

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

COUNTRY REPORT 2007

Slovenia

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State of affairs up to 29 February 2008

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:

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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 between 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.

Under the Constitution itself, everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, gender, language, religion, political or other conviction, financial status, birth, education, social status, disability or any other personal circumstance (Article 14). In April 2004 the National Assembly, which is the legislative body, adopted the Act Implementing the Principle of Equal Treatment¹. This act was amended on 22 June 2007². Another act that includes comprehensive anti-discrimination provisions is Employment Relationship Act,³ adopted on 24 April 2002, and amended on 29 October 2007. Other legislation mentioned in this report includes additional provisions relating to anti-discrimination that are not as exhaustive as these two amended acts.

0.2 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.

Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

Following the European Commission's reasoned opinion from June 2006 and June 2007 the Slovenian National Assembly adopted amendments to the Act Implementing the Principle of Equal Treatment on 22 June 2007. The amendments remedied all issues found to be problematic by the Commission, except for issue regarding the alleged lack of NGO standing to engage in judicial proceedings on behalf of the victim.

¹ *Zakon o uresničevanju načela enakega obravnavanja* [Act Implementing the Principle of Equal Treatment], Official Journal of the Republic of Slovenia no. 50/2004.

² *Zakon o spremembah in dopolnitvah zakona o uresničevanju načela enakega obravnavanja* [Act amending the Act Implementing the Principle of Equal Treatment], Official Journal of the Republic of Slovenia no. 61/2007.

³ *Zakon o delovnih razmerjih* [The Employment Relations Act], Official Journal of The Republic of Slovenia no. 42/2002.

Considering the Commission's notice on the alleged lack of NGO standing to engage in judicial proceedings, and findings from this report, the Slovenian law may be in breach of the directives on the following points:

- There is no explicit provision on duty to provide reasonable accommodation.
- There is no common definition of intellectual disability.
- 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 for persons who wish to work to renounce the disability status and consequently lose their eligibility for social benefits.
- In order to claim entitlement to protection under the equality legislation in the area of disability, a person must first be officially recognized as disabled under the Pension and Disability Act (limitation of personal scope).
- The national designated body (Advocate of the Principle of Equality) is not independent as it functions within the Government Office for Equal Opportunities (particularly in cases of alleged discrimination committed by the Government);⁴ 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; 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.
- 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

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:

- a. *Name of the court*
- b. *Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.*
- c. *Name of the parties*
- d. *Brief summary of the key points of law (no more than several sentences)*

⁴ 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. Fifteen months later the case remains without decision.

→ 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 2 Directives, 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.

1. Supreme Court of the Republic of Slovenia

- b. Judgment No. VIII Ips 265/2006
- c. Information on parties not available.
- d. In accordance with the rule on the shift of burden of proof the respondent proved that ethnicity of the plaintiff was not the ground for non-selection of the plaintiff for the job post, but it was the objectively justified reasons deriving from the type and nature of work at the job post concerned, regardless of the personal circumstances of the plaintiff. The sole statement that the plaintiff is of Macedonian ethnicity does not suffice for the claim that discrimination occurred.

2. Administrative Court of the Republic of Slovenia

- b. Judgment No. U 1324/2007-24 of 26 November 2007
- c. Aleš Zalar v. Republic of Slovenia (Ministry of Justice)
- d. The court found that the Minister of Justice discriminated against the plaintiff on the grounds of belief by selecting another candidate for the position of the president of a District Court. In accordance with the burden of proof rule, the court concluded that the Minister did not prove the reasons for non-selection were not discriminatory. By stating his qualifications and comparing it to the selected candidate the plaintiff succeeded in proving that he was a better candidate for the position. In addition, by listing media reports in which the Minister of Justice publicly opposed the plaintiff due to their political differences, the plaintiff succeeded in proving that the reason for non-selection was discrimination on the grounds of belief.

3. Administrative Court of the Republic of Slovenia

- b. Judgment No. U 947/2007-12 of 20 March 2008
- c. Jasminka Dedić v. Municipality of Ljubljana
- d. 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 is over 35, her family did not 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 fulfillment of the conditions.

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 Travelers. The annual report of the Advocate of the Principle of Equality states that in 2007 the advocate has been dealing with two cases of ethnic discrimination. At least one of them was brought by NGOs on behalf of Roma. In this case the Peace Institute and Legal Information Centre for Non-Governmental Organizations – PIC filed a complaint with the consent of the Roma family's attorney who was representing them in their relations with the state. The Strojan family (consisting of 31 members, 14 of them children), were forced to leave their land on 28 October 2006, when a mob from Ambrus approached their homes, threatening to kill them and burn their dwellings, and demanding their eviction. While the police kept the crowd back, Slovenian government officials (particularly the Minister of Interior, Minister of Education, and Minister of Environment) negotiated the family's removal to a former army barracks in Postojna 50 kilometers away. When they tried to return to their land, the police prevented them from returning. The trigger which provoked such reaction was a physical assault on a villager committed by a person, who lived with Roma but was not Roma himself. The mob claimed the eviction of the family due to alleged criminal behavior of the family. The official position of the Slovenian officials was that the family agreed with removal since they no longer felt safe. The NGOs claimed that in this case discrimination on the grounds of race or ethnicity occurred since no such thing has or could have ever happened to a family of a Slovenian ethnic origin.

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 Slovenia⁵ 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.⁶ 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 exclusion of sexual orientation was in 1991 a consequence of homophobic viewpoint of the political actors.⁷

Article 63 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 purpose of this report. Constitutional provisions apply to all areas covered by the Directives.

- b) *Are constitutional anti-discrimination provisions directly applicable?*

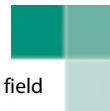
Constitutional anti-discrimination provisions are directly applicable as it derives from Article 15 of the Constitution, which states that human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.

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

⁵ *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.

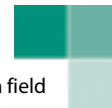
⁶ This rule must be respected even in cases of the temporary suspension and limitation of human rights in case of war or emergency, Article 16 of the Constitution.

⁷ See SiQRD – Slovenian Queer Resource Directory, Škuc Magnus, at <http://www.ljudmila.org/siqrd/dosje.php>



Article 14 of the Constitution on the prohibition of discrimination can be invoked against private actors (for example employers).⁸

⁸ 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,⁹ 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. 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 or marital status).

⁹ *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.

The Employment Relations 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 favorable or exact in his case (which is a general principle of law). The Employment Relations Act, 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 color, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance.

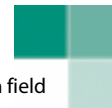
Discrimination on the ground of disability is additionally prohibited. Namely, Article 5 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act¹⁰ explicitly prohibits direct and indirect discrimination during the recruitment and employment of persons with disabilities, in relation 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.

