

NATIONAL LEGAL MEASURES TO COMBAT RACISM AND INTOLERANCE IN THE MEMBER STATES OF THE COUNCIL OF EUROPE

SLOVENIA, Situation as of 31 December 2005

General Overview: Slovenia

Preliminary Note: this table is self-sufficient and is not accompanied by an explanatory note

COUNTRY: SLOVENIA	Constitutional provisions	Specific Legislation	Criminal Law	Civil and Administrative Law
Norms concerning Discrimination in general	Yes.	Yes.	Yes.	Yes.
Norms concerning racism	Yes. Art. 63	No.	Yes. Criminal Code Art. 134, 141.	No.
Relevant jurisprudence	Yes.	No.	No reliable information on case law available.	No.

Constitutional law: Slovenia

Preliminary Note: this table is accompanied by an explanatory note

Constitutional provisions	Scope	Relevant jurisprudence	Remarks
Art. 5 - Protection of human rights and basic freedoms	Protects and guarantees the rights of the indigenous Italian and Hungarian ethnic minorities		
Art. 11 - Official language	Slovenian is the official language; Italian and		

	Hungarian are official languages in regions or communities in which Italian or Hungarian minorities live		
Art. 14 - Equal rights before the law	All persons shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other convictions, material standing, birth, education, social status or any other personal circumstance.		
Art. 16 - Temporary suspension and limitation of rights	Prohibition of inequality in case of suspension or limitation of rights based inter alia on race		
Art. 22 - Equal protection of rights	All persons 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 such person's rights, duties or legal interests.		
Art. 49 - Freedom to work	All working posts shall be equally accessible to all persons		
Art. 61 - Expression of national affiliation	All persons shall have the right freely to express affiliation to their nationality or national community		
Art. 62 - The right to use one's own language	All persons shall have the right to use their own language, orally and in writing, in the realisation of their rights and duties and in		

	procedures before the authorities.		
Art. 63 Prohibition of incitement to inequality and intolerance	Any incitement to national, racial, religious or other inequality and the encouragement of national, racial, religious or other hatred and intolerance is prohibited by the constitution		
Art. 64 Special rights of indigenous Italian and Hungarian national communities	These communities enjoy the right freely to use national symbols, found organisations, develop different activities, promote upbringing and education in their own language and to cultivate relations with the mother nation and its state		
Art. 65 Position and special rights of Romany communities	The position and special rights of Romany communities who live in Slovenia shall be governed by law.		
Article 65 Status and Special Rights of the Romany Community in Slovenia)	The status and special rights of the Romany community living in Slovenia shall be regulated by law.		
Article 159 Ombudsman for Human Rights and Fundamental Freedoms	The office of the ombudsman for the rights of citizens shall be established In order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities and bearers of public authority.		

EXPLANATORY NOTE

SLOVENIA / CONSTITUTIONAL LAW

The Constitution of Slovenia contains relatively broad provisions concerning equality before the law, protection of ethnic and national minorities as well as specific provisions concerning prohibition of racial hatred and of incitement to inequality and intolerance.

According to Article 5, the State shall protect human rights and basic freedoms on its territory. It shall protect and guarantee the rights of the indigenous Italian and Hungarian ethnic communities. It shall look after the Slovenian ethnic minorities indigenous to neighbouring states, Slovenian emigrants and migrant workers and promote their contacts with their homeland. It shall care for the national heritage and create the conditions necessary for the harmonious civilizational and cultural development of Slovenia. Slovenians without Slovenian citizenship can enjoy special rights and benefits in Slovenia. The variety and extent of these rights are specified by law.

The official language is Slovenian. Nevertheless, according to Article 11, in regions or communities in which Italian and Hungarian national communities live, Italian and Hungarian are also official languages.

Equal rights before the law are guaranteed by Article 14 of the Constitution. One of the criteria subjected to equality is race. Everybody in Slovenia is guaranteed equal human rights and basic liberties, without respect to nationality, race, sex, language, religion, political or other convictions, material status, birth, education, social status or any other personal circumstances. All are equal before the law.

