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Non-discrimination

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Country report

Non-discrimination

Slovenia

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EXECUTIVE SUMMARY

1. Introduction

According to the most recent population census of 2002, Slovenia consists of 83 % ethnic Slovenians, 1.98 % Serbs, 1.81 % Croats, 1.10 % Bosnians, 0.11 % Italians, 0.32 % Hungarians and 0.17 % Roma. Members of the Italian and Hungarian ethnic minorities enjoy the status of autochthonous (indigenous) minorities, the Roma have the status of a special ethnic community, while the people who originate from other republics of the former Yugoslavia do not.

The Constitution guarantees special protection for the Roma population living in Slovenia. Special rights of the Roma Community are regulated by 12 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, establishing a Council of the Roma Community and providing a basis for further positive measures for the Roma. The Roma in Slovenia are often victims of discrimination, especially in access to employment, education, housing etc., according to the 2011 Amnesty International report, *Parallel lives*, the Human Rights Ombudsman's Annual Report for 2013 and the 2014 Fourth Report on Slovenia of the European Commission against Racism and Intolerance at the Council of Europe.

In spite of the legislation regulating the registration of same-sex partners, they still suffer discrimination compared to opposite-sex partners in some areas, such as employment and social security rights deriving from such partnerships.

Finally, discrimination against people with disabilities remains a problem with regard to accessibility of buildings, unemployment and a lack of measures enabling independent living. In 2014 the Constitutional Court declared that the failure to make more than one third of polling stations accessible for persons with disabilities is unconstitutional.¹ In 2014 amendments to the Act on Equal Opportunities for People with Disabilities² were adopted, as well as an implementing act,³ providing for new positive measures for people with disabilities, such as technical equipment for people with visual and hearing impairments and co-financing for the adaptation of vehicles.

In relation to age discrimination, in 2013 the Constitutional Court declared mandatory termination of employment for State officials who reach the retirement age, in accordance with the Constitution and in line with the exception to the prohibition of discrimination on the ground of age.⁴

The organisation of the equality body in Slovenia – the Advocate of the Principle of Equality – remains the most important political issue in the non-discrimination field. Discussion as to how the body should be organised and what kind of powers it should be granted continue to take place.

¹ Constitutional Court of the Republic of Slovenia, Decision no. U-I-156/11-29, 10 April 2014.

² *Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*, Official Journal of the Republic of Slovenia, no. 50/14.

³ *Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*, Official Journal of the Republic of Slovenia, no. 71/14.

⁴ Constitutional Court of the Republic of Slovenia, Decision no. U-I-146/12-40, 14 November 2013.

2. Main legislation

At the constitutional level discrimination on all personal grounds is prohibited by Article 14 of the Constitution.⁵ In 2009 the Constitutional Court confirmed that the Constitution prohibits discrimination on the ground of sexual orientation as well, although this ground is not specifically listed in the Constitution.⁶ Slovenia has ratified all the main human rights treaties concerning discrimination, most recently Protocol No. 12 to the European Convention on Human Rights. 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,⁷ 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 in employment and social services, and Article 297 – prohibition of incitement to religious or ethnic hatred or hatred based on sexual orientation or other personal characteristics).

After Slovenia became a Member State of the European Union and the EU directives entered into force in Slovenia, the Act Implementing the Principle of Equal Treatment⁸ was adopted in May 2004 as an umbrella anti-discrimination act, in order to transpose Council Directives 2000/43/EC and 2000/78/EC into national legislation. Furthermore, discrimination was also prohibited in the field of employment with Article 6 of the Employment Relationship Act, which entered into force in January 2003. In 2013 a new Employment Relationship Act⁹ was adopted, however, the provisions on discrimination have not changed, with the exception of liability for damages which is now defined in more detail.

Concerning disability, the Vocational Rehabilitation and Employment of Persons with Disabilities Act¹⁰ was also adopted in June 2004. This act specifically prohibits discrimination on the grounds of disability and introduces a system of positive measures for the employment of disabled people. In 2010 the Act on Equal Opportunities for People with Disabilities was adopted,¹¹ setting out the duty of appropriate (reasonable) accommodation for people with disabilities. The implementing acts foreseen by this law have still not been adopted which impedes the practical implementation of the law.

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 this, the legislation prohibits discrimination on the grounds of gender, and all laws include a general clause “other personal characteristics”, 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 colour, health condition, family status, membership of a trade union and financial situation, which is more than the directives require.

The legislation extends the protection required by the Racial Equality 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 Directive 2000/43/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 anti-discrimination legislation. The legislation is also being

⁵ *Ustava Republike Slovenije*, Official Journal of the Republic of Slovenia, No. 33/1991.

⁶ Constitutional Court of the Republic of Slovenia, Decision no. U-I-425/06, 2 July 2009.

⁷ *Kazenski zakonik*, Official Journal of the Republic of Slovenia No. 55/2008.

⁸ *Zakon o uresničevanju načela enakega obravnavanja – uradno prečiščeno besedilo*, Official Journal of the Republic of Slovenia, No. 93/07.

⁹ *Zakon o delovnih razmerjih*, Official Journal of the Republic of Slovenia, No. 21/13 and 78/13.

¹⁰ *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*, Official Journal of the Republic of Slovenia, No. 63/2004, as amended.

¹¹ *Zakon o izenačevanju možnosti invalidov*, Official Journal of the Republic of Slovenia, No. 94/2010.

implemented by the equality body, the Advocate of the Principle of Equality, established pursuant to the Act Implementing the Principle of Equal Treatment, in order to examine complaints of discrimination and provide assistance to victims.

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 and instructions to discriminate, as well as victimisation on the grounds of gender, race and ethnicity, religion or belief, sexual orientation, age and disability. The Employment Relationship Act also includes the personal grounds of social origin, skin colour, health condition, family status, membership of a trade union and financial situation. Both acts define direct discrimination on the grounds of personal characteristics as an act when, due to such personal a characteristic, an individual has been, is or could be treated less favourably than another individual in an equal or comparable situation. Indirect discrimination on the grounds of a personal characteristic is defined as being when a seemingly neutral provision, criterion or practice in equal or comparable situations and under similar conditions, puts an individual person with a certain personal characteristic in a less favourable position compared to other individuals.

There is an exception to this rule, since indirect discrimination is permitted if such a 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 an individual or offends their dignity.

Both acts also prohibit instructions to discriminate and victimisation, which means that victims of discrimination and people assisting victims of discrimination should not be exposed to negative consequences for taking action 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 when a certain personal characteristic is needed as a condition to perform certain work, provided that the objective of such a condition is legitimate and that the condition is proportionate. The Act Implementing the Principle of Equal Treatment introduces additional exceptions to the prohibition of discrimination, such as different treatment on the grounds of religion or belief in employment with religious institutions or other institutions whose ethics are based on religion or belief, and different treatment in the area of employment, the labour market and vocational training on the ground of age (if this is justified by a legitimate objective and if the means to achieve such an objective are appropriate and necessary). All these exceptions are in accordance with the provisions of the two directives.

The duty of reasonable accommodation is governed by the 2010 Act on Equal Opportunities for People with Disabilities in the field of employment, education, access to goods and services, access to public buildings and access to information. In addition, some form of duty of reasonable accommodation can in fact be indirectly derived from the Vocational Rehabilitation and Employment of Persons with Disabilities Act and some provisions of the Employment Relations Act (the legislation does not call it 'reasonable accommodation'; the terminology used is 'manners, measures and incentives' concerning the employment of people with disabilities).

Multiple discrimination is not mentioned in the legislation.

4. Material scope

National legislation regulates the prohibition of discrimination in all areas required by Directive 2000/43/EC (including both the private and public sectors) for all personal grounds (and not only for the grounds of race and ethnicity).

This means that discrimination is prohibited in access to employment, self-employment and occupation, selection criteria, recruitment conditions, promotion; vocational and professional education and training (including advanced) and retraining and practical work experience; employment and working conditions, dismissals and pay; as well as membership of and involvement in an organisation of workers or employers, or other professional organisation, including the associated benefits. Discrimination on all five grounds is also prohibited in the areas of social protection, social security and healthcare; social advantages; education; and access to and supply of goods and services which are available to the public, including housing, as required by Directive 2000/78/EC. In addition, the Act Implementing the Principle of Equal Treatment also includes a general clause 'all areas of social life', which means that protection from discrimination extends 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 for both the public and private sectors, as are the Penal Code and the Vocational Rehabilitation and Employment of Persons with Disabilities Act.

5. Enforcing the law

Victims of discrimination have at their disposal formal or informal procedures for the protection of the right to equal treatment. The victim can lodge a complaint with the Advocate of the Principle of Equality or, if the alleged perpetrator is a State or a State-related body, also with 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 the form of a formal, administrative procedure (however, in some such cases inspectorates have declared themselves incompetent because the prohibition of discrimination was not included in the organic laws the implementation of which they are obliged to monitor). If the inspectorate assesses that discrimination occurred, the offender is fined. The victim can also file a lawsuit in the civil courts (including the labour and social courts for 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 the possibility to use administrative procedures, judicial review and the constitutional complaint mechanism for the protection of their rights. In spite of a number of legal remedies available, both the Advocate of the Principle of Equality and the Human Rights Ombudsman consider that the system of protection mechanisms is ineffective.

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

According to the Constitutional Court, associations and other entities do not have the right to challenge regulations that interfere with the legal status of their members or other persons.

Both the Act Implementing the Principle of Equal Treatment and the Employment Relationship Act introduce the rule of the shift of the burden of proof, stating that when

victims state facts which justify the assumption that the prohibition of discrimination on protected grounds has been violated, the alleged perpetrator must prove discrimination did not take place. If a violation of the ban on discrimination is established, relevant sanctions apply in the form of misdemeanour fines (ranging from EUR 250 to EUR 40 000 EUR), criminal sanctions, compensation, publication of the judgement, etc. Examples of compensation payments that have been awarded (EUR 3 000, 6 000 or EUR 11 000) show that the sanctions may be considered proportionate and dissuasive. National law does not specify whether the use of "situational testing" would be admissible as evidence in the courts.

Regarding the use of statistical evidence in court, claimants have the right to request that respondents provide statistical data, however, they are limited by the Personal Data Protection Act. There have been only a few cases where statistical data have been used.

Positive action measures exist in relation to the Roma community (political representation at the local level which is important for all fields), persons with disabilities (quotas and positive action measures in the field of employment) and in relation to various protected groups in the field of employment (such as protection of younger and older workers).

6. Equality bodies

In accordance with the Act Implementing the Principle of Equal Treatment, the Advocate of the Principle of Equality started work in 2005 within the Government Office for Equal Opportunities. In 2012 the office was dissolved and the Advocate was moved to the Ministry of Labour, Family, Social Affairs and 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 fines or other sanctions in the case of a violation. 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, which is mainly due to the fact that the tasks of the Advocate are carried out by a single civil servant. According to the most recent annual report, the Advocate of the Principle of Equality in 2012 issued an opinion in 20 cases of alleged discrimination. In these 20 cases one case concerned disability, 18 religion or belief and 7 sexual orientation (some complaints were merged). The report for 2013 is not yet available.

The main issues with regard to the institution of the Advocate are that it functions within the Ministry of Labour, Family, Social Affairs and Equal Opportunities which raises doubts about whether the Advocate is able to examine impartially cases of alleged discrimination committed by the Government or its own ministry. Impartiality might also be hindered by the fact that the Advocate is nominated by the Government following a proposal from the Minister of Labour, Family, Social Affairs and Equal Opportunities. In addition, the Advocate has no support staff (it is a one-person body); it has insufficient investigative powers, no powers to conduct surveys and no sanctioning powers. Its funding depends on the Ministry. In 2009 and 2010 concerns about the possible lack of independence have been strengthened by the negative findings of two inspectorates concerning the nomination procedure of the Advocate, as well as by an unusual follow-up nomination procedure for the new advocate. The Advocate's annual report for 2012 itself raised the issue of the lack of powers, staff and independence granted to the institution of the Advocate, as well as the inappropriateness of the general legal framework regulating the equality body in Slovenia.

7. Key issues

- The national designated equality body (the Advocate of the Principle of Equality) is not independent as it functions within the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The Advocate is nominated by the Government following a proposal from the Minister. Furthermore, the budget for the Advocate's activities is determined by the Ministry. The Advocate is a civil servant (one person) and has no support staff, which does not provide for sufficient protection from discrimination.
- In spite of the fact that a number of legal remedies exist on paper, the most recent annual report of the Advocate of the Principle of Equality points out that the legal remedies available in Slovenia are not effective and that the system is in fact not working, which can be seen from the low number of cases resolved and sanctions issued. If the Advocate finds discrimination and submits the case to the competent inspectorate for a further procedure, which can result in a fine or other sanctions, the inspectorates often declare themselves not competent, as the misdemeanour of discrimination is not defined in the organic laws, the respect of which they are obliged to monitor. In other words, as in the key act – the Act Implementing the Principle of Equal Treatment – it is not specifically stipulated that a certain inspectorate is competent to examine cases of discrimination in its respective field of work, so the inspectorates consider themselves incompetent. These inconsistencies weaken protection from discrimination.
- There is no national action plan or strategy concerning discrimination. The situation of the Roma, for which the Government Office for National Minorities is competent, is often not dealt with as a discrimination issue. Similarly, disability issues are entirely left to the Office for People with Disabilities within the Ministry of Labour, Family and Social Affairs. No public body is explicitly responsible for conducting research on issues of discrimination, which means that they may carry out research but they are not obliged to. This means that the majority of research is done by other non-governmental institutions (project based). For issues concerning some personal grounds none of the State bodies is responsible, e.g. sexual orientation. Same-sex couples remain excluded from many rights accorded to opposite-sex couples (including in the field of employment).

Other issues mentioned in the report are:

- NGOs do not have legal standing to engage in judicial proceedings on behalf of the victim. The only legal persons who can provide representation in court are law firms. NGOs can only be involved in the procedures if they engage individuals entitled to provide representation in court, which in some cases can only be done by a lawyer who has passed the bar exam.
- The provision that permits direct discrimination is quite confusing and allows for contradicting interpretations.
- Judicial interpretation is required on whether multiple discrimination, assumed discrimination and discrimination by association are prohibited by national law.
- Judicial interpretation is required on whether situation testing is permitted by law and whether situation testing and statistical evidence are admissible as evidence in courts.
- 'Instruction to discriminate' is prohibited by law but the term itself is not defined.
- 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 disabled status under this act have the right to receive social benefits, but are automatically presumed as being unable to live independently and unable to be employed, regardless of their actual ability to work. The act creates an obligation for people who wish to work to renounce their disability status and consequently lose their eligibility for social benefits.

- It is not clear whether a person must first be officially recognised as disabled under the Pension and Disability Insurance Act in order to claim entitlement to protection under the equality legislation in the area of disability (limitation of personal scope).

RÉSUMÉ

1. Introduction

Selon le recensement le plus récent, effectué en 2002, la Slovénie compte 83 % de Slovènes de souche, 1,98 % de Serbes, 1,81 % de Croates, 1,10 % de Bosniaques, 0,11 % d'Italiens, 0,32 % de Hongrois et 0,17 % de Roms. Les membres des minorités ethniques italienne et hongroise jouissent du statut de minorités autochtones et les Roms ont le statut de communauté ethnique particulière, contrairement aux personnes originaires d'autres républiques de l'ancienne Yougoslavie.

La Constitution garantit une protection particulière à la population rom vivant en Slovénie. Les droits spéciaux octroyés à cette communauté sont régis par douze actes législatifs spécifiques et différents programmes gouvernementaux visant à améliorer la situation de ses membres. Adoptée en 2007, la loi sur la communauté rom institue un Conseil de la communauté rom de Slovénie et constitue une base sur laquelle appuyer d'autres mesures positives en faveur des Roms. Il ressort du rapport «*Parallel lives*» publié par Amnesty International en 2011, du rapport annuel 2013 du médiateur slovène en charge des droits de l'homme et du quatrième rapport sur la Slovénie (2014) de la Commission européenne contre le racisme et l'intolérance (ECRI) du Conseil de l'Europe que les Roms de Slovénie sont souvent victimes de discrimination, en particulier pour ce qui concerne l'accès à l'emploi, à l'éducation, au logement, etc.

En dépit de la législation réglementant l'enregistrement de partenaires de même sexe, ceux-ci demeurent victimes de discrimination par rapport aux partenaires de sexe opposé pour ce qui concerne notamment les droits découlant de ce type de partenariat en matière d'emploi et de sécurité sociale.

Enfin, la discrimination à l'égard de personnes handicapées continue de poser problème pour ce qui concerne l'accessibilité des bâtiments, le chômage et l'insuffisance de mesures permettant de mener une vie autonome. La Cour constitutionnelle a déclaré en 2014 qu'il était inconstitutionnel de ne pas rendre plus d'un tiers des bureaux de vote accessibles aux personnes handicapées.¹² En 2014 également, des amendements à la loi sur l'égalité des chances pour les personnes handicapées¹³ ont été votés, de même qu'un acte d'exécution,¹⁴ prévoyant de nouvelles mesures positives à l'intention des personnes handicapées (équipements techniques pour personnes malvoyantes et malentendantes et cofinancement de l'adaptation de véhicules, par exemple).

En ce qui concerne la discrimination fondée sur l'âge, la Cour constitutionnelle a déclaré en 2013 que la cessation obligatoire d'emploi des fonctionnaires de l'État atteignant l'âge de la retraite était conforme à la Constitution et relevait de l'exception à l'interdiction de discrimination fondée sur l'âge.¹⁵

Le fonctionnement de l'organisme slovène pour la promotion de l'égalité – le Défenseur du principe d'égalité – reste la grande question politique en matière de lutte contre la non-discrimination, et le débat se poursuit à propos de son mode d'organisation et des compétences à lui conférer.

¹² Arrêt n° U-I-156/11-29 du 10 avril 2014 de la Cour constitutionnelle de la République de Slovénie.

¹³ *Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*, Journal officiel n° 50/14 de la République de Slovénie.

¹⁴ *Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*, Journal officiel n° 71/14 de la République de Slovénie.

¹⁵ Arrêt n° U-I-146/12-40 du 14 novembre 2013 de la Cour constitutionnelle de la République de Slovénie.

2. Législation principale

L'article 14 de la Constitution interdit la discrimination fondée sur tout motif personnel.¹⁶ La Cour constitutionnelle a confirmé en 2009 que la Constitution interdit également la discrimination fondée sur l'orientation sexuelle, bien que ce motif n'y soit pas spécifiquement cité.¹⁷ La Slovénie a ratifié tous les grands traités sur les droits de l'homme relatifs à la discrimination, le plus récent étant le protocole n° 12 de la Convention européenne des droits de l'homme. Avant l'adoption des directives de l'UE, la discrimination était déjà interdite par la législation pénale, laquelle a été modifiée en 2008 avec l'adoption du Code pénal;¹⁸ celui-ci définit différents délits relevant du non-respect des droits à l'égalité (article 131: violation de l'égalité de droits; articles 116 et 265: meurtre et torture motivés par la discrimination; articles 197, 198 et 202: violation de l'égalité en matière d'emploi et de services sociaux; et article 297: interdiction d'incitation à la haine religieuse ou ethnique ou à la haine fondée sur l'orientation sexuelle ou autre caractéristique personnelle).

Lors de l'adhésion de la Slovénie à l'Union européenne et de l'entrée en vigueur des directives européennes sur son territoire, le pays a adopté en mai 2004 la loi sur la mise en œuvre du principe de l'égalité de traitement¹⁹ en tant que loi-cadre antidiscrimination, afin de transposer en droit interne les directives 2000/43/CE et 2000/78/CE du Conseil. La discrimination a par ailleurs été également interdite dans le domaine de l'emploi en vertu de l'article 6 de la loi sur les relations de travail, entrée en vigueur en janvier 2003. Une nouvelle loi sur les relations de travail²⁰ a été votée en 2013, mais les dispositions relatives à la discrimination n'ont pas été modifiées hormis en ce qui concerne la responsabilité relative aux dommages, laquelle est désormais davantage précisée.

En ce qui concerne le handicap, la loi sur la réadaptation professionnelle et l'emploi des personnes handicapées²¹ a également été adoptée en juin 2004. Elle interdit spécifiquement la discrimination fondée sur le handicap et instaure un système de mesures positives en faveur de l'emploi des personnes handicapées. Adoptée en 2010, la loi sur l'égalité des chances pour les personnes handicapées²² définit pour sa part l'obligation d'aménagement approprié (raisonnable) à l'intention des personnes handicapées. L'application concrète de cette loi est entravée du fait que les actes d'exécution y afférents n'ont toujours pas été adoptés.

La législation en vigueur proscriit la discrimination dans tous les domaines de la vie sociale, en ce compris ceux visés par les directives. La discrimination est donc interdite pour les cinq motifs énoncés dans les directives, à savoir la race et l'origine ethnique, la religion et les convictions, l'orientation sexuelle, l'âge et le handicap. La législation interdit en outre la discrimination fondée sur le genre, et toutes les lois comportent une clause générale visant les «autres caractéristiques personnelles» – ce qui signifie que des motifs non spécifiquement mentionnés dans la législation pourraient également constituer des motifs protégés. De façon plus spécifique, la loi sur les relations de travail cite, parmi les motifs protégés, l'origine sociale, la couleur de la peau, l'état de santé, la situation familiale, l'appartenance à un syndicat et la situation financière, ce qui va au-delà des exigences des directives.

¹⁶ *Ustava Republike Slovenije*, Journal officiel n° 33/1991 de la République de Slovénie.

¹⁷ Arrêt n° U-I-425/06 du 2 juillet 2009 de la Cour constitutionnelle de la République de Slovénie,

¹⁸ *Kazenski zakonik*, Journal officiel n° 55/2008 de la République de Slovénie.

¹⁹ *Zakon o uresničevanju načela enakega obravnavanja – uradno prečiščeno besedilo*, Journal officiel n° 93/07 de la République de Slovénie.

²⁰ *Zakon o delovnih razmerjih*, Journaux officiels n° 21/13 et 78/13 de la République de Slovénie.

²¹ *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*, telle que modifiée, Journal officiel n° 63/2004 de la République de Slovénie.

²² *Zakon o izenačevanju možnosti invalidov*, Journal officiel n° 94/2010 de la République de Slovénie.

La législation étend la protection requise par la directive sur l'égalité raciale à d'autres motifs, ce qui signifie que la discrimination est interdite pour les cinq motifs (et d'autres encore) dans tous les domaines de vie répertoriés dans la directive 2000/43/CE, de même que dans tous les autres domaines de la vie en général. La loi a été concrètement appliquée dans une certaine mesure, mais la jurisprudence invoquant la législation antidiscrimination reste peu abondante. Cette législation est également appliquée par le Défenseur du principe d'égalité, organisme en charge des questions d'égalité institué en vertu de la loi mettant en œuvre le principe de l'égalité de traitement afin d'examiner les plaintes pour discrimination et de fournir une assistance aux victimes.

3. Principes généraux et définitions

La loi mettant en œuvre le principe de l'égalité de traitement et la loi sur les relations de travail interdisent l'une et l'autre la discrimination directe et indirecte, le harcèlement, les injonctions de discriminer et les représailles se fondant sur le genre, la race et l'origine ethnique, la religion ou les convictions, l'orientation sexuelle, l'âge et le handicap. La loi sur les relations de travail inclut également les motifs personnels que sont l'origine sociale, la couleur de la peau, l'état de santé, la situation familiale, l'appartenance à un syndicat et la situation financière. Les deux lois définissent la discrimination directe fondée sur des caractéristiques personnelles comme un acte par lequel une personne a été, est ou pourrait être traitée, en raison d'une caractéristique personnelle, moins favorablement qu'une autre personne se trouvant dans une situation égale ou comparable. La discrimination indirecte fondée sur une caractéristique personnelle est définie comme se produisant lorsqu'une disposition, un critère ou une pratique apparemment neutre dans des situations égales ou comparables et dans des conditions similaires place une personne présentant une caractéristique personnelle déterminée dans une position défavorable par rapport à d'autres personnes.

Il existe une exception à cette règle, la discrimination indirecte étant permise si cette disposition, ce critère ou cette pratique est objectivement justifié par un but légitime et si les moyens d'atteindre ce but sont appropriés et nécessaires.

Le harcèlement est défini comme un comportement non désiré qui, lié à une situation personnelle quelconque, crée un environnement intimidant, hostile, humiliant ou offensant pour une personne ou porte atteinte à sa dignité.

Les deux lois interdisent également les injonctions de discriminer et les rétorsions, ce qui signifie que les victimes de discrimination et les personnes qui leur viennent en aide ne peuvent subir de répercussions négatives pour avoir agi contre des actes discriminatoires. Aucune des deux lois ne définit ni ne proscribit spécifiquement la discrimination par association, la discrimination fondée sur des caractéristiques personnelles présumées ou la discrimination multiple.

Les lois définissent également les exceptions à l'interdiction de discrimination, et en particulier les exigences professionnelles essentielles et déterminantes; en d'autres termes, une différence de traitement en matière d'emploi n'est pas interdite lorsqu'une caractéristique personnelle précise est requise pour accomplir le travail concerné – pour autant que l'objectif soit légitime et l'exigence proportionnée. La loi mettant en œuvre le principe de l'égalité de traitement instaure des exceptions supplémentaires à l'interdiction de discrimination, parmi lesquelles la différence de traitement fondée sur la religion ou les convictions pour un emploi dans des institutions religieuses ou autres institutions dont l'éthique repose sur la religion ou les convictions; et la différence de traitement fondée sur l'âge dans le domaine de l'emploi, sur le marché du travail et dans le cadre de la formation professionnelle (pour autant que l'objectif soit légitime et que les moyens de l'atteindre soient appropriés et nécessaires). Toutes ces dérogations sont conformes aux dispositions des deux directives.

L'obligation d'aménagement raisonnable est régie par la loi de 2010 sur l'égalité des chances pour les personnes handicapées en matière d'emploi, d'éducation, d'accès aux biens et aux services, d'accès aux bâtiments publics et d'accès à l'information. Une certaine forme d'obligation d'aménagement raisonnable peut en outre être indirectement inférée de la loi sur la réadaptation professionnelle et l'emploi des personnes handicapées, et de certaines dispositions de la loi sur les relations de travail (la législation ne parle pas d'«aménagement raisonnable» mais de «façons, mesures et incitations» en faveur de l'emploi de personnes handicapées).

La législation ne mentionne pas la discrimination multiple.

4. Champ d'application matériel

La législation nationale régit l'interdiction de discrimination dans tous les domaines visés par la directive 2000/43/CE (couvrant à la fois le secteur privé et le secteur public) pour l'ensemble des motifs personnels (et pas uniquement pour les motifs de la race et de l'origine ethnique).

En d'autres termes, la discrimination est interdite pour ce qui concerne l'accès à l'emploi salarié et à une activité ou profession non salariée, y compris les critères de sélection, les conditions de recrutement et la promotion; l'enseignement et la formation professionnels (y compris le perfectionnement) et la formation de reconversion et l'acquisition d'une expérience pratique; les conditions d'emploi et de travail, y compris les conditions de licenciement et de rémunération; et l'appartenance et la participation à une organisation de travailleurs ou d'employeurs, ou à toute autre organisation professionnelle, en ce compris les avantages y afférents. La discrimination fondée sur l'un des cinq motifs est également interdite dans les domaines de la protection sociale, de la sécurité sociale et des soins de santé; des avantages sociaux; de l'éducation; et de l'accès aux biens et services mis à la disposition du public et de la fourniture de ceux-ci, y compris le logement, comme l'exige la directive 2000/78/CE. La loi mettant en œuvre le principe de l'égalité de traitement comportant en outre une clause générale couvrant «tous les domaines de la vie sociale», la protection contre la discrimination s'étend bien au-delà des exigences des directives.

Dans le domaine de l'emploi, la discrimination n'est pas seulement interdite par la loi mettant en œuvre le principe de l'égalité de traitement, mais également par la loi sur les relations de travail; toutes deux sont contraignantes à la fois pour le secteur public et le secteur privé, tout comme le Code pénal et la loi sur la réadaptation professionnelle et l'emploi des personnes handicapées.

5. Mise en application de la loi

Les victimes de discrimination disposent de procédures formelles et informelles pour faire protéger leur droit à l'égalité de traitement. Une victime peut déposer plainte auprès du Défenseur du principe d'égalité ou, si l'auteur présumé des faits est l'État ou une entité rattachée à l'État, auprès du Médiateur pour les droits de l'homme également. Le Défenseur peut renvoyer l'affaire à l'inspection compétente afin d'engager une procédure contraventionnelle officielle. Une victime peut également déposer plainte directement auprès de l'inspection en recourant à une procédure administrative formelle (les inspections se sont toutefois déclarées incompétentes dans certains cas, en l'occurrence lorsque l'interdiction de discrimination ne figurait pas dans les lois organiques dont elles ont l'obligation de contrôler l'application). Si l'inspection estime qu'il y a eu discrimination, l'auteur du délit est sanctionné d'une amende. Une victime peut également engager une action en justice auprès de juridictions civiles (y compris les tribunaux du travail et les juridictions sociales pour les questions d'emploi et de sécurité sociale) et réclamer une indemnisation pour le préjudice subi en conséquence directe de la discrimination. Si le fait discriminatoire constitue une infraction pénale, il peut être

signalé à la police ou au parquet. Une victime peut également recourir à des procédures administratives, à un contrôle juridictionnel et au mécanisme de recours constitutionnel pour faire valoir ses droits. En dépit de l'existence d'un large éventail de recours possibles, le Défenseur du principe d'égalité et le Médiateur pour les droits de l'homme estiment tous deux que les dispositifs du régime de protection sont inefficaces.