Unequal treatment is also prohibited by criminal legislation. In accordance with the provisions of Article 141 §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, color, 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 favorable 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. In addition, Article 20 of the Protection of Public Order Act¹¹ 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.

¹⁰ *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.

¹¹ *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 on 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"?

The definition of disability, encompassed in Article 60 of the Pension and Disability Insurance Act,¹² is also used as a reference in the equality legislation. 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. 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 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 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 in the national law therefore differs from the one adopted by the European Court in Chacon Navas. The definition of Slovenian law connects the impairments to medical treatment which can not 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. Slovenian legislation continues to use outdated terms both with respect to people with disabilities in general and to people with intellectual disabilities. NGOs have advocated for amending legislation that refers to adults with more severe intellectual disabilities as "children". There is also no common definition of intellectual disability.

The Social Care Act 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*,

¹² *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.).

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 also 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.

- 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’; or a “disability”, sometimes defined only in social security legislation)? Is recital 17 of Directive 2000/78/EC reflected in the national legislation against discrimination?*

There is no definition of religion, however the Religious Freedom Act¹³ 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.

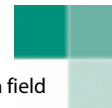
- c) *Are there any restrictions related to the scope of ‘age’ as a protected ground (e.g. a minimum age below which the anti-discrimination law does not apply)?*

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.*

There are no legal rules dealing with multiple discrimination. 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. For more information about the case please see point 0.3, case 3.

¹³ *Zakon o verski svobodi* [Religious Freedom Act], Official Journal of the Republic of Slovenia, No. 14/2007.



2.1.2 Assumed and associated discrimination

- a) *Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.*

National law does not explicitly state that discrimination based on assumed characteristics shall be prohibited. However, in the opinion of the authors 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 who is discriminated against actually has to have the personal circumstance on grounds of which discrimination allegedly occurred.

- b) *Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?*

National law does not explicitly prohibit discrimination based on association with persons with particular characteristics either. However, in the opinion of the authors 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). 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 could have been treated less favorably 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 Relations Act also defines direct discrimination; in Article 6 §3 it states that discrimination shall be prohibited in both forms, as direct or indirect discrimination. According to this act, “direct discrimination occurs if a person due to personal circumstance is, was or could have been treated less favorably than another person in equal of similar situations.”

- b) *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.

- c) *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 permit the use of 'situational 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 all grounds are not included, what are the reasons given for this limitation?*

National law does not specify whether the use of "situational 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 Act¹⁴ 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, meaning 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.

¹⁴ *Zakon o pravdnem postopku – Uradno prečiščeno besedilo* [Civil Procedure Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 73/2007.

- b) *Is there any reluctance to use situational 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 situational evidence 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.

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

There is still no case law on situation testing.

- d) *Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

Situation testing is still not used in practice.

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

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

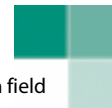
Article 4, §3 of the Act Implementing the Principle of Equal Treatment states that indirect discrimination on grounds of personal circumstance occurs when a seemingly neutral provision, criterion or practice in equal or comparable situations and under similar conditions, puts a person with a certain personal circumstance in a less favorable position compared to other persons, unless that provision, criterion or practice is objectively justified by a legitimate objective and the means of achieving that objective are appropriate and necessary. Indirect discrimination is also defined in the Employment Relations 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 favorable 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 ERU directives. Slovenian law refers to indirect discrimination on personal circumstances, and not on the grounds of being a person with e.g. particular 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 indirect discrimination on the grounds of racial or ethnic origin?*

The law does not specify language as possible indirect discrimination on the grounds of race or ethnicity. 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.¹⁵ There has been no relevant case law so far where statistical data had been used.

b) *Is the use of such evidence commonly used? 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?*

So far statistical evidence has not been used yet to prove discrimination, therefore it is not possible to state whether there would be any reluctance to use such evidence in Court.

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

There is no case law in this area yet.

d) *Are there national rules which permit data collection? Please answer in respect to all 5 grounds. The aim of this question is 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; 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.

¹⁵ *Zakon o varstvu osebnih podatkov* [The Personal Data Protection Act], Official Journal of the Republic of Slovenia, No. 86/2004.

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 (Article 13, §7). An implementing act titled the Rules on Methodology of Keeping the Register of Personal Data Collections¹⁶ further regulates the procedures concerning administering personal data collections. 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 Relations 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 Relations Act). 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 labor inspectorate about the breach in writing (Article 112 of the Employment Relations Act).

- 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 Opportunities recommends good practice for employers in the field of gender discrimination.

¹⁶ *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.

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, and advice and assistance for employees.¹⁷ However there are no official codes of good practice.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

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.

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'. e.g. ➔ 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?*

The national law (even after the adopted amendments) does not contain an explicit provision on the duty to provide reasonable accommodation, nor does it specify when the duty applies, what are the criteria for assessing the extent of the duty and any definition of 'reasonable'.

However, there are related provisions which could constitute measures to provide reasonable accommodation under the Vocational Rehabilitation and Employment of Persons with Disabilities Act, Employment Relations Act and in other pieces of legislation. All of these provisions protect only those whose disability is attested by a medical certificate in accordance with the Pension and Disability Insurance Act. In accordance with Article 60 of this 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 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 and 2006.¹⁸ 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 labor 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.

¹⁷ See <http://www.uem-rs.si>.

¹⁸ *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 and 114/2006.

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 analyzing 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, currently Slovenia is facing the problem that 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. Another problem is that the employers are not using the available funds for costs deriving from reasonable accommodation.

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). Fifteen 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 200 of the Employment Relations 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 society signed 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 societies even before the “public” tender is made public. The HII lets the societies 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. Rehabilitation for persons with muscular dystrophy can not, for example, be implemented anywhere else but at Dom dva topola, owned by the manager of the Muscular Dystrophy Society.¹⁹ (the paragraph is a short summary of the Article published by E. Pečarič and does not reflect the view of the authors of the present Report).

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 an 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.

Article 6 of the Employment Relations 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 further obliges the employer to guarantee the employee work in another job that meets the employee’s requirements, part-time work, or occupational rehabilitation, and to give the employee cash benefits in accordance with pension and disability insurance provisions.

¹⁹ Pečarič, Elena: *Slovenia: Rights and Discrimination*, Social Work and Society, at <http://www.socwork.net/2006/2/countrysnotes/pecaric/pecaric.pdf>

- b) *Does failure to meet the duty 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 Relations Act and Article 4 of the Act Implementing the Principle of Equal Treatment would occur, since Article 2, §1 lists disability as prohibited ground of discrimination. However, the Act Implementing the Principle of Equal Treatment does not explicitly elaborate on reasonable accommodation and it does not define “disproportionate burden”.

