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# Country report

## Non-discrimination

Slovenia

2017

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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. The 2007 Roma Community Act establishes a Council of the Roma Community and provides a legal 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 2014 and the 2014 Fourth Report on Slovenia of the European Commission against Racism and Intolerance at the Council of Europe. Migrants and asylum seekers are protected on an equal basis with Slovenian citizens but there are no specific policies or provisions in antidiscrimination laws aimed at them.

In 2016, a Civil Unions Act was adopted, providing for rights of same-sex partners equal to those of opposite-sex partners, except for in relation to marriage, joint adoption and access to donor insemination.<sup>1</sup>

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 people with disabilities is unconstitutional.<sup>2</sup> In 2014 amendments to the Act on Equal Opportunities for People with Disabilities<sup>3</sup> were adopted, as well as an implementing act,<sup>4</sup> 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 that the mandatory termination of employment for State officials who reach the retirement age, is in accordance with the Constitution and in line with the exception to the prohibition of discrimination on the ground of age.<sup>5</sup>

The organisation of the equality body in Slovenia – the Advocate of the Principle of Equality – was the most important political issue in the non-discrimination field. Under the Protection against Discrimination Act 2016,<sup>6</sup> a new equality body was established on 25

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<sup>1</sup> Slovenia, Civil Unions Act (*Zakon o partnerski zvezi*), adopted on 21 April 2016, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434) (last accessed 27 March 2017).

<sup>2</sup> Constitutional Court of the Republic of Slovenia, Decision no. U-I-156/11-29, 10 April 2014.

<sup>3</sup> Slovenia, Act amending the Act on Equal Opportunities for People with Disabilities (*Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*), adopted on 30 June 2014, available at: <http://www.uradni-list.si/1/objava.jsp?sop=2014-01-2080> (last accessed 30 August 2016).

<sup>4</sup> Slovenia, Rules on technical aids and adaptation of vehicles (*Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*), adopted on 1 October 2014, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12201> (last accessed 30 August 2016).

<sup>5</sup> Constitutional Court of the Republic of Slovenia, Decision no. U-I-146/12-40, 14 November 2013.

<sup>6</sup> Slovenia, Protection against Discrimination Act (*Zakon o varstvu pred diskriminacijo*), adopted on 21 April 2016, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273> (last accessed 16 October 2016).

October 2016, but it is now questionable whether its resources are sufficient to enable it to fulfil its mandate.

## 2. Main legislation

At the constitutional level discrimination on all personal grounds is prohibited by Article 14 of the Constitution.<sup>7</sup> 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.<sup>8</sup> 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,<sup>9</sup> 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 acceded to the European Union, the Act Implementing the Principle of Equal Treatment<sup>10</sup> was adopted in May 2004, transposing Council Directives 2000/43/EC and 2000/78/EC into national legislation. In 2016 it was replaced by the new Protection against Discrimination Act. Discrimination was also prohibited under the 2003 Employment Relationship Act, which was replaced by the 2013 Employment Relationship Act.<sup>11</sup> The provisions on discrimination have not changed with the adoption of the 2013 law, with the exception of liability for damages, which is now defined in more detail.

The 2004 Vocational Rehabilitation and Employment of Persons with Disabilities Act<sup>12</sup> specifically prohibits discrimination on the grounds of disability and introduces a system of positive measures for the employment of people with disabilities. In 2010 the Act on Equal Opportunities for People with Disabilities was adopted,<sup>13</sup> setting out the duty of appropriate (reasonable) accommodation for people with disabilities. Not all the implementing acts planned by this law have been adopted, which impedes its practical implementation.

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, language, gender identity or gender expression, social standing, economic situation, education and all laws include a general clause on 'other personal characteristics'. Specifically, the protected grounds mentioned in the Employment Relationship Act include social origin, skin colour, health condition, family status, membership of a trade union and financial situation, which is more than the directives require.

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<sup>7</sup> Slovenia, Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), adopted on 23 December 1992, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=USTA1> (last accessed 30 August 2016).

<sup>8</sup> Constitutional Court of the Republic of Slovenia, Decision no. U-I-425/06, 2 July 2009.

<sup>9</sup> Slovenia, Penal Code (*Kazenski zakonik*), adopted on 20 May 2008, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050> (last accessed 30 August 2016).

<sup>10</sup> Slovenia, Act Implementing the Principle of Equal Treatment (*Zakon o uresničevanju načela enakega obravnavanja*), adopted on 22 April 2004, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3908> (last accessed 30 August 2016).

<sup>11</sup> Slovenia, Employment Relationship Act (*Zakon o delovnih razmerjih*), adopted on 5 March 2013, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944> (last accessed 30 August 2016).

<sup>12</sup> Slovenia, Vocational Rehabilitation and Employment of Disabled Persons Act (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*), adopted on 21 May 2004, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841> (last accessed 30 August 2016).

<sup>13</sup> Slovenia, Act on Equal Opportunities for People with Disabilities (*Zakon o izenačevanju možnosti invalidov*), adopted on 16 November 2010, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4342> (last accessed 30 August 2016).



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 implemented by the equality body, the Advocate of the Principle of Equality, established pursuant to the previous Act Implementing the Principle of Equal Treatment and reformed with the 2016 Protection against Discrimination Act, in order to examine complaints of discrimination and provide assistance to victims.

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

Both the Protection against Discrimination Act 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 Protection against Discrimination Act also prohibits discrimination by association, discrimination by assumption and severe forms of discrimination (multiple discrimination, mass discrimination, long-term or continuous discrimination, or discrimination which causes or could cause irreversible consequences for victims in relation to the damage to their legal situation, rights or obligations, in particular if it is perpetrated against children or other vulnerable people). The Employment Relationship Act also includes the personal characteristics 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 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.

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 Protection against Discrimination Act 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 respect of education, access to goods and services, access to public buildings and access to information. In addition, some form of duty of reasonable accommodation in the field of employment can be indirectly derived from the Vocational Rehabilitation and Employment of Persons with Disabilities Act and some provisions of the Employment Relationship Act (the legislation does not call it 'reasonable accommodation'; the terminology used is 'manners, measures and incentives' concerning the employment of people with disabilities).

#### **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 (and beyond) 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 Protection against Discrimination Act states that this law is binding for state bodies, local communities and holders of public authority, as well as legal and natural persons who are responsible for ensuring protection from discrimination in all fields of exercising public authority, participation in legal transactions and all other areas of their activities, 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 Protection against Discrimination Act, 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 the competent inspectorate for an inspection procedure 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, 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 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 of using 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 Protection against Discrimination Act defines the possibility of involvement by NGOs and the Advocate in judicial and administrative proceedings in cases of alleged discrimination, in accordance with the conditions defined by law. However, the conditions for representation of the victim by the Advocate or an association are now stricter than the general rules of representation under the Civil Procedure Act.

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 people. However, under the new Act the Advocate has the power to initiate constitutional review of laws that are allegedly discriminatory.

Both the Protection against Discrimination Act 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 (formally ranging from EUR 250 to EUR 30 000, but in fact the fines imposed may not exceed the minimum, since there is no formal authorisation in law for imposing fines higher than the minimum), 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), people 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 previous 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, and since 2012 within the Ministry of Labour, Family, Social Affairs and Equal Opportunities. Following the adoption of the new Protection against Discrimination Act and the election of the new Advocate, the institution of the Advocate of the Principle of Equality became an independent state body. The mandate of the new Advocate is to conduct independent research on the situation of people with a certain personal characteristic, publish independent reports and issue recommendations, undertake control of respect for legislation, provide independent assistance to victims of discrimination in the sense of advice and legal aid to parties in other administrative and judicial procedures related to discrimination, raise awareness of the general public about discrimination and measures for its prevention, monitor the general situation in the Republic of Slovenia in the field of protection from discrimination and the situation of people with certain personal characteristics, propose the adoption of special measures to improve the situation of people who are in a less favourable situation due to a certain personal characteristic, take part in judicial proceedings initiated because of discrimination, ensure the exchange of available information with the European Union bodies, and conduct other tasks.

The investigation procedure before the Advocate is formal and free of charge. The Advocate has investigative powers and issues decisions ordering the termination of discrimination and the adoption of measures, but cannot impose misdemeanour fines or other sanctions

in the case of a violation. If the perpetrator does not comply with the Advocate's decisions, the Advocate may refer the case to the competent inspectorate to carry out the misdemeanour procedure. In the past, the Advocate's office, which consisted of only one designated civil servant, was barely operational. This should change with the reform of the body, if sufficient resources are provided for its operations. The Advocate's planned budget for 2017 is EUR 200 000, of which EUR 130 000 is allocated for staff costs.

The previous procedure before the Advocate was informal, he/she had no investigative powers and his/her decisions were not binding, but this should change with the new Advocate. In addition, the independence of the Advocate is further enhanced by a nomination procedure similar to that for the Human Rights Ombudsman or Information Commissioner, as well as with the additional conditions and exclusion criteria for the person to be nominated. Under the previous legislation the Advocate had only limited powers (focusing on assistance to victims and examining complaints), but it now also has explicitly stated powers to conduct surveys and publish reports and several other powers. According to the most recent annual report including cases that have been closed (from 2012), the Advocate of the Principle of Equality issued an opinion in 20 cases of alleged discrimination. In these 20 cases one case concerned disability, 18 religion or belief and seven sexual orientation (some complaints were merged). The reports for 2013, 2014, and 2015 were not released. The report for 2016 issued by the new Advocate does not involve statistics on the closed cases (none were closed in 2016) but describes the 278 cases that are pending.

## **7. Key issues**

- The law in general does not permit direct discrimination. However, Article 13 (1) of the Protection against Discrimination Act states that, in spite of the general requirement to ensure equal treatment in Article 5 of the PADA, differential treatment based on personal characteristics does not constitute discrimination in line with this act, if such treatment is based on a legitimate goal and if the means for achieving this goal are appropriate, necessary and proportionate. This provision reads as if direct discrimination on the ground of race and ethnicity is also justified as long as the principle of proportionality is respected, which is not in line with Article 2 of the Racial Equality Directive.
- The new equality body set up with the nomination of the new Advocate as of 24 November 2016 lacks the resources for effective work. The budget for 2017 is EUR 200 000, of which EUR 130 000 is available for three to four staff members. It is anticipated that the body will be provided with administrative support by the Ministry of Labour, Family, Social Affairs and Equal Opportunities for the next two years, but in order for the equality body to become explicitly independent there is a need for a reconsideration as to whether the allocated budget suffices for the extensive tasks given to the Advocate by the new Protection against Discrimination Act. So far, the Advocate has been completely incapacitated, as the last full annual report was published in 2012 for 2011.
- 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. It is questionable whether this will change with the new Protection against Discrimination Act. As in the previous act, – the Act Implementing the Principle of Equal Treatment – it is again not specifically stipulated in the new Act that a certain inspectorate is competent to examine cases of discrimination in its respective field of work, so the inspectorates consider themselves incompetent and insist that it is the

Advocate who should always carry out the procedure first. These inconsistencies weaken protection from discrimination.

- The sanctions (fines for misdemeanours or minor offences) prescribed in a range from a maximum to a minimum are, in fact, prescribed only at the minimum end of the range. Namely, the Protection against Discrimination Act does not contain an explicit authorisation for the inspectorates to impose fines higher than the minimum, which means that, unless the law changes, legal persons will never have to pay more than EUR 3 000 in fines for discrimination, while natural persons will not need to pay more than EUR 250 or 500, depending on the gravity and the type of offence. This indicates that the fines cannot be regarded as effective and dissuasive.
- With the new provisions on the standing of NGOs and the Advocate, who are now explicitly allowed to represent victims in judicial proceedings and act on their behalf, a new problem has emerged. Namely, the conditions for representation are now stricter for judicial cases of discrimination dealt with by county courts, than for any other judicial case. According to the Civil Procedure Act, anyone with legal capacity may represent a party before the county courts, while according to the new Protection against Discrimination Act, an individual must have passed the state legal exam (bar exam) to represent a complainant. The conditions are therefore stricter for cases of discrimination which makes their access to justice more difficult.
- It is not clear whether the new Protection against Discrimination Act provisions on remedies that can be claimed before courts in cases of discrimination (termination of discrimination, compensation and publication of the judgment in the media) now exist in addition to the general tort law provisions or whether these provisions replace the general tort law rules.
- Related to this, it is not clear whether the ceiling for compensation which is set at a maximum of EUR 5 000 is in place only for compensation claimed solely due to exposure to discrimination or for compensation in cases of discrimination in general. The verbatim interpretation supports the former position. If the former is true, the sanctions could not be considered dissuasive, as this would mean that compensation in cases of discrimination can never exceed EUR 5 000, even if the actual damages were much higher.
- 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 characteristics, none of the State bodies is responsible, e.g. sexual orientation.

Other issues mentioned in the report are:

- 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.
- 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).
- Age limits for access to certain jobs could be in breach of EU law and CJEU case law.

## 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. La loi de 2007 sur la communauté rom institue un Conseil de la communauté rom de Slovénie et constitue une base juridique 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 2014 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. Les migrants et les demandeurs d'asile sont protégés au même titre que les citoyens slovènes mais les lois antidiscrimination ne comportent aucune mesure ni disposition spécifique à leur intention.

Une loi sur les unions civiles a été adoptée en 2016. Elle prévoit pour les partenaires de même sexe des droits égaux à ceux de partenaires de sexe opposé hormis pour ce qui concerne le mariage, l'adoption conjointe et l'accès à l'insémination par donneur.<sup>14</sup>

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.<sup>15</sup> En 2014 également, des amendements à la loi sur l'égalité des chances pour les personnes handicapées<sup>16</sup> ont été votés, de même qu'un acte d'exécution,<sup>17</sup> 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 est conforme à la Constitution et relevait de l'exception à l'interdiction de discrimination fondée sur l'âge.<sup>18</sup>

La grande question politique en matière de lutte contre la non-discrimination a longtemps porté sur le fonctionnement de l'organisme slovène pour la promotion de l'égalité – le Défenseur du principe d'égalité. Un nouvel organisme pour l'égalité a été institué le

<sup>14</sup> Slovénie, loi sur les unions civiles (*Zakon o partnerski zvezi*), adoptée le 21 avril 2016, disponible sur: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434) (consulté en dernier lieu le 27 mars 2017).

<sup>15</sup> Arrêt n° U-I-156/11-29 du 10 avril 2014 de la Cour constitutionnelle de la République de Slovénie.

<sup>16</sup> Slovénie, loi modifiant la loi sur l'égalité des chances pour les personnes handicapées (*Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*), adoptée le 30 juin 2014, disponible sur <http://www.uradni-list.si/1/objava.jsp?sop=2014-01-2080> (consulté en dernier lieu le 30 août 2016).

<sup>17</sup> Slovénie, règles en matière d'aides techniques et d'adaptation des véhicules (*Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*), adoptées le 1<sup>er</sup> octobre 2014, disponibles sur <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12201> (consulté en dernier lieu le 30 août 2016).

<sup>18</sup> Arrêt n° U-I-146/12-40 du 14 novembre 2013 de la Cour constitutionnelle de la République de Slovénie.

25 octobre 2016 en vertu de la loi de 2016 sur la protection contre la discrimination,<sup>19</sup> mais la question qui se pose désormais est celle de savoir si les ressources dont il dispose lui permettront de s'acquitter de son mandat.

## 2. Législation principale

L'article 14 de la Constitution interdit la discrimination fondée sur tout motif personnel.<sup>20</sup> 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.<sup>21</sup> 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;<sup>22</sup> 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).

Après son accession à l'Union européenne, la Slovénie a adopté en mai 2004 la loi sur la mise en œuvre du principe de l'égalité de traitement<sup>23</sup> pour transposer en droit interne les directives 2000/43/CE et 2000/78/CE du Conseil; elle a été remplacée en 2016 par la nouvelle loi relative à la protection contre la discrimination. La discrimination était également interdite en vertu de l'article 6 de la loi sur les relations de travail, remplacée par une nouvelle loi sur les relations de travail<sup>24</sup> en 2013. Les dispositions relatives à la discrimination n'ont pas été modifiées par la loi de 2013 hormis en ce qui concerne la responsabilité relative aux dommages, laquelle est désormais davantage précisée.

La loi de 2004 sur la réadaptation professionnelle et l'emploi des personnes handicapées<sup>25</sup> interdit spécifiquement la discrimination fondée sur le handicap et instaure un système de mesures positives en faveur de l'emploi des personnes souffrant d'un handicap. Adoptée en 2010, la loi sur l'égalité des chances pour les personnes handicapées<sup>26</sup> définit pour sa part l'obligation d'aménagement approprié (raisonnable) à l'intention de ces personnes. L'application concrète de cette loi est entravée du fait que tous les actes d'exécution y afférents n'ont pas encore 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

<sup>19</sup> Slovénie, loi relative à la protection contre la discrimination (*Zakon o varstvu pred diskriminacijo*), adoptée le 21 avril 2016, disponible sur: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273> (consulté en dernier lieu le 16 octobre 2016).

<sup>20</sup> Slovénie, Constitution de la République de Slovénie (*Ustava Republike Slovenije*), adoptée le 23 décembre 1992, disponible sur <http://www.pisrs.si/Pis.web/pregledPredpisa?id=USTA1> (consulté en dernier lieu le 30 août 2016).

<sup>21</sup> Arrêt n° U-I-425/06 du 2 juillet 2009 de la Cour constitutionnelle de la République de Slovénie,

<sup>22</sup> Slovénie, Code pénal (*Kazenski zakonik*), adopté le 20 mai 2008, disponible sur <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050> (consulté en dernier lieu le 30 août 2016).

<sup>23</sup> Slovénie, loi portant application du principe de l'égalité de traitement (*Zakon o uresničevanju načela enakega obravnavanja*), adoptée le 22 avril 2004, disponible sur <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3908> (consulté en dernier lieu le 30 août 2016).

<sup>24</sup> Slovénie, loi sur les relations de travail (*Zakon o delovnih razmerjih*), adoptée le 5 mars 2013, disponible sur <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944> (consulté en dernier lieu le 30 août 2016).

<sup>25</sup> Slovénie, loi sur la réadaptation professionnelle et l'emploi des personnes handicapées (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*), adoptée le 21 mai 2004, disponible sur <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841> (consulté en dernier lieu le 30 août 2016).

<sup>26</sup> Slovénie, loi sur l'égalité des chances pour les personnes handicapées (*Zakon o izenačevanju možnosti invalidov*), adoptée le 16 novembre 2010, disponible sur <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4342> (consulté en dernier lieu le 30 août 2016).

les convictions, l'orientation sexuelle, l'âge et le handicap. La législation interdit en outre la discrimination fondée sur le genre, la langue, l'identité ou l'expression de genre, la position sociale, la situation économique et l'instruction, et toutes les lois comportent une clause générale visant les «autres caractéristiques personnelles». De façon plus spécifique, les motifs protégés cités dans la loi sur les relations de travail incluent 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.

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 précédente loi mettant en œuvre le principe de l'égalité de traitement et réformé par la loi de 2016 relative à la protection contre la discrimination, afin d'examiner les plaintes pour discrimination et de fournir une assistance aux victimes.

### **3. Principes généraux et définitions**

La loi relative à la protection contre la discrimination 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 relative à la protection contre la discrimination interdit également la discrimination par association, la discrimination par présomption et les formes graves de discrimination (discrimination multiple, discrimination massive, discrimination de longue durée ou permanente, ou discrimination entraînant ou susceptible d'entraîner des conséquences irréversibles pour les victimes en termes de préjudice porté à leur situation juridique, leurs droits ou leurs obligations, en particulier lorsqu'elle s'exerce à l'encontre d'enfants ou d'autres personnes vulnérables). La loi sur les relations de travail inclut également pour sa part les caractéristiques personnelles 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.

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 relative à la protection contre la discrimination 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'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 dans le domaine de l'emploi 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).

#### **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 (et au-delà) 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 relative à la protection contre la discrimination dispose en outre que ses dispositions sont contraignantes pour les organismes publics, les collectivités locales et les détenteurs de charges publiques, ainsi que pour les personnes physiques ou morales responsables d'assurer la protection contre la discrimination dans tous les domaines relevant de l'exercice de l'autorité publique, de la participation à des transactions juridiques et de tout autre secteur de leur activité – ce qui signifie que 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 relative à la protection contre la discrimination, 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 de l'inspection compétente en vue d'une procédure de contrôle 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 formelle. Une victime peut également déposer plainte directement auprès de l'inspection, même si les inspections se sont déclarées incompétentes dans certains cas du fait que 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 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 relative à la protection contre la discrimination prévoit la possibilité pour des ONG et le Défenseur de prendre part à des procédures judiciaires et administratives en cas de présomption de discrimination, conformément aux conditions fixées par la loi. Ceci dit, les conditions relatives à la représentation de la victime par le Défenseur ou une association sont désormais plus rigoureuses que les règles générales en matière de représentation figurant dans la loi de procédure civile.

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. En vertu de la nouvelle loi, toutefois, le Défenseur est habilité à initier une révision constitutionnelle des lois prétendument discriminatoires.

La loi relative à la protection contre la discrimination 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 officiellement de 250 à 30 000 euros, mais qui ne peuvent en réalité dépasser le minimum car la loi ne contient aucune autorisation formelle d'imposer des amendes supérieures à ce minimum), 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 précédente 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 et, depuis 2012, au sein du ministère du Travail, de la famille, des affaires sociales et de l'égalité des chances. Suite à l'adoption de la nouvelle loi relative à la protection contre la discrimination et à l'élection du nouveau Défenseur, l'institution du Défenseur du principe d'égalité est devenue un organisme public indépendant. Le nouveau Défenseur a pour mandat de consacrer des études indépendantes à la situation des personnes présentant certaines caractéristiques personnelles; de publier des rapports indépendants et de formuler des recommandations; de procéder au contrôle du respect de la législation; de fournir une aide indépendante aux victimes de discrimination sous la forme de conseils et d'assistance juridique aux parties à d'autres procédures administratives et judiciaires portant sur une discrimination; de sensibiliser le grand public au phénomène discriminatoire et aux mesures visant à le prévenir; d'assurer un suivi de la situation générale de la République de Slovénie en termes de protection de la discrimination, et de la situation des personnes présentant certaines caractéristiques personnelles; de proposer l'adoption de mesures spéciales en vue d'améliorer la situation des personnes se trouvant dans une situation moins favorable en raison d'une caractéristique personnelle déterminée; de prendre part aux poursuites judiciaires initiées pour cause de discrimination; d'assurer l'échange des informations disponibles avec les organes de l'Union européenne; et de réaliser une série d'autres tâches.

