



## European network of legal experts in gender equality and non-discrimination

### FLASH REPORT

<b>Country:</b>	Slovenia
<b>Title:</b>	Equality Body initiates first strategic litigation
<b>Date:</b>	26 November 2019
<b>Expert:</b>	Neža Kogovšek Šalamon
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Age discrimination by a private association challenged before a civil court
<b>Grounds of discrimination:</b>	Age
<b>Field of application:</b>	Employment, Other field
<b>Source:</b>	National equality body
<b>Applicable law:</b>	Articles 39, 40, 41 and 42 of the Protection against Discrimination Act

### **Content**

**Case:** On 3 October 2019 the Advocate of the Principle of Equality (equality body of the Republic of Slovenia) initiated the first strategic litigation case before a civil court. The case concerns age discrimination in a private sports association of cycling commissaires (i.e. authorised judges who oversee the regularity of cycling races). The claimant, a 76-year old man who is in good physical and intellectual shape, has been trying to renew his license for the past six years, however, unsuccessfully. The association first relied on the rules of the International Cycling Association (UCI) and then also inserted a provision into its own statute, stating that the career of cycling commissaires who reach the age of 70 automatically ends.

Already in 2015, when the man was first rejected by the association, he filed a complaint to the Advocate who under the previous law (Implementing the Principle of Equal Treatment Act) issued an opinion that the treatment constitutes age discrimination. The association ignored the opinion. Hence, the man continued to complain to the Advocate. In 2018 when he complained again the new Advocate under the new law (2016 PADA) again found, however this time by issuing a decision in an administrative procedure, that the provision in the statute and the refusal to renew the license constitute age discrimination. The man also tried to prevent the association from inserting such a provision into the statute by filing an appeal to the Administrative Authority that keeps a registry of all associations and their statutes, but was also unsuccessful. Further, he obtained an opinion of the Human Rights Ombudsman that found that the Administrative Authority should not have allowed the insertion of such a provision into the statute due to its discriminatory nature.

In the 2018 decision the Advocate found that the rule of 70 years of age is too general and applies to all cycling commissaires without distinction, regardless of their individual capabilities. The association defended itself by stating that the international association has the same rule in its statute, but did not provide for further reasons on why it deems the age of 70 necessary for ending the career of cycling commissaires. The Advocate

found that the rules of an international sports association – which is essentially an international non-governmental organisation – do not overrule national legislation and European law. It found that the association did not meet its obligations under the shift of the burden of proof rule defined in Article 40 of PADA as it made no attempt to show that setting the limit at the age of 70 is proportionate or which legitimate aim this limit is pursuing. In the decision, among other legal bases, the Advocate invoked the Employment Equality Directive 2000/78/EC, as the treatment prevents the commissaires who are over 70 to engage in paid work in this association (in spite of the fact that they are not employed).

When the Advocate issued its 2018 decision finding discrimination on the grounds of age it gave the opportunity to the association to remedy the situation by removing the provision from the statute and extend the validity of the claimant's license. However, the association refused to cooperate. First the Advocate, which does not have the power to issue sanctions on its own, proposed to the Inspection for Internal Affairs to carry out the minor offence procedure in line with Article 42 of the Protection against Discrimination Act (PADA) and impose sanctions. However, in 2019 the Inspection declared itself not competent for this case. It stated that PADA declares those inspections competent to oversee the implementation of PADA that have the power to carry out *inspection* procedures in the area of concern; while the Associations Act states that the Inspection for Internal Affairs has the power to carry out *minor offence* procedure in relation to associations that are breaking the law. The Inspection hence declared that the laws are not compatible and that this loophole prevents their competence for this case.

In this situation the Advocate assessed that since no other means exist for discrimination to be eliminated, a lawsuit to the civil court could be a suitable legal remedy. Hence, in cooperation with the claimant the Advocate lodged a lawsuit, claiming the elimination of discrimination (by way of deleting the discriminatory provision from the statute and issuing of a license to the claimant), EUR 3500 of just satisfaction and publication of the judgment in the media, all under Article 39 of PADA. The Advocate is representing the claimant in the case, as provided for in Article 41 of PADA.

**Key points of analysis:** This is the first strategic litigation case in which the Advocate of the Principle of Equality is representing a client – a claimant in an anti-discrimination case. The case is appropriate for strategic litigation as it concerns only the application of the law as the facts are undisputed. The case will provide for an opportunity for civil courts to assess whether such a blanket exclusion of persons over 70 from paid work is discriminatory also from a civil law point of view. Also, the judgment may clarify a number of other issues that exist in the absence of case law in the Republic of Slovenia, such as the appropriateness of the amount of compensation claimed, the effectiveness of claiming termination of discrimination before civil courts and the manners in which the publication of a judgment can be reached by court order.

**Internet link source:**

<http://www.zagovornik.si/zagovornik-nacela-enakosti-na-okrajno-sodisce-v-ljubljani-vlozil-tozbo-zaradi-diskriminacije-zaradi-starosti/>.