and the employer (the plan is in fact produced by the employer).

Thirty hours per month of the person's salary will be funded by the Fund if the person with disabilities has no other rights to employment rehabilitation under the Act, if he has an employment contract for an indefinite time and if the number of employees with disabilities exceeds the quota set by the Act. All other cases require the employer to pay the costs himself. As can be seen, the system aims to balance the obligations of employers and the State, but no clear proportionality test has been established. The employer has to meet certain criteria in order to get benefits from public sources. Moreover, the employer must cover the costs incurred as a result of his obligation to ensure health and safety at work.



Article 6 of the Employment Relationship Act enumerates disability and state of health among other grounds on which discrimination is prohibited and therefore distinguishes among the two. Article 199 of this Act states that, the employer has to protect persons with disabilities in relation to employment, vocational training, and retraining in accordance with the provisions in the Vocational Rehabilitation and Employment of Persons with Disabilities Act and in line with the provisions of the Pension and Disability Insurance Act. Article 200 of the Employment Relationship Act (ERA) which defines the rights of workers with disabilities, states that to a worker who still has some remaining capacity to work, his or her employer has to ensure performing another appropriate work which suits his or her remaining work capacity, shorter working time, vocational rehabilitation and allowance substituting his payment in accordance with the provisions of pension and disability insurance. The employer's duty to provide reasonable accommodation could therefore also be derived from Article 200 of the ERA, but only to a certain extent.

However, the above described situation has its critics in practice. According to an article by Elena Pečarič, published in *Social Work and Society*, the right to rehabilitation is applied discriminatorily in practice. It is carried out only by some disability organisations, by means of “public” tender and only people with certain diagnoses have the right to it, although it is supposedly a common right. On top of that, it is based on the “medical model” of disability. The author is highly critical on the organisation of the right to rehabilitation, the policy of its organisers, as well as incompetence of the Health Insurance Institute (HII). She states that based on the principle of choice, every individual should be able to choose between several operators of these services but as it is now, the associations sign an exclusive agreement, monopolizing the market of services intended for people with a common or similar diagnosis. HII did not form criteria to assess the quality of provided services, as it performs no technical control and does not monitor the use of funds. It has no per-day service price list based on a given diagnosis, which is necessary when services are funded from state budget. People, who actually need less resources and services, therefore often get more than they need and vice versa, people who need more help do not get all the services they should. The price list is formed by the associations even before the “public” tender is made public. The HII lets the associations implement the services as they see fit, and does not take measures, even if expert opinions dictate that a certain individual needs a personal assistant. The HII thus allows for unmarked use of funds, discriminates against beneficiaries who cannot use the services they are entitled to, and violates internal acts and resolutions of the management board, as well as their own rules.³¹

(The paragraph is a short summary of the Article published by E. Pečarič and does not necessarily reflect the view of the author of the present Report.)

³¹ Pečarič, Elena: *Slovenia: Rights and Discrimination*, *Social Work and Society*, at <http://www.socwork.net/2006/2/countrynotes/pecaric/pecaric.pdf>.



The Pension and Disability Insurance Act allows an employer to terminate an employment contract with a person with disabilities due to redundancy.

Article 101 of this act states that employer may terminate employment contract with the employee on the ground of disability. In this case the employer has to offer the employee another employment contract (with part-time work or in a different position), which means that reasonable accommodation considerations will have to be taken into account when offering a new contract for work in a different post and in relation to termination of the original employment.

It seems that the national law differentiates between personal scopes with regard to definition of disability for the purposes of obtaining a disability status³² or claiming reasonable accommodation,³³ however, which definition will be adopted by courts for the purposes of the protection from discrimination on the grounds of disability remains to be seen.

- b) *Does national law provide for a duty to provide a reasonable accommodation for people with disabilities in areas outside employment? Does the definition of “disproportionate burden” in this context, as contained in legislation and developed in case law, differ in any way from the definition used with regard to employment?*

The above mentioned Act on Equal Opportunities of People with Disabilities provides for the duty of appropriate accommodation also outside the area of employment, in particular in the area of access to goods and services. The definition of disproportionate burden specified under the previous question does not differ in the area of access to goods and services.

- c) *Does failure to meet the duty of reasonable accommodation count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?*

Although there is no specific reference to reasonable accommodation in the Act Implementing the Principle of Equal Treatment, the failure to provide reasonable accommodation could result in direct or indirect discrimination as employees with disabilities would not be in the same position as other employees and thus a breach of Article 6 of the Employment Relationship Act and Article 4 of the Act Implementing

³² In accordance with Article 60 of the Pension and Disability Insurance Act, employees with disabilities are categorised in three categories according to their remaining capability to work. 1st category are not capable of work, 2nd and 3rd category are able to work but subject to certain limitations or after rehabilitation.

³³ Under the 2010 Act on Equal Opportunities for People with Disabilities people with disabilities are those who have long-term physical, mental or sensory impairments and disturbances in their mental development which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

the Principle of Equal Treatment would occur, since Article 2, §1 lists disability as prohibited ground of discrimination.

Even though the newly adopted Act on Equal Opportunities of People with Disabilities defines the duty of appropriate accommodation, it does not explicitly provide for an overall rule that denying reasonable accommodation (or appropriate accommodation, as the law calls it) constitutes discrimination. However, the sole fact that the duty of appropriate accommodation is now defined in the law, could strengthen the argument that denial of it would constitute discrimination. There is, e.g. a specific provision which states that discrimination on the ground of disability includes not making available access to information to people with disabilities taking into account the duty of appropriate or reasonable accommodation (Article 14 of the Act on Equal Opportunities for people with Disabilities). The fact that a failure to meet the duty of reasonable accommodation constitutes discrimination is also reflected in the two opinions of the Advocate of the Principle of Equality No. UEM – 0921-1/2008-2 (disability) and No. UEM – 0921-10/2008-3 (religion).³⁴ In the two opinions the Advocate of the Principle of Equality found indirect discrimination of a person with disability and a person of a Muslim religion, as the same rules were applied to them as to all other people who did not have these personal circumstances. However, the Advocate found that reasonable accommodation should be used for them in order to prevent discrimination from taking place.

d) *Has national law (including case law) implemented the duty to provide reasonable accommodation in respect of any of the other grounds (e.g. religion)?*

The duty of reasonable (appropriate) accommodation is only defined with respect to disability. In spite of this the Advocate of the Principle of Equality issued an opinion recognising the right to reasonable accommodation on the grounds of religion (opinion No. UEM-0921-10/2008-3).³⁵

e) *Does national law clearly provide for the shift of the burden of proof, when claiming the right to reasonable accommodation?*

The national law does not clearly provide for a shift of burden of proof when claiming the right to reasonable accommodation. However, since according to the current state of legislation which indirectly defines that failure to respect the duty of reasonable accommodation constitutes discrimination, the rule of shift of burden of proof should apply in this case as well.

f) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so,*

³⁴ The opinions are described in detail on pages 8 and 9 of this report, in section 0.3 (Case Law).

³⁵ The opinion is described in detail on page 9 of this report, in section 0.3 (Case Law).



could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Employers have to adjust doors, stairways, bathrooms, and washrooms etc. that are directly used by the persons with disabilities and that are located within the workplace of these persons.³⁶ In relation to the accessibility of buildings and infrastructure, a national strategy titled National Directions for Improvement of Accessibility of Built Environment, Information and Communication for Persons with Disabilities was adopted by the government in December 2005. The national strategy is long term, with some aims are to be achieved by 2010, 2015, and 2025. It is aimed not only at persons with disabilities but also at other people with special needs e.g. elderly people and mothers with babies. On 30 November 2006 the Government adopted Action Program for People with Disabilities 2006 – 2013. The program aims at setting new goals in the area of protection of people with disabilities. It focuses on improving all the aspects of the well-being of each person with disabilities and includes, inter alia, ensuring accessibility to buildings. The duty to make public building accessible for people with disabilities is also specified in the 2010 Act on Equal Opportunities of People with Disabilities (Article 9).

g) Does national law contain a general duty to provide accessibility for people with disabilities by anticipation? If so, how is accessibility defined, in what fields (employment, social protection, goods and services, transport, housing, education, etc.) and who is covered by this obligation? On what grounds can a failure to provide accessibility be justified?

The duty of accessibility concerning goods and services available to public, public educational institutions, public buildings, means of public transport as well as public cultural events, is defined in the 2010 Act on Equal Opportunities of People with Disabilities. Failure to provide accessibility can only be justified if the burden on the responsible entity would be unreasonable.

There are also some implementing acts in place specifying the duty to provide accessibility. Such examples are “Rules on requirements for ensuring safety and health of workers at work” and “2003 Rules on the requirements for free access to, entry to and use of public buildings and facilities and multi-apartment buildings”. The main requirement from these rules is that access to the building and moving within the buildings should be without any built-in or communication hurdles, which would prevent independent and safe access to apartments or to common premises within the building.

The persons covered by the latter are responsible persons (tenants or owners) of restaurants with at least 30 tables or 120 seats, buildings of public administration with headquarters of state bodies or municipalities with at least 15 employees, banks,

³⁶ See Article 92 of *Pravilnik za zagotavljanje varnosti in zdravja delavcev na delovnih mestih* [Rules on requirements for ensuring safety and health of workers at work], Official Journal of the Republic of Slovenia, No. 89/1999.

post offices and insurance companies with at least 30 employees, other office buildings that deal with clients with at least 50 employees, shops with areas larger than 200 square meters, fairs and exposition buildings with areas larger than 1000 square meters, gas stations that employ employees, buildings with businesses offering services to clients, with areas larger than 100 square meters, station or terminal intended for public bus, train, plane, ship or lift transport, garages with 50 or more parking spaces, cultural and entertainment buildings with areas of at least 300 square meters, museums, libraries and galleries intended for visitors with areas at least 150 square meters, education and scientific buildings with at least five rooms intended for education, medical buildings, sports buildings with places for viewers, religious buildings with areas at least 150 square meters, cemeteries and playgrounds for open air sports. In addition, the Rules on the requirements for free access to, entry to and use of public buildings and facilities and multi-apartment buildings also require accessibility of apartment buildings with at least ten apartments, apartment buildings with at least five care apartments and apartment buildings for special social groups with at least 30 units.³⁷

h) Please explain briefly the existing national legislation concerning people with disabilities (beyond the simple prohibition of discrimination). Does national law provide for special rights for people with disabilities?

There are several acts in place concerning people with disabilities in Slovenia. In the area of employment special rights and entitlements of people with disabilities are stipulated by Employment Relationship Act, Vocational Rehabilitation and Employment of People with Disabilities Act and Health and Safety at Work Act. As it was already mentioned, Slovenia also ratified the Convention on the Rights of People with Disabilities and the Optional Protocol to the Convention on the Rights of People with Disabilities, which are now also part of national law and are directly applicable.

Status of a person with disabilities (first, second or third category) is defined and granted in accordance with the Pension and Disability Insurance Act, which provides for disability pension in case of retirement due to disability, disability allowance, the right to part-time work, the right to vocational rehabilitation and the right to be transferred to another work position for persons who are not yet entitled to disability pension. Additional social benefits for people with disabilities are defined with Social Security Act, which provide for assistance at home, social services, possibility of a family assistant, etc. The use of sign language is defined with Act of the Use of Slovene Sign Language.

Some of these acts are being criticized by people with disabilities because they do not provide for sufficient mechanisms for independent life (e.g. they do not provide

³⁷ Pravilnik o zahtevah za zagotavljanje neoviranega dostopa, vstopa in uporabe objektov v javni rabi ter večstanovanjskih stavb [Rules on the requirements for free access to, entry to and use of public buildings and facilities and multi-apartment buildings], Official Journal of the Republic of Slovenia, No. 97/2003.

for a personal assistance, available for people with serious intellectual or physical disabilities, who would be fully paid for his or her assistance services by the state).

There is a system of incentives in place for hiring people with disabilities, which includes: subsidising wages of people with disabilities; paying costs of adapting work stations and working equipment supplied to people with disabilities; exempting the employer from paying pension and disability insurance for employees with disabilities; rewards for exceeding quotas; yearly rewards for employers for good practice in the area of employment of people with disabilities; other incentives in the area of employing people with disabilities and reserving positions for them, and other development incentives.

Sheltered accommodation is provided on the basis of Act Concerning Social Care of Mentally and Physically Handicapped Persons.³⁸ It is provided mostly by NGOs on the basis of licences issued by the Ministry of Labour, Family and Social Affairs. New legislation is foreseen to be adopted in this field.

The new 2010 Act on Equal Opportunities of people with Disabilities defines the scope of appropriate and reasonable accommodation duties in the area of access to goods and services available to public, education, public buildings, means of public transport, public cultural events etc. (see above).

2.7 Sheltered or semi-sheltered accommodation/employment

a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for workers with disabilities?*

Sheltered employment is defined in the Vocational Rehabilitation and Employment of Persons with Disabilities Act. The Act states that sheltered employment denotes employment of a person with disabilities at workplace with an environment adapted to the abilities and requirements of a worker with disabilities, who does not meet the requirements of an ordinary employment position. Sheltered employment is mostly provided by employment centres, but can also be provided by other employers. The latter have to define sheltered employment in the company's statutes, or if the company does not have statutes, sheltered employment has to be defined in the declaration of safety (Article 41).

According to the Vocational Rehabilitation and Employment of Persons with Disabilities Act, an employment centre is a legal person which has been established for the employment of persons with disabilities exclusively in sheltered working positions, subject to fulfilling technical, organizational and staff conditions, set by the Ministry of Labour, Family and Social Affairs.

³⁸ *Act Concerning Social Care of Mentally and Physically Handicapped Persons* [Zakon o družbenem varstvu duševno in telesno prizadetih oseb], Official Journal of the Socialist Republic of Slovenia No. 41/1983.



In accordance with Article 48 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act, supportive employment denotes employment of a worker with disabilities at a place of work in a normal working environment where professional and technical support is provided to the person with disabilities, the employer and in relation to the working environment.

b) *Would such activities be considered to constitute employment under national law- including for the purposes of application of the anti-discrimination law?*

These activities are considered to constitute employment under national law. In such employment all provisions protecting from discrimination apply.



3 PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?

The Constitution guarantees human rights and freedoms to everyone. Slovenian citizenship is not being required for protection of these rights. The Act Implementing the Principle of Equal Treatment ensures equal treatment to all persons, irrespective of personal circumstances. Nationality is therefore not a requirement for protection under this law.

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?

The Act Implementing the Principle of Equal Treatment does not distinguish between natural persons and legal persons for ensuring equal treatment. The first provision states that “this Act determines the common basis and premises for ensuring equal treatment for everyone”, which includes legal persons. Constitutional provisions, especially the Chapter on Human Rights and Freedoms which includes general anti-discrimination provisions, are to be guaranteed to everyone, including legal persons that can be holders of rights and duties, with exception of those rights and duties that are explicitly of a human biological or sociological nature. According to the Slovenian Constitutional Court, a legal person is entitled to enjoy fundamental rights and freedoms where they are by their nature obtainable by a legal person (e.g. property rights, freedom of entrepreneurship, equality, etc.).

The law differs in respect to the liability of natural persons and the liability of legal persons for harm caused by the acts of discrimination. There is a significant difference in the amount of compensation prescribed by the law that the party in breach of anti-discrimination provisions has to pay. When the act of discrimination amounts to a criminal offence, Article 4 of the Liability of Legal Persons for Criminal Offences Act³⁹ states that for a criminal offence, which the actor committed in the name, on the account of or for the benefit of a legal person, the legal person is also liable.

³⁹ *Zakon o odgovornosti pravnih oseb za kazniva dejanja* [Liability of Legal Persons for Criminal Offences Act], Official Journal of the Republic of Slovenia, No. 59/1999, (12/2000 – corr.), 50/2004, 65/2008.

According to Article 13, criminal offences committed by legal persons are subject to a fine ranging from 10.000 EUR to 1.000.000 EUR, or up to the value of the damage caused or pecuniary advantage obtained, multiplied by two hundred. Instead of paying a fine, the legal person can also be dissolved in cases where the activity of the legal person was wholly or predominantly abused for the purpose of executing the criminal offence. The same measure is prescribed for criminal offences against the employment relationship and social security (Articles 205, 206, and 209 of the Penal Code). While a natural person, as defined in the Penal Code, shall be punished with a fine or imprisonment (see Section 6.5 Sanctions and Remedies), sanctions for legal persons for the same criminal offences are fines or the dissolution of the legal person.

According to Article 2 of the Liability of Legal Persons for Criminal Offences Act, the Republic of Slovenia and the local self-governing communities as legal persons are not liable for criminal offences.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

The Act Implementing the Principle of Equal Treatment generally defines the scope of liability, in which the offender is liable for discriminatory treatment, in every field of social life, and in particular the fields enumerated in Article 2 of the act (see section 2.1 Grounds of unlawful discrimination). According to the general principles of liability for damages, a person who has caused damage has to compensate for it, unless they prove that they were not responsible for it. The Code of Obligations⁴⁰ also regulates liability for others. An employer is, according to Article 147 of the Code of Obligations, liable for damage caused by an employee during work or in connection with work to a third person, unless he or she proves that the employee acted properly. A legal person is liable for the damage caused to a third person while performing its function. A school is liable for the damage that a minor under the supervision of the school has caused to a third person, unless the school proves that the supervision was carried out in accordance with due diligence or that the damage would have occurred even with due diligence. Slovenian legislation has no specific provisions on liability for other people in the field of discrimination. Emphasis should also be put on the fact that none of the general provisions of the Code of Obligations have been yet used in discrimination cases. Therefore the question remains open as

⁴⁰ *Obligacijski zakonik* [Code of Obligations], Official Journal of the Republic of Slovenia, No. 83/2001, 32/2004.



to how these provisions would be interpreted by courts in cases where damages arose due to unlawful discrimination.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

The Act Implementing the Principle of Equal Treatment regulates protection from discrimination in all areas of social life, and with regard to employment in particular in the area of, inter alia, conditions for access to employment, to self-employment and to occupation. Employment Relationship Act covers employment contracts and the obligations and responsibilities of the respective parties arising from employment (including payment and bonuses), training for employees, protection of specific categories of workers and the role of trade unions. The 2010 Act on Equal Opportunities of People with Disabilities regulates the reasonable accommodation duties in areas outside of employment, such as access to information, access to public buildings, education etc.

General provisions on the employment of persons by state bodies, local communities, institutions, other organizations and private individuals performing public services are also regulated by the Employment Relationship Act, with the exception of some special provisions, which are contained in the Public Servants Act.