- c) *Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?*

Reasonable accommodation is only implemented indirectly and only with respect to disability.

- d) *Does national law require services available to the public, buildings and infrastructure to be designed and built in a disability-accessible way? If so, 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, washrooms, etc. that are directly used by the persons with disabilities and that are located within the workplace of these persons.²⁰ 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.

- e) *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 Relations Act, Vocational Rehabilitation and Employment of People with Disabilities Act and Health and Safety at Work Act.

²⁰ 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.

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 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.

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 centers, 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 Labor, Family and Social Affairs.



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?

These activities are considered to constitute employment under national law.

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 of the Republic of Slovenia 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. The act further defines that equal treatment shall be available irrespective of personal circumstances, which also covers 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 (for more information see Section 6.5 Sanctions and Remedies).

When the act of discrimination amounts to a criminal offence, Article 4 of the Criminal Liability of Legal Entities Act²¹ 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. According to Article 141, criminal offences are subject to a fine ranging from 2.000 EUR to 312.500 EUR, or up to the value of the damage caused or pecuniary advantage obtained, multiplied by hundred.

²¹ *Zakon o odgovornosti pravnih oseb za kazniva dejanja* [The Criminal Liability of Legal Entities Act], Official Journal of the Republic of Slovenia, No. 59/1999, (12/2000 – corr.), 50/2004.

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). 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 Criminal Liability of Legal Entities 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 Obligations²² 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 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?

²² *Obligacijski zakonik* [Code of Obligations], Official Journal of the Republic of Slovenia, No. 83/2001, 32/2004.

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.

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. 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 Relations 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 Relations 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”.

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 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 Relations 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 favors 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 Relations Act.

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 Relations 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 Relations 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 Relations 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 Relations Act apply to public sector, the public and private sectors are not dealt with 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))

- a) *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 Relations 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 Relations Act, race, ethnicity and ethnic origin, skin color, 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 Relations 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 Relations 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.

b) In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 ?

The Pension and Insurance Act states that the conditions for access to occupational pensions can not 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.

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 course?

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.

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.

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.²³ Article 4 states the principle of equal access to social security services and financial social aid 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 Parental Protection and Family Benefit Act²⁴ 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 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 Act²⁵ 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.

²³ *Zakon o socialnem varstvu – Uradno prečiščeno besedilo* [Social Security Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 36/2004,

²⁴ *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.

²⁵ *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.

The Health Services Act²⁶ 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 almost the whole population of Slovenia is included in the mandatory health insurance scheme. However, persons who do not have any residence status arranged in Slovenia remain outside the system. People without any status in Slovenia include: refugees, asylum seekers, foreigners who are residing temporary in Slovenia, and the “erased people”.²⁷ These persons, however, are also entitled to emergency health care. The national budget of the Republic of Slovenia covers the expenses for these groups.

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 granted to people because of their employment or residence status, e.g. 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.

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. If these cases and/ or patterns exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

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.

²⁶ *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.

²⁷ 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. Even today around 4.000 people continue living in Slovenia without any status.

The main legislation on education is the Organization and Financing of Education Act,²⁸ 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 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 education²⁹ as well as access to high school³⁰ and higher education³¹ 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.

Children with disabilities are predominantly enrolled in special schools. If they 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.³² Inclusion of children with disabilities into regular schools is an exception and depends on the willingness of the school to accept them.

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.³³ The act and other regulations deal with the pre-school and primary school education of Roma children. 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 Education³⁴ allows these classes to include a smaller number of children than other classes, as well as fewer children per teacher.

Elementary school classes established especially for Roma children have only been set up exceptionally since the school year 2003/2004. The tendency to integrate Roma children in regular classes has prevailed in the majority of elementary schools. The Ministry of Education and Sport decided to change norms and standards and to introduce integration of Roma children in regular classes in all elementary schools.

²⁸ *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.

²⁹ *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.

³⁰ *Zakon o gimnazijah* [High School Act], Official Journal of the Republic of Slovenia, No. 12/1996, 59/2001.

³¹ *Zakon o visokem šolstvu – Uradno prečiščeno besedilo* [Higher Education Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 100/2004.

³² *Zakon o usmerjanju otrok s posebnimi potrebami – Uradno prečiščeno besedilo* [Placement of Children with Special Needs Act – Official Consolidated Text], Official Journal of the Republic of Slovenia, No. 3/2007.

³³ *Zakon o vrtcih – Uradno prečiščeno besedilo* [Kindergarten Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 113/2003.

³⁴ *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.

In accordance with the Rules Amending the Decree on Norms and Standards and Elements for the Classification of Posts Providing the Basis for the Organization and Financing of the Program of the Nine-Year Elementary School with the Budgetary Funds (Official Gazette RS, no. 82/03), there needs to be a total of 21 children in a class with more than three Roma in the 2003/04 school year. The new rules no longer provide for classes of exclusively Roma children; however, in practice there are at least two schools in Slovenia where this model is still used.

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. 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 Slovenian language and help their earlier socialization. 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 (on the special rights of the two national minorities see below).

According to the Amnesty International report of November 2006,³⁵ Roma children in Slovenia continue to face discrimination irrelevant of the strategies and programmes adopted by the Government. According to the mentioned report, which included the position of Roma in Bosnia and Herzegovina, Croatia and Slovenia, extreme poverty, discrimination in schools and the lack of truly inclusive and multicultural curricula 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. As members of the Roma community in Slovenia told Amnesty International, "Some of us live in huts. How can the children do well at school?" 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. At present, the languages spoken by Roma are virtually absent from schools of the three countries, unlike other minority languages. 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.³⁶ In 2007 the situation remained unchanged.

The above mentioned view is also shared by the authors of the 2006 report *The Aspect of Culture in the Social Inclusion of Ethnic Minorities for Slovenia*.

³⁵ <http://www.amnesty.org/en/library/info/EUR05/002/2006>

³⁶ 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>

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. Actually, a high portion of children, who attend primary school, end their education with the 5th or 6th class. 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.³⁷ In NAP/inclusion 2004-2006 the educational situation of the Roma is considered one of the main obstacles for their social inclusion: »Members of the Roma community are characterized by a low level of education and inadequate functional literacy. Owing to their deficient knowledge of Slovenian, Roma children have difficulties as soon as they enrol in kindergarten or primary school. All of this creates problems with inclusion in society. Slovenia will try to invest greater effort in including Roma children in full-time education« (NAP/inclusion 2004-2006, p. 20).

