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Non-discrimination

Slovenia

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Country report

Non-discrimination

Transposition and implementation at national level of
Council Directives 2000/43 and 2000/78

Slovenia

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Reporting period 1 January 2018 – 31 December 2018

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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 minorities enjoy the status of autochthonous (indigenous) minorities. The Roma have the status of a special ethnic community. People who originate from other republics of the former Yugoslavia do not have any minority status.

The Constitution guarantees special protection for the Roma community in Slovenia. The Roma's special rights are regulated by 12 special acts and various Government programmes with the aim of improving their situation. The 2007 Roma Community Act established a Council of the Roma Community and provides a legal basis for further positive measures for the Roma. Roma people are often victims of discrimination in the fields of education, employment, housing etc., as was recently confirmed in a report by the Special Rapporteur on Minority Issues following the 2018 country visit.¹ In 2017, the Constitutional Court adopted a ruling that applies to irregular Roma settlements that are under threat of destruction and eviction.² The Court found that the Construction Act was unconstitutional as it did not provide for an effective legal remedy against an inspection decision that ordered a house to be torn down. The fact that the complainant was Roma and that the house was his only home was key to the ruling.

Migrants and asylum seekers are protected on an equal basis with Slovenian citizens but there are no specific policies or provisions in anti-discrimination laws that are aimed at them.

In 2016, a Civil Union Act was adopted that provides rights for same-sex partners that are equal to those for opposite-sex partners, except in relation to marriage, joint adoption and access to donor insemination.³ A strategic litigation case is pending before the Constitutional Court on the access of couples in same-sex unions to joint adoption.⁴

Discrimination against people with disabilities remains a problem with regard to accessibility of buildings, unemployment and a lack of measures to enable independent living. The Act on Equal Opportunities for People with Disabilities⁵ and its rules for implementation⁶ provide for positive measures for people with disabilities. The 2017 Personal Assistance Act, which became applicable on 1 January 2019, provides for state-paid personal assistants for people with disabilities.⁷

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

¹ United Nations (2019), *Report of the Special Rapporteur on Minority Issues*, available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/40/64/Add.1&Lang=E>.

² Constitutional Court of the Republic of Slovenia, ruling No. U-I-64/14-20 of 12 October 2017, ECLI:SI:USRS:2017:U.I.64.14.20.

³ Slovenia, Civil Unions Act (*Zakon o partnerski zvezi*), adopted on 21 April 2016, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434.

⁴ The constitutional complaint has been lodged against the judgment of the Administrative Court of the Republic of Slovenia, No. I U 1497/2016 of 17 January 2019. The reference number for the Constitutional Court case is not yet available.

⁵ Slovenia, Act amending the Act on Equal Opportunities for People with Disabilities (*Zakon o spremembah in dopolnitvah Zakona o izenačevanju možnosti invalidov*), 30 June 2014, available at: <http://www.uradni-list.si/1/objava.jsp?sop=2014-01-2080>.

⁶ Slovenia, Rules on Technical Aids and Adaptation of Vehicles (*Pravilnik o tehničnih pripomočkih in prilagoditvi vozila*), 1 October 2014, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12201>.

⁷ Slovenia, Personal Assistance Act (*Zakon o osebni asistenci*), 7 February 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7568>.

in accordance with the Constitution and in line with the exception to the prohibition of discrimination on the ground of age.⁸

The equality body – the Advocate of the Principle of Equality, established under the 2016 Protection Against Discrimination Act⁹ – continued to strengthen its capacity. By the end of 2018, the Advocate employed 17 staff members.

2. Main legislation

At the constitutional level, discrimination is prohibited by Article 14 of the Constitution, which includes an open-ended list of personal grounds.¹⁰ According to the 2009 Constitutional Court ruling, sexual orientation is covered by that provision, although this ground is not specifically listed.¹¹ Slovenia has ratified all the main human rights treaties concerning discrimination, most recently Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Discrimination is also prohibited in the Penal Code,¹² 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).

The main non-discrimination laws are the 2016 Protection Against Discrimination Act (which replaces the 2004 Act Implementing the Principle of Equal Treatment¹³ that was adopted to transpose the relevant directives), and the 2013 Employment Relationship Act.¹⁴ The 2004 Vocational Rehabilitation and Employment of Persons with Disabilities Act¹⁵ specifically prohibits discrimination on the grounds of disability and introduces a system of positive measures in respect of the employment of people with disabilities. In 2010, the Act on Equal Opportunities for People with Disabilities was adopted,¹⁶ which sets out the duty of appropriate (reasonable) accommodation for people with disabilities. Not all the planned implementation acts under this law have been adopted, which impedes its practical implementation. Discrimination on the grounds of religion is additionally prohibited by the Freedom of Religion Act.¹⁷

The legislation in place prohibits discrimination in all areas of social life, including the areas required by the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). Discrimination is prohibited on all five grounds required by the directives: race and ethnicity, religion and belief, sexual orientation, age and disability. In addition, the legislation prohibits discrimination on the grounds of gender, language, gender identity or gender expression, social standing, economic situation and education, and all key laws include a general clause on 'other personal characteristics'. The specific protected grounds mentioned in the Employment Relationship Act include social origin, skin

⁸ Constitutional Court of the Republic of Slovenia, decision No. U-I-146/12-40, 14 November 2013.

⁹ Slovenia, Protection Against Discrimination Act (*Zakon o varstvu pred diskriminacijo*), 21 April 2016, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273>.

¹⁰ Slovenia, Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1992, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=USTA1>.

¹¹ Constitutional Court of the Republic of Slovenia, decision No. U-I-425/06, 2 July 2009.

¹² Slovenia, Penal Code (*Kazenski zakonik*), 20 May 2008, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050>.

¹³ Slovenia, Act Implementing the Principle of Equal Treatment (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3908>.

¹⁴ Slovenia, Employment Relationship Act (*Zakon o delovnih razmerjih*), 5 March 2013, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944>.

¹⁵ Slovenia, Vocational Rehabilitation and Employment of Disabled Persons Act (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*), 21 May 2004, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841>.

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

¹⁷ Slovenia, Freedom of Religion Act (*Zakon o verski svobodi*), 2 February 2007, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4008>.

colour, health condition, family status, membership of a trade union and financial situation. Since the Civil Union Act equalises the legal consequences of civil union with marriage in almost all areas, the 'family status' ground includes civil unions.

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 in the directive, and in all other areas of life in general.

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 damage to their legal situation, rights or obligations, in particular if it is perpetrated against children or other vulnerable people). Both acts define direct discrimination on the grounds of personal characteristics as an act where, due to such a 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 in comparison with other individuals. There is an exception to this rule: 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). On 1 January 2019, the Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs¹⁸ became applicable, de facto introducing age-related reasonable accommodation for children with special needs in pre-school education.

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 at an advanced level) as well as retraining and practical work experience; employment and working conditions, dismissals and pay; and 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 that are available to the public, including housing.

In addition, the Protection Against Discrimination Act states that this law is binding on state bodies, local communities and holders of public authority, as well as on 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 prohibited by not only the Protection Against Discrimination Act but the Employment Relationship Act; both are binding on 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 and 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. If the inspectorate's assessment finds that discrimination has occurred, the offender may be 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 a constitutional complaint for the protection of their rights. However, despite the availability of a number of legal remedies, very few of them are actually used and enforced.

The Protection Against Discrimination Act defines the possibility of involvement by NGOs and the Advocate in judicial and administrative proceedings in cases of alleged

¹⁸ Slovenia, Act Regulating the Integrated Early Treatment of Pre-school Children with Special Needs (*Zakon o celostni zgodnji obravnavi predšolskih otrok s posebnimi potrebami*), 14 July 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7681>.

discrimination, in accordance with the conditions defined by law. The Civil Procedure Act¹⁹ also includes other, more general rules for representation of victims in court procedures.

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 Protection Against Discrimination Act, the Advocate has the power to initiate constitutional review of laws that are allegedly discriminatory. This power has not yet been used.

In 2017, the Class Actions Act²⁰ was adopted, according to which the only permissible class action in relation to discrimination is an action claiming termination of the discriminatory acts. No damages may be claimed with a class action. The class action provisions have not yet been invoked in a discrimination case.

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 that discrimination did not take place. If a violation of the ban on discrimination is established, relevant sanctions apply in the form of misdemeanour fines, criminal sanctions, compensation, publication of the judgment, etc. Misdemeanour fines formally range 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. This means that fines cannot be considered as sanctions that are proportionate and dissuasive. Examples of compensation payments that have been awarded by courts (EUR 3 000, EUR 6 000 or EUR 11 000) show that the sanctions issued in the form of compensation 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 in doing so by the Personal Data Protection Act. There have been only a few cases in which statistical data have been used (for instance, in a case related to the ground of health).²¹

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 various protected groups in the field of employment (such as younger and older workers).

6. Equality bodies

In 2018, the new independent equality body – the Advocate of the Principle of Equality – which has existed since 2016, continued to strengthen its capacity to address discrimination. By the end of 2018, it had 17 employees: the Advocate, a secretariat of two employees, and two departments – one for individual complaints (six employees) and a systemic department for monitoring, awareness raising and prevention (eight employees). Before 2016, the Advocate consisted of one civil servant working at the Ministry of Labour, Family, Social Affairs and Equal Opportunities, and before 2012 at the Government Office for Equal Opportunities.

The mandate of the new Advocate as an independent body is to conduct independent research on the situation of people with certain personal characteristics; publish

¹⁹ Slovenia, Civil Procedure Act (*Zakon o pravdnem postopku*), 25 March 1999, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212>.

²⁰ Slovenia, Class Actions Act (*Zakon o kolektivnih tožbah*), 55/17, 26 September 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7399>.

²¹ Higher Labour and Social Court, judgment No. Pdp 1283/2010, 5 May 2011.

independent reports and issue recommendations; undertake controls to ensure that legislation is respected; provide independent assistance to victims of discrimination in the form of advice and legal aid to parties in other administrative and judicial procedures related to discrimination; raise awareness among 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 Advocate's budget in 2018 was EUR 500 000.

The procedure on establishing discrimination before the Advocate is formal and free of charge. The Advocate has investigative powers and issues declaratory decisions, in line with the General Administrative Procedure Act, on whether or not discrimination has taken place, but it 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. The Advocate does not yet carry out inspection procedures (which would enable it to order actions to be taken by perpetrators) as the legal basis in that respect is insufficiently clear. However, it does address recommendations to public and private law bodies on actions needed to prevent discrimination.

The independence of the Advocate is ensured by its position as an independent state body in law as well as by the nomination procedure, in which the nominee for Advocate is proposed by the President of the Republic and elected by the National Assembly. Under the previous legislation, the Advocate had only limited powers (which focused on assistance to victims and examining complaints), but it now also has explicitly stated powers to conduct surveys and publish reports. According to the most recent annual report, in 2018 the Advocate dealt with 223 discrimination cases; 149 cases were closed while 74 cases were rolled over to 2019.²²

7. Key issues

- Despite the fact that a number of legal remedies exist on paper, the data shows that they are not effective. In 2018, only 13 cases were decided by courts. In none of those cases did the court find that there had been discrimination; consequently, no compensation was awarded to any of the claimants.
- 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. The Protection Against Discrimination Act does not explicitly authorise 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 EUR 500, depending on the gravity and type of offence. This indicates that the misdemeanour 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 that are 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

²² Slovenia, Advocate of the Principle of Equality (2019), *Annual Report for 2018 (Redno letno poročilo za leto 2018)*, p. 36, available at: <http://www.zagovornik.si/porocila/>.

- exam (bar exam) in order to represent a complainant. The conditions are therefore stricter for cases of discrimination, which makes 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.
 - On a related matter, it is not clear whether the ceiling for compensation, which is set at 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 could 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. Disability issues are left entirely to the Office for People with Disabilities within the Ministry of Labour, Family and Social Affairs.
 - Hate speech as a form of discrimination is not prosecuted at all.
 - There is a lack of equality data, due to the strict interpretation of the Personal Data Protection Act.
 - Data collection is an issue. The courts are not obliged to collect data on discrimination cases, and hence they have difficulties in reporting on such cases. The publicly accessible database sodnapraksa.si is not comprehensive; court cases that became final in the first instance (because they were not appealed) are not included in the database.
 - Judicial interpretation is required with regard to 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 disability status under the Act have the right to receive social benefits but are automatically presumed to be unable to live independently and unable to be employed, regardless of their actual ability to work.
 - Age limits for access to certain jobs could be in breach of EU law and CJEU case law.

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 conform to the Constitution. Laws must conform to generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal provisions must comply with other treaties ratified by the Government. Regulations and other general legal provisions must conform to 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 subject to revision by the Constitutional Court. Article 14 of the Constitution of the Republic of Slovenia prohibits discrimination on the grounds of national origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability or any other personal characteristic.²³

List of main legislation transposing and implementing the directives

Protection Against Discrimination Act. Date of adoption: 21 April 2016.²⁴ 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 and 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; and access to and supply of goods and services which are available to the public, including housing.

Employment Relationship Act. Date of adoption: 5 March 2013.²⁵ 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 and private employment.

Vocational Rehabilitation and Employment of Persons with Disabilities Act. Date of adoption: 21 May 2004.²⁶ Grounds covered: disability. Material scope: employment.

Act on Equal Opportunities for People with Disabilities. Date of adoption: 16 November 2010.²⁷ Grounds covered: disability. Material scope: employment, education and access to and supply of goods and services which are available to the public, including housing.

²³ Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), *Official Journal of the Republic of Slovenia*, No. 33/1991.

²⁴ Slovenia, Protection Against Discrimination Act (*Zakon o varstvu pred diskriminacijo*), *Official Journal of the Republic of Slovenia*, No. 33/16.

²⁵ Slovenia, Employment Relationship Act (*Zakon o delovnih razmerjih*), *Official Journal of the Republic of Slovenia*, Nos. 21/13 and 78/13.

²⁶ Slovenia, Vocational Rehabilitation and Employment of Persons with Disabilities Act (*Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov*), *Official Journal of the Republic of Slovenia*, No. 63/2004.

²⁷ Slovenia, Act on Equal Opportunities for People with Disabilities (*Zakon o izenačevanju možnosti invalidov*), *Official Journal of the Republic of Slovenia*, No. 94/2010.

Penal Code. Date of adoption: 20 May 2008.²⁸ 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. Date of adoption: 22 June 2006.²⁹ Grounds covered: ethnicity, race, gender, religious, political opinion or sexual orientation. Material scope: not explicitly stated.

²⁸ Slovenia, Penal Code (*Kazenski zakonik*), *Official Journal of the Republic of Slovenia*, No. 55/2008.

²⁹ Slovenia, Protection of Public Order Act (*Zakon o varstvu javnega reda in miru*), *Official Journal of the Republic of Slovenia*, No. 70/2006.

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.³⁰ 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 under 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 enforcement against the state).

³⁰ 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 Against 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,³¹ 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 in the directives

a) Racial or 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 the Roma which are binding on Slovenia. In its judgment, the Court referred specifically 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 judgment of the Higher Court came following a first-instance judgment in which the County Court stated that the 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.

b) Religion and belief

³¹ In terms of how much property and wealth (*premoženjsko stanje*) an individual has.

There is no definition in law of 'religion or belief'.

The Religious Freedom Act³² 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. A service provider has no legal ground to refuse serving a same-sex couple on the basis of his/her religious belief as such conscientious objection is not provided for by law. Conscientious objection is, for example, defined in the Medical Practitioners Act³³ (for medical workers) and in the Regulation on the Enforcement of the Conscientious Objection to the Military Service and of the Civil Alternative Service³⁴ (for military personnel). The military service regulation states that conscientious objection can be related to religious, philosophical and humanitarian reasons.³⁵ Conscientious objection is not further defined in the Medical Practitioners Act, hence judicial interpretation is required to confirm that conscientious objection by medical practitioners can be related to philosophical or humanitarian reasons.

In a case related to political opinion, the Supreme Court articulated that the term 'religion or belief' does not include political opinion. It stated that 'belief' should not be understood as any kind of difference of opinion. For definition, the Court turned to an official dictionary of Slovenian language, according to which 'belief' means a belief on basic and general views on the world, society or a human, in the sense of 'defending or rejecting one's belief', 'to be ready to die to one's belief' or 'to be Marxist by belief'. Hence, belief has to be close to the meaning of a religion, and not to the meaning of an opinion.³⁶

c) Disability

There is no definition of disability in the Protection Against Discrimination Act. Under the 2010 Act on Equal Opportunities for People with Disabilities³⁷ the definition of a person with disabilities follows the UN Convention on the Rights of Persons with Disabilities: persons with disabilities are those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others. This definition is close to that set out in *Ring and Skouboe Werge*. This law therefore applies 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 latter definition could be used. Therefore, it could be used both in the case of determining the duty of reasonable accommodation and when invoking the Protection Against Discrimination Act.