La procédure d'examen devant le Défenseur est formelle et gratuite. Le Défenseur jouit de pouvoirs d'investigation et rend des décisions ordonnant la cessation de la discrimination et l'adoption de mesures, mais il ne peut imposer d'amendes ni d'autres sanctions lorsqu'une infraction est établie. Si l'auteur des faits ne se conforme pas aux décisions du Défenseur, celui-ci peut soumettre l'affaire à l'inspection compétente afin de poursuivre la procédure contraventionnelle. Le bureau du Défenseur, formé d'un seul fonctionnaire désigné, est resté longtemps à peine opérationnel. Les choses devraient changer avec la réforme de l'institution pour autant que des ressources suffisantes lui soient allouées pour agir. Il est prévu d'allouer au Défenseur un budget de 200 000 euros pour 2017, dont 130 000 euros pour les frais de personnel.

Les procédures engagées devant le Défenseur avaient précédemment un caractère informel; il ne jouissait d'aucun pouvoir d'investigation; et ses décisions n'étaient pas exécutoires – mais tout cela devrait changer avec le nouveau Défenseur. Son indépendance sera en outre renforcée encore par une procédure de nomination similaire à celle en vigueur pour le Médiateur pour les droits de l'homme ou le Commissaire à l'information, ainsi que par l'ajout d'exigences et de critères d'exclusion du candidat. Le Défenseur n'était doté en vertu de la législation antérieure que de compétences limitées (axées sur l'assistance aux victimes et sur l'examen des plaintes), mais il est désormais explicitement compétent, entre autres, pour réaliser des études et publier des rapports. Il ressort du dernier rapport annuel incluant les affaires clôturées (depuis 2012) que le Défenseur du principe d'égalité a rendu 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 sept cas liés à l'orientation sexuelle (certaines plaintes ont été jointes). Les rapports relatifs aux années 2013, 2014 et 2015 n'ont pas été publiés. Le rapport relatif à 2016, publié par le nouveau Défenseur, ne contient pas de statistiques concernant les affaires clôturées (aucune n'a été clôturée en 2016) mais décrit les 278 dossiers en cours.

## 7. Points essentiels

- Le droit en général n'autorise pas la discrimination directe. Cependant l'article 13, paragraphe premier, de la loi relative à la protection contre la discrimination dispose qu'en dépit de l'exigence générale de veiller à l'égalité de traitement figurant en son article 5, une différence de traitement fondée sur des caractéristiques personnelles ne constitue pas une discrimination en vertu de ladite loi lorsque le traitement en question relève d'un but légitime et que les moyens d'atteindre ce but sont appropriés, nécessaires et proportionnés. Cette disposition peut s'interpréter comme justifiant également une discrimination directe fondée sur la race ou l'origine ethnique pour autant que le principe de proportionnalité soit respecté, ce qui n'est pas conforme à l'article 2 de la directive sur l'égalité raciale.
- Le nouvel organisme pour l'égalité mis en place avec la nomination du nouveau Défenseur à dater du 24 novembre 2016, ne dispose pas de ressources lui permettant de travailler efficacement. Le budget pour 2017 est fixé à 200 000 euros, dont 200 000 euros disponibles pour trois ou quatre membres de personnel. Il est prévu que l'organisme bénéficie du soutien administratif du ministère du Travail, de la famille, des affaires sociales et de l'égalité des chances pendant les deux prochaines années mais il faudrait, afin que l'organisme pour l'égalité devienne explicitement indépendant, s'interroger sur le point de savoir si le budget alloué lui permettra d'assumer les lourdes tâches conférées au Défenseur par la nouvelle loi sur la protection contre la discrimination. Le Défenseur a été jusqu'ici dans l'incapacité totale d'exercer sa fonction, la publication du dernier rapport annuel complet remontant à 2012 (relatif à 2011).
- 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. Rien ne permet d'affirmer que cette situation va changer avec la nouvelle loi relative à la protection contre la discrimination, étant donné qu'elle ne précise pas plus spécifiquement que la loi précédente – à savoir la loi portant application du principe de l'égalité de traitement – 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 dès lors incompétentes et font valoir qu'il appartient toujours au Défenseur de mener les procédures en premier. Ces incohérences affaiblissent le degré de protection contre la discrimination.
- Les sanctions (amendes pour délits ou infractions mineures) prévues dans une fourchette allant d'un maximum à un minimum ne sont, en réalité, appliquées qu'au taux minimal. En fait, étant donné que la loi relative à la protection contre la discrimination ne contient aucune disposition autorisant expressément les inspections à infliger des amendes supérieures au minimum, les personnes morales ne seront jamais tenues, sauf modification de la loi, de payer plus de 3 000 euros d'amende en cas de discrimination, et les personnes physiques ne devront pas payer plus de 20 ou 500 euros selon le type d'infraction et sa gravité. On peut en déduire que les amendes ne peuvent être considérées comme efficaces et dissuasives.
- Un nouveau problème découle des nouvelles dispositions relatives à l'habilitation des ONG et du Défenseur, désormais expressément autorisés à représenter des victimes dans le cadre de procédures judiciaires et à agir en leur nom. En effet, les conditions de cette représentation sont aujourd'hui plus strictes en ce qui concerne les affaires de discrimination traitées par les tribunaux cantonaux qu'en ce qui concerne n'importe quelle autre affaire judiciaire. En vertu de la loi de procédure civile, toute personne dotée de la capacité juridique peut représenter une partie plaignante

devant les tribunaux cantonaux alors qu'en vertu de la nouvelle loi relative à la protection contre la discrimination, la personne doit avoir réussi l'examen de droit de l'État (examen du barreau) pour assurer cette représentation. Les conditions sont donc plus rigoureuses dans le cas d'affaires de discrimination, ce qui a pour effet qu'il est plus difficile de les porter en justice.

- On ne peut déterminer clairement si les dispositions en matière de réparation qui figurent dans la nouvelle loi relative à la protection contre la discrimination et peuvent être invoquées en justice en cas de discrimination (cessation de la discrimination, indemnisation et publication de l'arrêt dans les médias) s'ajoutent désormais aux règles générales du droit de la responsabilité civile ou bien s'ils les remplacent.
- De même, il n'apparaît pas clairement si le plafond fixé à 5 000 euros s'applique uniquement à une indemnisation résultant exclusivement d'une exposition à une discrimination ou s'il s'applique à l'indemnisation dans les affaires de discrimination de façon générale. L'interprétation textuelle étaye la première option. Si elle devait se confirmer, les sanctions ne pourraient être considérées comme dissuasives puisque cela signifierait qu'en cas de discrimination l'indemnité ne peut jamais dépasser 5 000 euros, même si le préjudice réel s'élève à un montant beaucoup plus élevé.
- 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 certaines caractéristiques personnelles, telle l'orientation sexuelle.

Les points suivants sont également mentionnés dans le rapport:

- 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.
- 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).
- Les limites d'âge imposées pour l'accès à certains emplois pourraient contrevenir au droit de l'UE et à la jurisprudence de la CJUE.

## 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 Zuge des 2007 verabschiedeten Gesetzes für die Roma-Gemeinschaft wurden ein Rat der Roma-Gemeinschaft eingerichtet und die Rechtsgrundlagen für weitere Fördermaßnahmen zugunsten der Roma geschaffen. Der Bericht „Parallel lives“ von Amnesty International aus dem Jahr 2011, der Jahresbericht des Ombudsmanns für Menschenrechte für 2014 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. Migrant/innen und Asylsuchende genießen den gleichen Schutz wie die slowenischen Bürger/innen; spezielle, auf sie zugeschnittene Maßnahmen oder Bestimmungen in den Antidiskriminierungsgesetzen existieren jedoch nicht.

2016 wurde ein Lebenspartnerschaftsgesetz verabschiedet, das gleichgeschlechtlichen Partnern die gleichen Rechte zuspricht wie gegengeschlechtlichen Partnern, mit Ausnahme von Eheschließung, gemeinsamer Adoption und dem Zugang zu donogener Insemination.<sup>27</sup>

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.<sup>28</sup> Im Jahr 2014 wurde eine Neufassung des Gesetzes für die Gleichstellung von Menschen mit Behinderungen<sup>29</sup> verabschiedet,<sup>30</sup> 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.<sup>31</sup>

Die Organisation der slowenischen Gleichbehandlungsstelle – der Anwaltschaft für den Gleichheitsgrundsatz – war das wichtigste politische Thema im Bereich

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<sup>27</sup> Slowenien, Lebenspartnerschaftsgesetz (*Zakon o partnerski zvezi*), verabschiedet am 21. April 2016, abrufbar unter: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434) (letzter Zugriff am 27. März 2017).

<sup>28</sup> Verfassungsgericht der Republik Slowenien, Urteil U-I-156/11-29, 10. April 2014.

<sup>29</sup> Slowenien, Gesetz zur Änderung des Gesetzes zur Gleichstellung von Menschen mit Behinderung (*Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*), verabschiedet am 30. Juni 2014, abrufbar unter: <http://www.uradni-list.si/1/objava.jsp?sop=2014-01-2080> (letzter Zugriff am 30. August 2016).

<sup>30</sup> Slowenien, Vorschriften über technische Hilfsmittel und Anpassung von Fahrzeugen (*Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*), verabschiedet am 1. Oktober 2014, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12201> (letzter Zugriff am 30. August 2016).

<sup>31</sup> Verfassungsgericht der Republik Slowenien, Urteil U-I-146/12-40, 14. November 2013.

Nichtdiskriminierung. Im Rahmen des Gesetzes zum Schutz vor Diskriminierung von 2016<sup>32</sup> wurde am 25. Oktober 2016 eine neue Gleichbehandlungsstelle eingerichtet; derzeit ist jedoch fraglich, ob ihre Mittel ausreichen, damit sie ihr Mandat erfüllen kann.

## 2. Wichtigste Gesetze

Artikel 14 der slowenischen Verfassung verbietet Diskriminierung aufgrund personenbezogener Gründe.<sup>33</sup> Im Jahr 2009 urteilte das Verfassungsgericht, dass die Verfassung auch Diskriminierung aufgrund der sexuellen Orientierung verbietet, obwohl dieser Grund in der Verfassung nicht ausdrücklich genannt wird.<sup>34</sup> 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 der Strafgesetze von 2008 strafrechtlich verboten.<sup>35</sup> Das Gesetz definiert mehrere Straftatbestände, die mit Verstößen gegen den Gleichheitsgrundsatz 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 Merkmale).

Nachdem Slowenien der Europäischen Union beigetreten war, wurde im Mai 2004 das Gesetz zur Verwirklichung des Gleichheitsgrundsatzes<sup>36</sup> verabschiedet, mit dem die Richtlinien 2000/43/EG und 2000/78/EG in nationales Recht umgesetzt wurden. 2016 wurde es durch das neue Gesetz zum Schutz vor Diskriminierung ersetzt. Diskriminierung war auch im Gesetz über die Beschäftigungsverhältnisse von 2003 verboten, das durch das Gesetz über die Beschäftigungsverhältnisse von 2013 ersetzt wurde.<sup>37</sup> Die Bestimmungen in Bezug auf Diskriminierung haben sich mit der Verabschiedung des Gesetzes von 2013 nicht geändert, mit Ausnahme der Schadenersatzhaftung, die nunmehr genauer definiert ist.

Das Gesetz zur beruflichen Wiedereingliederung und Beschäftigung von Menschen mit Behinderung von 2004<sup>38</sup> verbietet ausdrücklich Diskriminierung aufgrund von Behinderungen und führt ein System zur Beschäftigungsförderung für behinderte Menschen ein. 2010 wurde das Gesetz zur Gleichstellung von Menschen mit Behinderung verabschiedet,<sup>39</sup> das die Pflicht zum Treffen angemessener (zumutbarer) Vorkehrungen für Menschen mit Behinderung enthält. Nicht alle in diesem Gesetz vorgesehenen Umsetzungsverordnungen sind erlassen worden, was seine praktische Umsetzung behindert.

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<sup>32</sup> Slowenien, Gesetz zum Schutz vor Diskriminierung (*Zakon o varstvu pred diskriminacijo*), verabschiedet am 21. April 2016, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273> (letzter Zugriff am 16. Oktober 2016).

<sup>33</sup> Slowenien, Verfassung der Republik Slowenien (*Ustava Republike Slovenije*), verabschiedet am 23. Dezember 1992, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=USTA1> (letzter Zugriff am 30. August 2016).

<sup>34</sup> Verfassungsgericht der Republik Slowenien, Urteil U-I-425/06, 2. Juli 2009.

<sup>35</sup> Slowenien, Strafgesetzbuch (*Kazenski zakonik*), verabschiedet am 20. Mai 2008, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050> (letzter Zugriff am 30. August 2016).

<sup>36</sup> Slowenien, Gesetz zur Verwirklichung des Gleichheitsgrundsatzes (*Zakon o uresničevanju načela enakega obravnavanja*), verabschiedet am 22. April 2004, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3908> (letzter Zugriff am 30. August 2016).

<sup>37</sup> Slowenien, Gesetz über die Beschäftigungsverhältnisse (*Zakon o delovnih razmerjih*), verabschiedet am 5. März 2013, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944> (letzter Zugriff am 30. August 2016).

<sup>38</sup> Slowenien, Gesetz zur beruflichen Wiedereingliederung und Beschäftigung von Menschen mit Behinderung (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*), verabschiedet am 21. Mai 2004, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841> (letzter Zugriff am 30. August 2016).

<sup>39</sup> Slowenien, Gesetz zur Gleichstellung von Menschen mit Behinderung (*Zakon o izenačevanju možnosti invalidov*), verabschiedet am 16. November 2010, abrufbar unter: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4342> (letzter Zugriff am 30. August 2016).

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 Orientierung, Alter und Behinderung. Außerdem verbieten die Gesetze Diskriminierung aufgrund des Geschlechts, der Sprache, der Geschlechtsidentität oder des Geschlechtsausdrucks, der sozialen Stellung, der wirtschaftlichen Lage und der Bildung und enthalten alle Gesetze eine generelle Klausel „Sonstige persönliche Merkmale“. Zu den im Gesetz über Beschäftigungsverhältnisse genannten Schutzgründen gehören insbesondere soziale Herkunft, Hautfarbe, Gesundheitszustand, Familienstand, Mitgliedschaft in einer Gewerkschaft und finanzielle Situation, was über die Vorgaben der Richtlinien hinausgeht.

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. Die gesetzlichen Vorschriften werden auch von der Gleichbehandlungsstelle – der Anwaltschaft für den Gleichheitsgrundsatz – umgesetzt, die im Zuge des bisherigen, mit dem Gesetz zum Schutz vor Diskriminierung von 2016 reformierten Gesetzes zur Verwirklichung des Gleichheitsgrundsatzes eingerichtet wurde, um Diskriminierungsbeschwerden zu prüfen und Betroffene zu unterstützen.

### **3. Wichtige Grundsätze und Begriffe**

Sowohl das Gesetz zum Schutz vor Diskriminierung als auch das Gesetz über Beschäftigungsverhältnisse verbieten unmittelbare und mittelbare Diskriminierung, Belästigung, die Anweisung zu Diskriminierung sowie Viktimisierung aufgrund von Geschlecht, rassistischer und ethnischer Herkunft, Religion oder Weltanschauung, sexueller Orientierung, Alter und Behinderung. Das Gesetz zum Schutz vor Diskriminierung verbietet darüber hinaus Diskriminierung durch Assoziierung, Diskriminierung aufgrund einer Vermutung und schwere Formen von Diskriminierung (Mehrfachdiskriminierung, Massendiskriminierung, langfristige oder andauernde Diskriminierung bzw. Diskriminierung, die für die Betroffenen irreversible Folgen hat oder haben könnte, was die Schädigung ihrer rechtlichen Situation, Rechte oder Pflichten angeht, insbesondere wenn sie sich gegen Kinder oder andere schutzbedürftige Menschen richtet). Das Gesetz über Beschäftigungsverhältnisse enthält außerdem die persönlichen Merkmale soziale Herkunft, Hautfarbe, Gesundheitszustand, Familienstand, Mitgliedschaft in einer Gewerkschaft und finanzielle Situation. Beide Gesetze definieren eine Tat als unmittelbare Diskriminierung aufgrund persönlicher Merkmale, wenn eine Person aufgrund dieser Merkmale eine weniger günstige Behandlung erfährt oder erfahren würde, als eine andere Person in der gleichen oder einer vergleichbaren Situation. Als mittelbare Diskriminierung aufgrund persönlicher Merkmale gilt es, wenn scheinbar neutrale Vorschriften, Kriterien oder Verfahren Personen mit bestimmten Merkmalen 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.

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 zum Schutz vor Diskriminierung führt weitere Ausnahmen vom Diskriminierungsverbot ein, z. B. Ungleichbehandlung aufgrund der Religion oder Weltanschauung bei der Beschäftigung in religiösen oder anderen Einrichtungen, deren Ethik auf einer 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 zum Treffen angemessener Vorkehrungen ist im Gesetz zur Gleichstellung von Menschen mit Behinderung von 2010 in Bezug auf Bildung, Zugang zu Gütern und Dienstleistungen, Zugang zu öffentlichen Gebäuden und Zugang zu Information geregelt. Eine gewisse Pflicht zum Treffen angemessener Vorkehrungen im Beschäftigungsbereich kann indirekt auch aus dem Gesetz zur beruflichen Rehabilitation und Beschäftigung von Menschen mit Behinderung und einigen Bestimmungen des Gesetzes über Beschäftigungsverhältnisse abgeleitet werden (diese Rechtsakte verwenden allerdings nicht den Begriff „angemessene Vorkehrungen“; die verwendete Formulierung lautet „Verfahren, Maßnahmen und Anreize“ bezüglich der Beschäftigung von Menschen mit Behinderungen).

#### **4. Sachlicher Geltungsbereich**

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 (und darüber hinaus) 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 heißt es im Gesetz zum Schutz vor Diskriminierung, dass dieses Gesetz für staatliche Stellen, Kommunen und Amtsträger sowie für juristische und natürliche Personen verbindlich ist, die dafür verantwortlich sind, Schutz vor Diskriminierung in allen Bereichen der Ausübung staatlicher Gewalt, der Teilnahme am Rechtsverkehr und allen sonstigen Bereichen ihrer Tätigkeit zu gewährleisten, was so viel bedeutet, dass der Diskriminierungsschutz weit über die Anforderungen der Richtlinien hinausgeht.

Im Bereich Beschäftigung ist Diskriminierung nicht nur im Gesetz zum Schutz vor Diskriminierung verboten, sondern auch im 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. Betroffene können bei der Anwaltschaft für den Gleichheitsgrundsatz, der für entsprechende Kontrollen zuständigen Aufsichtsbehörde oder, wenn die mutmaßliche Diskriminierung von einem Staat oder einer Stelle mit staatlichem Charakter ausgeht, auch beim Menschenrechtsbeauftragten Beschwerde einreichen. Die Anwaltschaft kann den Fall an die zuständige Aufsichtsbehörde weiterleiten, die dann ein formelles Verfahren einleitet. Betroffene können auch direkt bei der zuständigen Behörde Beschwerde 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 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 geltend zu machen. Obwohl also zahlreiche Rechtsmittel zur Verfügung stehen, halten sowohl die Anwaltschaft für den Gleichheitsgrundsatz als auch der Ombudsmann für Menschenrechte die vorhandenen Schutzmechanismen für ungenügend.

Das Gesetz zum Schutz vor Diskriminierung sieht vor, dass sich NROs und der Anwalt/die Anwältin in Fällen von mutmaßlicher Diskriminierung nach Maßgabe der gesetzlichen Bedingungen an Gerichts- und Verwaltungsverfahren beteiligen können. Allerdings sind die Bedingungen für die Vertretung von Betroffenen seitens des Anwalts/der Anwältin oder einer Organisation nun strenger als die allgemeinen Vertretungsregeln der Zivilprozessordnung.

Nach einem Urteil des Verfahrensgerichts sind Verbände und andere Organisationen nicht berechtigt, Regelungen anzufechten, die den Rechtsstatus ihrer Mitglieder oder Dritter betreffen. Nach dem neuen Gesetz kann die Anwältin/der Anwalt für den Gleichheitsgrundsatz jedoch eine verfassungsrechtliche Überprüfung von Gesetzen, die vermeintlich diskriminierend sind, in die Wege leiten.

Sowohl das Gesetz zum Schutz vor Diskriminierung als auch das Gesetz über Beschäftigungsverhältnisse sehen eine Verlagerung der Beweislast vor. Wenn das Opfer Tatsachen glaubhaft macht, die einen Verstoß gegen das Diskriminierungsverbot vermuten lassen, muss der mutmaßliche Täter beweisen, dass keine Diskriminierung vorliegt. Wird ein Verstoß gegen das Diskriminierungsverbot festgestellt, kommen entsprechende Sanktionen in Form von Geldbußen (offiziell reichen diese von 250 bis 30 000 Euro, in Wirklichkeit dürfen die verhängten Geldbußen nicht höher sein als der Mindestbetrag, da es im Gesetz keine offizielle Berechtigung gibt, Geldbußen zu verhängen, die den Mindestbetrag überschreiten), strafrechtlichen Sanktionen, Entschädigungszahlungen, einer Veröffentlichung des Urteils usw. zur Anwendung. Die bisher zuerkannten Entschädigungssummen (3000, 6000 bzw. 11 000 Euro) zeigen, dass die Sanktionen als verhältnismäßig und abschreckend gelten können. Das slowenische Recht enthält keine Angaben dazu, ob „Testing-Verfahren“ vor Gericht als Beweis zulässig 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**

Entsprechend dem früheren Gesetz zur Verwirklichung des Gleichheitsgrundsatzes nahm die Anwaltschaft für den Gleichheitsgrundsatz 2005 ihre Arbeit innerhalb des Staatlichen Amtes für Chancengleichheit und, ab 2012, innerhalb des Ministeriums für Arbeit, Familie, Soziales und Chancengleichheit auf. Mit Verabschiedung des neuen Gesetzes zum Schutz vor Diskriminierung und der Wahl des neuen Anwalts wurde die Anwaltschaft für den Gleichheitsgrundsatz eine unabhängige staatliche Stelle. Die neue Anwaltschaft ist dafür zuständig, unabhängige Untersuchungen über die Situation von Menschen mit bestimmten persönlichen Merkmalen durchzuführen, unabhängige Berichte zu verfassen und Empfehlungen auszusprechen, die Einhaltung der gesetzlichen Vorschriften zu überwachen, Diskriminierungsopfern unabhängige Unterstützung zu gewähren (durch Beratung von und rechtliche Hilfe für Parteien in anderen gerichtlichen oder administrativen Verfahren, in denen es um Diskriminierung geht), die Öffentlichkeit für Diskriminierung und Maßnahmen zu deren Verhütung zu sensibilisieren, die allgemeine Lage in der slowenischen Republik in puncto Schutz vor Diskriminierung und Situation von Menschen mit bestimmten persönlichen Merkmalen zu beobachten, spezielle Maßnahmen zur Verbesserung der Situation von Menschen vorzuschlagen, die aufgrund eines bestimmten persönlichen Merkmals benachteiligt sind, an Gerichtsverfahren teilzunehmen, die wegen Diskriminierung initiiert wurden, den Austausch von Informationen mit den Einrichtungen der Europäischen Union sicherzustellen usw.

