



Executive Summary

Slovenian country report on measures to combat discrimination

**by Maja Tratar
and Meira Hot**

1. Introduction

Slovenia is a very ethnically homogeneous state. According to the population census of 2002 the country consists of 83% ethnic Slovenians, 0.11% Italians, 0.32% Hungarians, 0.17% Roma people. In Slovenia there are also 1.98% Serbs, 1.81% Croats, 1.10% Bosnians and other minorities from the former Yugoslavia, which have immigrated to Slovenia during the period of Yugoslavia's existence. Members of the ethnic Italian and Hungarian minorities enjoy the status of autochthonous minorities. Slovenia pays special attention to the position of the Hungarian and Italian minorities in Slovenia, as well as to the Slovenian minorities living in the neighbouring countries. The Nationals of former Yugoslav republics do not enjoy collective minority rights.

The Constitution also guarantees special protection for the Roma population living in Slovenia. Special rights of the Roma Community are regulated by nine special acts and various Government programmes with the aim of improving the situation of the Roma population, but a special bill for the protection the Roma population has not yet been adopted. On 21 February 2006, a public debate about the Act regulating the status of the Roma community was held in the National Council. All the participants agreed that the act was necessary, and that it should most importantly contain provisions regulating the organisation of the Roma community at national and local level as well as financing. The act is still in the process of being drafted by the Office for National Minorities, whose Director also attended the debate in the Council. It is expected that this act will be adopted by the Government by the end of the year 2006.

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 very bad housing conditions with poor infrastructure as well as low standards of hygiene. An improvement in the education of Roma children is expected with the implementation of the Strategy for the Education of the Roma, adopted by the Ministry of Education in May 2004. 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). This is reasonable mostly on the ground that earlier enrolment will improve their knowledge of the Slovene language and help their earlier socialisation. Another measure is the introduction of Roma assistants in classes with Roma children, 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.

2. Main legislation

Article 14 of the Constitution guarantees equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance. In addition to the general equality clause, some other provisions of the Constitution guarantee equality regarding the person's rights in judicial and administrative proceedings, the voting process, employment, participation in public affairs, marriage and family, parenthood, religious communities and criminal charges.

Slovenia is bound to respect international treaties for combating discrimination, including the European Convention on Human Rights, International Covenant on Civil and Political rights, the International Convention on the Elimination of all forms of Racial Discrimination, Revised European Social Charter, International Convention on Economic, Social and Cultural Rights and relevant International Labour Organisation conventions.

In order to implement the Racial Equality and Employment Equality Directives, the Government has adopted the Implementation of the Principle of Equal Treatment Act, which came into force on 07 May 2004, and The Vocational Rehabilitation and Employment of Disabled Persons Act, which came into force on 25 June 2004.

Regarding specific departmental acts, an explicit anti-discrimination clause can be found in the Employment Relationships Act, which has been in force since January 2003. Some other acts expressly prohibit the discriminatory treatment: the Law on the Legal Status of Religious Communities, the Associations Act, the Political Parties Act and the Media Act. Other legislation usually does not entail specific anti-discrimination norms, but the concept of anti-discrimination can be understood from the provisions of those laws.

Acts of discrimination can also in some instances be regarded as criminal offences. The Penal Code sanctions the violation of equality and the stirring up of ethnic, racial or religious hatred, strife or intolerance among others. In accordance with the provisions of Article 141 of The Penal Code, whoever deprives or restrains another person of any human right or fundamental freedom recognised by the international community or laid down by the Constitution or the Statute, or grants another person a special privilege or advantage on the grounds of nationality, race, colour, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, social status, birth, education, social position or any other circumstance, shall be punished.

The Legislation is generally harmonised with the EU Directives. However, since the basic Acts in this field are fairly new, there is practically no relevant case-law, hence it is difficult to ascertain to what extent this legislation is upheld and followed in practice. However, according to our opinion, persons are generally not as well informed as they should be about their rights and the possibilities they have in cases of discrimination. According to information provided by the Labour Inspectorate, only 4 cases of discrimination at the workplace have been brought forward since January to November 2004

3. Main principles and definitions

According to the Implementation of the Principle of Equal Treatment Act (IPETA), equal treatment is required irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, state of health, disability, language, religious or other conviction, age,



sexual orientation, education, financial status, social status or other personal circumstances. Discriminatory acts shall be prohibited in every field of social life and especially in the fields of employment, labour relations, participation in trade unions and special interest associations, education, social security, and access to and supply of goods and services. The Implementation of the Principle of Equal Treatment Act provides definitions of direct and indirect discrimination, harassment and victimisation, which all correspond to those, provided by the two Directives, and prohibits all such conduct. The Act also states that conduct with similar effect as the direct and indirect discrimination shall also be deemed as direct or indirect discrimination.