La loi mettant en œuvre le principe de l'égalité de traitement prévoit la possibilité pour des ONG de prendre part à des procédures judiciaires et administratives en cas de présomption de discrimination, conformément à la loi. Les règles en matière de procédures civiles et administratives en vigueur par ailleurs ne confèrent cependant pas aux ONG la capacité d'ester en justice au sens de la directive.

Selon la Cour constitutionnelle, des associations ou autres entités n'ont pas le droit de contester les réglementations qui interfèrent avec le statut juridique de leurs membres ou d'autres personnes.

La loi mettant en œuvre le principe de l'égalité de traitement et la loi sur les relations de travail introduisent toutes deux la règle du renversement de la charge de la preuve: elles disposent que lorsque des victimes établissent des faits conduisant à présumer un non-respect de l'interdiction de discrimination fondée sur un motif protégé, il incombe à l'auteur présumé de prouver l'absence de discrimination. S'il est établi que l'interdiction de discrimination n'a effectivement pas été respectée, les sanctions applicables peuvent prendre la forme d'amendes correctionnelles (allant de 250 à 40 000 euros), de sanctions pénales, d'indemnisation, de publication de l'arrêt, etc. Les exemples d'indemnités allouées (3 000, 6 000 ou 11 000 euros) montrent que les sanctions peuvent être considérées comme proportionnées et dissuasives. La législation nationale ne précise pas si le recours au «test de situation» serait admis au titre de preuve en justice.

En ce qui concerne l'utilisation de preuves statistiques en justice, les parties plaignantes ont le droit de requérir que les parties défenderesses fournissent des données statistiques, mais cette possibilité est limitée par les dispositions de la loi sur la protection des données personnelles. À ce jour, il n'existe dans la jurisprudence que quelques cas d'utilisation de données statistiques.

Des mesures d'action positive sont en place en faveur de la communauté rom (représentation politique à l'échelon local, ce qui est important pour tous les domaines), des personnes handicapées (quotas et mesures d'action positive dans le domaine de l'emploi) et de divers groupes protégés dans le domaine de l'emploi (protection des jeunes travailleurs et des travailleurs âgés notamment).

6. Organismes de promotion de l'égalité de traitement

Conformément aux dispositions de la loi mettant en œuvre le principe de l'égalité de traitement, le Défenseur du principe d'égalité est entré en fonction en 2005 au sein du Bureau gouvernemental pour l'égalité des chances. Ce Bureau a été dissous en 2012 et le Défenseur transféré au ministère du Travail, de la famille, des affaires sociales et de l'égalité des chances. Le Défenseur a pour mandat d'examiner les plaintes pour discrimination relatives à tous les motifs protégés et à tous les domaines de la vie sociale, de fournir une assistance aux victimes et de formuler des recommandations. La procédure est informelle et gratuite. Le Défenseur ne jouit pas de pouvoirs d'investigation et ne peut imposer d'amendes ni d'autres sanctions lorsqu'une infraction est établie. Si l'auteur des faits ne se conforme pas aux recommandations du Défenseur, celui-ci peut uniquement soumettre l'affaire à l'inspection compétente. Bien que l'institution ait été mise en place pour offrir aux victimes de discrimination une voie de recours rapide et financièrement abordable, le traitement des plaintes n'est pas toujours prompt – essentiellement du fait que les tâches incombant au Défenseur sont effectuées par un seul et unique fonctionnaire. Il ressort du dernier rapport annuel en date que le

Défenseur du principe d'égalité a rendu en 2012 un avis dans vingt cas de discrimination présumée. Il s'agissait d'un cas lié au handicap, de 18 cas liés à la religion ou aux convictions et de 7 cas liés à l'orientation sexuelle (certaines plaintes ont été jointes). Le rapport relatif à l'année 2013 n'est pas encore disponible.

Les grandes préoccupations à l'égard de l'institution du Défenseur portent sur le fait qu'il opère au sein du ministère du Travail, de la famille, des affaires sociales et de l'égalité des chances, ce qui suscite certains doutes quant à sa capacité d'examiner en toute impartialité les affaires dans lesquelles une présomption de discrimination est alléguée à l'encontre du gouvernement ou de son propre ministère. Son impartialité pourrait également être mise à mal du fait qu'il est nommé par le gouvernement sur proposition du ministre du Travail, de la famille, des affaires sociales et de l'égalité des chances. Le Défenseur ne dispose en outre d'aucun personnel d'appui (il s'agit d'un organisme unipersonnel); ses pouvoirs d'investigation sont insuffisants; et ses pouvoirs en termes de réalisation d'études et d'application de sanctions sont inexistantes. Son financement dépend du ministère. Ces inquiétudes quant au manque éventuel d'indépendance ont été renforcées en 2009 et 2010 par les conclusions négatives de deux inspections concernant la procédure de nomination du Défenseur, ainsi que par la procédure inhabituelle de nomination de son successeur. Dans son rapport annuel relatif à 2012, le Défenseur lui-même évoque le problème posé par l'insuffisance des pouvoirs, du personnel et de l'indépendance conférés à l'institution, ainsi que l'inadéquation du cadre juridique général régissant l'organisme pour la promotion de l'égalité de traitement en Slovénie.

7. Points essentiels

- L'organisme national désigné en qualité d'organisme pour l'égalité (le Défenseur du principe d'égalité) n'est pas indépendant dans la mesure où il exerce son activité au sein du ministère du Travail, de la famille, des affaires sociales et de l'égalité des chances. Le Défenseur est nommé par le gouvernement sur proposition du ministre. Le budget de fonctionnement du Défenseur est fixé en outre par le ministère. Le Défenseur est un fonctionnaire (une seule personne) et ne dispose d'aucun personnel d'appui, ce qui n'assure pas une protection suffisante contre la discrimination.
- En dépit de l'existence sur papier d'une série de recours juridiques, il ressort du dernier rapport annuel en date du Défenseur du principe d'égalité que ces recours ne sont pas efficaces et qu'en réalité le système slovène ne fonctionne pas – comme en témoigne le nombre très peu élevé d'affaires résolues et de sanctions prononcées. Lorsque le Défenseur établit une discrimination et soumet le cas à l'inspection compétente pour qu'elle donne suite (cette procédure ultérieure pouvant donner lieu à une amende ou une sanction), l'inspection saisie se déclare souvent incompétente, le délit de discrimination n'étant pas défini dans les lois organiques qu'elle est tenue de faire respecter. En d'autres termes, étant donné que la loi principale – à savoir la loi mettant en œuvre le principe de l'égalité de traitement – ne précise pas spécifiquement que les différentes inspections sont habilitées à examiner des faits de discrimination intervenant dans leurs domaines de compétence respectifs, les inspections en question se déclarent incompétentes. Ces incohérences affaiblissent le degré de protection contre la discrimination.
- Il n'existe aucun plan d'action ni aucune stratégie nationale en matière de discrimination. La situation des Roms, qui relève de la compétence du Bureau gouvernemental des minorités nationales, n'est généralement pas envisagée comme une question de discrimination. De même, les questions liées au handicap sont entièrement laissées aux soins du Bureau pour les personnes handicapées, lequel fait partie du ministère du Travail, de la famille et des affaires sociales. Aucun organe public n'est explicitement chargé de réaliser des études sur les problématiques de la discrimination: des organes publics peuvent effectuer des recherches, mais ils n'en ont pas l'obligation. Il en résulte que la plupart des études sont réalisées par d'autres institutions non gouvernementales dans le cadre de

projets. Aucune instance de l'État n'est en charge de certains motifs personnels, telle l'orientation sexuelle. Les couples homosexuels restent privés de nombreux droits accordés aux couples hétérosexuels (y compris dans le domaine de l'emploi).

Les points suivants sont également mentionnés dans le rapport:

- Les ONG ne sont pas habilitées à engager une action judiciaire au nom de la victime. Les seules personnes morales autorisées à assurer une représentation en justice sont les cabinets juridiques. Les ONG peuvent uniquement participer aux procédures en engageant des personnes habilitées à remplir la fonction de représentants en justice, et il convient d'ajouter que seul un avocat ayant réussi l'examen du barreau peut, dans certains cas, assurer cette représentation.
- La disposition autorisant une discrimination directe peut prêter à confusion et ouvre la voie à des interprétations contradictoires.
- Une interprétation judiciaire s'impose sur le point de savoir si la discrimination multiple, la discrimination présumée et la discrimination par association sont interdites par le droit national.
- Une interprétation judiciaire s'impose sur le point de savoir si le test de situation est autorisé par la loi, et si le test de situation et les preuves statistiques sont recevables en justice.
- L'«injonction de discriminer» est interdite par la loi mais le terme lui-même n'est pas défini.
- Une définition commune de la déficience intellectuelle fait défaut.
- La loi sur l'aide sociale est discriminatoire pour ce qui concerne l'égalité d'accès à l'emploi, étant donné que les adultes qui obtiennent le statut d'handicapés en vertu de cette loi sont en droit de recevoir des prestations sociales, mais qu'ils sont automatiquement présumés inaptes à mener une vie indépendante et à occuper un emploi, quelle que soit leur aptitude réelle au travail. La loi crée pour les personnes désireuses de travailler l'obligation de renoncer à leur statut d'handicapé et leur fait perdre ainsi l'éligibilité aux prestations sociales.
- Il n'apparaît pas clairement si une personne doit d'abord être officiellement reconnue comme handicapée au titre de la loi sur les régimes de retraite et l'assurance invalidité avant de pouvoir faire valoir son droit à une protection en vertu de la législation en matière d'égalité dans le domaine du handicap (limitation du champ d'application personnel).

ZUSAMMENFASSUNG

1. Einleitung

Laut der jüngsten Volkszählung von 2002 unterteilt sich die Bevölkerung Sloweniens in 83 % ethnische Slowenen, 1,98 % Serben, 1,81 % Kroaten, 1,10 % Bosniaken, 0,11 % Italiener, 0,32 % Ungarn und 0,17 % Roma. Die Mitglieder der ethnischen Minderheit der Italiener und Ungarn genießen den Status autochthoner (indigener) Minderheiten und die Roma haben den Status einer eigenen ethnischen Gemeinschaft. Menschen aus anderen ehemaligen jugoslawischen Republiken haben keinen besonderen Minoritätenstatus.

Die Verfassung gewährt den in Slowenien lebenden Roma einen besonderen Schutz. Die Sonderrechte der Roma sind in 12 speziellen Gesetzen geregelt und es gibt mehrere Regierungsprogramme, mit denen die Situation der Roma verbessert werden soll. Im Jahr 2007 wurde das Gesetz für die Roma-Gemeinschaft verabschiedet, mit dem ein Rat der Roma-Gemeinschaft eingerichtet und weitere Fördermaßnahmen für die Roma ermöglicht wurden. Der Bericht „*Parallel lives*“ von Amnesty International aus dem Jahr 2011, der Jahresbericht des Ombudsmanns für Menschenrechte für 2013 und der vierte Bericht der Kommission gegen Rassismus und Intoleranz beim Europarat über Slowenien von 2014 kommen dennoch übereinstimmend zu dem Schluss, dass die Roma in Slowenien häufig Opfer von Diskriminierung werden, insbesondere in Bezug auf den Zugang zum Arbeitsmarkt, zu Bildung und Wohnraum.

Trotz neuer Gesetze, die die Eintragung gleichgeschlechtlicher Partnerschaften ermöglichen, werden Menschen, die in diesen Partnerschaften leben, in einigen Bereichen weiterhin diskriminiert, beispielsweise auf dem Arbeitsmarkt und bei sozialen Rechten, die sich aus der Partnerschaft ergeben.

Schließlich ist auch die Diskriminierung von Menschen mit Behinderung weiterhin ein Problem, insbesondere was die Barrierefreiheit, die hohe Arbeitslosigkeit und die fehlenden Hilfen für eine eigenständige Lebensführung angeht. Im Jahr 2014 urteilte das Verfassungsgericht der Landes, dass es gegen die Verfassung verstößt, wenn über ein Drittel der Wahllokale nicht barrierefrei sind.²³ Im Jahr 2014 wurde eine Neufassung des Gesetzes für die Gleichstellung von Menschen mit Behinderungen²⁴ verabschiedet,²⁵ das neue Unterstützungsmaßnahmen für Menschen mit Behinderungen vorsieht, z. B. technische Hilfsmittel für Menschen mit vermindertem Seh- oder Hörsinn und Finanzhilfen für den Umbau von Fahrzeugen.

Zum Thema Altersdiskriminierung kam das Verfassungsgericht 2013 zu dem Schluss, dass die obligatorische Pensionierung von Beamten, die das Rentenalter erreicht haben, nicht gegen die Verfassung verstößt und in diesem Fall eine Ausnahme vom Verbot der Diskriminierung aufgrund des Alters möglich ist.²⁶

Die Organisation der slowenischen Gleichbehandlungsstelle – des Anwalts für den Gleichbehandlungsgrundsatz – bleibt das wichtigste politische Thema im Bereich Nichtdiskriminierung. Der Aufbau dieser Stelle und die Vollmachten, mit denen sie ausgestattet werden soll, sind weiterhin umstritten.

²³ Verfassungsgericht der Republik Slowenien, Urteil U-I-156/11-29, 10. April 2014.

²⁴ *Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*, Amtsblatt der Republik Slowenien, Nr. 50/14.

²⁵ *Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*, Amtsblatt der Republik Slowenien, Nr. 71/14.

²⁶ Verfassungsgericht der Republik Slowenien, Urteil U-I-146/12-40, 14. November 2013.

2. Wichtigste Gesetze

Artikel 14 der slowenischen Verfassung verbietet Diskriminierung aufgrund personenbezogener Gründe.²⁷ Im Jahr 2009 urteilte das Verfassungsgericht, dass die Verfassung auch Diskriminierung aufgrund der sexuellen Ausrichtung verbietet, obwohl dieser Grund in der Verfassung nicht ausdrücklich genannt wird.²⁸ Slowenien hat alle wichtigen Menschenrechtsabkommen ratifiziert, die sich mit Diskriminierung beschäftigen, zuletzt das 12. Protokoll der Europäischen Menschenrechtskonvention. Schon vor der Umsetzung der entsprechenden EU-Richtlinien war Diskriminierung in Slowenien durch die Neufassung des Strafgesetzes von 2008 strafrechtlich verboten.²⁹ Das Gesetz definiert mehrere Straftatbestände, die mit Verstößen gegen den Gleichbehandlungsgrundsatz verbunden sind (Artikel 131 – Ungleichbehandlung, Artikel 116 und 265 – Diskriminierung als Motiv bei Mord und Folter, Artikel 197, 198 und 202 – Ungleichbehandlung auf dem Arbeitsmarkt und bei Sozialleistungen sowie Artikel 297 – Verbot der Anstiftung zu religiösem oder ethischem Hass oder Hass aufgrund der sexuellen Orientierung oder anderer persönlicher Eigenschaften).

Nach dem Beitritt Sloweniens zur Europäischen Union traten die EU-Richtlinien in Slowenien in Kraft. Im Mai 2004 wurde das Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes³⁰ als umfassendes Antidiskriminierungsgesetz verabschiedet, mit dem die Richtlinien 2000/43/EG und 2000/78/EG des Rates in nationales Recht umgesetzt wurden. Diskriminierung am Arbeitsplatz wird außerdem durch Artikel 6 des Gesetzes über Beschäftigungsverhältnisse verboten, das seit Januar 2003 in Kraft ist. 2013 wurde ein neues Gesetz über Beschäftigungsverhältnisse³¹ verabschiedet, die Bestimmungen zum Thema Diskriminierung blieben jedoch unverändert, nur die Schadensersatzhaftung wurde detaillierter ausgeführt.

Das Gesetz zur beruflichen Rehabilitation und Beschäftigung von Menschen mit Behinderung³² wurde im Juni 2004 verabschiedet. Dieses Gesetz verbietet Diskriminierung aufgrund von Behinderungen und führt ein System zur Beschäftigungsförderung für behinderte Menschen ein. Im Jahr 2010 wurde das Gesetz zur Förderung der Chancengleichheit von Menschen mit Behinderung verabschiedet,³³ das eine Pflicht zu angemessenen (zumutbaren) Vorkehrungen für Menschen mit Behinderung enthält. Die im Gesetz vorgesehenen Umsetzungsverordnungen wurden noch nicht erlassen, was die praktische Umsetzung des Gesetzes verzögert.

Das geltende Recht verbietet Diskriminierung in allen sozialen Bereichen und erfüllt somit die Vorgaben der EU-Richtlinien. Das Verbot gilt für alle fünf Diskriminierungsgründe, die von den Richtlinien vorgegeben sind – Rasse und ethnische Herkunft, Religion oder Weltanschauung, sexuelle Ausrichtung, Alter und Behinderung. Zusätzlich verbieten die Gesetze Diskriminierung aufgrund des Geschlechts und enthalten die allgemeine Formulierung „sonstige persönliche Eigenschaften“, was einen Schutz vor Diskriminierung aus irgendeinem anderen Grund beinhaltet, auch wenn dieser nicht ausdrücklich genannt ist. Das Gesetz über Beschäftigungsverhältnisse nennt als Schutzgründe soziale Herkunft, Hautfarbe, Gesundheitszustand, Familienstand, Mitgliedschaft in einer Gewerkschaft und finanzielle Situation und geht damit über die Vorgaben der Richtlinien hinaus.

²⁷ *Ustava Republike Slovenije*, Amtsblatt der Republik Slowenien, Nr. 33/1991.

²⁸ Verfassungsgericht der Republik Slowenien, Urteil U-I-425/06, 2. Juli 2009.

²⁹ *Kazenski zakonik*, Amtsblatt der Republik Slowenien Nr. 55/2008.

³⁰ *Zakon o uresničevanju načela enakega obravnavanja – uradno prečiščeno besedilo*, Amtsblatt der Republik Slowenien, Nr. 93/07.

³¹ *Zakon o delovnih razmerjih*, Amtsblatt der Republik Slowenien, Nr. 21/13 und 78/13.

³² *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*, Amtsblatt der Republik Slowenien, Nr. 63/2004 in der aktuellen Fassung.

³³ *Zakon o izenačevanju možnosti invalidov*, Amtsblatt der Republik Slowenien, Nr. 94/2010.

Die Gesetzgebung dehnt den von der Richtlinie zur Gleichbehandlung geforderten Schutz auf weitere Bereiche aus, d. h. Diskriminierung ist aus den genannten fünf (und weiteren) Gründen in allen Lebensbereichen verboten, die in der Richtlinie 2000/43/EG genannt sind, und auch ganz allgemein in jedem anderen Zusammenhang. Das Gesetz wurde zu einem gewissen Grad in der Praxis durchgesetzt, es gibt aber noch wenig Rechtsprechung, die sich auf die Antidiskriminierungsgesetze bezieht. Das Recht wird auch von der Gleichbehandlungsstelle, dem Anwalt für den Grundsatz der Gleichbehandlung, umgesetzt, die durch das Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes eingerichtet wurde, um Fälle von Diskriminierung zu prüfen und die Opfer zu unterstützen.

3. Wichtige Grundsätze und Begriffe

Das Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes und das Gesetz über Beschäftigungsverhältnisse verbieten unmittelbare und mittelbare Diskriminierung, Belästigung, die Anweisung zu Diskriminierung sowie Viktimisierung aufgrund von Geschlecht, Rasse und ethnischer Herkunft, Religion oder Weltanschauung, sexueller Ausrichtung, Alter und Behinderung. Das Gesetz über Beschäftigungsverhältnisse enthält außerdem als weitere personenbezogene Gründe die soziale Herkunft, Hautfarbe, den Gesundheitszustand, Familienstand, die Mitgliedschaft in einer Gewerkschaft und die finanzielle Situation. Beide Gesetze definieren eine Tat als unmittelbare Diskriminierung aufgrund persönlicher Eigenschaften, wenn eine Person aufgrund dieser Eigenschaften eine weniger günstige Behandlung erfährt oder erfahren würde, als eine andere Person in der gleichen oder einer vergleichbaren Situation. Als mittelbare Diskriminierung aufgrund persönlicher Eigenschaften gilt es, wenn scheinbar neutrale Vorschriften, Kriterien oder Verfahren Personen mit bestimmten Eigenschaften in gleichen oder vergleichbaren Situation und unter ähnlichen Umständen gegenüber anderen Personen benachteiligen können.

Es gibt eine Ausnahme von dieser Regel: mittelbare Diskriminierung ist erlaubt, wenn diese Vorschriften, Kriterien oder Verfahren durch ein rechtmäßiges Ziel sachlich gerechtfertigt und die Mittel zur Erreichung des Ziels angemessen und erforderlich sind.

Belästigung wird definiert als unerwünschte Verhaltensweisen auf der Grundlage persönlicher Umstände, die ein von Einschüchterungen, Anfeindungen, Erniedrigungen oder Beleidigungen gekennzeichnetes Umfeld schaffen oder die Würde einer Person verletzen.

Beide Gesetze verbieten auch die Anweisung zur Diskriminierung und Viktimisierung, d. h. dass Opfer von Diskriminierung und Menschen, die sie unterstützen, durch ihren Kampf gegen Diskriminierung keine Nachteile erleiden dürfen. Keines der Gesetze definiert oder verbietet jedoch ausdrücklich Diskriminierung durch Assoziierung, Diskriminierung aufgrund vermuteter persönlicher Eigenschaften oder Mehrfachdiskriminierung.

Die Gesetze sehen auch Ausnahmen vom Diskriminierungsverbot vor, insbesondere im Falle wesentlicher und entscheidender beruflicher Anforderungen. Das heißt, dass Ungleichbehandlung im Bereich Beschäftigung nicht verboten ist, wenn besondere persönliche Eigenschaften für die Arbeit erforderlich sind, vorausgesetzt, das Ziel dieser Bedingungen ist rechtmäßig und die Bedingung selbst angemessen. Das Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes führt weitere Ausnahmen vom Diskriminierungsverbot ein, z. B. Ungleichbehandlung aufgrund der Religion oder Weltanschauung bei der Beschäftigung in religiösen Institutionen oder anderen Institutionen, deren Ethik sich auf eine Religion oder Weltanschauung gründet, und Ungleichbehandlung am Arbeitsplatz, auf dem Arbeitsmarkt oder bei der beruflichen Bildung aufgrund des Alters (sofern mit angemessenen und erforderlichen Mitteln ein

rechtmäßiges Ziel erreicht werden soll). Keine der Ausnahmen verstößt gegen die Bestimmungen der beiden EU-Richtlinien.

Die Pflicht zu angemessenen Vorkehrungen ist durch das Gesetz zur Förderung der Chancengleichheit von Menschen mit Behinderung im Bereich Beschäftigung, Bildung, Zugang zu Gütern und Dienstleistungen, Zugang zu öffentlichen Gebäuden und zur Information von 2010 gesetzlich geregelt. Außerdem kann die Pflicht zu angemessenen Vorkehrungen in gewissem Sinne auch aus dem Gesetz zur beruflichen Rehabilitation und Beschäftigung von Menschen mit Behinderung und einigen Bestimmungen des Gesetzes über Beschäftigungsverhältnisse abgeleitet werden (obwohl diese Rechtsakte nicht den Begriff „angemessene Vorkehrungen“ verwenden, sondern „Verfahren, Maßnahmen und Anreize“ vorschreiben, die die Beschäftigung von Menschen mit Behinderungen unterstützen).

Mehrfachdiskriminierung wird in der Gesetzgebung nicht erwähnt.

4. Sachlicher Anwendungsbereich

Das slowenische Recht verbietet Diskriminierung in allen von der Richtlinie 2000/43/EG geforderten Bereichen (einschließlich des privaten und öffentlichen Sektors) und aus allen persönlichen Gründen (nicht nur aufgrund der Rasse oder ethnischen Herkunft).

Das heißt, Diskriminierung ist beim Zugang zum Arbeitsmarkt und zur Unternehmensgründung, bei Einstellungs- und Beförderungskriterien, bei der beruflichen Aus- und Weiterbildung (auf allen Ebenen), bei der Umschulung und am Arbeitsplatz, bei den Beschäftigungs- und Arbeitsbedingungen, bei Kündigung und Gehalt sowie bei Mitgliedschaft und Engagement in Arbeitnehmerorganisationen und anderen Berufsverbänden und den zugehörigen Leistungen verboten. Diskriminierung aufgrund aller fünf Diskriminierungsgründe ist außerdem beim Sozialschutz, bei der Sozial- und Krankenversicherung, im Gesundheitswesen, bei sozialen Vergünstigungen, bei der Bildung, dem Zugang zu öffentlichen Gütern und Dienstleistungen einschließlich Wohnraum verboten, was den Vorgaben der Richtlinie 2000/78/EG entspricht. Zusätzlich enthält das Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes die allgemeine Formulierung „in allen sozialen Bereichen“, wodurch der Diskriminierungsschutz weit über die Anforderungen der Richtlinien hinausgeht.

Im Bereich Beschäftigung ist Diskriminierung nicht nur durch das Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes verboten, sondern auch durch das Gesetz über Beschäftigungsverhältnisse, die beide für die Privatwirtschaft und die öffentliche Hand verbindlich sind, genauso wie das Strafgesetz und das Gesetz zur beruflichen Rehabilitation und Beschäftigung von Menschen mit Behinderung.

5. Rechtsdurchsetzung

Opfern von Diskriminierung stehen formelle und informelle Verfahren zur Verfügung, mit denen sie ihr Recht auf Gleichbehandlung schützen können. Das Opfer kann eine formelle Beschwerde beim Anwalt für den Grundsatz der Gleichbehandlung oder, wenn die mutmaßliche Diskriminierung vom Staat oder einer staatlichen Stelle ausgeht, beim Ombudsmann für Menschenrechte einlegen. Der Anwalt kann den Fall an die zuständige Aufsichtsbehörde weiterleiten, die dann ein formelles Verfahren einleitet. Das Opfer kann auch auf dem Wege eines Verwaltungsverfahrens direkt Beschwerde bei der zuständigen Behörde einlegen (allerdings gab es Fälle, in denen Aufsichtsbehörden eine Zuständigkeit abgelehnt haben, weil die Organgesetze, mit deren Einhaltung sie betraut sind, kein Diskriminierungsverbot enthalten). Wenn die Aufsichtsbehörde eine Diskriminierung bestätigt, erhält der Täter eine Geldstrafe. Das Opfer kann auch eine Klage vor einem Zivilgericht (oder gegebenenfalls vor einem Arbeits- oder Sozialgericht) einreichen und eine Entschädigung für die Schäden einklagen, die sich unmittelbar aus der

Diskriminierung ergeben. Sofern die Diskriminierung eine Straftat darstellt, kann sie bei der Polizei oder der Staatsanwaltschaft angezeigt werden. Weiterhin haben Opfer die Möglichkeit, ihre Rechte auf dem Wege des Verwaltungsverfahrens, der gerichtlichen Überprüfung oder einer Verfassungsbeschwerde zu schützen. Obwohl also zahlreiche Rechtsmittel zur Verfügung stehen, halten sowohl der Anwalt für den Grundsatz der Gleichstellung als auch der Ombudsmann für Menschenrechte die vorhandenen Schutzmechanismen für ungenügend.

Gemäß dem Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes können sich NRO rechtmäßig an gerichtlichen und verwaltungsrechtlichen Verfahren beteiligen, in denen Fälle mutmaßlicher Diskriminierung verhandelt werden. Allerdings sieht weder die Zivilprozessordnung noch das Verwaltungsrecht vor, dass sich NRO im Sinne der Richtlinie an Verfahren beteiligen.

Nach einem Urteil des Verfahrensgerichts sind Verbände und andere Organisationen nicht berechtigt, sich gegen Regelungen einzusetzen, die den Rechtsstatus ihrer Mitglieder oder Dritter betreffen.