Contracts for work or contracts for services are defined by Article 619 of the Code of Obligations. According to Article 619, a contract for work is a contract where one party commits themselves to perform a certain task (such as to produce or repair a certain object or to perform a physical or intellectual task etc.), while the person placing the order (the other party) commits to paying for the task performed. The provisions of the Code of Obligations are very general and optional, meaning that in practice, people who want to work on the basis of a contract for work will mainly define their mutual rights and obligations in a specific contract. The Government is generally not encouraging contracts for work, which is why their conclusion is limited by the Employment Relationship Act. The reason for this lies in the fact that contracts for work do not allow for a sufficient social security of the contracted person, they put the person in a vulnerable situation without the rights following the termination of the regular employment contract. Contracts for work, holding statutory office and military service are not specifically mentioned as the area protected from discrimination, however, they can be deemed protected by way of clause “all areas of social life”.

In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.



3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a)) Is the public sector dealt with differently to the private sector?

Article 2 of the Act Implementing the Principle of Equal Treatment (in place for both public and private sector) stipulates that in relation to selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, equal treatment is guaranteed irrespective of gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance. Similarly Article 6, §1 and §2 of the Employment Relationship Act stipulate that equal treatment has to be ensured to employee by employer at, inter alia, recruitment and promotion. An employer may not advertise a vacancy exclusively for men or for women, unless a specific gender is a genuine occupational requirement for the performance of the work. In addition, a job advertisement may not imply that the employer favours a specific gender for the post, except when a specific gender is a genuine occupational requirement for the performance of the work. Although these prohibitions apply to all the aforementioned grounds, discrimination on the ground of gender is emphasized since it was more exposed in the period before adoption of the new Employment Relationship Act. The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability does not refer explicitly to the field of employment.

Access to employment is generally the same for the public sector regarding anti-discrimination provisions, but there are some provisions in the recruitment process that differ from the provisions of the Employment Relationship Act.

According to Article 7 of the Civil Servants Act, all civil servants are chosen through a public competition. In the course of a public tender all candidates must be treated equally and only professional qualifications should be considered in hiring an employee in the public sector. Article 29 of the Civil Servants Act regulates promotion of employees. It specifically states that when assessing a candidate for promotion only the qualifications and other professional skills should be considered, in addition to the quality of the employee's work. Both the Employment Relationship Act and Act Implementing the Principle of Equal Treatment apply to civil servants, but the Civil Servants Act is *lex specialis* in comparison to both the Employment Relationship Act and Act Implementing the Principle of Equal Treatment, and therefore regulates certain conditions for access to employment in the public sector differently, as described above. Even though the Act Implementing the Principle of Equal Treatment (which covers both the private and public sector) and the Employment Relationship Act apply to public sector, the public and private sectors are not dealt with entirely in the same way as the Civil Servants Act contains some additional specific provisions about selection criteria, recruitment and promotion that are compatible with the objectives of the Directives.



3.2.3 Employment and working conditions, including pay and dismissals (Article 3(1)(c))

In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 EC? NB: Case C-267/06 Maruko confirmed that occupational pensions constitute part of an employee's pay under Directive 2000/78 EC.

Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.

The Act Implementing the Principle of Equal Treatment prohibits discrimination on each of the grounds covered by the directives in the field of, inter alia, employment and working conditions, including dismissals and pay. Employment and working conditions are further regulated by the Employment Relationship Act. The anti-discrimination clause in Article 6 (see also Section 3.2.2) refers explicitly to the course of employment, payment and other income from employment, absence, work conditions, working time and termination of employment contract. Under Article 89 of Employment Relationship Act, race, ethnicity and ethnic origin, skin colour, gender, age, disability, marital status, family obligations, pregnancy, religious and political belief, ethnic and social origin cannot be admitted as reasonable grounds for terminating an employment contract. Article 133 ensures the equality of payment between men and women. The employer shall guarantee equal remuneration for male and female workers for work of equal value. Although the Employment Relationship Act does not include any special provisions regarding equal pay for other grounds, such a claim is possible under Article 6. The act also states that provisions included in individual and collective agreements or employers' rules relating to professional activity that are contrary to the principle of equal payment are null and void. Article 200 of the Employment Relationship Act obliges the employer to guarantee an employee with disabilities work in another post that is suitable for the employee's abilities. According to Article 116 of this act, the employer cannot terminate the contract of an employee with disabilities of the second or third category for reasons of redundancy.

Such action is possible only if the employer, in line with the provisions on pension and disability insurance, cannot find another working position for the employee with disabilities or to arrange for him to work part-time. The reasonable accommodation standard has to be used when the worker with disabilities is in sheltered or supportive employment.

The Pension and Insurance Act states that the conditions for access to occupational pensions cannot be set differently according to gender. As to other grounds Act Implementing the Principle of Equal Treatment applies which prohibits unequal treatment in all the areas of social life. Since there is no case law that would prove the opposite, such regulation is consistent with the Maruko case.

The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability does not refer explicitly to the field of employment.

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b))

Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult life long learning courses?

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal circumstances in all areas of social life, including access to all types and to all levels of career orientation, vocational and professional education and training, advanced vocational training and retraining, including practical work experience. The act does not differentiate among different types of training and education with respect to where the knowledge was acquired.

The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability does not refer explicitly to the field of vocational training, however in Article 11 it sets out the reasonable accommodation duty in the field of education and life-long learning which includes vocational training.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal circumstances in all areas of social life, including membership of and involvement in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations.

Protected grounds are enumerated and are the same as in the directives, however, the legislation also includes the general clause “any other personal circumstance”, which practically covers all personal circumstances. Due to the lack of case law, it is not yet clear which additional grounds it would cover.



The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability does not refer explicitly to the field of membership in organisations of workers or any other organisation.

3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance, in all areas of social life, including social protection, social security and healthcare.

The national law does not rely on the exception in Article 3 (3) of the Directive 2000/78/EC.

Social security, which embraces preventing and solving problems connected to the social situation of individuals, families and groups, is regulated through the Social Security Act.⁴¹ Article 4 states the principle of equal access to social security services for all beneficiaries under the conditions set by law. The beneficiaries are Slovenian citizens with permanent residence in Slovenia and foreigners with a residence permit in Slovenia. Slovenian citizens who do not have permanent residence in Slovenia and foreigners without a permanent residence permit are entitled only to certain limited services provided by Social Security Act in cases and under the conditions set by this act. The Financial Social Assistance Act⁴² (adopted on 13 July 2010, entered into force 10 August 2010, started to be used on 1 June 2011) regulates the entitlement to financial social assistance, which is recognized to those individuals who are not able to secure their material safety due to circumstances they cannot influence (Article 2). The right to financial social assistance is recognized to Slovenian citizens with permanent residence in Slovenia, foreigners with a residence permit in Slovenia and others who are recognized this right on the basis of international agreements binding for Slovenia (Article 3).

The Parental Protection and Family Benefit Act⁴³ regulates insurance for parental protection and the rights arising from this, family benefits, and the conditions and procedure for exercising individual rights. The Pension and Disability Insurance Act regulates the compulsory pension and disability insurance system on the basis of

⁴¹ *Zakon o socialnem varstvu – Uradno prečiščeno besedilo* [Social Security Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 36/2004.

⁴² *Zakon o socialno varstvenih prejemkih* [Financial Social Assistance Act], official Journal of the Republic of Slovenia, No. 61/2010 and 40/2011.

⁴³ *Zakon o starševskem varstvu in družinskih prejemkih – Uradno prečiščeno besedilo* [Parental Protection and Family Benefit Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 110/2003.



intergenerational solidarity. The criteria for determining claims to family benefits and insurance for pension and disability insurance are neutral. Social security provisions are generally not subject to age limits. However, should a person seeking protection be under age or have the status of a student (and be younger than 26 years), the question whether they are eligible to receive some form of financial assistance is determined by looking into the social situation of persons with the duty to provide for them (which are mostly his parents). There are no other age limitations.

The right of any person to health care under conditions set by law is one of the constitutionally guaranteed rights. The Health Care and Health Insurance Act⁴⁴ does not contain an explicit provision on discrimination in access to health care. It only neutrally defines groups of insurance with certain rights resulting from this insurance. Article 2 introduces a broad provision that everyone has a right to health care and a duty to contribute to it according to their means. The Health Services Act⁴⁵ deals with the content and presence of health services, which can be performed as public or private health service. When carrying out their duties, health workers are obliged to treat all persons in the same circumstances equally and to respect their constitutional and lawful rights. The only priority allowed is when a person's medical condition necessitates urgent treatment.

Today, on the basis of the Health Care and Health Insurance Act all citizens are included in the mandatory health insurance scheme. Refugees with granted asylum status and foreigners with work permit, who are employed or are registered in the unemployment office, are also included in the scheme.

However, other persons (asylum seekers, foreigners who are residing temporary in Slovenia for reasons other than employment and work, and those "erased" people⁴⁶ who did not manage to regulate their status) remain outside the system, which constitutes direct discrimination on the grounds of legal status and indirect discrimination on the grounds of ethnicity. These persons, however, are also legally entitled to emergency health care. The national budget of the Republic of Slovenia covers the expenses for these groups.

⁴⁴ *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju – Uradno prečiščeno besedilo* [Health Care and Health Insurance Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 20/2004.

⁴⁵ *Zakon o zdravstveni dejavnosti – Uradno prečiščeno besedilo* [The Health Services Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 63/2004, 80/2004.

⁴⁶ Erased people are citizens of successor states of former Yugoslavia, who had permanent residence in Slovenia before its independence; in February 1992, the authorities erased these people from the Register of permanent residents, leaving them without any status. Slovenia only started to consider their position in 1999, when the Constitutional Court found the erasure of 1992 as unconstitutional. Out of 25.671 erased people, about 12.000 regulated their legal status, while 13.000 have no legal status in Slovenia (some of them living in Slovenia, some of them abroad). In 2010 the National Assembly implemented a seven year old 2003 ruling of the Constitutional Court by passing amendments to the Act Regulating the Legal Status of Citizens of Other Successor States of the Former Yugoslavia in the Republic of Slovenia.



The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability does not refer explicitly to the field of social protection and health care, except for the duty to provide reasonable accommodation in relation to access to public buildings.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors to people because of their employment or residence status, for example reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal circumstances in all areas of social life, including social advantages. See also Sections 3.2.9 and 3.2.10.

The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability does not refer explicitly to the field of social benefits, except for the duty to provide reasonable accommodation in relation to access to public buildings.

3.2.8 Education (Article 3(1)(g) Directive 2000/43)

This covers all aspects of education, including all types of schools. Please also consider cases and/ or patterns of segregation and discrimination in schools, affecting notably the Roma community and people with disabilities. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

Please briefly describe the general approach to education for children with disabilities in your country, and the extent to which mainstream education and segregated "special" education are favoured and supported.

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal circumstances in all areas of social life, including education.

The main piece of legislation on education is the Organization and Financing of Education Act,⁴⁷ which guarantees the chance of achieving optimum development of individuals regardless of their gender, social and cultural background, religion, national origin and physical and mental abilities, and sets this standard as one of the

⁴⁷ *Zakon o organizaciji in financiranju vzgoje in izobraževanja – Uradno prečiščeno besedilo* [Organization and Financing of Education Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 115/2003.



goals in the upbringing and education of children. Cultural background and national origin would cover race and ethnicity and for example the Roma community.

However, the educational goals are not legally binding and do not provide any safeguard against unequal treatment. Access to elementary schools is unimpeded for any child, regardless of their status, while access to professional and occupational education⁴⁸ as well as access to high school⁴⁹ and higher education⁵⁰ is equal for all Slovenian citizens, for Slovenians without citizenship and for foreigners under the condition of reciprocity or else under the condition of bearing the costs.

If children with disabilities are not able to follow the regular school program they can be enrolled in adjusted programs in special schools, in accordance with the Placement of Children with Special Needs Act.⁵¹ They are still predominantly enrolled in special schools. Inclusion of children with disabilities into regular schools is an exception and depends on the willingness of the school to accept them. There is, however, a slight change of trends in policies that could be observed at least on the level of principle. Namely, in accordance with Article 11 of the 2010 Act on Equal Opportunities of People with Disabilities, there is a duty to ensure to people with disabilities inclusion into educational programs on all levels, in the environment in which they live. The same article, further stipulates that inclusion into special schools with adjusted programs do not constitute discrimination.

Children with disabilities, who are enrolled in regular schools, obtain a decision from the Ministry of Labour, Family and Social Affairs, specifying the rights he or she has according to disability. The rights may include the right to special equipment or personal assistance. The school, however, is not entitled to equipment, but in case children with disabilities are included in regular classes, the size of classes is smaller and the school is entitled to employ more staff (the system is similar to the one related to Roma). Segregated special education is, however, in practice still favoured and supported, which might be contrary to UN Convention on the Rights of People with Disabilities.

Pre-school education which takes place in kindergartens is based on the principles of democracy and equal opportunities for children and parents taking into consideration the variety among children and maintaining the balance between different aspects of a child's physical and mental growth.⁵² The Kindergarten Act and other regulations also deal with the pre-school and primary school education of Roma children.

⁴⁸ *Zakon o poklicnem in strokovnem izobraževanju* [Vocational and Technical Education Act], Official Journal of the Republic of Slovenia, No. 12/1996, 44/2000, 86/2004.

⁴⁹ *Zakon o gimnazijah* [High School Act], Official Journal of the Republic of Slovenia, No. 12/1996, 59/2001.

⁵⁰ *Zakon o visokem šolstvu – Uradno prečiščeno besedilo* [Higher Education Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 100/2004.

⁵¹ *Zakon o usmerjanju otrok s posebnimi potrebami* [Placement of Children with Special Needs Act], Official Journal of the Republic of Slovenia, No. 58/2011.

⁵² *Zakon o vrtcih – Uradno prečiščeno besedilo* [Kindergarten Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 113/2003.

In kindergartens they can be placed together with other children in mixed kindergarten classes, or in special classes (which is only possible in the regions with a large Roma population), depending on a decision by the kindergarten, municipality and the Centre for Social Work. Where a special class for Roma children is formed, the Direction on Standards and Employment Criteria in Pre-School Education⁵³ allows these classes to include a smaller number of children than other classes, as well as fewer children per teacher.

The tendency to integrate Roma children in regular classes has prevailed in the majority of elementary schools. In accordance with the Rules on Norms for Implementing the Elementary School Program (Official Gazette RS, no. 57/2007) there needs to be a maximum of 21 children in a class with more than three Roma in a school year.

The Third Report of European Commission for Racism and Intolerance at the Council of Europe of 2006, which states that Roma children are nine times more likely to be included in the schools for pupils with special needs, is still very much valid.⁵⁴ In the school year 2008/09, there were 1846 pupils in the schools for children with special needs, and the assessment is that 8 % were Roma.

An improvement in the education of Roma children is expected with the Strategy for the Education of the Roma, adopted by the Ministry of Education in May 2004. The Strategy was amended in 2011.⁵⁵ It provides for Roma children to attend kindergarten at an earlier age (at least two years prior to the start of elementary school but at the latest at the age of four) and sets forth measures needed and planned to improve integration and progress of Roma children in schools. Another measure is the introduction of Roma assistants in classes with Roma children at the moment there are 30 Roma assistants in Slovenia (60 would be needed to meet the needs of the Roma population), optional lessons in Roma language, and non-segregation of Roma children. While learning the Roma language is to be optional for Roma children, the Constitution and a special Act give the Italian and Hungarian minority the right to an education in the minority language and the right to adopt and to promote education (on the special rights of the two national minorities see below).

According to the Amnesty International report of November 2006,⁵⁶ Roma children in Slovenia continue to face discrimination irrelevant of the strategies and programmes adopted by the Government. According to the mentioned report, extreme poverty, discrimination in schools and the lack of truly inclusive and multicultural curricula

⁵³ *Odredba o normativih in kadrovskih pogojih za opravljanje dejavnosti predšolske vzgoje* [Direction on Standards and Employment Criteria in Pre-School Education], Official Journal of the Republic of Slovenia, No. 57/1997 (59/1997 - corr), 40/1999, 3/2000 (13/2000, 32/2000 – corrig.), 29/2002.

⁵⁴ http://www.coe.si/res/dokument/download.php?id=/res/dokument/10387-1.pdf&url=/res/dokument/10387-1.pdf&title=tretje_porocilo_o_sloveniji.pdf.

⁵⁵ http://www.mizks.gov.si/fileadmin/mizks.gov.si/pageuploads/podrocje/razvoj_solstva/projekti/Strategija_Romi_dopolnitev_2011.pdf.

⁵⁶ <http://www.amnesty.org/en/library/info/EUR05/002/2006>.

violate the right to education of Roma children. Free meals, textbooks and transportation are sometimes provided to Roma children. But even getting to school can be impossible when the school is too far away to reach on foot and children's clothes are not warm enough to cope with a bitter winter. Children are often unable to study or do homework in cold, overcrowded homes. Roma children are in some cases discriminated against by their own teachers. Negative stereotypes about the Roma's "way of life" or attitude toward education are often used to explain poor school attendance and grades, even by educators. Teachers, Roma children and parents generally acknowledge that many of the difficulties Roma children encounter in primary schools are due to linguistic barriers. Many Roma children have no or limited command of the language spoken by the majority population. Other measures that could help overcoming language obstacles, such as improving access to pre-school education for Roma children and the employment of suitably trained Roma teaching assistants, have not been implemented in a systematic and comprehensive way. Roma culture and history in general are not included in a systematic way in school curricula.⁵⁷ This view is also shared by the authors of the 2006 report *The Aspect of Culture in the Social Inclusion of Ethnic Minorities for Slovenia*. According to their observations despite considerable efforts – financial means and organization of training and lectures that Slovenia has already dedicated to the inclusion of the Roma in educational system – the achieved results are not satisfying. The share of the Roma children, who successfully progress in the education vertical, is essentially lower in comparison with the rest of Slovenia's population. The dropout of Roma children is much higher than amongst other primary school pupils. A large number of the Roma children do not complete the primary school education.⁵⁸ The number of Roma children attending primary school is slowly increasing, but it is still only a part of the Roma population that successfully completes their primary education.⁵⁹ The so-called "Bršljin model" still remains in place.⁶⁰ In April 2005, the parents of some non-Roma children at Bršljin elementary school started a school boycott. They requested that the 86 Roma pupils at Bršljin elementary school be dispersed evenly across the schools in the Novo Mesto municipality. In the absence of an agreement, the Minister of Education proposed a solution, but according to experts, the Human Rights Ombudsman and NGOs, the proposed model was actually segregating Roma children. 23 professors of the three Slovenian universities stated that the proposed pilot model was in breach of the Elementary School Act, which stipulates that children from the fourth to the eighth grade of elementary school can only be divided for a total of one quarter of all the educational hours. The model prepared by the Ministry of Education and Institute of Education envisaged special classes for Roma children from the 1st to the 9th grade of elementary school. The justification for the

⁵⁷ Report, *False start: The exclusion of Romani children from primary education in Bosnia and Herzegovina, Croatia and Slovenia*,

<http://www.amnestyusa.org/regions/europe/document.do?id=ENGUSA20061105001>.

