



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

### FLASH REPORT

<b>Country:</b>	Slovenia
<b>Title:</b>	Discrimination based on religion in access to marketing services
<b>Date:</b>	26 November 2019
<b>Expert:</b>	Neža Kogovšek Šalamon
<b><u>Context</u></b>	
<b>Issue at stake:</b>	Termination of a pro-life advertising campaign on a city bus
<b>Grounds of discrimination:</b>	Religion or belief
<b>Field of application:</b>	Goods and services
<b>Source:</b>	National equality body
<b>Applicable law:</b>	Article 9 of Protection against Discrimination Act (PADA)

### **Content**

**Case:** The Advocate of the Principle of Equality (equality body in the Republic of Slovenia) issued a decision in a case concerning a pro-life association whose marketing campaign had been terminated by the provider of marketing services.

The association concluded a contract with the marketing agency on an advertising campaign on city buses that should have lasted for two full months. The poster pictured on the advertisement showed a family with a baby, a phone number, slogans such as "you are not alone" and "call us", together with the phone number and a website of the association. In the days following the beginning of the campaign, a debate started on social media with some users calling upon the city bus transportation company to remove the advertisements, since they were allegedly contrary to Article 55 of the Constitution guaranteeing the right of abortion.

Consequently, nine days after the beginning of the campaign the city bus company decided to adhere to the calls of social media users and ordered the marketing agency to remove the advertisements.

In the procedure before the Advocate, the marketing agency stated that they followed the instructions of the city bus company and expressed an interest in a settlement; it offered the association (the complainant) advertising opportunities by other means. However, the city bus company defended its decision stating that, according to its advertising rules, advertisements are not allowed if they incite to hatred. Since these advertisements caused hatred on the social media, they decided to have them removed. The company also stated that it pursues the goal of providing a neutral environment for the city transport users.

**Decision of the Equality Body:** The Advocate found that the described treatment constitutes discrimination on the grounds of religion. The elimination of advertisements and the termination of the contract meant that the association was prevented from accessing marketing services (advertising on the city buses) which are available to the

public. The Advocate did not follow the arguments of the city bus company that the advertisements invoked hatred on the social media, but found that social media users expressed hatred against the association. It found that the association's advertising campaign is closely related to the religion of its members, who are catholic and supporters of the pro-life movement. It found that the content of the advertisement was not hateful and that the provision invoked by the city bus company did not apply in this case. The Advocate pointed out that advertising is never neutral and that there are numerous items advertised on city buses that some people oppose to, but the bus company never removed these ads.

The Advocate found that the city bus company in fact instructed the marketing agency to remove the ads, hence the form of discrimination that was found in terms of the city bus company was "instructions to discriminate" in line with Article 9 of PADA. The procedure against the marketing agency was terminated as the latter reached a settlement with the complainant, which consequently removed the complaint against the agency. The Advocate also explained that legal persons such as associations are also protected against discrimination based on personal grounds held by their members or founders.

**Key points of analysis:** The case concerns a dilemma between the civilisational achievement of the right of a woman to choose whether she will have an abortion or not on the one hand, and freedom of religion on the other hand, which is closely connected to the prohibition of abortion. Both freedoms are enshrined in the Constitution of the Republic of Slovenia. Hence, the issue that the case tackles is the question whether the city bus company in fact protected the pro-choice paradigm enshrined in the constitution, by removing the ads of the association that does not recognise this paradigm. At the same time, the case also raises a question whether the advertisement itself, as well as the pro-life association itself, by their mere existence, violate the constitution. The answer is clearly negative, meaning that the association also holds the right to freely express its views, and, based on anti-discrimination law, also has the right to access any kind of services, including advertising/marketing services, regardless of its religious views. Denial of such services in fact denied the possibility of the association to advertise its services in a supportive, non-offensive and non-intrusive way. Should such denial of advertising services be legally acceptable, a denial of some other kind of advertising, such as the Pride Parade, should also be acceptable, which is not the case. Hence, the case is consistent with non-discrimination law.

**Internet link source:** <http://www.zagovornik.si/diskriminacija-na-podlagi-vere-ali-prepricanja-s-strani-izvajalca-javnega-prevoza/>.