Das Beschwerdeverfahren bei der Anwaltsstelle ist förmlich und kostenlos. Der Anwalt bzw. die Anwältin kann Untersuchungen durchführen und trifft Entscheidungen, in denen die Beendigung von Diskriminierung und die Umsetzung bestimmter Maßnahmen angeordnet werden; Geldbußen und andere Strafmaßnahmen kann er/sie jedoch nicht verhängen. Leistet die betreffende Person den Anordnungen des Anwalts/der Anwältin keine Folge, kann diese/r den Fall an die zuständige Aufsichtsbehörde weiterleiten, die dann ein Ordnungswidrigkeitsverfahren einleitet. In der Vergangenheit war die Anwaltsstelle, die nur aus einer Person – einer Beamtin oder einem Beamten – bestand, kaum operativ. Dies sollte sich mit der Reform der Anwaltsstelle ändern, sofern ausreichende Mittel für ihre Arbeit zur Verfügung gestellt werden. Das Budget der Anwaltsstelle für 2017 beläuft sich auf 200 000 Euro; davon sind 130 000 Euro für Personalkosten vorgesehen.

Das frühere Verfahren bei der Anwaltsstelle war informell, der Anwalt bzw. die Anwältin hatte keine Untersuchungsbefugnisse und seine/ihre Entscheidungen waren nicht bindend; mit dem neuen Anwalt bzw. der neuen Anwältin sollte sich dies jedoch ändern. Zusätzlich gestärkt wird die Unabhängigkeit des Anwalts/der Anwältin durch ein Nominierungsverfahren, das dem der/des Menschenrechts- oder Öffentlichkeitsbeauftragten ähnelt, sowie durch zusätzliche Bedingungen und Ausschlusskriterien für die zu nominierende Person. Nach den bisherigen Gesetzesvorschriften hatte die Anwaltsstelle nur begrenzte Befugnisse (die sich auf die Unterstützung von Betroffenen und die Prüfung von Beschwerden konzentrierten), nun ist sie, neben verschiedenen anderen Befugnissen, auch ausdrücklich befugt, Umfragen durchzuführen und Berichte zu veröffentlichen. Dem jüngsten Jahresbericht zufolge hat der Anwalt bzw. die Anwältin in 20 Fällen von mutmaßlicher Diskriminierung, einschließlich bereits abgeschlossener Fälle (seit 2012), eine Stellungnahme abgegeben. Von diesen 20 Fällen betraf ein Fall Behinderung, 18 Fälle betrafen Religion oder Weltanschauung und sieben weitere sexuelle Orientierung (einige Beschwerden wurden zusammengelegt). Die Berichte für 2013, 2014 und 2015 wurden nicht veröffentlicht. Der vom neuen Anwalt veröffentlichte Bericht für 2016 enthält keine statistischen Angaben zu den bereits abgeschlossenen Fällen (2016 wurden keine Fälle abgeschlossen), sondern beschreibt die 278 Fälle, die noch anhängig sind.

## 7. Schlüsselprobleme

- Das Gesetz im Allgemeinen erlaubt keine unmittelbare Diskriminierung. Nach Artikel 13 Absatz 1 des Gesetzes zum Schutz vor Diskriminierung stellt eine unterschiedliche Behandlung aufgrund persönlicher Merkmale – ungeachtet der generellen Vorschrift in Artikel 5 des Gesetzes zum Schutz vor Diskriminierung, Gleichbehandlung zu gewährleisten – jedoch keine Diskriminierung im Sinne dieses Gesetzes dar, sofern diese Behandlung ein legitimes Ziel verfolgt und die Mittel zur Erreichung dieses Ziels angemessen, notwendig und verhältnismäßig sind. Diese Bestimmung vermittelt den Eindruck, als ob unmittelbare Diskriminierung aufgrund der rassistischen und ethnischen Zugehörigkeit ebenfalls gerechtfertigt ist, solange der Grundsatz der Verhältnismäßigkeit eingehalten wird, was nicht im Einklang mit Artikel 2 der Antirassismusrichtlinie steht.
- Der neuen Gleichbehandlungsstelle, die mit der Nominierung des neuen Anwalts am 24. November 2016 eingerichtet wurde, fehlen die Mittel für eine effektive Arbeit. Der Haushalt für 2017 beläuft sich auf 200 000 Euro; 130 000 Euro davon stehen für drei bis vier Mitarbeiter/innen zur Verfügung. Es wird davon ausgegangen, dass die Gleichbehandlungsstelle für die nächsten zwei Jahre administrative Unterstützung vom Ministerium für Arbeit, Familie, Soziales und Chancengleichheit erhält; um die Gleichbehandlungsstelle vollständig unabhängig zu machen, ist es jedoch erforderlich, zu überprüfen, ob die zugeteilten Mittel für die umfangreichen Aufgaben ausreichen, die das neue Gesetz zum Schutz vor Diskriminierung der Anwaltsstelle zuweist. Bisher war die Anwaltschaft völlig funktionsunfähig, da der letzte vollständige Jahresbericht für 2011 im Jahr 2012 veröffentlicht wurde. Obwohl auf dem Papier eine Reihe von Rechtsmitteln existiert, weist der jüngste Jahresbericht der Anwaltschaft für den Gleichheitsgrundsatz 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/die Anwältin eine Diskriminierung feststellt und den Fall zur weiteren Bearbeitung an die zuständige Aufsichtsbehörde überweist, was 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. Es ist fraglich, ob sich dies mit dem neuen Gesetz zum Schutz vor Diskriminierung ändern wird. Wie im vorherigen Gesetz – dem Gesetz zur Verwirklichung des Gleichheitsgrundsatzes – ist auch im neuen Gesetz nicht ausdrücklich festgelegt, dass eine bestimmte Aufsichtsbehörde dafür zuständig ist, Diskriminierungsfälle in ihrem jeweiligen Fachbereich zu prüfen; die Aufsichtsbehörden halten sich daher für nicht zuständig und bestehen darauf, dass immer zuerst die Anwaltschaft das Verfahren durchführen sollte. Diese Widersprüche schwächen den Diskriminierungsschutz.
- Für Sanktionen (Bußgelder für minder schwere Verstöße oder Bagatelldelikte) ist eine Spanne zwischen einem Höchst- und einem Mindestbetrag vorgegeben, in Wirklichkeit können aber nur Sanktionen am unteren Ende der Spanne verhängt werden. Das Gesetz zum Schutz vor Diskriminierung enthält nämlich keine ausdrückliche Genehmigung für die Aufsichtsbehörden, Bußgelder zu verhängen, die den Mindestbetrag überschreiten, was bedeutet, dass – sofern sich an dem Gesetz nichts ändert – juristische Personen in keinem Fall mehr als 3000 Euro Bußgeld wegen Diskriminierung und natürliche Personen, je nach Schwere und Art des Verstoßes, höchstens 250 bzw. 500 Euro zahlen müssen. Daran wird deutlich, dass die Bußgelder nicht als wirksam und abschreckend gelten können.
- Mit den neuen Bestimmungen über die Stellung von NROs und die Stellung des Anwalts/der Anwältin, denen es nun ausdrücklich erlaubt ist, Betroffene vor Gericht zu vertreten und in deren Namen zu handeln, ist ein neues Problem aufgetaucht. Die Bedingungen für die Vertretung in Diskriminierungsverfahren, die vor den Amtsgerichten verhandelt werden, sind jetzt nämlich strenger als für alle andere Verfahren. Nach dem Zivilprozessgesetz kann jede rechtsfähige Person eine Partei

vor den Amtsgericht vertreten; nach dem neuen Gesetz zum Schutz vor Diskriminierung muss eine Person, um eine beschwerdeführende Partei zu vertreten, jedoch die staatliche juristische Prüfung (Anwaltsprüfung) abgelegt haben. Die Bedingungen sind für Diskriminierungsfälle also strenger, was es schwerer macht, dass diese vor Gericht kommen.

- Es ist unklar, ob die im neuen Gesetzes zum Schutz vor Diskriminierung enthaltenen Bestimmungen über Ansprüche, die im Fall einer Diskriminierung vor Gericht geltend gemacht werden können (Beendigung der Diskriminierung, Entschädigung und Veröffentlichung des Urteils in den Medien), zusätzlich zu den allgemeinen Bestimmungen des Deliktrechts gelten oder ob sie diese ersetzen.
- Im Zusammenhang damit ist unklar, ob der Höchstbetrag für Entschädigungen, der 5000 Euro beträgt, nur für Entschädigungen gilt, die ausschließlich wegen einer erlittenen Diskriminierung geltend gemacht werden, oder für Entschädigungen im Zusammenhang mit Diskriminierung im Allgemeinen. Die wortwörtliche Auslegung spricht für die erstere Option. Wenn Ersteres zutrifft, könnten die Sanktionen nicht als abschreckend gelten, da dies bedeuten würde, dass die Entschädigung im Fall einer Diskriminierung niemals 5000 Euro überschreiten kann, selbst wenn der tatsächliche Schaden weitaus höher wäre.
- 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 Angelegenheiten im Zusammenhang mit bestimmten persönlichen Merkmalen ist keine staatliche Stelle zuständig, z. B. für sexuelle Orientierung.

Im vollständigen Bericht werden außerdem die folgenden Probleme angesprochen:

- Die Rechtmäßigkeit von Testing-Verfahren und die Frage, ob Testing-Verfahren und statistische Daten vor Gericht als Beweise zulässig sind, bedürfen einer gerichtlichen Klärung.
- 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 gilt, die offiziell nach dem Renten- und Behindertenversicherungsgesetz als behindert anerkannt sind (Einschränkung des persönlichen Geltungsbereichs).
- Altersgrenzen für den Zugang zu bestimmten Tätigkeiten verstoßen möglicherweise gegen EU-Recht und gegen die Rechtsprechung des EuGH.

## **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: 31 May 2013. Grounds covered: national origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability or any other personal characteristic. Material scope: not explicitly stated.

Protection against Discrimination Act – PADA (*Zakon o varstvu pred diskriminacijo*), Official Journal of the Republic of Slovenia, No. 33/16. Date of adoption: 21 April 2016. Entry into force: 24 May 2016. Grounds covered: gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic. Material scope: all fields, in particular access to employment, self-employment or profession, access to all levels of career orientation, professional training, advanced training and 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; upbringing and 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: 23 December 2014. 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:

20 June 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: 9 July 2015. 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.<sup>40</sup> 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.

These provisions are directly applicable.

These provisions can be enforced against private actors (in addition to against the state).

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<sup>40</sup> This clause must be respected even in the event of the temporary suspension and restriction 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 Protection from Discrimination Act (Article 1): gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing,<sup>41</sup> economic situation, education or any 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 characteristic (Article 297).

In addition, Article 20 of the Protection of Public Order Act sets out the 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**

##### **Racial and ethnic origin**

There is no definition in law of racial and ethnic origin.

Ethnicity: in 2011 the Higher Court in Ljubljana issued its decision on case no. II Kp 24633/2010 of 13 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. In its judgment the Court specifically referred to the International Convention on the Elimination of All Forms of Racial Discrimination. 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 enjoy the protection of the Penal Code. In the appeal the representatives of the accused claimed that they do not because they are not a recognised national minority.

There is no similar case law related to race.

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<sup>41</sup> In terms of how much property and wealth an individual has (in Slovenian: *premoženjsko stanje*).

## Age

There is no definition in law of age.

## Sexual orientation

There is no definition in law of sexual orientation.

In its decision No. U-I-212/10-16 of 29 March 2013 the Constitutional Court of the Republic of Slovenia invoked a definition of sexual orientation as stated in the Yogyakarta Principles, according to which sexual orientation means 'each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender'.<sup>42</sup> This definition has not been repeated or invoked in the judgments of lower courts, which have not yet elaborated on the meaning of sexual orientation.

## Disability

There is a different situation in respect of disability. In accordance with Article 63(2) of the Pension and Disability Insurance Act,<sup>43</sup> 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 Protection against Discrimination Act 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 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*.<sup>44</sup> First, the CJEU, drawing inspiration from the CRPD, explicitly recognises the social model of disability – i.e. the fact that disability results from an interaction between impairment and environmentally created barriers – and this is not reflected that in the Slovenian texts. Secondly, the CJEU requires a long-term (or permanent) impairment – i.e. not just an irreversible (permanent) condition.

There is no common definition of intellectual disability.

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<sup>42</sup> International Commission of Jurists (2007), *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. Available at: <http://www.yogyakartaprinciples.org/principles-en/> (last accessed 27 March 2017).

<sup>43</sup> Slovenia, Pension and Disability Insurance Act (*Zakon o pokojninskem in invalidskem zavarovanju*), adopted on 4 December 2012, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6280](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6280) (last accessed 27 March 2017).

<sup>44</sup> CJEU, Joined Cases C-335/11 and C-337/11, *HK Danmark, acting on behalf of Jette Ring v. Dansk almennyttigt Boligselskab, and HK Danmark, acting on behalf of Lone Skouboe Werge v. Dansk Arbejdsgiverforening, acting on behalf of Pro Display A/S, in liquidation*, 11 April 2013.

Further, under the 2010 Act on Equal Opportunities for People with Disabilities,<sup>45</sup> 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, which can be relied on directly by the Slovenian courts: 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.

There is no limitation in the law on the legal contexts in which this last definition could be used. Therefore, it could be used both in the case of determining the duty of reasonable accommodation as well as when invoking the Protection against Discrimination Act.

In terms of disability there is another act – the Social Care Act<sup>46</sup> – 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 is no further explanation of what ‘severe’ entails.

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

## **Religion or belief**

There is no definition in law of religion or belief.

The Religious Freedom Act,<sup>47</sup> 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 Medical Practitioners Act<sup>48</sup> (for medical workers) and in the Regulation on the enforcement of the conscientious objection to the military service and of the civil alternative service<sup>49</sup> (for military personnel). Conscientious objection is not further defined in the Medical Practitioners Act, and is also not limited to religion. The military service regulation states that conscientious objection can be related to religious, philosophical and humanitarian reasons (Article 8 (4)).

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<sup>45</sup> Slovenia, Act on Equal Opportunities for People with Disabilities (*Zakon o izenačevanju možnosti invalidov*), adopted on 16 November 2010, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4342](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4342) (last accessed 27 March 2017).

<sup>46</sup> Slovenia, Social Care Act (*Zakon o socialnem varstvu*), adopted on 4 November 1992, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO869](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO869) (last accessed 27 March 2017).

<sup>47</sup> Slovenia, Religious Freedom Act (*Zakon o verski svobodi*), adopted on 2 February 2007, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4008](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4008) (last accessed 27 March 2017).

<sup>48</sup> Slovenia, Medical Practitioners Act (*Zakon o zdravniški službi*) adopted on 18 November 1999, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1395> (last accessed 17 May 2017).

<sup>49</sup> Slovenia, Regulation on the enforcement of the conscientious objection to the military service and of the civil alternative service (*Uredba o uveljavljanju ugovora vesti vojaški dolžnosti in o izvajanju civilne službe*), adopted on 27 June 1996, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED999> (last accessed 17 May 2017).

### 2.1.2 Multiple discrimination

In Slovenia, the prohibition of multiple discrimination is covered by law. In line with Article 12, indent 1, of the Protection against Discrimination Act, multiple discrimination, which is considered to be a severe form of discrimination, exists when a person is discriminated against based on more than one personal characteristic. The fact that multiple discrimination is considered to be a severe form of discrimination is relevant for determining the amount of compensation (Article 39 (3) of the PADA) or in determining the amount of the fine for misdemeanour (Article 45 (2) of the PADA).

According to the available information, only one judgement has so far been issued that relates to multiple discrimination, and it was delivered before multiple discrimination was explicitly defined by law. 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.<sup>50</sup> 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.

From consideration of 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).<sup>51</sup> Comprehensive information about these cases is not available. New data is not available either, as the Advocate has not published reports for the years 2012-2015. The last report covering 2016 does not contain information on decisions because the new equality body has been in the process of establishment over the year.

### 2.1.3 Assumed and associated discrimination

#### a) Discrimination by assumption

In Slovenia, national law explicitly prohibits discrimination based on perception or assumption of a person's identity. Namely, in line with Article 5 (2), indent 2, of the PADA, equal treatment shall be guaranteed also for a person who is discriminated against due to an erroneous assumption of the existence of a certain personal characteristic. In the opinion of the author, the provision of Article 6(3) of the Employment Relationship Act, which states, 'equal treatment shall be guaranteed, irrespective of personal characteristic', could be interpreted by the court, using the argument *a maiore ad minus* (that is, 'what

<sup>50</sup> Administrative Court of the Republic of Slovenia, Judgement No. U 947/2007-12 of 20 March 2008.

<sup>51</sup> Advocate of the Principle of Equality (2012), *Annual Report 2011*, available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

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 discrimination allegedly occurred.

b) Discrimination by association

In Slovenia, national law explicitly prohibits discrimination based on association with people with particular characteristics. Namely, in line with Article 5 (2), indent 1, of the PADA, equal treatment shall be guaranteed also for a person who is legally or factually associated with the person with a certain personal characteristic. In addition, in the opinion of the author, a court could interpret the provisions contained in 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.<sup>52</sup> 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, in Article 4 (2) of the Protection against Discrimination Act.

Discrimination in general is defined as any unjustified factual or legal unequal treatment, differentiation, exclusion or limitation or omission due to personal characteristics which aims at or results in hindering, reducing or abolishing equal recognition, enjoyment or realisation of human rights and fundamental freedoms, other rights, legal interests or benefits (Article 4(1) of the Protection against discrimination Act). Equal treatment is defined as the absence of direct or indirect discrimination due to any personal characteristic, as well as absence of any other treatment which constitutes discrimination under this law (Article 5(1) of Protection against Discrimination Act), i.e. harassment, instructions, incitement and victimisation (Article 7 of the Protection against Discrimination Act).

Direct discrimination is defined as follows: direct discrimination on grounds of a personal characteristic occurs if, due to this personal characteristic, a person or a group has been, is or would be treated less favourably than another individual or group is treated, was treated or would be treated in an equal or comparable situation (Article 6 (1) of the Protection against Discrimination Act). 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, due to his or her disability, a person with a disability has been, is or would be 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 13 (1) of the Protection against Discrimination Act states that, in spite of the general requirement to ensure equal treatment in Article 5 of the PADA, differential treatment based on a personal characteristic does not constitute discrimination in line with this act, if such treatment is based on a legitimate goal and if the means for achieving this goal are appropriate, necessary and proportionate. (This provision reads as if direct discrimination on the ground

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<sup>52</sup> CJEU, C-303/06, *S. Coleman v Attridge Law and Steve Law*, 17 July 2008.

of race and ethnicity is also justified as long as the principle of proportionality is respected, which is not in line with Article 2 of the Racial Equality Directive.)

The law then introduces an exception to this exception by stating that regardless of the previous sentence unequal treatment in the fields related to employment and work is always prohibited if it is based on gender, race or ethnic origin, religion or opinion, disability, age or sexual orientation, except in cases defined by the law (Article 13 (1), last sentence). Such cases are genuine and determining occupational requirements in the area of employment (Article 13 (2)); religion in religious and ethos-based organisations (Article 13 (4)); age in recruitment, employment and vocational training (Article 13 (3)); beneficial treatment of women during pregnancy and motherhood (Article 13 (5)); and availability of goods and services for people of a particular gender (Article 13 (6)).

### **2.2.1 Situation testing**

#### **a) Legal framework**

In Slovenia, situation testing is not clearly permitted in national law. In fact, it is not mentioned in national law. The Civil Procedure Act<sup>53</sup> defines various types of evidence that can be taken into account by a court: hearing witnesses; hearing experts; hearing 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 significant 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 twice. First, it was used 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. In the second case it was used by an NGO, TransAkcija, to test access of same-sex couples to apartments available on the market for rent.<sup>54</sup> In both cases 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 in Article 4(2) of the Protection against Discrimination Act. It is defined in Article 6(2) as follows: indirect discrimination on grounds of personal characteristics occurs when a seemingly neutral provision, criterion or practice in equal or comparable situations and under similar

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<sup>53</sup> Slovenia, Civil Procedure Act (*Zakon o pravdnem postopku*), adopted on 25 March 1999, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212> (last accessed 27 March 2017).

<sup>54</sup> See the report on testing from the DIKE project: Mitja Blažič, dr. Neža Kogovšek, dr. Roman Kuhar, Simon Maljevac, dr. Barbara Rajgelj, Manca Šetinc Vernik, Boštjan Vernik Šetinc, dr. Alenka Švab: *LGBT pravice: sociološka raziskava, monitoring, situacijsko testiranje, gradiva za odvetnice in odvetnike*, Ljubljana, Društvo informacijski center Legebitra, 2016, available at <http://lgbtpravice.si/userfiles/files/LGBTpravice.pdf> (last accessed 27 March 2017) (in Slovenian).

conditions, puts, put or could have put an individual or a group with a certain personal characteristic in a less favourable position compared to other persons, unless that provision, criterion or practice is objectively based on a legitimate aim and the means of achieving that aim 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 aim and if the means to achieve such an aim 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 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 aim and the means of achieving that aim 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,<sup>55</sup> 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 (civil unions) are collected separately, as these are two separate institutions. Therefore, since civil unions 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 civil union.) 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).

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<sup>55</sup> Slovenia, Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*), adopted on 15 July 2004, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3906](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3906) (last accessed 27 March 2017).



An implementing act entitled Rules on the Methodology for Keeping a Register of Personal Data<sup>56</sup> 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.

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.<sup>57</sup>

#### 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 prohibited as a form of discrimination, which is generally prohibited in Article 4(2). Harassment is defined as follows.

Article 8(1) of the Protection against Discrimination Act defines harassment as unwanted conduct, based on any personal characteristic, which deliberately or factually creates an intimidating, hostile, humiliating or offensive environment for an individual or offends their dignity. The personal and material scopes therefore do not differ from those where direct and indirect discrimination are prohibited. This definition does not exclude groups of persons from protection, nor has it been interpreted as such.

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. The personal and material scope therefore does not differ from those where direct and indirect discrimination are prohibited.