Even temporary suspension or limitation of rights does not permit inequality based upon race. According to Article 16, human rights and basic liberties specified in the Constitution may be suspended or limited during war and states of emergency. However, human rights and basic liberties may be suspended or limited only for the duration of the war or state of emergency and only to the extent demanded by such state of emergency and in such a way that the accepted measures do not cause inequality based only on race, national affiliation, sex, language, religion, political or other convictions, material status, birth, education, social status or any other personal circumstances.

Equal protection of rights is guaranteed by Article 22 of the Constitution. All persons are guaranteed equal protection of their rights in proceedings before the courts and other state bodies, local authorities and other bearers of public authority who decide on their rights, duties or legal interests.

Equality is also guaranteed in the field of work. According to Article 49, all persons are free to choose their own employment and all working posts shall be equally accessible to all persons.

According to Article 61, every person has the right freely to express affiliation to his nationality or national community, to nurture and express his or her culture and to use his or her language orally and in writing. All persons shall have the right to use their own language, orally and in writing, in the realisation of their rights and duties and in

proceedings before state and other bodies which perform public services, in a manner which shall be specified by law (Article 62).

One of the provisions of the Constitution of Slovenia expressly prohibits incitement to inequality and intolerance. According to Article 63, any incitement to national, racial, religious or other inequality and the encouragement of national, racial, religious or other hatred and intolerance is prohibited by the constitution. Any incitement to violence and war is also prohibited by the constitution.

Taking into consideration the role and function of the indigenous Italian and Hungarian national communities, the Constitution stipulates that these communities and their members have guaranteed the right freely to use their national symbols and to found organisations for the preservation of their national identity and the right to develop economic, cultural and scientific research activities and activities in the field of public information and publishing. In accordance with the law, both of these national communities and their members have the right to upbringing and education in their own language as well as to the development and improvement of this upbringing and education. The regions in which bilingual education is compulsory are to be determined by law. The national communities and their members are guaranteed the right to cultivate relations with the parent nations and with the relevant foreign States.

The Slovenian State shall financially and morally support the implementation of these rights. In regions in which these communities live, the members may found their own self-governing associations to defend their rights. On the initiative of self-governing national associations, the State may authorise them to perform specific tasks within the competence of the State and guarantee resources for their realisation.

The national communities shall be directly represented in the local bodies of representative self-government and in the Slovenian national assembly.

The rights of the Italian and Hungarian national communities shall be realised in the regions in which they live in the manner and circumstances prescribed by law, which shall also determine the duties of the self-governing local associations formed for the realisation of those rights, as well as the rights to be enjoyed by the members of the national communities outside the regions in which they normally live. The rights of both national communities as well as of their members shall be guaranteed without reference to the number of members of each community. Laws, regulations and general acts which concern the realisation of rights defined in the constitution and the situation of the national communities themselves may not be adopted without the consent of the representatives of the national communities.

Special laws should be passed to regulate the position and special rights of the Roma/Gypsy communities which live in Slovenia (Article 65).

Nonetheless, the status of thousands of former Yugoslav citizens who were removed from the Slovenian population registry in 1992 (otherwise known as the "erased") remained non-clarified. Most of the individuals removed from the population registry were citizens of other former Yugoslav republics who had been living in Slovenia and had not filed an application for Slovenian citizenship, after Slovenia became independent. The Slovenian Constitutional Court had recognized that the measure

constituted a violation of the principle of equality and, in those cases where the individuals concerned were required to leave the Slovenian territory; it gave rise to a violation of their rights to a family life and to freedom of movement. Moreover, Amnesty International was concerned that the removal from population registries would give rise to violations of the social and economic rights; in some cases the individuals concerned lost their employment and pension rights. The Slovenian Constitutional Court had established in April 2003 that previous provisions to solve this issue were inadequate to restore the rights of former Yugoslav citizens who were unlawfully removed from Slovenian population registries. A "technicalities bill" the first of two acts aimed at reinstating the status of individuals removed from the population registry, was later adopted by the Parliament, however, debates on a second bill continued, prompting opposition parties to call for a referendum to address the "technicalities bill". (Amnesty International, Slovenia: The "erased" – Briefing to the UN Committee on Economic, Social and Cultural Rights, AI Index: EUR 68/002/2005, Embargoed for 28 November 2005).