⁵⁸ Teja Krakar, *Inclusion of Roma Pupils in Elementary School Bršljin*, diploma thesis, University of Ljubljana, Faculty of Arts, p. 36.

⁵⁹ Mitja Žagar, Ph. D., Miran Komac, Ph. D., Mojca Medvešek, Ph. D. Romana Bešter, Ph. D. : *The Aspect of Culture in the Social Inclusion of Ethnic Minorities*, The Institute for Ethnic Studies, Ljubljana, Slovenia http://www.ecmi.de/download/working_paper_33.pdf.

⁶⁰ <http://thereport.amnesty.org/eng/regions/europe-and-central-asia/slovenia>.



division was, according to the Ministry, the knowledge and skills of children. Parents of the Roma children threatened to boycott classes and not send their children to school unless a more reasonable model of education was proposed, but that did not happen.⁶¹ The Human Rights Ombudsman demanded information on the procedure for adopting the model and the criteria on which the division was to be made. The Ministry claimed that the division was not made based on ethnic origin but on the grounds of knowledge. NGOs insisted that this was direct discrimination, but the Ministry of Education claimed such division was justified due to the fact that Roma children were not well adapted and did not have skills equal to other children. The Ministry therefore did not reconsider its decision but carried on implementing the model. The model has not been challenged in the Constitutional Court. Such a model had been heavily criticized by education experts and the Council of Europe for effectively resulting in the segregation of Roma.⁶² Bršljin model is also mentioned in the 2007 ECRI Report on Slovenia. No complaints before the European Court of Human Rights have been filed in this case yet.

Taking into account the unsatisfying situation of Roma in the field of education (as well as other fields) the Government of the Republic of Slovenia prepared and the parliament adopted a new National Program of Measures for Roma 2010-2015⁶³. The program includes a plan for strengthening the pre-school education of Roma children and cooperation with their parents within the Roma settlements (outreach program) as well as strengthening the tutoring system for Roma pupils. Both plans will be supported by extensive funds from both European Social Fund as well as the national budget.

Special provisions govern children of Slovenian citizens who reside in Slovenia but whose mother tongue is other than Slovenian. In accordance with international agreements, special lessons in their mother tongue and culture are organised, with the possibility of Slovenian lessons organised in addition. Children who are of foreign citizenship or do not have citizenship and reside in Slovenia have the right to obligatory primary school education on the same terms as Slovenian citizens. For them, lessons in their mother tongue and culture are organised free of charge, through international agreements.

Pre-school, primary school, as well as primary and secondary vocational education, secondary technical education, professional education and secondary general education for the Italian and Hungarian national minorities are regulated in the

⁶¹ Teja Krakar, Inclusion of Roma Pupils in Elementary School Bršljin, diploma thesis, University of Ljubljana, Faculty of Arts, p. 47-48.

⁶² Council of Europe Commissioner for Human Rights, Follow-Up Report on Slovenia (2003-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, CommDH(2006)8, 29 March 2006.

⁶³ Available at

http://www.uvn.gov.si/fileadmin/uvn.gov.si/pageuploads/pdf_datoteke/Nacionalni_program_ukrepov_za_Rome_20.11..pdf (8.3.2010).

Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act.⁶⁴

The members of the second generation of ethnic groups of the former Yugoslavia face a high level of discrimination on the ground of their ethnic origin, according to a survey on Slovenian Integration Policies. The so-called second generation are children of emigrants from the countries of former Yugoslavia, who were born and raised in Slovenia. They face a high level of intolerance in school. Discrimination practices in education are even greater among Roma children as they are seen as incompetent and unable to reach higher standards.

The erased people who still have no legal status or only have temporary or permanent residence permit, but no citizenship, suffer direct discrimination in education, access to goods and services, including housing, on the grounds of legal status, and indirect discrimination on the grounds of ethnicity. To the erased people with no legal status only elementary school for minors is accessible, while other types of education are not. To those with temporary or permanent residence permit, secondary schools and higher level of education are accessible upon payment and principle of reciprocity. Non-profit housing is not accessible to any of them if they don't have citizenship. Access to other goods and services depends on legal status that is required in each particular case.

3.2.9 Access to and supply of goods and services which are available to the public (Article 3(1)(h) Directive 2000/43)

- a) *Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.*

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal circumstances in all areas of social life, including access to and supply of goods and services which are available to public. With regard to access to goods and services, Article 25 of the Consumer Protection Act should also be considered, as it states that providers must sell goods and provide services to all consumers, under the same conditions.

The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability sets out a reasonable accommodation duty on the ground of disability, imposed on providers of goods and services.

⁶⁴ The Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act, Official Gazette of the Republic of Slovenia no. 35/2001. *Zakon o posebnih pravicah pripadnikov italijanske in madžarske narodne skupnosti na področju izobraževanja, Uradni list Republike Slovenije številka 35/2001.*

- b) *Does the law allow for differences in treatment on the grounds of age and disability in the provision of financial services? If so, does the law impose any limitations on how age or disability should be used in this context, e.g. does the assessment of risk have to be based on relevant and accurate actuarial or statistical data?*

There are no specific provisions in the law concerning age and disability in relation to access to financial services. The limitations are still entirely within the authority of entities providing such services.

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions? Please also consider cases and patterns of housing segregation and discrimination against the Roma and other minorities or groups, and the extent to which the law requires or promotes the availability of housing which is accessible to people with disabilities and older people.

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal circumstances in all areas of social life, including apartments and their supply. The 2010 Act on Equal Opportunities of People with Disabilities which prohibits discrimination on the ground of disability, sets out an obligation of local governments to provide accessible apartments to people with disabilities that meet the conditions for obtaining non-profit apartments (Article 13).

The Housing Act⁶⁵ regulates types of residential buildings, conditions for maintaining and planning them, building and selling new apartments, tasks and competences of the Government and municipalities concerning housing and also matters connected with ownership and leasing. In order to rent a social (non-profit) apartment, people have to fulfil general conditions, such as citizenship, permanent residence in the area where the apartment is located, and confirmation of income and the income of their family members. For other types of lease, landlords may add even more conditions that have to be satisfied in order to lease a particular apartment. Such conditions could lead to discrimination on the basis of some personal characteristics, for example for Roma, however, there is no research available to confirm whether this is the case in practice.

Social apartments are financed through the Housing Fund. When new apartments owned by the Fund are sold (for approximately 20% below market price) some categories of buyers are given preference, as a type of positive action measure: (1) buyers who were saving in the National Housing Scheme, (2) young families (parents not older than 30 or 35), (3) younger people (not older than 30 or 35) and (4) families

⁶⁵ *Stanovanjski zakon* [The Housing Act], Official Journal of the Republic of Slovenia, No. 69/2003, 18/2004.

with large numbers of children. Apart from the first criterion, the criteria could not impact adversely on the Roma, since usually they have more children at younger age.

Additional criteria can be added to give priority to certain groups of people, for example people with disabilities. With regard to age, only young people and young families with young people are specified as a priority group, while elderly people are usually not considered a special privileged category in terms of accessibility of non-profit housing. Social housing has to be accessible for people with disabilities. In accordance with “Rules on the requirements for free access to, entry to and use of public buildings and facilities and multi-apartment buildings”, multi-apartment buildings with ten or more apartments, apartment buildings with assistance with five or more housing units, or apartment buildings for special social groups with 30 housing units or more, have to be physically accessible for people with disabilities.

The Housing Act, adopted on 19 June 2003, and Spatial Planning Act, adopted on 30 March 2007, apply generally and contain no provisions specifically concerning Roma. Some specific provisions on housing are contained in Roma Community Act, which in Article 5 (§ 2) recognizes the importance of regulating spatial problems concerning Roma settlements. On 1 December 2006 the Government established an Expert Commission for Regulating the Spatial Problems of Roma Settlements with a mandate to deal with illegal buildings and the lack of infrastructure in the Roma Settlements. The Commission prepared a report finding that about one quarter of Roma settlements have good chances of fast integration and regulation of infrastructure, one third has good mid-term chances for regulation of infrastructure after legal obstacles are overcome (change of purpose of the land, to begin with), one third of settlements will have many difficulties with regulation of living conditions and legal issues, and for one tenth of settlements regulation is not possible and relocation seems to be the only solution.⁶⁶ On 5 March 2009 the Government of the Republic of Slovenia established a Commission for the Protection of Roma Community with a mandate to monitor the implementation of measures based on the Roma Community Act, including spatial and housing issues as well as issues connected to Roma settlements. The Commission has already begun with its work, however, no results are available yet.

Various reports and state documents contain reference to poor housing conditions of Roma. On 23 November 2005 the European Centre for Monitoring Racism and Xenophobia issued a report stating that the Roma population in Slovenia is territorially segregated. It states that they are subject to extremely bad housing conditions with poor infrastructure as well as low standards of hygiene. Until 2010 the

⁶⁶ Roma – Legislation, programs, measures. Office for ethnic minorities of the Government of the Republic of Slovenia. Available at: http://www.google.si/url?sa=t&source=web&ct=res&cd=1&ved=0CAYQFjAA&url=http%3A%2F%2Fwww.rtv.slo.si%2Ffiles%2FSlovenija%2Fzakonodaja_programi_ukrepi_1.doc&rct=j&q=Romi+zakonodaja+programi+ukrepi&ei=tQaRS4jhDc_z_Aay04jiDA&usq=AFQjCNGVu2dkGx2o7m8KIPekQE8_EhAa1w (10.3.2010).

situation has not changed much. On 16 March 2011 Amnesty International published a report *Parallel Lives: Roma Denied Rights to Housing and Water in Slovenia*⁶⁷ on inadequate housing conditions and lack of access in some Roma settlements to safe drinking water.

The National Action Plan on Social Inclusion, published in 2004, states that the 'housing conditions for Roma are in general considerably worse than for the rest of the population. In some communities, unsuitable residential buildings are still in use, without sanitation, electricity, mains water, sewerage or waste removal.' The aim of the Action Plan is to tackle the problem of Roma settlements by assisting municipalities and the state to purchase the land if needed, legalise existing buildings, and provide for appropriate infrastructure. The Operational Programme for Strengthening Regional Development Potentials for Period 2007-2013, which is related to the implementation of the EU cohesion policy in Slovenia, includes a reference to the Roma settlements, stating that one of the goals to be achieved is also development of areas of both autochthonous national minorities and the Roma settlements in the Republic of Slovenia.

The National Strategy and Priority Tasks in the European Year of Equal Opportunities for All⁶⁸ stated that most Roma live in isolated settlements or on the outskirts of urban areas in bad conditions, which are below minimal housing standards. Thirty-nine per cent live in brick houses, 12 per cent in apartments, while the rest of the Roma population live in barracks, containers, or trailers. According to the 2007 survey done among the administrative units (local expositions of central government), more than 60 per cent of Roma settlements were slightly isolated, more than 20 per cent of settlements were in the vicinity of the towns or were part of towns, but less than 20 per cent of the Roma settlements were in contact with other settlements.⁶⁹

Often Roma settlements, constructed without a construction permit on land owned by another legal or private persons, are endangered due to the fact that this land is intended for construction of apartments, business and industrial centres. In such cases the interests of Roma families living in such settlements are often not sufficiently taken into account.

⁶⁷ <http://www.amnesty.org/en/library/info/EUR68/005/2011/en>.

⁶⁸ Ministry of Labour, Family and Social Affairs (2007): *Nacionalna strategija in prednostne naloge v evropskem letu enakih možnosti za vse: Slovenija*, p.7, available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/elem_strategija.pdf (31.03.2009).

⁶⁹ J. Zupančič: *Stanje in perspektive romskih naselij v Sloveniji: od analize k novi rekonstrukciji*, p. 5, (ppt presentation).

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

Article 2.a., §2, indent 1, of the Act Implementing the Principle of Equal Treatment states that difference in treatment in the area of employment on the grounds of gender, ethnicity, race or ethnic origin, religion or belief, disability, age or sexual orientation is prohibited except in case when, inter alia, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is appropriate and necessary, does not constitute discrimination. The provision complies with the directives.

4.2 Employers with an ethos based on religion or belief (Art. 4(2) Directive 2000/78)

a) *Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?*

Article 2.a., §2, indent 2, of the Act Implementing the Principle of Equal Treatment states that difference in treatment in the area of employment on the grounds of religion or belief of the individual, in the case of occupational activities within churches and other public or private organizations the ethos of which is based on religion or belief, shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos. The same provision is included in Article 3, §3 of the Religious Freedom Act. The provision complies with the directive. The law does not specifically state that such differences in treatment should not justify discrimination on another ground.

b) *Are there any specific provisions or case law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination? (e.g. organisations with an ethos based on religion v. sexual orientation or other ground).*

There are no specific provisions or case law in this area.

c) *Are there cases where religious institutions are permitted to select people (on the basis of their religion) to hire or to dismiss from a job when that job is in a state entity, or in an entity financed by the State (e.g. the Catholic church in Italy*



or Spain can select religious teachers in state schools)? What are the conditions for such selection? Is this possibility provided for by national law only, or international agreements with the Holy See, or a combination of both?

Article 3, § 3 of the Religious Freedom Act states that difference in treatment in the area of employment on the grounds of religion or belief of the individual, in the case of occupational activities within churches and other religious communities shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the ethos of churches and other religious organizations. All religious communities are benefiting from the same right. In addition, Article 5 of the Act ratifying the Agreement between the Republic of Slovenia and the Holy See on Legal Issues⁷⁰ states that the Catholic Church shall be competent to nominate and employ people in accordance with the canon law. This is a general recognition of the churches capacity to be an employer and it is intended for all employees of the church (including teachers and priests).

4.3 Armed forces and other specific occupations (Art. 3(4) and Recital 18 Directive 2000/78)

a) *Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?*

The Defense Act⁷¹ states that candidates wishing to perform military service professionally should, among other requirements, in principle not be older than 25 years or 30 years for officers.⁷² Article 88, §3 states that, anyone who wants to professionally engage in military service has to fulfil specific requirements, which include a condition of physical and mental capability. The age requirement is absolute and does not depend on the ability of the individual to perform required tasks. It still has to be seen whether these exceptions in the legislation are in accordance with the two directives.

b) *Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?*

When the Police Act was amended in 2003⁷³ the maximum age limit was removed from the act and is no longer a requirement for this kind of employment.

⁷⁰ *Zakon o ratifikaciji Sporazuma med Republiko Slovenijo in Svetim sedežem o pravnih vprašanjih* [Act ratifying the Agreement between the Republic of Slovenia and the Holy See on legal issues]. Official Journal of the Republic of Slovenia no. 4/2004.

⁷¹ *Zakon o obrambi* [The Defence Act], Official Journal of the Republic of Slovenia, No. 82/1994, 44/1997, 87/1997, 87/2001, 47/2002 (67/2002 – corr.).

⁷² Ministry of Defence states in its advertisements that applicants must be a maximum of 25 years old and that the contract will be ended when the individual is 45 years old.

⁷³ *Zakon o spremembah in dopolnitvah zakona o policiji* [Act Amending the Police Act], Official Journal of the Republic of Slovenia, No. 79/2003.

The Police Act determines furthermore that an unsuccessful applicant does not have the right to be informed of the reasons leading to the decision. This provision enables arbitrary and discriminatory decisions on employment without any chance of reviewing the employer's decision. Article 1, § 1, indent 1 of the Police Act requires that a policeman has adequate mental and physical capabilities, which is a provision that allows for difference of treatment of people with disabilities. A case dealt with by the Advocate of the Principle of Equality on the applicant who was not selected for the job of the police officer due to his coeliac disease raises an issue of unlawful discrimination due to health status, which is a result of restrictive interpretation of these rules (case No. 0921-42/2009/7 of 25 January 2011). Further, Article 67 of the Police Act states that employment in the police is not possible if a person filed conscientious objection in the armed forces (indent 6), which might unjustifiably exclude people on the grounds of religion or belief.

4.4 Nationality discrimination (Art. 3(2))

Both the Racial Equality Directive and the Employment Equality Directive include exceptions relating to difference of treatment based on nationality (Article 3(2) in both Directives).

- a) *How does national law treat nationality discrimination? Does this include stateless status?
What is the relationship between 'nationality' and 'race or ethnic origin', in particular in the context of indirect discrimination?
Is there overlap in case law between discrimination on grounds of nationality and ethnicity (i.e. where nationality discrimination may constitute ethnic discrimination as well?)*

Nationality discrimination is not explicitly prohibited in national law. The Constitution, Act Implementing the Principle of Equal Treatment and Employment Relationship Act do not list nationality (they list a ground 'nacionalnost', but in Slovenian this means ethnicity) as one of the grounds of prohibited discrimination. However, both the constitution and the two laws prohibit unequal treatment on the grounds of "any other personal circumstance", therefore nationality discrimination could be included as a ground on which discrimination is prohibited. There are, however, many provisions in the employment legislation that exclude people of other nationalities. Article 88, §2 of Defense Act for example states that, a person that wants to join the armed forces has to be a citizen of Slovenia. People with dual citizenship are not allowed to professionally engage in defense activities.

In its ruling of 23 September 1998 concerning a procedure initiated by V.K. of Koper, the Constitutional Court ruled that the words "Slovenian nationality" must be removed from the Article 2, §3 of the Redress of Injustices Act,⁷⁴ since it grants certain rights

⁷⁴ *Zakon o popravi krivic* [The Redress of Injustices Act], Official Journal of the Republic of Slovenia, No. 59/1996.

only to the individuals of “Slovenian nationality” thereby excluding other possible beneficiaries, and consequently does not conform with the Constitution.⁷⁵

The facts of the case were that under this act a Serb legally residing in Slovenia whose rights were violated in the communist times was not eligible for compensation for damages caused because of deprivation of liberty which was contrary to the rule of law, because he did not have Slovenian citizenship. The Constitutional Court stated that since the act represented a legal basis for compensation due to violations committed also by other public bodies of the former Yugoslavia, which were not necessarily based in Slovenia, there is no justification for differentiating among victims on the basis of their personal circumstances.⁷⁶

b) Are there exceptions in anti-discrimination law that seek to rely on Article 3(2)?

