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FLASH REPORT

Country:	Slovenia
Title:	Anti-COVID-19 measures' Impact on Age and Disability
Date:	11 May 2020
Expert:	Neža Kogovšek Šalamon
Context	
Issue at stake:	Among anti-COVID-19 measures, the government introduced recommended and mandatory time slots for grocery shopping for persons defined by age and disability
Grounds of discrimination:	Age, Disability, Other ground
Field of application:	Goods and services
Source:	National legislation
Applicable law:	Article 2.a, paragraph 2, of Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia

Content

Law: On 12 March 2020, based on the Communicable Diseases Act,¹ the Ministry of Health of the Republic of Slovenia officially declared epidemic due to virus SARS-CoV-2.² A number of governmental measures were adopted following the declaration of the epidemic in numerous fields, including the field of access to goods and services available to the public. To limit social contacts among people, on 15 March 2020 the Government issued an Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia.³

Since its adoption it was amended numerous times to respond to the actual situation of the spread of the infection. With the amendment of 18 March 2020, a new provision of Article 2.a was added to the ordinance. The second paragraph of Article 2.a dealing with grocery stores stated: 'Between 8 a.m. and 10 a.m. vulnerable groups (e.g. people with disabilities, retired people, pregnant women) have to have priority (e.g. in access to stores and cashiers).'⁴

On 28 March 2020 the provision of the stated ordinance was changed, as priority was replaced by exclusivity: 'Between 8 a.m. and 10 a.m. grocery shopping may be done

¹ *Zakon o nalezljivih boleznih*, Official Gazette no. 69/95, 47/04 – ZdZPZ, NPB1, 119/05, NPB2, 33/06 – UPB1, NPB3, 49/20 – ZIUZEOP in NPB4, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO433&d=49682-p=3&&tab=strokovni&scrollTop=700>.

² Decree on declaration of contagious disease SARS-CoV-2 (COVID-19) [Odredba o razglasitvi epidemije nalezljive bolezni SARS-CoV-2 (COVID-19) na območju Republike Slovenije], Official Gazette of the Republic of Slovenia, no. 19/20, available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ODRE2550>.

³ *Odlok o začasni prepovedi ponujanja in prodajanja blaga in storitev potrošnikom v Republiki Sloveniji*, Official Gazette of the Republic of Slovenia no. 25/20, 29/20, 32/20, 37/20, 42/20, 44/20, 47/20, 53/20, 58/20 and 59/20).

⁴ In Slovenian: 'Ranljivim skupinam (npr. invalidom, upokojeencem, nosečnicam) mora biti v času od 8.00 do 10.00 ure omogočena prednost pri nakupu (npr. pri vstopu v trgovino, pri blagajni).'

exclusively by vulnerable groups (e.g. people with disabilities, retired people, pregnant women). Retired people may shop only in this time slot.⁵

Due to criticism that the allocated time slot of two hours is too short,⁶ on 3 April 2020 the provision of the stated ordinance was changed again to add one additional hour to the time slot, as follows: 'Between 8 a.m. and 10 a.m. grocery shopping may be done exclusively by vulnerable groups (e.g. people with disabilities, retired people, pregnant women). Retired people may shop only in this time slot and during the last hour of opening times of the store.'⁷

Due to criticism of the Information Commissioner that it is difficult to determine who belongs to vulnerable groups and who is a retired person,⁸ on 9 April 2020 the provision was changed again: 'Between 8 a.m. and 10 a.m. and during the last hour of opening times of the store grocery shopping may be done exclusively by vulnerable groups (e.g. people with disabilities, people above the age of 65, pregnant women). A consumer above the age of 65 has to show a public document used to prove one's identity.'⁹ The provision continued to be criticised by the Information Commissioner stating that identity card may prove one's age but not other vulnerabilities.¹⁰

Due to favourable epidemic situation, on 28 April 2020 the prohibition of shopping for people above the age of 65 was removed and the provision again read: 'In [grocery stores, hardware stores and other stores in the size below 400 m²] the purchase may be done exclusively by vulnerable groups (e.g. people with disabilities, people above the age of 65, pregnant women).'¹¹ As the provision shows, only exclusivity was maintained, while the prohibition of shopping in certain times and the duty to produce an identity document were removed.

During the validity of the provision the media reported about the numerous accounts of persons who encountered problems or harassment while shopping. For instance, persons who looked like they were retired, but were not, were not allowed in the store after 10 a.m.,¹² or persons were harassed due to their perceived age when trying to enter the stores.¹³

Key points of analysis: Article 2.a, paragraph 2, of the Ordinance raised several issues. The first question was how to identify persons who belong to 'vulnerable groups' in order to establish who has priority in grocery shopping, for whom exclusive shopping times are

⁵ In Slovenian: 'Nakup v času od 8.00 do 10.00 ure lahko opravijo izključno ranljive skupine (npr. invalidi, upokojeanci, nosečnice). Upokojeanci lahko opravijo nakup samo v tem času.'