In 2005 there was a big public discussion on a proposed new model of education in the Bršljin Elementary School, near Novo Mesto. 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 envisaged special classes for Roma children from the 1st to the 8th grade of elementary school. The justification for the 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. 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.³⁸

³⁷ 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

³⁸ 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.

In 2006 The Human Rights Ombudsman demanded the above mentioned school in Novo Mesto to provide an answer on the recent developments in the implementation of the new model. The answer provided to the Ombudsman showed that the school can not be accused of ethnic segregation, however the work of the national and local authorities was still to be criticised. The core of the problem is the fact that the Strategy for the Education of the Roma, is not being implemented in practice. Another problem is the systematisation of the Roma assistants who would be contributors in the education system. There are currently no members of the Roma Community, who would fulfil the conditions to qualify as assistants (nobody has a high school degree, which is an essential requirement for a person to be part of the schooling system). In 2007 there were 2 Roma co-operators at the School, one working as a family coordinator, and the other in charge of the liaising with the Roma Community.

According to the educational authorities, a number of measures have been taken to find a solution. One of them was the introduction, from the first year onwards, of ability-based streaming for certain subjects. This measure, which runs counter to the standard practice of streaming only after the third year, has resulted in a *de facto* segregation. Additional professional support and Roma assistants have, however, been made available to the school, according to the educational authorities.³⁹ The model was criticised in the Human Rights Ombudsman's report⁴⁰ as well as in the report of the Commissioner for Human Rights of the Council of Europe (29 March 2006). The equality body did not address this issue in spite of the stated reports.

In 2004/2005 there were 1547 Roma children attending elementary schools, approximately 40 in secondary schools, while only five Roma students were attending university (however the latter information is not completely accurate as data could only be found for the regions of Štajerska and Prekmurje).⁴¹

The Elementary School Act introduces goals for primary school education, which include: educating children to encourage mutual tolerance, respect for difference, co-operation with others, and respect for human rights and fundamental freedoms, and thus prepares them for life in a democratic society.⁴²

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. The Strategy for the Education of Roma in Slovenia states that this model should be used in solving the problem of education of Roma children.

³⁹ Council of Europe, Commissioner for Human Rights: *Follow up Report on Slovenia 2003-2005*; 29 March 2006;

⁴⁰ <http://www.varuh-rs.si/index.php?id=879&L=6>

⁴¹ Information included in: *The Strategy of the Education of Roma in Slovenia prepared by the working group for the strategy of inclusion of Roma in the education* and on <http://www.uvn.gov.si/index.php?id=99>

⁴² Elementary School Act, Official Gazette of the Republic of Slovenia no. 12/1996, 33/1997, 54/2000, 59/2001, 71/2004. *Zakon o osnovni šoli*, Uradni list Republike Slovenije številka 12/1996, 33/1997, 54/2000, 59/2001, 71/2004.

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 Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act.⁴³

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. A quote from the research states: “When I was in school the teacher told us for a whole hour that we smelled that we are stupid and so on.” Discrimination practices in education are even greater among Roma children as they are seen as incompetent and unable to reach higher standards. Another quote from the research states: “When I was in elementary school all the children were sent to the textile high school. It was immediately assumed that if you are Roma you have to go to textile school. You could not attend medical school or school of economics.”

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

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.

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 of the Roma and other minorities or groups.

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.

⁴³ 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.

The Housing Act⁴⁴ 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 fulfill 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 buyer 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 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. 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.

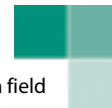
The Housing Act, adopted on 19 June 2003, and Spatial Planning Act, adopted on 30 March 2007, apply generally and contain no provisions specifically concerning Roma. Some specific provisions on housing are contained in Roma Community Act, which in Article 5 (§ 2) recognizes the importance of regulating 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 before mentioned view of the EUMC (now Fundamental Rights Agency) was confirmed in October 2006, when a series of alarming events took place in Ambrus, a small settlement in central Slovenia. A Roma family (31 members) fled their settlement into the nearby woods following an incident of Monday, October 23, 2006, in which one of the locals was attacked by a man who lived with the Roma, although he is not a Roma himself. Some 300 locals, enraged, gathered at a meeting, urging the state to move the Roma from their village to a more appropriate location. Shortly after the incident, Minister of the Interior Dragutin Mate, appeared at the site as the negotiations started. He surrendered to the demands of the villagers' crowd and self-willingly ordained a deportation of all present Roma to the former refugee centre in Postojna. The Government's position was that an agreement was achieved between Minister Mate and the head of the Strojan family, Mirko Strojan and that the family was not forcibly deported, as stated in some media, but rather relocated with their consent. The story continued with demolition teams which under the police protection pulled down the otherwise illegally built homes of the Roma family in Ambrus, on land the family legally owned.

⁴⁴ *Stanovanjski zakon* [The Housing Act], Official Journal of the Republic of Slovenia, No. 69/2003, 18/2004.



The family, including 14 children, was relocated from centre to former military barracks in the suburb of Ljubljana late in October after local villagers threatened to kill members of the family. In 2007, with the pro bono assistance of attorney Aleksander Čeferin, a contract was signed between the family, the state which owned the military barracks, and an unknown third party, on the exchange of properties in Ambrus and in Ljubljana. Pursuant the contract, the state became the owner of the property in Ambrus and the family became the owner of the former military barracks. The difference in price was 57.000 EUR which was paid to the state by the unknown third party. In exchange for the property of higher value the family renounced all claims for damages from the state.



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.

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?*

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

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 Act⁴⁵ 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.⁴⁶ Article 88, §3 states that, anyone who wants to professionally engage in military service has to fulfill 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 2003⁴⁷ the maximum age limit was removed from the act and is no longer a requirement for this kind of employment. 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. 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.

c) *Are there cases where religious institutions can 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 (example: the Catholic church in Italy or Spain can select religious teachers in state schools)? In what conditions is that selection done? 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. In addition, Article 5 of the Act ratifying the Agreement between the Republic of Slovenia and the Holy See on Legal Issues⁴⁸ states that the catholic church shall be competent to nominate and employ people in accordance with the canon law.

⁴⁵ *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.).

⁴⁶ 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.

⁴⁷ *Zakon o spremembah in dopolnitvah zakona o policiji* [Act Amending the Police Act], Official Journal of the Republic of Slovenia, No. 79/2003.

⁴⁸ *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.

