



## Executive Summary

### Country Report Slovenia 2009 on measures to combat discrimination

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#### 1. Introduction

Slovenia is ethnically quite homogeneous state. According to the population census of 2002 the country consists of 83 % ethnic Slovenians, 0.11 % Italians, 0.32 % Hungarians, 0.17 % Roma people. In Slovenia there are also 1.98 % Serbs, 1.81 % Croats, 1.10 % Bosnians and other minorities from the former Yugoslavia, which have immigrated to Slovenia during the period of Yugoslavia's existence. Members of the ethnic Italian and Hungarian minorities enjoy the status of autochthonous minorities, Roma have the status of special ethnic community, while the people who originated from other republics of the former Yugoslav republics do not. Within this group a specific group of people called "the erased" in 2009 still faced discrimination in a form of the lack of implementation of the Constitutional Court decision ordering their legal status be resolved and their rights restored, however, first steps towards implementing the decision have been taken.

The Constitution guarantees special protection for the Roma population living in Slovenia. Special rights of the Roma Community are regulated by twelve special acts and various Government programmes with the aim of improving the situation of the Roma population. In 2007 the Roma Community Act was adopted with a purpose of establishment of the Council of Roma Community and introduction of the basis for further positive measures for Roma. The Roma in Slovenia are often victims of discrimination, especially in access to employment, education, housing etc. According to the Amnesty International report of November 2006, Romany children in Slovenia continue to face discrimination regardless 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. 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.

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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, are only starting to be implemented in a systematic and comprehensive way. In addition, in one of the elementary schools a school model was introduced which separates children in accordance to their class performance. The model has been criticized by education experts and Council of Europe since classes that require lower performance of pupils consist mostly or entirely of Roma pupils, which reflects indirect discrimination. Also, hate speech and racism towards Roma are common problems.

In spite of the legislation regulating registration of same-sex partners, they remain discriminated against comparing to opposite-sex partners in areas such as social security rights deriving from such partnership. Discriminatory provisions on inheritance rights for same-sex couples have been annulled by the Constitutional Court. Finally, discrimination against people with disabilities remains a problem with regard to accessibility of buildings (including the Government Office for Equal Opportunities), unemployment and the lack of measures enabling independent life.

## **2. Main legislation**

On the constitutional level discrimination on all personal grounds is prohibited by Article 14 of the Constitution. In 2009 the Constitutional Court confirmed that the Constitution prohibits discrimination on the grounds of sexual orientation as well, although this ground is not specifically listed in the Constitution. Slovenia ratified all main human rights treaties concerning discrimination, including the recently adopted United Nations Convention on the Rights of Persons with Disabilities. It did not, however, ratify the Protocol No. 12 to the European Convention of Human Rights which introduces the right to non-discrimination as an independent right. Before the adoption of the EU directives discrimination was already prohibited by penal legislation, that was changed in 2008 with the adoption of the Penal Code, which defines various crimes connected to violations of equal rights (Article 131 – violations of equal rights, Articles 116 and 265 – discriminatory motives in murder and torture, Articles 197, 198 and 202 – violations of equality at employment and social services, and Article 297 – prohibition of incitement to religious or ethnic hatred or hatred based on sexual orientation or other personal circumstances).

After Slovenia became a member state of the European Union and the EU directives entered into force on the Slovenian territory, the Act Implementing the Principle of Equal Treatment was adopted in May 2004 as an umbrella anti-discrimination act, in order to transpose (implement) Council Directives 2000/43/EC and 2000/78/EC into the national legislation. Furthermore, discrimination was additionally prohibited in the field of employment with Article 6 of the Employment Relationship Act, which entered into force already in January 2003.

Pursuant to two reasoned opinions of the European Commission about the seemingly insufficient transposition of the two directives into the Slovenian national legislation, both key acts were amended in June 2007 and October 2007 respectively. Concerning disability, the Vocational Rehabilitation and Employment of Disabled Persons Act was also adopted in June 2004. This act specifically prohibits discrimination on the grounds of disability and introduces the system of positive measures for the employment of disabled people.

The legislation in place prohibits discrimination in all areas of social life, including the areas required by the directives. Discrimination is prohibited on all five grounds required by the directives – race and ethnicity, religion and belief, sexual orientation, age and disability.