<sup>56</sup> Slovenia, Rules on the methodology of keeping a register of personal databases (*Pravilnik o metodologiji vodenja registra zbirk osebnih podatkov*), adopted on 3 March 2005, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV6619](http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV6619) (last accessed 27 March 2017).

<sup>57</sup> Slovenia, Higher Labour and Social Court, Judgment No. Pdp 1283/2010 of 5 May 2011.



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 7(1) of the Protection against Discrimination Act states that harassment referred to in Article 8(1) as well as any less favourable treatment based on rejection or toleration of harassment shall be considered discrimination under the provisions of the Act. The Act on Equal Opportunities for People with Disabilities does not contain a prohibition of harassment, but only a definition of harassment (in Article 3(5)), which is identical to the definition in the Protection against Discrimination Act. In the opinion of the author this does not cause a problem as harassment based on disability is clearly prohibited in the Protection from Discrimination 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 Protection against Discrimination Act (Article 39 (1)) defines in general terms the scope of liability for discriminatory treatment in every sphere of life, including employment. The provision states that the person who believes that he or she was discriminated against may file a lawsuit to demand the termination of discrimination, compensation for discrimination and publication of the judgment in the media. 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 Obligations<sup>58</sup> 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 defined as decrees, orders or other types of instructions to discriminate against an individual based on their personal characteristics (Article 7, indent 2 of the Protection against Discrimination Act). This definition does not exclude groups from protection nor has it been interpreted as such. Another provision states that instructions are any type of instructions the consequence of which is, was or could have been discrimination, including instructions that discrimination should not be prevented or eliminated (Article 9 of the Protection against Discrimination Act). This shows that in defining the instructions to discriminate the law goes beyond the directive's requirements.

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<sup>58</sup> Slovenia, Code of Obligations (*Obligacijski zakonik*), adopted on 3 October 2001, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263) (last accessed 27 March 2017).

In Slovenia, instructions do explicitly constitute a form of discrimination (Article 7, indent 2 of the Protection against Discrimination Act). Since discrimination is prohibited in line with Article 4(2), consequently instructions, as a form of discrimination, are also 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 addition to instructions to discriminate the law also prohibits incitement to discrimination. According to Article 10 of the PADA, incitement to discrimination means any kind of encouragement of other persons to engage in acts the consequences of which is, was or could have been discrimination. Aggravated forms of such incitement are stating or spreading calls to differentiation based on race, religion or gender, abetting, or instigating hatred and discrimination and wider public calls that encourage discrimination. Defining it as a form of discrimination, the law also prohibits public condoning of disregarding or despising people or groups based on personal characteristics as well as justifying ideas about the supremacy or superiority of people or groups with certain characteristics which derive from personal characteristics over those who are not members of such groups.

It is relevant to add that 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 characteristic, 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 Act<sup>59</sup> sets out the 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 Protection against Discrimination Act 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.

## **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 for people with disabilities in the area 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 not defined in the Protection against Discrimination Act. It is defined in Article 3(3) of the 2010 Act on Equal Opportunities for People with Disabilities. In this act the term 'reasonable

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<sup>59</sup> Slovenia, Protection of Public Order Act (*Zakon o varstvu javnega reda in miru*), adopted on 22 June 2006, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3891](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3891) (last accessed 27 March 2017).

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, the Employment Relationship Act and in other pieces of legislation. The new Protection against Discrimination Act does not include a duty of reasonable accommodation. 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 – under Article 5, the provisions of the act may also be used in the context of the prohibition of discrimination if they are more favourable for the person with disabilities.<sup>60</sup>

Article 2 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act<sup>61</sup> 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.

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 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act 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, an analysis of the particular position and working environment of an individual with disabilities, in order to produce a plan for making

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<sup>60</sup> Slovenia, Supreme Court of the Republic of Slovenia, Judgment no. X Ips 362/2013 of 8 July 2015.

<sup>61</sup> Slovenia, Vocational Rehabilitation and Employment of Disabled Persons Act (*Zakon o poklicni rehabilitaciji in zaposlovanju invalidov*), adopted on 21 May 2004, available at [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841) (last accessed 27 March 2017).

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 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act 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.

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 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 modifications 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

According to a study from 2009, 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.<sup>62</sup> In addition, 5 % of reasonable accommodation measures consist of rehabilitation and training, and less than 1 % are measures involving technical solutions. A more recent study is not available.

c) Definition of disability and non-discrimination protection

The Protection against Discrimination Act, the Act on Equal Opportunities for People with Disabilities and the 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 status<sup>63</sup> or claiming reasonable accommodation.<sup>64</sup> It remains to be seen which definition will be adopted by the courts for the purposes of protection from discrimination on the grounds of disability. In the event it will be important to take into account Article 5 of the Act on Equal Opportunities for People with Disabilities, which states that the provisions of the act can also be used in the context of the prohibition of discrimination if they are more favourable for the person with disabilities.

d) Duties to provide reasonable accommodation in areas other than employment for people with disabilities

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));

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<sup>62</sup> Tabaj, A. 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.

<sup>63</sup> 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.

<sup>64</sup> 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 to their mental development which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others.

- 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 through 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.<sup>65</sup>

#### 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.

Although there is no specific reference to reasonable accommodation in the Protection against Discrimination Act, 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 2 of the Protection against Discrimination Act would occur, since Article 2(1) of PADA 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

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<sup>65</sup> Slovenia, Rules on technical aids and adaptation of vehicles (*Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*), 1 October 2014, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12201](http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12201) (last accessed 27 March 2017).



that reasonable accommodation should be applied to them in order to prevent discrimination from taking place.<sup>66</sup>

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 domestic law.

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

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<sup>66</sup> Advocate of the Principle of Equality, Opinion No. UEM – 0921-1/2008-2 and Opinion No. UEM – 0921-10/2008-3.

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 transport, elevators, 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.<sup>67</sup>

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.<sup>68</sup>

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 of 2014).<sup>69</sup> 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. 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 people 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

<sup>67</sup> Slovenia, Rules on the requirements for free access to, entry to and use of public buildings and facilities and multi-apartment buildings (*Pravilnik o zahtevah za zagotavljanje neoviranega dostopa, vstopa in uporabe objektov v javni rabi ter večstanovanjskih stavb*), adopted on 25 September 2003, available at [www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV4067](http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV4067) (last accessed 27 March 2017).

<sup>68</sup> 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](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/invalidi_vzv/API_2014-2021_ANG.pdf) (last accessed 27 March 2017).

<sup>69</sup> Slovenia, Constitutional Court of the Republic of Slovenia, Decision No. U-I-156/11-29 of 10 April 2014.



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).<sup>70</sup> 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).

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 people who are 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 people who are deaf and hard of hearing and hearing people.<sup>71</sup>

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<sup>70</sup> Slovenia, Constitutional Court of the Republic of Slovenia, Decision No. U-I-146/07-34 of 13 November 2008.

<sup>71</sup> *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](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 Natural and legal persons (Recital 16 Directive 2000/43)**

###### **a) Protection against discrimination**

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 Protection against Discrimination Act does not distinguish between natural persons and legal persons for ensuring equal treatment. The provision of Article 1(1) states that, 'this Act defines protection of each individual from discrimination' and in Article 1(3) continues that protection from discrimination is also applicable to legal persons 'if the grounds that could be a basis for discrimination can be attributed to legal persons'. The term 'a person' cannot be interpreted as precluding a group of people who have been discriminated against from bringing a complaint, as long as each individual is identified. 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.).

###### **b) Liability for discrimination**

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 Articles 39 (civil liability) and 45 (misdemeanour liability) of the Protection against Discrimination Act and Article 229 of the Employment Relationship Act. The law differs in respect to the misdemeanour liability of natural persons and the liability of legal persons for harm caused by acts of discrimination. While there are no differences in establishing misdemeanour liability as such, there is a significant difference in the amount prescribed by the law of fines 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 Act<sup>72</sup> 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.

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<sup>72</sup> Liability of Legal Persons for Criminal Offences Act (*Zakon o odgovornosti pravnih oseb za kazniva dejanja*), adopted on 8 July 1999, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1259](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1259) (last accessed 27 March 2017).

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 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.

### **3.1.3 Private and public sector including public bodies (Article 3(1))**

#### **a) Protection against discrimination**

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 2(1) of the Protection against Discrimination Act states that this law is binding for state bodies, local communities and holders of public authority, as well as legal and natural persons who are responsible for ensuring protection from discrimination in all fields of exercising public authority, participation in legal transactions and all other areas of their activities. Accordingly, the law 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.

#### **b) Liability for discrimination**

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 Protection against Discrimination Act (Articles 39 and 45) 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 Directive grounds (race and ethnicity, religion and belief, disability, age and sexual orientation) as well as grounds not covered by the Directives.

The Protection against Discrimination Act 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 (Article 2 (1), indent

1). 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 wording of the Protection against Discrimination Act which requires protection from discrimination in 'all fields of exercising public authority, participation in legal transactions and all other areas of activities' (Article 2(1)).

### **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 prohibits discrimination in the following areas: 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 directive grounds and grounds beyond the directives, in both the private and public sectors as described in the directives.

Article 2 (1), indent 1 of the Protection against Discrimination Act (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, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic. Similarly, Articles 6(1) and 6(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. The main legal basis for reasonable accommodation remains the Vocational Rehabilitation and Employment of Disabled Persons Act.

Access to employment is generally the same for the public sector regarding anti-discrimination provisions, but there are some provisions in the recruitment process that differ from the provisions of the Employment 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 Protection against Discrimination Act 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 Protection against Discrimination Act (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 prohibits discrimination in the following area: working conditions, including pay and dismissals, for all five grounds contained in the directives and more, and for both private and public employment.

The Protection against Discrimination Act prohibits discrimination on the grounds of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic in the field of, inter alia, employment and working conditions, including dismissals and pay (Article 2(1), indent 3). 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.

#### **3.2.3.1 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 Protection against Discrimination Act applies, generally prohibiting unequal treatment. 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 Protection against Discrimination Act, equal treatment is guaranteed irrespective of personal characteristics in 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 (Article 2(1), indent 2). 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 prohibits discrimination in the following area: membership of, and involvement in workers' or employers' organisations as formulated in the directives for all five grounds and beyond, and for both private and public employment.

In accordance with the Protection against Discrimination Act, equal treatment is guaranteed irrespective of personal characteristics in relation to 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 (Article 2(1), indent 4).

Protected grounds are gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic.

### **3.2.6 Social protection, including social security and healthcare (Article 3(1)(e) Directive 2000/43)**

In Slovenia, national legislation prohibits discrimination in the following area: social protection, including social security and healthcare, as formulated in the Racial Equality Directive.

In accordance with the Protection against Discrimination Act, equal treatment is guaranteed irrespective of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic, in all areas, including social protection, social security and healthcare (Article 2(1), indent 5).

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. 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 Act<sup>73</sup> (adopted on 13 July 2010, entered into force 10 August 2010, came into effect on 1 June 2011, latest amendments of 18 November 2015) regulates the entitlement to financial social assistance, which is recognised for those individuals who are not able to secure their material security 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 Act<sup>74</sup> (last amended on 18 November 2015) 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.<sup>75</sup>

The right of any person to healthcare under conditions established by law is a constitutionally guaranteed right. The Healthcare and Health Insurance Act<sup>76</sup> 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 Act<sup>77</sup> 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.

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<sup>73</sup> Slovenia, Social Assistance Benefits Act (*Zakon o socialno varstvenih prejemkih*), adopted on 13 July 2010, available at [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5609](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5609) (last accessed 27 March 2017).

<sup>74</sup> Slovenia, Parental Protection and Family Benefits Act (*Zakon o starševskem varstvu in družinskih prejemkih*), adopted on 3 April 2014, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6688](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6688) (last accessed 27 March 2017).

<sup>75</sup> 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 since 24 March 2017 also for same-sex partners, regardless of whether they have entered into civil unions.

<sup>76</sup> Slovenia, Health Care and Health Insurance Act (*Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*), adopted on 12 February 1992, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213) (last accessed 27 March 2017).

<sup>77</sup> Slovenia, Health Services Act (*Zakon o zdravstveni dejavnosti*), adopted on 12 February 1992, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO214](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO214) (last accessed 27 March 2017).

#### 3.2.6.1 Article 3.3 exception (Directive 2000/78)

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 prohibits discrimination in the following area: social advantages, as formulated in the Racial Equality Directive.

In accordance with the Protection against Discrimination Act, equal treatment is guaranteed irrespective of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic in the field of social advantages (Article 2(1), indent 6). 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 prohibits discrimination in the following area: education, as formulated in the Racial Equality Directive.

In accordance with the Protection against Discrimination Act (Article 2(1), indent 7), equal treatment is guaranteed in the field of education irrespective of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic.

The main piece of legislation on education is the Organisation and Financing of Education Act,<sup>78</sup> 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,<sup>79</sup> while access to professional and occupational education<sup>80</sup> as well as access to high school<sup>81</sup> and higher education<sup>82</sup> 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 the reciprocity principle that is in place for foreigners. Primary school is mandatory for every child between the ages of six and 15.

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<sup>78</sup> Slovenia, Organization and Financing of Education Act (*Zakon o organizaciji in financiranju vzgoje in izobraževanja*), adopted on 6 February 1996, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO445](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO445) (last accessed 27 March 2017).

<sup>79</sup> Slovenia, Elementary School Act (*Zakon o osnovni šoli*), adopted on 14 February 1996, Article 10, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448) (last accessed 27 March 2017).

<sup>80</sup> Slovenia, Vocational and Technical Education Act (*Zakon o poklicnem in strokovnem izobraževanju*), adopted on 13 July 2006, Article 7, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4325](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4325) (last accessed 27 March 2017).

<sup>81</sup> Slovenia, High School Act (*Zakon o gimnazijah*), adopted on 14 February 1996, Article 9, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO450](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO450) (last accessed 27 March 2017).

<sup>82</sup> Slovenia, Higher Education Act (*Zakon o visokem šolstvu*), adopted on 7 December 1993, Article 7, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO172](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO172) (last accessed 27 March 2017).



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.<sup>83</sup>

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 Slovenian lessons being organised in addition.<sup>84</sup> 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.<sup>85</sup> 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.<sup>86</sup>

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

Migrants are treated equally to Slovenian citizens under anti-discrimination legislation. There is no case law in the field of education where migrants are involved. There are no specific policies that aim to address the discrimination of migrants in education – there are only policies of inclusion of migrants into various levels of the education system.

a) 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.<sup>87</sup> 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.

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<sup>83</sup> Slovenia, Kindergarten Act (*Zakon o vrtcih*), adopted on 14 February 1996, Article 3, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO447](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO447) (last accessed 27 March 2017).

<sup>84</sup> Slovenia, Elementary School Act, 1996, Article 8.

<sup>85</sup> Slovenia, Elementary School Act, 1996, Article 10.

<sup>86</sup> Slovenia, Special Rights for Members of the Italian and Hungarian Minorities in the Field of Education Act (*Zakon o posebnih pravicah pripadnikov italijanske in madžarske narodne skupnosti na področju izobraževanja*), adopted on 25 April 2001, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2611](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2611) (last accessed 26 May 2016).

<sup>87</sup> Slovenia, Placement of Children with Special Needs Act (*Zakon o usmerjanju otrok s posebnimi potrebami*), adopted on 12 July 2011, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5896](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5896) (last accessed 27 March 2017).

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.<sup>88</sup> 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 may be contrary to the UN Convention on the Rights of Persons with Disabilities.

#### b) Trends and patterns regarding Roma pupils

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

The Kindergarten Act<sup>89</sup> 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 Decree on Standards and Employment Criteria in Pre-School Education<sup>90</sup> (last amended on 20 July 2005) allows these classes to include a smaller number of children than other classes, as well as fewer children per teacher (Article 39 of the decree).

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'.<sup>91</sup> 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.<sup>92</sup> 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 2006<sup>93</sup> (this is the most recent comprehensive report on the Roma education situation in Slovenia), Roma children in Slovenia continue to face

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<sup>88</sup> Slovenia, Placement of Children with Special Needs Act, 2011, Article 30.

<sup>89</sup> Slovenia, Kindergarten Act (*Zakon o vrtcih*), adopted on 14 February 1996, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO447> (last accessed 18 May 2017).

<sup>90</sup> Slovenia, Decree on Standards and Employment Criteria in Pre-School Education (*Odredba o normativih in kadrovskih pogojih za opravljanje dejavnosti predšolske vzgoje*), adopted on 15 September 1997, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ODRE357](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ODRE357) (last accessed 27 March 2017).

<sup>91</sup> [www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf) (last accessed 27 March 2017).

<sup>92</sup> [www.mizs.gov.si/fileadmin/mizs.gov.si/pageuploads/podrocje/razvoj\\_solstva/projekti/Strategija\\_Romi\\_dopo\\_Initev\\_2011.pdf](http://www.mizs.gov.si/fileadmin/mizs.gov.si/pageuploads/podrocje/razvoj_solstva/projekti/Strategija_Romi_dopo_Initev_2011.pdf) (last accessed 27 March 2017).

<sup>93</sup> Amnesty International (2006) *False starts: The exclusion of Romani children from primary education in Bosnia and Herzegovina, Croatia and Slovenia*, available at: [www.amnesty.org/en/documents/EUR05/002/2006/en/](http://www.amnesty.org/en/documents/EUR05/002/2006/en/) (last accessed 27 March 2017).

discrimination irrespective of the strategies and programmes adopted by the Government. According to this 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 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. The UN Committee on the Rights of the Child in its concluding observations in 2013 also expressed concern over the fact that Roma children 'enjoy limited access to education and a high number of them are attending classes for children with special needs despite the Committee's previous recommendation.'<sup>94</sup>

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 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.<sup>95</sup>

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*.<sup>96</sup> 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.<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup> Most of the information in these reports is still very relevant today. The fourth government report recognises that there is a significant gap between the education levels of Roma and the rest of the

<sup>94</sup> UN Committee on the Rights of the Child (2013), *Concluding observations on the combined third and fourth periodic reports of Slovenia, adopted by the Committee at its sixty-third session* (27 May–14 June 2013), Section B. 24 (c), <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsiN07UIbUkV3oM5iuiI94uROt6rFYcmjQDrXuoIjUb6XmpGj%2bry4vaS%2beIQg4LtHqUn%2fAeN9mzSJCXr%2bqagY%2f2eVH9v1z9X%2fsdydZItFNIA> (27 March 2017).

<sup>95</sup> Amnesty International (2006), *False starts: The exclusion of Romani children from primary education in Bosnia and Herzegovina, Croatia and Slovenia*, available at: [www.amnesty.org/en/documents/EUR05/002/2006/en/](http://www.amnesty.org/en/documents/EUR05/002/2006/en/) (last accessed 27 March 2017).

<sup>96</sup> 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.ecmi.de/uploads/tx\\_lfpubdb/Report\\_60\\_OMC\\_Evaluation.pdf](http://www.ecmi.de/uploads/tx_lfpubdb/Report_60_OMC_Evaluation.pdf) (last accessed 27 March 2017).

<sup>97</sup> Krakar, T. (2010), *Inclusion of Roma pupils in primary school* Bršljin, diploma thesis, University of Ljubljana, Faculty of Arts, p. 36.

<sup>98</sup> 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.ecmi.de/uploads/tx\\_lfpubdb/Report\\_60\\_OMC\\_Evaluation.pdf](http://www.ecmi.de/uploads/tx_lfpubdb/Report_60_OMC_Evaluation.pdf) (last accessed 27 March 2017).

<sup>99</sup> 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: [www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo\\_06112014.pdf](http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo_06112014.pdf) (last accessed 27 March 2017).

population.<sup>100</sup> Officially, segregation (schooling in separate classes) is no longer present, but de facto the situation is still not satisfactory.<sup>101</sup>

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<sup>102</sup> (a new national Programme for 2016-2021 is currently in preparation). The programme 2010-2015 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.<sup>103</sup>

### **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 prohibits discrimination in the following area: access to and supply of goods and services, as formulated in the Racial Equality Directive.

In accordance with the Protection against Discrimination Act, equal treatment is guaranteed irrespective of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic in access to and supply of goods and services which are available to the 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 (but not on manufacturers or designers of goods).

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 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 by its decision.<sup>104</sup>

#### **3.2.9.1 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).

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<sup>100</sup> Government of Slovenia (2015), *Četrto poročilo vlade republike slovenije o položaju romske skupnosti v Sloveniji* [Fourth government report on the situation of the Roma community in Slovenia], available at: [www.un.gov.si/si/manjsine/romska\\_skupnost/ustavno\\_pravni\\_polozej/](http://www.un.gov.si/si/manjsine/romska_skupnost/ustavno_pravni_polozej/) (last accessed 27 March 2017).

<sup>101</sup> Amnesty International Slovenia, available at [www.amnesty.si/romi](http://www.amnesty.si/romi) (last accessed 27 March 2017).

<sup>102</sup> Government of the Republic of Slovenia (2010), National Programme of Measures for Roma, 2010-2015, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED5100> (last accessed 14 July 2017).

<sup>103</sup> Human Rights Ombudsman (2014), *Annual report for 2013*, available at: [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Devetnaisto\\_redno\\_letno\\_porocilo\\_Varuha\\_CP\\_RS\\_za\\_letno\\_2013.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnaisto_redno_letno_porocilo_Varuha_CP_RS_za_letno_2013.pdf) (last accessed 27 March 2017).

<sup>104</sup> Human Rights Ombudsman (2014), *Annual Report for 2013*, available at: [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Devetnaisto\\_redno\\_letno\\_porocilo\\_Varuha\\_CP\\_RS\\_za\\_letno\\_2013.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnaisto_redno_letno_porocilo_Varuha_CP_RS_za_letno_2013.pdf) (last accessed 27 March 2017). Full reference to the case is not available.

Non-discrimination provisions only apply to goods and services available to the public, as stipulated by Article 2 (1), indent 8 of the Protection against Discrimination Act.

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

In Slovenia, national legislation prohibits discrimination in the following area: housing, as formulated in the Racial Equality Directive.

In accordance with the Protection against Discrimination Act, equal treatment is guaranteed irrespective of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic, in relation to apartments and their supply (the law only mentions apartments and not housing in general) (Article 2(1), indent 8). 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 and it does not define the reasonable accommodation duty of landlords to allow a person with disabilities to make changes to the property.

Migrants are treated equally under anti-discrimination legislation. There is no anti-discrimination case law in the field of housing involving migrants. There are no policies that aim to address discrimination against migrants in the field of housing. However, it should be stressed that migrants and EU nationals do not have equal access to public housing with no-profit rents, as having Slovenian nationality is generally included among the eligibility criteria.