The Slovenian ombudsman has also criticized Slovenes in this matter for being narrow-minded and intolerant when it comes to marginal groups such as battered women, drug addicts or the disabled. "Some events indicate that we care little about other people. Moreover, that the citizens of Slovenia are egotists who do not let anybody in our vicinity who could disturb our daily self-satisfied lives," the Ombudsman told the press after visiting Maribor to learn about the problems faced by the locals. The Ombudsman also noted that this was a problem throughout Slovenia, rather than in Maribor alone, and said that such behaviour was intolerable. "Instead of removing the barriers dividing people, we create new ones, we atomize the society into small isolated groups that cannot communicate among each other," the Ombudsman said and called for the people not to erect new borders within the country at a time when the borders between countries are falling. (Slovenian Press Agency (STA), 5. 5. 2004, Human rights Ombudsman criticizes Slovenes for being "intolerant", 27 May 2004, http://www.varuh-rs.si/cgi/teksti-eng.cgi/Show?_id=jelovecang)

On 25 January 2005, the National Assembly discussed the proposal for a bill on the position of the Roma community that had been introduced by the Slovenian National Party. The proposal for the bill only contained three articles and the only provision with actual substantive content reads: "The Members of the Roma Community who live in the Republic of Slovenia do not have special rights and do not enjoy a privileged position. Everyone is equal under the law". The National Assembly refused the adoption of the proposed bill with a high majority of votes (69 votes against, in favour 6 votes). Currently, the special rights of the Roma community based on Article 65 of the Constitution are regulated by nine sectoral acts; however a special bill for the protection of the position and rights of the Roma people has not yet been adopted. The Constitutional Court has already established in one of its previous rulings (U-I-416/98-38; <http://us-rs.si>) that Article 65 of the Constitution allows the legislator to grant special protection to the Roma people and to positively discriminate in favour of the Roma.

Criminal law: Slovenia

Preliminary Note: this table is accompanied by an explanatory note

Offence	Source	Scope	Sanction	Relevant jurisprudence	Remarks
Infringement of equality	Criminal Code - Art. 141	Any person who, due to differences in respect of nationality, race, skin colour, religion, ethnic origin, gender, language, political or other beliefs, birth status, education, social position or any other circumstances, prevents another person's enjoyment of any human right or freedom recognised by the international community or laid down by the Constitution or a statute, or grants to any person a special privilege or advantage on the basis of such discrimination. The same punishment applies to the offence of harassment of an individual or organisation	Imprisonment up to one year; qualified offence: up to three years		

		<p>promoting equality (paragraph 2 of the Article). Paragraph 3 contains a qualified form of the criminal offence of infringing equality as defined above and foresees a greater punishment for public officials abusing their official function (imprisonment for up to three years).</p>	
Incitement to racial hatred	Criminal Code - Art. 300	Prohibits incitements to ethnic, racial and religious hatred or intolerance or spreading ideas concerning racial superiority.	Imprisonment up to two years; qualified offence: up to five years
Genocide	Criminal Code - Art. 373		Imprisonment for ten to twenty years
Definition of unlawful harassment	Executing Criminal Sanctions Act (2000) Article 10/3:	Torture is any act by which a public servant or other person, by order or agreement of an official, in order to obtain from this or a third person information or	

confession, in order that the person be punished for an offence which he has committed or of which he is suspected, because of intimidation or the punishment of a third person or for any other reason based on discrimination of any kind, intentionally causes serious physical or mental pain or suffering to a person against whom a criminal sanction is being imposed.