Sowohl das Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes als auch das Gesetz über Beschäftigungsverhältnisse sehen eine Umkehrung der Beweislast vor. D. h. wenn das Opfer Indizien beibringt, die einen Verstoß gegen das Diskriminierungsverbot vermuten lassen, muss der mutmaßliche Täter beweisen, dass keine Diskriminierung vorliegt. Wird ein Verstoß gegen das Diskriminierungsverbot festgestellt, werden Strafmaßnahmen in Form von Geldbußen (zwischen 250 und 40.000 EUR), strafrechtlichen Sanktionen, Entschädigungszahlungen, einer Veröffentlichung des Urteils und weiteren Maßnahmen verhängt. Die bisher zuerkannten Entschädigungssummen (3.000, 6.000 oder 11.000 EUR) zeigen, dass die Sanktionen verhältnismäßig und abschreckend sind. Das slowenische Recht legt nicht fest, ob „Situationstests“ vor Gericht als Beweise anwendbar sind.

Was die Beweiskraft statistischer Daten betrifft, haben Kläger das Recht, vom Beklagten statistische Daten zu verlangen, dieses Recht wird aber vom Datenschutzgesetz eingeschränkt. Statistische Daten wurden bisher nur in wenigen Fällen genutzt.

Spezielle positive Fördermaßnahmen gibt es für Roma (politische Vertretung auf lokaler Ebene, die in allen Bereichen wichtig ist), für Menschen mit Behinderung (Quoten und Maßnahmen zur beruflichen Förderung) und für soziale Gruppen, die auf dem Arbeitsmarkt besonders benachteiligt sind (z. B. zum Schutz junger und älterer Arbeitnehmer).

6. Gleichbehandlungsstellen

Gemäß dem Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes hat der Anwalt für den Grundsatz der Gleichbehandlung seine Arbeit 2005 im Staatlichen Amt für Chancengleichheit aufgenommen. 2012 wurde dieses Amt aufgelöst und die Anwaltsstelle in das Ministerium für Arbeit, Familie, Soziales und Chancengleichheit verlegt. Aufgabe des Anwalts ist es, Beschwerden wegen Diskriminierung aus jedem Grund und in allen Bereichen des sozialen Lebens zu prüfen, die Opfer zu unterstützen und Empfehlungen auszusprechen. Das Beschwerdeverfahren ist formlos und gebührenfrei. Der Anwalt kann selbst keine Untersuchungen durchführen oder Geldbußen oder andere Strafmaßnahmen verhängen. Wenn der Täter den Empfehlungen des Anwalts nicht Folge leistet, kann dieser den Fall lediglich der zuständigen Aufsichtsbehörde übergeben. Obwohl die Stelle geschaffen wurde, um Opfern von Diskriminierung ein günstiges und schnelles Rechtsmittel an die Hand zu geben, dauert die Prüfung der Beschwerden manchmal länger, vor allem deshalb, weil die Pflichten des Anwalts von einem einzigen Beamten wahrgenommen werden. Nach Angaben des jüngsten Jahresberichts hat der Anwalt für den Grundsatz der Gleichbehandlung 2012 20 Fälle mutmaßlicher Diskriminierung

überprüft. Von diesen 20 Fällen ging es einmal um Diskriminierung aufgrund einer Behinderung, 18-mal um Religion oder Weltanschauung und siebenmal um sexuelle Ausrichtung (einige Opfer haben gemeinsam Beschwerde eingelegt). Der Bericht für das Jahr 2013 liegt noch nicht vor.

Der wichtigste Kritikpunkt gegen die Anwaltsstelle ist ihre Ansiedlung beim Ministerium für Arbeit, Familie, Soziales und Chancengleichheit, die bezweifeln lässt, ob der Anwalt in der Lage ist, Fälle mutmaßlicher Diskriminierung durch die Regierung oder das eigene Ministerium unvoreingenommen zu untersuchen. Seine Unabhängigkeit wird weiter durch die Tatsache unterhöhlt, dass der Anwalt vom Ministerium für Arbeit, Familie, Soziales und Chancengleichheit vorgeschlagen und von der Regierung ernannt wird. Außerdem verfügt er über keinerlei Mitarbeiter (es ist eine Ein-Personen-Stelle), unzureichende Untersuchungs- und Befragungsbefugnisse und keine Sanktionsmöglichkeiten. Die Stelle wird vom Ministerium finanziert. 2009 und 2010 wurden die Zweifel an der Unabhängigkeit des Anwalts dadurch verstärkt, dass zwei Aufsichtsbehörden das Besetzungsverfahren negativ bewertet haben. Außerdem kam es zu einer ungewöhnlichen Nachnominierung eines neuen Anwalts. Sogar der Jahresbericht 2012 des Anwalts thematisiert die mangelnden Befugnisse, Mitarbeiter und die fehlende Unabhängigkeit der Anwaltsstelle und beklagt den ungenügenden Rechtsrahmen für die Arbeit der slowenischen Gleichbehandlungsstelle.

7. Wichtige Punkte

- Die vom Staat bestellte Gleichbehandlungsstelle (der Anwalt für den Grundsatz der Gleichbehandlung) ist nicht unabhängig, weil er im Ministerium für Arbeit, Familie, Soziales und Chancengleichheit angesiedelt ist. Der Anwalt wird vom Minister vorgeschlagen und von der Regierung ernannt. Außerdem hängt die Finanzierung seiner Tätigkeit vom Ministerium ab. Der Anwalt ist ein Beamter (eine Einzelperson) und hat keine Mitarbeiter, wodurch seine Stelle keinen angemessenen Schutz vor Diskriminierung gewährleisten kann.
- Obwohl es auf dem Papier zahlreiche Rechtsmittel gibt, weist der jüngste Jahresbericht des Anwalts für den Grundsatz der Gleichstellung darauf hin, dass die in Slowenien verfügbaren Rechtsmittel nicht ausreichen und das System nicht wirklich funktioniert. Dies spiegelt sich auch in der geringen Zahl der überprüften Fälle und verhängten Strafmaßnahmen wieder. Wenn der Anwalt eine Diskriminierung feststellt und den Fall an die zuständige Aufsichtsbehörde zur weiteren Bearbeitung überweist, die zu Geldbußen oder anderen Sanktionen führen kann, erklären sich die Aufsichtsbehörden häufig für nicht zuständig, weil Diskriminierung in den Organgesetzen, mit deren Überwachung sie beauftragt sind, nicht ausdrücklich genannt wird. Anders gesagt, weil im wichtigsten Gesetz, dem Gesetz zur Umsetzung des Gleichbehandlungsgrundsatzes, die Zuständigkeit bestimmter Aufsichtsbehörden für die Untersuchung von Diskriminierungsfällen im jeweiligen Kompetenzbereich nicht ausdrücklich festgelegt ist, lehnen die Aufsichtsbehörden eine Zuständigkeit ab. Dieser Widerspruch schwächt den Schutz vor Diskriminierung.
- Es gibt keinen nationalen Aktionsplan oder eine Strategie für den Kampf gegen Diskriminierung. Beim Umgang mit der Situation der Roma, für die das Amt für nationale Minderheiten zuständig ist, wird Diskriminierung oft nicht als Problem thematisiert. Entsprechend fallen die Probleme behinderter Menschen ausschließlich in die Zuständigkeit des Amts für Menschen mit Behinderungen, das im Ministerium für Arbeit, Familie und Soziales angesiedelt ist. Es gibt keine staatliche Stelle, die ausdrücklich für die Erhebung von Daten über Diskriminierung zuständig ist, d. h. einzelne Stellen können Untersuchungen durchführen, sind aber nicht dazu verpflichtet. Aus diesem Grund wird der Großteil der Forschung von Nichtregierungsorganisationen durchgeführt (auf Projektbasis). Für einzelne personenbezogene Diskriminierungsgründe ist keine staatliche Stelle zuständig, z. B. für sexuelle Ausrichtung. Gleichgeschlechtlichen Paaren werden weiterhin

zahlreiche Rechte vorenthalten, die anderen Paaren zustehen (auch im Arbeitsleben).

Im vollständigen Bericht werden außerdem die folgenden Probleme angesprochen:

- NRO sind nicht berechtigt, sich im Namen des Opfers an Gerichtsverfahren zu beteiligen. Diese dürfen sich vor Gericht ausschließlich von Anwaltskanzleien vertreten lassen. NRO können sich also nur dann an Verfahren beteiligen, wenn sie dazu berechnigte Personen mit der Vertretung des Opfers beauftragen, in einigen Fällen also Anwälte, die das Staatsexamen bestanden haben.
- Die Bestimmung, die unmittelbare Diskriminierung erlaubt, ist recht verwirrend und lässt gegensätzliche Auslegungen zu.
- Ob Mehrfachdiskriminierung, vermutete Diskriminierung und Diskriminierung durch Assoziierung im slowenischen Recht verboten sind, muss durch die Rechtssprechung geklärt werden.
- Dasselbe gilt für die Rechtmäßigkeit von Situationstests und für die Frage, ob Situationstests und statistische Daten vor Gericht als Beweise zulässig sind.
- „Anweisung zur Diskriminierung“ ist verboten, der Begriff wird im Gesetz aber nicht näher bestimmt.
- Es gibt keine einheitliche Definition von geistiger Behinderung.
- Das Sozialschutzgesetz diskriminiert Personen beim Zugang zum Arbeitsmarkt, weil Erwachsene, die gemäß diesem Gesetz einen Status als Behinderte erhalten, Anrecht auf Sozialleistungen haben, gleichzeitig aber als unfähig zu einer eigenständigen Lebensführung und Beschäftigung eingestuft werden, und dies unabhängig von ihrer tatsächlichen Arbeitsfähigkeit. Das Gesetz zwingt Menschen, die arbeiten möchten, dazu, ihren Behindertenstatus aufzugeben, wodurch sie automatisch ihre Ansprüche auf Sozialleistungen verlieren.
- Es ist nicht klar, ob der Schutz, den die Gleichbehandlungsgesetze Menschen mit Behinderungen gewähren, nur für Menschen greift, die offiziell gemäß dem Renten- und Behindertenversicherungsgesetz als behindert anerkannt sind (Einschränkung des persönlichen Geltungsbereichs).

INTRODUCTION

The national legal system

According to its Constitution, the Republic of Slovenia is a democratic republic, governed by the rule of law. It is a unified state and competence for the adoption of national law in the field of non-discrimination rests with the National Assembly. All laws, regulations and other general legal provisions must be in conformity with the Constitution. Laws must also 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. Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights (such as the European Union) shall be applied in Slovenia in accordance with the legal regulation of these organisations. All legislation in Slovenia may be subjected to revision by the Constitutional Court.

List of main legislation transposing and implementing the directives

Constitution of the Republic of Slovenia – CRS (*Ustava Republike Slovenije*), Official Journal of the Republic of Slovenia, No. 33/1991. Date of adoption: 23 December 1991. Entry into force: 23 December 1991. Latest amendments: 20 June 2006. Grounds covered: national origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability. Material scope: not explicitly stated.

Act Implementing the Principle of Equal Treatment – AIPET (*Zakon o uresničevanju načela enakega obravnavanja – uradno prečiščeno besedilo*), Official Journal of the Republic of Slovenia, No. 93/07. Date of adoption: 22 April 2004. Entry into force: 7 May 2004. Date of latest amendment: 22 June 2007. Grounds covered: gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation or other personal characteristic. Material scope: all fields, in particular retraining, practical work experience; employment and working conditions, dismissals and pay; membership of and involvement in an organisation of workers or employers, or other professional organisation, including associated 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.

Employment Relationship Act – ERA (*Zakon o delovnih razmerjih*), Official Journal of the Republic of Slovenia, Nos. 21/13 and 78/13. Date of adoption: 5 March 2013. Entry into force: 12 April 2013. Grounds covered: ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership of a trade union, financial situation or other personal characteristic. Material scope: public employment, private employment.

Vocational Rehabilitation and Employment of Persons with Disabilities Act – VREPDA (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*), Official Journal of the Republic of Slovenia, No. 63/2004. Date of adoption: 21 May 2004. Entry into force: 25 June 2004. Latest amendments: 19 October 2011. Grounds covered: disability. Material scope: employment.

Act on Equal Opportunities for People with Disabilities – AEOPD (*Zakon o izenačevanju možnosti invalidov*), Official Journal of the Republic of Slovenia, No. 94/2010. Date of adoption: 16 November 2010. Entry into force: 11 December 2010. Latest amendments: 4 July 2014. Grounds covered: disability. Material scope: employment, education, access to and supply of goods and services which are available to the public, including housing.

Penal Code – PC (*Kazenski zakonik*), Official Journal of the Republic of Slovenia No. 55/2008. Date of adoption: 20 May 2008. Entry into force: 1 November 2008. Latest amendments: 2 November 2011. Grounds covered: ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other characteristic. Material scope: not explicitly stated.

Protection of Public Order Act – PPOA (*Zakon o varstvu javnega reda in miru*), Official Journal of the Republic of Slovenia, No. 70/2006. Date of adoption: 22 June 2006. Entry into force: 21 July 2006. Grounds covered: ethnicity, race, gender, religious, political opinion or sexual orientation. Material scope: not explicitly stated.

1 GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

The Constitution of the Republic of Slovenia includes the following articles dealing with non-discrimination:

- Article 14(1) 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 characteristic.³⁴ Although sexual orientation and age are not stated among the various grounds on which discrimination is prohibited, this can be derived from the general clause. The fact that sexual orientation is a protected ground in the meaning of Article 14 of the Constitution was confirmed by the Constitutional Court in its decision No. U-I-425/06 of 2 July 2009.
- 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 deemed unconstitutional.
- Article 34 establishes the right to personal dignity and safety.
- Article 35 establishes the protection of the right to privacy and personality rights.
- Article 22 states that everyone shall be guaranteed equal protection of their rights in any proceeding before a court or before other state authorities, local community authorities and bearers of public authority that decide on their rights, duties or legal interests.

These provisions apply to all areas covered by the directives. Their material scope is broader than those of the directives.

The constitutional anti-discrimination provisions are directly applicable.

The constitutional equality clauses can be enforced against private actors.

³⁴ This clause must be respected even in the event of the temporary suspension and limitation of human rights in case of war or emergency, Article 16 of the Constitution.

2 THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination explicitly covered

The following grounds of discrimination are explicitly prohibited in the Act Implementing the Principle of Equal Treatment (Article 2): gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation or other personal characteristic.

The following grounds of discrimination are explicitly prohibited in the Employment Relationship Act (Article 6(1)): ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership of a trade union, financial situation or other personal characteristic.

The Vocational Rehabilitation and Employment of Persons with Disabilities Act and the Act on Equal Opportunities for People with Disabilities prohibit discrimination on the grounds of disability.

The Penal Code prohibits discrimination on the grounds of ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other characteristic (Article 131(1)). It also prohibits incitement to hatred, violence and intolerance based on national, racial, religious or ethnic affiliation, sex, skin colour, origin, property status, education, social status, political or other opinion, disability, sexual orientation or any other personal ground (Article 297).

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

2.1.1 Definition of the grounds of unlawful discrimination within the directives

There is no definition in law of racial and ethnic origin, religion or belief, age or sexual orientation.

It is different with disability. In accordance with Article 63(2) of the Pension and Disability Insurance Act,³⁵ employees with disabilities are classed in one of three categories, according to their capacity for work. Those in Category I are not capable of working, while those in Categories II and III are able to work, but subject to certain limitations or after rehabilitation. Disability status is granted if the impairment of the insured individual's health cannot be reversed by medical treatment or medical rehabilitation. These impairments are determined in accordance with the Pension and Disability Insurance Act and result in decreased ability to obtain or retain a job or to be promoted.

It is not clear whether the definition of disability contained in Article 63 of the Pension and Disability Insurance Act is also used for the purposes of defining disability in the Act Implementing the Principle of Equal Treatment and other laws prohibiting discrimination.

According to the Vocational Rehabilitation and Employment of Persons with Disabilities Act, the term "persons with disabilities" applies to an individual who has been granted the status of a person with disabilities in accordance with the Pension and Disability

³⁵ *Zakon o pokojninskem in invalidskem zavarovanju*, Official Journal of the Republic of Slovenia, No. [96/12](#) ([39/13](#), [99/13](#) – ZSVarPre-C, [101/13](#) – ZIPRS1415, [44/14](#) – ORZPIZ206, [85/14](#) – ZUJF-B and [95/14](#) – ZUJF-C).

Insurance Act, or any other regulation, and to an individual for whom the consequences of a permanent physical or mental impairment or disease have been ascertained by an administrative decision, and whose chances of obtaining or retaining a job or obtaining promotion are substantially reduced. The definition of disability under this law therefore differs from that adopted by the CJEU in *Ring and Skouboe Werge*, as the definition in this law links the impairments to medical treatment which cannot reverse the damages. It presumes that disability could also be seen as a disease (resulting from a disease), while the Court makes a strict distinction between disease and disability. There is no common definition of intellectual disability.

However, under the 2010 Act on Equal Opportunities for People with Disabilities³⁶ which sets out obligations concerning reasonable accommodation (or appropriate accommodation, as the law calls it), the definition of a person with disabilities is more comprehensive and follows more closely the UN Convention on the Rights of People with Disabilities: people with disabilities are those who have long-term physical, mental or sensory impairments or impairments in their mental development which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. This definition is closer to that set out in *Ring and Skouboe Werge*. This law therefore extends the meaning of disability to people who have not been officially recognised as belonging to one of the categories of disability.

In terms of disability there is another act – the Social Care Act³⁷ – which is relevant for the status of people with disabilities. This act defines a person with disabilities as “an adult with a severe disorder in their mental development or with severe physical impairments who needs assistance in performing all the basic functions of life”.

There are a few examples where equivalent terms are used for other grounds of discrimination.

Ethnicity: in 2011 the Higher Court in Ljubljana issued its decision on case no. II Kp 24633/2010 of 12 September 2011 in which it provided guidance on how “ethnicity” (*narodnost*) should be understood in the context of prohibition of incitement to racial or ethnic hatred in the Penal Code. The court stated that all ethnicities enjoy the protection of the law, regardless of whether they are recognised as national minorities or not. The term “ethnicity” should therefore be interpreted in line with Articles 63 and 14 of the Constitution, international instruments and recommendations on Roma which are binding on Slovenia. Therefore, legal protection is also accorded to an ethnic group such as the Roma which does not have the official status of a national minority. The judgement of the Higher Court came following a first instance judgement in which the County Court stated that Roma do not enjoy the protection of the Penal Code because they are not a recognised national minority.

Religion: the Religious Freedom Act,³⁸ adopted on 2 February 2007, does not define religion but states that religious freedom encompasses freedom of expression of religious belief, renouncement of its expression and the freedom of everyone, alone or in a group, with others, privately or publicly, to express their religion at a religious service or class, through practice or religious rituals or in another way. Religious freedom includes conscientious objection to an obligation required by law that seriously contradicts an individual’s religious belief, if this does not impede the rights of other people, in cases defined by law. Conscientious objection is, for example, defined in the Health Services

³⁶ *Zakon o izenačevanju možnosti invalidov*, Official Journal of the Republic of Slovenia, Nos. 94/2010 and 50/2014.

³⁷ *Zakon o socialnem varstvu – uradno prečiščeno besedilo*, Official Journal of the Republic of Slovenia, No. 23/2007.

³⁸ *Zakon o verski svobodi*, Official Journal of the Republic of Slovenia, No. 14/2007.

Act (for medical workers) and in the Decree on the Exercise of Conscientious Objection in the Slovenian Army and Civil Service (for military personnel).

2.1.2 Multiple discrimination

In Slovenia, the prohibition of multiple discrimination is not covered by law.

The following case deals with an example of multiple discrimination in Slovenia.

According to the available information, only one judgement has so far been issued that relates to multiple discrimination. In the case in question a claimant complained of discrimination on the grounds of gender, age and family status in access to a non-profit apartment, and lost. The court rejected the applicant's claim of discrimination on the grounds of gender, age and family status in relation to access to public, non-profit housing (social housing, apartments made available by municipalities for rent lower than the market rate).

The claimant had applied for public housing. Since the number of applicants exceeded the number of available apartments, the applicants were evaluated and put on a priority list if, inter alia, they could be considered a "young family", in accordance with the implementing act (a family with one or more children, of whom at least one is under school age, and where none of the parents are over 35, as defined within the Rules on Allocating Non-profit Apartments). Since the applicant's husband was over 35, her family did not receive the necessary points and was not put on the priority list.

The court stated that, since the defendant (the 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 access to public housing are set by the law and implementing acts, and are equal for all; according to the court, the decision of the defendant was not a consequence of discrimination but a consequence of the claimant's failure to fulfil the conditions.³⁹ In this case the claimant should have used all available remedies and finally should have challenged the law and implementing acts before the Constitutional Court.

Considering the available data, the Advocate of the Principle of Equality has dealt with several cases of multiple discrimination (two cases in 2009, three in 2010 and two in 2011).⁴⁰ Comprehensive information about these cases is not available. New data is not available either, as the Advocate has not published reports since then.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Slovenia, national law (including case law) does not explicitly prohibit discrimination based on perception or assumption of a person's identity. However, in the opinion of the author, the provision of Article 4(2) of the Act Implementing the Principle of Equal Treatment, which states "equal treatment shall be guaranteed, irrespective of personal characteristic", could be interpreted by the court, using the argument *a maiori ad minus* (that is, "what includes more, also covers less"), as covering assumed characteristics. Namely, the law does not specifically state that the individual who is discriminated against must actually have the personal characteristic on the grounds of which the

³⁹ Administrative Court of the Republic of Slovenia, Judgement No. U 947/2007-12 of 20 March 2008.

⁴⁰ Advocate of the Principle of Equality, Annual report 2012, available at http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

discrimination allegedly occurred. The same applies to Article 6(3) of the Employment Relationship Act.

b) Discrimination by association

In Slovenia, national law (including case law) does not explicitly prohibit discrimination based on association with people with particular characteristics. However, in the opinion of the author, a court could interpret the provisions contained in Article 4(2) of the Act Implementing the Principle of Equal Treatment and Article 6(3) of the Employment Relationship Act as covering discrimination by association, as required by the *Coleman v Attridge Law and Steve Law* case. This act does not state that the victim must have the personal characteristic on the grounds of which the discrimination allegedly occurred. So far, there has been no case law interpreting the prohibition of discrimination by association.

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

a) Prohibition and definition of direct discrimination

In Slovenia, direct discrimination is prohibited in national law. It is defined as follows: direct discrimination on grounds of a personal characteristic occurs if an individual due to such personal characteristic has been, is or would be treated less favourably than another individual in an equal or comparable situation (Article 4(2) of the Act Implementing the Principle of Equal Treatment). The Employment Relationship Act also defines direct discrimination: in Article 6(3) it states that "direct discrimination occurs if an individual due to a personal characteristic is, was or could have been treated less favourably than another individual in equal or similar situations". Finally, Article 3 of the Act on Equal Opportunities for People with Disabilities states that direct discrimination on grounds of disability occurs if a person with a disability has been, is or would be, due to his or her disability, treated less favourably than another person in an equal or comparable situation.

b) Justification of direct discrimination

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 prohibit difference in treatment on the basis of certain personal characteristics, if such treatment is justified by a legitimate goal and if the means for achieving this goal are appropriate and necessary (Article 2.a(1)). Furthermore, Articles 2.a(2) and (3) absolutely prohibit any discrimination, regardless of the provision of Article 2.a(1), except for specifically defined exceptions, related to genuine and determining occupational requirements in the area of employment; religion in religious organisations; 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 to European Union law.

In conclusion, this provision is quite confusing since Article 2.a(1) indicates that direct discrimination based on race or ethnicity can also be justified by reasons other than positive action and genuine and determining occupational requirements.

This is unlikely to be the case, since Articles 2.a(2) and (3) absolutely prohibit any discrimination, except for the listed examples. The provision, however, remains unclear and allows for contradicting interpretations.

2.2.1 Situation testing

a) Legal framework

In Slovenia, situation testing is not mentioned in national law. The Civil Procedure Act⁴¹ defines various types of evidence that can be taken into account by a court: hearing of witnesses; hearing of experts; hearing of the parties to the case; and documents. The Civil Procedure Act (Article 213/2) contains only one provision explicitly mentioning a court's option to reject evidence which is not important for the decision, namely evidence which does not serve to establish legally relevant facts. As to other types of inadmissible evidence, Article 3 of the Civil Procedure Act should be taken into account, as it states that the court shall reject evidence which would be contrary to the law or morality. The admissibility of situational testing as evidence will therefore be subject to judicial interpretation.

b) Practice

In Slovenia, situation testing is not often used in practice. According to the available information, situation testing has only been used in practice within the European Grassroots Antiracist Movement – EGAM campaign (Actright project), implemented in Slovenia by an NGO called Institute Ekvilib. The testing was carried out in relation to access to apartments publicly advertised for rent by estate agencies. Testing, which focused on uncovering racial discrimination, showed discrimination in one third of cases, when a person of non-Slovenian descent was either rejected or treated unequally compared to a Slovenian who was enquiring about the same apartment. However, testing was not used for the purposes of court procedures but with the aim of establishing evidence of discrimination for public discussion.

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

a) Prohibition and definition of indirect discrimination

In Slovenia, indirect discrimination is prohibited in national law by Article 3(1) of the Act Implementing the Principle of Equal Treatment. It is defined as follows: Article 4(3) of the Act Implementing the Principle of Equal Treatment states that indirect discrimination on grounds of personal characteristics occurs when a seemingly neutral provision, criterion or practice in equal or comparable situations and under similar conditions, puts an individual with a certain personal characteristic in a less favourable position compared to other people, 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 Relationship Act, which states that indirect discrimination exists when an individual with a certain personal characteristic was, is or could be, due to a seemingly neutral provision, criterion or practice in equal or similar situations and conditions, placed in a less favourable situation than other individuals, unless this provision, criterion or practice is objectively justified by a legitimate objective and if the means to achieve such an objective are appropriate and necessary (Article 6(3)).

Article 3 of the Act on Equal Opportunities for People with Disabilities states that indirect discrimination on the grounds of disability occurs when a seemingly neutral provision, criterion or practice, in equal or comparable situations and under similar conditions, puts

⁴¹ *Zakon o pravdnem postopku – Uradno prečiščeno besedilo*, Official Journal of the Republic of Slovenia, No. 73/2007.

an individual with disabilities in a less favourable position compared to other individuals, unless that provision, criterion or practice is objectively justified by a legitimate objective and the means of achieving that objective are appropriate and necessary.

b) Justification test for indirect discrimination

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

c) Comparison in relation to age discrimination

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

2.3.1 Statistical evidence

a) Legal framework

In Slovenia, there are national rules permitting data collection. Data collection is regulated by the Personal Data Protection Act,⁴² which determines that data can be collected only if permitted by law. It sets special conditions for collecting sensitive personal data. According to this law, sensitive personal data are data on racial, national or ethnic origin; political, religious or philosophical beliefs; trade union membership; state of health; sex life; and criminal records (Article 6(19)). Biometric characteristics are also sensitive personal data if their use makes it possible to identify an individual in connection with any of the aforementioned characteristics. (It should be noted that data on marriages and registered partnerships are collected separately, as these are two separate institutions. Therefore, since registered partnerships are only available to same-sex couples, an individual's same-sex orientation can easily be detected from the fact that he or she entered into a registered partnership.) To summarise, data protection law generally prohibits the processing of sensitive data but it does allow, under special circumstances, the data to be processed in order to assert or oppose a legal claim (one example of when data collection is allowed is if this is necessary in order to assert or oppose a legal claim, as stipulated by Article 13(7) of this Act).

An implementing act entitled Rules on the Methodology for Keeping a Register of Personal Data⁴³ further regulates the procedures concerning the administration of personal data collection.

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

In Slovenia, statistical evidence is, in principle, permitted by national law, in order to establish indirect discrimination. In accordance with Article 213(2) of the Civil Procedure Act the court decides which evidence is needed to prove the facts of the case. It is therefore up to the court to decide whether, in a specific case, the statistical evidence submitted by the parties will be admissible.

⁴² *Zakon o varstvu osebnih podatkov*, Official Journal of the Republic of Slovenia, No. 86/2004.

⁴³ [Pravilnik o metodologiji vodenja registra zbirk osebnih podatkov](#), Official Journal of the Republic of Slovenia, No. 28/2005.

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

b) Practice

In Slovenia, statistical evidence in order to establish indirect discrimination is rarely used in practice. Statistical evidence is used to design positive action measures, such as employment measures for young people or members of the Roma minority.

2.4 Harassment (Article 2(3))

a) Prohibition and definition of harassment

In Slovenia, harassment is prohibited in national law. It is defined as follows.

Article 5(1) of the Act Implementing the Principle of Equal Treatment defines harassment as unwanted conduct, based on any personal characteristic, which creates an intimidating, hostile, humiliating or offensive environment for an individual or offends their dignity.

Article 7 of the Employment Relationship Act prohibits sexual or other harassment. Harassment is defined as any unwanted conduct, related to any personal characteristic, with the effect or purpose of injuring the dignity of an individual or creating an intimidating, hostile, humiliating or offensive environment. Rejection of conduct considered to be harassment should never constitute a legitimate reason to discriminate, which means that if an employee refuses to be harassed he or she should not suffer any adverse consequences in the form of discrimination. The definitions of harassment in national law comply with the directives.