Further, under the Pension and Disability Insurance Act,³⁸ employees with disabilities are classed in one of three categories according to their capacity for work. Those in category I are considered not to be capable of working, while those in categories II and III are able and allowed to work, subject to certain limitations or after rehabilitation. Disability status

³² Slovenia, Religious Freedom Act (*Zakon o verski svobodi*), 2 February 2007, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4008.

³³ Slovenia, Medical Practitioners Act (*Zakon o zdravniški službi*), 18 November 1999, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1395>.

³⁴ 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*), 27 June 1996, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=URED999>.

³⁵ Slovenia, Medical Practitioners Act (*Zakon o zdravniški službi*), 18 November 1999, Article 8(4), available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1395>.

³⁶ Supreme Court of the Republic of Slovenia, ruling No. I Up 27/2008, 23 June 2008.

³⁷ Slovenia, Act on Equal Opportunities for People with Disabilities (*Zakon o izenačevanju možnosti invalidov*), 16 November 2010, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4342.

³⁸ Slovenia, Pension and Disability Insurance Act (*Zakon o pokojninskem in invalidskem zavarovanju*), 4 December 2012, Article 63(2), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6280.

is granted if the impairment of the insured individual's health cannot be reversed by medical treatment or medical rehabilitation. The definition of disability in the Pension and Disability Insurance Act may be used, but not exclusively, 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*.³⁹

The Social Care Act⁴⁰ is also relevant to the status of people with disabilities. The 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.

d) Age

There is no definition in law of 'age'. However, the Advocate of the Principle of Equality has interpreted age as including discrimination against elderly and young people.⁴¹

e) 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'.⁴² 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. The Yogyakarta principles did not seem to play any other role in the reasoning of the Constitutional Court on issues of discrimination on the grounds of sexual orientation.

2.1.2 Multiple discrimination

In Slovenia, multiple discrimination is prohibited in 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

³⁹ 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.

⁴⁰ Slovenia, Social Care Act (*Zakon o socialnem varstvu*), 4 November 1992, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO869.

⁴¹ Slovenia, Advocate of the Principle of Equality (2012), *Annual Report for 2011 (Letno poročilo za leto 2011)*, p. 83, available at: www.mddsz.gov.si/fileadmin/migrated/content/uploads/zagovornik_LP_2011.doc.

⁴² 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/>.

in determining the amount of compensation (Article 39(3) of the PADA) or the amount of the fine for misdemeanour (Article 45(2) of the PADA).

In Slovenia, there is no recent case law on multiple discrimination. According to the available information, only one judgment that relates to multiple discrimination has so far been issued, 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 relation to access to a non-profit apartment (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, among other factors, they were a family with one or more children, of whom at least one was under school age, and where none of the parents were over 35). 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 rejected the claim and stated that, since the defendant (the Municipality of Ljubljana) respected the conditions set out in the implementing act, its decision was in accordance with the law and was therefore correct. The court stated that the conditions for access to public housing are set down by the law and the implementing acts, and are equal for all; according to the court, the defendant's decision was a consequence not of discrimination but of the claimant's failure to fulfil the conditions.⁴³ In this case, the claimant should have used all available remedies and finally should have challenged the law and the implementing acts before the Constitutional Court.

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).⁴⁴ Between 2012-2015, the Advocate did not publish its reports. The reports covering 2016, 2017 and 2018 do not mention multiple discrimination cases.

2.1.3 Assumed and associated discrimination

a) Discrimination by assumption

In Slovenia, discrimination based on a perception or assumption of a person's characteristics is prohibited in national law.

In line with Article 5(2), indent 2, of the Protection Against Discrimination Act, equal treatment shall be guaranteed 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, Article 6(3) of the Employment Relationship Act, which states that '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 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. There is no case law on discrimination by assumption.

b) Discrimination by association

In Slovenia, discrimination based on association with persons with particular characteristics is prohibited in national law.

⁴³ Administrative Court of the Republic of Slovenia, judgment No. U 947/2007-12, 20 March 2008.

⁴⁴ Slovenia, Advocate of the Principle of Equality (2012), *Annual Report 2011*, available at: www.mddsz.gov.si/si/delovna_podrocja/enake_moznosti/zagovornik/letna_porocila/.

In line with Article 5(2), indent 1, of the Protection Against Discrimination Act, equal treatment shall be guaranteed 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 in Article 6(3) of the Employment Relationship Act as covering discrimination by association, as required by the CJEU case *Coleman v Attridge Law and Steve Law*.⁴⁵ 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 under 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 the absence of any other treatment which constitutes discrimination under this law (Article 5(1) of the PADA), i.e. harassment, instructions, incitement and victimisation (Article 7 of the PADA).

Direct discrimination is defined as follows: direct discrimination on the 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: Article 6(3) 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.

In a recent case that was decided by the Advocate of the Principle of Equality, age-based direct discrimination was found to have occurred. At the age of 70, the complainant was no longer allowed to continue his work as a sports judge in one of the sporting disciplines. According to the provision of the statute of the association which grants licences for the performance of tasks by sports judges, the active career of the judge automatically ended on December 31 of the year when the judge reached the age of 70. The Advocate asked the association to justify the mandatory termination of the judge's career. The association explained that the reason for including such a condition in the statute of the society was that the rules of the International Sports Federation, in the field concerned, set the same condition. The Advocate concluded that the association failed to show that a legitimate goal was pursued by setting an age criterion, and that it failed to demonstrate that the age limit was an appropriate, necessary and proportionate means, as required by Article 13 of the Protection Against Discrimination Act. Age as such does not in itself define the psycho-physical characteristics of people. These cannot be determined by generalisation, but only in concrete terms, e.g. through individual ability or capabilities tests, medical examinations, investigations, etc. The association should therefore introduce individual means to assess the capabilities of sports judges, which would be in line with the proportionality test.⁴⁶ The association has not yet abided by the Advocate's decision.

⁴⁵ Judgment of 17 July 2008, *S. Coleman v Attridge Law and Steve Law*, C-303/06.

⁴⁶ Slovenia, Advocate of the Principle of Equality, decision No. 0700-45/2017, 6 December 2018.

b) Justification for direct discrimination

The law in general does not permit direct discrimination. However, Article 13(1) of the Protection Against Discrimination Act states that, despite 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.

The law then introduces an exception to this exception by stating that, regardless of the previous sentence, unequal treatment in 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 specific cases stipulated by the directives (see Chapter 4). Hence, apart from defining the exception relating to a genuine occupational requirement, the law does not include a complete prohibition of direct discrimination on the grounds of ethnicity beyond employment as required by Directive 2000/43/EC.

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 at all. The Civil Procedure Act⁴⁷ 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 that explicitly mentions a court's option to reject evidence that 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 been used in practice only twice. First, it was used in the European Grassroots Antiracist Movement (EGAM) campaign, the Actright project, which was implemented in Slovenia in 2013 by an NGO called Institute Ekvilib. The testing was carried out in relation to access to apartments that were publicly advertised for rent by estate agents. Testing, which focused on uncovering racial discrimination, showed that discrimination occurred in one third of cases, when a person of non-Slovenian descent was either rejected or treated unequally in comparison with a Slovenian who was enquiring about the same apartment.⁴⁸ Secondly, situation testing was used in 2016 by the NGO TransAkcija in order to test the ability of same-sex couples to access apartments that were available for rent on the market.⁴⁹ The testing showed that there was discrimination based on sexual orientation in 9.7 % of attempts to rent an apartment, in which a same-sex couple was denied the opportunity to see an apartment. In 17.7 % of attempts, same-sex

⁴⁷ Slovenia, Civil Procedure Act (*Zakon o pravdnem postopku*), 25 March 1999, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212>.

⁴⁸ Slovenia, Siol, *Pri najemu stanovanj kar tretjina oseb tujega porekla diskriminirana* (In renting apartments one third of foreigners discriminated against), 24 July 2013, available at: <https://siol.net/novice/slovenija/pri-najemu-stanovanj-kar-tretjina-oseb-tujega-porekla-diskriminirana-99303>.

⁴⁹ 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 (2016), *LGBT pravice: sociološka raziskava, monitoring, situacijsko testiranje, gradiva za odvetnice in odvetnike*, Ljubljana, Društvo informacijski center Legebitra, available at <http://lgbtpravice.si/userfiles/files/LGBTpravice.pdf> (in Slovenian).

couples experienced differential treatment in comparison with opposite sex partners (e.g. more questioning, comments or meaningful silence).⁵⁰ In both those cases, testing was used not 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 under 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 conditions, puts, put or could have put an individual or a group with a certain personal characteristic in a less favourable position in comparison with 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 in comparison with 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.

There is no recent case law on indirect discrimination.

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.

2.3.1 Statistical evidence

a) Legal framework

In Slovenia, there is legislation regulating the collection of personal data and national rules permitting data collection. Data collection is regulated by the Personal Data Protection Act,⁵¹ 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)). The case law of the Information Commissioner shows that 'sex life' does not cover sexual

⁵⁰ Mitja Blažič, Dr. Neža Kogovšek, Dr. Roman Kuhar, Simon Maljevac, Dr. Barbara Rajgelj, Manca Šetinc Vernik, Boštjan Vernik Šetinc, Dr. Alenka Švab (2016), *LGBT pravice: sociološka raziskava, monitoring, situacijsko testiranje, gradiva za odvetnice in odvetnike*, Ljubljana, Društvo informacijski center Legebitra, p.39, available at <http://lgbtpravice.si/userfiles/files/LGBTpravice.pdf> (in Slovenian).

⁵¹ Slovenia, Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*), 15 July 2004, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3906.

orientation and that sexual orientation is considered as falling under 'sensitive personal data', even though it is not explicitly mentioned as a ground in the Personal Data Protection Act.⁵² 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. Data on marriages and registered partnerships (civil unions) are collected. Since civil unions are available only to same-sex couples, an individual's same-sex orientation can be detected from the fact that he or she has entered into a civil union. The General Data Protection Regulation (GDPR) has not yet been transposed in Slovenia; however, it can be directly invoked. The proposed legislation to transpose GDPR shows that sexual orientation will be explicitly included under 'special types of personal data'.⁵³

In Slovenia, statistical evidence is 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 a case. It is therefore up to the court to decide whether, in a specific case, statistical evidence submitted by the parties will be admissible.

b) Practice

In Slovenia, the use of statistical evidence in order to establish indirect discrimination is rare 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).

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 in which direct and indirect discrimination are prohibited. This definition does not exclude groups of persons from protection, nor has it been interpreted as such.

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. Harassment is therefore not explicitly prohibited by the Act on Equal Opportunities for People with Disabilities; however, it is prohibited by the PADA.

Article 7 of the Employment Relationship Act prohibits sexual or other harassment. The provision does not exclude same-sex sexual harassment, which means that the latter is also prohibited by law. 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. The rejection of conduct that is 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

⁵² Slovenia, Information Commissioner, opinion No. 0712-506/2006/2 of 10 September 2006, available at: https://www.ip-rs.si/varstvo-osebnihi-podatkov/iskalnik-po-odlocbah-in-mnenjih/odlocbe-in-mnenja-vop/?tx_jzvopdecisions_pi1%5BshowUid%5D=548&tx_jzvopdecisions_pi1%5BhighlightWord%5D=spolna%20usmerjenost.

⁵³ Slovenia, Ministry of Justice, Draft Personal Data Protection Act of 6 March 2019, available at: http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/Mandat_2018-2022/Zakonodaja/ZVOP-2_6.3.19_splet.pdf.

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 in which direct and indirect discrimination are prohibited.

Harassment in the workplace is also prohibited by the Penal Code, which provides that harassment constitutes a crime. Article 197 of the Code imposes a sanction on 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 explicitly constitutes a form of discrimination. Article 7(1) of the Protection Against Discrimination Act states that harassment as 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.

b) Scope of liability for harassment

Where harassment is perpetrated by an employee, 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 can prove that they were not responsible for it. The Code of Obligations⁵⁴ also regulates liability for others. According to Article 147 of the Code of Obligations, an employer is 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, 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 in relation to the candidate or worker in line with the general provisions of civil law. In accordance with Article 47 of the Act, the employer is obliged to guarantee a working environment without 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 PADA). This shows that in defining instructions to discriminate, the law goes beyond the directive's requirements.

⁵⁴ Slovenia, Code of Obligations (*Obligacijski zakonik*), 3 October 2001, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263.

In Slovenia, instructions explicitly constitute a form of discrimination (Article 7, indent 2, of the PADA). Since discrimination is prohibited in line with Article 4(2), consequently instructions, as a form of discrimination, are also prohibited.

Instructions to discriminate are also prohibited by the Employment Relationship Act. Article 6(3) of the Act states that instructions to discriminate also constitute direct or indirect discrimination, which is prohibited by law. However, instructions to discriminate are not mentioned in the Act on Equal Opportunities for People with Disabilities.

In addition to instructions to discriminate, the law 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 include 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 the public condonement of disregarding or despising people or groups based on any personal characteristics from Article 1 of the PADA as well as justifying ideas about the supremacy or superiority of people or groups with certain characteristics that derive from the stated 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. 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 when 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 Act⁵⁵ 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 instructor and the discriminator are 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 can 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). The question remains as to how these provisions would be interpreted by courts in cases in which 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 on employers to provide reasonable accommodation for people with disabilities is included in the law and is defined.

The duty to provide reasonable accommodation for people with disabilities is not mentioned or 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 the Act, the term

⁵⁵ Slovenia, Protection of Public Order Act (*Zakon o varstvu javnega reda in miru*), 22 June 2006, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3891.

'reasonable accommodation' is replaced by 'appropriate accommodation' which, in accordance with Article 3(3), means 'necessary legislative, administrative and other measures which do not represent an unreasonable burden, that are needed *in a specific case* in order to ensure for people with disabilities the enjoyment and realisation of their rights and freedoms'. Even though the 2010 Act on Equal Opportunities for People with Disabilities regulates reasonable accommodation beyond employment, the following measures provided for in this law are relevant for employment as well:

- 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));
- the adaptation of public buildings with structural solutions and technical equipment, sound and sensory indicators, written information and other reasonable adjustments (Article 9(2)).

Other reasonable accommodation measures can be taken in addition to the above examples.

There are also provisions in other laws that could constitute measures to provide reasonable accommodation, such as those in the Vocational Rehabilitation and Employment of Persons with Disabilities Act.⁵⁶ Article 1(1) states that the Act defines the right to vocational rehabilitation and various aspects of employment for persons with disabilities. Article 2 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. 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. The provisions of this law protect only those whose disability is attested by a medical certificate, in accordance with the Pension and Disability Insurance Act, and who 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, subject to certain limitations or after rehabilitation). The personal scope of the reasonable accommodation duty under this law is limited and there is no definition of 'reasonable accommodation', hence judicial interpretation is needed as to whether the relevant directive provisions are adequately transposed.

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 to the person with disabilities. However, a person can only do this in relation to the accessibility of information in the workplace and the physical accessibility of the workplace (as the 2010 Act does not generally mention the field of employment).⁵⁷

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

⁵⁶ Slovenia, Vocational Rehabilitation and Employment of Disabled Persons Act (*Zakon o poklicni rehabilitaciji in zaposlovanju invalidov*), 21 May 2004, available at www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841.

⁵⁷ Supreme Court of the Republic of Slovenia, judgment No. X Ips 362/2013, 8 July 2015.

environment of an individual with disabilities in order to produce a plan for making appropriate adjustments. This plan includes: necessary equipment; training for a job or profession; expert assistance with training and education; shadowing the individual with disabilities at work after they have been employed; evaluating the success of the rehabilitation process; evaluating the extent to which employment goals have been reached; and providing other employment rehabilitation services.

The Minister of Labour, Family, Social Affairs and Equal Opportunities decides the amount payable for those services, which are financed from the national budget, the Fund for Promoting the Employment of People with Disabilities and other sources. Article 72 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act states that the employer can lodge an application to obtain a refund from the Fund for the costs entailed in adapting a workstation to meet the needs of a person with disabilities. This funding is available only for accommodations that benefit people who have been officially recognised as disabled. 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 decided in the same way. The employer must produce an individual plan of support for the person with disabilities.