4.4 Nationality discrimination (Art. 3(2))

Both the Race Directive and the Framework Employment 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 (ie 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 Relations 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. E.g. Article 88, §2 of Defense Act 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,⁴⁹ since it grants certain rights only to the individuals of “Slovenian nationality” thereby excluding other possible beneficiaries, and consequently does not conform with the Constitution.⁵⁰

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.

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 employee and their partner. Certain employers limit these benefits to the married partners 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.

⁴⁹ Zakon o popravil krivic [The Redress of Injustices Act], Official Journal of the Republic of Slovenia, No. 59/1996.

⁵⁰ See the Legal analysis of national and European anti-discrimination legislation for Slovenia, by Vera Klopčič, 2001.

- (a) *Does national law permit an employer to provide benefits that are limited to those employees who are married?*

Married and unmarried opposite-sex partners are treated equally according to the act regulating family relations; therefore if an employer limited work-related benefits to married partners, this would be a breach of the Constitution. Moreover, the Act Implementing the Principle of Equal Treatment prohibits discrimination based on any personal circumstance, which includes marital status.

- (b) *Does national law permit an employer to provide 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,⁵¹ which however contains no provisions on work-related family benefits. Therefore, the Act Implementing the Principle of Equal Treatment would apply if the employer limited benefits to opposite-sex partners, since it prohibits discrimination on the ground of sexual orientation.

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

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

There are no explicit exceptions in relation to disability and health and safety. Article 20, § 3 of the Employment Relations 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 fulfill 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.

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 ?*

⁵¹ *Zakon o registraciji istospolnih partnerskih skupnosti* [The Registration of Same-sex Partnerships Act], Official Journal of the Republic of Slovenia, No. 65/2005.

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, labor 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 25 of the Employment and Insurance Against Unemployment Act 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 18 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 24 months.

c) *Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it 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. 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 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 (the law states that all the employed and self employed are to be included in the mandatory insurance. However 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 Relationships 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 set 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).⁵²

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 Act⁵³ 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 fulfill specific requirements, including that he is physically and mentally capable of professionally performing military service.

⁵² *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.

⁵³ *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.).

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 Act Supplementing and Amending the Employment and Insurance in the case of Unemployment 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 retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

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 fulfill 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).

- 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 for longer, or can an individual collect a pension and still work?*

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.⁵⁴ 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.

⁵⁴ See Article 36 Pension and Disability Insurance Act with regard to Article 52 of the same Act.

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 individuals 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 for longer, or can an individual collect a pension and still work?*

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, 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 transmitted to 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)?*

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

The law protecting against dismissal apply to all workers irrespective of age and are 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 Relations Act sets criteria for selecting workers for redundancy. The first criterion is the professional education of the employee and his or her work qualifications, as well as additional knowledge and abilities required.

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 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 Relations Act, older employees enjoy special protection. Namely, employees who are more than 55 (men) or 51 (women) years old can not 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 Framework Employment 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 Act⁵⁵ 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.

⁵⁵ *Zakon o policiji – Uradno prečiščeno besedilo* [Police Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 102/2004.



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.

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 favorable position for persons with a particular personal circumstance or to compensate for a less favorable 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 favorable 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 of 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 5 grounds, 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.*

A. 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 that was recently opened in Novo Mesto.

Article 65 of the Constitution stipulates that the status and special rights of the Roma living in Slovenia are regulated by law. Government social programs⁵⁶ 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 1995,⁵⁷ and there are also provisions in twelve different organic laws.⁵⁸ On 30 March 2007 Roma Community Act⁵⁹ was adopted.

⁵⁶ 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.

⁵⁷ 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 tradition.

⁵⁸ To date there are 12 different laws according to statements by the Government.

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. The Local Self-Government Act⁶⁰ 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 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.⁶¹ 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,⁶² which entered into force on 12 November 2005 and stipulates that gradually Roma radio and television shows are to be 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,⁶³ 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.

⁵⁹ *Zakon o romski skupnosti v Republiki Sloveniji* [The Roma Community Act], Official Journal of the Republic of Slovenia, No. 33/2007.

⁶⁰ *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.

⁶¹ <http://www.errc.org/cikk.php?cikk=2384>

⁶² *Zakon o Radioteleviziji Slovenija* [The Radio and Television Slovenia Act], Official Journal of the Republic of Slovenia, No. 96/2005.

⁶³ *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.

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,⁶⁴ 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). Self-governing communities established by the Self-governing Ethnic Communities Act⁶⁵ 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.

B. Special measures in labor and social security legislation

The Employment Relations 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 can not be undertaken without the consent of the employee (Article 203); employment relationship can not 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 Relations 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 Relations 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

⁶⁴ *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.

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

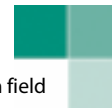
loss of earnings (Article 200), and protection from redundancy, unless there is no other appropriate job or part-time job (Article 116).

The Employment and Insurance Against Unemployment Act deals with the protection of older employees and the long-term unemployed (Article 48a). This act stipulates that the state will reimburse the employer or organization for half of the contributions towards pension and disability insurance taken from an employee's gross wages for a period of up to two years if the employer or organization employs certain categories of unemployed people (e.g. an unemployed person who is more than 50 years old and receives unemployment allowance or social assistance).

C. Special measures related to disability and any quotas for access of persons with disabilities to the labor 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. Vocational rehabilitation consists of counseling 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.



6. REMEDIES AND ENFORCEMENT

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

- 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. 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. The procedure is informal and free of charge.

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**⁶⁶ is another specialized 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 (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,⁶⁷ 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. In 2007 the Ombudsman examined 57 complaints on alleged discrimination. In 10 matters the complainants claimed discrimination on the grounds of race and ethnicity, in 1 case on the grounds of gender, in 3

⁶⁶ 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.

⁶⁷ 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.

cases in the area of employment, while in 43 cases the complainants claimed discrimination on other grounds.

These are only cases in which complainants claimed discrimination, however, the Ombudsman's office suspected discrimination in numerous additional cases in which, however, the complainants did not claim it. Accordingly, only by April 2007 the Ombudsman's office suspected discrimination took place in additional 54 cases.⁶⁸

Discrimination can also be reported to **inspectors** competent for certain areas of social life (e.g. labor, 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 labor inspectorate since the prohibition of discrimination is included in the Employment Relations Act, the respect of which is monitored by the labor inspectorate. The procedure before the inspector is free of charge. In 2007 the Labor Inspectorate found discrimination in 6 cases: in three of them discrimination occurred already at advertising the vacancy, and in two cases discrimination occurred in connection with the questionnaires of employers that job candidates had to fill in. In one case the Inspectorate found discrimination on the grounds of disability.⁶⁹

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 Act⁷⁰ 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.⁷¹ 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.⁷² 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.