EXPLANATORY NOTE

SLOVENIA / CRIMINAL LAW

The Criminal Code of the Republic of Slovenia, adopted by the Slovenian National Assembly on 29 September 1994, which came into force on 1 January 1995, contains the definition of two criminal offences which actualise Article 14 of the Constitution, containing the principle of equality before the law, and Article 63 containing the prohibition of incitement of inequality and intolerance. These are: the offence of infringing equality in Article 141 of the Criminal Code, which is listed in the chapter on offences against human rights and freedoms; and the offence of incitement to ethnic, racial and religious hatred or intolerance in Article 300, listed in the chapter on public order and peace. The first criminal offence is to deny to someone - for reasons of nationality, race, religion, ethnic origin, sex, language, political or other belief, sexual preferences, financial status, birth, education or any other circumstances - any human rights or fundamental freedoms recognised by the international community or stipulated by the Constitution or law, or to restrict such rights or freedoms, or to give to any person a special right or benefit on the grounds of such discrimination. The offence is punishable with a fine or imprisonment of up to a year; the same punishment is applied to the offence of harassing an individual or organisation

supporting the equality of people (2nd paragraph, Article 141 of the Criminal Code). Paragraph 3 of the same article contains a qualified form of the criminal offence of infringing equality. It is defined as an act from paragraph 1 or 2 of Article 141 committed by an official abusing his official function or official rights and receives appropriately higher punishment (imprisonment for up to three years).

The basic criminal offence of incitement to ethnic, racial or religious hatred is committed by a person who incites to or inflames ethnic, racial or religious hatred, division or intolerance, or who spreads ideas of the superiority of one race over another. It is punishable with imprisonment of up to two years (paragraph 1 of Article 300). A qualified form of the basic criminal offence is defined as including force or maltreatment, endangering safety, ridiculing other nationalities, ethnic or religious symbols, damaging foreign property or desecrating monuments, memorials or graves. In these cases the prescribed imprisonment is up to five years (paragraph 2 of Article 300).

The crime of genocide is treated in Article 373 of the Criminal Code. The crime is committed by anyone who commits certain specified acts with a view towards total or partial annihilation of a national, ethnic or religious group or of a group appertaining to a particular race. The relevant acts were: committing homicides or causing grievous bodily harm; severely prejudicing the physical or mental health of members of the group; carrying out the forced dispersment of the population; placing the group in living conditions which naturally lead to its total or partial extermination; applying measures to hinder or prevent the propagation of the group by reproduction; forcibly transferring children from one group into a different group. The penalty for this crime is imprisonment for a minimum of ten years and a maximum of twenty years.

An anti-discrimination clause is a part of the constitutional and legal and public order in Slovenia and should be officially taken into account. The legal order of the Republic of Slovenia provides for criminal sanctions in the event of the violation of individual rights. The violation of equality, stirring up ethnic, racial or religious hatred, strife or intolerance and the crime of Genocide are criminal offences under the Penal Code of the Republic of Slovenia. Nevertheless, reliable information concerning pre-trial criminal procedure and criminal procedure in this kind of criminal offence has not been available.

Civil and Administrative Law: Slovenia

Preliminary Note: this table is accompanied by an explanatory note

Provision	Scope	Consequences of breach	Relevant jurisprudence	Remarks
The Law on the Legal Status of Religious Communities (Official Gazette RS, no. 15/76, 42/86 and 22/91)	It derives from the constitution which guarantees equal rights of freedom of religion and religious communities and separation of the			

Prohibition of religious intolerance, hatred or strife	Church and State. It comprises the prohibition against inciting or stirring up religious intolerance, hatred or strife (Article 5/2).			
The manner of collecting, using and publishing data on national, ethnic, religious or linguistic origin is governed by the Personal Data Protection Act (1999).	Database administrators authorised by law to collect data, may collect personal data referring to racial and other origins, political, religious and other beliefs, trade union membership or sexual orientation only on the basis of a written consent of the individual concerned (Article 3).			
Law on Public Institutions 1991 Right to co-found or found public institutions	Self-governing ethnic communities shall have the right to co-found or found public institutions which perform activities important for the realisation of the rights of the national minority (Article 3).			
Organization and Financing of Education Act (1996)	No distinctions in educational organizations may be made based on gender, social or cultural origin, religion, citizenship or any other personal characteristics (Article 2).			
Organization and Financing of Education Act (1996) Founders of Public Preschool Institutions and	National minorities shall act as cofounders of public preschool institutions or schools providing education in the language of the national minority or			