Further, Article 6 of the Employment Relationship Act enumerates disability and state of health among other grounds on which discrimination is prohibited, and 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. This provision in fact means that only people who have disability status may claim reasonable accommodation, as far as the Vocational Rehabilitation and Employment of Persons with Disabilities Act is interpreted as providing for reasonable accommodation duties. 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 the capacity to work must provide that worker with the opportunity to perform other appropriate work that suits their capacity, shorter working time, vocational rehabilitation and an allowance substituting for pay, in accordance with pension and disability insurance provisions. This option is available only for accommodations that benefit people who have been officially recognised as disabled under the Vocational Rehabilitation and Employment of Persons with Disabilities Act. The employer's duty to provide reasonable accommodation could 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 who has disabilities due to redundancy. Article 101 of the 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 (for 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 the termination of the original employment.

In the Act on Equal Opportunities for People with Disabilities, there are no specific rules on what kind of accommodation is considered to constitute a disproportionate burden. 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; and the historical, cultural, artistic and architectural value of the building where the employment is based (Article 8).

Under this Act, a system was established to enable people with disabilities to obtain state funding for technical equipment (in addition to that which is available through other disability legislation) that 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 and communication and the adjustment of living conditions and modifications to their cars (Articles 17 to 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). The rights under this Act are available to a broader group of people with disabilities and not only to those who have been officially recognised as such.

b) Practice and case law

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.⁵⁸ 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.

It is not yet clear whether not abiding by accessibility rules would violate the duty of reasonable accommodation, as there is as yet no case law on this issue.

There is no case law on reasonable accommodation.

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 the 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 status⁵⁹ or claiming reasonable accommodation.⁶⁰ 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 to the person with disabilities.

d) Failure to meet the duty of reasonable accommodation for people with disabilities

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

⁵⁸ 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.

⁵⁹ 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, subject to certain limitations or after rehabilitation.

⁶⁰ 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.

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. 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 the 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 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 found that there was indirect discrimination against a person with a disability and a person of the Muslim faith, as the same rules were applied to them as to all other people who did not have these personal characteristics. Furthermore, the Advocate found that reasonable accommodation should be applied to them in order to prevent discrimination from taking place.⁶¹

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 generally would apply in such cases as well.

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

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

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. 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));
- the adaptation of public buildings with structural solutions and technical equipment, sound and sensory indicators, written information and other reasonable adjustments (Article 9(2));

⁶¹ Slovenia, Advocate of the Principle of Equality, opinion No. UEM – 0921-1/2008-2 and opinion No. UEM – 0921-10/2008-3.

- 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).

Other reasonable accommodation measures can be taken in addition to the above examples.

Access to a service dog is regulated in Service Dog Rules.⁶² Access to technical equipment and the adaptation of vehicles is regulated in an implementing act: the Rules on Technical Aids and Adaptation of Vehicles.⁶³ The number of persons who received funds for the adaptation of vehicles was 28 in 2015, 37 in 2016 and 36 in 2017.⁶⁴

The Personal Assistance Act, which became applicable on 1 January 2019, provides for a state-paid personal assistant for people with disabilities.⁶⁵

On 1 January 2019, the Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs⁶⁶ became applicable, de facto introducing age-related reasonable accommodation for children with special needs in pre-school education. Pre-school special needs determination was added to school special needs determination, which already existed, and is regulated under the Placement of Children with Special Needs Act.⁶⁷ These two acts can also be considered as providing for reasonable accommodation outside employment – namely, in education.

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

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

The duty of reasonable (appropriate) accommodation is defined only with respect to disability. Despite 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 that offered hot meals to its employees. Due to his religion, the applicant wished

⁶² Slovenia, Service Dog Rules (*Pravilnik o psih pomočnikih*), 12 January 2018, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV12874>.

⁶³ 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.

⁶⁴ *Annual Report on the functioning of the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia for 2017*.

⁶⁵ Slovenia, Personal Assistance Act (*Zakon o osebni asistenci*), 7 February 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7568>.

⁶⁶ Slovenia, Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs (*Zakon o celostni zgodnji obravnavi predšolskih otrok s posebnimi potrebami*), 14 July 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7681>.

⁶⁷ Slovenia, Placement of Children with Special Needs Act (*Zakon o usmerjanju otrok s posebnimi potrebami*), 12 July 2011, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5896.

to make use of the possibility of a monthly allowance that was offered to employees in order to buy their own food, in accordance with his religion. However, this possibility was available only for employees who submitted a medical certificate confirming that they required 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, was indirectly discriminated against as he was put in a less favourable position than other employees. The Advocate found that reasonable accommodation was already provided for a certain group of employees, who belong to the Catholic faith, and that the company should simply extend that 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.

In 2017, the Constitutional Court dealt with an issue of religious holidays for persons of religions other than Catholicism. In case No. U-I-67/14-11 of 19 January 2017, the Constitutional Court rejected a complaint concerning the Public Holidays and Off-Work Days in the Republic of Slovenia Act. The applicant, a member of the Muslim community, claimed that the Act is in conflict with the Constitution as it takes into account only Catholic holidays and not those pertaining to other religions. The applicant claimed that the Act is discriminatory in relation to members of other religions as well as atheists. The applicant, unlike his Catholic colleagues, had to obtain consent from his employer to commemorate his religious holidays. The Constitutional Court found that the determination of off-work days does not interfere with the religious rights of an individual, and it rejected the complaint as manifestly unfounded. The Constitutional Court emphasised that off-work days are not defined as holidays and that the National Assembly has autonomy in defining which days will be off-work days. The Constitutional Court stressed that, as part of that process, the National Assembly takes into account the identity of people who historically lived in the territory of the current state. Hence, the determination of off-work days does not relate to the enjoyment of human rights and equality before the law under Article 14 of the Constitution. There were no references to ECtHR case law in the reasoning of the court.

In 2018, the Advocate of the Principle of Equality found that providing reasonable accommodation in the field of religion does not constitute discrimination, following a complaint brought by a parent. A school's management announced that it would start providing meals that did not contain pork and pork products, and parents and carers were asked to confirm with their signature whether they wanted their child to use that option. The Inspectorate for Education and Sport received a complaint that that constituted discrimination against other children who might want to enjoy other types of diets. The Inspectorate turned to the Advocate for an opinion. The Advocate estimated that the measure constituted reasonable accommodation on the grounds of religion, for a religion that prohibits the consumption of pork. Slovenian legislation provides for a duty of reasonable accommodation only in relation to disability, namely in the Employment Rehabilitation and Employment of Disabled Persons Act and in the Act on Equal Opportunities for People with Disabilities, which results from the transposition of the Framework Directive 2000/78/EC and the implementation of the Convention of the United Nations on the Rights of Persons with Disabilities in the Slovene legislation. However, as the Advocate stated, 'reasonable accommodation measures' may in practice also be introduced in other areas and in conjunction with other personal grounds, and not only in the field of disability. The school provided a diet for school-age children that was adapted to their religion (Jewish and Muslim), otherwise the children could be deprived of a school meal. In doing so, the school acted in line with the principle of the best interest of the child, as protected by the Family Code. The introduction of reasonable accommodation measures does not interfere with the rights of others and does not imply discrimination against all other individuals who do not need such an accommodation. In the light of the

above, the Advocate did not find that there were elements of discrimination as defined by the Protection Against Discrimination Act.⁶⁸

⁶⁸ Slovenia, Advocate of the Principle of Equality, decision no. 0700-57/2016, 21 November 2018.

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, there are no residence or citizenship/nationality requirements for protection under the relevant national laws transposing the directives. Hence, anyone, including undocumented migrants, enjoys protection from discrimination.

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 Protection Against Discrimination Act does not distinguish between natural persons and legal persons in ensuring equal treatment. Article 1(1) states that 'this Act defines protection of each individual from discrimination', and Article 1(3) continues by stating 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 preparatory materials in relation to the Protection Against Discrimination Act indicate that legal persons can enjoy protection from discrimination if they are discriminated against because of personal grounds in relation to their members, founders or management. As for groups of 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.

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 Article 39 (civil liability) and Article 45 (misdemeanour liability) of the Protection Against Discrimination Act and Article 229 of the Employment Relationship Act. The law differs in respect of 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 in law for fines that are payable by the party that is found to be 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 Act⁶⁹ states that for a criminal offence, which the perpetrator committed in the name, on the account of or for the benefit of a legal person, the legal person is also liable.

According to Article 13 of the Liability of Legal Persons for Criminal Offences Act, criminal offences committed by legal persons are subject to a fine ranging from EUR 10 000 to EUR 1 000 000, or up to the value of the damage caused or pecuniary advantage obtained, multiplied by 200. Instead of paying a fine, the legal person can also be dissolved in cases

⁶⁹ Slovenia, Liability of Legal Persons for Criminal Offences Act (*Zakon o odgovornosti pravnih oseb za kazniva dejanja*), 8 July 1999, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1259.

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 involve 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 on 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, which means that it applies 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 grounds in the directives (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 it 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 that are contained in the Public Servants Act.

Contracts for work or 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 that are protected from discrimination; however, they can be deemed to be 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)).

The Vocational Rehabilitation and Employment of Persons with Disabilities Act in fact provides for reasonable accommodation measures in the workplace for people who have a disability status. The Act on Equal Opportunities for Persons with Disabilities provides for reasonable accommodation duties in employment in the areas of accessibility of information and physical accessibility.

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 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 material scope of the Act is education and access to and supply of goods and services that are available to the public, including housing). The main legal basis for the provision of reasonable accommodation in employment remains the Vocational Rehabilitation and Employment of Disabled Persons Act; however, the 'duty of reasonable accommodation' in employment is not mentioned as such in the law, which means that judicial interpretation is needed as to whether the relevant directive provisions have been adequately transposed.

Access to employment is generally the same for the public sector with regard to anti-discrimination provisions, but there are some provisions that relate to the recruitment process which differ from the provisions in the Employment Relationship Act. According to Article 7 of the Civil Servants Act, all civil servants will be 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.

The Act on Equal Opportunities for Persons with Disabilities provides for reasonable accommodation duties in the areas of accessibility of information and physical accessibility.

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

In Slovenia, national legislation prohibits discrimination in working conditions, including pay and dismissals, for all five grounds contained in the directives and more, in 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. There is no practical or legal significance in excluding sexual orientation from this list.

As a result of the Civil Union Act, which equalises all legal consequences of same-sex partnerships with those of opposite sex partnerships, civil partners are covered by 'marital status' and 'family obligations'.

Although the Employment Relationship Act does not include any special provisions regarding equal pay in relation to 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 the 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 with 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 who consequently received severance pay that was twice the amount that the complainants received. 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 as much, the case could be viewed in the context of indirect discrimination on the grounds of disability.

The Vocational Rehabilitation and Employment of Persons with Disabilities Act provides for reasonable accommodation measures in the workplace for people who have a disability status. The Act on Equal Opportunities for Persons with Disabilities provides for reasonable accommodation duties in employment in the areas of accessibility of information and physical accessibility.

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 prohibits discrimination in vocational training outside the employment relationship, such as adult lifelong learning courses or vocational training provided by technical schools or universities.

In accordance with the Protection Against Discrimination Act, equal treatment is guaranteed irrespective of personal characteristics in access to all types and all levels of career orientation, vocational and professional education and training, and 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 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 lifelong learning, which includes vocational training. This Act also applies to vocational training-related reasonable accommodation duties in the areas of accessibility of information and physical accessibility.

The Vocational Rehabilitation and Employment of Persons with Disabilities Act provides for reasonable accommodation measures in the workplace for people who have a disability status.

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, in 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).

The protected grounds include 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 Act on Equal Opportunities for Persons with Disabilities provides for reasonable accommodation duties in the areas of accessibility of information and physical accessibility.

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

In Slovenia, national legislation prohibits discrimination in 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 certain cases and under the conditions set out by this Act.

For the purposes of the Social Security Act, the term 'families' is inclusive of same-sex families (whether or not constituted by a civil partnership). The Civil Union Act equalises all legal consequences of same-sex partnerships with opposite sex partnerships.

The Social Assistance Benefits Act⁷⁰ (adopted on 13 July 2010, entered into force 10 August 2010, came into effect on 1 June 2011, latest amendments on 20 December 2016) 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 on Slovenia (Article 3).

The Parental Protection and Family Benefit Act⁷¹ (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

⁷⁰ Slovenia, Social Assistance Benefits Act (*Zakon o socialno varstvenih prejemkih*), 13 July 2010, available at www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5609.

⁷¹ Slovenia, Parental Protection and Family Benefits Act (*Zakon o starševskem varstvu in družinskih prejemkih*), 3 April 2014, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6688.

of those people with the duty to provide for them (usually parents). There are no other age limitations.⁷²

The right of any person to healthcare under conditions established by law is a constitutionally guaranteed right. The Healthcare and Health Insurance Act⁷³ does not contain an explicit provision on discrimination in access to healthcare. It only neutrally defines categories 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 Act⁷⁴ 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 and accessibility of information.

a) 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 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 and accessibility of information.

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

In Slovenia, national legislation prohibits discrimination in 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.

⁷² 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.

⁷³ Slovenia, Health Care and Health Insurance Act (*Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*), 12 February 1992, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213.

⁷⁴ Slovenia, Health Services Act (*Zakon o zdravstveni dejavnosti*), 12 February 1992, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO214.

The main piece of legislation on education is the Organisation and Financing of Education Act,⁷⁵ Article 2 of which guarantees individuals the opportunity 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,⁷⁶ while access to professional and occupational education⁷⁷ as well as access to high school⁷⁸ and higher education⁷⁹ 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 exempt from the reciprocity principle that is in place for foreigners. Primary school is mandatory for every child between the ages of six and 15.

Pre-school education, which takes place in kindergartens, is based on the principles of democracy and equal opportunities for children and parents, taking into consideration the differences between children and maintaining the balance between different aspects of a child's physical and mental growth.⁸⁰

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 additional possibility of Slovenian lessons being organised.⁸¹ Children who are of foreign citizenship or who are stateless and reside in Slovenia have the right to compulsory primary school education on the same terms as Slovenian citizens.⁸² 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 a child's mother tongue.

The provision of pre-school and primary school education, primary and secondary vocational education, secondary technical education, professional education and secondary general education for the Italian and Hungarian national minorities is regulated in the Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act.⁸³

There are reports and articles mentioning the existence of bullying in schools due to students' sexual orientation;⁸⁴ however, no comprehensive statistics are available.

⁷⁵ Slovenia, Organisation and Financing of Education Act (*Zakon o organizaciji in financiranju vzgoje in izobraževanja*), 6 February 1996, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO445.

⁷⁶ Slovenia, Elementary School Act (*Zakon o osnovni šoli*), 14 February 1996, Article 10, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448.

⁷⁷ Slovenia, Vocational and Technical Education Act (*Zakon o poklicnem in strokovnem izobraževanju*), 13 July 2006, Article 7, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4325.

⁷⁸ Slovenia, High School Act (*Zakon o gimnazijah*), 14 February 1996, Article 9, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO450.

⁷⁹ Slovenia, Higher Education Act (*Zakon o visokem šolstvu*), 7 December 1993, Article 7, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO172.

⁸⁰ Slovenia, Kindergarten Act (*Zakon o vrtcih*), 14 February 1996, Article 3, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO447.

⁸¹ Slovenia, Elementary School Act (*Zakon o osnovni šoli*), 14 February 1996, Article 8, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448.

⁸² Slovenia, Elementary School Act, (*Zakon o osnovni šoli*), 14 February 1996, Article 10, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO448.

⁸³ 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*), 25 April 2001, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2611.

⁸⁴ Sonja Pečjak (2014), 'Medvrstniško nasilje v šoli' (Peer Violence in Schools), Faculty of Arts, University of Ljubljana, available at: https://issuu.com/znanstvenazalozbaff/docs/medvrstnisko_nasilje_v_soli; Doroteja M. Lešnik, Andrej Koren, Vinko Logaj, Mateja Brejc (2009), 'Nasilje v šolah: Opredelitev, prepoznavanje, preprečevanje in obvladovanje' (Violence in Schools: Definition, Recognition, Prevention and Management), Šola za ravnatelje, available at: www.solazaravnatelje.si/ISBN/978-961-6637-24-4.pdf.

a) Pupils with disabilities

In Slovenia, the general approach to education for pupils with disabilities raises problems.