#### **3.2.10.1 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.<sup>105</sup> Often Roma settlements, constructed without a building permit on 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

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<sup>105</sup> See, for example, Human Rights Ombudsman (2012), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2011* [Annual report for 2011], available at [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Letno\\_porocilo\\_Varuha\\_za\\_leto\\_2011.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Letno_porocilo_Varuha_za_leto_2011.pdf) (last accessed 27 March 2017).



one tenth of settlements regularisation is not possible and relocation seems to be the only solution.<sup>106</sup>

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 % were in contact with other non-Roma settlements.<sup>107</sup> On 16 March 2011 Amnesty International published a report, *Parallel lives: Roma denied rights to housing and water in Slovenia*,<sup>108</sup> 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.<sup>109</sup> 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.<sup>110</sup> Currently, a case is pending against Slovenia before the European Court of Human Rights, for failure to ensure access to drinking water in some Roma settlements.<sup>111</sup>

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, were also highlighted by the 2014 ECRI report.<sup>112</sup> 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.<sup>113</sup> The *Fourth Government report on the situation of the Roma community in Slovenia* emphasises that the main problem with the delays in addressing the housing situation of Roma, the legalisation of Roma settlements and in facilitating access of Roma to social (non-profit) apartments is in the lack of state competence in these matters. Namely, the primary competence to deal with these issues lies with local communities and if the latter are inactive in this field there are no additional mechanisms set up through which the state could act.<sup>114</sup> The report does not specifically address the problem of forced evictions and the duty to provide housing to vulnerable groups (women,

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<sup>106</sup> Office for ethnic minorities of the Government of the Republic of Slovenia, *Roma – zakonodaja, programi, ukrepi* [Roma – Legislation, programmes, measures]. Available at: [www.rtvsllo.si/files/Slovenija/zakonodaja\\_programi\\_ukrepi\\_1.doc](http://www.rtvsllo.si/files/Slovenija/zakonodaja_programi_ukrepi_1.doc) (last accessed 27 March 2017).

<sup>107</sup> 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).

<sup>108</sup> Amnesty International Slovenia (2011) *Slovenia: Parallel lives: Roma denied rights to housing and water in Slovenia*, available at: [www.amnesty.org/en/library/info/EUR68/005/2011/en](http://www.amnesty.org/en/library/info/EUR68/005/2011/en) (last accessed 27 March 2017).

<sup>109</sup> Human Rights Ombudsman (2012), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2011* [Annual report for 2011], available at [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Letno\\_porocilo\\_Varuha\\_za\\_leto\\_2011.pdf](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 [www.varuh-rs.si/fileadmin/user\\_upload/pdf/posebna\\_porocila/POSEBNO\\_POROCILO\\_ROMI\\_-\\_maj\\_2012\\_-\\_za\\_splet.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/posebna_porocila/POSEBNO_POROCILO_ROMI_-_maj_2012_-_za_splet.pdf) (last accessed 27 March 2017).

<sup>110</sup> Human Rights Ombudsman (2014), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013* [Annual report for 2013], available at: [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Devetnajsto\\_redno\\_letno\\_porocilo\\_Varuha\\_CP\\_RS\\_za\\_leto\\_2013.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_leto_2013.pdf) (last accessed 27 March 2017).

<sup>111</sup> This is a strategic litigation case: Applications No. 24816/14 and 25140/14, *Branko Hudorovič and Aleks Hudorovič v. Slovenia and Ljubo Novak and others v. Slovenia*, lodged on 26 March 2014. For third party intervention of the European Roma Rights Centre see <http://www.errc.org/article/hudorovic-and-others-v-slovenia-third-party-intervention-pending/4423> (last accessed 18 May 2017).

<sup>112</sup> ECRI (2014) *ECRI report on Slovenia*, available at: [www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf) (last accessed 27 March 2017).

<sup>113</sup> 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: [www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo\\_06112014.pdf](http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo_06112014.pdf) (last accessed 27 March 2017).

<sup>114</sup> Government of Slovenia (2015), *Četrto poročilo vlade republike slovenije o položaju romske skupnosti v Sloveniji* [Fourth Government report on the situation of the Roma community in Slovenia], available at: [www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo\\_2014\\_NG2.pdf](http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Porocilo_2014_NG2.pdf), p. 24 (last accessed 27 March 2017).

children, families), but it briefly mentions that general social housing schemes for vulnerable groups from the National Housing Programme are to be used in cases when a housing problem needs to be addressed.

A problem which needs to be addressed is the issue of non-profit housing defined by the Housing Act.<sup>115</sup> In order to rent a social (non-profit) apartment, people must fulfil general conditions, such as citizenship, permanent residence in the area where the apartment is located and confirmation of income and the income of their family members. For other types of lease, landlords may add even more conditions that have to be satisfied in order to lease a particular apartment. Such conditions could lead to discrimination on the basis of 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. The provision seems to be purely declaratory. It has not yet been invoked in litigation.

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<sup>115</sup> Slovenia, Housing Act (*Stanovanjski zakon*), adopted on 19 June 2003, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2008](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2008) (last accessed 27 March 2017).

## **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 13(2) of the Protection against Discrimination Act states that difference in treatment in the area of employment on the grounds of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic does not constitute discrimination in cases where 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, necessary and proportionate.

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 characteristic 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)**

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

Article 13(4) of the Protection against Discrimination Act 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 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 a 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. There are two exceptions to this rule. 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.<sup>116</sup> The

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<sup>116</sup> Slovenia, *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], signed on 21 September 2000, available at:



second exception are a few Catholic schools which are funded by the State as they run a state-accredited programme.<sup>117</sup> There have been no cases yet concerning clashes of grounds, e.g. religion and sexual orientation in employment in these schools. Also, as the provisions are not precise it is also unclear whether the exceptions apply to teachers of religion, all teachers or all staff.

#### **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 discrimination (Article 3(4), Directive 2000/78/EC).

The Defence Act<sup>118</sup> states that candidates wishing to perform military service professionally should, among other requirements, in principle not be older than 25 (or 30 for officers).<sup>119</sup> 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 (disability is not explicitly referred to). The age requirement is absolute and does not depend on the ability of the individual to perform required tasks. This might be inconsistent with the CJEU case law where the Court elaborated on whether such conditions are in line with the genuine occupational requirement argument.<sup>120</sup>

In 2013 a new Police Organisation and Work Act was adopted.<sup>121</sup> 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

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[www.mk.gov.si/fileadmin/mizks.gov.si/pageuploads/urad\\_zav\\_verske\\_skupnosti/zakonodaja/sporazumi/duhovna\\_oskrba\\_ssk.pdf](http://www.mk.gov.si/fileadmin/mizks.gov.si/pageuploads/urad_zav_verske_skupnosti/zakonodaja/sporazumi/duhovna_oskrba_ssk.pdf) (last accessed 27 March 2017).

<sup>117</sup> 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/si/odlocitev/US30557?q=zasebne+%C5%A1ole> (last accessed 27 March 2017).

<sup>118</sup> Slovenia, Defence Act (*Zakon o obrambi*), adopted on 20 December 1994, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO532](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO532) (last accessed 27 March 2017).

<sup>119</sup> 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.

<sup>120</sup> See CJEU, C-416/13, *Mario Vital Pérez v Ayuntamiento de Oviedo*; Judgment of 13 November 2014; CJEU, C-229/08, *Colin Wolf v Stadt Frankfurt am Main*, Judgment of 12 January 2010.

<sup>121</sup> Slovenia, Police Organisation and Work Act (*Zakon o organiziranosti in delu v policiji*), adopted on 7 February 2013, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6315](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6315) (last accessed 27 March 2017).

Article 2(3) of the Redress of Injustices Act,<sup>122</sup> 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.<sup>123</sup>

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

The Constitution, the Protection against Discrimination Act 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 provided 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 if 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 Protection against Discrimination Act prohibits discrimination based on any personal characteristic, which includes marital status.

b) Benefits for employees with opposite-sex partners

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

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<sup>122</sup> Slovenia, Redress of Injustices Act (*Zakon o popravu krivic*), adopted on: 11 October 1996, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO474](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO474) (last accessed 27 March 2017).

<sup>123</sup> Constitutional Court Decision No. U-I-371/96 of 23.9.1998, Official Gazette No. 68/1998.

In April 2016 Slovenia adopted the Civil Unions Act,<sup>124</sup> which brings full equality for same-sex partners in all fields except for marriage, joint adoption and access to donor insemination. This means that also some work family benefits that were previously not accessible for same-sex partners are now accessible under equal grounds. The Civil Unions Act was adopted after years of efforts to replace the Registration of Same-sex Partnership Act,<sup>125</sup> which contained a limited set of rights. There were several legislative efforts to regulate the matter within family legislation, but they were overridden by two referendums (in 2012 and 2015).

In addition, if an employer limited benefits to opposite-sex partners, the Protection against Discrimination Act could apply since it prohibits discrimination on the ground of sexual orientation.

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

In Slovenia, there are no exceptions in relation to disability and health and safety as allowed under Article 7(2) of the Employment Equality Directive.

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, particular hair styles, beards, jewellery, etc. are not permitted if this runs counter to health and safety rules.

#### **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 13(3) of the Protection against Discrimination Act states that difference of treatment in the area related to employment on the ground of age does not constitute discrimination, if such treatment is objectively and reasonably justified with a legitimate aim, including the legitimate aims of the active employment policy, labour market and vocational training, and if the means to achieve these objectives are appropriate, necessary and proportionate.

##### **a) 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*<sup>126</sup> and *Kücükdeveci*<sup>127</sup> cases.

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<sup>124</sup> Slovenia, Civil Unions Act (*Zakon o partnerski zvezi*), adopted on 21 April 2016, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434) (last accessed 27 March 2017).

<sup>125</sup> Slovenia, Registration of Same-sex Partnerships Act (*Zakon o registraciji istospolnih partnerskih skupnosti*), adopted on 22 June 2005, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335) (last accessed 27 March 2017).

<sup>126</sup> CJEU, C-144/04, *Werner Mangold v Rüdiger Helm*, Judgment of 22 November 2005.

<sup>127</sup> CJEU, C-555/07, *Seda Küçükdeveci v. Swedex GmbH & Co. KG*, Judgment of 19 January 2010.

b) 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/EC.

Article 60 of the 2010 Labour Market Regulation Act<sup>128</sup> (adopted on 28 September 2010, entered into force on 27 October 2010, came into effect on 1 January 2011)<sup>129</sup> 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.

c) Fixing of ages for admission or entitlements to benefits of occupational pension schemes

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 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

<sup>128</sup> Slovenia, Labour Market Regulation Act (*Zakon o urejanju trga dela*), adopted on 28 September 2010, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5840](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5840) (last accessed 27 March 2017).

<sup>129</sup> The difference between the act entering into force and the act coming into effect 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 effect enables stakeholders to take all the necessary preparatory steps. Allowing extra time for the law to come into effect is the usual practice in the process of adopting large systemic laws.

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 (Article 185(1)). 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 (Article 185(3)). 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 years<sup>130</sup> of age (Judicial Service Act).<sup>131</sup> This might be inconsistent with the CJEU case law in which the Court elaborated on whether such conditions are in line with the genuine occupational requirement argument.<sup>132</sup> 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).

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<sup>130</sup> The law does not mention any justification for setting the minimum age for judges to 30.

<sup>131</sup> Slovenia, Judicial Service Act (*Zakon o sodniški službi*), adopted on 30 March 1994, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO334](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO334) (last accessed 27 March 2017).

<sup>132</sup> See CJEU, C-416/13, *Mario Vital Pérez v. Ayuntamiento de Oviedo*; Judgment of 13 November 2014; CJEU, C-229/08, *Colin Wolf v. Stadt Frankfurt am Main*, Judgment of 12 January 2010.

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.

If an individual in the private sector wishes to work longer, the pension can be deferred. In the public sector the individual must retire when reaching pensionable age, and may not defer his or her pension, unless he or she changes jobs and becomes an employee in the private sector.

An individual cannot collect a pension and still work on the basis of an employment contract (but may work on the basis of civil law contracts).

There are two different types of pensions available under conditions defined by law: old-age pension and disability pension.<sup>133</sup> 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).<sup>134</sup> This is a general rule which has one exception. Namely, in the period between 2013 and 2015 women also had the right to an old-age pension when they reached 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:

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:

<sup>133</sup> 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.

<sup>134</sup> Article 27 of Pension and Disability Insurance Act.



Year	Age		Pension insurance (women)
	Men	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 normal age of 65 when people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wishes to work longer, payments from such occupational pension schemes can be deferred. In the public sector the individual must retire when reaching pensionable age, and may not defer his or her pension, unless he or she changes jobs and becomes an employee in the private sector.

An individual cannot collect a pension and still work on the basis of an employment contract (but may work on the basis of civil law contracts).

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 confirming 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).<sup>135</sup> It remains to be seen whether this is compatible with the directive.

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.<sup>136</sup> It found that the two aims pursued by the Fiscal Balance Act – balanced age composition of the public service and avoidance of disputes about whether a public servant is capable of performing his/her work after a certain age – are not contrary to Article 6 (1) of the Employment Framework Directive and the CJEU case law.

In addition, in relation to the Fiscal Balance Act at least three cases were decided by the Supreme Court of the Republic of Slovenia in 2015. In two of these cases the Supreme Court invoked the decision of the Constitutional Court and stated that that termination of an employment contract on the grounds of retirement age does not constitute unlawful discrimination.<sup>137</sup> In one case the Supreme Court in principle confirmed the same reasoning, but since this case involved a female complainant the court recognised that her employment should be terminated one month later than it was.<sup>138</sup> The reason for this was that in the stated decision the Constitutional Court only found a breach of the Constitution in relation to women and confirmed that the same, gender-neutral rules on mandatory retirement in the public sector should apply for both men and women (see also Section 12.2.).

#### 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 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.

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<sup>135</sup> Slovenia, Fiscal Balance Act (*Zakon za uravnoteženje javnih financ*), adopted on 11 May 2012, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6388](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6388) (last accessed 27 March 2017).

<sup>136</sup> Constitutional Court of the Republic of Slovenia, Decision No. U-I-146/12-40, 14 November 2013.

<sup>137</sup> Supreme Court of the Republic of Slovenia, Judgment No. VIII Ips 231/2014 of 24 February 2015 and Judgment No. VIII Ips 65/2015 of 13 July 2015.

<sup>138</sup> Supreme Court of the Republic of Slovenia, Judgment No. VIII Ips 213/2014 of 24 March 2015.



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.<sup>139</sup> 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 no other exceptions to the prohibition of discrimination (on the grounds covered by the Directives 2000/43 and 2000/78) provided in national law.

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<sup>139</sup> CJEU, C-229/08, *Colin Wolf v. Stadt Frankfurt am Main*, Judgment of 12 January 2010.

## **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 permitted in national law.

Article 17 of the Protection against Discrimination Act 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 17(1)). Furthermore, the law stipulates two different forms of positive action: i) incentive measures which provide special incentives or benefits for people in a less favourable situation, and ii) 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 (Article 17(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.

Furthermore, according to Article 18 of the Protection against Discrimination Act, positive action may be introduced by state bodies, self-governing local communities, holders of public authority, employers, educational institutions, business entities, and others depending on the nature of their operations and their activities (Article 18(1)). Positive action must pursue a legitimate aim of eliminating the fact-based, less favourable situation of individuals with a certain personal characteristic, and they must be appropriate and necessary for the elimination of such a situation. The entities that adopt positive action must regularly check whether continuing with the measures is substantiated and justified. If they establish that the aim of their implementation has been achieved they must terminate the measures immediately (Article 18(2)).

### **b) Main positive action measures in place on national level**

#### **1. Special measures for national minorities**

According to the population census of 2002, the population consists of 83 % ethnic Slovenians, 0.11 % Italians, 0.32 % Hungarians and 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 institution 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.<sup>140</sup>

Special measures for the Roma include political representation of Roma on municipal councils with Roma councillors through the Roma Community Act<sup>141</sup> which introduced a 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.<sup>142</sup>

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,<sup>143</sup> 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.<sup>144</sup> The Local Self-government Act also provides for committees on Roma issues as working bodies of the local councils, although these are not mandatory.

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 above the age of 30 who are long-term unemployed; those above the age of 30 with low education; young people; migrants; refugees; and other vulnerable groups.<sup>145</sup>

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

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<sup>140</sup> Human Rights Ombudsman (2009), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2008* [Human Rights Ombudsman annual report 2008], p. 47, available at [www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/](http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/) (last accessed 27 March 2017).

<sup>141</sup> Slovenia, Roma Community Act (*Zakon o romski skupnosti v Republiki Sloveniji*), adopted on 30 March 2007, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4405](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4405) (last accessed 27 March 2017).

<sup>142</sup> Human Rights Ombudsman (2014), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2013*, (Human Rights Ombudsman annual report for 2013), available at [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Devetnajsto\\_redno\\_letno\\_porocilo\\_Varuha\\_CP\\_RS\\_za\\_leto\\_2013.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Devetnajsto_redno_letno_porocilo_Varuha_CP_RS_za_leto_2013.pdf) (last accessed 27 March 2017).

<sup>143</sup> Slovenia, Local Self-government Act (*Zakon o lokalni samoupravi*), adopted on 21 December 1993, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO307](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO307) (last accessed 27 March 2017).

<sup>144</sup> [www.errc.org/cikk.php?cikk=2384](http://www.errc.org/cikk.php?cikk=2384) (last accessed 27 March 2017).

<sup>145</sup> Ministry of Labour, Family, Social Affairs and Equal Opportunities (2016) *Katalog ukrepov aktivne politike zaposlovanja* [Catalogue of Measures of the Active Employment Policy], available at [http://www.mddsz.gov.si/si/delovna\\_podrocja/trg\\_dela\\_in\\_zaposlovanje/zaposlovanje/zutd/katalog\\_ukrepu\\_v\\_apz\\_arhiv/](http://www.mddsz.gov.si/si/delovna_podrocja/trg_dela_in_zaposlovanje/zaposlovanje/zutd/katalog_ukrepu_v_apz_arhiv/) (last accessed 27 March 2017).

requirement in law and that the procedure for issuing such a certificate should be stipulated in law.<sup>146</sup> There were no further discussions on the issue.

### 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).

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; people with disabilities; migrants; refugees; homeless people; and other vulnerable groups.<sup>147</sup>

### 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. These special rights, which include transfer to a more appropriate workplace, a part-time job, vocational rehabilitation, compensation for loss of earnings and protection from redundancy, are described under reasonable accommodation duties (see Section 2.6 above). Furthermore, in order to promote the inclusion of groups that experience disproportionately high unemployment rates, including persons with disabilities, the government has an Active Employment Policy through which these groups can access short-term employment sponsored by the State (see above title 3).<sup>148</sup>

### 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.

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<sup>146</sup> Human Rights Ombudsman (2013), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2012 (Annual report for 2012)*, available at: [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/Letno\\_porocilo\\_Varuha\\_2012.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Letno_porocilo_Varuha_2012.pdf) (last accessed 27 March 2017).

<sup>147</sup> Ministry of Labour, Family, Social Affairs and Equal Opportunities (2016) *Katalog ukrepov aktivne politike zaposlovanja [Catalogue of Measures of the Active Employment Policy]*, available at [http://www.mddsz.gov.si/si/delovna\\_podrocja/trq\\_dela\\_in\\_zaposlovanje/zaposlovanje/zutd/katalog\\_ukrepov\\_apz\\_arhiv/](http://www.mddsz.gov.si/si/delovna_podrocja/trq_dela_in_zaposlovanje/zaposlovanje/zutd/katalog_ukrepov_apz_arhiv/) (last accessed 27 March 2017).

<sup>148</sup> Ministry of Labour, Family, Social Affairs and Equal Opportunities (2016) *Katalog ukrepov aktivne politike zaposlovanja [Catalogue of Measures of the Active Employment Policy]*, available at [http://www.mddsz.gov.si/si/delovna\\_podrocja/trq\\_dela\\_in\\_zaposlovanje/zaposlovanje/zutd/katalog\\_ukrepov\\_apz\\_arhiv/](http://www.mddsz.gov.si/si/delovna_podrocja/trq_dela_in_zaposlovanje/zaposlovanje/zutd/katalog_ukrepov_apz_arhiv/) (last accessed 27 March 2017).

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 2-6 % people with disabilities out of the total number of employees). Companies that do not meet the quota must pay contributions to the Fund for Promoting the Employment of Persons with Disabilities equivalent to 70 % of the minimum wage for each person with disabilities that the employer should have hired according to the quota. The number and proportion of people with disabilities in employment has not changed significantly since the establishment of the quota system: 32 682 employees in 2006 which amounts to 3.99 % of all employees in Slovenia, compared to 32 143 employees in 2016, which amounts to 3.86 % of all employment. According to the annual report on the functioning of the fund, this shows that the quota system is functioning, as in spite of economic crisis the number of disabled people in employment remains relatively stable.<sup>149</sup>

Under Article 73 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act, 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. 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.

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 sets out measures for

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<sup>149</sup> Annual Report on the functioning of the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia for 2016.

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.<sup>150</sup>

There are no major positive action measures related to migrants in terms of promotion of their integration in employment.

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<sup>150</sup> *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](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/invalidi_vzv/API_2014-2021_ANG.pdf) (last accessed 27 March 2017).

## 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:

Competent body	Type of case	Outcome
Human Rights Ombudsman	Violation of Article 14 of the Constitution (prohibition of discrimination)	Non-binding decision
Advocate of the Principle of Equality	Violation of the Protection against Discrimination Act (PADA)	Binding decision and recommendations, but no sanctions.
Labour Inspector	Violation of Article 6 or 6.a of the Employment Relationship Act	Binding decision, sanctions
Other Inspectorates	Violations of other laws in the fields protected by the PADA	Binding decision, sanctions
Administrative procedures, Administrative Court	Discrimination in administrative procedures	Binding decision, sanctions
Civil courts	Compensation claims due to discrimination	Binding decision, sanctions
Labour and Social Court	Violation of Article 6 or 6.a of the Employment Relationship Act, discrimination related to social security	Binding decision, sanctions
Criminal courts	Discrimination amounting to a crime	Binding decision, sanctions
Constitutional Court	Violation of Article 14 of the Constitution (prohibition of discrimination)	Binding decision, no sanctions

#### - 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 Ombudsman<sup>151</sup> is a body competent to examine 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 only has competence in the public sector. The decisions of the Ombudsman are not binding.

<sup>151</sup> 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 Slovenian Human Rights Ombudsman Act (*Zakon o Varuhu človekovih pravic*), adopted on 20 December 1993, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO300](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO300) (last accessed 27 March 2017), and the Rules of Procedure of the Human Rights Ombudsman, adopted on 18 October 1995, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=POS17](http://www.pisrs.si/Pis.web/pregledPredpisa?id=POS17). The duties and competencies of the Ombudsman are based on the classic Scandinavian model.