⁶⁸ Information was provided by Human Rights Ombudsman of the Republic of Slovenia on 2 July 2008.

⁶⁹ Labor Inspectorate of the Republic of Slovenia, Annual Report 2007, p. 99.

⁷⁰ *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.

⁷¹ *Zakon o upravnih taksah – Uradno prečiščeno besedilo* [The Administrative Fees Act], Official Journal of the Republic of Slovenia, No. 40/2004.

⁷² *Zakon o upravnem sporu* [The Judicial Review Act], Official Journal of the Republic of Slovenia, No. 50/1997 and 70/2000, 11/2003.

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 labor and social courts is available, and is regulated by the Labor and Social Courts Act.⁷³ So far the Labor Court finally decided only one case due to alleged discrimination. The court found in favor of the defendant since the plaintiff did not state sufficient facts that would justify the claim that the ban on discrimination has been violated, nor did he specify which personal grounds were the basis for discrimination.

Criminal procedure is regulated by the Criminal Procedure Act, according to which cases of discrimination on the grounds of ethnicity, race, color, 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. The 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 8333 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 labor 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 Act⁷⁴ according to the value of the subject of the dispute. In social or labor disputes which do not

⁷³ *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.

⁷⁴ *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.

relate to property, the amount of the fee is 20 EUR. Court fees are not payable in collective labor disputes and some social disputes.

In addition, a worker does not have to pay a court fee for individual labor 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 labor dispute. In disputes over the termination of employment, the employer covers the expenses of the procedure irrespective of the outcome of the procedure. Article 68 of the Labor 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 Act⁷⁵ 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.

There are no provisions relating the physical accessibility of the courts by persons with disability or provisions that decisions or information should be provided in Braille. There are also no special procedures for dealing with individuals with a learning disability.

In Slovenia potential plaintiffs are facing long-lasting trials due to complicated legislation and court backlogs, which is a deterring element for the victims of discrimination with relation to initiating court procedures. In average, in 2005 19 % of court cases are completed in up to three months, 15 % of cases are completed in 3-6 months, 21 % of cases are completed in 6 months to 1 year, 30 % are completed in one year to three years, and 15 % are completed in more than three years.⁷⁶

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**. Both the Constitution and the Constitutional Court Act state that the constitutional complaint is admissible only if previous legal remedies have been exhausted⁷⁷ and if the complaint was lodged within 60 days of the act.⁷⁸

⁷⁵ *Zakon o brezplačni pravni pomoči* [The Free Legal Aid Act], Official Journal of the Republic of Slovenia, No. 66/2001, 50/2004.

⁷⁶ The numbers are calculated on the basis of statistics from Bele, Ivan: *Merjenje in analiza sodnih zaostankov* [Measuring and Analysis of Court Backlogs], presented at Statistical Days 2006, at http://www.stat.si/radenci/program_2006/SEPARATI_A1_Bele.doc

⁷⁷ 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.

⁷⁸ 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

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.⁷⁹ 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 for Equality and the Human Rights Ombudsman.

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

In relation to each, 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.

According to the Employment Relations Act, a person can bring a case after the employment relationship has ended. Article 204 of the Act states that should the employer not fulfill 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 labor court within 30 days from the expiry of the time limit stipulated for the fulfillment of obligations and/or rectification of the violation by the employer. The Employment Relations Act 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 labor 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. 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

from a violation. The time limit cannot therefore be interpreted strictly and the judges should consider when the relationship ended.

⁷⁹ *Zakon o ustavnem sodišču* [The Constitutional Court Act], Official Journal of Republic of Slovenia, No. 15/1994, 64/2001.

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 Relations Act already mentioned in the report there is always the possibility of binging a case under the general provisions of Act Implementing the Principle of Equal Treatment. The Advocate or the Labor 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) in support of a complainant

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. Due to the lack of specificity of this provision the NGOs' involvement depend on other more specific provisions in procedural legislation. The Civil Procedure Act, which is used for **civil procedures**, and also when appropriate for the proceedings at the Constitutional Court or at the Labor and Social Court, states that a third party who has a legal interest (meaning a personal interest based on statute or other regulations) in the success of one of the parties can intervene at any time until the end of the proceedings. This party can be represented in the court only by an attorney or by a law firm with the exception of a county court, where anybody with a business capacity can represent a party (see Section 6.1).

According to the General Administrative Procedure Act, anyone who has a legal interest is entitled to participate in **administrative proceedings** (as a participant). The individual must state protection of rights and legal benefits in order to demonstrate legal standing. Legal interest is a personal interest based on statute or other regulations. Such a person has equal rights and duties as a party to proceedings unless another statute provides differently (Article 43). State bodies shall provide for the participation of all persons whose rights and duties may be affected by a decision during the proceedings (Article 44). A professional organization which is recognized in certain activities directly connected with the relevant rights and duties may represent an individual during administrative proceedings (Article 54, §3). The party is entitled to invite an expert in special circumstances. This expert shall provide explanations and legal advice on behalf of or in support of the party concerning legal matters but is not entitled to represent the party (Article 61).

Article 179 of the Employment Relations Act defines the role of trade unions or workers' representative bodies in disciplinary procedures.

It states that 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 Relations 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.

b) on behalf of one or more complaints (please indicate if class actions are possible)

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 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 (for example the Society of Erased Persons⁸⁰). The Helsinki Monitor for Human Rights, for example, cannot 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.⁸¹

Class actions are not possible.

To conclude, according to the national law, the only legal person who can be a representative at the 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 give authorization for representation to one of the employees of the NGO. In case of the later there are two possibilities: NGO can employ an attorney at law, in which case he/she as a physical person will be representing the victim. However, no NGO in Slovenia actually employs an attorney at law, therefore the second possibility is more likely to occur: employees of NGOs can be authorized to represent a victim, however only in disputes of little value 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.⁸²

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).

⁸⁰ Constitutional Court decision no.U-I-296/02-8 of 20.11.2003.

⁸¹ Constitutional Court decision no. U-I-246/02 of 3.4.2003.

⁸² See legal opinion available at

http://www.etcgraz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lanki/prevod_pravnega_mnenja.doc

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.

Article 6, §4 of the Employment Relations 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. Therefore we find Slovenian legislation compliant with both Directives.

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 persons other than the complainant? (e.g. witnesses, ➔ or person that help the victim of discrimination to present 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 Relations 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 Relations Act states that after ending a labor 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 labor relationship. If an employer insults an employee or acts violently, or if the employer does not prevent such behavior from other employees, the employee affected may, according to Article 112 of the Employment Relations Act, end the contract without notice after eight days if he has notified the employer and the Labor Inspectorate in writing.