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.⁸⁵ They are still predominantly enrolled in special schools. The practice of evaluating children's abilities to follow the regular programme does not raise serious concerns. The inclusion of children with disabilities in mainstream schools is an exception, and in practice depends on the willingness of the school to accept them. However, a slight change in policy has been observed, at least on the level of principle. Namely, in accordance with Article 11 of the 2010 Act on Equal Opportunities for People with Disabilities, there is a duty to ensure that people with disabilities have access to inclusion in educational programmes at all levels in the area in which they live. The same article further stipulates that inclusion in special schools with adapted programmes does not constitute discrimination.

Children with disabilities who are enrolled in mainstream schools obtain a decision from the National Education Institute of the Republic of Slovenia that specifies their rights depending on their disability.⁸⁶ These rights may include the right to special equipment or personal assistance. The school is not entitled to equipment, although it can pay for it from its own resources or can ask the municipality to pay for it. However, 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 in respect of Roma children). However, in practice, segregated special education is still favoured and supported, which is contrary to the UN Convention on the Rights of Persons with Disabilities. Children with disabilities have equal access to secondary education. Many university departments are accessible for children with disabilities.⁸⁷

b) Trends and patterns regarding Roma pupils

In Slovenia, there are specific trends and patterns (whether legal or societal) in education regarding Roma pupils, such as segregation.

The Kindergarten Act⁸⁸ 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 possible only in the regions with large Roma populations), depending on a decision being 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 Education⁸⁹ (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).

According to a report by the Council of Europe Human Rights Commissioner, Roma children continue to be underrepresented in pre-schools. The reason seems to be that many Roma families prefer not to enrol their children in pre-school in order to benefit from a 20 %

⁸⁵ Slovenia, Placement of Children with Special Needs Act (*Zakon o usmerjanju otrok s posebnimi potrebami*), 12 July 2011, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5896.

⁸⁶ Slovenia, Placement of Children with Special Needs Act (*Zakon o usmerjanju otrok s posebnimi potrebami*), 12 July 2011, Article 30, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5896.

⁸⁷ Slovenia, Association of Students with Disabilities, <http://www.dsis-drustvo.si/za-bodoce-studente/dostopnost-fakultet/>.

⁸⁸ Slovenia, Kindergarten Act (*Zakon o vrtcih*), 14 February 1996, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO447>.

⁸⁹ Slovenia, Decree on Standards and Employment Criteria in Pre-School Education (*Odredba o normativih in kadrovskih pogojih za opravljanje dejavnosti predšolske vzgoje*), 15 September 1997, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ODRE357.

bonus in child benefits aimed at compensating families that do not obtain a place in pre-school for their children.⁹⁰ A project funded by the EU and the Ministry of Education that focused on pre-school for children aged three to six years old introduced educational 'incubators' in Roma settlements. The incubators are aimed at equipping Roma children with the skills necessary to their successful integration into elementary school, including speaking the Slovenian language.⁹¹ Since 2016, the Ministry of Education has continued to implement the activities supporting Roma education incubators.⁹²

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 and formally there are no more separate schools and classes for the Roma.

However, a 2014 report by the Council of Europe's European Commission against Racism and Intolerance – *ECRI Report on Slovenia (fourth monitoring cycle)* – does not note any Roma children without learning disabilities being sent to special schools. However, it states that '[while] the national average of children with special needs is 4 %, it is up 7 % in the case of Roma children'.⁹³ More recent data shows that, according to official statistics, Roma children continue to be overrepresented in special needs schools, with about 12.2 % of Roma children being directed to such schools in the school year 2017-18 in comparison with 6.18 % of other children.⁹⁴

Further, the UN Committee on the Rights of the Child, in its concluding observations in 2013, 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'.⁹⁵ Similar findings are available in the Concluding Observations of the UN Committee on Economic, Social and Cultural Rights of 2014.⁹⁶ The 2017 report of the Council of Europe Commissioner for Human Rights also notes issues such as absenteeism from school, high drop-out rates in some regions and the very low numbers of Roma children who reach secondary and tertiary education in the country. The Commissioner reports the reasons identified for this as: insufficient value placed on education by families; poor housing conditions that do not allow families to make school a priority; early marriages and pregnancies; and criminality among teenage boys, induced by certain male figures from the community.⁹⁷ Officially, segregation (schooling in separate classes) is no longer present, but de facto the situation is still not satisfactory.⁹⁸

⁹⁰ Council of Europe, Commissioner for Human Rights (2017), *Report on Slovenia*, CommDH(2017)21, 11 July 2017, pp. 19-20, available at: <https://rm.coe.int/report-on-the-visit-to-slovenia-from-20-to-23-march-2017-by-nils-muizn/1680730405>.

⁹¹ <http://skupajdoznanja.si/romski-izobrazevalni-inkubatorji/>.

⁹² Government of Slovenia (2018), *Peto poročilo Vlade Republike Slovenije o položaju romske skupnosti v Sloveniji (Fifth Report of the Government of Republic of Slovenia on the Situation of Roma Community in Slovenia)*, 18 July 2018, available at: http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Peto_porocilo_Romi.pdf, p. 7.

⁹³ www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf.

⁹⁴ Amnesty International Slovenia, 'Podatki o šolskem uspehu romskih otrok kažejo, da se jih pušča na cedilu', 4 October 2018, available at: <https://www.amnesty.si/podatki-o-solskem-uspehu-romskih-otrok-kazejo-da-se-jih-pusca-na-cedilu.html>.

⁹⁵ 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%2beIQq4LtHqUn%2fAeN9mzSJCXr%2bqaqY%2f2eVH9v1z9X%2fsdydZItFNIA>.

⁹⁶ UN Committee on Economic, Social and Cultural Rights (2014), *Concluding observations on the second periodic report of Slovenia*, 15 December 2014, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fSVN%2fC.O%2f2&Lang=en.

⁹⁷ Council of Europe, Commissioner for Human Rights (2017), *Report on Slovenia*, CommDH(2017)21, pp. 19-20, available at: <https://rm.coe.int/report-on-the-visit-to-slovenia-from-20-to-23-march-2017-by-nils-muizn/1680730405>.

⁹⁸ Amnesty International Slovenia, available at www.amnesty.si/romi.

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.⁹⁹

Taking into account the unsatisfactory situation of Roma in the field of education (as well as in other fields), the Government of the Republic of Slovenia prepared, and the Parliament adopted, a National Programme of Measures for Roma 2010-15,¹⁰⁰ which was subsequently replaced by a new National Programme for 2017-21.¹⁰¹ The 2017-21 programme includes a plan for strengthening the pre-school education of Roma children; the tutoring system for Roma pupils; Slovenian language learning; the inclusion of Roma in the apprenticeship system; and the education of education professionals who work with Roma children.

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

In Slovenia, national legislation prohibits discrimination in 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 that is 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 clean drinking water to the unregulated Roma settlement of Dobruška was constituted a 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 was implied by its decision.¹⁰²

a) Distinction between goods and services available publicly or privately

⁹⁹ 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/.

¹⁰⁰ 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>.

¹⁰¹ Government of the Republic of Slovenia (2017), National Programme of Measures for Roma, 2017-2021, available at: www.un.gov.si/fileadmin/un.gov.si/pageuploads/NPUR_2017_2021.pdf.

¹⁰² 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_letno_2013.pdf.

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

Non-discrimination provisions apply only 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 area of 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 mentions only 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 for local governments to provide accessible apartments to people with disabilities who 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 on landlords to allow a person with disabilities to make changes to the property.

a) Trends and patterns regarding housing segregation for Roma

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

Various reports and state documents contain references to problems deriving from irregular Roma settlements without appropriate infrastructure and to the poor housing conditions of the Roma.¹⁰³ Roma settlements that have been constructed without a building permit on land owned by another legal or private person are often 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. Consequently, the Ombudsman continues to stress that more concrete measures must be adopted to regularise Roma settlements.¹⁰⁴

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 the Roma and the legalisation of Roma settlements, and in facilitating access for the Roma to social (non-profit) apartments, lies 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.¹⁰⁵ The report does not specifically address the problem of forced evictions and the duty to provide housing to vulnerable groups (women, children and families), but it briefly mentions that general social housing schemes for vulnerable groups

¹⁰³ 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.

¹⁰⁴ 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.

¹⁰⁵ 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.

from the National Housing Programme are to be used in cases when a housing problem needs to be addressed. The *Fifth Government Report on the Situation of the Roma Community in Slovenia* describes funding instruments for infrastructure projects in Roma settlements carried out by municipalities, such as the construction of power, water and sewage systems in the settlements, public lighting, the reconstruction of roads and buying out property from owners where irregular settlements are built.¹⁰⁶ In 2017, the Government formed a new Working Group for Regulating the Spatial Problems of Roma Settlements with a one-year mandate. No specific results from this working group are publicly available.

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 in the 2014 ECRI report.¹⁰⁷

Further, according to the 2017 Report of the Council of Europe Commissioner for Human Rights, the housing situation of Roma communities in Slovenia, which is generally unfavourable, varies from one region to another. Only a small number of Roma live in houses or apartments together with the majority population. Discriminatory reactions often prevent Roma families from buying or renting accommodation. The Roma also experience difficulties in accessing social housing, which is generally in short supply in the country, due to conditions set by municipalities that they cannot meet. Most Roma continue to live in settlements isolated from the rest of society in conditions that are well below the minimum standard of living, particularly in south-east Slovenia (Dolenjska region). There, the Roma frequently live in makeshift wooden huts or trailers, which are usually set up illegally on state-owned or private land designated for agricultural or industrial use, such as the settlements in Grosuplje and Ribnica municipalities. Public utility facilities are inadequate or non-existent.¹⁰⁸

The Constitutional Court issued a ruling (No. U-I-64/14-20 of 12 October 2017) on the issue of Roma houses built without building permits and the orders of the spatial inspectors to demolish such houses. In the ruling, the Constitutional Court found that Articles 152 and 156a of the Construction Act are in conflict with the Constitution, as they do not provide for an effective legal remedy against the decision to tear down the illegally built building. The case was decided following a constitutional complaint by a Roma man who claimed that the house concerned is the only home of him and his family, and that by tearing down the house and not providing him with effective legal remedies, his right to protection of family and private life under Article 8 of the ECHR would be infringed. The Court did not discuss discrimination in the reasoning, but it based its decision on the fact that the case concerns the Roma minority as a group that is particularly vulnerable. This was a strategic litigation case in which a Roma applicant was assisted by Amnesty International.

It is worth mentioning that protection of individuals in cases of forced evictions is not in line with ECHR standards (e.g. *Winterstein v France*), which require the provision of alternative accommodation in the event of forced evictions.

¹⁰⁶ Government of Slovenia (2018), *Peto poročilo vlade republike slovenije o položaju romske skupnosti v Sloveniji* (*Fifth Government report on the situation of the Roma community in Slovenia*), available at: http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Peto_porocilo_Romi.pdf, p. 16.

¹⁰⁷ European Commission against Racism and Intolerance (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.

¹⁰⁸ Council of Europe, Commissioner for Human Rights (2017), *Report on Slovenia*, CommDH(2017)21, 11 July 2017, pp. 15-16, available at: <https://rm.coe.int/report-on-the-visit-to-slovenia-from-20-to-23-march-2017-by-nils-muizn/1680730405>. Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities (2018), *Fourth Opinion on Slovenia*, ACFC/OP/IV(2017)003, p. 15, available at: https://www.coe.int/en/web/minorities/news-2018/-/asset_publisher/WSzOdQnzJ7kM/content/slovenia-publication-of-the-4th-advisory-committee-opinion?_101_INSTANCE_WSzOdQnzJ7kM_viewMode=view/.

In addition, there is a pending case before the ECtHR against Slovenia that relates to access to drinking water and sanitation in irregular Roma settlements (*Hudorovič, Hudorovič and Novak v. Slovenia*).¹⁰⁹ The applications claiming violations of Articles 3 and 8 of the ECHR, as well as Article 14 in conjunction with Articles 3 and 8 of the Convention, were submitted to the court in March 2014 and communicated to the Slovenian Government in April 2015. These are also strategic litigation cases in which the applicants are being assisted by Amnesty International and pro bono lawyers.

A problem which also requires attention is the issue of non-profit housing defined by the Housing Act.¹¹⁰ 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, which was adopted on 19 June 2003, and the Spatial Planning Act, which was 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. However, the provision seems to be purely declaratory and has not yet been invoked in litigation. In 2018, draft amendments to the Roma Community Act were prepared to remedy the deficiencies of this and other provisions in the law; however, the law was not passed.¹¹¹

¹⁰⁹ Application Nos. 24816/14 and 25140/14.

¹¹⁰ Slovenia, Housing Act (*Stanovanjski zakon*), 19 June 2003, available at: www.pisrs.si/Pis_web/pregledPredpisa?id=ZAKO2008.

¹¹¹ Government of Slovenia (2018), *Peto poročilo vlade republike slovenije o položaju romske skupnosti v Sloveniji* (Fifth Government report on the situation of the Roma community in Slovenia), available at: http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Peto_porocilo_Romi.pdf, p. 16.

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 in which, 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 is 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 the circumstances in which the work is performed, a particular ground represents a genuine and determining occupational requirement for work, if this requirement is proportionate and justified with a legitimate goal.

There is no case law yet on genuine and determining occupational requirements.

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.

Specific mention of only the ground of religion and belief implies that discrimination on other grounds is not allowed. However, this is not specifically clarified in law and there is as yet no case law on this matter.

– 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 someone from a job on that basis when the job is in a state entity. There are two exceptions to this rule. The first exception is the role of military chaplain, who is 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.¹¹² The second exception is a few Catholic schools

¹¹² 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

which are funded by the State as they run a state-accredited programme.¹¹³ There have been no cases yet concerning clashes of grounds, e.g. religion and sexual orientation in employment in these schools. In addition, as the provisions are not precise, it is 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 Act¹¹⁴ states that candidates who wish to perform military service professionally should, among other requirements, in principle not be older than 25 (or 30 for officers).¹¹⁵ 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.

In 2013, a new Police Organisation and Work Act was adopted.¹¹⁶ 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 a difference in 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 in treatment based on nationality.

There are many provisions in the employment legislation that exclude people of other nationalities. Article 13 of the Constitution of the Republic of Slovenia states that foreigners (i.e. non-nationals) enjoy all rights enshrined in international law, while under the national law some rights can be reserved for Slovenian nationals only. Article 88(2) of the Defence Act, for example, states that an individual who wishes to join the armed forces as a professional soldier 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 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, the Constitutional Court ruled that the words 'Slovenian nationality' had to be removed from Article 2(3) of the Redress of Injustices Act,¹¹⁷ since it granted certain rights only to individuals of 'Slovenian nationality', thereby excluding

September 2000, available at:

www.mk.gov.si/fileadmin/mizks.gov.si/pageuploads/urad_za_verse_skupnosti/zakonodaja/sporazumi/duhovna_oskrba_ssk.pdf.

¹¹³ In relation to the issue of state funding of private schools, see Constitutional Court decision No. U-I-269/12-24, 4 December 2014, available at: <http://odlocitve.us-rs.si/si/odlocitev/US30557?q=zasebne+%C5%A1ole>.

¹¹⁴ Slovenia, Defence Act (*Zakon o obrambi*), 20 December 1994, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO532.

¹¹⁵ The Ministry of Defence states in its recruitment adverts that applicants must be a maximum of 25 years old and that the contract will be ended when the individual is 45 years old.

¹¹⁶ Slovenia, Police Organisation and Work Act (*Zakon o organiziranosti in delu v policiji*), 7 February 2013, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6315.

¹¹⁷ Slovenia, Redress of Injustices Act (*Zakon o popravil krivic*), 11 October 1996, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO474.

other possible beneficiaries, and consequently it 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, because he did not have Slovenian citizenship. The Constitutional Court stated that there is no justification for differentiating between victims based on personal grounds.¹¹⁸

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, the Constitution and the two laws all prohibit unequal treatment on the grounds of 'any other personal characteristic'; therefore, nationality could be included as a ground on which discrimination is prohibited.

b) Relationship between nationality and 'racial 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 constitutes unlawful discrimination in national law if an employer provides benefits only to those employees who are married.

Married and unmarried opposite-sex partners are treated equally, according to the Marriage and Family Relations Act in respect of 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 constitutes unlawful discrimination in national law if an employer provides benefits only to those employees with opposite-sex partners.