Paragraph 4 of Article 4 of the IPETA states that instructions with similar effect to that referred to in the previous paragraphs (which define equal treatment, direct and indirect discrimination) shall also be deemed to be direct or indirect discrimination.

The national law does not explicitly state that discrimination based on assumed characteristics shall be prohibited neither does it explicitly prohibit discrimination based on association with persons with particular characteristics.

The Employment Relationship Act (ERA) regulates employment relationships and is *lex specialis* in relation to the Implementation of the Principle of Equal Treatment Act (IPETA). However an individual who has faced discrimination in the field of employment can rely on the IPETA if it is more favourable or exact in his case. The ERA was adopted in 2002 in accordance with the Directives and explicitly prohibits discrimination. Article 5 of the Vocational Rehabilitation and Employment of Disabled Persons Act explicitly prohibits direct and indirect discrimination during the recruitment and employment of disabled persons, in connection with the termination of employment and also in the procedures defined by this law. These are the procedures used to define the status of a disabled person and the procedure for acquiring the right to vocational rehabilitation.

The legislation defines by way of exception occupational activities in which a distinction can be made owing to their character or circumstances, on the grounds of religion, sex, age and disability, e.g. members of the army, members of the police, judges, etc. However it is not permitted to discriminate on grounds of sexual orientation. The IPETA contains a general test of justification and/or proportionality in relation to possible occupational exceptions. Paragraph 1 of Article 2 of the IPETA states that the provisions of that Act do not exclude objectively and reasonably justified differentiated treatment or restrictions on the grounds of a specific personal circumstance, determined by special laws aiming to achieve a legitimate purpose.

As stated in the previous paragraph the Slovene legislation provides some exceptions to general anti-discrimination rules. The distinction on the grounds of religion, sex, age and disability is permitted regarding members of the army, members of the police and judges, under the conditions specified by law. Services of vocational rehabilitation have been established in order to provide reasonable accommodation, which include inter alia producing the plan of required working equipment and producing the plan of adaptation of working post and working environment for the disabled. These services are financed from the national budget, the Fund for promoting the employment disabled and from other sources. The rights to vocational rehabilitation as well as the rights arising from it are regulated by The Vocational Rehabilitation and Employment of Disabled Persons Act, which explicitly prohibits direct and indirect discrimination in cases of employing the disabled persons, during their employment and in connection with the termination of their employment. The Employment Relationships Act states that the employer is obliged to adapt the working place with consideration to the disability of the workers and in accordance with the regulations on safety and health at work.



4. Material scope

IPETA guarantees equal treatment 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 supply of goods and services. Prohibition of discrimination in the fields of health care, social advantages and housing is not explicitly mentioned, however, the access to and supply of goods and services is a very general formulation and it also includes those grounds.

IPETA is *lex generalis* and its provisions relate to every field of social life. On the other hand, The Employment Relationships Act is *lex specialis* for the field of employment, which explicitly and in detail prohibits the discrimination in recruitment, regarding the conditions of employment and the termination of an employment contract in both the public as well as the private sector.

5. Enforcing the law

A victim of discrimination has at their disposal formal or informal procedures for the protection of the right to equal treatment. The victim can initiate to the Advocate of the Principle of Equality, or in the event of violation of his or her human rights or fundamental freedoms by the State or a State related body, the victim can complain to the Human Rights Ombudsman. The Advocate can then advise the competent inspectorate body to initiate a formal procedure regarding the alleged discrimination. The victim can also make a complaint directly to the inspection service in a form of formal, administrative procedure. Discrimination means misdemeanour and the offender shall be punished by paying a fine. The victim can also initiate a civil proceeding in order to secure their right to be compensated for the damage suffered as a direct result of the discrimination.