Harassment in the workplace is also prohibited by the Penal Code, which constitutes harassment as a crime. The provision of Article 197 of the Code sanctions harassment in the workplace, stating that anyone causing humiliation or fear to another employee by means of sexual harassment, psychological violence, bullying or unequal treatment is sanctioned with imprisonment of up to two years.

In Slovenia, harassment does explicitly constitute a form of discrimination. Article 5(2) of the Act Implementing the Principle of Equal Treatment states that harassment referred to in Article 5(1) shall be considered discrimination under the provisions of the Act.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, in Slovenia the employer and the employee are liable (the victim can file a lawsuit against either of them or both of them at the same time).

The Act Implementing the Principle of Equal Treatment defines in general terms the scope of liability for discriminatory treatment in every sphere of life, including employment. According to the general principles of liability for damages, an individual who has caused damage must compensate for it, unless they prove that they were not

responsible for it. The Code of Obligations⁴⁴ also regulates liability for others. An employer is, according to Article 147 of the Code of Obligations, liable for damage caused to a third person by an employee during work or in connection with work, unless he or she proves that the employee acted properly. In the field of employment, the new Article 8 of the 2013 Employment Relationship Act states that, in case of a violation of the prohibition of discrimination or bullying in the workplace, the employer is liable in relation to the candidate or worker in line with the general provisions of civil law. In accordance with Article 47 of this act, the employer is obliged to guarantee a working environment without harassment. If necessary, the employer must adopt suitable measures to protect employees from harassment.

2.5 Instructions to discriminate (Article 2(4))

a) Prohibition of instructions to discriminate

In Slovenia, instructions to discriminate are prohibited in national law. Instructions are not defined.

In Slovenia, instructions do explicitly constitute a form of discrimination.

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 and direct and indirect discrimination shall also be deemed direct or indirect discrimination. According to Article 3(1) of the Act Implementing the Principle of Equal Treatment, instructions to discriminate are prohibited. Instructions to discrimination are also prohibited by the Employment Relationship Act, Article 6(3) of which states that instructions to discriminate also constitute direct or indirect discrimination which is prohibited by law.

In defining instructions to discriminate national law does not go beyond the Directive's requirements. However, incitement to hatred is defined and prohibited by the Penal Code. Namely, Article 297(1) states that anyone who publicly encourages or incites hatred, violence or intolerance based on national, racial, religious or ethnic origin, sex, skin colour, origin, property status, education, social status, political or other opinion, disability, sexual orientation or any other personal ground, and the act is committed in a manner that may endanger or disturb public order and peace, or by use of threat, abuse or insult, shall be sanctioned with imprisonment of up to two years. In addition, Article 20 of the Protection of Public Order Act⁴⁵ foresees punishment for inciting ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation.

b) Scope of liability for instructions to discriminate

In Slovenia, the individual issuing instructions to discriminate and the perpetrator of the discrimination may both be liable. However, this is not explicitly defined in the law. The Act Implementing the Principle of Equal Treatment defines in general terms the scope of liability for discriminatory treatment. According to the general principles of liability for damages defined in the Code of Obligations, an individual who has caused damage must compensate for it, unless they prove that they were not responsible for it (e.g. that there are circumstances that alleviate the responsibility of the person for the damage he or she caused). Slovenian legislation has no specific provisions on liability for other people in the field of discrimination. The question remains open as to how these provisions would be interpreted by courts in cases where damages arose due to unlawful discrimination.

⁴⁴ *Obligacijski zakonik [Code of Obligations]*, Official Journal of the Republic of Slovenia, No. 83/2001, 32/2004.

⁴⁵ *Zakon o varstvu javnega reda in miru [Protection of Public Order Act]*, Official Journal of the Republic of Slovenia, No. 70/2006.

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

- a) Implementation of the duty to provide reasonable accommodation in the field of employment

In Slovenia, the duty to provide reasonable accommodation is included in the law. It is defined as follows.

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

- accepting and making available written material for an individual with sensory impairments in a manner that is appropriate for and chosen by them (e.g. Braille, large print, audio tape or electronic format) (Article 7(2));
- ensuring access to information, communication and other services in case of emergency, removal of structural barriers in buildings where goods and services are made available to the public (Article 8(3));
- adaptation of public buildings with structural solutions and technical equipment, sound and sensory indicators, written information and other reasonable adjustments (Article 9(2)).

There are also provisions in other laws which could constitute measures to provide reasonable accommodation under the Vocational Rehabilitation and Employment of Persons with Disabilities Act, Employment Relationship Act and in other pieces of legislation. The provisions of the Vocational Rehabilitation and Employment of Persons with Disabilities Act protect only those whose disability is attested by a medical certificate, in accordance with the Pension and Disability Insurance Act, and are classed in one of three categories, according to their capacity for work (those in Category I are not capable of working, while those in Categories II and III are able to work, but subject to certain limitations or after rehabilitation). Article 1(1) of the Vocational Rehabilitation and Employment of Persons with Disabilities Act states that this act defines the right to vocational rehabilitation and various aspects of employment for persons with disabilities. Judicial interpretation is required as to whether the act provides for reasonable accommodation duties in employment. In the opinion of the author, if an individual employee has a disability, but does not meet the definition under the Vocational Rehabilitation and Employment of Persons with Disabilities Act and is not granted one of the disability statuses (categories), they can also rely on the duty of reasonable accommodation found in the 2010 Act on Equal Opportunities for People with Disabilities.

Article 2 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act⁴⁶ states that the aim of the act is to increase opportunities for people with disabilities to be employed and to establish the circumstances for them to participate equally in the labour market by eliminating obstacles and creating equal opportunities.

⁴⁶ *Zakon o spremembah in dopolnitvah Zakona o poklicni rehabilitaciji in zaposlovanju invalidov* [Act Amending the Vocational Rehabilitation and Employment of Disabled Persons Act], Official Journal of the Republic of Slovenia, No. 100/2005, 114/2006 and 87/2011.

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. All of these relate to work that suits their abilities.

Article 15 states that services promoting employment rehabilitation (carried out by service providers who have obtained a licence to perform this activity from the ministry with responsibility for social policy) include, inter alia: compiling a report on the level of working capacity, knowledge, working habits and professional interests; helping people to accept their disability and informing them about opportunities for training for work; helping to identify appropriate professional goals; developing social skills; assistance in searching for a suitable job; and analysing the particular position and working environment of an individual with disabilities, in order to produce a plan for making appropriate adjustments. This plan includes: necessary equipment; training for a job or profession; expert assistance with training and education; shadowing the individual 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 of Labour, Family, Social Affairs and Equal Opportunities decides the amount payable for these services which 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 obtain a refund for the 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 intent to conclude an employment contract for an indefinite period must be attached to it. The Fund decides whether to refund the costs and appeals are decided by the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

The costs of supporting employment are also decided in the same way. The employer must produce an individual plan of support for the person with disabilities.

Thirty hours per month of the individual's salary will be funded by the Fund if the person with disabilities has no other rights to employment rehabilitation under the Act, if they have an employment contract for an indefinite period and if the number of employees with disabilities exceeds the quota set by the Act.⁴⁷ All other cases require the employer to pay the costs themselves. 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 obtain benefits from public sources. Moreover, the employer must cover the costs incurred as a result of their obligation to ensure health and safety at work.

Article 6 of the Employment Relationship Act enumerates disability and state of health among other grounds on which discrimination is prohibited and therefore makes a distinction between the two. Article 195 of the Act states that the employer must protect people 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 196 of the Employment Relationship Act, which defines the rights of workers with disabilities, states that anyone who employs a worker who becomes disabled but still has capacity for work must provide them with the opportunity to perform other appropriate work which suits their capacity for work, shorter working time, vocational rehabilitation and an allowance substituting for pay, in accordance with pension and disability insurance provisions. The employer's duty to provide reasonable

⁴⁷ For more information about quotas, please see section 5 on positive action.

accommodation could therefore also be derived from Article 196 of the Employment Relationship Act, but only to a certain extent.

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 the employer may terminate an employment contract with an employee on the ground of disability. In this case, the employer must 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.

In the Act on Equal Opportunities for People with Disabilities there are no specific rules on what accommodation is considered to be unreasonable. In order to assess this, account must be taken of the size and financial resources of the public or private entity concerned, its nature and the estimated expenses of the appropriate accommodation, the potential benefits of improved access for people with disabilities, as well as the historical, cultural, artistic and architectural value of the building where the employment is based (Article 8).

With this Act, a system was also established for people with disabilities to obtain state funding for technical equipment (in addition to that available through other disability legislation) which they require outside the area of employment, in order to overcome communication or physical barriers, with the aim of establishing a safe and independent life, access to information, communication and adjustment of living conditions and adjustments to their cars (Articles 17-24). This act does not constitute a reasonable accommodation duty in the field of employment (employment is covered by the Vocational Rehabilitation and Employment of Persons with Disabilities Act, see below).

b) Practice

In practice, 94 % of all reasonable accommodation measures taken by employers are related to organisational solutions, such as transfers to other work posts, part-time work and protected employment posts. In addition, 5 % of reasonable accommodation measures consist of rehabilitation and training, and less than 1 % are accommodation measures involving technical solutions.⁴⁸

c) Definition of disability and non-discrimination protection

The Act on Equal Opportunities for People with Disabilities and Vocational Rehabilitation and the Employment of Persons with Disabilities Act do not define a different personal scope with regard to prohibition of discrimination and the duty to provide reasonable accommodation.

However, it seems that national law does differentiate in terms of personal scope with regard to the definitions of disability for the purposes of obtaining disability status⁴⁹ or claiming reasonable accommodation.⁵⁰ It remains to be seen which definition will be

⁴⁸ Aleksandra Tabaj et al. (2009) Izvajanje koncepta primerne prilagoditve – Reasonable accommodation na področju zaposlovanja invalidov [*Implementation of the concept of reasonable appropriate accommodation in the field of employment of persons with disabilities*], University rehabilitation Institute Soča.

⁴⁹ In accordance with Article 60 of the Pension and Disability Insurance Act, employees with disabilities are classed in one of three categories according to their capacity for work. Those in Category I are not capable of work, while those in Categories II and III are able to work, but subject to certain limitations or after rehabilitation.

⁵⁰ Under the 2010 Act on Equal Opportunities for People with Disabilities people with disabilities are those who have long-term physical, mental or sensory impairments or impairments in their mental development which,

adopted by the courts for the purposes of protection from discrimination on the grounds of disability.

d) Duties to provide reasonable accommodation outside the field of employment

In Slovenia, there is a duty to provide reasonable accommodation for people with disabilities outside the employment field.

The Act on Equal Opportunities for People with Disabilities also makes provision for the duty of appropriate accommodation outside the area of employment, in particular in the area of access to goods and services. The definition of disproportionate burden as specified in the previous section does not differ in the area of access to goods and services.

In accordance with Act on Equal Opportunities for People with Disabilities, measures of appropriate accommodation can include:

- accepting and making available written material for an individual with sensory impairments in a manner that is appropriate for and chosen by them (e.g. Braille, large print, audio tape or electronic format) (Article 7(2));
- ensuring access to information, communication and other services in case of emergency, removal of structural barriers in buildings where goods and services are made available to the public (Article 8(3));
- adaptation of public buildings with structural solutions and technical equipment, sound and sensory indicators, written information and other reasonable adjustments (Article 9(2));
- appropriate accommodation measures for inclusion in educational and study processes, including adjustments to meet the educational and study needs of an individual with disabilities (Article 11(2));
- the duty of local government to ensure that adapted non-profit apartments are made available for people with disabilities who apply for and are granted non-profit apartments (Article 13);
- accessibility of information by different types of scripts and technologies appropriate for different types of disabilities (Article 14);
- access to public cultural events by eliminating communication and structural barriers (Article 15(2));
- the duty to make public transport accessible for people with physical and sensory impairments, and the prohibition on charging extra for a wheelchair or a guide dog (Article 16);
- the right to state co-financing for the purchase of a new adapted vehicle (Article 21(4));
- the right to acquire a therapeutic dog (Article 22.c).

Access to technical equipment and the adaptation of vehicles is regulated in a new implementing act entitled Rules on Technical Aids and Adaptation of Vehicles.⁵¹

e) Failure to meet the duty of reasonable accommodation

In Slovenia, failure to meet the duty of reasonable accommodation does not explicitly count as discrimination. Judicial interpretation is required to confirm that failure to provide reasonable discrimination counts as discrimination.

in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

⁵¹ *Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*, Official Journal of the Republic of Slovenia, No. 71/14.

Although there is no specific reference to reasonable accommodation in the Act Implementing the Principle of Equal Treatment, failure to provide reasonable accommodation could result in direct or indirect discrimination, as employees with disabilities would not be in the same position as other employees and thus a breach of Article 6 of the Employment Relationship Act and Article 4 of the Act Implementing the Principle of Equal Treatment would occur, since Article 2(1) lists disability as a prohibited ground of discrimination.

Even though the Act on Equal Opportunities for People with Disabilities defines the duty of reasonable accommodation, it does not explicitly provide for an overall rule that denying reasonable accommodation (or appropriate accommodation, as the law calls it) constitutes discrimination. However, the sole fact that the duty of appropriate accommodation is defined in the law could strengthen the argument that denial of it would constitute discrimination. There is, for example, a specific provision which states that discrimination on the ground of disability includes not ensuring access to information for people with disabilities, taking into account the duty of appropriate or reasonable accommodation (Article 14 of the Act on Equal Opportunities for People with Disabilities).

The fact that a failure to meet the duty of reasonable accommodation constitutes discrimination (even though this is not explicitly stipulated in the law) is reflected in two opinions from the Advocate of the Principle of Equality, No. UEM – 0921-1/2008-2 (disability) and No. UEM – 0921-10/2008-3 (religion). In these two opinions the Advocate of the Principle of Equality found indirect discrimination against a person with a disability and a person of the Muslim faith, as the same rules were applied to them as to all other people who did not have these personal characteristics. Furthermore, the Advocate found that reasonable accommodation should be applied to them in order to prevent discrimination from taking place.

If failure to provide reasonable accommodation was considered as an act of discrimination (e.g. by a court or inspectorate), the same sanctions would apply as in cases of discrimination (see below, section on sanctions).

There are no special provisions in law on the burden of proof in cases of claiming discrimination due to denial of reasonable accommodation. The shift of the burden of proof as applied in discrimination cases is applied.

f) Duties to provide reasonable accommodation in respect of other grounds

In Slovenia, there is no duty to provide reasonable accommodation in respect of other grounds in the public and private sector.

The duty of reasonable (appropriate) accommodation is only defined with respect to disability. In spite of this, the Advocate of the Principle of Equality issued an opinion recognising the right to reasonable accommodation on the grounds of religion (opinion No. UEM-0921-10/2008-3). In this case the applicant, who was a Muslim, was employed by a company which offered hot meals to its employees. Due to his religion, the applicant wished to make use of the possibility of a monthly allowance offered to employees in order to buy their own food, in accordance with his religion. However, this possibility is only available for employees who submit a medical certificate confirming that they require a special diet. It is noteworthy that the company adapted the menus to the Catholic faith which requires fasting on Fridays. The Advocate found that, since all employees are treated equally in the area of food provision, regardless of their religion, the applicant, as a Muslim, is indirectly discriminated against, as he is put in a less favourable position than other employees. The Advocate found that reasonable accommodation is already provided for a certain group of employees, who belong to the Catholic faith, and the company should simply extend this rule to employees of a different religion. The Advocate issued this decision, even though the law makes no

provision on reasonable accommodation for people because of their religion. The decision was adopted based on an interpretation of the law identifying indirect discrimination.

g) Accessibility of services, buildings and infrastructure

In Slovenia, national law requires services available to the public, buildings and infrastructure to be designed and built in a way which is accessible for people with disabilities.

According to Article 92 of the Rules on the Requirements for Ensuring Health and Safety at Work, employers must adapt doors, stairways, bathrooms and washrooms etc. which are directly used by people with disabilities and which are located where they work. The duty to make public buildings accessible for people with disabilities is also specified in the 2010 Act on Equal Opportunities for People with Disabilities (Article 9). It remains to be seen whether failure to comply can be invoked in a discrimination claim under Directive 2000/78.

In Slovenia, national law contains a general duty to ensure accessibility for people with disabilities.

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

A number of implementing acts are also in place specifying the duty to provide accessibility. Some examples are the Rules on Requirements for Ensuring Health and Safety at Work and the 2003 Rules on the Requirements for Free Access to, Entry to and Use of Public Buildings and Facilities and Multi-apartment Buildings. The main requirement of these rules is that access to buildings and movement within them should be without any structural or communication barriers, which would prevent independent and safe access to apartments or to common premises within the building.

Those covered by these rules are the tenants or owners of restaurants with at least 30 tables or 120 seats, public administration buildings with headquarters of State bodies or municipalities with at least 15 employees, banks, post offices and insurance companies with at least 30 employees, other office buildings that deal with clients with at least 50 employees, shops with an area larger than 200 square metres, trade fairs and exhibition centres with an area larger than 1,000 square metres, petrol stations with employees, buildings with businesses offering services to clients with an area larger than 100 square metres, stations or terminals intended for public bus, train, plane, ship or lift transport, car parks with 50 or more parking spaces, cultural and entertainment buildings with an area of at least 300 square metres, museums, libraries and galleries intended for visitors with an area of at least 150 square metres, educational and scientific buildings with at least five rooms intended for education, medical buildings, sports buildings with space for viewers, religious buildings with an area of at least 150 square metres, cemeteries and playgrounds for open air sports. In addition, the Rules on the Requirements for Free Access to, Entry to and Use of Public Buildings and Facilities and Multi-apartment Buildings also require accessibility of apartment buildings with at least ten apartments, apartment buildings with at least five care apartments and apartment buildings for special social groups with at least 30 units.⁵²

⁵² *Pravilnik o zahtevah za zagotavljanje neoviranega dostopa, vstopa in uporabe objektov v javni rabi ter večstanovanjskih stavb*, Official Journal of the Republic of Slovenia, No. 97/2003.

In 2014, a new Action Programme for Persons with Disabilities 2014–2021 was adopted by the Government. In the field of accessibility, the Action Programme foresees measures for the provision of access to transport, public buildings and the built environment.⁵³

In the field of accessibility, the Constitutional Court dealt with a case related to the right to vote (case no. U-I-156/11-29). The complainants challenged Article 79.a of the National Assembly Elections Act which defines very limited duties of the State to ensure accessibility of polling stations and to adapt the means of voting (positive action in relation to disability). According to the law, one third of polling stations should be accessible. The claimants argued that all (and not only some) polling stations should be accessible for persons with disabilities and that they should be enabled to vote by themselves and not with the assistance of other people.

They claimed that the provision violates Articles 14 (non-discrimination) and 44 (participation in managing public affairs) of the Constitution and Article 9 of the Convention on the Rights of Persons with Disabilities, which obliges the States Parties to ensure accessibility of buildings, the built environment, means of transport, information and communication. The Court established that, while the right to vote is a basic political right, only about 34 % of all polling stations were accessible at the last elections. Taking into account the obligation undertaken by the State decades ago to improve the accessibility of buildings for people with disabilities, the percentage of polling stations that are accessible for people with disabilities should be higher. The Constitutional Court decided to diverge from its previous decision from 2010 on the same topic (in which it examined the same arguments and did not find a violation) and found a violation of Article 14 in relation to Article 43 of the Constitution (the right to vote). It declared Article 79.a of the National Assembly Elections Act contrary to the Constitution and ordered the National Assembly to eliminate the unconstitutionality within two years.

h) Accessibility of public documents

The duty of all State bodies to provide documents for people with visual impairments in an appropriate manner is defined by Article 7 of the Act on Equal Opportunities for People with Disabilities. The manner is chosen by the individual concerned and can include Braille. This means that there is no duty to provide all public documents in a manner accessible to people with visual impairments, but only those specifically requested by an individual.

In 2008 the Constitutional Court delivered a ruling declaring the Civil Procedure Act unconstitutional because it does not enable the right of people with visual impairments to access court files and judicial documents in a manner appropriate for them. The Court ordered the legislature to amend the law within one year, while in the meantime all individuals have the right to request that the court provide them with court documents in an appropriate manner (which can include Braille) (Ruling no. U-I-146/07-34 of 13 November 2008). The legislative body has yet to amend the Civil Procedure Act accordingly.

However, no such duty is in place concerning sign language. The Act on Equal Opportunities for People with Disabilities only provides for the establishment of a call centre for people with hearing impairments who need sign language services. The call centre operates through the Slovenian Association of Persons with Hearing Impairments (an NGO).

⁵³ *Government Action Programme for Persons with Disabilities 2014–2021* (2014), available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/invalidi_vzv/API_2014-2021_ANG.pdf (11 August 2015).

The 2014 Action Programme for Persons with Disabilities 2014–2021 establishes requirements for public authorities to ensure the accessibility of information and communications (adaptation to an easy-to-read format of documents relating to decision-making at the national and local levels); use of Slovenian sign language for the deaf and hard of hearing, and provision of subtitles and audio descriptions of what is shown on screen, at least for daily news, scientific and other educational television programmes; encouraging e-accessibility and the use of other information and communication technologies; encouraging producers to attach Braille inscriptions to their products; preservation of relay centres for people with sensory and communication impairments, i.e. centres which provide the transmission of information between the deaf and hard of hearing and hearing people).⁵⁴

⁵⁴ Government Action Programme for Persons with Disabilities 2014–2021, 2014, available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/invalidi_vzv/API_2014-2021_ANG.pdf.

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)

In Slovenia, no residence or citizenship/nationality requirements for protection are contained in the relevant national laws transposing the directives.

3.1.2 Protection against discrimination (Recital 16 Directive 2000/43)

a) Natural and legal persons

In Slovenia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of protection against discrimination. The provisions comply with the directives.

The Act Implementing the Principle of Equal Treatment does not distinguish between natural persons and legal persons for ensuring equal treatment. The provision of Article 1 states that "this Act determines the common basis and premises for ensuring equal treatment for everyone", which includes legal persons. Article 6 of the Employment Relationship Act does not specify whether both natural and legal persons are covered (it just states "person"). However, since only natural persons can be employed they are the only ones who can be protected under this law.

Constitutional provisions, especially the Chapter on Human Rights and Freedoms which includes general anti-discrimination provisions, are guaranteed to everyone, including legal persons, who can be holders of rights and duties, with the 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.).

In Slovenia, the personal scope of anti-discrimination law covers natural and legal persons for the purpose of liability for discrimination.

Liability for discrimination is established by Article 24 of the Act Implementing the Principle of Equal Treatment and Article 229 of the Employment Relationship Act. The law differs in respect to the liability of natural persons and the liability of legal persons for harm caused by acts of discrimination. While there are no differences in establishing liability as such, there is a significant difference in the amount prescribed by the law of compensation payable by the party in breach of anti-discrimination provisions. When the act of discrimination amounts to a criminal offence, Article 4 of the Liability of Legal Persons for Criminal Offences Act⁵⁵ states that for a criminal offence, which the perpetrator 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 13 of the Liability of Legal Persons for Criminal Offences Act, criminal offences committed by legal persons are subject to a fine ranging from EUR 10 000 to EUR 1 000 000, or up to the value of the damage caused or pecuniary advantage obtained, multiplied by 200. 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

⁵⁵ *Zakon o odgovornosti pravnih oseb za kazniva dejanja [Liability of Legal Persons for Criminal Offences Act]*, Official Journal of the Republic of Slovenia, No. 59/1999, (12/2000 – corr.), 50/2004, 65/2008.

abused for the purpose of perpetrating the criminal offence. The same measure is prescribed for criminal offences against the employment relationship and social security, defined in Articles 205, 206, and 209 of the Penal Code. While a natural person, as defined in the Penal Code, shall be punished with a fine or imprisonment (see Section 6.5 Sanctions and Remedies), sanctions for legal persons for the same criminal offences are fines or the dissolution of the legal person.

b) Private and public sector including public bodies

In Slovenia, the personal scope of national law covers the private and public sectors, including public bodies, for the purpose of protection against discrimination.

Article 4 of the Act Implementing the Principle of Equal Treatment makes no distinction between the sectors, meaning that it is applicable to both the private and public sectors, including public bodies. In addition, Article 6 of the Employment Relationship Act does not specify whether both the private and public sectors are covered (it just states "person"). However, since neither of the two are excluded, the conclusion should be drawn that both are covered by law. There is a special Public Servants Act, but it defines only those aspects of employment that are specific to public service. For all matters not regulated by the Public Servants Act, the Employment Relationship Act (including its anti-discrimination provisions) should be used. The provisions are in accordance with the directives.

In Slovenia, the personal scope of anti-discrimination law covers the private and public sectors, including public bodies, for the purpose of liability for discrimination.

The liability provisions of the Act Implementing the Principle of Equal Treatment (Article 24) and the Employment Relationship Act (Article 229) do not differentiate between the private and public sectors. According to Article 2 of the Liability of Legal Persons for Criminal Offences Act, the Republic of Slovenia and the local self-governing communities as legal persons are not liable for criminal offences.

3.2 Material scope

3.2.1 Employment, self-employment and occupation

In Slovenia, national legislation applies to all sectors of private and public employment, self-employment and occupation, including contract work, self-employment, military service and holding statutory office, for the five grounds (race and ethnicity, religion and belief, disability, age and sexual orientation).

The Act Implementing the Principle of Equal Treatment (Article 2) regulates protection from discrimination in all areas of the social sphere and with regard to employment, in particular in the area of conditions for access to employment, self-employment and occupation. The Employment Relationship Act (Article 6(1)) 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, and prohibits discrimination in work and employment. General provisions on the employment of people in the public sector by State bodies, local communities, institutions, other organisations and private individuals performing public services are also regulated by the Employment Relationship Act, with the exception of some special provisions, which are contained in the Public Servants Act.

Contracts for work or contracts for services are defined by Article 619 of the Code of Obligations. Contracts for work, holding statutory office and military service are not specifically mentioned as areas protected from discrimination, however, they can be

deemed protected by way of the clause “all areas of the social sphere” included in the Act Implementing the Principle of Equal Treatment (Article 2).

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))

In Slovenia, national legislation includes conditions for access to employment, self-employment or occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy for the five grounds in both the private and public sectors as described in the directives.

Article 2 of the Act Implementing the Principle of Equal Treatment (in place for both the public and private sectors) 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 characteristic. Similarly, Article 6(1) and (2) of the Employment Relationship Act stipulate that equal treatment must be ensured for employees by the employer in, inter alia, recruitment and promotion. The 2010 Act on Equal Opportunities for People with Disabilities, which prohibits discrimination on the ground of disability, does not refer explicitly to the field of employment.

Access to employment is generally the same for the public sector regarding anti-discrimination provisions, but there are some provisions in the recruitment process that differ from the provisions of the Employment Relationship Act. According to Article 7 of the Civil Servants Act, all civil servants are chosen through a public competition. In the course of a public tender all candidates must be treated equally and only professional qualifications should be considered in hiring an employee in the public sector.

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

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

In Slovenia, national legislation covers working conditions, including pay and dismissals, for all five grounds and for both private and public employment.

The Act Implementing the Principle of Equal Treatment prohibits discrimination on each of the grounds covered by the directives in the field of, inter alia, employment and working conditions, including dismissals and pay. Employment and working conditions are further regulated by the Employment Relationship Act. The anti-discrimination clause in Article 6 (see also Section 3.2.2) refers explicitly to the course of employment, payment and other income from employment, absence, working conditions, working time and termination of employment contracts. Under Article 90 of the Employment

Relationship Act, race, ethnicity and ethnic origin, skin colour, gender, age, disability, marital status, family obligations, pregnancy, religious and political belief, ethnic and social origin cannot be admitted as reasonable grounds for terminating an employment contract (sexual orientation is not on this list, however, this does not mean that termination of employment due to an individual's sexual orientation is allowed, as discrimination on this ground is prohibited in Article 6 of the Employment Relationship Act).

Although the Employment Relationship Act does not include any special provisions regarding equal pay for the five 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 pay are null and void.

The Constitutional Court of the Republic of Slovenia has dealt with a case on protection of rights related to dismissal (case no. Up-109/12-18 of 23 Jan. 2014). After working for a factory for many years (between 24 and 35 years) the claimants were registered as Category III disabled, which gave them the right to part-time work and a partial disability pension. After two and four years respectively they were dismissed by the employer. When calculating their severance payment (redundancy compensation) the employer took into account the average of the last three salaries they received for working part-time and the number of years they had worked for the employer, literally following the provisions of the Employment Relationship Act.

Before the first and second instance labour and social courts, the claimants argued that, for the calculation of their severance pay, their previous salary, when they worked full-time, should have been taken into account. The first and second instance courts rejected their claim. However, the Constitutional Court found in favour of the claimants, considering that they were treated unequally in comparison to other workers who had worked for the company for a similar number of years and were made redundant when they still worked full-time and consequently received severance pay which was twice the amount of the complainants'. The Constitutional Court stated that the complainants' contribution to the company was similar to that of other workers. While the Court did not explicitly state it, the case could be read in light of indirect discrimination on the grounds of disability.