In April 2016, Slovenia adopted the Civil Unions Act,¹¹⁹ which provides for full equality for same-sex partners in all fields except for marriage, joint adoption and access to donor insemination. This means that some work and family benefits that were previously not

¹¹⁸ Constitutional Court of the Republic of Slovenia, decision No. U-I-371/96, 23 September 1998, *Official Gazette* No. 68/1998.

¹¹⁹ Slovenia, Civil Unions Act (*Zakon o partnerski zvezi*), 21 April 2016, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7434.

accessible to same-sex partners are now accessible on equal grounds. The Civil Unions Act was adopted after years of efforts to replace the Registration of Same-Sex Partnership Act,¹²⁰ which contained a limited set of rights. There were several legislative efforts to regulate the matter in family legislation, but they were overridden by two referendums (in 2012 and 2015).

In addition, if an employer limited benefits to opposite-sex partners, only the Protection Against Discrimination Act would apply since it prohibits discrimination on the ground of sexual orientation. There are no recent studies on discrimination on the grounds of sexual orientation in employment. Older studies (2012) reveal that such discrimination is not widespread.¹²¹

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 specified in 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, 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 hairstyles, beards, jewellery, etc. are not permitted if they run counter to health and safety rules.

A court case decided in 2018 is worth mentioning, as it shows that health and safety issues at work are taken into consideration in practice. The claimant – a woman wearing a headscarf – applied in response to a job advert for a service worker in a hospital. She was invited for an interview, but later received written notice that she had not been selected for the job. Based on alleged statements by the employer ('just look at yourself'), she claimed that she had been exposed to direct discrimination on the grounds of religion. The first instance labour court did not find that discrimination had taken place and rejected the action. After re-examining the evidence and hearing witnesses, the appellate court confirmed the first decision. It found that one of the witnesses told the claimant that outdoor clothes can bring germs into the hospital, and the same goes for a headscarf. The witnesses – persons present at the personal interview – denied the above statement ('look at yourself') and claimed that no one said to the claimant that a person with a headscarf would not be employed. One of the witnesses also stated that, in order to prevent infections and contagious diseases in the hospital, all staff members have to wear uniforms, and a complete change of clothes is required before the start of work. The witnesses explained that the hospital also employs Catholic nuns, who take off all their religious clothing while at work. In addition, 20 % of its employees are of the Muslim religion and none of them wears a headscarf. The claimant, however, stated that she was not ready to take off her headscarf. The witnesses also explained that there were 64 candidates for four job posts and that they selected the best candidates. The appellate court followed the arguments of the witnesses and considered that a reasonable explanation had been provided that gave the reasons for the requirement for employees to remove their clothes. It also stated that there was no indirect discrimination, because hygiene requirements represent a legitimate

¹²⁰ Slovenia, Registration of Same-sex Partnerships Act (*Zakon o registraciji istospolnih partnerskih skupnosti*), 22 June 2005, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4335.

¹²¹ Švab, A. and Kuhar, R. (2005), *Unbearable comfort of privacy: everyday life of gays and lesbians (Neznosno udobje zasebnosti)*, Peace Institute, p. 116, available at <http://www.mirovni-institut.si/publikacije/neznosno-udobje-zasebnosti-vsakdanje-zivljenje-gejev-in-lezbijk/>.

goal. The court did not address the proportionality test to dismiss the indirect discrimination claim.¹²²

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 for specific exception(s) for direct discrimination on the ground of age.

The Defence Act¹²³ states that candidates wishing to perform military service professionally should, among other requirements, in principle not be older than 25 (or 30 for officers).¹²⁴

For certain other professions such as judges, the minimum age requirement is set at 30 years¹²⁵ of age (Judicial Service Act).¹²⁶ This might be inconsistent with CJEU case law in which the Court elaborated on whether such conditions are in line with the genuine occupational requirement argument.¹²⁷

a) Justification of direct discrimination on the ground of age

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

Article 13(3) of the Protection Against Discrimination Act states that difference of treatment in relation 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. The test is compliant with the *Mangold*¹²⁸ and *Kücükdeveci*¹²⁹ cases. There is as yet no case law in Slovenia on this matter.

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 Act¹³⁰ (adopted on 28 September 2010, entered into force on 27 October 2010, came into effect on 1 January 2011)¹³¹ contains provisions which allow direct discrimination on the ground of age if it is objectively and

¹²² Slovenia, Higher Labour and Social Court, judgment No. Pdp 898/2017, 8 March 2018.

¹²³ Slovenia, Defence Act (*Zakon o obrambi*), 20 December 1994, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO532.

¹²⁴ The Ministry of Defence states in its recruitment adverts that applicants must be a maximum of 25 years old and that the contract will be ended when the individual is 45 years old.

¹²⁵ The law does not mention any justification for setting the minimum age for judges at 30.

¹²⁶ Slovenia, Judicial Service Act (*Zakon o sodniški službi*), 30 March 1994, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO334.

¹²⁷ See CJEU, judgment of 13 November 2014, *Mario Vital Pérez v Ayuntamiento de Oviedo*, C-416/13; and judgment of 12 January 2010, *Colin Wolf v Stadt Frankfurt am Main*, C-229/08.

¹²⁸ CJEU, judgment of 22 November 2005, *Werner Mangold v Rüdiger Helm*, C-144/04.

¹²⁹ CJEU, judgment of 19 January 2010, *Seda Küçükdeveci v Swedex GmbH & Co. KG*, C-555/07.

¹³⁰ Slovenia, Labour Market Regulation Act (*Zakon o urejanju trga dela*), 28 September 2010, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5840.

¹³¹ The difference between an act entering into force and 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.

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 entitlement 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 advantage of the possibility for which Article 6(2) provides.

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 in order to be admitted to the voluntary scheme. Although the law does not explicitly fix ages for admission, it is implied that the minimum age for entry is 15 (because children below the age of 15 are not allowed to work and must be in full-time education), since the law states that everyone who is employed and self-employed must be included in the mandatory insurance. Accordingly, people can join on a voluntary basis at the age of 15.

4.7.2 Special conditions for young people, older workers and persons with caring responsibilities

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

Several provisions of the Employment Relationship Act are intended to protect younger and older workers with regard to working conditions and the working environment. In particular, the law provides for the special protection of workers over the age of 55 with regard to the length of working hours, stating that an older worker may conclude an employment contract for shorter working hours if he or she takes partial retirement. In addition, the Act imposes limitations on overtime and night working, which prohibit the employer from requiring an older worker to work overtime or at night. An older worker may be made redundant only for business-related reasons with his or her consent, which is based on a positive discrimination clause to protect older workers from being fired as they face more difficulties in finding a job in comparison with younger workers. 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 that 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 that are 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 on 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 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 in which one of the employed parents of a child under seven, a child who is severely ill or a child with severe physical or intellectual disabilities is living alone with 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 judge, the minimum age requirement is set at 30 years¹³² of age (Judicial Service Act). This might be inconsistent with CJEU case law in which the Court elaborated on whether such conditions are in line with the genuine occupational requirement argument.¹³³ 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 adverts 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 to qualify for another position (Article 93 of the Defence Act).

There is no obvious evidence of age discrimination in training opportunities. However, the 1998 Act Amending the Employment and Unemployment Insurance Act has imposed, *inter alia*, a rule by which both younger and older age is one of the criteria for the inclusion of an unemployed individual in the active employment policy programme (i.e. state subsidised employment).

There are no maximum age requirements for employees in the police.

4.7.4 Retirement

a) State pension age

¹³² The law does not mention any justification for setting the minimum age for judges at 30.

¹³³ See judgment of 13 November 2014, *Mario Vital Pérez v. Ayuntamiento de Oviedo*, C-416/13; and judgment of 12 January 2010, *Colin Wolf v. Stadt Frankfurt am Main*, C-229/08.

In Slovenia, there is no state pension age at which individuals must begin to collect their state pension. The age at which the pension becomes available depends on the number of years the person has worked (65 years of age if the person worked for 15 years; 60 years of age if the person worked for 40 years).

If an individual in the private sector wishes to work for 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.

Individuals cannot collect a pension and still work on the basis of an employment contract (but may work on the basis of civil law contracts – consultancy agreements, author's agreement etc.). If they decide to continue to work as a self-employed person¹³⁴ they may collect only a part of their pension.

There are two different types of pensions available under conditions defined by law: old-age pension and disability pension.¹³⁵ 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 (dependent only on years at work), men and women have to be at least 65 years old and have 15 years of pension insurance in order to receive a full pension (the pension insurance period is the same as years of service, unless additional years of pension insurance have been paid for by the insured person).¹³⁶ 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:

Year	Age		Pension insurance (women)
	Men	Women	
	Years/months	Years/months	Years/months

¹³⁴ People are self-employed in Slovenia if they set up an individual entrepreneurship. In this way, they are bound not by the employment legislation but by civil law. They issue invoices to be paid for their services. However, as individual entrepreneurs they can also employ others, and these relationships are governed by employment legislation.

¹³⁵ 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.

¹³⁶ Slovenia, Pension and Disability Insurance Act (*Zakon o pokojninskem in invalidskem zavarovanju*), 4 December 2012, Article 27, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6280.

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 the 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 the case of working longer than required by law.

b) Occupational pension schemes

In Slovenia, 65 is normally the age at which people can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements.

If an individual wish to work for 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 service contracts).

Occupational pension schemes are organised as voluntary pension insurance, which represents 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 taken at 65 under the general rules.

c) State imposed mandatory retirement ages

In Slovenia, there is no state-imposed mandatory retirement age in the private sector. Such a mandatory retirement age is, however, imposed in the public sector. The age depends on the number of years for which the person has worked (65 years of age if the person worked for 15 years; 60 years of age if the person worked for 40 years).

The Pension and Disability Insurance Act 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).¹³⁷ It remains to be seen whether this is compatible with the directive.

The relevant provisions of the Fiscal Balance Act have already been examined by the Constitutional Court of the Republic of Slovenia, which found that the Act did not constitute discrimination with regard to men (because they reached pensionable age later than women).¹³⁸ 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 CJEU case law.

At least three cases in relation to the Fiscal Balance Act 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.¹³⁹ In one case, the Supreme Court confirmed the same reasoning in principle, but since this case involved a female complainant the court recognised that her employment should be terminated one month later than it was.¹⁴⁰ The reason for this was that, in the stated decision, the Constitutional Court found a breach of the Constitution only in relation to women and confirmed that the same gender-neutral rules on mandatory retirement in the public sector should apply to 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. This may, however, happen in practice: that the person, instead of being laid off, retires early but does not qualify for full pension.

e) Employment rights applicable to all workers irrespective of age

In Slovenia, the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, even if they remain in employment after attaining pensionable age or any other 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. People who are on service as opposed to employment contracts are not protected by legislation on dismissal.

f) Compliance of national law with CJEU case law

¹³⁷ Slovenia, Fiscal Balance Act (*Zakon za uravnoteženje javnih financ*), 11 May 2012, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6388.

¹³⁸ Constitutional Court of the Republic of Slovenia, decision No. U-I-146/12-40, 14 November 2013.

¹³⁹ Supreme Court of the Republic of Slovenia, judgment No. VIII Ips 231/2014, 24 February 2015, and judgment No. VIII Ips 65/2015, 13 July 2015.

¹⁴⁰ Supreme Court of the Republic of Slovenia, judgment No. VIII Ips 213/2014, 24 March 2015.

In Slovenia, national legislation is in line with CJEU case law on age regarding mandatory 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 to have occurred.¹⁴¹ Furthermore, for certain professions, such as judge, 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 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 judgment 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 for in national law.

¹⁴¹ Judgment of 12 January 2010, *Colin Wolf v. Stadt Frankfurt am Main*, C-229/08.

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

a) Scope for positive action measures

In Slovenia, positive action is permitted in national law in respect of racial or ethnic origin, religion or belief, disability, age and sexual orientation. The law does not state grounds for which positive action is not permitted.

Article 17 of the Protection Against Discrimination Act states that positive action consists of temporary measures, defined by law, which are 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 underrepresentation 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) Quotas in employment for people with disabilities

In Slovenia, national law provides for quotas for people with disabilities in employment.

There is 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.¹⁴² 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 people with disabilities as 2 % to 6 % 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, in comparison with 32 143 employees in 2016, which amounts to 3.86 % of all employment.¹⁴³ Data for 2017 or 2018 is not available, as this was a single study without a follow up. According to the annual report on the functioning of the fund, the quota system is functioning as, despite economic crisis, the number of disabled people in employment

¹⁴² Slovenia, *Uredba o določitvi kvote za zaposlovanje invalidov* (Decree establishing the employment quota for persons with disabilities), adopted on 27 March 2014, available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=URED6489>.

¹⁴³ Univrztetni rehabilitacijski inštitut Republike Slovenije – Soča (2017), *Evalvacija zaposlitvene rehabilitacije za leto 2016* (Evaluation of Vocational Rehabilitation for 2016), available at: http://www.rczr.uri-soca.si/f/docs/2017/01_Evalvacija_zaposlitvene_rehabilitacije_za_leto_2016_30_06_2017.pdf.

remains relatively stable.¹⁴⁴ Further, each year the number of employers who exceed the quota has increased, from 2 528 in 2006 to 4 962 in 2017.¹⁴⁵ The report for 2018 is not yet available.

In Slovenia, the majority of employers still prefer to pay the allowances (set out by the Vocational Rehabilitation and Employment of Persons with Disabilities Act on which the quota is based) 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. 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. In 2017, the Fund paid EUR 22 005.177 of subsidies to employers for adaptations of workplaces, subsidised employment and other benefits related to vocational rehabilitation, and received EUR 25 116.929 of payments as contributions replacing the duty to employ people with disabilities in line with quotas, and other payments.¹⁴⁶

¹⁴⁴ *Annual Report on the functioning of the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia for 2017*, available at: <http://www.sklad-kadri.si/si/info/o-skladu/informacije-javnega-znacaja/letno-porocilo/>.

¹⁴⁵ *Annual Report on the functioning of the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia for 2017*.

¹⁴⁶ *Annual Report on the functioning of the Public Guarantee, Maintenance and Disability Fund of the Republic of Slovenia for 2017*, p. 41.

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.
Ethics Commission of Journalists	Code of Ethics of the Slovenian Association of Journalists	Non-binding judgments and opinions
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 6a 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

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 Ombudsman¹⁴⁷ is a body that is competent to examine informal complaints and an independent and unbiased form of informal protection that is available to individuals in relation to state authorities, local self-government authorities and bearers of public authority. The Ombudsman has competence only in the public sector. The decisions of the Ombudsman are not binding.

¹⁴⁷ The basis for the institution of 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*), 20 December 1993, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO300, and the Rules of Procedure of the Human Rights Ombudsman, 18 October 1995, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=POSL7. 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,¹⁴⁸ 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 that 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 competent only in relation to 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.

- Informal: Ethics Commission of Journalists

Printed media is monitored by the Ethics Commission of Journalists. This is a self-regulating body, composed of nine elected journalists and editors as well as two representatives of the public, which ensures that the members of the journalistic community and the authors of journalistic texts and articles comply with ethical and professional rules. Complaints can be made on breaches of the Code of Journalists of Slovenia, which prohibits stereotyping (Article 20) and incitement to violence and intolerance (Article 21). Between 2011 and 2017, there were 18 complaints under each article, and the Commission found that there were 11 and five breaches respectively.¹⁴⁹ The Commission does not impose sanctions; it only determines whether there has been a violation of the code.

- Formal: Procedure on establishing discrimination conducted by the Advocate of the Principle of Equality

The 2016 Protection Against Discrimination Act maintains the Advocate of the Principle of Equality as the equality body in Slovenia. The Advocate was first established by the 2004 Act Implementing the Principle of Equal Treatment. It 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. Under the 2016 Act, an independent state body was established with the same name to replace the previous Advocate, who was only one civil servant. For more on the institutional changes to the equality body, see Section 7.

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)).

¹⁴⁸ 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.

¹⁴⁹ Advisory Committee on the Framework Convention for the Protection of National Minorities (2018) *Fourth Opinion on Slovenia - adopted on 21 June 2017*, 25 January 2018, p. 24, available at: https://www.coe.int/en/web/minorities/news-2018/-/asset_publisher/WSzOdQnzJ7kM/content/slovenia-publication-of-the-4th-advisory-committee-opinion?_101_INSTANCE_WSzOdQnzJ7kM_viewMode=view/.