In addition to that, the legislation prohibits discrimination on the grounds of gender, and all laws include a general clause “other personal circumstances”, which means that grounds not specifically mentioned in the legislation could also be protected grounds. Specifically, the Employment Relationship Act among the protected grounds mentions social origin, skin color, health condition, family status, membership in a trade union, and financial situation, which is more than the directives require.

Also, the legislation extends the protection required by the race directive to other grounds as well, which means that discrimination is prohibited on all five grounds (and more) in all areas of life, listed by the directive 2000/34/EC, and also in all other areas of life in general. The law has been enforced in practice to a certain extent, but there is still little case law invoking the new anti-discrimination legislation. The legislation is being implemented also by the Advocate of the Principle of Equality, established pursuant to the Act Implementing the Principle of Equal Treatment, in order to examine complaints on discrimination and provide assistance to victims. The 2009 annual report on the cases of the Advocate is not available yet.

### **3. Main principles and definitions**

Both the Act Implementing the Principle of Equal Treatment and the Employment Relationship Act prohibit direct and indirect discrimination, harassment, instructions to discriminate as well as victimization on the grounds of gender, race and ethnicity, religion and belief, sexual orientation, age and disability. The Employment Relationship Act also includes personal grounds of social origin, skin color, health condition, family status, membership in a trade union, and financial situation. Both acts defined direct discrimination on the grounds of personal circumstance as an act when 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. Indirect discrimination on personal circumstance is defined as an event 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.

There is an exception to this rule since indirect discrimination is permitted if such provision, criterion or practice is objectively justified by a legitimate objective and the means of achieving that objective are appropriate and necessary. Harassment is defined as unwanted conduct, based on any personal circumstance, which creates an intimidating, hostile, humiliating or offensive environment for a person or offends their dignity.

Both acts also prohibit instructions to discriminate and victimization, which means that discriminated persons and persons assisting victims of discrimination should not be exposed to negative consequences for acting against discrimination. None of the acts, however, specifically define or prohibit discrimination by association, discrimination due to assumed personal characteristics, or multiple discrimination.

The acts also define exceptions from the prohibition of discrimination, in particular genuine and determining occupational requirements, which means that difference in treatment in the area of employment is not prohibited a certain personal characteristic is needed as a condition to perform certain work, provided that the objective of such condition is legitimate and that the condition is proportionate. Act Implementing the Principle of Equal Treatment introduces additional exceptions of the prohibition of discrimination, such as different treatment on the grounds of religion or belief in employment at religious institutions or other institutions whose ethics is based on religion or belief, and different treatment in the area of employment, labor market and vocational training on the grounds of age (if this is justified by a legitimate objective and if means to achieve such objective are appropriate and necessary). All these exceptions are in accordance with the provisions with the two directives. The national legislation, however, introduces some additional exceptions, such as special protection of women during pregnancy and motherhood; supply of goods and services to a group of one gender if this is justified by a legitimate goal and if means are proportionate; in insurance services pursuant to the Council Directive 2004/113/EC.

Contrary to the requirement of the directive 2000/78/EC, national anti-discrimination legislation does not specifically mention the employers' duty of reasonable accommodation of the work place for people with disabilities. However, the duty of reasonable accommodation is specified in the ratified Convention on the Rights of People with Disabilities, which is directly applicable. Also, some form of duty of reasonable accommodation can in fact be indirectly derived from the Vocational Rehabilitation and Employment of Disabled Persons Act and some provisions of the Employment Relations Act (just that the legislation does not name it 'reasonable accommodation'; they are called 'manners, measures and incentives' concerning employment of people with disabilities).

#### **4. Material scope**

The national legislation regulates prohibition of discrimination in all areas required by the directive 2000/34/EC (including both private and public sector) for all personal grounds (and not only for the grounds of race and ethnicity).

This means that discrimination is prohibited in access to employment, to self-employment and to occupation, selection criteria, recruitment conditions, promotion; vocational and professional education and training (including advanced), and retraining, practical work experience; employment and working conditions, dismissals and pay; as well as membership of and involvement in an organization of workers or employers, or other professional organization, including the benefits. Discrimination on all five grounds is also prohibited in the areas of 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, as required by the directive 2000/78/EC.