There are various conditions for entry and residence of third country nationals in Slovenia, as well as for access to certain social benefits and posts depending on their nationality. These conditions might cause indirect discrimination on the grounds of race and ethnicity, but there is no research confirming that. With regard to racial and ethnic discrimination, a tool often used to avoid it but to cause similar consequences is deprivation of rights on the grounds of deprivation of legal status which is done under the colour of law.

In Slovenia, such example is the erased people, 25.671 citizens of the former Yugoslavia who had permanent residence in Slovenia before the independence. Those who had not obtained the citizenship of the newly established Republic of Slovenia, were also unlawfully erased from the registry of permanent residents and were deprived of their legal status of permanent residents. Consequently, they were deprived of all rights, linked to legal status (most of the social and economic rights except for elementary schooling for children, the right to vote, the right to property, the right to liberty etc.) The Constitutional Court found this measure unlawful and unconstitutional. While approximately 13.000 people already resolved their legal status in Slovenia, and 1.300 already passed away, about 11.000 are still without it. Some of them live in Slovenia, while a majority of them was either deported, rejected at the borders when they wanted to return, or left Slovenia on their own due to difficult living conditions into which they were pushed because of the erasure. Those erased, who have not managed to obtain citizenship from one of the other successor states of the former Yugoslavia, are stateless. The extent of this problem is not known. There is a case *Kurić and Others vs. Slovenia* pending before the Grand Chamber of the European Court of Human Rights, due to appeals filed against a first instance decision with which the violation of Article 8 and Article 13 of ECHR was found.

⁷⁵ See the *Legal analysis of national and European anti-discrimination legislation for Slovenia*, by Vera Klopčič, 2001.

⁷⁶ Constitutional Court Decision No. U-I-371/96 of 23.9.1998, Official Gazette No. 68/1998.



4.5 Work-related family benefits (Recital 22 Directive 2000/78)

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employees and their partners. Certain employers limit these benefits to the married partners (e.g. Case C-267/06 Maruko) or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note: this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

- a) *Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees who are married?*

Married and unmarried opposite-sex partners are treated equally according to the Marriage and Family Relations Act concerning the rights stipulated in this act, however, as concerns the rights stipulated in other acts they are treated equally if so provided by other acts (Article 12 of the Marriage and Family Relations Act). The Employment Relationship Act treats married and unmarried couples equally. Therefore if an employer limited work-related benefits to married partners, this would be a breach of this act. Moreover, the Act Implementing the Principle of Equal Treatment prohibits discrimination based on any personal circumstance, which includes marital status.

- b) *Would it constitute unlawful discrimination in national law if an employer provides benefits that are limited to those employees with opposite-sex partners?*

In June 2005 Slovenia adopted the Registration of a Same-Sex Civil Partnership Act,⁷⁷ which however contains no provisions on work-related family benefits. Therefore, the Act Implementing the Principle of Equal Treatment could apply if the employer limited benefits to opposite-sex partners, since it prohibits discrimination on the ground of sexual orientation. The issue whether or not that constitutes discrimination would depend on the Constitutional Court.

In 2011 a new Family Code was adopted by the National Assembly. The Family Code introduced full equality of married opposite-sex partners and registered same-sex partners, as well as full equality of cohabiting opposite-sex partners and cohabiting same-sex partners (except for the right to marriage and the right to joint adoption which remained reserved for opposite sex partners only). This would bring equality of partners in all areas of life, including employment benefits. However, 42.000 signatures for referendum were lodged to the National Assembly by conservative groups (signatures for referendum should not be confused with a

⁷⁷ *Zakon o registraciji istospolnih partnerskih skupnosti* [The Registration of Same-sex Partnerships Act], Official Journal of the Republic of Slovenia, No. 65/2005.

petition; if the signatures are lodged, it is mandatory by constitution for the referendum to be carried out while the petition is an attempt to bring attention to a certain issue). Even though the National Assembly lodged an appeal to the Constitutional Court asking for the referendum to be prohibited because such referendum would cause unconstitutional consequences (i.e. it would violate the principle of equality before law regardless of one's sexual orientation), the Constitutional Court did not prevent the referendum. At the public vote held on 25 March 2012 44 % of voters supported the Family Code and 56 did not. The Family Code did not enter into force, and Registration of a Same-Sex Civil Partnership Act which provides for only limiting rights of same-sex couples remains in power. Consequently, limiting benefits to opposite-sex couples by employers remains lawful.

4.6 Health and safety (Art. 7(2) Directive 2000/78)

- a) *Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?*

There are no explicit exceptions in relation to disability and health and safety. Article 20, § 3 of the Employment Relationship Act states that a person with disabilities who is qualified to do a certain job can conclude an employment contract for that job. A person with disabilities who is qualified to perform a specific type of work should also have the physical capacity to do that type of work in order to conclude an employment contract. In accordance with the Health and Safety at Work Act, when concluding an employment contract, the employee has to fulfil medical requirements for that specific position, which is determined by medical examination and medical certificate. If the employee is medically fit for a certain post, then the employer cannot say that employing him would endanger other employees or customers.

- b) *Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery, etc)?*

In the act there is no exception regarding health and safety issues resulting from ethnic origin or religion, thus turbans, hair, beards, jewellery, etc. are not permitted if that runs counter to health and safety rules.

Issues of dress and personal appearance could also be affected by the test of proportionality which could allow difference of treatment if justified with the legitimate objection and the means to achieve the objection are appropriate and necessary.

4.7 Exceptions related to discrimination on the ground of age (Art. 6 Directive 2000/78)

4.7.1 Direct discrimination

- a) *Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in*



Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold?

Article 2.a, §1 of the Act Implementing the Principle of Equal Treatment states that difference of treatment on the basis of personal circumstance is allowed if it is justified by a legitimate goal and if means to achieve this goal are appropriate and necessary. In addition, the provision of article 2.a, §2, indent 3, states that difference of treatment in the area related to employment on the ground of age is allowed, if such treatment is objectively and reasonably justified with a legitimate objective, including the legitimate goals of the active employment policy, labour market and vocation training, and if means to achieve these objectives are appropriate and necessary.

- b) *Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?*

Article 60 of the 2010 Labour Market Regulation Act⁷⁸ (adopted on 28 September 2010, entered into force on 27 October 2010, started to be used on 1 January 2011)⁷⁹ contains provisions which allow direct discrimination on the ground of age if it is objectively and reasonably justified by a legitimate aim. It provides unemployed workers older than 50 years with a right to receive unemployment benefits for 19 months instead of just 12 months as is the case for other workers in the same situation (that is, with insurance of 25 years or more), and the unemployed workers older than 55 years with a right to receive compensation for 25 months.

- c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by article 6(2)?*

The Pension and Disability Insurance Act, introduced two types of supplementary pension insurance in the year 2000: compulsory (for insured persons performing particularly hard work and work harmful to health, and insured persons performing professional activities, which cannot be successfully performed after attaining a certain age) and voluntary.

The voluntary supplementary scheme is an option offered in particular to younger generations of the employed population, who will have to use their own savings to provide for their social security in their old age due to a gradual decrease of pensions

⁷⁸ Zakon o urejanju trga dela [Labour Market Regulation Act], Official Journal of the Republic of Slovenia, No. 80/2010.

⁷⁹ The difference between the act entering into force and the act being used is that after the act enters into force implementing acts needed for accurate implementation of the law can be prepared and can be adopted by responsible bodies. In this time the act is not used in practice yet. The time between the entry into force and usage of the law enables all stakeholders to take all necessary preparations. Allowing extra time for the law to be used is a usual practice in the process of adoption of large systemic laws.

earned in the mandatory insurance scheme. Mandatory insurance is financed on a pay-as-you-go basis, while supplementary pension and disability insurance is based on funded schemes. The law states that a person has to be included in the mandatory insurance scheme to be admitted to the voluntary scheme. Therefore, even though the law does not explicitly fix ages for admission it is implied that the minimum set age to enter is 15 (because children below the age of 15 are not allowed to work and have to be included in the education system on the full-time basis), since the law states that all the employed and self-employed are to be included in the mandatory insurance. Accordingly, one can join on a voluntary basis at the age of 15.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

Several provisions of the Employment Relationship Act are intended to protect younger and older workers with regard to working conditions and working environment. In particular, the law provides for the special protection of workers over 55 (men) or 51 (women) years of age, with regard to the length of working hours, stating that an older worker may conclude an employment contract for shorter working hours if he or she partially retires. Additionally, the act imposes limitations on overtime and night work, which prohibit the employer from ordering an older worker to work overtime or at night. Several provisions of the act are intended to protect workers who have not yet reached 18 years of age. These workers may not be exposed to certain kinds of working conditions, such as working underground or under water, exposure to increased health risks due to exceptional cold, heat, noise or vibrations, and conditions which present a greater risk of accidents. A worker who is younger than 18 may not work for more than 40 hours per week, or at night between 22.00 and 06.00 the next day, and has the right to seven extra days of paid holiday.

The Employment Relationship Act contains some provisions designed to protect workers due to pregnancy and parenthood. They are to enjoy special protection according to Article 187 of the act. Furthermore, in case of a dispute regarding the exercise of special protection due to pregnancy and parenthood, the burden of proof is shifted to the employer. The mentioned provision also imposes an obligation on the employer, to enable workers to easily reconcile their family and employment responsibilities.

Moreover, the Act also offers protection with regard to night work and overtime work; it states that a worker, who takes care of a child under the age of three, may be ordered to work overtime or at night only upon his written consent. A written consent for overtime work or night work is also required in circumstances where one of the

employed parents of a child under seven or a child who is severely ill, or of a child with severe physical or mental disability, is living alone with a child and caring for the child. There are no other provisions in the law offering special protection for persons with caring responsibilities.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?

As a general rule the law sets minimum age for entering into an employment contract at 15 years, and for working on a ship at 16 years. For certain professions such as judges, the minimum age requirement is set at 30 years of age (Judicial Service Act).⁸⁰ There are no maximum age requirements for employment set as a general rule. However, for certain professions there are maximum age conditions prescribed for entering employment as well as for obligatory termination of employment on reaching a certain age. These exceptions apply to employees in the armed forces (see chapter 4.3). The Defense Act⁸¹ states that candidates wishing to perform military service professionally should, among other requirements, in principle not be older than 25 years or 30 years for officers. Paragraph 3 of Article 88 states that anyone who wants to professionally engage in military service has to fulfil specific requirements, including that he is physically and mentally capable of professionally performing military service.

The Ministry of Defense states as a condition in its advertisements that candidates must be a maximum of 25 years old and that the contract will be ended when the individual is 45 years old, but the employer has to reallocate the employee to a different position, or help the employee qualify for another position (Article 93 of the Defense Act).

There is no obvious evidence of age discrimination in training opportunities. However, the 1998 Act Amending the Employment and Unemployment Insurance Act has imposed, inter alia, a rule by which age is one of the criteria for inclusion of unemployed person in the active employment policy program. There are no maximum age requirements for employees in the police.

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals actually retire from work), and mandatory retirement ages (which can be state-imposed, employer-

⁸⁰ *Zakon o sodniški službi* [Judicial Service Act], Official Journal of the Republic of Slovenia, No. 16/1994, 8/1996, 24/1998, 45/1999, 101/1999, 48/2001, 67/2002, 105/2002, 2/2004, 71/2004.

⁸¹ *Zakon o obrambi* [The Defence Act], Official Journal of the Republic of Slovenia, No. 82/1994, 44/1997, 87/1997, 87/2001, 47/2002 (67/2002 – corr.).



imposed, imposed by an employee's employment contract or imposed by a collective agreement).

For these questions, please indicate whether the ages are different for women and men.

- a) *Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work longer, or can a person collect a pension and still work?*

In Slovenia there are three different types of pensions available for persons under the conditions defined by law: old-age pension, disability pension and state pension (the latter is available for persons who fulfil the age of 65 and who have permanent residence in Slovenia, if they have no other pension in Slovenia or abroad, and if they had registered permanent residence in Slovenia for at least 30 years between the age of 15 and 65).

There is no state pension age at which individuals must begin to collect their pension. For entitlement to a full old-age (state) pension (dependant only on years at work), men have to be at least 63 (full age) years old and have 40 years of pension insurance while women have to be 61 (full age) years old and have 38 years of pension insurance.⁸² This difference is based on the different social burden of men and women over the past three decades. Although women held full time jobs just like men, they had to take care of children and the household after coming home from work. The state encourages longer employment with bonuses; employee who continues working after 40 (men) or 38 (women) years of work are awarded a correspondingly higher pension. If a person claiming old-age pension has neither reached full retirement age nor accumulated 40/38 years of service, their old-age pension is permanently reduced by a certain percentage. The greatest possible reduction in this respect may thus amount to 18%. For women, such reduction will be applied after 2015 and will gradually reach a maximum of 10.8%. The reduction therefore only applies to men at the moment. People can also choose to defer their pensions. Article 178 of the Pension and Disability Insurance Act gives an individual who continues working after retirement the opportunity to be elected to statutory office or to perform an employment or an economic activity. In this case their pension entitlement is deferred, because they are not entitled to receive double payments. This regulation does not interfere with the right to a higher pension in case of working longer than required by law.

- b) *Is there a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work longer, or can an individual collect a pension and still work?*

⁸² See Article 36 Pension and Disability Insurance Act with regard to Article 52 of the same Act.



Occupational pension schemes are organized as voluntary pension insurance, which represent an additional insurance for companies that chose to pay contributions for their employees. Insured persons are entitled to occupational pension under the same conditions as the old-age (state) pension.

- c) *Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, and if so please state which. Have there been recent changes in this respect or are any planned in the near future?*

There are no generally applicable provisions which fix mandatory retirement ages. The Pension and Disability Insurance Act only fixes minimum age and minimum working years for entitlement to a pension, but it is not mandatory for an employee to retire when he or she fulfils the conditions for retirement. (There is only one situation when compulsory retirement is permitted, which is in a case of complete disability. In this case, the employment relationship ceases when the decision asserting complete disability is served on the employee (see Article 119 of the Employment Relationship Act).)

- d) *Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?*

There is no practice of determining retirement ages in collective agreements or in individual contracts.

- e) *Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment, or are these rights lost on attaining pensionable age or another age (please specify)?*

The law protecting against dismissal applies to all workers irrespective of age and this protection is not lost on attaining retirement age. This retirement age is not fixed which means that a person can continue working if he or she so wishes and if the capacity of employer so allows.

4.7.5 Redundancy

- a) *Does national law permit age or seniority to be taken into account in selecting workers for redundancy?*

Article 100 of the Employment Relationship Act sets criteria for selecting workers for redundancy. The primary criterion is the professional education of the employee and his or her work qualifications, as well as additional knowledge and abilities required. Age or seniority discrimination in selecting workers for redundancy is in general not permitted, as specified in the judgment of Higher Labour and Social Court, No. Pdp

402/2007 of 19 March 2008. In this case the Court found that the assessment of the plaintiff as an employee who will soon retire puts the plaintiff in an unequal position due to her age. Termination of employment with an offer of new contract is therefore unlawful due to breach of the prohibition of discrimination.

Other criteria are length of work experience, performance at work, years of active employment, state of health, and social circumstances. These criteria can make redundancy less or more likely – depending on the criteria. E.g. if the person is better educated, performs better at work, has more working experience and additional knowledge and difficult social situation, redundancy is less likely; at the same time, if the person has more working experience, has more years of active employment, has more problems in health, he or she is also more likely to be older worker, which makes redundancy more likely. The criteria of work experience and years at work obviously indirectly discriminate on ground of age. It is, however, an example of positive discrimination since older workers are less likely to get a new job.

Furthermore, in accordance with article 236 of the Employment Relationship Act, older employees enjoy special protection. Namely, employees who are more than 55 (men) or 51 (women) years old cannot be dismissed without their consent. This protection continues until the actual retirement of the protected worker. However, this provision, which was incorporated into the legislation with the intention to protect older workers, has just the opposite effect and can be the cause of harassment on the basis of age, due to which workers resign and consequently lose unemployment indemnity payments.

b) If national law provides compensation for redundancy, is this affected by the age of the worker?

Compensation for redundancy, in cases covered by law, is not affected by the age of the worker (since it depends on the years working at the employer and the salary).

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

Does national law include any exceptions that seek to rely on Article 2(5) of the Employment Equality Directive?

The Defense Act prohibits striking by military personnel during military duty. Workers performing administrative and specialist tasks have to assure undisturbed performance of military and other tasks and duties during a strike, where these tasks and duties are connected to fundamental duties of citizens, private businesses, institutions and other organizations relating to national defense as well as the undisturbed performance of activities relating to civil defense.



The Police Act⁸³ requires police officers to ensure during a strike, inter alia, the following tasks: safeguarding life and the personal safety of people and property; prevention, detection and investigation of criminal acts; insuring public safety and securing national borders and carrying out border controls. According to this act, the Government also has to assess these restrictions on the right to strike and compensate for them in the form of increased salary.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

There are four additional exceptions stipulated by Article 2.a of the Act Implementing the Principle of Equal Treatment. Discrimination in areas of social protection, including social security and healthcare; social advantages; education; and access to and supply of goods and services which are available to the public, including housing is allowed in relation to special protection of women during pregnancy and motherhood (indent 1, §3); ensuring goods and services exclusively or predominantly to representatives of one gender, if such difference of treatment is justified by a legitimate objective and means to achieve this objective are appropriate and necessary (indent 2, §3). Discrimination on the grounds of gender, race, ethnicity and ethnic origin in the same areas is also allowed in relation to insurance and financial services connected to them, regulated by laws in the field of insurance pursuant the Council Directive 2004/113/EC. And last, the provision includes a general clause stating that difference in treatment is allowed if foreseen by a special law adopted pursuant the European Union acquis.

⁸³ *Zakon o policiji – Uradno prečiščeno besedilo* [Police Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 102/2004.

5 POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

- a) *What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to any important case law or relevant legal/political discussions on this topic.*

Article 6 of the Act Implementing the Principle of Equal Treatment states that positive action consists of temporary measures, defined by law, designed to prevent a less favourable position for persons with a particular personal circumstance or to compensate for a less favourable position (§1). Further, the law stipulates two different forms of positive action: i) positive measures which intend to give priority to persons with a particular personal circumstance and are used in cases when there is an obvious under representation of persons with a specific personal circumstance; and ii) incentive measures which provide special incentives or benefits to person in a less favourable situation (§2). The areas to which the provisions apply are not mentioned, however, concerning the areas protected by this law, in all these areas positive action measures can take place.