⁶ See, e.g., a Recommendation of the Advocate of the Principle of Equality of 2. 4. 2020, available at: http://www.zagovornik.si/wp-content/uploads/2020/04/02042020_Priporocilo_predlog-za-podajl%C5%A1anje-%C4%8Dasa-ko-lahko-nakupujejo-upokojeanci-invalidi-in-nose%C4%8Dnice.pdf.

⁷ In Slovenian: 'V prodajalnah z živili lahko nakup v času od 8.00 do 10.00 ure opravijo izključno ranljive skupine (npr. invalidi, upokojeanci, nosečnice). Upokojeanci lahko opravijo nakup samo v tem času ter zadnjo uro delovnega časa prodajalne z živili.'

⁸ See, e.g., a letter of the Information Commissioner to the Government of the Republic of Slovenia, available at: https://www.ip-rs.si/fileadmin/user_upload/Pdf/Dopisi/Dopis_Vlada_izvajanje_odloka_glede_nakupovanja_starejsih_in_ranjivih_skupin_02042020.pdf.

⁹ In Slovenian: 'V prodajalnah z živili lahko nakup v času od 8.00 do 10.00 ure ter zadnjo uro obratovalnega časa opravijo izključno ranljive skupine (na primer invalidi, starejši od 65 let, nosečnice). Starejši od 65 let lahko opravijo nakup samo v tem času. Potrošnik, starejši od 65 let, izkazuje svojo starost z javno listino, s katero se dokazuje istovetnost oseb.'

¹⁰ Statement of the Information Commissioner of 10 April 2020, available at: <https://www.ip-rs.si/novice/informacijski-pooblastenec-poziva-k-spostljivemu-odnosu-do-vseh-pri-preverjanju-pogojev-za-1182/>.

¹¹ In Slovenian: 'V prodajalnah iz 1., 15. in 16. točke prvega odstavka prejšnjega člena lahko nakup v času od 8.00 do 10.00 ure opravijo izključno ranljive skupine (na primer invalidi, starejši od 65 let, nosečnice).'

¹² Media report, <https://www.slovenskenovice.si/novice/slovenija/clanek/incident-pred-trgovino-ma-je-se-vsi-po-spisku-296484>.

¹³ Media report, <https://www.slovenskenovice.si/novice/slovenija/clanek/varnostnik-zasliseval-sivolase-kupce-298416>.

allocated, and later, whose entry into the grocery stores was prohibited outside the allocated time slots. Namely, there was no definition of 'vulnerable groups' in the provision and its meaning could only be assumed from examples in the provisions.

Further, the examples in the provision also included 'persons with disabilities', however, not all persons with disabilities are vulnerable with regard to virus SARS-CoV-2. This raised an issue why all persons with disabilities would be allowed to shop in the times reserved for persons with disabilities if they are not vulnerable with regard to the virus. On the other hand, it was unclear how to ensure that persons who are truly vulnerable, for instance persons with prior lung conditions, could shop safely.

The main issue however was raised with regard to age, as between 28 March and 28 April first 'retired people' and then 'people above the age of 65' were allowed to grocery shop only in limited time slots allocated to vulnerable groups. Before 28 March when the measure was formulated as exclusive times reserved for these groups it could have been considered as a positive measure. At the time the measure received a positive feedback and was understood as a strong recommendation meant to avoid mixing the active and retired populations in order to reduce the possibility of spreading the virus among the elderly. When it became mandatory for persons above a certain age to shop only in certain times, combined with the duty to produce an identity document, it became questionable whether such measure was proportionate and if it did not constitute direct discrimination on the grounds of age. Such measure did not seem to be substantiated by the public health situation in Slovenia. In addition, Slovenia was one of the few countries that actually decided to prohibit grocery shopping outside certain hours for the elderly.

Internet link source:

- http://www.zagovornik.si/wp-content/uploads/2020/04/02042020_Priporocilo_predlog-za-podaj%C5%A1anje-%C4%8Dasa-ko-lahko-nakupujejo-upokojenci-invalidi-in-nose%C4%8Dnice.pdf.
- https://www.ip-rs.si/fileadmin/user_upload/Pdf/Dopisi/Dopis_Vlada_izvajanje_odloka_glede_nakupovanja_starejsih_in_ranljivih_skupin_02042020.pdf.
- <https://www.ip-rs.si/novice/informacijski-pooblastenec-poziva-k-spostljivemu-odnosu-do-vseh-pri-preverjanju-pogojev-za-1182/>.
- <https://www.slovenskenovice.si/novice/slovenija/clanek/incident-pred-trgovino-ma-je-se-vsi-po-spisku-296484>.
- <https://www.slovenskenovice.si/novice/slovenija/clanek/varnostnik-zasliseval-sivolase-kupce-298416>.