In addition, Act Implementing the principle of Equal Treatment also includes general clause “all areas of social life”, which means that protection from discrimination is extending far beyond the requirements of the directives.

In the field of employment, discrimination is not only prohibited by the Act Implementing the principle of Equal Treatment, but also by the Employment Relationship Act; both are binding both for public and private sector, as are the Penal code and the Vocational Rehabilitation and Employment of Disabled Persons Act.

## **5. Enforcing the law**

A victim of discrimination has at their disposal formal or informal procedures for the protection of the right to equal treatment. The victim can lodge a complaint to the Advocate of the Principle of Equality, or when the alleged perpetrator is a state or a state-related body, to the Human Rights Ombudsman. The Advocate can refer the case to the competent inspectorate to initiate a formal misdemeanour procedure. The victim can also make a complaint directly to the inspectorate in a form of formal, administrative procedure (however, in some of such cases inspections have declared themselves incompetent because the prohibition of discrimination was not included into the organic laws the implementation of which they are obliged to monitor). If inspection assess that discrimination occurred, the offender is fined. The victim can also file a lawsuit in civil courts (including labour and social courts in employment and social security matters) and claim compensation for damages suffered as a direct result of the discrimination. If an act of discrimination amounts to a criminal act, it can be reported to the police or the prosecutor's office. The victim also has a possibility to use administrative procedures, judicial review and the constitutional complaint mechanism for the protection of his or her rights.

The Act Implementing the Principle of Equal Treatment defines a possibility of cooperation of NGOs in judicial and administrative proceedings in cases of alleged discrimination in accordance with the law. However the rules on civil and administrative procedure otherwise in place do not give legal standing to NGOs to participate in the proceedings in the meaning of the Directive.



According to the Constitutional Court, societies and other associations do not have the right to challenge regulations that interfere with the legal status of their members or other persons. They only have such right if the regulation in question interferes directly with their rights, legal interests or their status.

Both Act Implementing the Principle of Equal Treatment and the Employment Relationship Act introduce the rule of the shift of burden of proof, stating that when victims state facts which justify the assumption that the prohibition of discrimination on protected grounds was violated, the alleged perpetrator has to prove discrimination did not take place. If a violation of the ban on discrimination is established, relevant sanctions apply in the form of misdemeanour fees (ranging from 250 to 40.000 EUR), criminal sanctions, compensation, publication of judgment, etc. In the last year some additional cases have been decided in the field of discrimination. Examples of sanctions that have been awarded (3000, 6000 or 11.000 EUR) show that sanctions may be considered proportionate and dissuasive. The national law does not specify whether the use of “situational testing” would be admissible as evidence in courts.

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

## 6. Equality bodies

In accordance with the Act Implementing the Principle of Equal Treatment, the Advocate of the Principle of Equality started working in 2005 within the Government Office for Equal Opportunities. The mandate of the Advocate is to examine discrimination complaints on all protected grounds in all areas of social life, provide assistance to victims and issue recommendations. The procedure is informal and free of charge. The Advocate does not have investigative powers and cannot impose misdemeanour fees in cases of violations. If the perpetrator does not comply with the Advocate’s recommendations, the Advocate can only refer the case to the competent inspectorate. Although this institution was established to enable victims of discrimination affordable and fast legal remedy, complaints are not always decided quickly (the complaint in the case of removal of Roma family from the village of Ambrus, filed to the Advocate by NGOs in January 2007, was decided upon 26 months later).

The main issues with regard to the institution of the Advocate are that it functions within the Government Office of Equal Opportunities which raises doubts whether the Advocate will be able to impartially examine cases of alleged discrimination committed by the Government. Impartiality might also be hindered by the fact that the Advocate is nominated by the Government upon the proposal of the director of the Office. In addition, the Advocate has no support staff; it has insufficient investigative and no sanctioning powers; and its funding depends on the Government Office.



All this raises concerns about its ability of independent and impartial assessment of complaints, especially in cases when the alleged perpetrator of discrimination is the Government. In 2009 concerns on possible lack of independence have been strengthened by negative findings of two inspectorates concerning the nomination procedure of the Advocate.