- b) *Do measures for positive action exist in your country? Which are the most important? Please provide a list and short description of the measures adopted, classifying them into broad social policy measures, quotas, or preferential treatment narrowly tailored. Refer to measures taken in respect of all five grounds, and in particular refer to the measures related to disability and any quotas for access of people with disabilities to the labour market, any related to Roma and regarding minority rights-based measures.*

1. Special measures for national minorities:

The position of the two officially recognized national minorities is regulated by the Constitution, ratified international documents, legislation and statutes of the municipalities. The Italian and Hungarian national minorities enjoy some special rights in addition to all human rights and fundamental freedoms. Roma are not considered a national minority at the same level as Italians and Hungarians, but are considered a special ethnic community with specific ethnic characteristics, such as language, culture, etc. Even though the Roma Community is not offered similar self-governance as the Hungarian and Italian National Community it is organized in the Roma Union of Slovenia. This is an umbrella organization for Roma associations. The Union has two offices, one in Murska Sobota for the region of Prekmurje, and one in Novo Mesto. As the Sinti community in Slovenia does not consider itself as part of Roma community, while the authorities consider them exactly that, they have no official venue of their own through which they could participate in the process of improving of their situation. Human Rights Ombudsman considers such attitude of the state unjustifiable discrimination.⁸⁴

⁸⁴ Human Rights Ombudsman Annual Report 2008, p. 47.

Article 65 of the Constitution stipulates that the status and special rights of the Roma living in Slovenia are regulated by law. Government social programs⁸⁵ provide measures aiming at ensuring the equality of the Roma. One of the most important and still current is the Government program for assisting Roma people from 1995.⁸⁶ On 30 March 2007 Roma Community Act⁸⁷ was adopted. It provides for establishment of Council of Roma Community of the Republic of Slovenia which represents the interest of Roma community in a dialogue with state bodies. It consists of 21 members (14 representatives of Roma Union of Slovenia and seven representatives of local Roma communities). The act also sets financial obligations of the Republic of Slovenia and its local self-governing communities for guaranteeing special rights of Roma community. In the legislation there are additional provisions concerning Roma in twelve different organic laws. One of them, the Local Self-Government Act,⁸⁸ stipulates that Roma people, who are autochthonous (indigenous) to a particular area shall have at least one representative in the municipal council (Article 39, §5). The term “autochthonous” refers to peoples who have lived in Slovenia for centuries, in a territory in which these peoples do not consider themselves to be foreigners or immigrants. The Act was put under constitutional review due to distinguishing between those Roma who are autochthonous and those who are not. The complaint was filed by Human Rights Ombudsman of the Republic of Slovenia.

The Local Self-Government Act lists 20 municipalities which were obliged to ensure that the Roma community has a representative in the local council until regular local elections in 2002. Now all municipalities except one (Grosuplje) have a Roma representative in the local council. This distinction between Roma communities on the basis of being autochthonous is in fact discriminatory as was also noted by the UN Human Rights Committee, Amnesty International and the European Roma Rights Centre.⁸⁹ The Local Self-government Act also provides for committees on Roma issues as working bodies of the local councils, although these are not obligatory.

Another measure for promoting the position of the Roma community is included in the Act on Radio Television Slovenia,⁹⁰ which entered into force on 12 November 2005 and stipulates that gradually Roma radio and television shows are to be

⁸⁵ For example, the Government Employment Program for Roma entitled “Equal opportunities” was produced by the Ministry of Labor in May 2000 and is intended to promote integration into society and increase employment.

⁸⁶ This program primarily encompasses attempts to regulate their living conditions, their integration into society at large, to provide opportunities for education, employment, and preventive health protection, and for the development of culture, services providing information and preservation of their identity and traditions.

⁸⁷ *Zakon o romski skupnosti v Republiki Sloveniji* [The Roma Community Act], Official Journal of the Republic of Slovenia, No. 33/2007.

⁸⁸ *Zakon o lokalni samoupravi* [The Local Self-government Act], Official Journal of the Republic of Slovenia, No. 57/1994, 14/1995, 26/1997, 70/1997, 10/1998, 74/98.

⁸⁹ <http://www.errc.org/cikk.php?cikk=2384>.

⁹⁰ *Zakon o Radioteleviziji Slovenija* [The Radio and Television Slovenia Act], Official Journal of the Republic of Slovenia, No. 96/2005.



included on the public channel, RTV. According to Article 3 of this act, public service includes the making, preparation, and broadcasting of radio and television programs for the Roma ethnic community.

According to Article 3 of the Promotion of Balanced Regional Development Act,⁹¹ which entered into force on 5 November 2005, one of the goals of regional development is to include developing areas populated by both autochthonous minorities and Roma communities. It also stipulates that a Roma representative should be a member of the Regional Development Council in regions populated by Roma communities (representatives to be appointed by the Roma community). Article 25 of the Organization and Financing of Education Act sets competences of the Council of Experts of the Republic of Slovenia for General Education in adopting supplementary (additional) programs for Roma children. Article 81, §7 provides resources to be allocated from the national budget for various activities and projects (funds for writing and financing schoolbooks, resources for educating the Roma and partial funding for their education in primary schools).

The special rights of Italian and Hungarian national minorities are either collective rights, awarded to the whole community, or individual rights awarded to members of the national minority. The Constitution guarantees autochthonous Italian and Hungarian minorities the right to freely use their national symbols and the right to establish organizations to foster economic, cultural, scientific and research activities, as well as activities associated with the mass media and publishing.

In accordance with the Constitution and the Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act,⁹² members of national minorities have the right to education in the minority language and the right to adopt and to promote education. This act defines geographic areas where bilingual schooling is compulsory. The same act stipulates that members of the Italian or Hungarian national minorities must be among the teachers who perform consultancy and supervisory work in educational organizations (Article 28). The Constitution guarantees the right to foster contacts with the wider Italian and Hungarian communities living outside Slovenia, and with Italy and Hungary respectively. The State shall give financial support and encouragement to the implementation of these rights (Article 64). The Italian and Hungarian ethnic communities shall be directly represented at local level and shall also be represented in the National Assembly (Article 64, Paragraph 3).

⁹¹ *Zakon o spodbujanju skladnega regionalnega razvoja – Uradno prečiščeno besedilo* [Promotion of Balanced Regional Development Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 83/2003.

⁹² *Zakon o posebnih pravicah pripadnikov italijanske in madžarske narodne skupnosti na področju izobraževanja* [The Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act], Official Journal of the Republic of Slovenia, No. 12/1982.



Self-governing communities established by the Self-governing Ethnic Communities Act⁹³ is important for the development of culture, language and schooling and implementation of special rights of national minorities. Roma communities are not offered similar self-governance or the representative in the National Assembly.

2. Special measures in labour and social security legislation

The Employment Relationship Act imposes special protection of some categories of employees:

Juveniles: prohibition of night work and certain types of work (Articles 197 and 195); more holiday entitlement, weekly rests, breaks during working hours (Articles 196 and 198); prohibition on heavy work (Article 195);

Older employees (over 55 (men) or 51 (women) years): option of partial retirement and part-time work (Article 202); overtime and night work cannot be undertaken without the consent of the employee (Article 203); employment relationship cannot be terminated without the consent of the employee, until the employee fulfils the conditions for entitlement to old-age pension (Article 114). The only exception is if he or she is guaranteed the right to compensation from unemployment insurance until he or she fulfils the minimum conditions for an old-age pension. This protection does not apply in the case of the termination of the existence of the employer.

Persons with disability: under the provision of Article 199 of the Employment Relationship Act, persons with disabilities enjoy special rights according to Vocational Rehabilitation and Employment of Persons with Disabilities Act and the Pension and Disability Insurance Act. Those who are still able to perform some kind of work shall be granted another appropriate job (in accordance with Article 200 of the Employment Relationship Act, the employer must ensure the employee's transfer to another job appropriate for his remaining work capability), a part-time job, vocational rehabilitation, compensation for loss of earnings (Article 200), and protection from redundancy, unless there is no other appropriate job or part-time job (Article 116).

3. Special measures related to disability and any quotas for access of persons with disabilities to the labour market.

The Vocational Rehabilitation and Employment of Persons with Disabilities Act provides for different forms of employment for people with disabilities, in addition to measures and regulations. A worker with disabilities can e.g. claim a vocational rehabilitation program, including services, which are provided as a public service with the aim of qualifying workers with disabilities for suitable work, to employ workers with disabilities, to help them retain employment and to be promoted or to change career.

⁹³ *Zakon o samoupravnih narodnih skupnostih, Uradni list Republike Slovenije* [Self-governing Ethnic Communities Act], Official Journal of the Republic of Slovenia, No. 65/1994.



Vocational rehabilitation consists of counselling and motivating workers with disabilities to assume an active role and assistance in accepting their disability; preparing opinions about people with disabilities' level of ability for work, knowledge, working habits and professional interests; assistance in selecting suitable professional objectives and in searching for suitable work or employment; developing social skills and expertise; analyzing the position and working environment of a worker with disabilities and producing a plan for adapting it; and helping people with disabilities qualify for a specific job or selected profession. After the vocational rehabilitation program finishes, and based on an evaluation of the person with disabilities' chances of taking up work, the Employment Service provides assistance in seeking employment at suitable places of work or in companies employing people with disabilities, finding supportive or sheltered employment or incorporating them into active employment policy programs.

There is also a quota system in place for employing people with disabilities which applies to all companies (the mandatory proportion of people with disabilities to be employed out of the total of all employees working for a certain employer). The quota, which differs according to the main activity of the employer, was set by a Government regulation following a proposal by the Economic and Social Council. The duty for quotas applies to all companies which employ at least 20 employees (employers who have at least 20 employees are obliged to employ 2 – 6 % persons with disabilities, out of the total number of employees). Companies that do not meet the quota must pay contributions to the Fund for Promoting the Employment of Persons with Disabilities equivalent to 70% of the minimum wage for each person with disabilities that the employer should have hired according to the quota. The statistics show that in 2010 from employers with at least 20 employees the number of employers who would have to employ people with disabilities according to the quota requirements but do not is 2.200, the number of employers who meet the quota requirements was 1.370, and the number of employees who exceed the quota requirements by employing more people with disabilities than required was 1460. The number of employers who did not meet the quota requirements and decided to conclude a contract with a disability company (which in option provided for by the law) was 900 (disability company is a specific type of company in which at least 40 % of employees have a status of a person with disabilities; disability companies are governed by the Vocational Rehabilitation and Employment of Disabled Persons Act, which sets out certain benefits and specific duties for such companies). Others had the duty to pay to the Fund for Promoting the Employment of Persons with Disabilities. From this source the amount of money paid to this Fund in 2010 was 17,5 million EUR.⁹⁴

⁹⁴ Statistics for 2010 were provided by the Ministry of Labour, Family and Social Affairs on 22.2.2011.



6 REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

In relation to each of the following questions please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body).

Are there available statistics on the number of cases related to discrimination brought to justice? If so, please provide recent data.

- a) *What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)?*

With the enforcement of the Act Implementing the Principle of Equal Treatment, the Advocate of the Principle of Equality was introduced within the Office for Equal Opportunities on 1 January 2005.⁹⁵ The procedure conducted by the Advocate is informal and free of charge. After the Advocate finishes investigating an individual case, s/he issues an opinion about the circumstances of the case and recommendations. If the perpetrator does not follow the Advocate's recommendations within a certain timeframe or if the alleged offender doesn't provide the Advocate with appropriate explanations and additional information within a specified time-limit, s/he may pass the case to the relevant inspectorate (see below, Section 7). The Advocate is competent for examination of complaints on alleged discrimination on the grounds of gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance, in both public and private sphere.

Since the principle of equal treatment and the ban on discrimination is incorporated in the Constitution as the first provision among those ensuring fundamental human rights (Article 14), the Human Rights Ombudsman⁹⁶ is another body for lodging informal complaints and is an independent and unbiased form of informal protection available to individuals in relation to state authorities, local self-government authorities and bearers of public authority.

⁹⁵ With 1 April 2012 the Government Office for Equal Opportunities was abolished and its staff, including the Advocate of the Principle of Equality, was transferred to the Ministry of Labour, Family and Social Affairs.

⁹⁶ The basis for the institution of a Human Rights Ombudsman is found in Article 159 of the Constitution. The activities of the Human Rights Ombudsman are defined with *Zakon o Varuhu človekovih pravic* [Human Rights Ombudsman Act], Official Journal of the Republic of Slovenia, No. 71/1993, 15/1994, and the Rules of Procedure of the Human Rights Ombudsman, Official Journal of the Republic of Slovenia, No. 63/1995. The duties and competencies of the Ombudsman are based on the classical Scandinavian model.



Any person who believes that his/her human rights or fundamental freedoms (including the right to equal treatment) have been violated by an act or deed of a body may lodge a petition with the Ombudsman to start proceedings,⁹⁷ and the Ombudsman can also institute proceedings on his own initiative. The procedure is free of charge. By law, the Human Rights Ombudsman has the authority to obtain, from the state and other bodies which he may monitor, all information without regard to the degree of confidentiality, to perform investigations and in this capacity to call witnesses for questioning. He does not have the authority to monitor the work of judges and courts except in cases of improperly delayed procedures or clear abuse of power. It is only competent for matters from the public sphere; however, it can also monitor the activities of the state bodies in the reported cases from the private sphere. The Human Rights Ombudsman issues annual reports on the exercise of human rights, which are considered by the National Assembly. Complaints due to discrimination are often brought to the attention of the Ombudsman.

Discrimination can also be reported to inspectors competent for certain areas of social life (e.g. labour, health, goods and services etc.). However, the competencies for examining cases of discrimination by inspectors are not clear. The Act Implementing the Principle of Equal Treatment in Article 21, §1 states that the inspectorates are obliged to deal with cases of discrimination referred to them by the Advocate of the Principle of Equality. Therefore, they do not consider themselves competent for cases initiated directly by the victims, except for the labour inspectorate since the prohibition of discrimination is included in the Employment Relationship Act, the respect of which is monitored by the labour inspectorate.⁹⁸ The procedure before the inspector is free of charge.

Administrative procedure is used if a person was discriminated against on the grounds of gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance, by a decision or by other action by an administrative body. It is regulated by the General Administrative Procedure Act⁹⁹ which binds administrative organs and other state bodies, local government bodies and bearers of public authority. Any natural person or legal person in private or public law can be a party to an administrative procedure, who can file a request to begin proceedings, or against whom a claim is filed. A group of persons may also be a party, in as much as it can be holder of rights and duties (Article 42). In the administrative procedure, it is not obligatory for a party to be represented by a lawyer; any physical person with full legal capacity can represent them. Payment for applications and decisions is regulated by the Administrative Fees Act.¹⁰⁰

⁹⁷ The Rules of Procedure of the Ombudsman stipulate that the Ombudsman performs his work in the Slovenian language. However anyone who is not familiar with the Slovenian language may lodge a petition in his/her own language.

⁹⁸ Human Rights Ombudsman, Annual Report 2007, p. 40.

⁹⁹ *Zakon o splošnem upravnem postopku* [The General Administrative Procedure Act], Official Journal of the Republic of Slovenia, No. 80/1999, 70/2000, 54/2002, 73/2004.

¹⁰⁰ *Zakon o upravnih taksah – Uradno prečiščeno besedilo* [The Administrative Fees Act], Official Journal of the Republic of Slovenia, No. 40/2004.



The act provides for a possibility of tax exemption. Article 137 of the General Administrative Procedure Act states that if there are two or more parties with opposing interests involved in the procedure, the public official who is conducting the procedure, has to strive throughout the course of the proceeding for the parties to settle. The administrative court decides on the legality of individual actions and acts that pertain to the constitutional rights of the individual.¹⁰¹ It can ascertain the illegality of the act, prohibit such an act, grant compensation for damages and provide adequate measures in order to rectify interference with constitutional rights and to restore the previous state of affairs.

A civil procedure in accordance with the Civil Procedure Act shall be used for claiming material and immaterial damages arising from a violation of the principle of equal treatment on the grounds of gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance.

The parties may pursue a conciliation or mediation procedure. Article 309 of this act states that if someone intends to bring an action, he can firstly try to reach a compromise at a local court, situated in the area where the opposite party has residency. The costs of such a procedure are covered by the person submitting the case. According to Article 305a of the Civil Procedure Act, after the court receives a response to a law suit, it is obliged to arrange a conciliation hearing before the trial. For alleged discrimination in the field of employment or social services, the procedure before the labour and social courts is available, and is regulated by the Labour and Social Courts Act.¹⁰²

Criminal procedure is regulated by the Criminal Procedure Act, according to which cases of discrimination on the grounds of ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other circumstance, that amount to criminal acts, can be tried. Hate speech is defined in Article 297 of the new Penal Code, stating that one who publicly encourages or incites ethnic, racial, religious or other hatred or intolerance, or incites to another type of intolerance due to physical or intellectual deficiencies or sexual orientation, shall be sanctioned with imprisonment up to two years. The same punishment is foreseen for those who publicly spread ideas of prevalence of one race over another or cooperate at any racist activity, or deny, diminish the meaning of, approve of, ridicule or advocate for genocide, holocaust, crime against humanity, war crime, aggression or other criminal acts against humanity. If these acts are published in public media, the editor or his deputy are also punished, except in case of a live transmission and the lack of possibility to prevent these acts.

¹⁰¹ *Zakon o upravnem sporu* [The Judicial Review Act], Official Journal of the Republic of Slovenia, No. 50/1997 and 70/2000, 11/2003.

¹⁰² *Zakon o delovnih in socialnih sodiščih* [The Labour and Social Courts Act], Official Journal of the Republic of Slovenia, No. 19/1994, 20/1998, 42/2002, 2/2004.



The Penal Code also stipulates two aggravated forms of these crimes – if they were committed in official capacity or with coercion, threat etc. In addition, Article 20 of the Protection of Public Order Act¹⁰³ foresees punishment for inciting to ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation. The criminal procedure also enables the victim of a criminal offence to claim damages in the so-called adhesive procedure (regulated by Articles 100 to 111), provided that such a claim would not cause a delay in the criminal procedure itself. Under this procedure, victims can take over the prosecution of certain criminal offences if the public prosecutor withdraws the charges. Before requesting the institution of criminal proceedings, the state prosecutor can assign a minor criminal offence to conciliation procedures, but he has to consider the type and nature of the offence and also the personality of the offender. If a compromise is reached, the prosecutor will dismiss the case. According to Article 443A of the Criminal Procedure Act, the judge can interrupt the trial during criminal procedures for a maximum of 6 months, if the state prosecutor announces that he is going to assign the matter to a conciliation procedure.