- Occupational pensions constituting part of pay

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

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))

In Slovenia, national legislation applies to vocational training outside the employment relationship, such as that provided by technical schools or universities, or such as adult lifelong learning courses.

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal characteristics in all areas of the social sphere, 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 between different types of training and education with respect to where the knowledge was acquired.

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

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

In Slovenia, national legislation includes membership of, and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and for both private and public employment.

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of personal characteristics in all areas of the social sphere, including 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 by such organisations.

Protected grounds are enumerated and are the same as in the directives, however, the legislation also includes the general clause "any other personal characteristic", which theoretically covers all personal characteristics. 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 Slovenia, national legislation includes social protection, including social security and healthcare, as formulated in the Racial Equality Directive.

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 characteristic, in all areas of the social sphere, including social protection, social security and healthcare.

Social security, which covers the prevention and resolution of problems connected to the social situation of individuals, families and groups, is regulated through the Social Security Act.⁵⁶ Article 4 sets out the principle of equal access to social security services for all beneficiaries under the conditions set by law. The beneficiaries are Slovenian citizens with permanent residence in Slovenia and foreigners with a residence permit in Slovenia. Slovenian citizens who do not have permanent residence in Slovenia and foreigners without a permanent residence permit are entitled only to certain limited services provided by the Social Security Act in cases and under the conditions set out by this act.

The Financial Social Assistance Act⁵⁷ (adopted on 13 July 2010, entered into force 10 August 2010, started to be used on 1 June 2011) regulates the entitlement to financial social assistance, which is recognised to those individuals who are not able to secure

⁵⁶ *Zakon o socialnem varstvu – Uradno prečiščeno besedilo*, Official Journal of the Republic of Slovenia, No. 36/2004.

⁵⁷ *Zakon o socialno varstvenih prejemkih*, official Journal of the Republic of Slovenia, No. 61/10, 40/11, 14/13 and 99/13).

their material safety due to circumstances they cannot influence (Article 2). The right to financial social assistance is accorded to Slovenian citizens with permanent residence in Slovenia, foreigners with a residence permit in Slovenia and others who are accorded this right on the basis of international agreements which are binding for Slovenia (Article 3).

The Parental Protection and Family Benefit Act⁵⁸ regulates insurance for parental protection and family benefits. 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 for 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 a minor or a student (and be under the age of 26), the question of whether they are eligible to receive some form of financial assistance is determined by examining the social situation of those people with the duty to provide for them (usually parents). There are no other age limitations.

The Parental Protection and Family Benefit Act contains several rights that derive from marital status (such as the right to parental leave). All these rights are recognised not only for spouses and de facto opposite-sex partners, but also for registered same-sex partners. However, de facto (cohabiting unregistered) same-sex couples are excluded from these rights.

The right of any person to healthcare under conditions established by law is a constitutionally guaranteed right. The Healthcare and Health Insurance Act⁵⁹ does not contain an explicit provision on discrimination in access to healthcare. 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 healthcare and a duty to contribute to it according to their means. The Health Services Act⁶⁰ deals with the content and presence of health services, which can be performed as public or private health services. When carrying out their duties, health workers are obliged to treat all people 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.

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

– Article 3.3 exception

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

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

In Slovenia, national legislation includes social advantages, as formulated in the Racial Equality Directive.

⁵⁸ *Zakon o starševskem varstvu in družinskih prejemkih*, Official Journal of the Republic of Slovenia, No. 26/14.

⁵⁹ *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.

⁶⁰ *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.

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

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

In Slovenia, the lack of definition of social advantages does not raise problems, as there is hardly any case law in this area.

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

In Slovenia, national legislation includes education, as formulated in the Racial Equality Directive.

In accordance with the Act Implementing the Principle of Equal Treatment (Article 2, indent 7, read together with Article 3(1)), equal treatment is guaranteed in the field of education irrespective of all the personal characteristics covered by law.

The main piece of legislation on education is the Organisation and Financing of Education Act,⁶¹ Article 2 of which guarantees the opportunity for individuals to achieve optimum personal development 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.

Access to primary schooling is free for every child, regardless of their status,⁶² while access to professional and occupational education⁶³ as well as access to high school⁶⁴ and higher education⁶⁵ is equal for all Slovenian citizens, for Slovenians without citizenship and for foreigners under the condition of reciprocity or otherwise under the condition that they bear the costs. EU nationals are not exempted from reciprocity principle that is in place for foreigners. Primary school is mandatory for every child between the ages of 6 and 15.

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 differences between children and maintaining the balance between different aspects of a child's physical and mental growth.⁶⁶

Special provisions apply to the children of Slovenian citizens who reside in Slovenia but whose mother tongue is not Slovenian. In accordance with international agreements, special lessons in their mother tongue and culture are organised, with the possibility of

⁶¹ *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.

⁶² Article 10, Elementary School Act (*Zakon o osnovni šoli*), Official Journal of the Republic of Slovenia no 12/96 as amended.

⁶³ Article 7, *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.

⁶⁴ Article 9, *Zakon o gimnazijah* [High School Act], Official Journal of the Republic of Slovenia, No. 12/1996, 59/2001.

⁶⁵ Article 7, *Zakon o visokem šolstvu – Uradno prečiščeno besedilo* [Higher Education Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 100/2004.

⁶⁶ Article 3, *Zakon o vrtcih – Uradno prečiščeno besedilo* [Kindergarten Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 113/2003.

Slovenian lessons being organised in addition.⁶⁷ Children who are of foreign citizenship or are stateless and reside in Slovenia have the right to compulsory primary school education on the same terms as Slovenian citizens.⁶⁸ For them, lessons in their mother tongue and culture are organised free of charge, through international agreements. If there is no agreement, there is no obligation for the school to provide for lessons in their mother tongue.

Pre-school and primary school education, 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.⁶⁹

There are reports and articles mentioning bullying in schools due to students' sexual orientation, however, no comprehensive statistics are available.

– Pupils with disabilities

In Slovenia, there are problems associated with the general approach to education for pupils with disabilities.

If children with disabilities are not able to follow the mainstream school programme they can be enrolled in adapted programmes in special schools, in accordance with the Placement of Children with Special Needs Act.⁷⁰ They are still predominantly enrolled in special schools. The practice of evaluating the children's abilities to follow the regular programme does not raise serious concerns. Inclusion of children with disabilities into mainstream schools is an exception and in practice depends on the willingness of the school to accept them. However, a slight change in policy has been observed, at least on the level of principle. Namely, in accordance with Article 11 of the 2010 Act on Equal Opportunities for People with Disabilities, there is a duty to ensure that people with disabilities have access to inclusion in educational programmes at all levels in the area in which they live. The same article further stipulates that inclusion in special schools with adapted programmes does not constitute discrimination.

Children with disabilities who are enrolled in mainstream schools obtain a decision from the National Education Institute of the Republic of Slovenia, specifying their rights depending on their disability.⁷¹ These rights may include the right to special equipment or personal assistance. The school, however, is not entitled to equipment (but can pay for it from its own resources or can ask the municipality to pay for it), but when children with disabilities are included in mainstream classes, the size of classes is smaller and the school is entitled to employ more staff (this system is similar to that which applies to Roma). However, segregated special education is, in practice, still favoured and supported, which might be contrary to the UN Convention on the Rights of People with Disabilities.

– Trends and patterns regarding Roma pupils

⁶⁷ Article 8, Elementary School Act.

⁶⁸ Article 10, Elementary School Act.

⁶⁹ *Zakon o posebnih pravicah pripadnikov italijanske in madžarske narodne skupnosti na področju izobraževanja*, *Uradni list Republike Slovenije številka* [Special rights for members of the Italian and Hungarian Minorities in the Field of Education Act] Official Gazette of the Republic of Slovenia no. 35/2001.

⁷⁰ *Zakon o usmerjanju otrok s posebnimi potrebami* [Placement of Children with Special Needs Act], Official Journal of the Republic of Slovenia, No. 58/2011.

⁷¹ Article 30 of the Placement of Children with Special Needs Act.

In Slovenia, there are specific patterns existing in education regarding Roma pupils, such as segregation.

The Kindergarten 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 made by the kindergarten, the municipality and the Centre for Social Work. Where a special class for Roma children is formed, the Directive on Standards and Employment Criteria in Pre-School Education⁷² allows these classes to include a smaller number of children than other classes, as well as fewer children per teacher (Article 39 of the Directive).

The tendency to integrate Roma children into mainstream classes has prevailed in the majority of primary schools, meaning that Roma children are no longer in separate schools or separate classes. The Fourth Report of the Council of Europe's European Commission against Racism and Intolerance of 2014 does not note any Roma children without learning disabilities being sent to special schools, however, it also states that, '[while] the national average of children with special needs is 4 %, it is up to 7 % in the case of Roma children'.⁷³ This means that Roma children are still overrepresented in special schools for children with special educational needs.

An improvement in the education of Roma children is further expected with the Strategy for the Education of the Roma, adopted by the Ministry of Education in May 2004 and amended in 2011.⁷⁴ It provides for Roma children to attend kindergarten at an earlier age (at least two years prior to the start of primary school but at the latest at the age of four) and sets out measures needed and planned to improve the integration and progress of Roma children in schools. Another measure is the introduction of Roma assistants in classes with Roma children, optional lessons in the Roma language and non-segregation of Roma children.

This strategy is not effectively implemented. Namely, according to the Amnesty International report of November 2006⁷⁵ (this is the most recent comprehensive report on the Roma education situation in Slovenia), Roma children in Slovenia continue to face discrimination irrespective of the strategies and programmes adopted by the Government. According to this mentioned report, 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 "way of life" or attitude towards 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 language barriers. Many Roma children have no or limited command of the language spoken by the majority population. Other measures that could help in overcoming language obstacles, such as improving

⁷² *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, 75/2005.

⁷³ <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf> (11 August 2015)

⁷⁴ http://www.mizs.gov.si/fileadmin/mizs.gov.si/pageuploads/podrocje/razvoj_solstva/projekti/Strategija_Rom_i_dopolnitev_2011.pdf (11 August 2015).

⁷⁵ <https://www.amnesty.org/en/documents/EUR05/002/2006/en/> (11 August 2015).

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.⁷⁶

This view is also shared by the authors of the 2006 report, *The aspect of culture in the social inclusion of ethnic minorities for Slovenia*.⁷⁷ According to their observations, despite considerable efforts – the financial resources and organisation of training and lectures that Slovenia has already dedicated to the inclusion of the Roma in the education system – the results achieved are not satisfactory. The share of Roma children who successfully progress in education is essentially lower in comparison with the rest of Slovenia's population. The drop-out rate of Roma children is much higher than amongst other primary school pupils. A large number of Roma children do not complete primary school education.⁷⁸ The number of Roma children attending primary school is slowly increasing, but nevertheless only a proportion of the Roma population successfully completes their primary education.⁷⁹ The *Third government report on the situation of the Roma community in Slovenia* recognises that the projects carried out with the aim of increasing the educational level of the Roma community are scattered and mostly implemented by NGOs.⁸⁰ Most of the information in these reports is still very relevant today. Officially, segregation (schooling in separate classes) is no longer present, but de facto the situation is still not satisfactory.⁸¹

Taking into account the unsatisfactory situation of Roma in the field of education (as well as other fields), the Government of the Republic of Slovenia prepared and the parliament adopted a National Programme of Measures for Roma 2010-2015.⁸² The programme includes a plan for strengthening the pre-school education of Roma children and cooperation with their parents within the Roma settlements (outreach programme), as well as strengthening the tutoring system for Roma pupils. In the opinion of the Human Rights Ombudsman, due to a lack of activity by all State bodies, the National Programme is not being properly implemented as a result of a lack of concrete measures.⁸³

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

In Slovenia, national legislation includes access to and supply of goods and services, as formulated in the Racial Equality Directive.

⁷⁶ Report, *False start: The exclusion of Romani children from primary education in Bosnia and Herzegovina, Croatia and Slovenia*, available at: <https://www.amnesty.org/en/documents/EUR05/002/2006/en/> (11 August 2015).

⁷⁷ Žagar, M., Komac, M., Medvešek, M., Bešter, R. (2006), *The aspect of culture in the social inclusion of ethnic minorities*, Institute for Ethnic Studies, Ljubljana, Slovenia, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=28297> (11 August 2015).

⁷⁸ Krakar, T. (2010), *Inclusion of Roma pupils in primary school Bršljin*, diploma thesis, University of Ljubljana, Faculty of Arts, p. 36.

⁷⁹ Žagar, M., Komac, M., Medvešek, M., Bešter, R. (2006), *The aspect of culture in the social inclusion of ethnic minorities*, Institute for Ethnic Studies, Ljubljana, Slovenia, <http://www.isn.ethz.ch/Digital-Library/Publications/Detail?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=28297> (11 August 2015).

⁸⁰ Government of Slovenia (2014), *Tretje poročilo vlade republike slovenije o položaju romske skupnosti v Sloveniji* (Third government report on the situation of the Roma community in Slovenia), available at: http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo_06112014.pdf (11 August 2015).

⁸¹ Amnesty International Slovenia, available at <http://www.amnesty.si/romi> (11 August 2015).

⁸² Government of the Republic of Slovenia, National Programme of Measures for Roma, 2010-2015, available at: http://www.uvn.gov.si/fileadmin/uvn.gov.si/pageuploads/pdf_datoteke/Nacionalni_program_ukrepov_za_Rome_2011..pdf (8.3.2010).

⁸³ Human Rights Ombudsman, Annual report for 2013, available at: http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_leto_2013.pdf (11 August 2015).

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

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

In a case (no. 0.1-10/2013) related to access to services available to the public the Human Rights Ombudsman found that the failure of the municipality to provide for clean drinking water to the unregulated Roma settlement of Dobruška vas constitutes violation of human rights (in particular the right to clean drinking water and sanitation) and stressed that the rights of everyone are not equally protected throughout the whole of Slovenia. The Ombudsman did not explicitly state that such treatment constitutes racial discrimination, even though this is implied from its decision.⁸⁴

- Distinction between goods and services available publicly or privately

In Slovenia, national law distinguishes between goods and services available to the public (e.g. in shops, restaurants and banks) and those only available privately (e.g. limited to members of a private association).

Non-discrimination provisions only apply to goods and services available to the public, as stipulated by Article 2 of the Act Implementing the Principle of Equal Treatment.

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

In Slovenia, national legislation includes housing, as formulated in the Racial Equality Directive.

In accordance with the Act Implementing the Principle of Equal Treatment, equal treatment is guaranteed irrespective of all five personal characteristics in all areas of the social sphere, including apartments and their supply (the law only mentions apartments and not housing in general). The 2010 Act on Equal Opportunities for People with Disabilities which prohibits discrimination on the ground of disability, sets out an obligation of local governments to provide accessible apartments to people with disabilities that meet the conditions for obtaining non-profit (social) apartments (Article 13). The Act does not set out an obligation on all (private) providers of housing (rented/leased and sold) to provide housing that is accessible to people with disabilities.

- Trends and patterns regarding housing segregation for Roma

In Slovenia, there are patterns of housing segregation and discrimination against the Roma.

Various reports and State documents contain references to problems deriving from unlawful Roma settlements without appropriate infrastructure and to the poor housing conditions of Roma.⁸⁵ Often Roma settlements, constructed without a building permit on

⁸⁴ Human Rights Ombudsman, Annual Report for 2013, available at: http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_letno_2013.pdf (11 August 2015).

⁸⁵ See, for example, Human Rights Ombudsman (2012), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2011 (Annual report for 2011)*, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Letno_porocilo_Varuha_za_letno_2011.pdf (11 August 2015)

land owned by another legal or private person, are endangered due to the fact that this land is intended for the construction of apartments, business and industrial centres. In such cases the interests of Roma families living in these settlements are often not sufficiently taken into account.

On 23 November 2005 the European Monitoring Centre on Racism and Xenophobia issued a report stating that the Roma population in Slovenia is geographically segregated. It states that they are subject to extremely poor housing conditions with deficient infrastructure as well as low standards of hygiene. By 2013 the situation had not changed significantly. The Government Expert Group for Regulating the Spatial Problems of Roma Settlements wrote in its report of 2011 that about one quarter of Roma settlements have good chances of rapid integration and regularisation of infrastructure, one third have good mid-term chances for regularisation of infrastructure after legal obstacles are overcome (starting with a change of purpose for the land), one third of settlements will have considerable difficulties with regularisation of living conditions and legal issues, while for one tenth of settlements regularisation is not possible and relocation seems to be the only solution.⁸⁶

According to a 2007 survey conducted among the administrative units (local offices of central government), more than 60 % of Roma settlements were slightly isolated, more than 20 % of settlements were in the vicinity of towns or were part of towns, while less than 20 % of the Roma settlements were in contact with other non-Roma settlements.⁸⁷ On 16 March 2011 Amnesty International published a report, *Parallel lives: Roma denied rights to housing and water in Slovenia*,⁸⁸ on inadequate housing conditions and lack of access in some Roma settlements to safe drinking water. The worrying situation was verified and confirmed by the Human Rights Ombudsman.⁸⁹ The government has not yet undertaken any comprehensive measures to address the findings of this report. Consequently, the Ombudsman continues to stress that more concrete measures must be adopted to regularise Roma settlements.⁹⁰ The problems of living conditions in Roma settlements and their isolation from the rest of the society, as well the issue of access to facilities and a safe water supply was also highlighted by the 2014 ECRI report.⁹¹ The *Third government report on the situation of the Roma community in Slovenia* recognises that the projects carried out with the aim of improving the housing situation of the Roma community are scattered and mostly implemented by NGOs.⁹²

A problem which needs to be addressed is the issue of non-profit housing defined by the Housing Act.⁹³ In order to rent a social (non-profit) apartment, people must fulfil general

⁸⁶ Office for ethnic minorities of the Government of the Republic of Slovenia, *Roma – zakonodaja, programi, ukrepi* (Roma – Legislation, programmes, measures). Available at:

http://www.rtvsl.si/files/Slovenija/zakonodaja_programi_ukrepi_1_.doc (last visited 11 August 2015).

⁸⁷ J. Zupančič: *Stanje in perspektive romskih naselij v Sloveniji: od analize k novi rekonstrukciji* [State and Prospects of Roma Settlements in Slovenia: From Analysis to New Reconstruction], p. 5, (ppt presentation).

⁸⁸ Amnesty International Slovenia (2011) Slovenia: Parallel Lives: Roma Denied Rights to Housing and Water in Slovenia, available at: <http://www.amnesty.org/en/library/info/EUR68/005/2011/en> (11 August 2015)

⁸⁹ Human Rights Ombudsman (2012), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2011* (Annual report for 2011), available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Letno_porocilo_Varuha_za_leto_2011.pdf. See also Human Rights Ombudsman (2012) *Posebno poročilo o bivanjskih razmerah Romov na območju jugovzhodne Slovenije* (Special report on housing conditions of Roma in South-East Slovenia), available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/posebna_porocila/POSEBNO_POROCILO_ROMI_-_maj_2012_-_za_splet.pdf

⁹⁰ Human Rights Ombudsman (2014), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013* (Annual report for 2013), available at: http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_leto_2013.pdf.

⁹¹ ECRI (2014) *ECRI report on Slovenia*, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf>.

⁹² Government of Slovenia (2014), *Tretje poročilo vlade republike slovenije o položaju romske skupnosti v sloveniji* (Third Government Report on the Situation of Roma Community in Slovenia), available at: http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo_06112014.pdf.

⁹³ *Stanovanjski zakon*, Official Journal of the Republic of Slovenia, No. 69/2003, 57/2008.

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 certain personal characteristics, for example for Roma, however, there is no research available to confirm whether this is the case in practice.

The Housing Act, adopted on 19 June 2003, and the 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 the Roma Community Act, which in Article 5 (§ 2) recognises the importance of regularising spatial problems concerning Roma settlements.

4 EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

In Slovenia, national legislation provides for an exception for genuine and determining occupational requirements.

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 cases where, 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.

The exception for genuine and determining occupational requirements are also referred to in the Employment Relationship Act. Article 6(5) states that different treatment based on a personal ground does not constitute discrimination if, due to the nature of the work or due to the circumstances in which the work is performed, a particular personal ground represents a genuine and determining occupational requirement for work, and if this requirement is proportionate and justified with a legitimate goal.

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

- Exception for employers with an ethos based on religion or belief

In Slovenia, national law provides for an exception for employers with an ethos based on religion or belief.

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 the religion or belief of the individual, in the case of occupational activities within churches and other public or private organisations 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 constitutes a genuine, legitimate and justified occupational requirement, having regard to the organisation's ethos. The same provision is included in Article 3(3) of the Religious Freedom Act. The provision complies with the directive. The law does not specifically state that such differences in treatment should not justify discrimination on another ground. But since the provision states in the beginning that in cases of organisations with religious ethos different treatment is allowed on the grounds of religion and belief this implies that discrimination on other grounds is not allowed. However, this is not specifically clarified in law and there is no case law on this matter yet.

- Religious institutions affecting employment in state funded entities

In Slovenia, religious institutions are in general not permitted to select people to hire on the basis of their religion or to dismiss from a job when that job is in a state entity. The first exception is the military chaplain, a state official employed to provide religious (Catholic and Protestant) services to the armed forces.

The chaplain is nominated by the Slovenian Bishops' Conference, in accordance with the agreement signed between them and the Government of the Republic of Slovenia.⁹⁴ The second exception is a few Catholic schools which are funded by the State as they run a state-accredited programme.⁹⁵ There have been no cases yet concerning clashes of grounds, e.g. religion and sexual orientation in employment in these schools.

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

In Slovenia, national legislation provides for an exception for the armed forces in relation to age and disability discrimination (Article 3(4), Directive 2000/78).

The Defence Act⁹⁶ states that candidates wishing to perform military service professionally should, among other requirements, in principle not be older than 25 or 30 for officers.⁹⁷ Article 88(3) states that anyone who wants to professionally engage in military service must fulfil specific requirements, which include a condition of physical and mental capability. The age requirement is absolute and does not depend on the ability of the individual to perform required tasks.

In 2013 a new Police Organisation and Work Act was adopted.⁹⁸ Article 52 of this act lists circumstances in which the employment of an individual in the police force is not allowed. These circumstances include illness or psychological issues which could endanger safe police work. Article 44 of this act also requires that a police officer has adequate mental and physical capabilities, which is a provision that allows for difference of treatment of people with disabilities.

4.4 Nationality discrimination (Article 3(2))

a) Discrimination on the ground of nationality

In Slovenia, national law includes exceptions relating to difference of treatment based on nationality.

There are many provisions in the employment legislation that exclude people of other nationalities. Article 88(2) of the Defence Act, for example, states that an individual who wishes to join the armed forces as professional soldiers must be a citizen of Slovenia. People with dual citizenship are not allowed to engage professionally in defence activities. Since nationality of other EU Member States is not specifically mentioned in the defence act, this means that nationals of other EU Member States are not allowed to work as professional soldiers in the Slovenian army.

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

⁹⁴ *Sporazum med slovensko Škofovsko konferenco in Vlado Republike Slovenije o duhovni oskrbi vojaških oseb v slovenski vojski* [Agreement between Slovenian Bishops Conference and the Government of the Republic of Slovenia on Spiritual Care of Military Personnel in the Slovenian Military], 21 September 2000, available at: http://www.mk.gov.si/fileadmin/mizks.gov.si/pageuploads/urad_za_verse_skupnosti/zakonodaja/sporazu_mi/duhovna_oskrba_ssk.pdf (11 August 2015).

⁹⁵ In relation to the issue of state funding of private schools see the Constitutional Court decision No. U-I-269/12-24 of 4 December 2014, available at: <http://odlocitve.us-rs.si/sl/odlocitev/US30557?q=zasebne+%C5%A1ole> (11 August 2015).

⁹⁶ *Zakon o obrambi – uradno prečiščeno besedilo* [Defence Act – official consolidated text], Official Journal of the Republic of Slovenia, No. 82/1994, 44/1997, 87/1997, 87/2001, 47/2002 (67/2002 – corr.).

⁹⁷ The Ministry of Defence states in its recruitment 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.

⁹⁸ *Zakon o organiziranosti in delu v policiji (ZODPol)* [Police Organisation and Work Act], Official Journal of the Republic of Slovenia, No. 15/13 and 11/14.

Article 2(3) of the Redress of Injustices Act,⁹⁹ since it grants certain rights only to individuals of "Slovenian nationality", thereby excluding other possible beneficiaries, and consequently does not conform with the Constitution. The facts of the case were that under this act a Serb legally residing in Slovenia, whose rights were violated in communist times, was not eligible for compensation for damages caused due to deprivation of liberty contrary to the rule of law, because he did not have Slovenian citizenship. The Constitutional Court stated that, since the act represented a legal basis for compensation due to violations also committed by other public bodies of the former Yugoslavia, which were not necessarily based in Slovenia, there is no justification for differentiating between victims on the basis of their personal characteristics.¹⁰⁰

In Slovenia, nationality (as in citizenship) is not explicitly mentioned as a protected ground in national anti-discrimination law.

The Constitution, the Act Implementing the Principle of Equal Treatment and the Employment Relationship Act do not list nationality (they list a ground of "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 characteristic", therefore nationality discrimination could be included as a ground on which discrimination is prohibited.

b) Relationship between nationality and 'race or ethnic origin'

The relationship between nationality and race or ethnic origin is not specified either in legislation or in case law. Since most laws, as well as the Constitution, contain an open-ended list of grounds, both nationality and race or ethnic origin can be used to claim both direct and indirect discrimination.

In addition, 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 nationality. These conditions might cause indirect discrimination on the grounds of race and ethnicity, but there is no research confirming this.

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

a) Benefits for married employees

In Slovenia, it would constitute unlawful discrimination in national law if an employer only provides benefits to those employees who are married.

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

b) Benefits for employees with opposite-sex partners

⁹⁹ *Zakon o popravil krivic* [The Redress of Injustices Act], Official Journal of the Republic of Slovenia, No. 59/1996.

¹⁰⁰ Constitutional Court Decision No. U-I-371/96 of 23.9.1998, Official Gazette No. 68/1998.

In Slovenia, it would constitute unlawful discrimination in national law if an employer only provides some benefits to those employees with opposite-sex partners.

In June 2005 Slovenia adopted the Registration of Same-Sex Civil Partnerships Act,¹⁰¹ which contains no provisions on work-related family benefits. Some work-related family benefits for registered same-sex partners were added later into the Employment Relationship Act and Pension and Disability Insurance Act.

With a new 2012 Pension and Disability Insurance Act, which entered into force on 1 January 2013, the right to a survivor's pension was recognised for registered same-sex partners under equal conditions as it is recognised for married opposite-sex couples. Namely, Article 7, where the definitions are provided, now defines a survivor's pension as 'pension income granted to a spouse who has survived a deceased spouse who had a regulated pension insurance or who was already a pension beneficiary; under the conditions defined by a law survivor's pension is recognised also to a divorced spouse, co-habiting opposite-sex partner or registered same-sex partner'. The conditions for claiming a survivor's pension are further defined in Articles 53 and 54 of the Pension and Disability Insurance Act and are the same for married opposite-sex partners (spouses) and for registered same-sex partners. Co-habiting same-sex partners who have not registered their relationship are still not entitled to a survivor's pension.

In addition, the Act Implementing the Principle of Equal Treatment could apply if the employer limited benefits to opposite-sex partners, since it prohibits discrimination on the ground of sexual orientation. If the law does not state clearly that a certain benefit is also granted to same-sex partners (e.g. paid sick leave to care for a sick same-sex partner), the question of whether this constitutes discrimination would depend on the Constitutional Court.

The expansion of rights recognised to same-sex partners could strengthen the argument that provision of benefits to opposite-sex partners only constitutes discrimination.

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

a) Exceptions in relation to disability and health/safety

In Slovenia, there are no exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78).

There are no explicit exceptions in relation to disability and health and safety in law. The only provision that could be relevant can be found in the Health and Safety at Work Act which stipulates that when concluding an employment contract, the employee must fulfil the medical requirements for that specific position, which is determined by medical examination and a medical certificate. If the employee is medically fit for a certain post, then the employer cannot say that employing them 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 styles, beards, jewellery, etc. are not permitted if this runs counter to health and safety rules.

¹⁰¹ *Zakon o registraciji istospolnih partnerskih skupnosti* [The Registration of Same-sex Partnerships Act], Official Journal of the Republic of Slovenia, No. 65/2005.

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

4.7.1 Direct discrimination

In Slovenia, national law provides an exception for direct discrimination on the ground of age.

The provision of Article 2.a(2), indent 3, of the Act Implementing the Principle of Equal Treatment states that difference of treatment in the area related to employment on the ground of age is allowed, if such treatment is objectively and reasonably justified with a legitimate objective, including the legitimate goals of the active employment policy, labour market and vocational training, and if means to achieve these objectives are appropriate and necessary.