Schools	<p>bilingual education (Article 41). Prior to the appointment or removal of principals, the councils of public preschool institutions or schools shall obtain the opinion of the institution's faculty and the local community where the seat of the institution is located; if a public preschool institution or school is founded by a national minority, the national minority's opinion is also required (Article 53).</p>		
Notary Act (1994)	<p>The notary shall draw up notarial documents in the Slovene language. If the parties or other persons involved in the composition of the document under the preceding paragraph do not understand the language in which the document is drafted, the document shall contain a clause specifying that the entire document has been translated for such persons. The document shall be translated by the notary or, at the request of a party, by a court interpreter (Article 13).</p>		
Act on Media 2001 Prohibition of encouraging inequality and intolerance	<p>It is forbidden to encourage, through dissemination of programme contents, national, racial, religious or any other</p>	<p>A fine of not less than SIT 2,500,000 is imposed on a publisher which is a</p>	

	<p>form of inequality, to encourage violence and war, to provoke national, racial, sex or any other form of hatred and intolerance (Article 8). Advertising should not encourage racial, sex or national discrimination nor religious or political intolerance (Article 47/3).</p>	<p>legal entity for an offence: - if, through such publisher's media, respect for human dignity is affected; racial, sex or national discrimination or religious or political intolerance is provoked (Article 129).</p>		
Aliens Act 2002 Assistance in the Integration of Aliens	<p>National and other authorities, organisations and associations shall cooperate in particular with:</p> <ul style="list-style-type: none"> - authorities competent for the purpose of promoting the more rapid inclusion of aliens in the cultural, economic and social life of the Republic of Slovenia; - international organisations whose purpose is to address issues relating to the migration and integration of aliens (Article 82/2). 			
Associations Law 1998	<p>The Associations Law forbids associations from engaging in activities that encourage national, racial, religious or other forms of inequality (Article 29).</p>			
The Associations Act (1998) and	<p>Under the Act itself, an association must cease</p>			

<p>the Act Amending and Supplementing the Associations Act (1999),</p>	<p>its activities if the purpose of these activities are the modification of the Constitution in an unconstitutional manner; the execution of criminal activities; or the incitement to national, racial, religious or other inequality, or the inflaming of national, racial, religious or other hatred and intolerance or the incitement of violence or war. The competent body shall hold that such a society has ceased to exist. The competent authority establishes the termination of the existence of the society by decree (Article 15).</p>			
<p>Political Parties Act (1994)</p>	<p>The Act stipulates that in the Republic of Slovenia a party that incites violence or the destruction of the constitutional order or demands secession of any part of Slovenia, or intends to undertake or undertakes an anti-constitutional action is not permitted to register or to act. (Article 3/3).</p>			
<p>Law on foreigners 1999</p>	<p>The State and other authorities, institutions and societies, ensure, within all their activities, the protection of foreigners against any discrimination on racial, religious,</p>			

	national, ethnic or other grounds (Article 82/3).			
Act on equal opportunities for women and men (2002)	<p>The establishment of equal opportunities is the duty of the entire society and represents the elimination of obstacles to the introduction of gender equality, above all through the prevention and removal of unequal treatment of women and men as a form of discrimination in practice arising from traditionally and historically conditioned different roles within society, as well as the establishment of conditions for the introduction of equal representation of both genders in all fields of social life (Article 1/2).</p> <p>Finally, the Act requires, among other things, the equal treatment of individuals of different races in education.</p>			
Act Implementing the Principle of Equal Treatment, (2004) Article 1 (Contents and purpose of the act)	<p>The act determines common bases and premises for ensuring the equal treatment of all persons in performing their duties and exercising their basic freedoms in every field of social life, and especially in the fields of employment, labour relations, participation in trade unions and interest associations, education, social security, access to and</p>			

supply of goods and services. This shall be available, irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances.