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 more generally important in the context of 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 not formally a party to the procedure.

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 organisation (Article 37(3)). The wording of the provision lists these types of personal data as examples, which means that other types of data could also be demanded by the Advocate if he or she decides that they are needed for the examination of the case. In a case of victimisation, the Advocate may call upon the perpetrator to protect the individual who has experienced discrimination, or those who are assisting him or her, from victimisation or eliminate the consequences of victimisation (Article 37(2)).

The law now gives the Advocate the power to carry out the procedure of establishing discrimination (Article 33) or to conduct a formal inspection procedure, under the provisions of the Inspection Act¹⁵⁰ 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)).

The difference between the procedure on establishing discrimination and the inspection procedures are as follows:

Procedure on establishing discrimination	Inspection procedure
The victim as complainant is party to the procedure	The victim as complainant is not party to the procedure
The decision is declaratory and does not contain orders on measures to be taken by the perpetrator	The decision includes orders on measures to be taken by the perpetrator
The procedure is conducted based on general Administrative Procedure Act	The procedure is conducted based on Inspections Act

It is not possible to file an appeal against any of the two decisions 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 on the implementation of the inspection decision within eight days of the expiry of the deadline for implementation (Article 42(6)).

¹⁵⁰ Slovenia, Inspection Act (*Zakon o inšpekcijskem nadzoru*), 11 June 2002, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3209.

If the Advocate decides that issuing a decision would not be appropriate in a particular case, it may transfer the case to the competent inspectorate. 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 Act¹⁵¹ (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.

- Formal: Inspection and misdemeanour procedures conducted by competent inspectorates

The Protection Against Discrimination Act defines three cases in which 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, fall within the competence of both the Advocate and the inspectorates. This means that the complainant may file the complaint also with the inspectorate relevant to the particular area of discrimination (e.g. employment, education, health care, goods and services, social care, etc.). If violations are found, a misdemeanour procedure will also be conducted by the inspectorate.
- If the Advocate decides 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 may also transfer the case to the competent inspectorate if the perpetrator ignores or fails to implement its decisions. The competent inspectorate is obliged to examine the case and inform the Advocate of 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. In the past, there were issues with the competence of various inspectors in relation to examining cases of discrimination, as the rules were interpreted differently by the inspectorates and the Advocate. Namely, the inspectorates did not consider themselves competent for cases that were initiated with inspectorates directly by victims, with the exception of the Labour Inspectorate, since the prohibition of discrimination is included in the Employment Relationship Act, adherence to which is monitored by the Labour Inspectorate.¹⁵² Some other inspectorates (for example, the Education Inspector) were reluctant to examine cases about which they received complaints directly, and they insisted that the Advocate must examine the case first.

- Administrative procedures

Administrative procedure (used by all administrative bodies, meaning state bodies, local communities and 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.

¹⁵¹ Slovenia, Minor Offences Act (*Zakon o prekrških*), 18 December 2002, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2537.

¹⁵² 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/.

It is regulated by the General Administrative Procedure Act,¹⁵³ 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.¹⁵⁴

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.

In response to administrative decisions, judicial review may be sought before the administrative court.¹⁵⁵

- Judicial procedures: Courts

Civil procedure

A civil court procedure conducted 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 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 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)). The claim for the publication of the judgment in the media is granted if the court, taking into account the circumstances of the case, decides 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)). The law is not clear on whether anonymity should apply to only the claimant's information or whether it should also apply to the perpetrator's information. 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 Act¹⁵⁶ on compensation (see Section 6.5 on remedies and sanctions), in line with the principle of *lex specialis*

¹⁵³ Slovenia, General Administrative Procedure Act (*Zakon o splošnem upravnem postopku*), 16 September 1999, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603.

¹⁵⁴ Slovenia, Administrative Fees Act (*Zakon o upravnih taksah*), 26 January 2000, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2146.

¹⁵⁵ Slovenia, Administrative Dispute Act (*Zakon o upravnem sporu*), 28 September 2006, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4732.

¹⁵⁶ Slovenia, Obligations Act (*Obligacijski zakonik*), 3 October 2001, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263>.

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 and alleviates access to compensation. 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 opportunity 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 for 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 might 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 in comparison with complainants in other areas

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 Protection Against Discrimination Act introduced additional rules on representation, related to the legal standing of associations and the Advocate, which are further analysed in Section 6.2. 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. 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 interpretation, 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 in comparison with other complainants and would make access to justice more difficult for them. As in the case of complainants who are represented by trade unions, it would make more sense to impose more lenient, rather than 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,¹⁵⁷ 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.

Judicial proceedings for human rights cases are usually expensive, and individuals with limited financial means cannot afford such a lengthy and expensive procedure. The Free

¹⁵⁷ Slovenia, Court Fees Act (*Zakon o sodnih taksah*), 1 April 2008, available at www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4729.

Legal Aid Act¹⁵⁸ 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.

In respect of 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 the 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 2005.¹⁵⁹ For all matters not regulated by this Act, the Civil Procedure Act is used. In addition, 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, discussion about civil procedures).

The rules regarding representation are the same as for civil procedures, which again raises the dilemma around harsher conditions for representation by the Advocate and NGOs in discrimination cases. In addition, there is a special mitigating provision for procedures before the labour or social courts, whereby a worker can be represented by a trade union representative if the latter has acquired the title of graduate lawyer. In procedures before a higher court or the Supreme Court, a trade union representative can only appear if they have passed the bar examination.

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

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

In procedures before the labour and social courts, free legal aid is accessible under the same conditions that apply in 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

¹⁵⁸ Slovenia, Free Legal Aid Act (*Zakon o brezplačni pravni pomoči*), 31 May 2001, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1265.

¹⁵⁹ Slovenia, Labour and Social Courts Act (*Zakon o delovnih in socialnih sodiščih*), 19 December 2003, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3657.

speech is defined in Article 297 of the new Penal Code, which states 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 in which it is not possible to prevent such 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 sets 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 they 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 to refer 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 exhausted¹⁶⁰ and if the complaint was lodged within 60 days of the act.¹⁶¹ 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 issue 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

¹⁶⁰ The Constitutional Court may exceptionally decide on a constitutional appeal if a violation is probable and if certain irreparable consequences would ensue for the appellant as a result of the implementation of a particular act.

¹⁶¹ 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.

the constitutional right or freedom, and if a decision can be reached on the basis of the information on record.¹⁶² 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.

Under the 2016 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 the 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 it 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 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.

Despite the fact that a number of legal remedies exist, as described in the previous sections, the data on court cases from 2018 shows that the legal remedies available are not widely used.¹⁶³

b) Barriers and other deterrents faced by litigants seeking redress

The costs of the procedure depend on the type of procedure. Procedures that are free of charge include making a complaint to the Human Rights Ombudsman or 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 claimants 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 include lengthy judicial procedures, low compensation awards and ineffective protection mechanisms. In Slovenia, potential claimants face long trials due to the large numbers of new cases that are filed every year, as well as complicated legislation and court backlogs, which deter victims of discrimination from initiating court procedures. However, there have been significant improvements in recent years. The time that a case takes is reducing, and the statistics show that the number of unresolved disputes has continued to fall since 1996. In civil district courts, the duration of procedures reduced from 16.7 months in 2010 to 11.4

¹⁶² Slovenia, Constitutional Court Act (*Zakon o ustavnem sodišču*), 8 March 1994, available at www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO325.

¹⁶³ Slovenia, Advocate of the Principle of Equality (2019), *Annual Report for 2018 (Redno letno poročilo za leto 2018)*, p. 93, available at <http://www.zagovornik.si/porocila/>.

months in 2017. Similarly, in civil county courts, the duration of procedures reduced from 16.1 months in 2010 to 11.6 months in 2017.¹⁶⁴ The data for 2018 are not yet available.

c) Number of discrimination cases brought to justice

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

Judgments (not all of them) are publicly available online with a delay of several months after their delivery. For 2018, nine court cases were finalised by issuing a final judgment.¹⁶⁵

The statistical report on the work of the Advocate of the Principle of Equality shows that in 2018, the Advocate dealt with 223 cases, 149 of which were closed and 74 of which continued into 2019.¹⁶⁶ In 2018, the Advocate received 93 new cases, while it was still dealing with 130 on-going cases that were transferred to 2018 from previous years.¹⁶⁷ The cases comprise both discrimination complaints as well as requests for assistance by victims of alleged discrimination. In 53 % of closed cases, the complainants did not state the personal ground, hence the case was not a discrimination case (but a case in which the complainant believed it related to discrimination). Out of 149 closed cases, 8.8 % referred to disability; 8.3 % to race, ethnicity or ethnic origin; 4.7 % to gender; 4.1 % to religion or belief; 2.9 % to age and 2.9 % to sexual orientation. In terms of fields of discrimination, 26.6 % of closed cases referred to employment conditions; 24.8 % to access to employment; 24.8 % to access to goods and services; 14.7 % to education; 6.4 % to social protection, including health care; 1.8 % to social benefits; and 0.9 % to memberships in workers' or employers' organisations.¹⁶⁸

The statistical data for prosecution of the crime of incitement to hatred, violence and intolerance (under Article 297 of the Criminal Code) shows that the number of prosecutions and convictions is dropping:¹⁶⁹

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Crimes reported	21	8	21	3	83	34	13	20	37	13	32
Rejected reports	22	5	6	29	37	3	13	30	19	19	15
Indictments	1	3	5	5	26	15	1	2	1	2	6
Convictions			4	4	3	9	4	2		1	
Penal order			1	3	13		2		1		1
Acquittals	2			1					1		1
Rejected indictments			3			2					

¹⁶⁴ Supreme Court of the Republic of Slovenia, Annual Report on effectiveness and successfulness of courts 2017, available at: http://www.sodisce.si/sodna_uprava/statistika_in_letna_porocila/, p. 37-38.

¹⁶⁵ Slovenia, Advocate of the Principle of Equality (2019), *Annual Report for 2018 (Redno letno poročilo za leto 2018)*, p. 94, available at: <http://www.zagovornik.si/porocila/>.

¹⁶⁶ Slovenia, Advocate of the Principle of Equality (2019), *Annual Report for 2018 (Redno letno poročilo za leto 2018)*, p. 36, available at: <http://www.zagovornik.si/porocila/>.

¹⁶⁷ Slovenia, Advocate of the Principle of Equality (2019), *Annual Report for 2018 (Redno letno poročilo za leto 2018)*, available at: <http://www.zagovornik.si/porocila/>.

¹⁶⁸ Slovenia, Advocate of the Principle of Equality (2019), *Annual Report for 2018 (Redno letno poročilo za leto 2018)*, p. 42, available at: <http://www.zagovornik.si/porocila/>.

¹⁶⁹ Slovenia, Advocate of the Principle of Equality (2019), *Annual Report for 2018 (Redno letno poročilo za leto 2018)*, p. 92, available at: <http://www.zagovornik.si/porocila/>.

The statistics show that the Ombudsman dealt with 46 complaints in 2018,¹⁷⁰ which is 32 % less than in 2017, when it dealt with 68 complaints concerning discrimination,¹⁷¹ The number of complaints on the ground of ethnic origin varies (20 in 2012, 33 in 2014, 24 in 2015, 29 in 2016, 30 in 2017 and five in 2018).¹⁷² Of these, many complaints were related to bad living conditions in irregular Roma settlements. No data is available on who filed the complaints. The Ombudsman's report does not contain statistics on complaints related to sexual orientation, but it includes an extensive analysis of the prohibition of joint adoption by same-sex partners and its potential disaccord with the Constitution.¹⁷³

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 judgments are then sent to the Supreme Court, where a public database of cases is kept (www.sodnapraksa.si). The cases can be searched in the database using keywords. However, the database is not complete as first instance decisions that have not been appealed are not entered in it.

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 that they meet the conditions defined by law.

Following the 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 an NGO that is 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 Against Discrimination Act. The procedural acts in the judicial process in the name of the NGO may be conducted only by a person who is a representative of the NGO and who 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); it is sufficient that the representative has a mandate from the NGO allowing them to appear on its behalf. The problem with this provision relates 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.

¹⁷⁰ Human Rights Ombudsman (2019), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2018 (Annual Report for 2018)*, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf.

¹⁷¹ Human Rights Ombudsman (2017), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2016 (Annual Report for 2016)*, available at <http://www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila-priporocila-dz-odzivna-porocila-vlade/>.

¹⁷² Human Rights Ombudsman (2019), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2018 (Annual Report for 2018)*, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf.

¹⁷³ Human Rights Ombudsman (2019), *Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2018 (Annual Report for 2018)*, p. 80, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf.

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 those fields (Article 41(2)).¹⁷⁴ That status is granted by a competent ministry on the basis of the Associations Act¹⁷⁵ 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 those fields may also be granted to other NGOs (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.

Under the general rules for 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 addition, in county court procedures, anyone with legal capacity (i.e. the 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 (an NGO or trade union); however, in the latter case the NGO must appoint an individual who will act on behalf of the party. 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 have a legal interest only 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.¹⁷⁶

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.

Equality and human rights organisations have initiated strategic litigation in a few discrimination cases. Amnesty International assisted Roma applicants in cases related to the construction of buildings and access to water and sanitation. The Legal Information Centre for NGOs (PIC) is active in litigating disability-related cases.

¹⁷⁴ In January 2017, an implementing act was adopted to enable not only associations but also NGOs established as institutes to obtain the status of an organisation working in the 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*), 11 January 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV13034>.

¹⁷⁵ Slovenia, Associations Act (*Zakon o društvih*), 30 May 2006, available at <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4242>.

¹⁷⁶ Constitutional Court of the Republic of Slovenia, decision no. U-I-246/02, 3 April 2003.

b) Engaging in support of victims of discrimination (joining existing proceedings)

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

According to the Protection Against Discrimination Act, the representative of such an NGO (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 that consent is given, it is sufficient that 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 during 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 judgment procedure conducted by the European Court of Human Rights. In an exemplary procedure, the court may first decide in one test case that is identical to all the other cases (which are, in the meantime, put on hold), and the decision in this first case affects the decision in those other 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).

On 26 September 2017, the National Assembly adopted the Class Actions Act.¹⁷⁷ The law became applicable on 21 April 2018. The Act defines class actions; class settlements; the rules of class action procedure; the content and impact of class actions; the procedure of payment of aggregate compensation; and the rules on costs of the procedure and financing of class actions (Article 181). The aim of the Act is to facilitate access to justice, to stop and prevent unlawful conduct of perpetrators and to enable access to compensation in the

¹⁷⁷ Slovenia, Class Actions Act (*Zakon o kolektivnih tožbah*), 55/17, 26 September 2017, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7399>.

cases of mass rights violations. At the same time, the Act provides for procedural guarantees in cases of unjustified litigation (Article 1(2)). Article 2(2) states that, in the field of discrimination, the only permissible action is an action claiming termination of the discriminatory acts. Class action has not yet been used in discrimination cases.

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 or competent inspectorate, or in another procedure in which he or she demands the examination of a case of discrimination, states 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)). 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 the 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 cases 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 those people, stated that she was dismissed not 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 that 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 Act, victimisation is defined as the 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 with a document certifying the type of work that they were 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 that also applies in cases in which trade union representatives act on behalf of victims of discrimination.

The rule of the shift of the 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 or 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 that he or she was discriminated against may lodge a complaint. The Advocate deals with the complaint through the investigation procedure defined in Articles 33 to 37 and 42 to 43 of the Protection Against Discrimination Act (see above, Section 6.1 on administrative and judicial procedures). An individual who believes that he or she was discriminated against may also lodge a complaint directly with the competent inspectorates, which 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 will 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 the 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.¹⁷⁸ 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 Against Discrimination Act for the inspections to impose fines higher than the minimum (the same applied to the previous Act Implementing the Principle of Equal Treatment; this is an on-going 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 be imposed only 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 within a range is not sufficient. Since there is no such explicit authorisation in the Protection Against 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 that are used to define the amount of compensation for which the employer who acts in a discriminatory way is liable. Article 8 of the 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 for a candidate or worker cover mental pain suffered as a result of unequal or discriminatory treatment by an employer; a lack of protection from sexual or other harassment; or bullying in the workplace. The amount of monetary compensation for non-pecuniary damages must be defined in such a way that compensation is effective and

¹⁷⁸ Slovenia, Minor Offences Act (*Zakon o prekrških*), 18 December 2002, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2537.

proportionate to the damages suffered by the candidate or worker and 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. 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 in the case of a live transmission in which it is not possible to prevent such acts.