– Justification of direct discrimination on the ground of age

In Slovenia, it is possible, generally and in specified circumstances, to justify direct discrimination on the ground of age. The test is compliant with the *Mangold* and *Kücükdeveci* cases.

a) Permitted differences of treatment based on age

In Slovenia, national law permits differences of treatment based on age for any activities within the material scope of Directive 2000/78.

Article 60 of the 2010 Labour Market Regulation Act¹⁰² (adopted on 28 September 2010, entered into force on 27 October 2010, came into use on 1 January 2011)¹⁰³ 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 over the age of 50 with the right to receive unemployment benefits for 19 months instead of just 12 months as is the case for other workers in the same situation (that is, with insurance of 25 years or more), and unemployed workers over the age of 55 with the right to receive compensation for 25 months.

b) Occupational pension schemes' fixed ages for admission or entitlements

In Slovenia, national law allows occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits, taking up the possibility provided for by Article 6(2).

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

The voluntary supplementary scheme is an option offered in particular to younger generations of the employed population, who will have to use their own savings to

¹⁰² *Zakon o urejanju trga dela*, Official Journal of the Republic of Slovenia, No. 80/2010, 21/13, 63/13 and 100/13).

¹⁰³ The difference between the act entering into force and the act being used is that, after the act enters into force, implementing acts needed for detailed implementation of the law can be prepared and can be adopted by responsible bodies. During this period the act is not yet used in practice. The time between the entry into force and the law coming into use enables stakeholders to take all the necessary preparatory steps. Allowing extra time for the law to come into use is the usual practice in the process of adopting large systemic laws.

provide for their social security in their old age due to a gradual decrease in the 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 an individual must 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 age for entry is 15 (because children below the age of 15 are not allowed to work and must be in full-time education), since the law states that everyone who is employed and self-employed must be included in the mandatory insurance. Accordingly, people 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

In Slovenia, there are special conditions set by law for older and younger workers in order to promote their vocational integration, and for people with caring responsibilities to ensure their protection.

Several provisions of the Employment Relationship Act are intended to protect younger and older workers with regard to working conditions and the working environment. In particular, the law provides for the special protection of workers over the age of 55 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 takes partial retirement. In addition, the act imposes limitations on overtime and night working, which prohibit the employer from requiring an older worker to work overtime or at night. An older worker may only be made redundant for business-related reasons with his or her consent. Older workers do not enjoy this protection if they are entitled to unemployment benefits until they meet the conditions for retirement, if they are offered another appropriate employment by the same employer, if they were already enjoying this protection when they concluded their employment contract or if the employer ceases to exist (Article 114 of the Employment Relationship Act). Consent is also not required if the older worker is laid off due to incompetence or for violating the employment contract. Several provisions of the act are intended to protect workers who have not yet reached 18 years of age. These workers may not be exposed to certain kinds of working conditions, such as working underground or under water, exposure to increased health risks due to exceptional cold, heat, noise or vibrations, and conditions which present a greater risk of accidents. A worker who is younger than 18 may not work for more than 40 hours per week, or at night between 22.00 and 06.00 the next day, and has the right to seven extra days of paid holiday.

The Employment Relationship Act contains some provisions designed to protect workers in respect of pregnancy and parenthood. They should enjoy special protection, according to Article 182 of the act. Furthermore, in the event of a dispute regarding the exercise of special protection due to pregnancy and parenthood, the burden of proof is shifted to the employer. The provision also imposes an obligation on the employer to enable workers to easily reconcile their family and employment responsibilities.

Moreover, the Act also offers protection with regard to night work and overtime work; it states that a worker who looks after a child under the age of three may be required to work overtime or at night only with their written consent. 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 disabilities is living alone with a child and caring for the child. There are no other provisions in the law offering special protection for people with caring responsibilities.

4.7.3 Minimum and maximum age requirements

In Slovenia, there are exceptions permitting minimum and maximum age requirements in relation to access to employment (notably in the public sector) and training.

As a general rule the law sets the minimum age for entering into an employment contract at 15 and for working on a ship at 16. For certain professions such as judges, the minimum age requirement is set at 30 years¹⁰⁴ of age (Judicial Service Act).¹⁰⁵ 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 Section 4.3). The Defence Act states that candidates wishing to enter military service professionally should, among other requirements, in principle not be older than 25 years or 30 years for officers.

The Ministry of Defence states as a condition in its recruitment 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 must then reallocate the employee to a different position or help them qualify for another position (Article 93 of the Defence Act).

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

4.7.4 Retirement

a) State pension age

In Slovenia, there is no state pension age at which individuals must begin to collect their state pensions.

There are two different types of pensions available under conditions defined by law: old-age pension and disability pension.¹⁰⁶ In 2012 a new Pension and Disability Insurance Act was adopted, significantly changing the rules on retirement. For entitlement to the old-age (state) pension (dependant only on years at work), men and women have to be at least 65 years old and have 15 years of pension insurance to receive a full pension (pension insurance is the same as years of service, unless additional years of pension insurance have been paid for by the insured person).¹⁰⁷ This is a general rule which has one exception. Namely, in the period between 2013 and 2015 women also have the right to an old-age pension when they reach the age of 63.5 (2013), 64 (2014) and 64.5 (2015). For people with 20 years of pension insurance, a transition phase is defined until 2019:

¹⁰⁴ The law does not mention any justification for setting the minimum age for judges to 30.

¹⁰⁵ *Zakon o sodniški službi*, 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, 91/09, 33/11, 46/13, 63/13.

¹⁰⁶ Until the end of 2010 there were also state pensions available for people who had reached the age of 65 and who had permanent residence in Slovenia, if they had no other pension in Slovenia or abroad, and if they had registered permanent residence in Slovenia for at least 30 years between the ages of 15 and 65. However, since 1 January 2011 this pension no longer exists.

¹⁰⁷ Article 27 of *Zakon o pokojninskem in invalidskem zavarovanju*, Official Journal of the Republic of Slovenia, No. 96/2012.

Year	Age			
	Men		Women	
	Years	Months	Years	Months
2013	63	6	61	6
2014	64	0	62	0
2015	64	6	62	6
2016			63	0
2017			63	6
2018			64	0
2019			64	6

Regardless of these rules, the right to a pension is also accorded to an individual (male or female) who has reached the age of 60 and has 40 years of pension insurance (Article 27(4) of the Pension and Disability Insurance Act). A transition period until 2018 is also defined for this group. They are entitled to a pension when they reach a certain age and have had pension insurance for the following number of years:

Year	Age		Pension insurance (women)
	Men	A Women	
	Years/months	Years/months	Years/months
2013	58/4	58/0	38/4
2014	58/8	58/4	38/8
2015	59/0	58/8	39/0
2016	59/4	59/0	39/4
2017	59/8	59/4	39/8
2018		59/8	

The table shows that for men only age is taken into account, while for women both age and pension insurance period are taken as the basis for retirement. In other words, under these provisions a woman may retire at the first point where she fulfils one or other of the qualifying conditions. These differences in the transition period are 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 also had to take care of children and the household after coming home from work.

The State encourages longer employment with bonuses; employees who continue working after 40 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 years of service, their old-age pension is permanently reduced by a certain percentage. People can also choose to defer their pensions. Article 116 of the Pension and Disability Insurance Act gives an individual who continues working after retirement the right to be elected to statutory office or to be in employment or engage in an economic activity. In this case their pension entitlement is deferred, because they are not entitled to receive double payments. If an individual who has already obtained the right to a pension works only part-time, they have the right to receive their pension in the proportionate amount. This regulation does not interfere with the right to a higher pension in case of working longer than required by law.

b) Occupational pension schemes

In Slovenia, there is a normal age when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

Occupational pension schemes are organised as voluntary pension insurance, which represent an additional insurance for companies which choose to pay contributions for

their employees. Insured people are entitled to an occupational pension under the same conditions as the old-age (state) pension, which is 65 under the general rules.

c) State imposed mandatory retirement ages

In Slovenia, there is no state-imposed mandatory retirement age(s), but there is a specific one in the public sector.

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 the case of complete disability (i.e. Category I disability under the Pension and Disability Insurance Act). In this case, the employment relationship ceases when the employee receives the decision asserting their complete disability (see Article 119 of the Employment Relationship Act).

In addition, there is a provision in the Fiscal Balance Act which states that an employment agreement with an individual working for the State administration (i.e. all employees in the public sector) is terminated when the person reaches pensionable age. With some exceptions, the person has a choice of either retiring from all employment or finding employment in the private sector (Article 188).¹⁰⁸ It remains to be seen whether this is compatible with the directive.

In relation to the Fiscal Balance Act, at least two cases were decided in 2014. In the case no. Pdp 382/2014, the Higher Labour and Social Court of the Republic of Slovenia heard the action of a plaintiff (a man) who was dismissed from public service as soon as he met the old-age retirement conditions, based on the Fiscal Balance Act. He claimed his dismissal constituted discrimination on the grounds of age and violated Directive 2000/78/EC. The relevant provisions of the Fiscal Balance Act had already been examined by the Constitutional Court of the Republic of Slovenia and it had been found that the act did not constitute discrimination with regard to men (decision no. U-I-146/12-40, 14 November 2013). In addition to the Constitutional Court decision, the Higher Labour and Social Court based its judgement on the exception in Directive 2000/78/EC which allows for unequal treatment on the grounds of age which is objectively justified by legitimate aims related to employment policy and the labour market. The aim pursued in these cases is to lower the cost of salaries in the public sector, while at the same time to achieve a balanced age structure of public servants. The claims of the claimants were rejected as unjustified. The decision was confirmed by the Supreme Court in case no. VIII Ips 106/2014.

d) Retirement ages imposed by employers

In Slovenia, national law does not permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract or collective bargaining or unilaterally.

e) Employment rights applicable to all workers irrespective of age

In Slovenia, national law protecting against dismissal and rights related to dismissal applies to all workers irrespective of age and this protection is not lost on attaining pensionable age (except in the case of people employed in the State administration, as

¹⁰⁸ *Zakon za uravnoteženje javnih financ* [Fiscal Balance Act], Official Journal of the Republic of Slovenia, No. 40/2012.

stipulated by Article 188 of the Fiscal Balance Act). 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 the employer allows.

f) Compliance of national law with CJEU case law

In Slovenia, national legislation is in line with the CJEU case law on age regarding compulsory retirement.

For example, the Defence Act 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. The case is similar to the Wolf case in which discrimination was not found. Furthermore, for certain professions, such as judges, the minimum age requirement is set at 30 years of age (Judicial Service Act). However, for a definite assessment of whether the legislation is in accordance with the CJEU case law judicial interpretation is required.

4.7.5 Redundancy

a) Age and seniority taken into account for redundancy selection

In Slovenia, national law does not permit age or seniority to be taken into account in selecting workers for redundancy.

Article 102 of the Employment Relationship Act sets criteria for selecting workers for redundancy. The primary criterion is the professional education of the employee and his or her work qualifications, as well as additional knowledge and skills required. Age or seniority discrimination in selecting workers for redundancy is in general not permitted, as specified in the judgement of the Higher Labour and Social Court, No. Pdp 402/2007 of 19 March 2008. In this case the Court found that the assessment of the claimant as an employee who would soon retire put the claimant in an unequal position due to her age. Termination of employment with the offer of a new contract is therefore unlawful due to breach of the prohibition of discrimination.

Other criteria are length of work experience, performance at work, years of active employment, state of health and social circumstances. These criteria can make redundancy more or less likely – depending on the criteria. For example, if an individual is better educated, performs better at work, has more working experience and additional knowledge and a difficult social situation, redundancy is less likely. The criteria of work experience and years at work obviously indirectly discriminate on the ground of age. It is, however, an example of positive discrimination, since older workers are less likely to get a new job.

b) Age taken into account for redundancy compensation

In Slovenia, national law provides compensation for redundancy. Compensation for redundancy, in cases covered by law, is not affected by the age of the worker (since it depends on the years working for 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)

In Slovenia, national law does not include exceptions that seek to rely on Article 2(5) of the Employment Equality Directive.

4.9 Any other exceptions

In Slovenia, there are four other exceptions to the prohibition of discrimination (on any ground) provided in national law.

- According to Article 2.a of the Act Implementing the Principle of Equal Treatment, discrimination in the 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 if foreseen by a special law adopted pursuant to the *acquis communautaire*.

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

a) Scope for positive action measures

In Slovenia, positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation is provided for in national law.

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

b) Main positive action measures in place at national level

1. Special measures for national minorities

According to the population census of 2002, the country consists of 83 % ethnic Slovenians, 0.11 % Italians, 0.32 % Hungarians, 0.17 % Roma. In Slovenia there are also 1.98 % Serbs, 1.81 % Croats, 1.10 % Bosnians and other minorities from the former Yugoslavia, who moved to Slovenia during the period of Yugoslavia's existence. Members of the ethnic Italian and Hungarian minorities enjoy the status of "autochthonous" (indigenous) minorities, while the people who originated from other republics of the former Yugoslavia do not.

The position of the two officially recognised 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 the general human rights and fundamental freedoms.

2. Special measures for the Roma ethnic group

Roma are not considered to be a national minority on the same level as Italians and Hungarians, but are treated as a special ethnic community with specific ethnic characteristics, such as language, culture, etc. Although the Roma Community is not offered similar self-governance arrangements to the Hungarian and Italian National Communities, it is organised through the Roma Union of Slovenia. Since the Sinti community in Slovenia does not consider itself to be part of the Roma community (while the authorities consider it to be exactly that), it has no official venue of its own through which it could participate in the process of improving the community's situation. The Human Rights Ombudsman considers this attitude of the State to be unjustifiable discrimination.¹⁰⁹

Special measures for the Roma include political representation of Roma on municipal councils with Roma councillors through the Roma Community Act¹¹⁰ which introduced a

¹⁰⁹ Human Rights Ombudsman (2009), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2008* [Human Rights Ombudsman Annual report 2008], p. 47, available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

¹¹⁰ *Zakon o romski skupnosti v Republiki Sloveniji* [The Roma Community Act], Official Journal of the Republic of Slovenia, No. 33/2007.

Council of the Roma Community. The Council acts as an interlocutor with the State on Roma issues and is supported with State funding. The Council consists of 21 members (14 representatives of the Roma Union of Slovenia and seven representatives of local Roma communities). In the opinion of the Human Rights Ombudsman, the organisational structure of the Council is inappropriate as it does not include representatives of Roma from South-East Slovenia where their situation is most dire.¹¹¹

The act also sets out the financial obligations of the Republic of Slovenia and its local self-governing communities for guaranteeing the special rights of Roma community. In the legislation there are additional provisions concerning Roma in 12 different organic laws. One of them, the Local Self-Government Act,¹¹² stipulates that Roma people, who are autochthonous (indigenous) to a particular area shall have at least one representative on the municipal council (Article 39(5)). The term "autochthonous" refers to peoples who have lived in Slovenia for centuries, in a territory in which they 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 had a representative in the local council until regular local elections in 2002. Now all municipalities have a Roma representative on 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.¹¹³ The Local Self-government Act also provides for committees on Roma issues as working bodies of the local councils, although these are not mandatory.

3. Special measures for older and younger workers in employment

The Employment Relationship Act imposes special protection for some categories of employees.

Juveniles: prohibition of night work and certain types of work (Articles 191 and 193); more holiday entitlement, weekly rests, breaks during working hours (Articles 192 and 194).

Older employees (over 55): option of partial retirement and part-time work (Article 198); overtime and night work cannot be required without the consent of the employee (Article 199).

4. Special measures for persons with disabilities in employment

Under the provision of Article 195 of the Employment Relationship Act, persons with disabilities enjoy special rights according to the Vocational Rehabilitation and Employment of Persons with Disabilities Act and the Pension and Disability Insurance Act. Those who still have some capacity for work must be granted another appropriate job (in accordance with Article 196 of the Employment Relationship Act, the employer must ensure the employee's transfer to another job appropriate for their capacity for work), a part-time job, vocational rehabilitation, compensation for loss of earnings (Article 196) and protection from redundancy, unless there is no other appropriate job or part-time job (Article 116).

¹¹¹ Human Rights Ombudsman (2014), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013*, (Human Rights Ombudsman Annual report for 2013), available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_letno_2013.pdf (11 August 2015).

¹¹² *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.

¹¹³ <http://www.errc.org/cikk.php?cikk=2384>.

Furthermore, in order to promote the inclusion of groups that experience disproportionately high unemployment rates, the government has an Active Employment Policy through which these groups can access short-term employment sponsored by the State. The target groups are: those over the age of 50; those below the age of 25 without education or with a low level of educational attainment; members of the Roma community; people with addiction problems enrolled in treatment programmes; convicts; persons with disabilities; migrants; refugees; homeless people; and other vulnerable groups.¹¹⁴

In relation to the Roma, the Human Rights Ombudsman received a complaint from a Roma individual who, in order to take part in the Active Employment Policy, had to submit to the Employment Office a confirmation from the Roma Union of Slovenia proving that he really was Roma (self-declaration was not deemed sufficient). The Ombudsman agreed with the Employment Office that a certain proof of Roma ethnicity is required to avoid abuse of the Active Employment Policy. However it also found that currently there is no such requirement in law and that the procedure for issuing such a certificate should be stipulated in law.¹¹⁵ There were no further discussions on the issue.

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

The Vocational Rehabilitation and Employment of Persons with Disabilities Act makes provision for different forms of employment for people with disabilities, in addition to measures and regulations. A worker with disabilities can, for example, request a vocational rehabilitation programme, 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 help them attain promotion or to change career.

Vocational rehabilitation consists of counselling and motivating workers with disabilities to assume an active role and provides assistance in accepting their disability; preparing opinions about the capacity for work of people with disabilities, 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; analysing 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 programme finishes, and based on an evaluation of the chances of the person with disabilities 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 programmes.

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 depending on 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 to 6 % persons with disabilities of the total number of employees). Companies that do not meet the quota must pay contributions to the Fund

¹¹⁴ Ministry of Labour, Family, Social Affairs and Equal Opportunities (2013) *Katalog ukrepov aktivne politike zaposlovanja [Catalogue of Measures of Active Employment Policy]*, , available at http://www.ess.gov.si/files/5614/Katalog_APZ_2014.pdf (11 August 2015).

¹¹⁵ Human Rights Ombudsman (2013), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2012 (Annual report for 2012)*, available at: http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Letno_porocilo_Varuha_2012.pdf (11 August 2015).

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. In Slovenia, the majority of employers prefer to pay the allowances (set out by the Vocational Rehabilitation and Employment of Persons with Disabilities Act) to the Fund than to employ people with disabilities according to mandatory quotas, which is a choice they have at their disposal in accordance with the law. The option of paying into the Fund instead of following the mandatory quotas is by nature a type of sanction for those employers who do not meet the quota. Namely, if the employer does not meet the quota or pay into the Fund, the Fund issues a decision which can be enforced against the employer. Recent statistics on how many employers pay into the Fund instead of meeting the quotas are not available online.

In 2014, a new Action Programme for Persons with Disabilities 2014–2021 was adopted by the Government. In the field of employment, the Action Programme foresees measures for enhancing the employability of persons with disabilities, activating those who are unemployed, ensuring a support system for employers and ensuring a network of professional support or vocational rehabilitation services.¹¹⁶

¹¹⁶ *Government action programme for persons with disabilities 2014–2021* (2014), available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/invalidi_vzv/API_2014-2021_ANG.pdf

6 REMEDIES AND ENFORCEMENT

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

- a) Available procedures for enforcing the principle of equal treatment

In Slovenia, the following procedures exist for enforcing the principle of equal treatment.

- Informal: the Advocate of the Principle of Equality

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. On 1 April 2012 the Government Office for Equal Opportunities was abolished and its staff, including the Advocate of the Principle of Equality, was transferred to the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The Advocate is competent for public and private sector.

The procedure conducted by the Advocate is informal, non-binding 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 does not provide the Advocate with appropriate explanations and additional information within a specified time-limit, the Advocate may pass the case to the relevant inspectorate (see below, Section 7). The Advocate is competent for the 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 characteristic, in both the public and private spheres.

- Informal: Human Rights Ombudsman

Since the principle of equal treatment and the ban on discrimination is incorporated into the Constitution as the first provision among those ensuring fundamental human rights (Article 14), the Human Rights Ombudsman¹¹⁷ is another body for lodging informal complaints and is an independent and unbiased form of informal protection available to individuals in relation to State authorities, local self-government authorities and bearers of public authority. The Ombudsman is competent only for public sector. The decisions of the Ombudsman are not binding.

Any individual who believes that their human rights or fundamental freedoms (including the right to equal treatment) have been violated by an act or deed committed by a public body may lodge a petition with the Ombudsman to start proceedings,¹¹⁸ and the Ombudsman can also institute proceedings on its 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 it may monitor, all information irrespective of the degree of confidentiality, to perform investigations and in this capacity to call witnesses for questioning. It 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

¹¹⁷ 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 in the *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 classic Scandinavian model.

¹¹⁸ The Rules of Procedure of the Ombudsman stipulate that the Ombudsman perform their work in the Slovenian language. However, anyone who is not familiar with the Slovenian language may lodge a petition in their own language.

competent for matters in the public sphere; however, it can also monitor the activities of State bodies in 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.

- Formal: Inspection procedure

Discrimination can also be reported to inspectors competent in certain areas of the social sphere (e.g. labour, health, goods and services etc.). The inspectors work in line with the Inspection Act¹¹⁹ which has no specific provisions on discrimination cases. For all matters not regulated by this act, the General Administrative Procedure Act is used. 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 victims, with the exception of the Labour Inspectorate, since the prohibition of discrimination is included in the Employment Relationship Act, the respect of which is monitored by the Labour Inspectorate.¹²⁰ The procedure before the inspector is free of charge and the decisions are binding.

In its annual report, the Advocate of the Principle of Equality points out that protection by the inspectorates is not functioning well, and that the sanctions issued could certainly not be assessed as effective, proportionate and dissuasive. It notes that experience shows that it is extremely unlikely that the inspectorate will even carry out the inspection procedure in the case of a complaint, while the possibility that the perpetrator will be issued with any kind of sanction is practically non-existent.¹²¹ The Advocate further points out the problems which cause this lack of effectiveness of the inspectorates: none of the inspectorates are competent in some fields of life which are protected under anti-discrimination law; the competences of the inspectorates are not clearly defined (the competence is sometimes defined as subsidiary and sometimes as primary); the lack of willingness to deal with the complaint and use of various procedural manoeuvres by the inspectorates to avoid dealing with a complaint; the fact that inspectorates cannot sanction the actions of the Ministry which is superior to the inspectorate, as well as the actions of the other State bodies which have the status of independent bodies; the fact that inspectorates have no specific knowledge about discrimination issues and anti-discrimination law; and the problem that the victim of the action is not a party to the inspection procedure.¹²²

- Administrative procedure

Administrative procedure is used if an individual was discriminated against by a State body on the grounds of gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal characteristic, by a decision or by

¹¹⁹ *Zakon o inšpekcijskem nadzoru – uradno prečiščeno besedilo* [Inspection Act – Official Consolidated Text], Official Journal of the Republic of Slovenia, No. 43/07 and 40/14.

¹²⁰ Human Rights Ombudsman (2008), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2007* [Annual Report for 2012], p. 40, available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

¹²¹ The Advocate of the Principle of Equality (2012), *Letno poročilo Zagovornika načela enakosti 2011* [Annual report 2011], available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

¹²² The Advocate of the Principle of Equality (2012), *Letno poročilo Zagovornika načela enakosti 2011* [Annual report 2011], available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

another action of an administrative body. It is regulated by the General Administrative Procedure Act¹²³ which is binding on 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. They can file a request to begin proceedings or a claim may be filed against them. A group of people may also be a party, in as much as it can be the holder of rights and duties (Article 42). In 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.¹²⁴

The act provides for the 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 must seek throughout the course of the proceeding to achieve a settlement by the parties. The administrative court decides on the legality of individual actions and acts that pertain to the constitutional rights of the individual.¹²⁵ 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.

- Judicial procedures: Courts

Civil procedure

A civil procedure in accordance with the Civil Procedure Act shall be used for claiming material and non-material 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 characteristic.

Parties can represent themselves in first instance procedures. Alternatively, they can choose someone to represent them before the local court (dealing with disputes over subjects with a maximum value of EUR 20 000), while in other courts the authorised person must be a lawyer or an individual who has passed the bar examination.

When filing a lawsuit the victim must pay a fee defined on the basis of the Court Fees Act,¹²⁶ depending on the value of the subject of the dispute. In social or labour disputes which do not relate to property, the amount of the fee is EUR 20. Court fees are not payable in collective labour disputes and some social disputes.

Since judicial proceedings for human rights cases are usually expensive, individuals with limited financial means cannot afford the lengthy and expensive procedure. The Free Legal Aid Act¹²⁷ was adopted with the intention of remedying this situation. This act enables individuals to acquire the services of a lawyer 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 their survival or the survival of their dependants would be jeopardised if they were to pay judicial taxes may be exempted from this payment.

¹²³ *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, 126/07, 65/08 and 8/10).

¹²⁴ *Zakon o upravnih taksah – Uradno prečiščeno besedilo* [The Administrative Fees Act], Official Journal of the Republic of Slovenia, No. 40/2004.

¹²⁵ *Zakon o upravnem sporu* [Administrative Dispute Act], Official Journal of the Republic of Slovenia, No. 105/06, 62/10 and 109/12).

¹²⁶ *Zakon o sodnih taksah* [The Court Fees Act], Official Journal of the Republic of Slovenia, No. 37/08, 97/10 and 63/13).

¹²⁷ *Zakon o brezplačni pravni pomoči* [The Free Legal Aid Act], Official Journal of the Republic of Slovenia, No. 66/2001, 50/2004, 23/08.

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

Procedure before Labour and Social Courts

In cases of discrimination related to employment and social rights, the parties may file a claim before labour and social courts. There are special provisions in place for procedures before these courts defined in the Labour and Social Courts Act, which was adopted on 19 December 2003 and entered into force on 1 January 2005.¹²⁸ For all matters not regulated by this act the Civil Procedure Act is used.

The rules regarding representation are the same as for civil procedures. In addition, there is a special mitigating provision for procedures before labour or social courts, where a worker can be represented by a trade union representative, if the latter has acquired the title of a graduate lawyer. In procedures before a higher court or the Supreme Court, a trade union representative can only appear if they have passed the bar examination.

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

Article 68 of the Labour and Social Courts Act determines that in social disputes over the right to social insurance and social security, the social insurance institution must cover its expenses irrespective of the result of the action.

In procedures before labour and social courts free legal aid is accessible under the same conditions as in cases of other civil procedures.

Criminal procedure

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

¹²⁸ *Zakon o delovnih in socialnih sodiščih* [Labour and Social Courts Act], Official Journal of the Republic of Slovenia, No. 2/04, as amended.

The Penal Code also stipulates two aggravated forms of these crimes – if they were committed in an official capacity or with coercion, threat etc. In addition, Article 20 of the Protection of Public Order Act¹²⁹ foresees punishment for incitement to ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation. The criminal procedure also enables the victim of a criminal offence to claim damages in the so-called adhesive procedure (regulated by Articles 100 to 111), provided that such a claim would not cause a delay in the criminal procedure itself. Under this procedure, victims can take over the prosecution of certain criminal offences if the public prosecutor withdraws the charges. Before requesting the institution of criminal proceedings, the state prosecutor can assign a minor criminal offence to conciliation procedures, but must 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 six months, if the state prosecutor announces the intention to assign the matter to a conciliation procedure.

In criminal procedures parties can represent themselves in all instances of the procedure, except in cases when mandatory legal representation paid for by the State is provided. If the party has a legal representative before the Supreme Court, this must be a lawyer. The Free Legal Aid act also applies in criminal cases.

Procedure before the Constitutional Court

Any individual who believes that their human rights and basic freedoms have been violated by a particular act by 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 exhausted¹³⁰ and if the complaint was lodged within 60 days of the act.¹³¹ There is no right to file *actio popularis* claims before the Constitutional Court. 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 then issues a decision declaring that the appeal was unfounded or accepts the appeal and partly or completely revokes and rescinds the act which was the subject of the appeal and returns 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.¹³² 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.

¹²⁹ *Zakon o varstvu javnega reda in miru* [Protection of Public Order Act], Official Journal of the Republic of Slovenia, No. 70/2006.

¹³⁰ 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.

¹³¹ In special cases, the Constitutional Court may exceptionally rule on a constitutional complaint which has been lodged after the time limit. In such circumstances, judges become aware of cases with different backgrounds and consequences that derive from a violation. The time limit cannot therefore be interpreted strictly and the judges should consider when the relationship ended.

¹³² *Zakon o ustavnem sodišču* [Constitutional Court Act], Official Journal of Republic of Slovenia, No. 15/1994, 64/2001, 51/2007, 109/2012.

All court decisions are binding.