Parties can represent themselves in the first instance procedures. Alternatively, they can choose anybody to represent them before the local court (dealing with disputes over subjects with a maximum value of 20.000 EUR), while in other courts, the authorized person has to be an attorney at law or a person with bar exam. A special mitigating provision is in procedures before labour or social courts, where a worker can be represented by a trade union representative, if the latter has acquired the title of a graduate lawyer. In procedures before a higher court or the Supreme Court, a trade union representative can only appear if he has passed the bar examination.

At filing a lawsuit the victim has to pay a fee defined on the basis of the Court Fees Act¹⁰⁴ according to the value of the subject of the dispute. In social or labour disputes which do not relate to property, the amount of the fee is 20 EUR. Court fees are not payable in collective labour disputes and some social disputes.

In addition, a worker does not have to pay a court fee for individual labour disputes about entering employment, existing employment or termination of employment. Claims, decisions and appeals in procedures relating to the rights of persons with disabilities are free from court fees under the Vocational Rehabilitation and Employment of Persons with Disabilities Act. The unsuccessful party also has to pay to the opposite party other expenses incurred. The court can determine that the employer has to bear all the expenses for taking evidence, even if the worker did not wholly succeed with their claim in the given labour dispute. In disputes over the termination of employment, the employer covers the expenses of the procedure irrespective of the outcome of the procedure.

¹⁰³ *Zakon o varstvu javnega reda in miru* [Protection of Public Order Act], Official Journal of the Republic of Slovenia, No. 70/2006.

¹⁰⁴ *Zakon o sodnih taksah – Uradno prečiščeno besedilo* [The Court Fees Act – Official Journal of Republic of Slovenia], Official Journal of the Republic of Slovenia, No.20/2004.



Article 68 of the Labour and Social Courts Act, adopted on 19 December 2003 and which entered into force on 1 January 2005, determines that in social disputes over the right to social insurance and social security, the social insurance institution has to cover its expenses irrespective of the result of the action.

Since judicial proceedings for human rights cases are customarily expensive, individuals of poor financial means cannot afford the lengthy and expensive procedure. The Free Legal Aid Act¹⁰⁵ was adopted with intention of remedying this situation. This act enables individuals to acquire the services of an attorney at law at the expense of the State. The Judicial Tax Act (Article 13) includes the possibility of an exemption from judicial tax. An individual who proves that his survival or the survival of those who he is obliged to support would be jeopardized if he or she pays judicial taxes may be exempted from this payment.

Concerning the obligation to make courts accessible for people with disabilities and to make the writings of the court accessible in scripts or in other ways chosen by the person with disabilities, the 2010 Act on Equal Opportunities of People with Disabilities would apply.

In Slovenia potential plaintiffs are facing long-lasting trials due to large numbers of new matters filed every year, complicated legislation and court backlogs, which are deterring elements for the victims of discrimination with relation to initiating court procedures. However, there have been significant improvements in the last years. The time foreseen for the matter is shortening and the statistics show that the number of unresolved disputes fell on the lowest level since 1996. The expected time in which the matter would be resolved by the court was 6,6 months which is 1,2 months less than in 2010 and 2,9 months less than in 2009. In civil cases the expected time in which a civil case would be resolved was 10,2 months in 2011, comparing to 12,7 months in 2010, 15,8 in 2009, 17,6 in 2008 and 21,6 in 2007. The goal of the courts is to eliminate all court backlogs by the end of 2012.¹⁰⁶

Any person who believes that his/her human rights and basic freedoms have been violated by a particular act of a state body, local community body or statutory authority may lodge a constitutional complaint with the Constitutional Court.

¹⁰⁵ *Zakon o brezplačni pravni pomoči* [The Free Legal Aid Act], Official Journal of the Republic of Slovenia, No. 66/2001, 50/2004.

¹⁰⁶ Annual report of the Supreme Court of the Republic of Slovenia for 2011, available at http://www.sodisce.si/mma_bin.php?static_id=20120315101344.



Both the Constitution and the Constitutional Court Act state that the constitutional complaint is admissible only if previous legal remedies have been exhausted¹⁰⁷ and if the complaint was lodged within 60 days of the act.¹⁰⁸

If the complaint is accepted, the panel or Constitutional Court may suspend the application of the particular act if its implementation would cause irreparable damage, or they may decide to suspend a certain law or other regulation on the basis of which the individual act was adopted. The Constitutional Court shall then issue a decision declaring that the appeal was unfounded or it shall accept the appeal and partly or completely revoke and rescind the act which was the subject of the appeal and return the matter to the competent body. If the Constitutional Court abrogates an individual act, it may also rule on a contested right or freedom if such a procedure is necessary in order to undo the consequences that have already occurred on the basis of the individual abrogated act, or if such is the nature of the constitutional right or freedom, and if a decision can be reached on the basis of information on record.¹⁰⁹ According to Article 22 of the Constitutional Court Act, the Constitutional Court is also competent for assessing the constitutionality and legality of laws and other regulations with the constitution, ratified international treaties and the general principles of international law.

b) Are these binding or non-binding?

The procedures described above are binding, except for the procedure before the Advocate of the Principle of Equality and the Human Rights Ombudsman.

c) What is the time limit within which a procedure must be initiated?

The complaint to the Advocate of the Principle of Equality has to be made in one year since the alleged discrimination took place. There is no time limit for lodging a complaint to the Human Rights Ombudsman. The time limit to report a small offence to the inspectorate in any field is two years.

In the field of employment, Article 204 of the Act states that should the employer not fulfil his obligations arising from the employment relationship and/or not rectify any violation within eight working days of receipt of the worker's written request, the worker may request judicial protection before the competent labour court within 30 days from the expiry of the time limit stipulated for the fulfilment of obligations and/or rectification of the violation by the employer. The Employment Relationship Act

¹⁰⁷ The Constitutional Court may exceptionally decide on a constitutional appeal if a violation is probable and if certain irreparable consequences would occur to the appellant as a result of the implementation of a particular act.

¹⁰⁸ In special cases, the Constitutional Court may exceptionally rule on a constitutional complaint which has been lodged after the time limit. In such circumstances, judges become aware of cases with different backgrounds and consequences that derive from a violation. The time limit cannot therefore be interpreted strictly and the judges should consider when the relationship ended.

¹⁰⁹ *Zakon o ustavnem sodišču* [The Constitutional Court Act], Official Journal of Republic of Slovenia, No. 15/1994, 64/2001.

further stipulates that claims arising from an employment relationship shall lapse after five years. The same judicial protection applies the public sector. The procedure is defined in Article 25 of the Civil Servants Act, which states that a civil servant may request judicial review in a competent labour court within 30 days after being served with the order of the appellate commission or within 30 days after the deadline for issuing the order of the appellate commission has expired.

The claim for compensation in relation to employment or torts law can be filed in three years since the victim learnt about the damage, but not later than five years since the damage occurred.

The lawsuit to the Administrative court can be filed in 30 days after the final administrative decision has been served to the victim.

The report on a crime has to be filed within the statutes of limitation, specified in the Penal Code, the length of which depends on the type of crime and punishment foreseen for various crimes.

d) Can a person bring a case after the employment relationship has ended?

According to the Employment Relationship Act, a person can bring a case after the employment relationship has ended.

However, prior to the judicial review, an appeal against the decision on the rights and obligations arising out of civil servant's employment relationship, has to be made to the Appeals Commission with the Government of the Republic of Slovenia. Judicial redress can be sought only after the Commission gives a decision on the appeal.

In employment relationships dispute, the employer has to carry its costs of the procedure (even if the employee loses the dispute). An employee can seek legal support with the trade union, of which he/she is member. He can also engage an attorney at law to represent him/her at court. If latter is the case legal fees are also to be bared by the employee (they are reimbursed by the other party if the employee wins the dispute). In addition to provision of Employment Relationship Act already mentioned in the report there is always the possibility of bringing a case under the general provisions of Act Implementing the Principle of Equal Treatment. The Advocate or the Labour Inspectorate can deal with the complaint, in accordance with their own administrative procedural rules, filed against the discriminator, even after the employment relationship has ended.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

Please list the ways in which associations may engage in judicial or other procedures

- a) *What types of entities are entitled under national law to act on behalf or in support of victims of discrimination? (please note that these may be any association).*

The Act Implementing the Principle of Equal Treatment in Article 23 states that non-governmental organizations shall have the right to take part in judicial and administrative proceedings initiated by alleged victims of discrimination. Non-governmental organizations are all private non-profit entities, which in Slovenian can be established as associations, institutes or foundations. Due to the lack of specificity of this provision the NGOs' involvement however depends on other more specific provisions in procedural legislation, as described under the next question. The 2010 Act on Equal Opportunities of People with Disabilities does not address this issue.

- b) *What are the respective terms and conditions under national law for associations to engage in proceedings on behalf and in support of complainants? Please explain any difference in the way those two types of standing (on behalf/in support) are governed. In particular, is it necessary for these associations to be incorporated/registered? Are there any specific chartered aims an entity needs to have; are there any membership or permanency requirements (a set number of members or years of existence), or any other requirement (please specify)? If the law requires entities to prove "legitimate interest", what types of proof are needed? Are there legal presumptions of "legitimate interest"?*

As stated under the previous question, the general provision in the Act Implementing the Principle of Equal Treatment is too vague to be operational in practice. Therefore, the rules in place for each particular legal procedure apply in such cases. The Civil Procedure Act, which is used for civil procedures, and also when appropriate for the proceedings at the Constitutional Court or at the Labour and Social Court, states that a third party who has a legal interest (meaning a personal interest based on statute or other regulations) can intervene in support of one of the parties at any time until the end of the proceedings. Such third party is a so-called "side intervenient" (stranski intervenient). This is the only case in which an NGO can officially get involved in support of the party to the court procedure.

Standing of associations and other entities on behalf of the victim depends on provisions with which different types of legal procedures are governed. They are described in detail under question 6.2.e.

- c) *Where entities act on behalf or in support of victims, what form of authorization by a victim do they need? Are there any special provisions on victim consent in cases, where obtaining formal authorization is problematic, e.g. of minors or of persons under guardianship?*

In all cases of representation the NGO or the individual need an authorization, similar to the power of attorney. There are no rules on the exact form of such authorization,

however, it has to be clear from the authorization for what procedures and matters the authorization has been signed by the represented person.

There are no special provisions on victim's consent, however, the victim has the right to terminate authorization if he or she does not agree with the acts of the authorized representative.

d) *Is action by all associations discretionary or some have legal duty to act under certain circumstances? Please describe.*

There are no provisions that would bind certain associations to act under certain circumstances.

e) *What types of proceedings (civil, administrative, criminal, etc.) may associations engage in? If there are any differences in associations' standing in different types of proceedings, please specify.*

Different rules are in place for an entity to get involved in the proceedings on behalf of the party to the court procedure. In civil procedures the only legal entity that can represent the party to the procedure is a law firm. Individuals who can represent the party are attorneys and lawyers who passed the state legal exam, and in county court procedures also anybody with a legal capacity (i.e. capacity to perform official acts without a guardian). However, these are not legal entities but individuals. In criminal proceedings, the victim can be represented by anyone with legal capacity. In administrative proceedings, according to the General Administrative Procedure Act, the party to the procedure can be represented by anyone with legal capacity, who would in this case act on behalf of the party. It can be an individual, and it can also be a legal entity, however, in the latter case the NGO has to appoint an individual who will act on behalf of the party. Namely, according to Article 54, § 3 of the General Administrative Procedure Act, a professional organization which is recognized in certain activities directly connected with the relevant rights and duties of the party may represent this party during administrative proceedings. The party is also entitled to invite an expert in special circumstances, which could be relevant for NGOs knowledgeable in issues of anti-discrimination. This expert may provide explanations and legal advice on in support of the party concerning legal matters but is not entitled to represent the party (Article 61 of the General Administrative Procedure Act). In disciplinary procedures it is important to mention the role of trade unions in disciplinary procedures. Namely, according to Article 179 of the Employment Relationship Act, an employer must notify the employee's trade union of a disciplinary procedure in writing; if there is no such trade union or if the employee is not a member of it, the workers' council or the trade union organizer shall be notified. Furthermore, Article 208 of Employment Relationship Act stipulates that a trade union whose members are employed by a specific employer may appoint or elect a trade union organizer to represent the trade union before the employer. If no trade union organizer is appointed, the trade union is represented by its chairman. Trade union organizers have the right to exercise and protect the rights and interest of their

members vis-à-vis the employer. According to the Constitutional Court Act, societies and other associations do not have the right to challenge regulations that interfere with the legal status of their members or other persons. They only have legal interest if the regulation in question interferes directly with their rights, legal interests or their status as a legal person. The Constitutional Court exceptionally recognizes a society or association's legal interest in filing a petition in the name and in the interest of its members when it has been established with the purpose for which the action has been filed – in this case there is a requirement of chartered aims (for example the Society of Erased Persons¹¹⁰). The Helsinki Monitor for Human Rights, for example, can not represent the petitioners.

Pursuant to Article 86 of the Civil Procedure Act, which is applied mutatis mutandis concerning representation in proceedings before the Constitutional Court, only a natural person can be authorized to represent a party. A legal entity can represent a party if it is a law firm.¹¹¹

In general, for the entities to be included in any of these procedures, they have to be officially established and registered. There is, however, no membership and permanency requirements.

The situation is different with the informal procedure before the Advocate of the Principle of Equality. There the NGOs can act either on behalf in support of the victim of discrimination. There are no specific rules on whether an entity has to be registered to act on behalf of or in support of the victim in the procedure before the Advocate.

To conclude, according to the national law, the only legal entity that can represent before courts is a law firm, meaning that NGOs, as legal persons, do not have legal standing at the court. The only way to involve an NGO is for the victim to authorize one of the employees of the NGO to represent them in court. In case of the later there are two possibilities: an NGO can employ an attorney at law, in which case he/she as a physical person will be representing the victim. However, NGOs usually do not employ attorneys at law, therefore the second possibility is more likely to occur: employees of NGOs can be authorized to represent a victim, however only in civil disputes of value up to 20.000 EUR, in cases of victims of crimes, or in administrative procedures (as in higher instances only an attorney at law can be a representative). In all the other procedures they do not have legal standing, except in some procedures if they passed the state legal exam.¹¹² The European Commission considered this in accordance with the directives as the infringement procedure initiated due to this and other matters, has been terminated.

¹¹⁰ Constitutional Court decision no.U-I-296/02-8 of 20.11.2003.

¹¹¹ Constitutional Court decision no. U-I-246/02 of 3.4.2003.

¹¹² See legal opinion available at

http://www.etcgraz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lan_ki/prevod_pravnega_mnenja.doc.

- f) *What type of remedies may associations seek and obtain? If there are any differences in associations' standing in terms of remedies compared to actual victims, please specify.*

There are no special remedies that the associations engaged in the procedures may seek that would be different from remedies generally in place for various proceedings.

- g) *Are there any special rules on the shifting burden of proof where associations are engaged in proceedings?*

There are no special rules on the shift of the burden of proof where associations are engaged in the proceedings.

- h) *Does national law allow associations to act in the public interest on their own behalf, without a specific victim to support or represent (actio popularis)? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

Actio popularis is not provided for in the Slovenian legislation. The only procedure in which an association could act even if there is no victim yet is the informal procedure before the Advocate of the principle of Equality. However, this would not constitute an action (a lawsuit).

- i) *Does national law allow associations to act in the interest of more than one individual victim (class action) for claims arising from the same event? Please describe in detail the applicable rules, including the types of associations having such standing, the conditions for them to meet, the types of proceedings they may use, the types of remedies they may seek, and any special rules concerning the shifting burden of proof.*

The rules for class actions are identical to the rules with individual procedure. All the victims have to be identified, the only difference is that there is more than one. The only special provision which is in place for class actions concerning identical cases is the so-called exemplary action, which is similar to the pilot judgment procedure conducted by the European Court of Human Rights. In such exemplary procedure the court may first decide in one exemplary case which is identical to all other cases (which are in the meantime put on hold), and the decision in this first case affects the decision in all the other similar cases. This procedure is defined in the area of employment and social rights and is governed by the Labour and Social Courts Act (Article 40).



6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).

The Act Implementing the Principle of Equal Treatment states in Article 22, §2 that if a person who claims discrimination states facts in judicial and administrative proceedings, as well as before other competent bodies, that justify the claim that the ban on discrimination (including harassment) has been violated, the alleged offender must prove that he or she did not violate the principle of equal treatment or the ban on discrimination in the case being heard.

Further, Article 6, §4 of the Employment Relationship Act states that when a candidate or employee claims facts during a dispute which justify the assumption that the prohibition of discrimination (including harassment), the burden of proof rests with the employer. Article 45, §3 has the same provision. In criminal law, the burden of proof lies with the public prosecutor or private prosecutor since it would be inappropriate if it were the defendant who had to prove that there was no basis for their conviction. Furthermore, such a rule would be contrary to the principle of presumption of innocence.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to people other than the complainant? (e.g. witnesses, or someone who helps the victim of discrimination to bring a complaint).

Article 3, §2 of the Act Implementing the Principle of Equal Treatment prohibits victimization stating that discriminated persons and persons assisting victims of discrimination should not be exposed to negative consequences for acting against discrimination (prohibition of retaliation). The same provision is included in Article 6, §8 of the Employment Relationship Act. In addition, Article 16 of the Act Implementing the Principle of Equal Treatment sets out the actions to be taken by the Advocate of the Principle of Equality in relation to the application. In the course of the examination of the case the Advocate shall order in writing the legal person or other legal entity at which the violation of the ban on discrimination allegedly occurred, to apply appropriate measures for protection of the discriminated person or person assisting the victim of discrimination, from victimization or adverse consequences that have resulted from victimization. In the event that an alleged offender has not followed the Advocate's order and the person is still subjected to victimization, and the case has been passed to or examined by the competent inspector, the inspector shall have the right and duty to prescribe appropriate measures that, in the circumstances that have arisen, protect the person concerned from victimization, or

to prescribe the rectification of the adverse consequences of victimization (Article 21, §3).