The employee gets indemnity money and monetary compensation. Article 113 and 210 of the Employment Relations 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.

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, at which 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.⁸³ 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 Relations 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.

⁸³ *Zakon o prekrških - Uradno prečiščeno besedilo* [Minor Offences Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 55/2005.

Article 141 of the Penal Code prescribes punishment of individuals who commit a criminal offence of violating equality. In accordance with Article 141, §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 141 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. Article 300 of the Penal Code stipulates that anyone who provokes or stirs up ethnic, racial or religious hatred, strife or intolerance, or disseminates ideas relating to the supremacy of one race over another, shall be sentenced to imprisonment for a maximum term of two years. If the offence has been committed by coercion, maltreatment, endangering a person's safety, desecration of national, ethnic or religious symbols, damaging of movable property of another, or desecration of monuments or memorial stones or graves, the perpetrator shall be sentenced to imprisonment for not more than five years. Materials and objects which contain messages with the content described in Article 300, §1 as well the facilities for their production, duplication and distribution, are to be confiscated. Article 206 of the Penal Code states that anyone who limits or restricts a person's right to free access to any position of employment on equal terms, as required by law, is fined or imprisoned for up to one year. Article 205 of the Penal Code imposes punishment upon anyone who violates basic rights of employees, which includes anyone who deprives the worker of a right they are entitled to by deliberately violating, *inter alia*, the rules governing the conclusion or termination of an employment contract, salary, the protection of women, and young and handicapped persons. Article 209 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. In addition, Article 20 of the Protection of Public Order Act⁸⁴ 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 Act⁸⁵ 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 favor of the employee, the employee can seek full compensation before the court.

Sanctions for legal persons which are responsible are described in Section 3.1.2.

⁸⁴ *Zakon o varstvu javnega reda in miru* [Protection of Public Order Act], Official Journal of the Republic of Slovenia, No. 70/2006.

⁸⁵ *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.



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. 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 is required by the Directives?*

There is no information on the average compensation available to the victim, given the lack of relevant case law. It is therefore not possible to assess whether sanctions are effective, proportionate and dissuasive.

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), 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?*

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. According to this act, there is a possibility to establish additional Advocates dealing with a specific personal circumstance (a special Advocate for equal opportunities of men and women already works within the Office for Equal Opportunities). 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. 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**,⁸⁶ 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 co-ordinating 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 co-ordinating 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.

There are some additional bodies related to equal treatment of protected groups that need to be mentioned. The Vocational Rehabilitation and Employment of Persons with Disabilities Act adopted by the Parliament in May 2004 established the Institute of the Republic of Slovenia for Rehabilitation. To encourage the recruitment and retention of employees with disabilities, the Act also established the Fund for Promoting the Employment of People with Disabilities.

⁸⁶ Website address: <http://www.uem-rs.si>

To improve the coordination of activities in dealing with the issue of Roma in Slovenia, the Government has established the Commission of the Government of the Republic of Slovenia for the Protection of Ethnic Roma Community⁸⁷ (the last Commission was established by a Government decree on 5 May 2005).⁸⁸ There is also a similar governmental commission which deals with the issues concerning Italian and Hungarian National Communities. Finally, there is a Commission for National Minorities (meaning for Italian and Hungarian National Communities) which is a special working body of the National Assembly. Since the principle of equal treatment and the ban on discrimination are incorporated in the Constitution (Article 14), the Human Rights Ombudsman can also be considered as a body competent for examining violations of human rights, including the right to equal treatment.

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.

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 fulfills 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.

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).

⁸⁷ Order of the Government on the Appointment of the Members of the Commission of the Government of the Republic of Slovenia for the Protection of the Roma Ethnic Community No. 1174/01, 12 April 2001.

⁸⁸ Order of the Government on the Appointment of the Members of the Commission of the Government of the Republic of Slovenia for the Protection of the Roma Ethnic Community No. 117-44/2005, 5 May 2005

With the amendments of June 2007 the status of the Council was changed and the provisions of the law no longer foresee membership of civil society representatives (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 Council does not have its own budget.

- 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, and the Advocate and other employees of the Office for Equal Opportunities must keep confidential all information presented during a hearing. After the complaint, the Advocates conduct 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. The problem with the procedure before the Advocate is that both parties are not informed about the procedure in the same way, since the complainant that started the procedure is not informed about the alleged perpetrator's response to the complaint. Also, the Advocate has no investigative powers and it therefore cannot establish the truth 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.

In 2007 the Advocate examined 47 cases, out of which in 17 cases discrimination was claimed on the grounds of gender, while in 8 cases it was not possible to assess what was the ground of discrimination claimed. The Advocate found discrimination in only 7 seven cases. The low number of cases in addition to the lack of case law shows that people are not aware of their right to non-discrimination and the institutes and remedies available to them. The high number of gender-related complaints and complaints which were not specific concerning the ground of discrimination, show that people are not familiar with the concept of discrimination, or the concept of discrimination outside of gender.



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. It is therefore still to be seen, what kind of role will the council play under the new act.

d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish 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 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) 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.

f) Is the work undertaken independently?

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 Body'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.

g) *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. Roma are therefore not a priority with the specialized body in Slovenia. This raises concern since on the state level Roma are not recognized as a group which is more exposed to discrimination.



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.

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 2007 there were many projects implemented in the area of discrimination due to the European Year of Equal Opportunities for All, within which 50 % of the funds were provided by the European Commission and 50 % by the Ministry of Labor, Family and Social Affairs. The program allowed the NGOs to carry out about ten anti-discrimination projects, which included preparation of web sites, roundtables, trainings for journalists and NGOs. All other 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, the Government at present only provides some funding (upon the incentives of European Commission, such as European Year of Equal Opportunities) for NGOs for specific projects, some of which involve the dissemination of information regarding the issue of discrimination and upholding personal rights.

- 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.

The Government's Economic and Social Council is carrying out a Phare project on social dialogue between the employers and employees regarding the principle of anti-discrimination. The Economic and Social Council was established by an agreement with the social partners in 1994. It has no constitutional or statutory basis. This tripartite organ has dealt with several important issues and its members have reached agreements on issues relating to pension reform, the Employment Relations Act, pay, and the Safety and Health at Work Act.

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 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 two sessions have been held, no progress has been made so far.