So far, there have been only a few cases with regard to hate speech (prosecuted as incitement to hatred, violence and intolerance) in Slovenia, which has been perpetrated mostly against the Roma, with other cases being related to sexual orientation. However, in recent years, the prosecution and conviction of incitement to hate has almost completely ceased. 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 as 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 Judgments in Civil Matters and Insurance of Claims Act¹⁷⁹ 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 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 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, or replaces, the general provisions on compensation in the Obligations Act.

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 (if this provision is in fact *lex specialis* and replaces the general compensation system when it comes to discrimination cases), 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 for 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

¹⁷⁹ Slovenia, Execution of Judgments in Civil Matters and Insurance of Claims Act (*Zakon o izvršbi in zavarovanju*), 30 June 1998, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1008.

unlawful acts and damages). The fourth element – responsibility for damages – is assumed and it is for the defendant to prove that 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 to have taken place 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 (judgment of the Labour and Social Court in Ljubljana, No. IPd 804/2007 of 6 January 2009). In the third case, the court found that there was discrimination (in the form of bullying) by the employer and awarded the claimant compensation of EUR 6 000 (judgment 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. In 2018, none of the lawsuits filed concerning discrimination was successful.

c) Assessment of the sanctions

Due to the very low number of sanctions issued in cases of discrimination, it is difficult to assess whether they are effective and dissuasive. However, there are a few indications on which to base an assessment.

The case law shows that compensation payments awarded in disputes in which claimants are successful are sufficiently high in order to consider such sanctions dissuasive from the perspective of an average person (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 to impose fines in the range prescribed (in fast procedures) and not only the minimum fine. Consequently, it is questionable whether fines of EUR 3 000 for legal persons and EUR 250 for natural persons may be assessed as being sufficiently high and therefore effective.

The sanctions of imprisonment issued in hate crime and hate speech cases are always suspended, and it is therefore 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 Protection Against Discrimination Act, which was passed on 21 April 2016, provided for the establishment of a new equality body, the Advocate of the Principle of Equality. The Advocate of the Principle of Equality has been an independent state body since November 2016. The Advocate works on all grounds covered by the Protection Against Discrimination Act and is not limited to addressing race and ethnicity.

- b) Political, economic and social context for the designated body

The adoption of the law in 2016, which provided for a reform of the Advocate of the Principle of Equality and its transformation from a one-civil-servant body to a fully operational independent state body with 17 employees at the end of 2018, shows that there was political support for the institutional strengthening of the equality body. The main incentive for this was the infringement procedure initiated by the European Commission. The less positive side of the establishment of the new equality body was the reluctance of the Ministry of Finance to ensure sufficient funds for it become fully operational, i.e. to move to appropriate and wheelchair-accessible premises suitable for the operation of a state body, to hire personnel and to carry out the duties enshrined in its mandate. Initially, the budget allocated to the body was EUR 130 000 for 2017, which was insufficient. Following the visit of the Council of Europe Commissioner for Human Rights, the Ministry of Finance agreed to add an additional EUR 50 000 for 2017 to enable the equality body to relocate.¹⁸⁰ For 2018, the budget was further increased to EUR 500 000.

Civil society organisations were supportive of the reform and carried out an independent campaign to support the Advocate's call for additional resources. As part of the campaign, the organisations staged a performance in which they set up a mock single-desk office in front of the Government building, in order to illustrate how the body was expected to function with such limited resources. The campaign was extensively covered by the media.¹⁸¹

- c) Institutional architecture

In Slovenia, the Advocate of the Principle of Equality does not form part of a body with multiple mandates.

It is also not part of the Office of the Human Rights Ombudsman. The Ombudsman's office is a separate independent state body with a different mandate that relates to the protection of human rights with regard to the public sector. The competences of the two bodies overlap with regard to the prohibition of discrimination in the public sector; however, the mandate of each is defined in separate laws. There are no legal provisions that would clarify the overlap. It is possible for an individual to lodge a complaint with both institutions as that is not precluded by any law. In such a situation, it would be possible to reach two different outcomes: the decision of the Advocate is binding but can be challenged before the Administrative Court, while the Ombudsman issues non-binding recommendations that cannot be challenged before the courts.

¹⁸⁰ Mladina (2017), 'Miza zagovornika načela enakosti iz pisarne predstavljena na pločnik', 6 April 2017. <http://www.mladina.si/179524/miza-zagovornika-nacela-enakosti-iz-pisarne-prestavljena-na-plocnik/>.

¹⁸¹ Advocate of the Principle of Equality, written response to questions sent by email to the author on 5 March 2018.

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

The Advocate of the Principle of Equality was set up as an independent entity (Article 19(1) of the Protection Against Discrimination Act). The new body conducts its responsibilities autonomously within the framework and on the basis of the law and the Constitution (Article 19(2)). The chair of the Advocate has the status of a functionary, in line with Article 28(1) of the Act, as opposed to the previous situation in which the Advocate was one of the civil servants employed by the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

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.¹⁸² 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 Advocate is appointed for a five-year term, by the National Assembly, upon a proposal from the President of the Republic of Slovenia. A simple relative majority is needed in the vote by the National Assembly to elect the Advocate. 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 submits a reasoned proposal for the candidate to the National Assembly (Article 25 of the Protection Against Discrimination Act).

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 a provision in Article 30, according to which the Advocate shall have a professional service which will carry out professional, administrative or other tasks.

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. As an independent state body, the Advocate has the power to independently recruit and manage staff in line with the allocated budget. Once recruited, the staff are accountable to the Advocate in the person of the functionary who is responsible for heading the Advocate as an equality body.

¹⁸² The fact that no annual reports were issued by the Advocate between 2012 and 2016 was the 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.

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.¹⁸³ ECRI recommended that the state find a suitable solution 'in order for a fully independent national specialised body to combat discrimination' to be established.¹⁸⁴ In its 2017 report, following the reform of the equality body, ECRI declared that its recommendation has been implemented.¹⁸⁵

ii) Independence of the body

A specific provision of the law is dedicated solely to the autonomous status of the Advocate. Specifically, according to Article 20 of the 2016 Protection Against Discrimination 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 the Act;
- the content of reports published by the Advocate on discrimination findings;
- decisions of the Advocate based on the Act;
- decisions on whether the Advocate will take part in a judicial procedure in a specific case, as provided for by the Act.

In order to enhance the independence of the Advocate or eliminate the risk of bias, the law explicitly states which functions are incompatible with the function of the Advocate (Article 29 of the Protection Against Discrimination Act).

Based on all provisions and facts, the Advocate may be considered as an independent state body in practice.

e) Grounds covered by the designated body/bodies

The Advocate of the Principle of Equality covers the grounds of gender, language, religion or belief, disability, age, sexual orientation, gender identity or gender expression, social standing, economic situation, education or any other personal characteristic. Based on the variety of different cases published on the Advocate's website covering all discrimination grounds, it can be assessed that each ground receives appropriate attention.¹⁸⁶

Attention given to the individual grounds depends on the number of complaints received by the Advocate in relation to each ground. In addition, the Advocate monitors the situation through complaints received by the Ombudsman, inspectorates and the police, and through court case law. The Advocate also follows developments in society, participates in expert consultative bodies (such as the Intersectoral Commission for Human Rights and the Council of the Government for Religious Freedom Dialogue) and conducts structured dialogue both with state bodies and NGOs.¹⁸⁷ In general, there is no evidence available to

¹⁸³ ECRI (2014) *Report on Slovenia*, 2014, available at: www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf.

¹⁸⁴ ECRI (2014) *Report on Slovenia*, 2014, available at: www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf.

¹⁸⁵ ECRI (2017), *Conclusions on the implementation of the recommendations in respect of Slovenia*, <https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Slovenia/SVN-IFU-IV-2017-039-ENG.pdf>.

¹⁸⁶ <http://www.zagovornik.si/obravnavani-primeri/obravnavani-primeri-rezultati/>.

¹⁸⁷ Advocate of the Principle of Equality, written response to questions sent by email to the author on 5 March 2018.

conclude that certain grounds would be given priority or that others would be neglected. So far, the Advocate has not prioritised any ground over other grounds. The only information available on the grounds dealt with by the Advocate are the statistics on the complaints received, presented by ground.

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

i) Independent assistance to victims

In Slovenia, the designated body has the competence to provide independent assistance to victims.

According to Article 21, the Advocate provides independent assistance to victims of discrimination in claiming their rights in relation to protection from discrimination, in the sense of providing advice and legal aid to parties in other administrative and judicial procedures related to discrimination. Legal assistance is provided by staff, some of whom are lawyers and others who have a social sciences background. The assistance provided in practice is independent. The staff employed by the Advocate do not take instructions from anyone outside the body, and no one is entitled to provide such instructions to the Advocate. The assistance is provided effectively. The victims can access the Advocate through phone, email, in writing or personally. The office hours for victims are every day from 10:00 to 12:00, and on Wednesdays from 15:00 to 18:00. The phone line is free of charge.

ii) Independent surveys and reports

In Slovenia, the designated body has the competence to conduct independent surveys and publish independent reports.

According to Article 21, the Advocate conducts independent research on the situation of people with a certain personal characteristic, in particular 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. The same article provides that the Advocate will publish independent reports and issue 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.

This mandate is new and has only been given to the Advocate under the 2016 Protection Against Discrimination Act. No research reports have yet been published. In 2017, the Advocate published the outcomes of a survey of perceptions of the scope of discrimination in Slovenia.¹⁸⁸

iii) Recommendations

In Slovenia, the designated body has the competence to issue independent recommendations on discrimination issues.

¹⁸⁸ Slovenia, Advocate of the Principle of Equality (2018), *Annual Report for 2017 (Redno letno poročilo za leto 2017)*, available at: <http://www.zagovornik.si/redno-letno-porocilo-za-leto-2017/>.

According to Article 21 of the PADA, the Advocate has the power to 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.

In 2018, the Advocate issued seven systemic or specific independent recommendations to different kinds of stakeholders – the National Assembly, municipalities, ministries and private legal persons.

iv) Other competences

Article 21 of the PADA also states that the Advocate:

- 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 (this means that the Advocate carries out assessment procedures and also inspection procedures);
- raises awareness among 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;
- ensures the exchange of available information with the European Union bodies.

g) Legal standing of the designated body/bodies

In Slovenia, the designated body (the Advocate of the Principle of Equality) has legal standing to:

- bring discrimination complaints (on behalf of identified victims) to court;
- bring discrimination complaints *ex officio* to Constitutional Court.

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

The 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 has 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 with the Advocate and who 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 interpretation, 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 in comparison with 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, the courts, in the opinion of the author, 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 the discretionary power to allow intervention by a third party.

As the Advocate has not yet brought cases to court, there has as yet been no practice in this area.

h) Quasi-judicial competences

In Slovenia, the body is a quasi-judicial institution.

With the Protection Against Discrimination Act, the Advocate obtained some additional powers, and the position of the complainant is now clearer. Namely, the Advocate shall be able to conduct investigative procedures, and 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, which means that they have the right to see the case files and the statements of the opposing party (except for personal data that needs to be protected in line with the Protection of Personal Data Act).

With regard to decision-making powers, the Advocate exercises its powers only in part: inspection procedures are not yet carried out, while the administrative procedures on establishing discrimination are. The reason for this relates to the problem with the procedure as it is defined in the Protection Against Discrimination Act. The Act suggests that the Advocate will first conduct an administrative procedure in order to examine the discrimination complaint and will then issue a decision following this procedure. If discrimination is found to have occurred through the administrative procedure, the Advocate will carry out an inspection procedure and issue a second decision based on that procedure. Legal remedies can be used in respect of both final decisions issued in the two procedures. Hence, the law foresees two procedures conducted by one body in one single case of discrimination. As the procedure is unclear, the Advocate conducts only administrative procedures on establishing discrimination, and not inspection procedures. The outcome does not differ between the two procedures as both types of decisions are binding; however, the Advocate does not have the power to issue sanctions in any case.

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

In Slovenia, the body registers the number of complaints of discrimination and the decisions that are made, as well as the number of requests for assistance from persons who allege that they have been discriminated against (by ground, field, type of discrimination, etc.). These data are available to the public. The report for 2018 containing the registered number of complaints, decisions and requests for assistance was published in April 2019. The statistical report on the work of the Advocate of the Principle of Equality shows that in 2018, the Advocate dealt with 223 cases, 149 of which were closed and 74 of which continued into 2019.¹⁸⁹ In 2018, the Advocate received 93 new cases, while it continued to deal with 130 on-going cases that were transferred over to 2018 from previous years.¹⁹⁰ The cases comprise discrimination complaints as well as requests for assistance by victims of alleged discrimination. In 53 % of closed cases, the complainants did not state a personal ground, hence the case was not a discrimination case (but a case in which the complainant believed there was an action related to discrimination). Of 149 closed cases, 8.8 % related to disability; 8.3% to race, ethnicity or ethnic origin; 4.7 % to

¹⁸⁹ Slovenia, Advocate of the Principle of Equality (2018), *Annual Report for 2017 (Redno letno poročilo za leto 2017)*, p. 36.

¹⁹⁰ Slovenia, Advocate of the Principle of Equality (2018), *Annual Report for 2017 (Redno letno poročilo za leto 2017)*,

gender; 4.1 % to religion or belief; 2.9 % to age; and 2.9 % to sexual orientation. In terms of fields of discrimination, 26.6 % of closed cases related to employment conditions; 24.8 % to access to employment; 24.8 % to access to goods and services; 14.7 % to education; 6.4 % to social protection, including health care; 1.8 % to social benefits; and 0.9 % to memberships in workers' or employers' organisations.¹⁹¹

j) Stakeholder engagement

In Slovenia, the designated body engages with stakeholders as part of implementing its mandate.

The Advocate undertakes conversations and dialogue with all key stakeholders: other branches of the Government (National Assembly, National Council), ministries, inspectorates, other independent state bodies (such as the Human Rights Ombudsman and the Information Commissioner), NGOs, international stakeholders, embassies and academia.

k) Roma and Travellers

Responsibility for the Roma generally falls within the competence of the Government Office for Minorities. However, the Advocate is carrying out dialogue with Roma civil society organisations, investigating cases relating to alleged discrimination against Roma people and focusing on the Roma within its systemic work.

¹⁹¹ Slovenia, Advocate of the Principle of Equality (2018), *Annual Report for 2017 (Redno letno poročilo za leto 2017)*, p. 42.

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 their coming into force. State regulations are published in the *State Official Journal*, whereas local community regulations are published in an official publication as determined by the local community. The Advocate disseminates specific non-discrimination related content from its work via its website www.zagovornik-rs.si, social media channels (Facebook and Twitter), in public events and through media announcements.

- 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 cooperate with NGOs (associations, foundations or institutes)

- 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 cooperate with social partners who are active in the field of equal treatment; the protection of human rights and fundamental freedoms; the protection of vulnerable groups from discrimination; or the provision of legal or social assistance to persons who experience discrimination. Trade unions provide 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 situation of the Roma is addressed by the Advocate of the Principle of Equality. Competence for the situation of the Roma also lies with the Government Office for Minorities (which deals with the position of Italian and Hungarian minorities in addition to 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 contradict the principle of equality, which is embodied in the Constitution. One of the basic powers of the Constitutional Court is to decide on the compliance 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 their 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 Union 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. The Constitutional Court decided that this differentiation is reasonable and does not constitute discrimination (decision No. U-I-176/08-10 of 7 October 2010).

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 it is automatically presumed that they are unable to live independently and are unable to be employed, regardless of their actual ability to work.