Article 76 of the Employment Relationship Act states that after ending a labour relationship, the employer shall return to the employee all his or her documents and shall issue him or her a paper certifying the type of work the employee was performing. The employer must not include any information in the certificate that would render it more difficult for the employee to conclude a new labour relationship. If an employer insults an employee or acts violently, or if the employer does not prevent such behaviour from other employees, the employee affected may, according to Article 112 of the Employment Relationship Act, end the contract without notice after eight days if he has notified the employer and the Labour Inspectorate in writing. Article 113 and 210 of the Employment Relationship Act protect trade union representatives from losing their jobs, reductions in their wages, disciplinary proceedings or being placed in a worse position because of their trade union activities.

The rule of the shift of burden of proof applies to both prohibition of discrimination and prohibition of victimization, in accordance with Articles 22 and 3. of the Act Implementing the Principle of Equal Treatment.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

- a) *What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.*

Article 26 of the Constitution grants everyone the right to compensation for damage caused through unlawful actions in connection with the performance of any function or other activity by a person or body performing such a function or activity under state authority, local community authority or as a bearer of public authority. Any person suffering damage also has the right to claim compensation directly from the person or body that has caused the damage.

In accordance with Article 22, §1 of the Act Implementing the Principle of Equal Treatment, in cases of violations of the prohibition of discrimination discriminated persons may start judicial and administrative procedures and have the right to compensation in accordance with the general principles of tort law. Article 24 of the same act defines small offences and sanctions for discrimination. It states that commission or omission that occurred at the execution of laws and other rules, collective agreements and general acts regulating each individual area of social life, which includes all signs of discrimination in accordance with the definitions of direct and indirect discrimination, instructions to discriminate and harassment, is a small offence for which the perpetrator shall be fined. It needs to be stressed that the wording of the provision (“at the execution of the laws...”) is problematic since it

indicates that sanctions might be imposed in cases when discrimination occurred by conduct that does not represent “execution of the law” (e.g. conduct of private employers). The provision sets different fees for small offences depending on the perpetrator: A natural person who commits such small offence shall be fined from 250 to 1.200 EUR, while a legal person or an individual entrepreneur, at which the small offence occurred, from 2.500 to 40.000 EUR. An official of a state body or local community, where the small offence occurred, shall be fined from 250 to 2.500 EUR. The size of the fine depends on the seriousness of offence and negligence or intent on the part of the offender.¹¹³

The fine contributes towards state revenue. Article 25 of the Act Implementing the Principle of Equal Treatment states that in addition to that a law regulating a certain area may define other offenders and prescribe sanctions for small offences within the limits from the Article 24.

Article 6, §7, of the Employment Relationship Act stipulates the employer’s liability for damage in accordance with the provisions of tort law, when the employer infringes an anti-discrimination provision. Article 81, §4 of this act states that discriminatory termination of a contract (with or without a notice period), is not valid. Article 229, §1 of this act states that an employer, who is a legal person or an individual entrepreneur, shall be fined with a penalty from 3.000 to 20.000 EUR, for putting a job seeker or an employee in unequal position.

Article 131 of the Penal Code prescribes punishment of individuals who commit a criminal offence of violating equality. In accordance with Article 131, §2, anyone who persecutes an individual or an organization due to their advocacy of equality, shall be punished. In the event of an offence under the first or the second paragraph of Article 131 being committed by an official through the abuse of office or of official authority, such an official shall be sentenced to imprisonment for a maximum term of three years. The provision of Article 116 of the Penal Code specifically defines criminal act of murder committed due to violation of the equality and prescribes a sentence of imprisonment of at least 15 years. Penal Code in Article 265 states that one who intentionally causes severe pain or suffering for a reason based on violation of equality, shall be sanctioned with imprisonment from one to ten years. If this is caused by a person in official capacity, the sanction foreseen is imprisonment from three to twelve years. There are no cases in relation to these provisions yet. Article 297 of the Penal Code stipulates that anyone who publicly encourages or incites ethnic, racial, religious or other hatred or intolerance, or incites to another type of intolerance due to physical or intellectual deficiencies or sexual orientation, shall be sanctioned with imprisonment up to two years. The same punishment is foreseen for those who publicly spread ideas of prevalence of one race over another or cooperate at any racist activity, or deny, diminish the meaning of, approve of, ridicule or advocates for genocide, holocaust, crime against humanity, war crime, aggression or

¹¹³ *Zakon o prekrških - Uradno prečiščeno besedilo* [Minor Offences Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 55/2005.



other criminal acts against humanity. If these acts are published in public media, the editor or his deputy are also punished, except if it was a live transmission and it was not possible to prevent these acts. So far there were only two cases with regard to hate speech (prosecuted as incitement to hatred, violence and intolerance) in Slovenia, both perpetrated against Roma. In both cases the perpetrators received suspended sentence of imprisonment. There was also one case of homophobic crime, also prosecuted under incitement to hatred violence and intolerance, perpetrated against a gay-friendly café Open.

The Penal Code also stipulates two aggravated forms of these crimes – if they were committed in official capacity or with coercion, threat etc. Materials and objects which contain messages with the content described in Article 297, §1 as well the facilities for their production, duplication and distribution, are to be confiscated. Article 198 of the Penal Code states that anyone who limits or restricts a person's right to free access to any position of employment on terms required by law, is fined or imprisoned for up to one year. Article 197 of the Penal Code imposes punishment of imprisonment of up to two years upon anyone who at the workplace or in relation to work with sexual harassment, psychological violence, mobbing or unequal treatment causes humiliation or fear to another employee.

If these acts have consequences such as psychological, psychosomatic or physical illness or decrease in work effectiveness of the employee, the punishment foreseen is imprisonment of up to three years.

Article 202 of the Penal Code punishes those who deliberately fail to act in line with the rules governing social security and therefore deprive an individual of a right or place a limit on it. An offender is punished with a fine or up to one year's imprisonment. There were no cases in relation to these provisions yet. In addition, Article 20 of the Protection of Public Order Act¹¹⁴ foresees punishment for inciting to ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation, with a fee up to 835 EUR.

Articles 230 to 233 of the Execution of Judgments in Civil Matters and Insurance of Claims Act¹¹⁵ regulate the reinstatement of an employee to his position of employment after this has been awarded following a legal procedure. Article 233 states that an employee who proposes to return to his position of employment could ask the court to decide that the employer has to pay him sums of money that correspond to his wage from the end of court proceedings until his reinstatement (the nature of the damages is pecuniary, and there is no statutory upper limit). The sum payable is stipulated by the court and should amount to the level of the employee's wage as if he had been working. The employee's right to demand past wages to be paid is not affected by this regulation. If the court decides partially in favour of the

¹¹⁴ *Zakon o varstvu javnega reda in miru* [Protection of Public Order Act], Official Journal of the Republic of Slovenia, No. 70/2006.

¹¹⁵ *Zakon o izvršbi in zavarovanju – Uradno prečiščeno besedilo* [The Execution of Judgments in Civil Matters and Insurance of Claims Act], Official Journal of the Republic of Slovenia, No. 40/2004.

employee, the employee can seek full compensation before the court. Sanctions for legal persons which are responsible are described in Section 3.1.2.

b) *Is there any ceiling on the maximum amount of compensation that can be awarded?*

The legislation contains no upper limit on compensation that can be awarded by a court decision. Compensation is a sanction which depends on the damage caused to the victim. The damage has to be proven and it is determined by the court. If awarded, the compensation is paid to the victim. In a case No. Pdp 729/2011 of 7 October 2011 decided by a Higher Labour and Social Court the court confirmed that in a compensation claim lodged due to alleged discrimination the plaintiff has to specify three out of four elements of responsibility for damages, i.e. unlawful act, damages, and nexus between unlawful acts and damages, while the fourth element is assumed and it is on the defendant to prove he is not responsible for damages. In this case the court rejected the claim as the plaintiff did not prove the first three elements, but only generally claimed discrimination and damages deriving from it. The case is also interesting because the plaintiff invoked directive 2000/78/EC which states that member states shall lay down the rules on sanctions (which may include compensation) applicable to infringements of the national provisions and shall take all measures necessary to ensure that they are applied. The court stated that the directive only sets the goals that the member states have to abide by, but they are free to choose the methods in which these goals will be achieved. The court stated that the method used by Slovenian legislation requires the plaintiff to prove the elements for responsibility for damages.

Fines, on the other hand, are financial punishment for the perpetrator and do not depend on the actual damage caused. The fines are paid into the state budget and, unlike the case for compensation an upper limit is imposed on the amount of any fine.

c) *Is there any information available concerning:*

- *the average amount of compensation available to victims?*
- *the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as required by the Directives?*

In the last year there have been several cases decided in which courts have awarded compensation to victims. A victim of discrimination on the grounds of disability (visual impairment) was awarded compensation in the amount of 3.500 EUR.

In this case discrimination occurred at workplace where the employer did not provide reasonable accommodation to the victim (decision of High Labour and Social Court No. Pdp 915/2008). In another case victimization was found in relation to a plaintiff who complained because he was not hired for a job post even though he fulfilled all conditions and had better qualifications than the selected candidate. The plaintiff was

awarded compensation in amount of 11.346,69 EUR (Judgement of Labour and Social Court in Ljubljana, No. I Pd 804/2007 of 6.1.2009). In the third case the court found discrimination (in a form of mobbing) by the employer and awarded the plaintiff compensation in amount of 6.000 EUR (Judgment of the Labour Court in Maribor No. Pd 828/2008 of 26.8.2009; the judgment is not yet final). In the latter two cases the grounds of discrimination were not established by the court.

This shows that awarded compensations in disputes in which plaintiffs are successful, are sufficiently high in order to consider sanctions dissuasive from a perspective of an individual (3000 EUR is equal to three average monthly net salaries in Slovenia). However, taking into account that the compensation is in most of the times not paid by a natural person but by a legal person (employer), compensations are not that high.

7 SPECIALISED BODIES, Body for the promotion of equal treatment (Article 13 Directive 2000/43)

When answering this question, if there is any data regarding the activities of the body (or bodies) for the promotion of equal treatment, include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly).

For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

- a) *Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin? (Body/bodies that correspond to the requirements of Article 13. If the body you are mentioning is not the designated body according to the transposition process, please clearly indicate so).*

In accordance with the Act Implementing the Principle of Equal Treatment adopted in April 2004 and amended in June 2007, the Advocate of the Principle of Equality functions within the Office for Equal Opportunities in order to examine cases of alleged violations of the prohibition of discrimination, and to provide persons with assistance on issues of discrimination. In accordance with Article 9 of the same act, the Council of the Government for the Implementation of the Principle of Equal Treatment was established first for the mandate 2005-2009 and then for the mandate 2009-2013. The Advocate of the Principle of Equality started working on 1 January 2005, whereas the Council for the Implementation of the Principle of Equal Treatment held its first session in May 2005. Both bodies cover all grounds covered by the Act Implementing the Principle of Equal Treatment and are not only limited to race and ethnicity. There are no equality bodies whose mandate is limited to the promotion of equal treatment only on the grounds of racial or ethnic origin. The above mentioned Act also imposes additional duties on the Government Office for Equal Opportunities,¹¹⁶ a Government body which has in the past been limited to the field of equal treatment of women and men. The Act expands its activities to coordinating the activities of individual ministries and government services related to the implementation of the Act as well as performing technical and administrative duties for the Council (Article 10). In addition to its responsibilities for promoting equal treatment of men and women, the Office's work entails coordinating policy formulation and drafting regulations for preventing and suppressing discrimination, particularly by transposing EU regulations on the equal treatment of persons regardless of the racial or ethnical origin and general frameworks for equal treatment in employment and work. The Office for Equal Opportunities, however, has no specific strategies on any of the grounds protected by the directive, except for gender. With 1 April 2012 the Government Office for Equal Opportunities was abolished and its staff, including the Advocate of the Principle of Equality, was transferred to the Ministry of Labour, Family and Social Affairs.

¹¹⁶ Website address: <http://www.uem-rs.si>.

The 2010 Act on Equal Opportunities of People with Disabilities does not include any reference to the Advocate of the Principle of Equality. The Advocate could, however, invoke this act if relevant for the complaint addressed to him or her.

- b) *Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Is the independence of the body/bodies stipulated in the law? If not, can the body/bodies be considered to be independent? Please explain why.*

In accordance with Article 11.a of the Act Implementing the Principle of Equal Treatment, the Advocate is a special civil servant position, subject to rules in the area of civil servants in state bodies and the system of salaries in public sector, except for the matter regulated differently with this act. The Advocate is nominated by the Government for the period of five years, upon the proposal of the Director of the Government Office for Equal Opportunities and on the basis of public competition.

The public competition has to be completed three months before the time limit for nomination of the Advocate. The existing Advocate can be re-nominated without public competition. The Advocate does not have its own budget, but is financed from the budget of the Office for Equal Opportunities. The budget, which is actually provided for the activities of the Office for Equal Opportunities, is fixed by the "Republic of Slovenia Budget Implementation Act" for each separate budget period. The Advocate is a civil servant employed by the Office for Equal Opportunities, and is therefore selected through public competition in accordance with the Civil Servants Act. The conditions for the Advocate are: university degree of social or humanistic area or higher education and three years of working experience in the area of equal opportunities and human rights. In the event of temporary absence of the Advocate, the Government authorizes another person that fulfils the stated conditions for performing the tasks of the Advocate. In accordance with Article 11.c of this act, the Advocate can be dismissed by the Government upon the proposal of the Director of the Government Office for Equal Opportunities before the expiry of the five year period if he or she so requests, in case of termination of employment of the Advocate by agreement or notice of the Advocate, if he or she does not perform the tasks in accordance with the law (i.e. if the tasks are not performed professionally or within reasonable time limits), or after the expiration of the five year term. The rules on nominating and financing of the Advocate of the Principle of Equality in the future, due to its transfer to the Ministry of Labour, Family and Social Affairs on 1 April 2012, are not known yet.

Article 1 of the Government Decree on the Establishment, Organization and Competencies of the Council of the Government of the Republic of Slovenia for the Implementation of Equal Treatment states that the members of the Council are appointed for a mandate of 5 years, unless they are ex officio members of the Council as a result of their function (e.g. the President of the Council has to be the Minister of Education according to the decree; his membership is therefore defined by his function). With the amendments of June 2007 the status of the Council was

changed. The council is now smaller and only five members of NGOs are foreseen for the Council (before it was foreseen that the membership of the body includes two representatives of the Italian and Hungarian minority, a representative of the Roma community, a representative for equal treatment irrespective of belief, and six members of NGOs involved in equal treatment relating to different personal circumstances).

The fact that the Advocate of the Principle of Equality is independent is explicitly stated in the law (Article 11.b). However, other characteristics of the way in which this institution is established do not support that (see the question e).

c) *Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.*

The main responsibility of the Advocate is to examine cases of alleged violations of the ban on discrimination, as stipulated in Article 11 of the Act Implementing the Principle of Equal Treatment. The purpose of the examination of cases of alleged discrimination is predominantly in discovering discrimination and alerting about its existence. For that purpose the Advocate provides general information and explanations in relation to discrimination, while at the examination of the case he or she alerts about the established irregularities and recommends how to remedy them; in other procedures in relation to protection from discrimination the Advocate offers assistance to discriminated persons. Examination of the case begins with a written or verbal complaint, which may be anonymous, but must include sufficient data for the case to be heard. The procedure is informal and free of charge. The Advocate and other employees of the Office for Equal Opportunities must keep confidential all information presented during a hearing. After the complaint, the Advocate conducts a hearing of a case.

The Advocate has the right to request the persons involved to provide him or her with appropriate explanations within a specific time-limit and the right to summon all persons involved and interview them. Finally, the Advocate issues a written opinion in which he states his findings and assesses whether discrimination has taken place. Both parties are informed of his findings. The Advocate also has the right to point out any irregularities discovered, issue a recommendation on how these should be rectified, and order the alleged offender to inform him within a specific time-limit of any measures taken. An individual or corporate body can also apply to the Advocate for an opinion on whether a particular act, service or omission of his or hers could be considered a violation of the principle of equal treatment because of personal circumstances. Finally, the Advocate produces an annual report by the end of March, which the Office for Equal Opportunities submits to the Government for adoption. By the time of writing this report, the yearly report of the Advocate on the cases has not been prepared yet.

The main responsibility of the Council for the Implementation of the Principle of Equal Treatment is to monitor and assess the situation of individual social groups from the aspect of equal treatment. At performing its tasks the Council cooperates with the competent state bodies and other institutions in the area of equal treatment and prevention of discrimination on personal grounds (Article 9 of the Act Implementing the Principle of Equal Treatment). Before the amendments of June 2007 the act defined the competencies of the Council in a more precise way. Since the establishment of the second Council with the mandate 2009-2013, the Council met several times, approximately four times a year.

In 2011 the Advocate of the Principle of Equality launched a new website: <http://www.zagovornik.net>. The website contains information in ten languages (Slovenian, English, Italian, Hungarian, German, French, Roma, Albanian, Bosnian and Serbian), on the institution of the Advocate, forms of discrimination, the procedure with the complaint filed to the Advocate, other legal and non-legal remedies that can be used in cases of discrimination, anti-discrimination legislation, activities of prevention and reports and studies prepared by the Advocate. The website was prepared within a Progress project implemented by the Government Office for Equal Opportunities in 2010.

In 2011 the Advocate issued an Annual Report 2010 which contains information on the work and activities of this body in 2010. However, the report does not only address the statistics of the complaints and cases dealt with in the past year (the number of which was 55), but also systemic issues concerning the lack of legal protection mechanisms in Slovenia, the lack of their effectiveness, and the lack of its own powers and capacities to address wide issues of discrimination, in particular with regard to the fact that the Advocate is expected to deal with issues of discrimination on all grounds and in all fields. The report assesses the work of Advocate since it has been set up in 2004, as unsuccessful. It states that the awareness of the public about the existence of this institution is low, that its reputation in the public is ruined and that it has no credibility in the eyes of the experts and key target groups. The document underlines that the current setting of the Advocate as an equality body Slovenia does not meet the requirements from the Race Equality Directive 2000/43/EC and the UN Convention on the Rights of People with Disabilities. The report points out that there is a lack of political will expressed by the Government of the Slovenia to address the described problems. The report also proposes a vision for 2011, which includes, among others, establishment of a truly independent equality body which should become a member of EQUINET (which at the moment is not the case).¹¹⁷ This report is the longest one issued since the Advocate was set up in 2004. The specificity of this report is reflected by the developments in July 2010 when a new person was nominated as the Advocate (Boštjan Vernik Šetinc) who decided to voice out the issues that hinder protection from discrimination in Slovenia.

¹¹⁷ http://www.zagovornik.net/uploads/media/zagovornik_lp_2010.pdf.