For the purpose referred to above, the act determines subjects that create conditions for the implementation of the principle of equal treatment, through measures within the framework of their competence and a raising of awareness amongst discriminated persons and alleged offenders, as well as in society as a whole. The act also introduces institutional preconditions for the activities of the Advocate of the Principle of Equality, an institution providing assistance to discriminated persons by dealing with cases of alleged unequal treatment under the provisions of the act. The act also determines common particularities valid for the legal protection of discriminated persons, by means of judicial and administrative

	proceedings, initiated on the grounds of violation of the ban on discrimination on the basis of personal circumstances, determined by law.			
Act Implementing the Principle of Equal Treatment, (2004) Article 3 Ban on discrimination and victimisation	<p>A discrimination action shall be prohibited in every field of social life.</p> <p>In the event that, in spite of the ban an act or omission should occur that is discrimination, the discriminated person must not be subjected to adverse consequences due to his/her actions (ban on victimisation).</p>			
Act Implementing the Principle of Equal Treatment, (2004) Article 4 Equal treatment	<p>Equal treatment is the absence of direct or indirect discrimination on the grounds of any kind of personal circumstance.</p> <p>Direct discrimination on grounds of personal circumstance occurs when a person has been, is or could be treated less favourably than another person in an equal or comparable situation on grounds of such a personal circumstance.</p> <p>Indirect discrimination on grounds of personal circumstance occurs when apparently neutral provision, criterion or practice in equal or comparable situations and under alike conditions put a person with a certain</p>			

personal circumstance in a less favourable position compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary. Instructions with similar affect to that referred above shall also be deemed to be direct or indirect discrimination.

<p>Act Implementing the Principle of Equal Treatment, (2004) Article 5 Harassment</p>	<p>Harassment is any unwanted conduct, based on any kind of personal circumstance, which creates an intimidating, hostile, humiliating or offensive environment for a person or offends his or her dignity. Harassment shall be deemed to be discrimination.</p>			
<p>Act Implementing the Principle of Equal Treatment, (2004) Article 16 Orders in the event of victimisation</p>	<p>In the event of a discriminated person being subjected to harmful consequences due to his or her actions in relation to cases of violation of the ban on discrimination in the environment in which the violation is alleged to have been committed, the Advocate, already in the course of hearing the case, shall order in writing the corporate body or other body in law where the violation of the ban on</p>			

discrimination is alleged to have occurred to apply appropriate measures to protect the discriminated person from victimisation or adverse consequences that have occurred from victimisation.

Act
Implementing the
Principle of
Equal Treatment,
(2004)
Article 24
Definition of
misdemeanours
and sanctions

An act or omission, committed in the implementation of laws and other regulations, collective agreements and general documents in an individual field of social life, regulated by law, which has all the indications of discrimination, shall be a misdemeanour for which the offender shall be fined.

An individual that commits a misdemeanour referred to in the previous paragraph shall be fined from 50,000 to 300,000 SIT. A corporate body or an individual entrepreneur at whose premises a misdemeanour referred to in the first paragraph was committed shall be fined from 500,000 to 10,000,000 SIT. The responsible person of a state body or of a self-governing local community where a misdemeanour referred to in the first paragraph was committed shall be fined

from 50,000 to
500,000 SIT.

EXPLANATORY NOTE

Slovenia / Civil and Administrative Law

Slovenian legislation contains several general provisions prohibiting discrimination, according to which state and other bodies, organisations and associations shall ensure in their activities protection from any kind of discrimination on the grounds of racial, national, ethnic or other differentiation. The recently adopted law of relevance to equality is the Implementation of the Principle of Equal Treatment Act, adopted in May 2004 (Official Gazette No. 50/2004). It is aimed to improve the protection in relation to discrimination based on different grounds, such as race or ethnic origin, sex, health condition, disability, language, religious or other conviction, age, sexual orientation, education and social status. The Act bans direct and indirect discrimination, harassment and victimization and determines sanctions for violations, allows positive measures if they promote the achievement of its aims or are used as a compensation for less favourable position of persons with particular personal circumstances. It also lays down the basis for the establishment of the Council of the Government for the Implementation of the Principle of Equal Treatment Act (the respective Rule should be adopted by the Government), which will among other tasks, provide for implementation of the provisions of the Act, monitor their implementation and initiate educational, awareness-raising, information and research activities for the promotion of equal treatment. The Act also assigns duties in relation to the consideration of informal complaints in relation to anti-discrimination rules to the Advocate of the principle of equality, a body for investigating complaints about alleged breaches of the equal treatment principle, and determines circumstances in which the Advocate shall cede a case to the competent inspection service.