- Mediation

The parties may pursue a conciliation or mediation procedure. Article 309 of the Civil Procedure Act states that if someone intends to bring an action, he can firstly try to reach a compromise at a local court, situated in the area where the opposite party has residency. The costs of such a procedure are covered by the person submitting the case. According to Article 305a of the Civil Procedure Act, after the court receives a response to a law suit, it is obliged to arrange a conciliation hearing before the trial. For alleged discrimination in the field of employment or social services, the procedure before the labour and social courts is available, and is regulated by the Labour and Social Courts Act.¹³³

In spite of the fact that a number of legal remedies exist, as described in the previous sections, the Advocate of the Principle of Equality in his annual report for the year 2012 (later annual reports have not been issued) points out that the legal remedies available in Slovenia are not effective and that the system is in fact not working, which is visible from a low number of resolved cases and issued sanctions.¹³⁴

b) Barriers and other deterrents faced by litigants seeking redress

The costs of the procedure depend on the type of procedure. Procedures that are free of charge are a complaint to the Human Rights Ombudsman and a complaint to the Advocate of the Principle of Equality. A criminal complaint is free of charge, however, if the victim wishes to be represented by a lawyer they must pay for one. There are exceptions to this rule but they are not related to discrimination cases. In civil procedures and administrative procedures the plaintiffs must pay judicial taxes. If they wish to be represented by a lawyer they must pay for one unless they are entitled to free legal aid under the Free Legal Aid Act. A complaint to the Constitutional Court is free of charge.

In addition to costs, other deterrents to seeking redress are lengthy judicial procedures, low compensation awards and ineffective protection mechanisms. In Slovenia, potential claimants face long trials due to large numbers of new cases filed every year, complicated legislation and court backlogs, which deter victims of discrimination in relation to initiating court procedures. However, there have been significant improvements in recent years. The time a case takes is reducing and the statistics show that the number of unresolved disputes has continued to fall since 1996. In civil cases the expected time in which a civil case will be resolved at the first instance was 7.6 months in 2013, which had dropped from 21.6 months in 2007. The data for 2014 is not yet available.

c) Number of discrimination cases brought to justice

In Slovenia, there are no available statistics on the number of discrimination-related cases brought to justice.

Judgements (not all of them) are publicly available online with a delay of several months after their delivery.

¹³³ *Zakon o delovnih in socialnih sodiščih*, Official Journal of the Republic of Slovenia, No. 2/04.

¹³⁴ The Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report 2011), available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

Comprehensive statistics for the cases dealt with by the Advocate of the Principle of Equality are available to 2012. The Advocate dealt with four cases in 2009, 13 in 2010, 33 in 2011 and 20 in 2012 (until 30 March 2012).¹³⁵ In total, 85 cases remained unresolved at the end of 2012. Statistics for 2013 and 2014 are not yet available. The low number of resolved cases is a result of the fact that there is only one person working with the entity of the Advocate.¹³⁶

In 2012 the Republic of Slovenia prepared an implementation report¹³⁷ and collected information from the courts that responded to the questionnaire. According to this report, the statistics of court cases decided in relation to discrimination are as follows.

	2003	2004	2005	2006	2007	2008	2009	2010	2011
No. of cases	1	1	0	3	5	7	11	8	9

Furthermore, according to the same report, the Labour Inspectorate dealt with the following number of discrimination cases: three in 2006, nine in 2007, 24 in 2008, 14 in 2009 and 11 in 2010. The Education Inspectorate dealt with 19 cases related to discrimination between April 2011 and December 2012.¹³⁸

According to the Labour Inspectorate report for 2013, the Inspectorate found discrimination in nine cases.¹³⁹ The reports states that it is very difficult to prove discrimination due to the fact that victims and witnesses are afraid to testify. Other inspectorates do not mention discrimination in their annual reports.

The Human Rights Ombudsman's statistics for 2014 are not yet available. However, the statistics for previous years show that the Ombudsman dealt with 80 complaints concerning discrimination in 2013, 74 complaints in 2012, 49 in 2011 and 54 in 2010.¹⁴⁰ The number of complaints on the ground of ethnic origin significantly increased (from 20 in 2012 to 33 in 2013). Of these, many complaints were related to bad living conditions in unregulated Roma settlements. The increase is related to the fact that the Ombudsman has been actively calling on the responsible bodies to take action.¹⁴¹ Three complaints were related to discrimination on the ground of sexual orientation. Sixteen complaints were related to people with disabilities (22 % were justified). Complaints concerning other grounds of discrimination are not mentioned in the report.¹⁴² The share of justified complaints (40.7 %) dealt with by the Ombudsman in 2013 was the largest

¹³⁵ The Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report 2011), available at:

http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/ (11 August 2015).

¹³⁶ The Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report 2011), available at:

http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/ (11 August 2015).

¹³⁷ Questionnaire (2012) on the implementation of Racial Equality Directive 2000/43/EC and Employment Equality Directive 2000/78/EC.

¹³⁸ Questionnaire (2012) on the implementation of Racial Equality Directive 2000/43/EC and Employment Equality Directive 2000/78/EC.

¹³⁹ Labour Inspectorate (2013) *Poročilo o o delu inšpektorata rs za delo za leto 2013* (Annual report for 2013), available at:

http://www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/LETNA_POROCILA/lp_2013_vlada_090614.pdf f.

¹⁴⁰ Human Rights Ombudsman (2014), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013* [Annual Report for 2013], available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

¹⁴¹ Human Rights Ombudsman (2014), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013* [Annual Report for 2013], available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

¹⁴² Human Rights Ombudsman (2014), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013* [Annual Report for 2013], available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

among complaints lodged due to alleged discrimination on the grounds of race and sexual orientation.¹⁴³

d) Registration of discrimination cases by national courts

In Slovenia, discrimination cases are not registered as such by national courts.

Discrimination cases are, like all other court cases, kept in the database of each court by the provision of the law concerned. There is no special registry for discrimination cases but they are kept in the general registry of the court. Many judgements are then sent to the Supreme Court where a public database of cases is kept (www.sodnapraksa.si). The cases can be searched in the database using keywords. However, the database is not regularly updated and it takes several months for a judgement to be entered into the database after its delivery.

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

a) Standing to act on behalf of victims of discrimination (representing them)

In Slovenia, associations, organisations and trade unions are not entitled to act on behalf of victims of discrimination.

The legal framework regarding legal standing for associations, organisations and trade unions is very unclear, creating legal uncertainty and a potential barrier to access to justice. Article 23 of the Act Implementing the Principle of Equal Treatment states that non-governmental organisations shall have the right to “take part in” judicial and administrative proceedings initiated by alleged victims of discrimination. However, due to the lack of specificity of this provision the NGOs’ involvement depends on other more specific provisions in procedural legislation as to who may represent a party before the courts.

In civil procedures the only legal entity that can represent the party to the procedure is a law firm. Individuals who can represent the party are lawyers who have passed the state legal exam, and in county court procedures also anyone with legal capacity (i.e. capacity to perform official acts without a guardian). However, these are not legal entities but individuals. In criminal proceedings, the victim can be represented by anyone with legal capacity. In administrative proceedings, according to the General Administrative Procedure Act, the party to the procedure can be represented by anyone with legal capacity, who would in this case act on behalf of the party. It can be an individual, and it can also be a legal entity (NGO or trade union), however, in the latter case the NGO must appoint an individual who will act on behalf of the party. Namely, according to Article 54(3) of the General Administrative Procedure Act, a professional organisation which is recognised in certain activities as being directly connected to the relevant rights and duties of the party may represent this party during administrative proceedings.

Furthermore, Article 205 of the Employment Relationship Act stipulates that a trade union whose members are employed by a specific employer may appoint or elect a trade union organiser to represent the trade union before the employer. If no trade union organiser is appointed, the trade union is represented by its chairperson. Trade union organisers have the right to exercise and to protect the rights and interests of their members vis-à-vis the employer.

¹⁴³ Human Rights Ombudsman (2014), Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013 [Annual Report for 2013], available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

According to the Constitutional Court Act, societies and other associations do not have the right to challenge regulations that interfere with the legal status of their members or other individuals. They only have a legal interest if the regulation in question interferes directly with their rights, legal interests or their status as a legal person. 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 authorised to represent a party. A legal entity can represent a party if it is a law firm.¹⁴⁴

In general, for NGOs or trade unions to be included in any of these procedures, they must be officially established and registered. There are, however, no membership and permanency requirements.

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

To conclude, according to national law, the only legal entity that can represent a claimant before the courts is a law firm, meaning that NGOs, as legal persons, do not have legal standing in the court. The only way to involve an NGO is for the victim to authorise an employee of the NGO to represent them in court. In case of the latter there are two possibilities: an NGO can employ a lawyer, in which case he/she as a physical person will be representing the victim. However, NGOs usually do not employ lawyers, therefore the second possibility is more likely to occur: employees of NGOs can be authorised to represent a victim, but only in civil disputes of a value up to EUR 20 000, in cases of victims of crimes, or in administrative procedures (as in higher instances only a lawyer can be a representative). In all other procedures they do not have legal standing, except in some procedures if they have passed the state legal exam.¹⁴⁵

The Advocate of the Principle of Equality stresses that the current system does not enable NGOs to have legal standing in procedures before district and higher courts and the supreme court, or procedures before the administrative court - thus in more demanding procedures where the support of and representation by NGOs could be crucial for the victims.¹⁴⁶

b) Standing to act in support of victims of discrimination

In Slovenia, associations, organisations and trade unions are entitled to act in support of victims of discrimination.

The Act Implementing the Principle of Equal Treatment in Article 23 states that non-governmental organisations have the right to take part in judicial and administrative proceedings initiated by alleged victims of discrimination. However, there are no specific provisions in the anti-discrimination law defining the right of associations to act in support of victims of discrimination. General provisions of the Civil Procedure Act apply in this case. The Civil Procedure Act, which is used for civil procedures, and also when appropriate for proceedings in the Constitutional Court or the Labour and Social Court, states that a third party (*stranski intervenient*) who has a legal interest (meaning a

¹⁴⁴ Constitutional Court decision no. U-I-246/02 of 3.4.2003.

¹⁴⁵ See legal opinion available at http://www.etc-graz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lanki/prevod_pravneg_a_mnenja.doc

¹⁴⁶ The Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011*, (Annual report 2011), available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/.

personal interest based on statute or other regulations) can intervene in support of one of the parties at any time until the end of the proceedings. "This is the only case in which an NGO can officially be involved in support of a party to the court procedure. The law does not require the party's permission for an NGO to become involved as a side intervenient.

c) Actio popularis

In Slovenia, national law does not allow associations, organisations and trade unions to act in the public interest on their own behalf, without a specific victim to support or represent (**actio popularis**).

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

d) Class action

In Slovenia, national law allows associations, organisations and trade unions to act in the interest of more than one individual victim (**class action**) for claims arising from the same event.

The rules for class actions are identical to the rules for individual procedures. All the victims have to be identified (there is no class certification), the only difference is that there is more than one of them. The only special provision which is in place for class actions concerning identical cases is the so-called exemplary action, which is similar to the pilot judgement procedure conducted by the European Court of Human Rights. In an exemplary procedure the court may first decide in one test case which is identical to all other cases (which are in the meantime put on hold), and the decision in this first case affects the decision in all the other similar cases. This procedure is defined in the area of employment and social rights and is governed by the Labour and Social Courts Act (Article 40).

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

In Slovenia, national law requires a shift of the burden of proof from the complainant to the respondent.

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 assumption that the prohibition of 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 prohibition on discrimination in the case being heard. Administrative and all other procedures before State bodies are explicitly mentioned among the provisions where the shift of the burden of proof also applies.

Furthermore, Article 6(4) of the Employment Relationship Act states that when a candidate or employee claims facts during a dispute which justify the assumption that the prohibition of discrimination (including harassment) was violated, the burden of proof rests with the employer. Article 47(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.

In the cases Pdp 224/2014 and Pdp 276/2014 the Higher Labour and Social Court of the Republic of Slovenia relied on the burden of proof to resolve them. The facts of the case show that the employer put an end to a part of the production process and justified the need to lay off three people. The claimant, who was one of them, stated that she was not dismissed for objectively justified reasons but due to her age. Namely, she was about to reach the age when she would have started to enjoy special labour law protection under the Employment Relationship Act. In both cases the court found that, while the claimant stated sufficient reasons to believe unequal treatment on the ground of age had taken place, the employer failed to prove, in accordance with the shift of burden of proof, that her dismissal was objectively justified.

In general, no problems with the implementation of the rule on the shift of burden of proof have been identified.

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

In Slovenia, there are legal measures of protection against victimisation.

Article 3(2) of the Act Implementing the Principle of Equal Treatment prohibits victimisation, stating that victims of discrimination and people who assist victims of discrimination should not be exposed to negative consequences for acting against discrimination (prohibition of retaliation). The same provision is included in Article 6(8) of the Employment Relationship Act. In addition, Article 16 of the Act Implementing the Principle of Equal Treatment sets out the actions to be taken by the Advocate of the Principle of Equality in relation to the application. In the course of the examination of the case, the Advocate must order in writing the legal person or other legal entity where the violation of the prohibition on discrimination allegedly occurred to apply appropriate measures for protection of the victim of discrimination or an individual assisting the victim of discrimination from victimisation or adverse consequences that have resulted from victimisation. In the event that an alleged offender has not followed the Advocate's order and the person is still subjected to victimisation, 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 individual concerned from victimisation, or to prescribe the rectification of the adverse consequences of victimisation (Article 21(3)).

Article 78 of the Employment Relationship Act states that, after ending a labour relationship, the employer shall return to the employee all their documents and shall issue them a document 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 enter into a new labour relationship. This provision means that the employer may not victimise the employee who has been discriminated against while working for the employer after the employment contract has been terminated. If an employer insults an employee or acts violently, or if the employer does not prevent such behaviour by other employees, the employee affected may, according to Article 111 of the Employment Relationship Act, end the contract without notice after eight days if they have notified the employer and the Labour Inspectorate in writing. This provision means that the employee may end the contract almost without notice and may not be victimised by the employer not allowing them to leave. Article 112 of the Employment Relationship Act protects trade union representatives from losing their jobs which is a provision also relevant for cases when trade union representatives act on behalf of victims of discrimination.

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

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

a) Applicable sanctions in cases of discrimination – in law and in practice

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 individual suffering damage also has the right to claim compensation directly from the individual or body that 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, victims may initiate judicial and administrative proceedings and have the right to compensation in accordance with the general principles of tort law. Article 24 of the same act defines minor offences and sanctions for discrimination. It states that commission or omission that occurred in the execution of laws and other rules, collective agreements and general acts regulating each individual area of the social sphere, which includes all types of discrimination in accordance with the definitions of direct and indirect discrimination, instructions to discriminate and harassment, is a minor offence for which the perpetrator shall be fined. It must be stressed that the wording of the provision ("in the execution of the laws...") is problematic, since it indicates that sanctions might not be imposed in cases when discrimination occurred through conduct that does not represent "execution of the law" (e.g. conduct of private employers). The provision sets different fees for minor offences depending on the perpetrator: a natural person who commits such a minor offence shall be fined between EUR 250 and EUR 1 200, while a legal person or an individual entrepreneur where the minor offence occurred shall be fined between EUR 2 500 and EUR 40 000. An official of a State body or local community where the minor offence occurred shall be fined between EUR 250 and EUR 2 500. The size of the fine depends on the seriousness of the offence and negligence or intent on the part of the offender.¹⁴⁷

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

The Employment Relationship Act stipulates the employer's liability for damage in accordance with the provisions of tort law when the employer infringes an anti-discrimination provision. The 2013 Employment Relationship Act establishes the elements used to define the amount of compensation for which the employer who acts in a discriminatory way is liable. Namely, Article 8 of the 2013 Employment Relationship Act states that, in the case of a violation of the prohibition of discrimination or bullying in the workplace, the employer is liable with regard to the candidate or worker in line with the general provisions of civil law. Non-pecuniary damages caused to a candidate or worker cover mental pain suffered due to the unequal treatment of a worker or discriminatory treatment by an employer, or a lack of protection from sexual or other harassment or bullying in the workplace suffered by the candidate or the worker. The amount of monetary compensation for non-pecuniary damages must be defined in such a way that compensation is effective and proportionate to the damages suffered by the candidate or worker and that it dissuades the employer from repeating the violations. Article 217(1) of this act states that an employer who is a legal person or an individual entrepreneur shall

¹⁴⁷ *Zakon o prekrških - Uradno prečiščeno besedilo* [Minor Offences Act – Official Consolidated Version], Official Journal of the Republic of Slovenia, No. 55/2005.

be fined between EUR 3 000 and EUR 20 000, for putting a job candidate or an employee in an unequal position.

Article 131 of the Penal Code prescribes punishment for individuals who commit the criminal offence of violating equality. In accordance with Article 131(2), anyone who persecutes an individual or an organisation due to their advocacy of equality shall be punished. In the event of an offence under the first or the second paragraph of Article 131 being committed by an official through the abuse of office or of official authority, the official shall be sentenced to imprisonment for a maximum term of three years. The provision of Article 116 of the Penal Code specifically defines the criminal act of murder committed due to a violation of equality and prescribes a sentence of imprisonment of at least 15 years. Article 265 of the Penal Code states that anyone who intentionally causes severe pain or suffering for a reason based on violation of equality shall be sanctioned with imprisonment of between one and 1 and 10 years. If this is caused by a person in an official capacity, the sanction foreseen is imprisonment of between 3 and 12 years. As yet there have been no cases in relation to these provisions.

Article 297 of the Penal Code stipulates that anyone who publicly encourages or incites ethnic, racial, religious or other hatred or intolerance, or incites another type of intolerance, due to physical or intellectual disabilities or sexual orientation, shall be sanctioned with imprisonment of up to two years. The same punishment is foreseen for those who publicly spread ideas of the superiority of one race over another or cooperate with any racist activity, or deny, diminish the meaning of, approve of, ridicule or advocate genocide, holocaust, crimes against humanity, war crimes, aggression or other criminal acts against humanity. If these acts are published in the public media, the editor or their deputy are also punished, except if it was a live transmission and it was not possible to prevent these acts.

So far there have only been a few cases with regard to hate speech (prosecuted as incitement to hatred, violence and intolerance) in Slovenia, mostly perpetrated against the Roma and LGBT minorities. In most cases punishments of imprisonment of between one and six months were issued, but they were suspended in the sense that they would not be executed if the perpetrator did not commit another crime within a certain period (usually one or two years) set by the court.

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

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

Article 202 of the Penal Code punishes those who deliberately fail to act in line with the rules governing social security and therefore deprive an individual of a right or place a limit on it. An offender is punished with a fine or imprisonment of up to one year. There have not yet been any no cases in relation to these provisions. In addition, Article 20 of the Protection of Public Order Act foresees punishment for inciting ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation, with a fine of up to EUR 835.

Articles 230 to 233 of the Execution of Judgements in Civil Matters and Insurance of Claims Act¹⁴⁸ regulate the reinstatement of an employee to their position of employment after reinstatement has been awarded following a legal procedure. Article 233 states that an employee who proposes to return to their position of employment may ask the court to decide that the employer must pay the employment sums of money that correspond to their wages from the end of court proceedings until their 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 they had been working. The employee's right to demand past wages be paid is not affected by this regulation. If the court decides partially in favour 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.

b) Ceiling and amount of compensation

The legislation contains no upper limit on the compensation that can be awarded by a court decision. Compensation is a sanction which depends on the damage caused to the victim. The damage must be proven and is determined by the court. If awarded, the compensation is paid to the victim.

In case No. Pdp 729/2011 of 7 October 2011, decided by the Higher Labour and Social Court, the court confirmed that in a compensation claim lodged due to alleged discrimination the complainant must specify three out of four elements of responsibility for damages (these three elements are unlawful act, damages and nexus between unlawful acts and damages). The fourth element – responsibility for damages – is assumed and it is for the defendant to prove they are not responsible for damages. In this case the court rejected the claim, as the complainant did not prove the first three elements, but only generally claimed discrimination and damages deriving from it. The case is also interesting because the claimant invoked Directive 2000/78/EC which states that Member States must establish the rules on the sanctions (which may include compensation) applicable to infringements of national provisions and shall take all measures necessary to ensure that they are applied. The court stated that the directive only sets the goals that the Member States must abide by, but they are free to choose the methods by means of which these goals will be achieved.

In recent years there have been only a few cases in which courts have awarded compensation to victims. A victim of discrimination on the grounds of disability (visual impairment) was awarded compensation of EUR 3 500. In this case discrimination occurred in the workplace where the employer did not provide reasonable accommodation for the victim (decision by the High Labour and Social Court No. Pdp 915/2008). In another case victimisation was found in relation to a claimant who complained because he was not hired for a post even though he fulfilled all the conditions and had better qualifications than the selected candidate. The plaintiff was awarded compensation of EUR 11 346.69 EUR (Judgement of the Labour and Social Court in Ljubljana, No. I Pd 804/2007 of 6.1.2009). In the third identified case the court found discrimination (in the form of bullying) by the employer and awarded the claimant compensation of EUR 6 000 (Judgement of the Labour Court in Maribor No. Pd 828/2008 of 26.8.2009). In the latter two cases the grounds of discrimination were not established by the court.

¹⁴⁸ *Zakon o izvršbi in zavarovanju – Uradno prečiščeno besedilo*, Official Journal of the Republic of Slovenia, No. 40/2004.

c) Assessment of the sanctions

The case law shows that compensation payments awarded in disputes in which claimants are successful are sufficiently high in order to consider sanctions dissuasive from the perspective of the individual (EUR 3 000 is equal to three average monthly net salaries in Slovenia). However, taking into account that the compensation is usually not paid by a natural person but by a legal person (employer), compensation payments are not high. There is a lack of more recent case law involving compensation.

The fines prescribed by the Act Implementing the Principle of Equal Treatment and Employment Relationship Act are sufficiently high, however, they are hardly ever implemented in practice due to the low number of reported cases and the lack of willingness of inspectorates to deal with issues of discrimination. The sanctions of imprisonment issued in hate crime and hate speech cases are always suspended, meaning that it is questionable how seriously they are taken by the perpetrators.

7 BODIES FOR THE PROMOTION OF EQUAL TREATMENT (Article 13 Directive 2000/43)

- a) Body/bodies designated for the promotion of equal treatment irrespective of racial/ethnic origin according to Article 13 of the Racial Equality Directive.

In accordance with the Act Implementing the Principle of Equal Treatment and in accordance with the Act Amending the Public Administration Act,¹⁴⁹ the Advocate of the Principle of Equality functions within the Ministry of Labour, Family, Social Affairs and Equal Opportunities in order to examine cases of alleged violations of the prohibition of discrimination, and to provide people with assistance on issues of discrimination.

In accordance with Article 9 of the same act, the Government Council for the Implementation of the Principle of Equal Treatment was established first for a mandated period of 2005-2009 and then for 2009-2013. It was then prematurely dissolved without completing its mandate and a new Council has not yet been established, even though provision is made for it in law.

The Advocate of the Principle of Equality started work on 1 January 2005, while the Council for the Implementation of the Principle of Equal Treatment held its first session in May 2005 but has not been convened since 2012. The Advocate covers all grounds covered by the Act Implementing the Principle of Equal Treatment and is 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 legislation also imposes additional duties on the Ministry of Labour, Family, Social Affairs and Equal Opportunities, such as the coordination of individual ministries and government services related to the implementation of the non-discrimination legislation.

- b) Status of the designated body/bodies – general independence

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 the rules governing civil servants in State bodies and the system of salaries in the public sector, except for matters regulated differently by this act. The Advocate is nominated by the Government at the proposal of the Minister for Labour, Family, Social Affairs and Equal Opportunities, for a period of five years, on the basis of public competition in accordance with the Civil Servants Act.

The public competition must be completed three months before the deadline for nomination of the Advocate. The existing Advocate can be re-nominated without public competition. The Advocate does not have their own budget, but is financed from the budget of the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The budget, which is actually provided for the activities of the Ministry, is fixed by the Republic of Slovenia Budget Implementation Act for each separate budget period. The conditions for the Advocate are: university degree in a social or humanities subject or higher education and three years of work experience in the area of equal opportunities and human rights. In the event of temporary absence of the Advocate, the Government authorises another individual who fulfils the stated conditions for performing the tasks of the Advocate. In accordance with Article 11.c of this act and the Act Amending the Public Administration Act, with which the Government Office for Equal Opportunities was abolished, the Advocate can be dismissed by the Government at the proposal of the Minister of Labour, Family, Social Affairs and Equal Opportunities, before the expiry of

¹⁴⁹ *Zakon o spremembah in dopolnitvah Zakona o državni upravi* [Act Amending the Public Administration Act], Official Journal of the Republic of Slovenia No. 21.2012.

the five-year period, if the Advocate so requests, in case of termination of employment of the Advocate by agreement with or notice from 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 expiry of the five-year term.

Article 1 of the Government Decree on the Establishment, Organisation 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 five 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/her membership is therefore defined by his/her function). With the amendments of June 2007, the status of the Council was changed. The council is now smaller and only five members of NGOs are foreseen for the Council (previously it was stipulated that the membership of the body include 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 characteristics). Currently, the Council does not in fact exist as it was dissolved in 2012.

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

In the annual reports for 2010, 2011 and 2012 the Advocate consistently pointed out that the status of the equality body, which consists of only one person employed as a civil servant within a government body or a ministry, is not an appropriate status for the tasks entrusted to this body. It proposed that the equality body should be established along similar lines to the Information Commissioner in Slovenia, a body with investigative powers and the powers to impose sanctions. Taking into account the workload, the body should employ at least eight people – head, four legal experts dealing with complaints, two experts for awareness-raising and monitoring and two administrative and technical support personnel.¹⁵⁰ The fact that the Advocate of the Principle of Equality 'lacks the organisational and budgetary independence required of a body for the promotion of equal treatment' was also confirmed by the 2014 ECRI report.¹⁵¹ The ECRI recommended to the State to find a suitable solution, 'in order for a fully independent national specialised body to combat discrimination' to be established.¹⁵²

Furthermore, the problem was again highlighted by the Human Rights Ombudsman in its annual report for 2013. In 2012, the government had already established a working group in order to prepare options for a different organisational structure of the equality body in Slovenia, however, no decision was taken. The 2012 report also stated that discussions are taking place about the possibility of the tasks of the equality body being taken over by the Ombudsman. However, the report highlights the problem that the Ombudsman is only competent for the public sector, while the equality body should cover both the public and private sectors. The report rejects the idea of the Ombudsman taking over the tasks of the equality body and proposes that the equality body be established in a similar form to the Information Commissioner, as a specialised independent state agency that would also be subject to the Ombudsman's scrutiny with regard to protection

¹⁵⁰ The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

¹⁵¹ ECRI Report on Slovenia, 2014, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf>.

¹⁵² ECRI Report on Slovenia, 2014, available at: <http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf>.

of human rights.¹⁵³ In 2013 the Ministry of Labour, Family, Social Affairs and Equal Opportunities presented the idea of the Ombudsman taking over the role of the equality body to the current Ombudsperson.¹⁵⁴ A final decision has not yet been taken by the Government.

c) Grounds covered by the designated body/bodies

The Advocate of the Principle of Equality covers gender, religion or belief, disability, age, sexual orientation, or any other personal characteristic.

d) Competences of the designated body/bodies – and their independent exercise

By law the Advocate provides independent assistance to victims and issues recommendations, but does not conduct surveys and reports (except for the annual report on its work which should be produced by March for the preceding year).

The main responsibility of the Advocate is to examine cases of alleged violations of the prohibition 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 to discover discrimination and alert the authorities and the public of its existence. To this end the Advocate provides general information and explanations in relation to discrimination, while upon examination of a case they highlight the established irregularities and recommend how to remedy them; in other procedures in relation to protection from discrimination the Advocate offers assistance to victims of discrimination. 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. After the complaint, the Advocate conducts a hearing of the case. The Advocate and other employees of the Ministry must keep confidential all information presented during a hearing.

The Advocate has the right to request those involved to provide appropriate explanations within a specific timeframe and the right to summon all those involved and interview them. Finally, the Advocate issues a written opinion in which they state their findings and assess whether discrimination has taken place. Both parties are informed of the 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 provide information within a specific timeframe 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 could be considered a violation of the principle of equal treatment because of personal characteristics. Finally, the Advocate produces an annual report by the end of March each year, which the Ministry of Labour, Family, Social Affairs and Equal Opportunities submits to the Government for adoption.

With regard to the Council for the Implementation of the Principle of Equal Treatment, the law provides for powers to monitor and assess the situation of individual social groups from the aspect of equal treatment. Since 2012 the Council has not, in fact, been in existence.