- d) *Does it / do they have the competence to provide independent assistance to victims, conduct independent surveys and publish independent reports, and issue recommendations on discrimination issues?*

The Advocate of the Principle of Equality does have the competence to provide legal assistance (in a form of written or telephone advice) to victims, in accordance with Article 11 of the Act Implementing the Principle of Equal Treatment.

Also, every year the Advocate publishes a report for the previous year. However, this report, except for the report for 2010, focuses solely on the past work of the Advocate and does not examine discrimination issues or the situation of discriminated groups. The Advocate can issue recommendations, but solely concerning concrete cases he or she was examining. The competency to conduct surveys is not awarded to any of the two bodies.

- e) *Are the tasks undertaken by the body/bodies independently (notably those listed in the Directive 2000/43; providing independent assistance to victims of discrimination in pursuing their complaints about discrimination, conducting independent surveys concerning discrimination and publishing independent reports).*

In accordance with Article 11.b of the Act Implementing the Principle of Equal Treatment, the Advocate conducts its professional and organizational tasks at examining cases of discrimination independently, impartially and irrespective of the instructions of the director of the Government Office or the Government. As to the law, the only relation that the director of the Government Office for Equal Opportunities has towards the Advocate are the rights and duties of the employer apart from those regulated in this act, on the basis of rules in place for civil servants. However, in practice the body does not have its own budget, but is actually funded through the Office for Equal Opportunities, a government office. This raises doubts as to the Advocate's actual independence. Also, the appointment mechanism and fact the Advocate can be dismissed before the end of the mandate cast doubts on his or her independence. It remains to be seen what will be the arrangement of the Advocate since the abolishment of Office for Equal Opportunities on April 1, 2012 and his transfer under the Ministry of Labour, Family and Social Affairs.

The issue of independence of the Advocate of the Principle of Equality was particularly burning in 2008. The previous Advocate of whose mandate ended in April 2008 was not nominated for another mandate. Instead three nomination competitions were organized when in August 2008 a new advocate, who had not taken part in previous competitions, was nominated. The new selected Advocate was at the same time member of the ruling right-wing party at the time, as well as the leader of the municipal committee of the youth of this party. The ruling party therefore understood the position of the Advocate as a political and not a professional function. The person serving as the Advocate at the time undertook the most publicized case of the removal of the Roma family, facilitated by members of this same party who were in



power at the time. Consequently, concerns were raised whether the Advocate will be capable of impartial and objective assessment of this case. The Advocate himself was though not involved with the removal of the family, while his superiors from the party were. Also, the part of the 2008 annual report of the Advocate was not confirmed by the Government of the Republic of Slovenia. The reason for not confirming it was the fact that the new government in power since November 2008 disagreed with the opinion of the Advocate finding that the removal of Roma family from their land near the village of Ambrus was not discriminatory. Government deemed the opinion on the removal as politically biased, claiming that the Advocate – also a member of the formerly ruling right wing party – took the stand of the then government and the police, instead of objectively and impartially examining the case.

In 2009 two inspectorates found violations in the nomination procedure of this Advocate. The Labour Inspectorate found that discrimination occurred in the nomination procedure of the Advocate. Consequently, inspection procedure was carried out against the responsible person – Ms. Majda Pučnik Rudl, Director of the Office of Equal Opportunities where the Advocate is based. As a result the labour inspectorate issued only an admonition to the Director. On the part of the complaint related to the lack of fulfilment of requirement for the position, the labour inspectorate declared itself not competent and assigned the case to the Inspectorate for the system of public servants which found that the selected candidate (Domen Zupan) did not meet two of the job conditions which required the candidate to hold university degree in social or humanistic sciences and at least three years of work experience in the area of equal treatment or human rights. Irregularities were also found in publication of the advertisement for this job post since the advertisement specified different conditions for the candidates from those specified in the systemization of employment positions. According to the provision of Article 74 of the Public Servants Act, which requires that the employment contract concluded with the public servant that does not meet the conditions for the position has to be annulled, the employment agreement concluded with the selected candidate was annulled. In 2009 no other candidate was selected, however, at the beginning of 2010 another former politician who was member of the parliament representing Slovenian National Party (i.e. the nationalists) was authorized to temporarily perform the duties of a temporary Advocate.

The authorization provoked a revolt among the civil society organizations which alerted that a normal nomination procedure should have been carried out with a public call instead of authorizing a former politician from the circle of nationalists for this post. Finally, in 2010 a nomination procedure was carried out which ended with the nomination of the most competent candidate Boštjan Vernik Šetinc for the new Advocate, who since the beginning of his term has been publicly speaking about the inappropriateness of the current institution of the Advocate and failure of Slovenia to comply with the international standards concerning equality bodies. All of this indicates not only that nomination procedure does not guarantee the independence of the Advocate as a person, while at the same time the fact that the Advocate as an



institution is not independent from the Government which can reject the part of Advocate's yearly report if it disagrees with any of his or her findings.

- f) *Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?*

The Advocate of the Principle of Equality does not in general have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination. It was established to examine cases of discrimination brought to it by petitioners and to provide assistance and advice to interested persons. With regard to initiating procedures the Advocate only has the competency to refer cases of discrimination to the competent inspectorate and in cases if the perpetrator of discrimination fails to comply with the Advocate's opinion and recommendations (Article 20 of the Act Implementing the Principle of Equal Treatment). With regard to intervening in legal procedures the same rules apply to the Advocate as for any other legal or natural person who is interested in intervening as a third party in a legal proceeding before the civil court. It is up to the court to allow intervention of such third party in each particular case. The courts have discretionary power to allow intervention of the third party.

The Council does not have legal standing to either bring discrimination complaints or to intervene in legal cases concerning discrimination. As a consultative body it does not have the status of legal person.

- g) *Is / are the body / bodies a quasi-judicial institution? Please briefly describe how this functions. Are the decisions binding? Does the body /bodies have the power to impose sanctions? Is an appeal possible? To the body itself? To courts?) Are the decisions well respected? (Please illustrate with examples/decisions).*

Generally, the Advocate could be seen as a quasi-judicial institution. However, some of the main traits of judicial decision-making are missing from the procedure before the Advocate. The principle of adversarity is not respected since the complainant is not informed about the written or oral submissions of the alleged perpetrator of discrimination against whom the complaint is lodged. Also, the Advocate has no investigative powers and it therefore cannot establish the facts of the case when statements of the two parties to the procedure differ to the extent when it is not possible to establish what really happened. In such case discrimination cannot be established or denied. The Advocate does not have the power to impose sanctions. It can only issue recommendations to the perpetrator, and if the latter does not respect them, the Advocate can forward the case to the competent inspectorate which then has to power to impose sanctions.

The problem with this system is that inspectorates (e.g. health inspectorate) do not consider themselves competent for issue of discrimination stated in the Act Implementing the Principle of Equal Treatment, since their competence is not



explicitly defined in this act, if the offence of discrimination is not at the same time defined in the legislation (e.g. health legislation) they are competent for supervising. Appeal against the opinion of the Advocate is not possible.

Once the opinion of the Advocate is issued, the procedure in this respect is completed (the victim can, however, still continue with the case at one of the courts, provided the deadlines are not missed and other preconditions are fulfilled). The opinions and recommendations of the Advocate are in general followed, however, if they are not, the case may only be forwarded to the inspectorate whose decisions are binding (e.g. as in the case of a woman with visual impairment who was refused service at the restaurant). For example, in the case of a company which published a job advertisement for young managers, the Advocate issued an opinion that such advertisement is discriminatory on the grounds of age. It set the deadline to the company to eliminate discrimination. The company acted accordingly – it made corrections in all instances where the advertisement was published and took measures to prevent such treatment in the future.

However, in another case when a Muslim worker did not have access to pork-free meals in workplace, or to financial compensation that would enable him to buy his own food, the employer was not cooperative and showed no interest in the case. Due to that reason the Advocate forwarded the case to the Labour Inspectorate.

i) *Does the body treat Roma and Travellers as a priority issue? If so, please summarise its approach relating to Roma and Travellers.*

Specialized equality body in Slovenia is Office of the Government for Equal Opportunities. Roma community does not fall within the competence of the equality body (which in practice mainly deals with gender and neglects all other personal circumstances), but within the Office of the Government for National Minorities, which was also abolished on 1 April 2012. Taking into account that the Government Office for Equal Opportunities was also abolished, only the Advocate of the Principle of Equality (one civil servant) remains an equality body, who deals with any complaint lodged. Roma are therefore not a priority with the equality body in Slovenia.



8 IMPLEMENTATION ISSUES

8.1 Dissemination of information, dialogue with NGOs and between social partners

Describe *briefly* the action taken by the Member State

- a) *to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

Pursuant to Article 154 of the Constitution, regulations must be published prior to coming into force. State regulations are published in the State Official Gazette, whereas local community regulations are published in the official publication determined by the local community. Apart from this, dissemination of information is one of the major problems in protection against discrimination in Slovenia. On one hand, there were several complaints made to the Advocate in 2007 regarding discrimination which proved to be unfounded. On the other hand, there are many more cases where people face discrimination but are not aware of their legal rights and how to uphold them. The existence of the Act Implementing the Principle of Equal Treatment is not given much media attention. In 2008 most anti-discrimination projects on awareness raising were carried out by the NGOs with the support of foreign funds. A particular problem is that the Government Office for Equal Opportunities which is an equality body in Slovenia competent for policies in the field of anti-discrimination, is not dealing with all grounds to an equal extent as required by the directives, since it still focuses mainly on gender.

- b) *to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78) and*

Based on Article 8 of the Act Implementing the Principle of Equal Treatment, the Government and competent ministries have to co-operate with non-governmental organizations that are active in the field of equal treatment. However, in practice, this cooperation is sporadic and carried out predominantly upon the initiative of the NGOs.

- c) *to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)*

Article 8 of the Act Implementing the Principle of Equal Treatment states that the Government has to cooperate with social partners that are active in the field of equal treatment. In practice, the main obstacle to greater effectiveness in the application of the principle of equal treatment in the workplace, codes of practice, and workforce monitoring is that the dialogue between social partners still fails to extend beyond the

issues of pay (in particular in the view of the economic crisis) and recently the length of the working day.

Even when the Government takes part in social dialogue, the issue of discrimination barely reaches beyond declaratory statements, for none of the social partners pays it sufficient attention. Trade unions, however, provide victims proper legal assistance to of discrimination at work when they are enforcing their right before the courts and other state organs.

Improvements in this field were expected with the establishment of the Council for the Implementation of the Principle of Equal Treatment, however as only one session has been held in 2009, no progress has been made so far.

d) *to specifically address the situation of Roma and Travellers.*

The issue of Roma is not addressed by the Slovenian equality body, i.e. the Government Office for Equal Opportunities. The competency for the position of Roma lies within the Government Office for Ethnic Minorities (which also deals with the position of Italian and Hungarian minorities). In 2008 several initiatives were carried out by the latter: it cooperated in the Expert Commission for Regulation of Spatial problems of Roma Settlements, and it carried out the Act on Roma Community.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) *Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).*

Under the Slovenian Constitution, all laws, regulations and rules have to comply with the Constitution (Article 153). Therefore, it would be unconstitutional for any of them to be contrary to the principle of equality, which is embodied in the Constitution. One of the basic powers of the Constitutional Court is to decide on the conformity of legislation and other regulations. The Constitutional Court Act contains a special chapter on the assessment of the constitutionality and legality of regulations and general laws passed for the exercise of public authority. This chapter stipulates the legal consequences of a decision. Under Article 43, the Constitutional Court may completely or partly revoke a law which does not conform with the Constitution. Article 44 prescribes that a law revoked by the Constitutional Court shall not be valid in situations that occurred before the day such a decision came into the effect, if there had been no legal rulings on such situations by that day. Unconstitutional and illegal non-statutory regulations and general acts issued for the exercise of public authority shall be revoked by the Constitutional Court. Such acts or regulations shall



be repealed by the Constitutional Court when it discovers that harmful consequences arising from the unconstitutionality have to be abolished.

This repeal shall be retroactive (Article 45). If the Constitutional Court under Article 48 determines that the law, other regulation or general act for the exercise of public authority was unconstitutional or illegal because a certain matter which it should have regulated was not regulated or has been regulated in a manner in which cannot be vitiated or abolished, an assessment decision shall be adopted on this. The legislative or body which issued the unconstitutional or illegal regulation or general act must ensure that the unconstitutionality or illegality is abolished within the time limit set by the Constitutional Court.

b) *Are any laws, regulations or rules that are contrary to the principle of equality still in force?*

There are at least three laws which may be contrary to the principle of equality. The first one is Registration of a Same-Sex Civil Partnership Act, which contains discrimination on the grounds of gender and sexual orientation (leaving aside the debate about the right to marry and to adopt children) and eligibility of same sex partners for rights deriving from social and health security system. The provision which regulated inheritance rights of same-sex couples differently than in the case of opposite sex couples was in 2009 annulled by the Constitutional Court. The second one is Police Act which sets a requirement for employment at the police for a candidate to prove that he or she did not invoke conscientious objection. This requirement has not been challenged in court yet. The third one is Local Self-Government Act which differentiates between autochthonous and non-autochthonous Roma. This law is currently also in the procedure before the Constitutional Court.



9 CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?

Is there an anti-racism or anti-discrimination National Action Plan? If yes, please describe it briefly.

According to the Act Implementing the Principle of Equal Treatment, the Government Office for Equal Opportunities is responsible for coordinating issues regarding anti-discrimination (Article 10). The Office was abolished on April 1, 2012, and all its staff were transferred to the Ministry of Labour, Family and Social Affairs.

Is there an anti-racism or anti-discrimination National Action Plan ? If yes, please describe it briefly.

There is no anti-racism or anti-discrimination National Action Plan in Slovenia.



ANNEX

1. Table of key national anti-discrimination legislation
2. Table of international instruments



ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country: Slovenia

Date 6 April 2012

Title of Legislation (including amending legislation)	Date of adoption: Day/month/ year	Date of entry in force from: Day/month/ year	Grounds covered	Civil/ Administrative/ Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.					e.g. public employment, private employment, access to goods or services (including housing), social protection, social advantages, education	e.g. prohibition of direct and indirect discrimination, harassment, instruction to discriminate or creation of a specialised body
Act Implementing the Principle of Equal Treatment – Official Consolidated Version http://zakonodaja.gov.si/	22 April 2004, 22 June 2007	7 May 2004, 25 July 2007	Gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or	Civil Law Administrative Law	Retraining, practical work experience; employment and working conditions, dismissals and pay; membership of and involvement in an organization of	Prohibition of direct and indirect discrimination, harassment, victimization, shift of burden of proof, exceptions, establishment of the equality body,



			other personal circumstance		workers or employers, or other professional organization, including the benefits; social Protection, social security and healthcare; social advantages; education; Access to and supply of goods and services which are available to the public, including housing.	the procedure of the equality body, sanctions.
Vocational Rehabilitation and Employment of Persons with Disabilities Act http://zakonodaja.gov.si	21 May 2004, 14 July 2005, 26 Oct. 2006, 19. Oct. 2011	25 June 2004, 13 August 2005, 24. Nov. 2006, 17. Nov. 2011	Disability	Administrative Law Labour Law	Employment	Positive action, creation of a specialised body
Act on Equal Opportunities of People with Disabilities	16 Nov. 2010	11. Dec. 2010	Disability	Administrative Law	Employment, education, access to and supply of	Appropriate (reasonable) accommodation



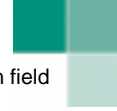
http://zakonodaja.gov.si					goods and services which are available to the public, including housing.	
Employment Relationship Act http://zakonodaja.gov.si/	24 April 2002, 29 Oct. 2007	1 Jan. 2003, 28 Nov. 2007	Ethnicity, race or ethnic origin, national and social origin, gender, skin color, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance.	Labor law	Public employment, private employment	Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, sanctions, shift of burden of proof, genuine and determining professional requirements, victimization, responsibility for damages.



Penal Code, http://zakonodaja.gov.si	20 May 2008, 14 May 2009, 2 Nov. 2011	1 Nov. 2008, 27 May 2009, 15 May 2012	Ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other circumstance.	Criminal law	/	Prohibition of unequal treatment, prohibition of incitement to ethnic or religious hatred, or hatred on the basis of sexual orientation, prohibition of violation of equal rights at employment and social services.
Protection of Public Order Act, http://zakonodaja.gov.si	22 June 2006	21 July 2006	Ethnicity, race, gender, religious, political opinion or sexual orientation	Criminal law	/	Prohibition of incitement to intolerance (hate speech)
Constitution of the Republic of Slovenia http://zakonodaja.gov.si	23 Dec. 1991, 14 July 1997,	23 Dec. 1991, 14 July 1997,	National origin, race, gender, language,	Constitutional law	/	/



	25 July 2000, 27 Feb. 2003, 15 June 2004, 20 June 2006	25 July 2000, 27 Feb. 2003, 15 June 2004, 20 June 2006	religion, political or other beliefs, financial status, birth, education, social status, disability			
--	---	---	--	--	--	--

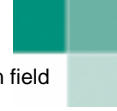


ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

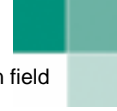
Name of country: Slovenia

Date: 06 April 2012

Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	14 May 1993	28 May 1994	No	Yes	Yes
Protocol 12, ECHR	7 March 2001	7 July 2010	No	Yes	Yes
Revised European Social Charter	11 Oct 1997	7 May 1999	Declaration on Part II, Articles 13, 18 (2).	Ratified collective complaints protocol? Yes	Yes
International Covenant on Civil and Political Rights	16 July 1993 (succession)	18 Aug 1993 (entry into force)	No	Yes	Yes
Framework Convention	1 Feb 1995	25 March 1998	No	-	Yes



Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
for the Protection of National Minorities					
International Convention on Economic, Social and Cultural Rights	6 July 1992 (succession)	6 July 1992 (entry into force)	No	-	Yes
Convention on the Elimination of All Forms of Racial Discrimination	6 July 1992 (succession)	6 July 1992 (entry into force)	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	6 July 1992 (succession)	5 Aug 1992 (entry into force)	No	Yes	Yes
ILO Convention No. 111 on Discrimination	29 May 1992	29 May 1992	Yes	Yes	Yes
Convention on the Rights of the Child	6 July 1992 (succession)	25 June 1991 (entry into force)	No	Yes	Yes



Instrument	Date of signature (if not signed please indicate) Day/month/year	Date of ratification (if not ratified please indicate) Day/month/year	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of Persons with Disabilities	30 March 2007	24 April 2008	No	Yes	Yes