- d) *to specifically address 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 2007 several initiatives were carried out by the latter: it cooperated in the Expert Commission for Regulation of Spatial problems of Roma Settlements, and it prepared the Act on Roma Community. The Roma situation, however, remains extremely worrying in the area of employment (more than 90 % of Roma are unemployed), housing, education, health, and hate speech.

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).*

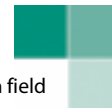
Under the Slovenian Constitution, all laws, regulations and rules have to comply with the Constitution (Article 153).



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 powers of the Constitutional Court are regulated by both the Constitution and the Constitutional Court Act. 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 contrary to the principle of equality still in force?

There are at least two 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, the law discriminatorily regulates inheritance and eligibility of same sex partners for rights deriving from social and health security system). This is law is currently in the procedure before 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.



9. OVERVIEW

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 (and if at all) national law has given rise to complaints or changes, including, eventually a reference to the number of complaints, whether instances of indirect discrimination have been found by judges, and if so, for which grounds, etc.

The Constitution of the Republic of Slovenia guarantees equality and prohibits discrimination. Besides the Constitution, only the Act Implementing the Principle of Equal Treatment and Employment Relations Act include comprehensive anti-discrimination provisions.

Despite the fact that anti-discrimination provisions were adopted and programs have been initiated promoting the equal treatment of certain groups, such as people with disabilities, older people and Roma, the results in practice have not yet reached a justifiable level. The average rate of unemployment among these groups still exceeds the state average. This fact leads to the conclusion that additional effort is required for improving the situation of underprivileged groups. Another issue worth mentioning at this point is the problem of the lack of dissemination of information among individuals who could be victims of discrimination, and thus are not aware of legal safeguards intended for their protection.

Another problem is the effectiveness of the equality body. The body designated to investigate cases of discrimination is understaffed, which raises concerns about the actual capacity of the body to provide effective assistance to victims of discrimination. Only the Advocate herself has been working on the cases of discrimination within the equality body (in her absence, another person was authorized to act on her behalf). The annual budget for the Advocate is not transparent, however, the annual budget for 2007 for the entire Office for Equal Opportunities, which in 2007 employed 8 people, is 412.000 EUR. Further, the Advocate acts within a government office, which does not enable its independence, in spite of the legislative provisions stipulating just that. The Advocate is lacking investigative powers which would enable him or her to establish discrimination in cases when parties are stating opposing facts. The Advocate is also lacking the powers of inspectorates (similarly as the Information Commissioner), which would enable him or her to issue sanctions in all areas of discrimination, and there would be no need to refer the case to the inspection, which then declares itself incompetent. In addition, the Advocate does not have a separate budget, since the latter depends on the government. The result is that in practice the body cannot function as independently as it should according to the Race Directive. The other concern is that according to the provisions of the Act Implementing the Principle of Equal Treatment, a special Advocate can be designated for a ground on which greater numbers of cases are based. The Advocate of the Principle of Equality currently works also as an Advocate for equal opportunities for men and women. However, the intent of this provision was to distribute the cases between different persons holding the functions of Advocates for different grounds, in order to enable quicker and more specialized decision making.

The problem relating to the implementation of the Directives is also the fact that there is no relevant case law and it is therefore hard to ascertain the efficiency of anti-discrimination legislation in practice.



Situation testing has not been used yet and there were no cases where indirect discrimination was found by judges. The situation regarding the use and admissibility of statistical data remains uncertain for the same reasons.

Finally, the problem is also that despite the legislation, the level of xenophobia and discrimination is still high in Slovenia. Hate speech, the issue of the erased⁸⁹, and the status of the Roma (see the case of Ambrus, p. 24) show that the law still needs to be enforced in practice and that education on discrimination from an early age as well as awareness rising, should be a priority in the future.

⁸⁹ After Slovenia became independent, citizens of other republics of Yugoslavia having permanent residence in Slovenia could apply for Slovenian citizenship by the deadline of 26 December 1991. On 26 February 1992, at least 18,305(3) individuals were removed from the Slovenian registry of permanent residents and their records were transferred to the registry of foreigners. Those affected were not informed of this measure and its consequences. The "erased" were mainly people from other former Yugoslav republics, who had been living in Slovenia and had not applied for or had been refused Slovenian citizenship in 1991 and 1992, after Slovenia became independent. As a result of the "erasure", they became *de facto* foreigners or stateless persons illegally residing in Slovenia. In some cases the "erasure" was subsequently followed by the physical destruction of the identity and other documents of the individuals concerned. Some of the "erased" were served forcible removal orders and had to leave the country.



10. 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?

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).



Annex

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

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Slovenia

Date

Title of Legislation (including amending legislation)	In force from:	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.	Please give month / year			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/	May 2004, amended in June 2007	gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance	Civil Law Administrative Law	every field of social life, and in particular conditions for access to employment, to self-employment and to occupation, selection criteria, recruitment conditions, promotion; vocational (also advanced) and professional education and training, and retraining, practical work experience; employment and working conditions, dismissals and pay; membership of and involvement in an organization of workers or employers,	prohibition of direct and direct discrimination, harassment, victimization, shift of burden of proof, exceptions, establishment of the equality body, the procedure of the equality body, sanctions.

				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.	
Vocational Rehabilitation and Employment of Persons with Disabilities Act http://zakonodaja.gov.si	June 2004	disability	Administrative Law Labor Law	employment	Positive action, creation of a specialised body
Employment Relations Act – Official Consolidated Version http://zakonodaja.gov.si/	January 2003, amended in October 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	October 1994	ethnicity, race, color, 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, prohibition of violation of equal rights at employment and social services

Protection of Public Order Act, http://zakonodaja.gov.si	June 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/	Dec 1991	national origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability	Constitutional law	/	/

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Slovenia

Date

Instrument	Signed (yes/no)	Ratified (yes/no)	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)	yes	yes	no	yes	Yes
Protocol 12, ECHR	yes	no	no	yes	Yes
Revised European Social Charter	yes	yes	Declaration on Part II, Articles 13, 18 (2).	Ratified collective complaints protocol? yes	Yes
International Covenant on Civil and Political Rights	yes	yes	no	yes	Yes
Framework Convention for the Protection of National Minorities	yes	yes	no	-	yes
International Convention on Economic, Social and Cultural Rights	yes	yes	no	-	Yes
Convention on the Elimination of All Forms of Racial Discrimination	yes	Yes	no	yes	Yes
Convention on the Elimination of Discrimination Against Women	yes	yes	no	yes	Yes

ILO Convention No. 111 on Discrimination	yes	yes			Yes
Convention on the Rights of the Child	yes	yes	no		yes
Convention on the Rights of Persons with Disabilities	yes	yes	no	yes	yes