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,<sup>152</sup> 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 competent for matters in the public sphere; however, it can also monitor the activities of State bodies in reported cases from the private sector. 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 conducted by the Advocate of the Principle of Equality**

The new Protection against Discrimination Act maintains the Advocate of the Principle of Equality as the equality body in Slovenia. The Advocate was first established with the 2004 Act Implementing the Principle of Equal Treatment and first functioned within the Government Office for Equal Opportunities and as of 1 April 2012 within the Ministry of Labour, Family, Social Affairs and Equal Opportunities. The new Act set out that the Advocate would be established as an independent state body by six months after the entry into force of the law (i.e. by 24 November 2016). Until then, the functions of the previous Advocate were performed by one civil servant working at the Ministry of Labour, Family, Social Affairs and Equal Opportunities. For more on the institutional changes to the equality body see Section 7.

The new Advocate was nominated on 25 October 2016, based on open call published by the President of the Republic. From 11 candidates, Mr Miha Lobnik was selected by the President of the Republic and confirmed by the National Assembly.

The Advocate has competence in the public and private sectors.

The procedure conducted by the Advocate is now formal and binding. It is also free of charge (Article 35(1)). Anyone who believes that he or she has been discriminated against may file a complaint with the Advocate. This individual has the status of a party to the procedure (Article 33 of the Protection against Discrimination Act). As parties to the procedure, the complainants have the right to access the files of the case, except for data which have been marked by the Advocate as sensitive personal data (Article 35(2)), in line with the Personal Data Protection Act. The Advocate may also start a procedure on its own initiative if it is made aware about the existence of discrimination on the basis of an anonymous complaint, a complaint from a third person or in another way (Article 34(1)). To conduct a procedure in such cases the Advocate must obtain the consent of the individual who has experienced discrimination, unless it is not possible to determine who experienced discrimination, if a larger group was discriminated against or if the case is generally important for protection from discrimination (Article 34(2)). An individual who experienced discrimination but who was not the one who filed the complaint also has the right to participate in the procedure (Article 34(3)), even though he or she is formally not a party to the procedure.

In order for the complaint to be examined it has to contain at least the following information: name and address of the natural or legal person who is complaining; the name and address of the perpetrator (if the complainant has such information at their disposal);

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<sup>152</sup> The Rules of Procedure of the Ombudsman stipulate that the Ombudsman should perform its work in the Slovenian language. However, anyone who is not familiar with the Slovenian language may lodge a petition in their own language.



the facts and circumstances of the case, names and contact information of possible witnesses, and other data that show discrimination has occurred; contact information of the complainant and signature of the complainant. If the complaint is anonymous it is sufficient to state the information about the perpetrator and the facts of the case (Article 36 of the Protection against Discrimination Act).

After receiving the complaint the Advocate verifies the statements in the complaint with the perpetrator and may demand such information and documents from the perpetrator that are necessary for the examination of the case (except for data that are classified). The information and documents must be provided to the Advocate free of charge. (Article 37(1)) The law explicitly authorises the Advocate to obtain from the alleged perpetrator, if this is required by the case, personal data such as names, dates of birth, gender, addresses, citizenship, function or status, pay and other income, promotions or other work conditions, family status, health situation, or membership of a trade union or other organisations (Article 37(3)). The wording of the provision shows that these types of personal data are listed as examples, meaning that other types of personal data could also be demanded by the Advocate, if he or she assessed that they are needed for the examination of the case. In case of victimisation the Advocate may call upon the perpetrator to protect the individual who has experienced discrimination, or those who are assisting him/her, from victimisation or eliminate the consequences of victimisation (Article 37(2)).

The law now gives the Advocate the power to conduct a formal inspection procedure, under the provisions of the Inspection Act<sup>153</sup> and the General Administrative Procedure Act (Article 42(1)). The inspection procedure is a monitoring procedure of the implementation of the provisions of the Protection against Discrimination Act and any other act relevant to various types and areas of discrimination (Article 42(2)). If the inspection procedure shows that discrimination has occurred, the Advocate may issue a decision and:

- Order the elimination of irregularities established through the inspection procedure, within a defined time limit;
- Propose the adoption of appropriate measures for the prevention of further discrimination or for the elimination of the consequences of discrimination within a defined time limit;
- Prohibit further discrimination (Article 42(3)).

It is not possible to file an appeal against the decision of the Advocate, but it is permitted to seek judicial review before the Administrative Court (Article 42(5)). The perpetrator must report to the Advocate about the implementation of the decision within eight days of the expiry of the deadline for implementation (Article 42(6)).

If the Advocate assesses that issuing a decision would not be appropriate in a particular case it may transfer the case to the competent inspectorate to carry out a misdemeanour procedure (Article 42(4)) which may result in a monetary fine. The Advocate also transfers the case to the competent inspectorate if the perpetrator ignores or fails to implement its decisions. In such cases the Advocate has to prepare a motion for the instigation of a misdemeanour procedure in line with the Minor Offences Act<sup>154</sup> (for more information about the procedure before the inspectorates see the next section, as well as Section 7).

The Advocate is competent to examine complaints of alleged discrimination on the grounds of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic, in both the public and private spheres.

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<sup>153</sup> Slovenia, Inspection Act (*Zakon o inšpekcijskem nadzoru*), adopted on 11 June 2002, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3209](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3209) (last accessed 27 March 2017).

<sup>154</sup> Slovenia, Minor Offences Act (*Zakon o prekrških*), adopted on 18 December 2002, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2537](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2537) (last accessed 27 March 2017).

- **Formal: Inspection and misdemeanour procedures conducted by competent inspectorates**

The Protection against Discrimination Act defines three cases when inspectorates are competent to examine complaints filed in line with this act:

- According to Article 42(1) the inspection procedures, i.e. monitoring of the implementation of this act, falls within the competence of both the Advocate and the inspectorates. This means that the complainant may file the complaint either with the Advocate or with the inspectorate which is competent with regard to the particular area of discrimination (e.g. employment, education, health care, goods and services, social care etc.). This means that if the complaint is filed directly with the inspectorate, the inspectorate is obliged to examine it and carry out an inspection procedure and, if violations are found, also a misdemeanour procedure.
- If the Advocate assesses that issuing a decision would not be appropriate in a particular case it may transfer the case to the competent inspectorate to carry out a misdemeanour procedure (Article 42(4)) which may result in a monetary fine.
- The Advocate also transfers the case to the competent inspectorate if the perpetrator ignores or fails to implement its decisions. In such cases the Advocate has to prepare a motion for the instigation of a misdemeanour procedure in line with the Minor Offences Act. The competent inspectorate is obliged to examine the case and inform the Advocate about its decision (Article 43 of the Protection against Discrimination Act).

The procedure before the inspector is free of charge and the decisions are binding. The inspectors work in line with the Inspection Act which has no specific provisions on discrimination cases. For all matters not regulated by this act, the General Administrative Procedure Act is used. In the past there were issues with competences for examining cases of discrimination by inspectors as they were interpreted differently by the inspectorates and the Advocate. Namely, the inspectorates did not consider themselves competent for cases initiated at inspectorates 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.<sup>155</sup> All other inspectorates were reluctant to examine cases about which they received complaints directly and insisted that the Advocate must examine the case first. It remains to be seen whether the new Protection against Discrimination Act sufficiently addresses this dilemma (which, in the opinion of the author does not exist as the act is clear that it is both the Advocate and the inspectorates which are obliged to carry out inspection procedures).

In the 2012 annual report, the Advocate of the Principle of Equality pointed 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.<sup>156</sup> The Advocate further points out the problems which cause this lack of effectiveness of the inspectorates: none of the inspectorates are competent in some of the areas 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

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<sup>155</sup> Human Rights Ombudsman (2008), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2007* [Annual Report for 2007], p. 40, available at: [www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/](http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/) (last accessed 27 March 2017).

<sup>156</sup> Advocate of the Principle of Equality (2012), *Letno poročilo Zagovornika načela enakosti 2011* [Annual report 2011], available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

inspection procedure. <sup>157</sup> 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. <sup>157</sup>

## **- Administrative Procedures**

Administrative procedure (used by all administrative bodies, meaning state bodies, local communities, bearers of public authority) is used if an individual was discriminated against by a State body on the grounds of gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic, by a decision or by another action of an administrative body. It is regulated by the General Administrative Procedure Act<sup>158</sup> 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.<sup>159</sup>

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.<sup>160</sup> 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, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic.

Article 39 of the Protection against Discrimination Act defines certain specifics of legal protection from discrimination. Namely, the person who believes that he or she is or has been discriminated against may file an action to demand the termination of the

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<sup>157</sup> Advocate of the Principle of Equality (2012), *Letno poročilo Zagovornika načela enakosti 2011* [Annual report 2011], available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

<sup>158</sup> Slovenia, General Administrative Procedure Act (*Zakon o splošnem upravnem postopku*), adopted on 16 September 1999, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603) (last accessed 27 March 2017).

<sup>159</sup> Slovenia, Administrative Fees Act (*Zakon o upravnih taksah*), adopted on 26 January 2000, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2146](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2146) (last accessed 27 March 2017).

<sup>160</sup> Slovenia, Administrative Dispute Act (*Zakon o upravnem sporu*), adopted on 28 September 2006, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4732](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4732) (last accessed 27 March 2017).

discrimination, payment of compensation due to the discrimination and publication of the judgment in the media (Article 39(1)). Due to exposure to discrimination the individual is entitled to compensation paid by the perpetrator of between EUR 500 and 5 000 (Article 39(2)). In determining the amount of compensation the competent court takes into account the duration of the discrimination, exposure to aggravated forms of discrimination and other circumstances of the case (Article 39(3)). The claim for the publication of the judgment in the media is granted if the court, taking into account the circumstances of the case, assesses that the publication of the judgment is needed to eliminate the consequences of discrimination or for the prevention of discrimination in other similar cases. The judgment is published in an anonymised way (Article 39(4)). For adjudicating actions under this provision the courts shall apply the provisions of the Civil Procedure Act (Article 39(5)).

This is a provision in relation to which two possible interpretations could arise (although there is as yet no case law to confirm one or the other). The first possible interpretation is that this provision replaces all the provisions of the Obligations Act<sup>161</sup> on compensation (see Section 6.5 on remedies and sanctions), in line with the principle of *lex specialis derogat legi generali*. The second possible interpretation is that this is only an additional provision that complements the general rules on compensation and tort law. In the opinion of the author this interpretation is more appropriate. Namely, it provides for a clear legal basis to claim compensation solely on the basis of the fact that discrimination has taken place, which was not clear before. At the same time, the individual should have the possibility to claim compensation on the usual grounds, such as lost income, material damages, and costs and expenses that might have occurred because of discrimination. In addition, since there is a ceiling to compensation for discrimination, this would mean that under no circumstances could the person who experienced discrimination claim compensation that would exceed EUR 5 000. If the person was discriminated against in the form of termination of employment, the lost income that they could wish to claim could easily exceed EUR 5 000. Therefore, if the first interpretation prevailed, this would put discrimination victims in a significantly worse position in the area of claiming compensation compared to other complainants.

Parties can represent themselves in first instance procedures. Alternatively, they can choose someone to represent them before the local court in line with the Civil Procedure Act (dealing with disputes over matters 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.

The new Protection against Discrimination Act introduced additional rules on representation, related to legal standing of associations and the Advocate, which are further analysed in Section 6.2. Namely, Article 41(1) states that, without prejudice to the provisions of the Civil Procedure Act, the person who experienced discrimination may authorise the Advocate or a non-governmental organisation active in the field of protection from discrimination or human rights to represent him or her in judicial proceedings under Article 39 of the Act. In the name of the Advocate or the NGO the procedural acts may be performed only by a person who is employed by the Advocate or is a representative of the NGO and has passed the state legal exam (Article 41(1)). This rule is stricter than the general rules for representation in civil procedures. Namely, under the general rules, representatives of state bodies or legal persons do not have to have passed the state legal exam for cases concerning disputes below the value of EUR 20 000.

Again, two possible interpretations could arise here (although there is no case law that would confirm one or the other). According to the first one this law is specific to the general rules and should also be used for minor disputes in line with the principle of *lex specialis*

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<sup>161</sup> Slovenia, Obligations Act (Obligacijski zakonik), adopted on 3 October 2001, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263> (last accessed 27 March 2017).

*derogat legi generali*, while under the second interpretation this makes no sense as it would put discrimination victims in a worse situation compared to other complainants and it would make their access to justice more difficult. As in the case of complainants who are represented by trade unions it would make more sense to impose more lenient and not harsher conditions for representation. Since the general provisions of the Civil Procedure Act are more lenient for the victims of discrimination and their authorised representatives the courts could also apply those.

When filing a lawsuit the victim must pay a fee defined on the basis of the Court Fees Act,<sup>162</sup> 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 Act<sup>163</sup> 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 Court Fees 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.

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.<sup>164</sup> For all matters not regulated by this act the Civil Procedure Act is used. In addition to these, the new rules of the Protection against Discrimination Act on the specific aspects of legal protection from discrimination should be taken into account. Here the same concerns about the relationship between these rules and the general compensation rules are valid (see above the discussion about civil procedures).

The rules regarding representation are the same as for civil procedures, including the dilemma on harsher conditions for representation by the Advocate and NGOs in discrimination cases. 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

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<sup>162</sup> Slovenia, Court Fees Act (*Zakon o sodnih taksah*), adopted on 1 April 2008, available at [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4729](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4729) (last accessed 27 March 2017).

<sup>163</sup> Slovenia, Free Legal Aid Act (*Zakon o brezplačni pravni pomoči*), adopted on 31 May 2001, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1265](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1265) (last accessed 27 March 2017).

<sup>164</sup> Slovenia, Labour and Social Courts Act (*Zakon o delovnih in socialnih sodiščih*), adopted on 19 December 2003, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3657](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3657) (last accessed 27 March 2017).

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 the case 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 laid out 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 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 the possibility of preventing these acts.

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 Act set out the punishment for incitement to ethnic, racial, gender, religious or political intolerance or intolerance related to sexual orientation. A 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 personal characteristics 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 of referring 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 exhausted<sup>165</sup> and if the complaint was lodged within 60 days of the act.<sup>166</sup> 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.<sup>167</sup> According to Article 22 of the Constitutional Court Act, the Constitutional Court is also competent to assess the constitutionality and legality of laws and other regulations with the Constitution, ratified international treaties and the general principles of international law.

With the new law, the Advocate also obtained additional powers in the field of constitutional review. Namely, if the Advocate assesses that a certain piece of legislation is discriminatory it may lodge a claim with the Constitutional Court for constitutional review of the law or general act issued with a purpose of exercising public authority (Article 38 of the Protection against Discrimination Act). The Constitutional Court does not have discretion as to whether the claim will be admissible or not but has to assess the claim based on its merits.

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 or she can first try to reach a compromise at a local court, located in the area where the opposing party is resident. 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 lawsuit, it is obliged to arrange a conciliation hearing before the trial. For alleged discrimination in the field of employment or social services, a procedure before the labour and social courts is available and is regulated by the Labour and Social Courts Act.

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 its annual report for the year 2012 (more recent 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 can be seen in the low number of resolved cases and sanctions issued.<sup>168</sup>

#### b) Barriers and other deterrents faced by litigants seeking redress

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<sup>165</sup> 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.

<sup>166</sup> 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.

<sup>167</sup> Slovenia, Constitutional Court Act (*Zakon o ustavnem sodišču*), adopted on 8 March 1994, available at [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO325](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO325) (last accessed 27 March 2017).

<sup>168</sup> Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report 2011), available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

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 do not apply to discrimination cases. In civil procedures and administrative procedures the plaintiffs must pay court fees. 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 5 months in 2015,<sup>169</sup> which had dropped from 21.6 months in 2007. The data for 2016 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.

Comprehensive statistics for the cases dealt with by the Advocate of the Principle of Equality are available up to 2012. The Advocate dealt with four cases in 2009, 13 in 2010, 33 in 2011 and 20 in 2012 (up to 30 March 2012).<sup>170</sup> In total, 85 cases remained unresolved at the end of 2012. Statistics for 2013, 2014 and 2015 are not yet available. The new Advocate published an annual report for 2016, however, since the body was in the process of a comprehensive reform, including establishing its legal identity, hiring staff etc. no work on cases was done during that time.<sup>171</sup> The low number of resolved cases as well as the fact that there have been no annual reports available since 2012 are a result of the fact that there is only one person working in the office of the Advocate.<sup>172</sup> Currently, the Advocate is looking at a backlog of 278 cases.<sup>173</sup>

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<sup>169</sup> Supreme Court of the Republic of Slovenia (2016), *Letno poročilo o učinkovitosti in uspešnosti sodišč 2015* [Annual report on the effectiveness and efficiency of the courts 2015], [http://www.sodisce.si/sodna\\_uprava/statistika\\_in\\_letna\\_porocila/](http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/) (27 March 2017).

<sup>170</sup> Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report 2011), available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

<sup>171</sup> Advocate of the Principle of Equality (2017), *Letno poročilo zagovornika načela enakosti za leto 2016* (Annual report 2016), available at: [https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=CDE1DBE4338FAB7BC12581080040FAA2&db=pre\\_akt&mandat=VII](https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=CDE1DBE4338FAB7BC12581080040FAA2&db=pre_akt&mandat=VII) (last accessed 18 May 2017).

<sup>172</sup> Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report 2011), available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

<sup>173</sup> Advocate of the Principle of Equality (2017), *Letno poročilo zagovornika načela enakosti za leto 2016* (Annual report 2016), available at: <http://www.zagovornik.gov.si/si/informacije/osvescanje/novice/novica/date/2017/04/20/letno-porocilo-za-leto-2016/index.html> (last accessed 18 May 2017).



In 2012 the Republic of Slovenia prepared an implementation report<sup>174</sup> and collected information from the courts which responded to a questionnaire. According to this report, the statistics on 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, 11 in 2010, four in 2011, statistics for 2012 are not available, nine in 2013, and 10 in 2014.<sup>175</sup> The Education Inspectorate dealt with 19 cases related to discrimination between April 2011 and December 2012.<sup>176</sup> In other reports from the Education Inspectorate discrimination is not mentioned.

According to the Labour Inspectorate report for 2015, the Inspectorate found discrimination in 10 cases,<sup>177</sup> the same as in 2014. The report for the year 2013 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.<sup>178</sup>

The statistics show that the Ombudsman dealt with 76 complaints concerning discrimination in 2015,<sup>179</sup> 75 complaints in 2014, 80 complaints in 2013, 74 complaints in 2012, 49 in 2011 and 54 in 2010.<sup>180</sup> The number of complaints on the ground of ethnic origin varies (20 in 2012, 33 in 2014, 24 in 2015). Of these, many complaints were related to bad living conditions in unregulated Roma settlements. The increase in 2014 was related to the fact that the Ombudsman had been actively calling on the responsible bodies to take action.<sup>181</sup> In 2015 six complaints were related to discrimination on the ground of sexual orientation, by the end of 2015 they had not yet been fully examined (the report does not mention the area the complaint is referring to). Twenty-two complaints were related to people with disabilities (35 % were upheld). Complaints concerning other grounds of discrimination are not mentioned in the report.<sup>182</sup> The share of upheld complaints (27.9 %) dealt with by the Ombudsman in 2015 was the largest among complaints lodged due to

<sup>174</sup> Questionnaire (2012) on the implementation of Racial Equality Directive 2000/43/EC and Employment Equality Directive 2000/78/EC.

<sup>175</sup> Labour Inspectorate (2015), *Poročilo o delu inšpektorata RS za delo za leto 2014* (Annual report for 2014), p. 62, available at: [www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/LETNA\\_POROCILA/lp\\_2014\\_vlada\\_280415.pdf](http://www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/LETNA_POROCILA/lp_2014_vlada_280415.pdf) (last accessed 27 March 2017).

<sup>176</sup> Questionnaire (2012) on the implementation of Racial Equality Directive 2000/43/EC and Employment Equality Directive 2000/78/EC.

<sup>177</sup> Labour Inspectorate (2015), *Poročilo o delu inšpektorata RS za delo za leto 2015* (Annual report for 2015), p. 67, available at: [http://www.id.gov.si/si/o\\_inspektoratu/javne\\_objave/letna\\_porocila/](http://www.id.gov.si/si/o_inspektoratu/javne_objave/letna_porocila/) (last accessed 27 March 2017).

<sup>178</sup> Labour Inspectorate (2013) *Poročilo o o delu inšpektorata RS za delo za leto 2013* (Annual report for 2013), available at: [www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/LETNA\\_POROCILA/lp\\_2013\\_vlada\\_090614.pdf](http://www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/LETNA_POROCILA/lp_2013_vlada_090614.pdf) (last accessed 27 March 2017).

<sup>179</sup> Human Rights Ombudsman (2016), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2015* (Annual Report for 2015), available at [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP2015\\_VARUH.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2015_VARUH.pdf) (last accessed 27 March 2017).

<sup>180</sup> Human Rights Ombudsman (2015), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2014* (Annual Report for 2014), available at [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2014\\_-\\_SLO\\_-\\_dvostr\\_-\\_web.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2014_-_SLO_-_dvostr_-_web.pdf) (last accessed 27 March 2017).

<sup>181</sup> Human Rights Ombudsman (2015), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2014* (Annual Report for 2014), available at [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2014\\_-\\_SLO\\_-\\_dvostr\\_-\\_web.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2014_-_SLO_-_dvostr_-_web.pdf) (last accessed 27 March 2017).

<sup>182</sup> Human Rights Ombudsman (2016), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2015* (Annual Report for 2015), available at [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP2015\\_VARUH.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2015_VARUH.pdf) (last accessed 27 March 2017).

alleged discrimination on the grounds of race and disability.<sup>183</sup> The report for 2016 is not yet available.

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](http://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) Engaging on behalf of victims of discrimination (representing them)

In Slovenia, associations, organisations and trade unions are entitled to act on behalf of victims of discrimination, provided they meet the conditions defined by law.

Following the newly adopted Protection against Discrimination Act, the legal framework regarding legal standing for associations, organisations and trade unions is now clearer than it was before. Article 41 of the Act states that, regardless of the rules defined in the Civil Procedure Act, the person who has experienced discrimination may authorise a non-governmental organisation active in the field of protection from discrimination or protection of human rights to represent him or her in judicial proceedings based on the Protection from Discrimination Act. In the name of the non-governmental organisation the procedural acts in the judicial process may be conducted only by a person who is a representative of the NGO and has passed a state legal exam. (Article 41(1))

This wording shows that the representative of the NGO does not have to be a member of an association, and does not have to be employed by the NGO (although this can certainly be the case), but it is sufficient that the representative has a mandate from the NGO allowing them to appear on behalf of the NGO. The problem with this provision is related to the fact that the person must have passed the state legal exam. It is not clear why this condition is imposed for representation in general, as under the general rules on representation from the Civil Procedures Act the state legal exam is not required for representation before county courts adjudicating disputes worth less than EUR 20 000.