In 2013 the Advocate issued the 2012 Annual Report which contains information on the work and activities of this body from 2009 to 2012. However, the report does not only

¹⁵³ Human Rights Ombudsman (2013), Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2012 [Annual Report for 2012], available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

¹⁵⁴ Human Rights Ombudsman (2014), Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013 [Annual Report for 2013], available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/> (11 August 2015).

address the statistics of the complaints and cases dealt with in the past year, it also tackles systemic issues concerning the lack of legal protection mechanisms in Slovenia, their lack of effectiveness, and the lack of its own powers and capacities to address wider issues of discrimination, in particular with regard to the fact that the Advocate is expected to deal with issues of discrimination on all grounds and in all fields. The report assesses the work of the role of Advocate since it was set up in 2004 as unsuccessful. It states that the public awareness of the existence of the institution is low, that its public reputation has been ruined and that it has no credibility in the eyes of experts and key target groups. The document underlines the fact that with the current structure of the Advocate as an equality body, Slovenia does not meet the requirements of the Race Equality Directive 2000/43/EC and the UN Convention on the Rights of People with Disabilities. The report points out that there is a lack of political will expressed by the Government of Slovenia to address the problems described. The report also proposes a vision for 2013, which includes, among other things, the establishment of a truly independent equality body and truly effective protective mechanisms.¹⁵⁵ The specific concerns of this report are reflected by the developments in July 2010 when a new person was nominated as the Advocate (Boštjan Vernik Šetinc), who decided to speak out on the issues that hinder protection from discrimination in Slovenia. The annual reports for 2013 and 2014 are not yet available.

e) Legal standing of the designated body/bodies

In Slovenia, the designated body does not have legal standing to bring discrimination complaints (on behalf or not of identified victim(s)) 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 power to refer cases of discrimination to the competent inspectorate and in cases where 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 a third party in each particular case. The courts have discretionary power to allow intervention by a third party.

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

f) Quasi-judicial competences

In Slovenia, the body is not a quasi-judicial institution.

Namely, some of the main traits of judicial decision-making are missing from the procedure before the Advocate. The principle of adversary is not respected, since the complainant is not informed about written or oral submissions from the alleged perpetrator of discrimination against whom the complaint is lodged. In addition, the Advocate has no investigative powers and it therefore cannot establish the facts of the

¹⁵⁵ The Advocate of the Principle of Equality (2011), Annual report for 2010, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

case if the statements from the two parties to the procedure differ to the extent that it is not possible to establish what really happened. In such cases discrimination cannot be established or ruled out. It is a one-person body without any professional, technical or other support.¹⁵⁶ Since this institution consists only of one person, there is a problem if he or she has to exclude himself for reasons of bias or association with the complainant. In such cases there is no-one else to deal with the complaint.¹⁵⁷ The Advocate does not have the power to impose sanctions. It can only issue recommendations to the perpetrator, but if the latter does not respect them, the Advocate can forward the case to the competent inspectorate which then has the power to impose sanctions. However, the advocate stresses that referring the case to the inspectorate often has no effect in practice.¹⁵⁸ The decisions are often not respected and there is no possibility of appeal.

g) Registration by the body/bodies of complaints and decisions

In Slovenia, the body registers the number of complaints and decisions (by ground, field, type of discrimination, etc.). These data are available to the public.

In 2012 the Advocate made decisions in 20 cases of alleged discrimination. It adopted six principled opinions and issued six opinions in concrete cases and 12 advisory opinions explaining that the case does not constitute discrimination. In one case the procedure was terminated and in one case the complaint was not deliberated in substance as it did not concern discrimination. Four complaints were lodged by women, eight by men and eight by an NGO. One appeal of the 20 was lodged on the ground of disability, 18 due to religion and belief and seven due to sexual orientation (some complaints were merged).¹⁵⁹ Religion and sexual orientation prevailed among the grounds in 2012, as most of the complaints were lodged in relation to the Family Code, introducing a number of equal rights for same-sex partners, which was opposed by religious communities.¹⁶⁰ In its annual report the Advocate admitted that its work results are average but pointed out that no more can be expected from a body with only one member of staff.¹⁶¹ The statistics for 2013 and 2014 are not yet available.

The equality body registers the number of complaints and decisions (by ground and field) in its annual report. The annual report is available to the public once it has been adopted by the National Assembly.

h) Roma and Travellers

The Advocate of the Principle of Equality does not state in any of its documents that Roma should be treated as a priority issue. It should be noted that the situation of Roma

¹⁵⁶ The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

¹⁵⁷ The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

¹⁵⁸ The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

¹⁵⁹ The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

¹⁶⁰ The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

¹⁶¹ The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

generally falls within the competence of the Department for National Minorities at the Ministry of the Interior.

8 IMPLEMENTATION ISSUES

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

Pursuant to Article 154 of the Constitution, regulations must be published prior to coming into force. State regulations are published in the State Official Journal, whereas local community regulations are published in the official publication determined by the local community. Apart from this, dissemination of information is one of the major problems in protection against discrimination in Slovenia. On one hand, there were several complaints made to the Advocate 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. Until 2013 most anti-discrimination awareness-raising projects were carried out by NGOs with the support of foreign funds.

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 organisations active in the field of equal treatment. However, in practice, this cooperation is sporadic and carried out predominantly upon the initiative of the NGOs.

Article 8 of the Act Implementing the Principle of Equal Treatment states that the Government has to cooperate with social partners active in the field of equal treatment. In practice, the main obstacle to greater effectiveness in the application of the principle of equal treatment in the workplace, codes of practice and workforce monitoring is that the dialogue between social partners still fails to extend beyond the issues of pay (in particular in view of the economic crisis) and, recently, the length of the working day.

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

Improvements in this field were expected with the establishment of the Council for the Implementation of the Principle of Equal Treatment, but this was dissolved in 2012.

The Roma issue is not comprehensively addressed by the Advocate of the Principle of Equality. Competence for the situation of the Roma lies within the Ministry of the Interior (which also deals with the position of Italian and Hungarian minorities and the Roma ethnic community).

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

a) Mechanisms

Under the Slovenian Constitution, all laws, regulations and rules must comply with the Constitution (Article 153). Therefore, it would be unconstitutional for any of them to be contrary to the principle of equality, which is embodied in the Constitution. One of the basic powers of the Constitutional Court is to decide on the conformity of legislation and other regulations. The Constitutional Court Act contains a special chapter on the assessment of the constitutionality and legality of regulations and general laws passed for the exercise of public authority. This chapter stipulates the legal consequences of a decision. Under Article 43, the Constitutional Court may completely or partly revoke a law which does not conform to the Constitution. Article 44 stipulates that a law revoked by the Constitutional Court shall not apply in situations that occurred before the date

when such a decision came into effect, if there have been no legal rulings on such situations by that date. Unconstitutional and illegal non-statutory regulations and general acts issued for the exercise of public authority should be revoked by the Constitutional Court. Such acts or regulations are to be repealed by the Constitutional Court if it discovers harmful consequences arising from the unconstitutionality d.

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

b) Rules contrary to the principle of equality

There are at least two laws which may be contrary to the principle of equality. The first is the Registration of Same-Sex Civil Partnerships Act which does not accord equal rights to same-sex partners and married couples in many areas, including employment (e.g. right to paid sick leave to care for a sick partner; right to additional days of leave for registration of partnership). The fact that systemic discrimination on the grounds of sexual orientation in the sphere of family life persists was also highlighted by the Advocate of the Principle of Equality.¹⁶²

The second law is the Local Self-Government Act which differentiates between autochthonous (indigenous) and non-autochthonous (non-indigenous) Roma. However, the Constitutional Court decided that the differentiation between autochthonous (indigenous) and non-autochthonous (non-indigenous) Roma is reasonable and does not constitute discrimination (decision No. U-I-176/08-10 of 7 October 2010).

¹⁶² The Advocate of the Principle of Equality (2012), Annual report for 2011, available at: http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/ (11 August 2015).

9 COORDINATION AT NATIONAL LEVEL

According to the Act Implementing the Principle of Equal Treatment (Article 10) and the Act Amending the Public Administration Act, the Ministry of Labour, Family, Social Affairs and Equal Opportunities is responsible for coordinating issues regarding anti-discrimination.

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

10 CURRENT BEST PRACTICES

Positive action defined by the Roma Community Act: the Roma Community Act was adopted on 30 March 2007. It provides for the establishment of a Council of the Roma Community of the Republic of Slovenia which represents the interests of the Roma community in dialogue with State bodies. It consists of 21 members (14 representatives of the Roma Union of Slovenia and seven representatives of local Roma communities). The act also sets out the financial obligations of the Republic of Slovenia and its local self-governing communities to guarantee the special rights of the Roma community. There are some negative aspects to the implementation of the law, however it is still considered to be an example of good practice in terms of setting the conditions for political dialogue. For more information see Section 5 on positive action.

The project entitled Increasing Social and Cultural Capital in Areas with a Roma Population: the aim of the project was to create conditions that would allow the members of the Roma community to escape the vicious circle of social exclusion. The project focused on education with two specific aims: to increase the level of education and to increase awareness about the importance of education. The primary method used to achieve these aims were the so-called Roma Education Incubators that were established in Roma settlements. The project started in 2011 and was funded by the European Social Fund.¹⁶³

The project entitled Successful Inclusion of Roma in Education: one of the key aspects of the project are Roma assistants. The role of Roma assistant is officially recognised at national level. Roma assistants are employed in kindergartens and schools attended by Roma children. They assist the children during classes and daily activities, help them with their homework and facilitate contacts between schools and the children's families. The fact that they take part in the education process has a significant impact on increasing the presence of Roma children in schools and, importantly, contributes to their integration. In the school year 2014/15 Roma assistants were working in 29 schools and two kindergartens in Slovenia.

Positive action: the Act on Equal Opportunities for People with Disabilities and its bylaw Rules on technical devices and adapting vehicles: on 3 October 2014, the implementing act 'Rules on technical devices and adapting vehicles for persons with sensory disabilities' was passed. In particular, the beneficiaries of the rules are people with visual and/or hearing impairments. This implementing act regulates in detail technical devices, conditions for their acquisition, quality standards and maintenance and financial value of technical devices, as well as methods of adapting vehicles, adjustments, maintenance, quality standards and financial value of vehicle adjustments. The act also defines groups of persons with disabilities who are entitled to technical devices and vehicle adaptation, and the conditions they have to meet in order to become beneficiaries. This implementing act entered into force on 11 October 2014. However, Article 19 states that beneficiaries may only exercise the right to certain technical devices for computers from 1 January 2016.

¹⁶³ <http://goodpracticeroma.ppa.coe.int/en/node/342>.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

- The national designated equality body (Advocate of the Principle of Equality) is not exercising its tasks independently as it functions within the Ministry of Labour, Family, Social Affairs and Equal Opportunities (particularly in cases of alleged discrimination committed by the Government). The Advocate is nominated by the Government following a proposal from the Minister of Labour, Family, Social Affairs and Equal Opportunities (before April 2012 the proposal was made by the Government Office for Equal Opportunities, which was abolished in April 2012). The Advocate consists of just one person who does not have the capacity to ensure effective protection and perform the tasks associated with Directive 2000/43/EC. The annual budget for the Advocate's activities is determined by the Ministry and consists of only the Advocate's annual salary and some travel expenses. 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.
- Due to the fact that the Advocate is a civil servant working at the Ministry it is not clear whether the Advocate is in a position to provide independent assistance to victims of discrimination.
- The annual report of the Advocate of the Principle of Equality notes that the protection provided by the inspectorates is not functioning well and that the sanctions issued could certainly not be assessed as effective, proportionate and dissuasive. It points out that experience shows that it is extremely unlikely that the inspectorate will even carry out an inspection procedure in the event of a complaint, while the possibility that the perpetrator will be issued with any kind of sanction is practically non-existent. The Advocate further highlights the problems which cause the lack of effectiveness of the inspectorates: in relation to some of the fields protected under anti-discrimination law, none of the inspectorates are competent; the competences of the inspectorates are not clearly defined (with competence sometimes being defined as subsidiary and sometimes as primary); there is a lack of willingness to deal with complaints and use by the inspectorates of various procedural manoeuvres to avoid dealing with them; the fact that inspectorates cannot sanction the actions of either the Ministry, which is superior to the inspectorate, or the actions of other State bodies which have the status of independent bodies; the fact that inspectorates have no specific knowledge about discrimination issues and non-discrimination law; and the problem that the victim of the action is not party to the inspection procedure.
- The Advocate of the Principle of Equality underlines the fact that the current system does not enable NGOs to have legal standing in procedures before district and higher courts or the Supreme Court, as well as procedures before the Administrative Court, i.e. in more demanding procedures where the support of and representation by NGOs could be crucial for the victims.
- Contrary to the directives, the task of conducting surveys in the field of discrimination has not been not awarded to any of the State bodies.

11.2 Other issues of concern

- In spite of the fact that a number of legal remedies exist on paper, the 2012 annual report of the Advocate of the Principle of Equality (the report for 2013 is not yet available) points out that the legal remedies available in Slovenia are not effective and that the system is in fact not working, which can be seen from the low number of cases resolved and sanctions issued.
- The provision that permits direct discrimination is quite confusing and allows for contradicting interpretations. The law in general does not permit direct discrimination, however, Article 2.a of the Act Implementing the Principle of Equal Treatment states that the provisions of this Act do not exclude difference of

treatment on the basis of certain personal characteristics, if such treatment is justified by a legitimate goal and if the means for achieving this goal are appropriate and necessary (Article 2.a(1)). Furthermore, Article 2.a(2) and (3) absolutely prohibit any discrimination, regardless of the provision of Article 2.a(1), except for specifically defined exceptions, related to genuine and determining occupational requirements in the area of employment; religion in religious organisations; 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 to European Union law. In conclusion, this provision is quite confusing since Article 2.a(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.

- Judicial interpretation is required on whether multiple discrimination, assumed discrimination, and discrimination by association are prohibited by national law.
- Judicial interpretation is required on whether situation testing is permitted by law and whether situation testing and statistical evidence are admissible as evidence in courts.
- “Instruction to discriminate” is prohibited by law but the term itself is not defined.
- Discrimination with regard to training is prohibited, but “training” is not defined by law.
- Judicial interpretation is required to specify whether sanctions foreseen for acts of discrimination can be considered as effective and dissuasive.
- The Social Care Act is discriminatory in the area of equal access to employment, since adults who obtain disability status under this Act have the right to receive social benefits, but are automatically presumed as being unable to live independently or unable to be employed, regardless of their actual ability to work. The Act creates an obligation for people who wish to work to renounce their disability status and consequently lose their eligibility for social benefits. Some of these people would be able to take up some form of employment even though they are registered as a person with disabilities under this act.
- According to the Vocational Rehabilitation and Employment of Persons with Disabilities Act, the term “persons with disabilities” applies to a person who has obtained disability status according to the Pension and Disability Insurance Act, or according to any other regulation, and to a person for whom the 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 law does not define whether “mental impairment” applies to intellectual or psycho-social disability or both). The definition of disability under this law therefore differs from that adopted by the European Court in the Chacon Navas case, as the definition in this law connects the impairments to medical treatment which cannot reverse the impairment. Such requirements in national law may restrict people who have not obtained disability status from claiming reasonable accommodation in employment.
- There is no definition of intellectual disability in Slovenian law, which means that it is not clear which people with intellectual disabilities are recognised by law as persons with disabilities and are consequently protected from discrimination under the national anti-discrimination law.
- The lack of case law does not allow for a comprehensive assessment of the effectiveness of the legal protection system in the field of anti-discrimination law.

12 LATEST DEVELOPMENTS

- In 2014, a new Action Programme for Persons with Disabilities 2014–2021 was adopted by the Government. In the field of accessibility, the Action Programme sets out measures for the provision of access to transport, public buildings and the built environment.¹⁶⁴ See Section 2.6.
- The Fourth Report of the European Commission against Racism and Intolerance at the Council of Europe was issued in 2014. It does not report any Roma children without learning disabilities being sent to special schools, but it also states that while 'the national average of children with special needs is 4 %, it is up to 7 % in the case of Roma children'. See Section 3.2.8.
- The Third Government Report on the Situation of the Roma Community in Slovenia was released in 2014. It recognises that the projects carried out with the aim of increasing the educational level of the Roma community and improving their housing situation are scattered and mostly implemented by NGOs. See Sections 3.2.8 and 3.2.10.

12.1 Legislative amendments

- Act Amending the Equalisation of Opportunities for Persons with Disabilities Act¹⁶⁵ providing for special benefits (such as adaptation of vehicles).
- Rules on technical devices and adapting vehicles,¹⁶⁶ benefiting people with visual and/or hearing impairments (for more information see Section 3.6. d) on reasonable accommodation).
- New Parental Protection and Family Benefit Act¹⁶⁷ relevant for social advantages in the field of parental protection and family benefits (for more information see Section 3.2.6 on social protection).

12.2 Case law

Name of the body: Human Rights Ombudsman

Date of decision: Date is not available, 2013

Name of the parties: Not available

Reference number: 0.1-10/2013

Address of the webpage:

www.varuhrs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_letno_2013.pdf

Brief summary: The Ombudsman found that the failure of the municipality to provide clean drinking water to the unregulated Roma settlement of Dobruška vas constitutes violation of human rights (in particular the right to clean drinking water and sanitation) and stressed that the rights of all are not equally protected throughout Slovenia. The Ombudsman did not explicitly state that such treatment constitutes racial discrimination, even though this is implied from its decision.

Name of the court: Higher Labour and Social Court of the Republic of Slovenia

Date of decision: 19 June 2014

Name of the parties: Not available

Reference number: Pdp 224/2014

Address of the webpage: www.sodnapraksa.si

¹⁶⁴ Government Action Programme for Persons with Disabilities 2014–2021, 2014, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/invalidi_vzv/API_2014-2021_ANG.pdf.

¹⁶⁵ Official Journal of the Republic of Slovenia, no. 50/14.

¹⁶⁶ Official Journal of the Republic of Slovenia, no. 71/14.

¹⁶⁷ Official Journal of the Republic of Slovenia, no. 26/14.

Brief summary: The employer abolished part of the production process and justified its need make three people redundant. The claimant, who was among the three people who lost their jobs, stated that she was not dismissed for objectively justified reasons but due to her age. Namely, she was about to reach the age when she would have started to enjoy special labour law protection under the Employment Relationship Act. The court found that while the claimant stated sufficient reasons to believe unequal treatment on the grounds of age had taken place, the employer failed to prove, in accordance with the shift of burden of proof, that her dismissal was objectively justified.

Name of the court: Higher Labour and Social Court of the Republic of Slovenia

Date of decision: 19 June 2014

Name of the parties: Not available

Reference number: Pdp 276/2014

Address of the webpage: www.sodnapraksa.si

Brief summary: The plaintiff claimed that his dismissal from employment constituted age discrimination that was not objectively justified. He claimed he was dismissed just before he reached the age when he would have started to enjoy the protection to which older workers are entitled. The court found that the employer managed to prove that there were economic reasons to justify redundancies in general, but did not prove that the work of this particular worker was no longer necessary. The court found that, while the claimant had provided sufficient reason to believe unequal treatment on the grounds of age had taken place, the employer failed to prove, in accordance with the shift of the burden of proof, that his dismissal was objectively justified.

Name of the court: Higher Labour and Social Court of the Republic of Slovenia

Date of decision: 5 June 2014

Name of the parties: Not available

Reference number: Pdp 382/2014

Address of the webpage: www.sodnapraksa.si

Brief summary: The plaintiff (a man) was laid off from public service as soon as he met the retirement age conditions, based on the Fiscal Balance Act. He claimed his dismissal constituted discrimination on the grounds of age and violated Directive 2000/78/EC. The relevant provisions of the Fiscal Balance Act had already been examined by the Constitutional Court of the Republic of Slovenia which found that the act did not constitute discrimination against men (decision no. U-I-146/12-40, 14 November 2013). In addition to the Constitutional Court decision, the Higher Labour and Social Court based its judgement on the exception in Directive 2000/78/EC which allows for unequal treatment on the grounds of age which is objectively justified by legitimate aims related to employment policy and the labour market. The aim pursued in these cases is to lower the cost of salaries in the public sector while at the same time to achieve a balanced age structure of public servants. The claims of the plaintiffs were denied as unjustified.

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

Date of decision: 18 November 2014

Name of the parties: Not available

Reference number: VIII Ips 106/2014

Address of the webpage: www.sodnapraksa.si

Brief summary: As in the previous case, a plaintiff (again a man) was dismissed from public service as soon as he met the retirement age conditions, based on the Fiscal Balance Act. He claimed his dismissal constituted discrimination on the grounds of age and violated Directive 2000/78/EC. The relevant provisions of the Fiscal Balance Act had already been examined by the Constitutional Court of the Republic of Slovenia which found that the act did not constitute discrimination against men (decision no. U-I-146/12-40, 14 November 2013). The claimant disagreed with the Constitutional Court decision, however, the Supreme Court found that the unequal treatment on the grounds of age is objectively justified in this case by a legitimate aim and that the means to achieve this aim are appropriate and necessary. The claim was denied.

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

Date of decision: 23 January 2014

Name of the parties: Terezija Luteršmit, Erika Kerčmar, Marija Žinkovič (claimants)

Reference number: Up-109/12-18

Address of the webpage: <http://odlocitve.us-rs.si/>

Brief summary: After working for a textile factory for many years (between 24 and 35 years) the claimants were registered as Category III disabled, which gave them the right to part-time work and a partial disability pension. After two and four years respectively they were dismissed by their employer. When calculating their severance payment, the employer took into account the average last three salaries they received for working part-time and the number of years working for the employer, literally following the provisions of the Employment Relationship Act. Before the first and second instance labour and social courts they argued that, for the calculation of their severance pay their previous salary, when they worked full-time, should have been taken into account. The first and the second instance court rejected their claim. However, the Constitutional Court found in their favour, considering that they were treated unequally compared to other workers who had worked for the company for a similar number of years and were made redundant when they still worked full-time, and consequently received twice as much severance pay. The court stated that the claimants' contribution to the company was similar to that of these workers. While the court did not state it explicitly, the case could be read in light of indirect discrimination on the grounds of disability.

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

Date of decision: 10 April 2014

Name of the parties: Herman Hari, Iztok Mrak and Karmen Bajt (complainants)

Reference number: U-I-156/11-29

Address of the webpage: <http://odlocitve.us-rs.si/>

Brief summary: The complainants challenged Article 79.a of the National Assembly Elections Act which defines very limited duties of the State to ensure accessibility of polling stations and to adapt the means of voting (positive action in relation to disability). According to the law, one third of polling stations should be accessible. The claimants argued that all (and not only some) polling stations should be accessible for persons with disabilities and that they should be enabled to vote by themselves and not with the assistance of other people. They claimed that the provision violates Article 14 (non-discrimination) and Article 44 of the Constitution (participation in managing public affairs) and Article 9 of the Convention on the Rights of Persons with Disabilities which obliges the States Parties to ensure accessibility of buildings, the built environment, means of transport, information and communication. The Court established that, while the right to vote is a basic political right, only about 34 % of all polling stations were accessible at the last elections. Taking into account the obligation undertaken by the State decades ago to improve the accessibility of buildings for people with disabilities, the percentage of voting stations that are accessible for people with disabilities should be higher. The Constitutional Court decided to divert from its previous decision from 2010 on the same topic (in which it examined the same arguments and did not find a violation) and found a violation of Article 14 in relation to Article 43 of the Constitution (the right to vote). It declared Article 79.a of the National Assembly Elections Act contrary to the Constitution and ordered the national Assembly to eliminate the unconstitutionality within two years.

There is no information available on the trends and patterns in 2014 regarding cases brought to courts by Roma people. The only trends and patterns available are related to the cases dealt with by the Human Rights Ombudsman as described above.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Please list below the **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

Country: Slovenia

Date: 31 December 2014

Title of legislation (including amending legislation)	Title of the Law: Act Implementing the Principle of Equal Treatment Abbreviation: AIPET Date of adoption: 22 April 2004 Latest amendments: 22 June 2007 Entry into force: 7 May 2004 Web link: http://www.pisrs.si Grounds protected: gender, ethnicity, race or ethnic origin, religion or belief, disability, age, sexual orientation, or other personal circumstance
	Civil law Administrative law
	Material scope: Retraining, practical work experience; employment and working conditions, dismissals and pay; membership of and involvement in an organization of workers or employers, or other professional organization, including the benefits; social Protection, social security and healthcare; social advantages; education; Access to and supply of goods and services which are available to the public, including housing.
	Principal content: 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.
Title of legislation (including amending legislation)	Title of the law: Vocational Rehabilitation and Employment of Persons with Disabilities Act Abbreviation: VREPD Date of adoption: 21 May 2004 Latest amendments: 19. Oct. 2011 Entry into force: 25 June 2004 Web link: http://www.pisrs.si Grounds covered: disability
	Administrative Law Labour Law
	Material scope: Employment
	Principal content: Positive action, creation of a specialised body
Title of legislation (including amending legislation)	Title of the law: Act on Equal Opportunities of People with Disabilities Abbreviation: AEOPD Date of adoption: 16 Nov. 2010 Latest amendments: 4 July 2014 Entry into force: 11 Dec. 2010 Web link: http://www.pisrs.si Grounds covered: disability
	Administrative law
	Material scope: Employment, education, access to and supply of goods and services which are available to the public, including housing.
	Principal content: Appropriate (reasonable) accommodation
Title of legislation (including amending legislation)	Title of the law: Employment Relationship Act Abbreviation: ERA Date of adoption: 5 March 2013 Latest amendments: / Entry into force: 12 April 2013 Web link: http://www.pisrs.si

	<p>Grounds covered: Ethnicity, race or ethnic origin, national and social origin, gender, skin colour, health condition, disability, religion or belief, age, sexual orientation, family status, membership in a trade union, financial situation or other personal circumstance.</p> <p>Labour law</p> <p>Material scope: Public employment, private employment</p> <p>Principal content: 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.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Penal Code</p> <p>Abbreviation: PC</p> <p>Date of adoption: 20 May 2008</p> <p>Latest amendments: 2 Nov. 2011</p> <p>Entry into force: 1 Nov. 2008</p> <p>Web link: http://www.pisrs.si</p> <p>Grounds covered: Ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other circumstance.</p> <p>Criminal law</p> <p>Material scope: /</p> <p>Principal content: Prohibition of unequal treatment, prohibition of incitement to ethnic or religious hatred, or hatred on the basis of sexual orientation, prohibition of violation of equal rights at employment and social services.</p>
Title of legislation (including amending legislation)	<p>Title of the law: Protection of Public Order Act</p> <p>Abbreviation: PPOA</p> <p>Date of adoption: 22 June 2006</p> <p>Latest amendments: /</p> <p>Entry into force: 21 July 2006</p> <p>Web link: http://www.pisrs.si</p> <p>Grounds covered: Ethnicity, race, gender, religious, political opinion or sexual orientation</p> <p>Criminal law/Misdemeanour law</p> <p>Material scope: /</p> <p>Principal content: Prohibition of incitement to intolerance (hate speech)</p>
Title of legislation (including amending legislation)	<p>Title of the law: Constitution of the Republic of Slovenia</p> <p>Abbreviation: CRS</p> <p>Date of adoption: 23 Dec. 1991</p> <p>Latest amendments: 31 May 2013</p> <p>Entry into force: 23 Dec. 1991</p> <p>Web link: http://www.pisrs.si</p> <p>Grounds covered: National origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability</p> <p>Constitutional law</p> <p>Material scope: /</p> <p>Principal content: /</p>

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Slovenia

Date: 31 December 2014

Instrument	Date of signature (if not signed please indicate) Dd.mm. yyyy	Date of ratification (if not ratified please indicate) Dd.mm. yyyy	Derogations/ reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	14.05.1993	28.05.1994	No	Yes	Yes
Protocol 12, ECHR	07.03.2001	07.07.2010	No	Yes	Yes
Revised European Social Charter	11.10.1997	07.05.1999	Declaration on Part II, Articles 13, 18 (2).	Ratified collective complaints protocol?	11 Oct 1997
International Covenant on Civil and Political Rights	16.07.1993 (succession)	18.08.1993 (entry into force)	No	Yes	Yes
Framework Convention for the Protection of National Minorities	01.02.1995	25.03.1998	No	-	Yes
International Covenant on Economic, Social and Cultural Rights	06.07.1992 (succession)	06.07.1992 (entry into force)	No	-	Yes
Convention on the Elimination of All Forms of Racial Discrimination	06.07.1992 (succession)	06.07.1992 (entry into force)	No	Yes	Yes
Convention on the Elimination of Discrimination Against Women	06.07.1992 (succession)	05.08.1992 (entry into force)	No	Yes	Yes
ILO Convention No. 111 on Discrimination	29.05.1992	29.05.1992	Yes	Yes	Yes
Convention on the Rights of the Child	06.07.1992 (succession)	25.06.1991 (entry into force)	No	Yes	Yes

Instrument	Date of signature (if not signed please indicate) Dd.mm. YYYY	Date of ratification (if not ratified please indicate) Dd.mm. YYYY	Derogations/ reservations relevant to equality and non- discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
Convention on the Rights of Persons with Disabilities	30.03.2007	24.04.2008	No	Yes	Yes

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