9 COORDINATION AT NATIONAL LEVEL

The 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 PRACTICE

The Ministry of Education, Science and Sports is implementing a five-year project called 'Together towards knowledge: implementing activities of support mechanisms to acquire knowledge for members of Roma Community' (*Skupaj za znanje: izvajanje aktivnosti podpornih mehanizmov pridobivanja znanja za pripadnike romske skupnosti*), which is supported by the European Social Fund (2016-2021). It focuses on motivating children to participate in education and on supporting Roma assistants, education incubators and extracurricular activities. One of the main goals of the project is the early inclusion of Roma children in pre-school education, at least two years before starting elementary schools, i.e. by the age of four. This is important for the purposes of learning the Slovenian and Roma languages and socialisation in an education institution in order to ensure a smooth transition to elementary school. The purpose is to overcome the language deficiency which is important for integration into the school environment.¹⁹²

In 2018, the Roma union Preporod (Union for Development of Roma Minority) based in Murska sobota undertook a project called 'Roma House' (*Romano Kher; Romska hiša*).¹⁹³ It consisted of four pillars: employment, political participation, international cooperation and the development of the Roma community. In 2018, the partners carried out 77 events and activities: they undertook activism and inclusion programmes in Roma settlements; created employment opportunities; implemented measures to raise awareness of the Roma Community among the majority population; carried out a programme aimed at increased security in Roma settlements; and ran a support programme to enable Roma councillors (representatives of Roma in municipal councils) to be able to perform their functions effectively. The project addressed the situation of Roma women and youth and provided workshops for activism. It also focused on the education of Roma girls with the aim of preventing early or forced marriage. In addition, the union offered counselling activities for Roma councillors, activists and associations, and three field information offices were in operation to provide this support on the spot. They offered support in writing project proposals and reports and in organising events. The project was co-financed by the European Social Fund.

The Slovenian Migration Institute (from the Slovenian Academy of Sciences and Arts), in partnership with the Slovene Institute of Education, is carrying out a project entitled 'Only with others we are' (*Le z drugimi smo*), funded through the European Social Fund and the Ministry of Education, Science and Sports (2016–2020). The goal is to raise knowledge among education workers in all fields and at all levels of education in the areas of diversity, the inclusion of migrants, zero tolerance for violence, conflict resolution, intercultural relations and integration. The project offers three different types of training: 1) in schools, by involving all teachers and lecturers working at each school; 2) regional training; and 3) national training. The training is carried out across the state. In 2018, more than 70 training sessions were carried out. One training session consisted of five 16-hour workshops.¹⁹⁴

Web Eye at the Faculty of Social Science – a contact point for reporting online hate speech with partners – started work on a project called 'Hate Speech on online social media in Slovenia', which was funded by the Slovenian Research Agency and the Police of the Republic of Slovenia (2018-2020). The project focuses on an analysis of the prevalence of online hate speech on social media in Slovenia, including analysis of reports to the police and the state prosecutor's office and analysis of court convictions for hate speech.¹⁹⁵

¹⁹² Government of Slovenia (2018), *Peto poročilo Vlade Republike Slovenije o položaju romske skupnosti v Sloveniji* (Fifth Report of the Government of Republic of Slovenia on the Situation of Roma Community in Slovenia), 18 July 2018, available at: http://www.un.gov.si/fileadmin/un.gov.si/pageuploads/Peto_porocilo_Romi.pdf.

¹⁹³ Project website: <http://www.romanokher.si/>.

¹⁹⁴ Project website: <https://lezdrugimismo.si/sl>.

¹⁹⁵ Project website: <https://www.spletno-oko.si/novice/izvaja-se-projekt-sovrazni-govor-na-spletnih-druzbenih-omrezjih-sloveniji>.

The Association of People with Labour-related Disabilities of Slovenia (*Zveza delovnih invalidov Slovenije*) is carrying out a programme entitled 'Disability-Friendly Municipality' (*Občina po meri invalidov*). Each municipality that takes the necessary measures defined in the by-laws of the Association may obtain a 'Disability-Friendly' certificate. Each year, one or more municipalities may take part in the programme. In 2018, the Municipality of Dobrna received this certificate. The project has been running since 2003, and so far 31 municipalities have obtained the certificate.¹⁹⁶

¹⁹⁶ Project website: <https://www.zdis.si/projekt-obcina-po-meri-invalidov/prejemniki-listine>.

11 SENSITIVE OR CONTROVERSIAL ISSUES

11.1 Potential breaches of the directives (if any)

- 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. The Protection Against Discrimination Act does not contain 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 EUR 500, depending on the gravity and type of offence. This indicates that the fines cannot be regarded as effective and dissuasive.
- With the provisions on the standing of NGOs and the Advocate, which 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 that are 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 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 access to justice more difficult.
- It is not clear whether the 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.
- On a related matter, it is not clear whether the ceiling for compensation, which is set at EUR 5 000, is in place only for compensation that is 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.

11.2 Other issues of concern

- There is no clear legal basis for persons with disabilities to be able to claim reasonable accommodation in employment.
- 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. Disability issues are entirely left to the Office for People with Disabilities within the Ministry of Labour, Family and Social Affairs.
- Hate speech as a form of discrimination is not prosecuted at all.
- There is a lack of equality data, due to a strict interpretation of the Personal Data Protection Act.
- Data collection is an issue. The courts are not obliged to collect data on discrimination cases, and hence they have difficulties in reporting on such cases. The publicly accessible database www.sodnapraksa.si is not comprehensive; court cases that became final on the first instance (because they were not appealed) are not included in the database.
- Judicial interpretation is required as to whether situation testing is permitted by law and whether situation testing and statistical evidence are admissible as evidence in court.
- 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 disability status under this Act have the right to receive social

benefits, but it is automatically presumed that they are unable to live independently and are unable to be employed, regardless of their actual ability to work.

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

12 LATEST DEVELOPMENTS IN 2018

12.1 Legislative amendments

- Personal Assistance Act (*Zakon o osebni asistenci*), *Official Gazette of the Republic of Slovenia*, Nos. 10/17 and 31/18, adopted on 7 February 2017, entry into force 14 March 2017, preparatory work taking place in 2018, beginning of use: 1 January 2019. The Act provides for state-paid personal assistants for people with disabilities, accessible under conditions set out by the law. It enables independent life and provides for special rights of eligible people with disabilities, who are eligible for a state-paid personal assistant. See Section 2.6. – Reasonable Accommodation.
- Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs (*Zakon o celostni zgodnji obravnavi predšolskih otrok s posebnimi potrebami*), *Official Gazette of the Republic of Slovenia*, No. 41/17, adopted on 14 July 2017, entry into force 12 August 2017, preparatory work taking place in 2018, beginning of use: 1 January 2019. The Act fills the gap in the assessment of special needs (including disabilities) of children before starting elementary school, to enable reasonable accommodation for the children already in pre-school and to ensure a smooth transition to elementary school.

12.2 Case law

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

Date of decision: 8 March 2018

Name of the parties:

Reference number: Pdp 898/2017

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

Brief summary: The claimant – a woman wearing a headscarf – applied in response to a job advert for a service worker in a hospital. She was invited for an interview, but later received written notice that she had not been selected for the job. Based on the alleged statements by the employer ('just look at yourself') she claimed that she had been exposed to direct discrimination on the grounds of religion. The first instance labour court did not find that discrimination had taken place and rejected the action. After re-examining the evidence and hearing witnesses, the appellate court confirmed the first decision. It found that one of the witnesses told the claimant that outdoor clothes can bring germs into the hospital, and the same goes for a headscarf. The witnesses – persons present at the personal interview – denied the above statement ('look at yourself') and claimed that no one said to the claimant that a person with a headscarf would not be employed. One of the witnesses also stated that, in order to prevent infections and contagious diseases in the hospital, all staff members have to wear uniforms, and a complete change of clothes is required before the start of the work. The witnesses explained that the hospital also employs Catholic nuns, who take off all their religious clothing while at work. In addition, 20 % of employees are of the Muslim religion and none of them wears a headscarf. The claimant, however, stated that she was not ready to take off her headscarf. The witnesses also explained that there were 64 candidates for four job posts and that they selected the best candidates. The appellate court followed the arguments of the witnesses and considered that a reasonable explanation had been provided that gave the reasons for the requirement for employees to remove their clothes. It also stated that there was no indirect discrimination, because hygienic requirements represent a legitimate goal. The court did not use the proportionality test to address the indirect discrimination claim.

Name of the body: Advocate of the Principle of Equality

Date of decision: 9 July 2018

Name of the parties:

Reference number: 0700-53/2016

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

Brief summary: A candidate for the driving test turned to the Advocate for advice because he needed an interpreter for people with hearing impairments in order to take the theoretical exam. Special time slots are provided for candidates who wish to take the exam on road traffic regulations with the assistance of an interpreter (for sign language, foreign language, assistance to a person with dyslexia or another special case). The rules stipulate that if a candidate who wishes to take the theoretical exam with an interpreter but cannot do so for legitimate reasons in the time slots provided, or there is no such time slot at a specific location, he or she can contact the Public Agency of the Republic of Slovenia for Traffic Safety and find an appropriate solution. The candidate turned to the Agency with a request to provide a morning appointment, but it was clear from the enclosed correspondence that the Agency did not provide a morning time as he had requested. In accordance with Article 21, indent 2, of the Protection Against Discrimination Act, the Advocate issued a recommendation to the Agency that it should adopt reasonable accommodation measures for candidates who need to take the exam with the assistance of an interpreter, in such a way that appointments are available in the same time slots as are available for people who are taking the exam without an interpreter.

Name of the body: Advocate of the Principle of Equality

Date of decision: 24 October 2018

Name of the parties:

Reference number: 0701-29/2018

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

Brief summary: The client, a parent of a daughter with cerebral palsy, turned to the Advocate for advice. He wanted to enrol his daughter in a regular kindergarten which, although it did not have a special programme for children with special needs, had experience of such children and employed a specialist, along with the possibility of employing an assistant for the child. The kindergarten was ready to accept the child, but in the final instance, due to the number of conditions imposed on the kindergarten by the Ministry of Education in order for it to be allowed to do so, it did not; a place at the kindergarten for children with special needs was offered instead. The parents claimed that a regular kindergarten would be best for the child, and claimed that this treatment amounted to discrimination based on disability. After examining the case, the Advocate explained that it did not find that discrimination had occurred and that, on the contrary, care was exercised to implement positive measures to ensure that the daughter enjoyed special benefits which could reduce her potential exposure to possible unequal treatment due to her disability. The Advocate expressed awareness that diligent parents are the ones who know the child best. At the same time, however, the Advocate called for consideration by the competent institutions – specialists, the Commission for the Guidance of Children with Special Needs, the Education Institute and the competent ministry – who, with their expertise and on the basis of the law, followed the principle of the benefit of the child. The Advocate proposed that the parents continue to cooperate with the competent institutions and build trust in order to ensure the rights of the child. Concerning the complaint that the parents wanted to file against the Ministry of Education, the Advocate explained that it cannot act as an appellate body in proceedings that are already pending before other bodies, but may provide independent assistance to parents in exercising their rights in respect of protection against discrimination.

Name of the body: Advocate of the Principle of Equality

Date of decision: 6 December 2018

Name of the parties:

Reference number: 0700-45/2017

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

Brief summary: At the age of 70, the complainant was no longer allowed to continue his work as a sports judge in one of the sporting disciplines. According to the provision of the statute of the association which grants licences for the performance of tasks by sports judges, the active career of the judge ended on December 31 of the year when the judge reached the age of 70. The Advocate asked the association to justify the mandatory

termination of the judge's career. The association explained that the reason for including such a condition in the statute of the association was that the rules of the International Sports Federation, in the field concerned, set the same condition. The Advocate concluded that the association failed to show that, by setting the age criterion, a legitimate goal was pursued, and that it failed to demonstrate that the age limit was an appropriate, necessary and proportionate means, as required by Article 13 of the Protection Against Discrimination Act. Age as such does not in itself define the psycho-physical characteristics of people. These cannot be determined by generalisation, but only in concrete terms, e.g. through individual ability or capabilities tests, medical examinations, investigations, etc. The association should therefore introduce individual means to assess the capabilities of sports judges which would be in line with the proportionality test.

Name of the body: Advocate of the Principle of Equality

Date of decision: 21 November 2018

Name of the parties: /

Reference number: 0700-57/2016

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

Brief summary: A school's management announced that it would start providing meals that did not contain pork and pork products, and parents and carers were asked to confirm with their signature whether they wanted their child to use that option. The Inspectorate for Education and Sport received a complaint that that constituted discrimination against other children who might want to enjoy other types of diets. The Inspectorate turned to the Advocate for an opinion. The Advocate estimated that the measure constituted reasonable accommodation on the grounds of religion, for a religion that prohibits the consumption of pork. In Slovenian legislation, the duty of reasonable accommodation is provided only in relation to disability, namely in the Employment Rehabilitation and Employment of Disabled Persons Act and in the Equalisation of Disabled Persons Act, which results from the transposition of the Framework Directive 2000/78/EC and the implementation of the Convention Of the United Nations on the Rights of Persons with Disabilities in the Slovene Legislation. However, reasonable accommodation measures may in practice also be introduced in other areas and in conjunction with other personal grounds, not only in the field of disability. The school provided a diet for school-age children that was adapted to their religion (Jewish and Muslim), otherwise the children could be deprived of a school meal. In doing so, the school acted in line with the principle of the best interest of the child, as protected by the Family Code. The introduction of reasonable accommodation measures does not interfere with the rights of others and does not imply discrimination of all other individuals who do not need such an accommodation. In the light of the above, the Advocate did not find that there were elements of discrimination, as defined by the Protection Against Discrimination Act.

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

The main transposition and anti-discrimination legislation.

Country: Slovenia
Date: 31 December 2018

<p>Title of the Law: Protection Against Discrimination Act Abbreviation: PADA Date of adoption: 21 April 2016 Entry into force: 24 May 2016 Latest relevant amendment: / Web link: http://www.pisrs.si 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 organisation of workers or employers, or other professional organisation, 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</p>
<p>Title of the law: Vocational Rehabilitation and Employment of Persons with Disabilities Act Abbreviation: VREPDA Date of adoption: 21 May 2004 Latest relevant amendment: 23 December 2014 Entry into force: 25 June 2004 Web link: http://www.pisrs.si Grounds covered: disability Administrative Law, Labour Law Material scope: Employment Principal content: Positive action, creation of a specialised body</p>
<p>Title of the law: Act on Equal Opportunities of People with Disabilities Abbreviation: AEOPD Date of adoption: 16 November 2010 Latest relevant amendment: 20 June 2017 Entry into force: 11 December 2010 Web link: http://www.pisrs.si Grounds covered: disability Administrative law Material scope: Employment, education, access to and supply of goods and services which are available to the public, including housing. Principal content: Appropriate (reasonable) accommodation</p>
<p>Title of the law: Employment Relationship Act Abbreviation: ERA Date of adoption: 5 March 2013 Latest relevant amendment: / Entry into force: 12 April 2013</p>

<p>Web link: http://www.pisrs.si</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 of a trade union, financial situation or other personal circumstance.</p> <p>Labour law</p> <p>Material scope: Public employment, private employment</p> <p>Principal content: Prohibition of direct and indirect discrimination, harassment, instruction to discriminate, sanctions, shift of burden of proof, genuine and determining professional requirements, victimisation, responsibility for damages</p>
<p>Title of the law: Penal Code</p> <p>Abbreviation: PC</p> <p>Date of adoption: 20 May 2008</p> <p>Latest relevant amendment: 1 June 2017</p> <p>Entry into force: 1 November 2008</p> <p>Web link: http://www.pisrs.si</p> <p>Grounds covered: Ethnicity, race, colour, religion, ethnic roots, gender, language, political or other belief, sexual orientation, social status, birth, education, social position or any other circumstance</p> <p>Criminal law</p> <p>Material scope: /</p> <p>Principal content: Prohibition of unequal treatment, prohibition of incitement to ethnic or religious hatred, or hatred on the basis of sexual orientation, prohibition of violation of equal rights at employment and social services</p>
<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 relevant amendment: /</p> <p>Entry into force: 21 July 2006</p> <p>Web link: http://www.pisrs.si</p> <p>Grounds covered: Ethnicity, race, gender, religious, political opinion or sexual orientation</p> <p>Criminal law/Misdemeanour law</p> <p>Material scope: /</p> <p>Principal content: Prohibition of incitement to intolerance (hate speech)</p>
<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 relevant amendment: 31 May 2013</p> <p>Entry into force: 23 December 1991</p> <p>Web link: http://www.pisrs.si</p> <p>Grounds covered: National origin, race, gender, language, religion, political or other beliefs, financial status, birth, education, social status, disability</p> <p>Constitutional law</p> <p>Material scope: /</p> <p>Principal content: /</p>

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Country: Slovenia

Date: 31 December 2018

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
European Convention on Human Rights (ECHR)	14 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 Against Women	6 July 1992 (succession)	5 Aug 1992 (entry into force)	No	Yes	Yes

Instrument	Date of signature	Date of ratification	Derogations / reservations relevant to equality and non-discrimination	Right of individual petition accepted?	Can this instrument be directly relied upon in domestic courts by individuals?
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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