An NGO is considered to be active in the field of protection from discrimination or protection of human rights only if it has been granted the status of an organisation working in the public interest in the field of protection from discrimination or protection of human rights (Article 41(2)).<sup>184</sup> The status of an association working in the public interest in this field is

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<sup>183</sup> Human Rights Ombudsman (2016), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2015* (Annual Report for 2015), available at: [www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP2015\\_VARUH.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2015_VARUH.pdf) (last accessed 27 March 2017).

<sup>184</sup> In January 2017 an implementing act was adopted enabling not only associations but also NGOs established as institutes to obtain the status of an organisation working in public interest: Slovenia, Rules on Establishing the status of an organisation working in the public interest etc. (*Pravilnik o določitvi kriterijev za izkazovanje pomembnejših dosežkov delovanja društva za podelitev statusa društva v javnem interesu na področju socialnega varstva, družinske politike, enakih možnosti žensk in moških, vojnih veteranov, vojnih invalidov in žrtev vojnega nasilja ter varnosti in zdravja pri delu*), adopted on 11 January 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV13034> (last accessed 27 March 2017).

granted by a competent ministry on the basis of the Associations Act<sup>185</sup> and in line with the implementing act adopted by the competent ministry for this purpose. The status of an organisation working in the public interest in this field may also be granted to other non-governmental organisations (Article 41(3)). This covers non-profit institutes, foundations or unions of associations which are, in addition to associations, the types of NGOs that can be established in Slovenia. These provisions show that, in order to represent victims in court, the associations will have to undergo a procedure of recognition of their public interest status. At the moment the conditions for obtaining such status are not yet known, as the implementing acts have not yet been adopted.

Under the general rules, 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). In criminal proceedings, the victim can be represented by anyone with legal capacity.

In administrative proceedings (which include inspection procedures before the Advocate and inspectorates), 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.

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.<sup>186</sup>

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.

#### b) Engaging in support of victims of discrimination

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

According to the new Protection against Discrimination Act, the representative of such a non-governmental organisation (with this status) may also accompany and support a victim of discrimination in judicial proceedings in cases of discrimination without representing them, provided that the victim consents to this. To ensure consent is given,

<sup>185</sup> Slovenia, Associations Act (*Zakon o društvih*), adopted on 30 May 2006, available at <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4242> (last accessed 27 March 2017).

<sup>186</sup> Constitutional Court decision no. U-I-246/02 of 3 April 2003.

it is sufficient if the victim of discrimination at the beginning of the procedure or in the course of the procedure gives a statement that a certain person is accompanying them and that they wish for the person to be present in the procedure (Article 41 (4)).

In addition it is worth mentioning that the general provisions of 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 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. In such cases the law does not require the party's permission for an NGO to become involved as a *stranski 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 inspection procedure before the Advocate of the Principle of Equality (Article 34 of the Protection against Discrimination Act). 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).

A certain kind of class procedure is allowed before the Advocate of the Principle of Equality (inspection procedure when not all the parties are required to give their consent (Article 34(2) of the Protection against Discrimination Act), but this would not constitute an action (a lawsuit).

Currently, a draft bill on class actions is under consideration by the Ministry of Justice.<sup>187</sup>

### **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 Protection against Discrimination Act states in Article 40 that if a person who claims discrimination in a procedure before the Advocate, competent inspectorate, or in another procedure in which he or she demands the examination of a case of discrimination, states

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<sup>187</sup> [http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/zakonodaja/160705\\_ZKoIT.pdf](http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/mp.gov.si/zakonodaja/160705_ZKoIT.pdf) (last accessed 27 March 2017).

facts that justify the assumption that the prohibition of discrimination (including harassment) has been violated, the offender must prove that he or she did not violate this prohibition or that unequal treatment is allowed under this law (Article 40(1)).

The only procedures that are explicitly excluded from the shift of the burden of proof rule are criminal procedures (Article 40(2)). Namely, 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 addition, 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 the cases Pdp 224/2014 and Pdp 276/2014 the Higher Labour and Social Court of the Republic of Slovenia relied on the reversal of 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.

Victimisation is defined as a form of discrimination that is prohibited under the Protection from Discrimination Act (Article 7, indent 4). In this law victimisation is defined as exposure of a victim of discrimination or a person assisting the victim to negative consequences due to their actions that aim to prevent or eliminate discrimination (Article 11). This definition does not exclude groups from protection and it has not been interpreted as such. Furthermore, Article 6(8) of the Employment Relationship Act states that victims of discrimination and people who assist the victims may not be exposed to negative consequences for acting against discrimination. In addition, according to the Article 37(2) of the Protection against Discrimination Act the Advocate may order the offender to apply appropriate measures to protect the victim of discrimination or an individual assisting the victim of discrimination from victimisation or to eliminate the consequences of victimisation. Since victimisation is considered to be a form of discrimination, the same measures may be taken by the Advocate as are generally available when violations occur (see above, Section 6.1 on Judicial and Administrative Procedures).

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 7, 11 and 40 of the Protection against Discrimination Act.

## **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 33 of the Protection against Discrimination Act the person who believes he or she was discriminated against may lodge a complaint. The Advocate deals with the complaint through the investigation procedure defined in Articles 33-37 and 42-43 of the Protection against Discrimination Act (see above Section 6.1 on administrative and judicial procedures). An individual who believes he or she was discriminated against may also lodge a complaint directly with the competent inspectorates who are authorised to carry out inspection procedures in line with Article 42 of the Protection against Discrimination Act. If the violations are established and the measures imposed on the offender by the Advocate or the inspectorates are not respected, the inspectorates carry out misdemeanour procedures in line with the Minor Offences Act (Article 44 of the Protection against Discrimination Act).

The law also includes penalties for acts of discrimination. According to Article 45 of the Protection against Discrimination Act, different fees for minor offences are defined depending on the type of offence: the fine for a legal person, individual entrepreneur or an 'individual with autonomous activity' (a formal arrangement under which it is possible to perform economic activity in Slovenia, a type of self-employment) ranges from EUR 3 000 to EUR 20 000 for exposing an individual to direct or indirect discrimination, or to harassment, giving instructions to discriminate or victimising an individual who assists the victim of discrimination (Article 45(1)). If such types of discrimination are perpetrated by an individual (a natural person), the prescribed fine is EUR 250 to EUR 1 200 (Article 45(3)).

A higher upper limit for the fine is defined for aggravated forms of discrimination perpetrated by the same types of offenders: a fine of between EUR 3 000 and EUR 30 000 is prescribed if the offender victimises the victim of discrimination or exposes a person or people to aggravated forms of discrimination (Article 45(2)), i.e. to multiple discrimination, mass discrimination, long-term or continuous discrimination, or discrimination which causes or could cause irreversible consequences for the individual in relation to the damage to his or her legal situation, rights or obligations, in particular if it is perpetrated against children or other vulnerable people (Article 12 of the Protection against Discrimination Act). If such discrimination is perpetrated by an individual (a natural person), the prescribed fine is EUR 500 to EUR 3 000 EUR (Article 45(4)).

In cases of discrimination perpetrated by legal persons additional fines may be imposed on responsible representatives of the legal persons. The responsible representative of a state body, local community, legal person or individual entrepreneur or of an 'individual with autonomous activity' where the misdemeanour took place shall be punished with a fine of between EUR 250 and EUR 2 500 (Article 45(5)) or, in case of aggravated forms of discrimination, with a fine of between EUR 500 and EUR 5 000 (Article 45(6) of the Protection against Discrimination Act).

In theory, the size of the fine depends on the seriousness of the offence and negligence or intent on the part of the offender.<sup>188</sup> However, there is a serious deficiency in provisions prescribing misdemeanours and fines for them in a range from a minimum to a maximum. Namely, there should be a direct authorisation in the Protection from Discrimination Act for the inspections to impose fines higher than the minimum (the same applied with the previous Act Implementing the Principle of Equal Treatment so this is an ongoing problem). This limitation derives from the Minor Offences Act which defines two types of procedures – regular procedures and fast procedures. For fast procedures – by means of which a large majority of misdemeanour cases are handled in practice – this Act states that the fines issued, which are defined in a range, may only be imposed at the minimum amount, if the law which defines specific misdemeanours does not state otherwise (Article 52(3) of the Minor Offences Act). This is a general rule which requires that the specific legislation which defines the fines in a range from a minimum to a maximum explicitly authorises the inspectorate to issue a fine higher than the minimum. Simply having a definition of a fine in a range is not sufficient. Since there is no such explicit authorisation in the Protection from Discrimination Act, this effectively means that in practice the fines do not exceed the minimum prescribed amounts.

The fines go towards State revenue.

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 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 an 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.

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<sup>188</sup> Slovenia, Minor Offences Act (*Zakon o prekrških*), adopted on 18 December 2002, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2537](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2537) (last accessed 27 March 2017).



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 10 years. If this is caused by a person in an official capacity, the sanction is imprisonment of between three 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 content as 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 for anyone who uses sexual harassment, psychological violence, bullying 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 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 cases in relation to these provisions. In addition, Article 20 of the Protection of Public Order Act sets out the 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 Act<sup>189</sup> 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 employee 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 wages as if they had been

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<sup>189</sup> Slovenia, Execution of Judgements in Civil Matters and Insurance of Claims Act (*Zakon o izvršbi in zavarovanju*), adopted on 30 June 1998, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1008](http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1008) (last accessed 27 March 2017).



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 that are responsible are described in Section 3.1.2.

b) Ceiling and amount of compensation

The general legislation which defines the rules of tort law – the Obligations Act – 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.

The new Protection against Discrimination Act introduced additional provisions on claiming compensation and other remedial measures in cases of discrimination. Among others it states that a person who believes that he or she is or has been discriminated against may file an action to claim payment of compensation due to discrimination (Article 39(1)) and that, due to exposure to discrimination, the individual is entitled to compensation paid by the perpetrator of between EUR 500 and EUR 5 000 (Article 39(2)). In determining the amount of compensation the competent court takes into account the duration of the discrimination, exposure to aggravated forms of discrimination and other circumstances of the case (Article 39(3)). As already mentioned in Section 6.1.a) in relation to civil procedures, it is not clear from the law whether this provision is complementary to the general provisions on compensation in the Obligations Act or replaces them.

If it is the former the law now places a ceiling on the amount of compensation that can be claimed solely for the fact that an individual has been exposed to discrimination, but at the same time the individual may claim compensation for other types of damages (e.g. pecuniary damages and other types of non-pecuniary damages apart from the exposure to discrimination). If it is the latter case (if this provision is in fact *lex specialis* and is replacing the compensation system generally in place when it comes to discrimination cases), then discrimination cases are an exception to the rule that there is no formal ceiling to compensation in the Slovenian law. As the legislature did not explicitly exclude discrimination cases from the general tort law provisions and did not provide any reasons for such an interpretation, in the opinion of the author these additional provisions on compensation were adopted only to exclude any doubt that a victim is entitled to compensation for the sole reason of being exposed to discrimination, which was not so clear before. Consequently, the ceiling to compensation is in place only with regard to compensation awarded precisely on these grounds.

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 the 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 complainant was awarded compensation of EUR 11 346.69 (Judgement of the Labour and Social Court in Ljubljana, No. I Pd 804/2007 of 6 January 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 August 2009). In the latter two cases the grounds of discrimination were not established by the court. No recent case law exists in relation to compensation for discrimination.

c) Assessment of the sanctions

Due to a very low number of sanctions issued in cases of discrimination it is difficult to assess whether they are effective and dissuasive. But there are a few indications for such an assessment.

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 Protection against Discrimination Act and Employment Relationship Act are theoretically 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. In addition, there is a problem with the lack of explicit authorisation for imposing fines in the range prescribed (in fast procedures) and not only the minimum fines. Consequently, it is questionable whether fines of EUR 3 000 for legal persons and EUR 250 for natural persons may be assessed as sufficiently high and therefore effective.

The sanctions of imprisonment issued in hate crime and hate speech cases are always suspended, meaning that it is questionable whether they have any impact on 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

The new Protection against Discrimination Act passed on 21 April 2016 provided for the establishment of a new equality body – the Advocate of the Principle of Equality – that would be organised as an independent state body, in six months after the entry into force of the act (i.e. by 24 November 2016).

Following the adoption of the new Protection against Discrimination Act, a new Advocate of the Principle of Equality (Mr Miha Lobnik) was nominated at the National Assembly of Slovenia on 25 October 2016. Since then the new Advocate has engaged in establishing the legal identity of the new independent body, setting up an organisational structure, hiring personnel (two additional full-time lawyers and four part-time civil-contract staff members), arranging premises for the new body and undertaking all other necessary complex tasks for the new body to be established.

The Advocate covers all grounds covered by the Protection against Discrimination Act 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. For two years from the entry into force the Protection against Discrimination Act will continue to impose additional duties on the Ministry of Labour, Family, Social Affairs and Equal Opportunities, such as provision of administrative and technical support for the functioning of the Advocate (Article 50).

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

In accordance with the previous Act Implementing the Principle of Equal Treatment, the Advocate of the Principle of Equality is set out as an independent state body (Article 19(1) of the Protection against Discrimination Act). The new body, which replaced the previous system of having one civil servant who was designated as the equality body, will conduct its responsibilities autonomously within the framework and on the basis of the law and the Constitution (Article 19(2)). The Advocate has the status of a functionary, in line with Article 28(1) of the Act, as opposed to the current status of a civil servant. A specific provision of the law is dedicated solely to the autonomous status of the Advocate. According to Article 20 of the Act, the Advocate may not be given binding guidelines related to the content of its work, particularly in relation to:

- the content of the published studies and research reports in the field of discrimination and decisions on which areas and groups with a certain personal characteristic will be researched;
- recommendations that the Advocate issues in relation to discrimination findings to state bodies, local communities and bearers of public authority or other subjects in line with this Act;
- the content of reports published by the Advocate on discrimination findings;
- decisions of the Advocate based on this Act;
- decisions on whether the Advocate will take part in a judicial procedure in a concrete case, as provided for by this Act.

In order to enhance the independence of the Advocate or eliminate the risk of bias, the law explicitly states that the function of the Advocate is incompatible with other functions in state bodies, local community bodies, political party and trade union bodies, or with other functions and activities which by law are not compatible with performing a public function. Any function which is incompatible with the function of the Advocate is terminated

or is temporarily suspended, if so provided by law, from the date the individual assumes the function of the Advocate (Article 29 of the Protection against Discrimination Act).

The Advocate must report to the National Assembly by submitting regular annual or special reports on its work and findings on the existence of discrimination against various groups with certain personal characteristics. The Advocate must submit its regular annual report to the National Assembly by 30 April for the previous year at the latest.<sup>190</sup> In line with its competence the National Assembly may adopt opinions and recommendations on the Advocate's reports. The Government may provide a preliminary opinion on the reports (Article 22 of the Protection against Discrimination Act).

The nomination procedure for the Advocate is now regulated very differently from under the previous legislation. Similarly to other important functions in the Republic of Slovenia (i.e. Information Commissioner, Human Rights Ombudsman, President of the Anti-Corruption Commission etc.), the Advocate shall be appointed for a five-year term, by the National Assembly, upon a proposal from the President of the Republic of Slovenia. The conditions an individual must fulfil to run for the post of Advocate are to:

- have nationality of the Republic of Slovenia;
- hold a university degree in the field of social sciences or humanities or higher professional education in the same field with specialisation or master's degree or second degree education in line with the rules governing higher education;
- have at least five years of work experience, which shall include at least three years of experience in the field of the principle of equality, human rights or fundamental rights;
- not be a member of a political party bodies;
- not have been convicted with a final decision for non-suspended punishment of imprisonment;
- not be subject to a criminal procedure for a crime prosecuted by official duty (*ex proprio motu*) (Article 23 of the Protection against Discrimination Act).

The majority needed in the vote by the National Assembly to elect the Advocate is a simple relative majority, which means that the candidate is elected if he or she receives more than 50 % of the votes of all members of the parliament who cast their vote (Article 194(3) of the Rules of Procedure of the National Assembly of Slovenia).<sup>191</sup>

In order for the nomination procedure for the new Advocate to be initiated, the Advocate must notify the President of the Republic three months before the expiry of his or her mandate. The public call for nominations for possible candidates for the Advocate shall be published in the official gazette within 30 days of the President receiving the notification from the Advocate. The deadline to apply should not be longer than 30 days or, in the case of an early termination of the mandate, should not be longer than 15 days after the publication of the call for nominations. The applications or nominations must be reasoned and must include the consent of potential candidates that they are willing to accept the nomination (Article 24 of the Protection against Discrimination Act).

The President of the Republic proposes a candidate for the post of the Advocate from among the candidates who were nominated or who applied. However, he or she may also propose other candidates. The President may propose more than one candidate. The President submits a reasoned proposal with the proposed candidate to the National Assembly. This proposal must be submitted within 30 days after the expiry of the deadline for candidates to apply (Article 25 of the Protection against Discrimination Act).

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<sup>190</sup> The fact that no annual reports have been issued by the Advocate between 2012 and 2016 is a result of a protest by the previous Advocate, who wanted to expose the untenable situation of there being a single person acting as the equality body for all grounds and all fields of competence.

<sup>191</sup> Slovenia, National Assembly of Slovenia Rules of Procedure (*Poslovnik državnega zbora*), adopted on 2 April 2002, available at: [www.pisrs.si/Pis.web/pregledPredpisa?id=POSL34](http://www.pisrs.si/Pis.web/pregledPredpisa?id=POSL34) (last accessed 27 March 2017).

The National Assembly must vote on the proposed candidate(s) for the Advocate within 30 days of the submission of the reasoned proposal by the President. The candidate may withdraw his or her candidacy before the beginning of the vote. If the President proposed multiple candidates, the order in which the candidates appear on the ballot is determined by random selection. If in the case of multiple candidates none of them receives the necessary majority in the first round, the vote is repeated with the candidates who received the highest numbers of votes (Article 26 of the Protection against Discrimination Act).

If the proposed candidate for the Advocate does not receive the necessary majority of the votes cast by the members of the parliament, the president of the National Assembly (Parliamentary Speaker) immediately informs the President of the Republic who, within seven days of the vote in the National Assembly, informs the Speaker of his or her decision on the continuation of the election process. If the Advocate is not elected even on the basis of a new reasoned proposal submitted by the President of the Republic, the procedure begins anew, with a new public call for applications or nominations, in line with Articles 24 and 25 of the Act. In such a case the new call must be published within seven days of the last vote in the National Assembly. The deadline to apply or submit nominations should not be longer than 15 days (Article 27 of the Protection against Discrimination Act). For the current Advocate who was appointed on 25 October 2016 it was not necessary to use the entire procedure as he was smoothly elected by the National Assembly in the first round of voting.

The Advocate may be dismissed early, before the expiry of the mandate, only if he or she:

- files a request to stand down;
- no longer meets the conditions for performing his or her function;
- permanently loses his or her ability to perform the function; or
- is found responsible for violating the law or the Constitution which disables the lawful or autonomous performance of the function in line with this Act.

The dismissal procedure begins upon a proposal from the President of the Republic (Article 28(3) of the Protection against Discrimination Act).

The reassurance that the Advocate will no longer function as a one-person body (as it has been since it was first established in 2005) stems from the provision of Article 30, according to which the Advocate shall have a professional service which will carry out professional, administrative or other tasks. Following an explicit mandate issued by the Advocate, the public (civil) servants employed within this professional service will be able to carry out investigation procedures (Article 30 of the Protection against Discrimination Act).

The amount of the budget for the functioning of the Advocate is defined from the state budget, as determined by the National Assembly (Article 31 of the Protection against Discrimination Act). The budget will be fixed by the Republic of Slovenia budget implementation acts for each separate budget period. There is no specification in the law about the number of employees the Advocate shall have. In 2017, the estimated budget of the new body was to be EUR 200 000 for 2017 (EUR 130 000 for human resources, which is sufficient for three to four staff members in total) and EUR 180 000 for 2018. As this is not deemed sufficient, a vibrant public debate has emerged whether it is possible to carry out all these tasks with such a low number of staff. Discussions as to whether and how the resources for the equality body should be increased are currently underway.<sup>192</sup>

The new legal basis is intended to enhance the capacity of the Advocate and its ability for independent, autonomous and effective work. In the annual reports for 2010, 2011 and 2012, the Advocate consistently pointed out that the status of the equality body, which

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<sup>192</sup> See newspaper articles about the discussions of the current Advocate with the President of the Republic: <http://www.vecer.com/lobnik-predsednika-pahorja-opozoril-na-nezadostne-pogoje-za-delovanje-zagovornika-nacela-enakosti-6251097> (last accessed 27 March 2017).

consisted 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, which is a body with investigative powers and the powers to impose sanctions. This was partially taken into account in the course of the preparation of the new act: the status of the Advocate is now similar to that of the Information Commissioner. However, the Advocate will still not have the power to impose sanctions and will have to engage the inspectorates in order for that to happen.

According to the Advocate's recommendations, taking into account the workload, the new body should employ at least eight people – director, four legal experts dealing with complaints, two experts for awareness-raising and monitoring and two administrative and technical support personnel.<sup>193</sup> In 2016 the forecast was that the new body would have three or four employees.

The fact that the previous Advocate of the Principle of Equality lacked 'the organisational and budgetary independence required of a body for the promotion of equal treatment' was also confirmed by the 2014 ECRI report.<sup>194</sup> The ECRI recommended that the State find a suitable solution, 'in order for a fully independent national specialised body to combat discrimination' to be established.<sup>195</sup> ECRI has not commented on the new situation yet, but it will be reviewing its report for Slovenia in 2017.

c) Grounds covered by the designated body/bodies

The Advocate of the Principle of Equality covers gender, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic.

The equality body is competent to deal with discrimination against migrants. However, there is no information on cases involving migrants that have been dealt with so far. The issue is not mentioned in the annual reports, including the report for 2016. Discrimination against migrants is not defined as a priority issue by the Advocate.