The IPETA enables cooperation between the complainant and NGOs in judicial and administrative proceedings, but the provision is very general. Article 23 says that non-governmental organisations shall have the right to take part in judicial and administrative proceedings initiated by alleged victims of discrimination. However the rules on civil and administrative procedure do not give legal standing to NGOs to participate in the proceedings in the meaning of the Directive. According to the Constitutional Court, 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 victim of discrimination can initiate criminal proceedings and can even take over the prosecution of criminal offences if the public prosecutor withdraws the charges. The victim also has a possibility to use administrative procedures, judicial review and the constitutional complaint mechanism for the protection of his or her rights.

Article 6, Paragraph 4 of the ERA states that when a candidate or employee alleges facts during a dispute which justify the assumption that the prohibition of discrimination on the grounds from the previous paragraph applies, the burden of proof rests with employer. Paragraph 3 of Article 45 has the same provision. Constitutional law has no explicit provision on the burden of proof. The burden of proof in discrimination cases is on the alleged offender. If the discriminated person quotes facts, justifying the allegation that the ban on discrimination has been violated, the alleged offender must prove that he or she did not violate the principle of equal treatment. This rule arises both from IPETA as well as from ERA.

If a violation of the ban on discrimination is ascertained, relevant sanctions apply in the form of criminal sanctions, compensation, etc. In case of an employer being found responsible for a breach of the anti-discrimination provision according to the tort law, the employee has the right to claim damages. If the Court finds that the employee was discriminated upon the termination of his employment contract, such termination is not legally valid.

The national law does not specify whether the use of “situational testing” would be admissible as evidence in courts. Article 22 of the IPETA very generally states that in cases of violation of the ban on discrimination under Article 3 of the IPETA, persons facing discrimination shall have the right to request a hearing of a case of violation of the principle of equal treatment in judicial and administrative proceedings in the manner determined by law. As admissibility of evidence is decided by the court, and there is no rule in civil or administrative procedures stating situation testing as inadmissible evidence, we believe that situation testing could be permitted as evidence, however this will be decided on a case by case basis.

As to the use of statistical evidence in court, complainants have a right to require or request the respondents to provide statistical data, however they are limited by the Personal Data Protection Act. There has been no relevant case law so far where statistical data had been used.

Article 24 of the IPETA defines that a discriminatory action shall be a minor offence for which the offender shall be fined, and sets the range of fines from 50,000 SIT (208 EUR) to 300,000 SIT (1250 EUR) for an individual who commits a misdemeanour, and from 500,000 SIT (2083 EUR) to 10,000,000 SIT (41666 EUR) for a legal person or an individual entrepreneur. Moreover 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 demand compensation directly from the person or body that has caused the damage.

6. Equality bodies

IPETA establishes three special bodies for the implementation of the principle of equal treatment: (1) The Council of the Government for the Implementation of the Principle of Equal Treatment, (2) The Advocate of the Principle of Equality, and (3) the Office for Equal Opportunities. 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. So far the Council has only had three sessions (only one was held in 2006). Both bodies cover all grounds covered by the IPETA and are not only limited to race and ethnicity. There are no equality bodies whose mandate is limited to the promotion of equal treatment irrespective of racial or ethnic origin.

The Council is a consultative body whose main responsibility is to issue recommendations, and to monitor the positions of individual groups with regard to the IPETA, but it does not provide assistance to victims. It is designed to combat systematic discrimination.

The main responsibility of the Advocate is to hear cases of alleged violations of the ban on discrimination. This process begins with a written or verbal complaint, which may be anonymous, but must include sufficient data for the case to be heard. The hearing is informal and free of charge, and the Advocate and other employees of the Office for Equal Opportunities must keep confidential all information presented during a hearing. The Advocate of the Principle of Equality received 31 complaints in 2005 and dealt with 11 cases.

She found discrimination had occurred in five, and called upon the offender to rectify irregularities within a certain time limit.

The Vocational Rehabilitation and Employment of Disabled Persons Act adopted by the Parliament in May 2004 established the Institute of the Republic of Slovenia for Rehabilitation. Its tasks are: (1) harmonisation and coordination of professional development in this area, (2) production of standards for vocational rehabilitation services, research work and standards for the training and qualifications of specialists and people working to provide vocational rehabilitation (3) preparation of methodology for assessing the professional achievements of disabled people and monitoring in this area, and (4) other tasks related to carrying out the provisions of this Act. Funding shall be allocated from the national budget. 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 Ombudsman is another specialised 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. Any person who believes that his/her human rights or fundamental freedoms have been violated by an act or deed of a body may lodge a petition with the Ombudsman to start proceedings, and the Ombudsman can also institute proceedings on his own initiative.