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

By law the Advocate carries out the following tasks:

- conducts independent research on the situation of people with a certain personal characteristic, particularly gender, ethnicity, race, ethnic origin, religion or belief, disability, age and sexual orientation, and other issues related to discrimination against people with a certain personal characteristic;
- publishes independent reports and issues recommendations to state bodies, local communities, bearers of public authority, employers, companies and other subjects in relation to findings about the situation of people with a certain personal characteristic, with the aim of preventing or eliminating discrimination and in relation to the adoption of special measures for the elimination of discrimination;
- undertakes control of the respect of the law on the basis of the competences defined in Chapter 5 of the Protection against Discrimination Act and other Acts which may define its competences;

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<sup>193</sup> Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report for 2011), available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

<sup>194</sup> ECRI Report on Slovenia, 2014, available at: [www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf) (last accessed 27 March 2017).

<sup>195</sup> ECRI Report on Slovenia, 2014, available at: [www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf](http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf) (last accessed 27 March 2017).



- provides independent assistance to victims of discrimination in claiming their rights in relation to protection from discrimination in the sense of advice and legal aid to parties in other administrative and judicial procedures related to discrimination;
- raises awareness of the general public about discrimination and measures for its prevention;
- monitors the general situation in the Republic of Slovenia in the field of protection from discrimination and the situation of people with certain personal characteristics;
- proposes adoption of special measures for improvement of the situation of people who are in a less favourable situation due to a certain personal characteristic;
- takes part in judicial proceedings initiated because of discrimination in line with this Act;
- ensures the exchange of available information with the European Union bodies;
- conducts other tasks defined by this Act (Article 21).

This shows that with the new law the list of tasks and responsibilities of the Advocate has been significantly extended. While providing assistance to victims was also included among the tasks under the previous legislation, the law now also contains specific provisions on conducting research and issuing various reports, which was not the case under the previous legislation.

One of the main responsibilities of the Advocate will continue to be the examination of complaints concerning cases of alleged discrimination. While under the previous legislation these procedures were informal and could end solely with non-binding recommendations, now the Advocate has investigative powers and may carry out investigative procedures in line with the Inspections Act, while the complainants have the formal status of a party to the procedure. The Advocate's decisions will now be binding, but it will still not be in a position to impose fines – this can only be done by the inspectorates which are authorised to carry out misdemeanour procedures. For more detailed information about the investigative procedure before the Advocate, please see Section 6.1 on Procedures.

One of the most important new powers provided to the Advocate is the power to initiate a constitutional review of legislation which is allegedly discriminatory (Article 38 of the Protection against Discrimination Act). After obtaining such a request for constitutional review the Constitutional Court will have to examine it on its merits.

#### e) Legal standing of the designated body/bodies

In Slovenia, the designated body does have legal standing to bring discrimination complaints (on behalf or not of identified victim(s)) or to intervene in legal cases concerning discrimination, under the conditions defined by law.

The new Protection against Discrimination Act introduced additional rules on representation, related to the legal standing of the Advocate. Namely, Article 41(1) states that without prejudice to the provisions of the Civil Procedure Act an individual who experienced discrimination may authorise the Advocate to represent him or her in judicial proceedings under Article 39 of the Act. In the name of the Advocate the procedural acts may be performed only by a person who is employed at the Advocate and has passed the state legal exam (Article 41(1)). This rule is stricter than the general rules for representation in civil procedures. Namely, under the general rules representatives of state bodies or legal persons do not have to have passed the state legal exam to represent complainants in disputes below the value of EUR 20 000.

Here two possible interpretations could arise. According to the first one this law is specific to the general rules and should also be used for minor disputes in line with the principle of *lex specialis derogat legi generali*, while under the second interpretation this makes no sense as it would put discrimination victims in a worse situation compared to other complainants, and employees of the Advocate in a worse position than employees in other

state bodies who take part in court proceedings, which would make victims' access to justice more difficult. Since the general provisions of the Civil Procedure Act are more lenient for the victims of discrimination and their authorised representatives, in the opinion of the author the courts could also apply those provisions.

With regard to intervening in legal procedures, the same rules apply to the Advocate as to 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 by such a third party in each particular case. The courts have discretionary power to allow intervention by a third party.

f) Quasi-judicial competences

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

With the new Protection against Discrimination Act the Advocate, obtained some new powers and the position of the complainant is now clearer. Namely, the Advocate shall be able to conduct investigative procedures, it shall have investigative powers and the powers to demand information from the opposing party, in order to objectively determine facts and draw conclusions in each case. The complainants will have the status of a party to the procedure meaning that they have the right to see the case files and the statements of the opposing party (except for personal data which needs to be protected in line with the Protection of Personal Data Act). While the Advocate's decisions will be binding and he or she will have the power to order the elimination of discrimination and other measures, the body is not authorised to issue penalties if its decisions are not respected. Since the power to issue penalties is a key feature of a body that could be considered as quasi-judicial the Advocate does not meet this definition.

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.), in line with Article 16 of the Protection against Discrimination Act. 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).<sup>196</sup> 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.<sup>197</sup> 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.<sup>198</sup> The statistics for 2013, 2014, and

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<sup>196</sup> Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report for 2011), available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

<sup>197</sup> Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report for 2011), available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).

<sup>198</sup> Advocate of the Principle of Equality (2012), *Letno poročilo zagovornika načela enakosti za leto 2011* (Annual report for 2011), available at: [www.mddsz.gov.si/si/delovna\\_podrocja/enake\\_moznosti/zagovornik/letna\\_porocila/](http://www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/) (last accessed 27 March 2017).



2015 are not available.<sup>199</sup> The report for 2016 does not contain statistics on the resolved cases, but has information only on pending cases (278). The Advocate undertook office on 25 October 2016 and has focused on establishing the new body, rather than on casework.

The equality body will have to register the number of complaints and decisions (by ground and field) in its annual report. The annual report will be 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 generally falls within the competence of the Department for National Minorities at the Ministry of the Interior. It remains to be seen whether this will change under the new Advocate.

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<sup>199</sup> The fact that no annual reports were issued by the Advocate between 2012 and 2016 is a result of a protest by the previous Advocate, who wanted to expose the untenable situation of there being a single person acting as the equality body for all grounds and all fields of competence.

## **8 IMPLEMENTATION ISSUES**

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

- a) Dissemination of information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)

Pursuant to Article 154 of the Constitution, regulations must be published prior to coming into force. State regulations are published in the State Official 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 Protection against Discrimination Act 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.

- b) Measures to encourage dialogue with NGOs with a view to promoting the principle of equal treatment (Article 12 Directive 2000/43 and Article 14 Directive 2000/78)

Under Article 15 of the Protection against Discrimination Act, in designing solutions and proposals aimed at achieving the purpose of the Act, the Government and other state bodies have to co-operate with non-governmental organisations (associations, foundations or institutes) active in the field of equal treatment, protection of human rights and fundamental freedoms, protection from discrimination of vulnerable groups or legal or social assistance to discriminated persons.

- c) Measures to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78)

Under Article 15 of the Protection against Discrimination Act, in designing solutions and proposals aimed at achieving the purpose of the Act, the Government and other state bodies have to co-operate with social partners. However, 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.

- d) Addressing the situation of Roma and Travellers

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.

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

The Civil Unions Act differentiates between marriage and civil unions, granting access to the latter only to same-sex partnerships. At the same-time same-sex partners do not have access to marriage, joint adoption and donor insemination.

The Local Self-Government Act 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).

## **9 COORDINATION AT NATIONAL LEVEL**

The new Protection against Discrimination Act no longer contains provisions on who is responsible for coordinating issues regarding anti-discrimination policies in the Republic of Slovenia.

Previously, 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 was responsible for coordinating issues regarding anti-discrimination.

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

## 10 CURRENT BEST PRACTICES

### Projects:

One of the key aspects a project entitled Integration of Roma in the Education System – Danube Region States<sup>200</sup> is 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.

In 2016, the trade union of young people, Mladi Plus, carried out non-discrimination workshops in various towns in Slovenia. The workshops titled 'Discrimination – no, thank you!' focused on discrimination in the employment and on grounds of gender and sexual orientation, but were open also for debate on other personal grounds.<sup>201</sup>

The Serbian Cultural and Educational Centre Danilo Kiš carried out an educational and media campaign on tolerance and diversity, against prejudice and discrimination of ethnic minorities and migrants, which was funded by the Government Communications Office.<sup>202</sup>

### Positive Action:

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. The Council is still in force and working, but also dealing with a number of internal and external problems. 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 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, modifications, maintenance, quality standards and financial value of vehicle modifications. The act also defines groups of people 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 has been applicable since 1 January 2016.

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<sup>200</sup> [http://www.un.gov.si/si/medijsko\\_sredisce/novica/browse/3/article/12447/5891/](http://www.un.gov.si/si/medijsko_sredisce/novica/browse/3/article/12447/5891/) (last accessed 27 March 2017).

<sup>201</sup> <http://www.mc-brezice.si/informator/item/11361-delavnica-proti-diskriminaciji> (last accessed 27 March 2017).

<sup>202</sup> <http://dkis.si/si/kratek-povzetek-projekta/> (last accessed 27 March 2017).

## **11 SENSITIVE OR CONTROVERSIAL ISSUES**

### **11.1 Potential breaches of the directives (if any)**

- The law in general does not permit direct discrimination. However, Article 13 (1) of the Protection against Discrimination Act states that, in spite of the general requirement to ensure equal treatment in Article 5 of the PADA, differential treatment based on personal characteristics does not constitute discrimination in line with this act, if such treatment is based on a legitimate goal and if the means for achieving this goal are appropriate, necessary and proportionate. This provision reads as if direct discrimination on the ground of race and ethnicity is also justified as long as the principle of proportionality is respected, which is not in line with Article 2 of the Racial Equality Directive.
- The new equality body set up with the nomination of the new Advocate as of 24 November 2016 lacks resources for effective work. The budget for 2017 is EUR 200 000, of which EUR 130 000 is available for three to four staff members. It is expected that the body will be provided with administrative support by the Ministry of Labour, Family, Social Affairs and Equal Opportunities for the next two years, but for the body to become explicitly independent there will be need to be a reconsideration as to whether the amount is sufficient for the extensive tasks allocated to the Advocate by the new Protection against Discrimination Act. So far, the Advocate has been completely incapacitated, as the last full annual report was published in 2012 for 2011.
- 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. Given that, in addition to the Advocate, under the new law the inspectorates remain the key bodies responsible for examining discrimination complaints, it is not clear whether this problem will persist or not. The Advocate further highlights problems which cause a lack of effectiveness on the part 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 sanctions (fines for misdemeanours or minor offences) prescribed in a range from a maximum to a minimum are in fact prescribed only at the minimum end of the range. Namely, the Protection against Discrimination Act does not contain an explicit authorisation for the inspectorates to impose fines higher than the minimum, which means that, unless the law changes, legal persons will never have to pay more than EUR 3 000 in fines for discrimination, while natural persons will not need to pay more than EUR 250 or 500, depending on the gravity and the type of offence. This indicates that the fines cannot be regarded as effective and dissuasive.
- With the new provisions on the standing of NGOs and the Advocate, who are now explicitly allowed to represent victims in judicial proceedings and act on their behalf, a new problem has emerged. Namely, the conditions for representation are now stricter for judicial cases of discrimination dealt with by county courts, than for any other judicial case. According to the Civil Procedure Act, anyone with legal capacity may represent a party before the county courts, while according to the new Protection

against Discrimination Act, a person must have passed the state legal exam (bar exam) to represent a complainant. The conditions are therefore stricter for cases of discrimination which makes their access to justice more difficult.

- It is not clear whether the new Protection against Discrimination Act provisions on remedies that can be claimed before courts in cases of discrimination (termination of discrimination, compensation and publication of the judgment in the media) now exist in addition to the general tort law provisions or whether these provisions replace the general tort law rules.
- Related to this, it is not clear whether the ceiling to compensation, which is set at a maximum of EUR 5 000, is in place only for the compensation claimed solely due to exposure to discrimination, or for compensation in cases of discrimination in general. The verbatim interpretation supports the former position. In the former is true, the sanctions could not be considered dissuasive, as this would mean that compensation in cases of discrimination can never exceed EUR 5 000, even if the actual damages were much higher.
- 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 do so. As a result, the majority of research is project based and is carried out by non-governmental institutions. None of the state bodies is responsible for issues concerning some personal characteristics, such as sexual orientation.

### **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 (more recent reports are 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.
- 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.
- Discrimination with regard to training is prohibited, but 'training' is not defined by law.
- Judicial interpretation is required to specify whether sanctions laid out 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 to be 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 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 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.
- Age limits in access to certain jobs could be in breach of EU law and CJEU case law.



## 12 LATEST DEVELOPMENTS IN 2016

- Following the adoption of the new Protection against Discrimination Act passed on 21 April 2016, a new Advocate of the Principle of Equality (Mr Miha Lobnik) was nominated at the National Assembly of Slovenia on 25 October 2016. Since then the new Advocate has engaged in establishing the legal identity of the new independent body, setting up an organisational structure, hiring personnel, arranging premises for the new body and undertaking all other necessary complex tasks for the new body to be established. The budget of the new body is EUR 200 000 for 2017 (EUR 130 000 of which is for human resources) and EUR 180 000 for 2018 (see Sections 6.1 and 7 (a) above).
- The UN Human Rights Committee issued its 'Concluding observations on the third periodic report of Slovenia related to International Covenant on Civil and Political Rights'. The observations contain a number of recommendations on the establishment of an independent anti-discrimination body, and protection from discrimination for different groups, including LGBTI persons, migrants and refugees and Roma.<sup>203</sup>
- A new legal-standing related implementing act<sup>204</sup> was adopted by the Ministry of Labour, Family, Social Affairs and Equal Opportunities. In accordance with the implementing act, not only associations but also institutes (which are two different organisational structures of NGOs) can apply for 'public interest status'. This is important as the Protection Against Discrimination Act requires organisations to have this status in order to intervene in legal proceedings in relation to discrimination. The implementing act gives institutes the ability to acquire this status, in addition to associations, which already had this option under the Associations Act (see section 6.2 above on legal standing).

### 12.1 Legislative amendments

- On 21 April 2016 the new Protection against Discrimination Act was adopted, and it entered into force on 24 May 2016. The Act replaced the previous Implementing the Principle of Equal Treatment Act which was adopted in 2004 and amended in 2007.
- On 21 April 2016 the new Civil Unions Act was adopted, granting rights to same-sex partners equal to those that are granted to opposite-sex partners, excluding for marriage, joint adoption and access to donor insemination.

### 12.2 Case law

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

**Date of decision:** 18 February 2016

**Name of the parties:** not public

**Reference number:** U-I-255/13-15

**Address of the webpage:** <http://odlocitve.us-rs.si/sl/odlocitev/US30876?q=diskriminacija&df=01.+01.+2016&dt=31.+12.+2016>

**Brief summary:** The decision declares the Registration of Same-Sex Partnerships Act unconstitutional, as it does not provide for registration to be carried out outside the designated office rooms of the state administration. The claimants wanted to have their ceremony performed at another location, similar to opposite-sex couples who can choose to do in case of a wedding, and were successful in claiming discrimination based on sexual

<sup>203</sup> UN Human Rights Committee (2016), *Concluding observations on the third periodic report of Slovenia*, [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SVN/CO/3&Lang=En](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/SVN/CO/3&Lang=En) (last accessed on 27 March 2017).

<sup>204</sup> Slovenia, *Pravilnik o določitvi kriterijev za izkazovanje pomembnejših dosežkov delovanja društva za podelitev statusa društva v javnem interesu na delovnem področju Ministrstva za delo, družino, socialne zadeve in enake možnosti*, adopted on 11 January 2017, <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV13034> (last accessed 27 March 2017).

orientation.<sup>205</sup> The case could come into the realm of the horizontal directive<sup>206</sup> if and when approved – access to services regardless of sexual orientation.

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

**Date of decision:** 5 July 2016

**Name of the parties:** not public

**Reference number:** I Up 7/2016

**Address of the webpage:** <http://www.sodnapraksa.si/>

**Brief summary:** The claimants asked the court to ensure that the voting facilities are accessible for persons with disabilities. The Administrative Court as the first instances court rejected their claim, stating that voting rights have to be ensured by state bodies and not by courts in advance of the elections. The claimants' appeal to the Supreme Court was rejected and their claim was declared inadmissible.

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

**Date of decision:** 23 February 2016

**Name of the parties:** not public

**Reference number:** VIII Ips 230/2015

**Address of the webpage:** <http://www.sodnapraksa.si/>

**Brief summary:** The case concerns an individual who filed a lawsuit against his former employer, claiming that the employer dismissed him for discriminatory reasons. The Supreme Court found that the claimant did not substantiate his claim of discriminatory treatment and did not state the ground of discrimination. Under the shift of the burden of proof rules the claimant should have had substantiated his claim to show that discrimination had probably taken place. The court found that the claimant stated the ground of discrimination (i.e. length of his work period due to which the employer wanted to avoid paying retirement payments) too late in the proceedings and therefore, under the Civil Proceedings Act, it could not be taken into account.

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

**Date of decision:** 10 November 2016

**Name of the parties:** not public

**Reference number:** VIII Ips 101/2016

**Address of the webpage:** <http://www.sodnapraksa.si/>

**Brief summary:** The case concerns an individual who had been granted category III disability and obtained the right to be transferred to another work post. However, the employer did not have a free work post available for the claimant and decided to dismiss her. The court reiterated that the right of the person with category III disability to be transferred to another work post is not absolute and the employer was not obliged to change the categorisation of the work posts and create a new work post for the claimant. The Supreme Court confirmed the lower courts' position.

There is no information available on the trends and patterns in 2016 regarding cases brought to courts by Roma people. According to the case law available in databases at [www.sodnapraksa.si](http://www.sodnapraksa.si), no cases were brought by Roma. The only trends and patterns available are related to the cases dealt with by the Human Rights Ombudsman as described above.

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<sup>205</sup> There are no reports that registration of same-sex unions would generate any tensions among registrars (marital status officers).

<sup>206</sup> Proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, COM/2008/0426 final.

## ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The **main transposition and anti-discrimination legislation** at both federal and federated/provincial level.

**Country:** Slovenia  
**Date:** 1 January 2017

<b>Title of legislation (including amending legislation)</b>	Title of the Law: Protection against Discrimination Act Abbreviation: PADA Date of adoption: 21 April 2016 Entry into force: 24 May 2016 Latest amendments: / Web link: <a href="http://www.pisrs.si">http://www.pisrs.si</a> Grounds protected: gender, ethnicity, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic
	Civil law, Administrative law
	Material scope: access to employment, self-employment or profession, access to all levels of career orientation, professional training, advanced training and 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, victimisation, shift of burden of proof, exceptions, establishment of equality body, the procedure of the equality body, sanctions.
<b>Title of legislation (including amending legislation)</b>	Title of the law: Vocational Rehabilitation and Employment of Persons with Disabilities Act Abbreviation: VREPDA Date of adoption: 21 May 2004 Latest amendments: 23 December 2014 Entry into force: 25 June 2004 Web link: <a href="http://www.pisrs.si">http://www.pisrs.si</a> Grounds covered: disability
	Administrative Law, Labour Law
	Material scope: Employment
	Principal content: Positive action, creation of a specialised body
<b>Title of legislation (including amending legislation)</b>	Title of the law: Act on Equal Opportunities of People with Disabilities Abbreviation: AEOPD Date of adoption: 16 November 2010 Latest amendments: 20 June 2014 Entry into force: 11 December 2010 Web link: <a href="http://www.pisrs.si">http://www.pisrs.si</a> 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 the law: Employment Relationship Act

<b>Title of legislation (including amending legislation)</b>	<p>Abbreviation: ERA</p> <p>Date of adoption: 5 March 2013</p> <p>Latest amendments: /</p> <p>Entry into force: 12 April 2013</p> <p>Web link: <a href="http://www.pisrs.si">http://www.pisrs.si</a></p> <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>
	Labour law
	Material scope: Public employment, private employment
	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.
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Penal Code</p> <p>Abbreviation: PC</p> <p>Date of adoption: 20 May 2008</p> <p>Latest amendments: 9 July 2015</p> <p>Entry into force: 1 November 2008</p> <p>Web link: <a href="http://www.pisrs.si">http://www.pisrs.si</a></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>
	Criminal law
	Material scope: /
	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.
<b>Title of legislation (including amending legislation)</b>	<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: <a href="http://www.pisrs.si">http://www.pisrs.si</a></p> <p>Grounds covered: Ethnicity, race, gender, religious, political opinion or sexual orientation</p>
	Criminal law/Misdemeanour law
	Material scope: /
	Principal content: Prohibition of incitement to intolerance (hate speech)
<b>Title of legislation (including amending legislation)</b>	<p>Title of the law: Constitution of the Republic of Slovenia</p> <p>Abbreviation: CRS</p> <p>Date of adoption: 23 December 1991</p> <p>Latest amendments: 31 May 2013</p> <p>Entry into force: 23 December 1991</p> <p>Web link: <a href="http://www.pisrs.si">http://www.pisrs.si</a></p> <p>Grounds covered: National origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability</p>
	Constitutional law
	Material scope: /
	Principal content: /

## ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

**Country:** Slovenia  
**Date:** 1 January 2017

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
European Convention on Human Rights (ECHR)	14 May 1993	28 May 1994	No	Yes	Yes
Protocol 12, ECHR	7 March 2001	7 July 2010	No	Yes	Yes
Revised European Social Charter	11 Oct 1997	7 May 1999	Declaration on Part II, Articles 13, 18 (2).	Ratified collective complaints protocol?	11 Oct 1997
International Covenant on Civil and Political Rights	16 July 1993 (succession)	18 Aug 1993 (entry into force)	No	Yes	Yes
Framework Convention for the Protection of National Minorities	1 Feb 1995	25 March 1998	No	N/A	Yes
International Covenant on Economic, Social and Cultural Rights	6 July 1992 (succession)	6 July 1992 (entry into force)	No	N/A	Yes
Convention on the Elimination of All Forms of Racial Discrimination	6 July 1992 (succession)	6 July 1992 (entry into force)	No	Yes	Yes
Convention on the Elimination of Discrimination	6 July 1992 (succession)	5 Aug 1992 (entry into force)	No	Yes	Yes

<b>Instrument</b>	<b>Date of signature (if not signed please indicate) Dd/mm/yyyy</b>	<b>Date of ratification (if not ratified please indicate) Dd/mm/yyyy</b>	<b>Derogations / reservations relevant to equality and non-discrimination</b>	<b>Right of individual petition accepted?</b>	<b>Can this instrument be directly relied upon in domestic courts by individuals?</b>
Convention Against Discrimination Against Women					
ILO Convention No. 111 on Discrimination	29 May 1992	29 May 1992	Yes	Yes	Yes
Convention on the Rights of the Child	6 July 1992 (succession)	25 June 1991 (entry into force)	No	Yes	Yes
Convention on the Rights of Persons with Disabilities	30 March 2007	24 April 2008	No	Yes	Yes

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