REPORT ON MEASURES TO COMBAT DISCRIMINATION
Directives 2000/43/EC and 2000/78/EC

COUNTRY REPORT
Slovenia
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INTRODUCTION

0.1 The national legal system

*Explain briefly the key aspects of the national legal system that are essential to understanding the legal framework on discrimination. For example, in federal systems, it would be necessary to outline how legal competence for anti-discrimination law is distributed between different levels of government.*

Slovenia is a democratic republic, governed by the rule of law. Laws, regulations and other general legal acts must be in conformity with the Constitution. Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal acts must also be in conformity with other ratified treaties. Regulations and other general legal acts must be in conformity with the Constitution and laws. Individual acts and actions of state authorities, local community authorities and bearers of public authority must be based on a law or regulation adopted pursuant to law. All legislation in Slovenia may be subjected to revision of the Constitutional Court, which after establishing any non-conformity with the Constitution, can abrogate an unconstitutional law as a whole or in part, and annul or abrogate other regulations or general acts that are unconstitutional or contrary to law.

Under the Constitution itself, everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance (Article 14). In April 2004 the National Assembly, which is the legislative body, adopted the Implementation of the Principle of Equal Treatment Act (IPETA). Besides that, only The Employment Relationship Act (ERA) includes comprehensive anti-discrimination provisions, whereas other statutes mentioned in the present report include provisions relating to anti-discrimination that are not as exhaustive as these two Acts.

0.2 State of implementation

*List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.*

*Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?*

The legislation in force, especially since the adoption of IPETA, generally complies with the Directives protecting against discrimination (including housing which is covered by ‘access to goods and services’). However, persons are not informed enough about their rights and the possibilities they have in case of discrimination, which may be one of the reasons, why the right of equal treatment is not enforced as widely as it could be. According to information provided by the Labour Inspectorate, 4 cases of discrimination in accordance with ERA at the workplace have occurred from January to November 2004, and the Inspectorate filed cases in the court for minor offences. No reports relating to IPETA have been filed in the same period. There is practically no relevant case-law where discrimination would be found to have occurred since the adoption of

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1 which were ratified by the Government
IPETA (there were two cases of alleged discrimination under Article 6 ERA, but the court found no breach of relevant legislation.)

0.3 Case-law

Provide a list of any important case-law within the national legal system relating to the application and interpretation of the Directives. This should take the following format:

a. Name of the court
b. Date of decision and reference number (or place where the case is reported). If the decision is available electronically, provide the address of the webpage.
c. Name of the parties
d. Brief summary of the key points of law (no more than several sentences)

The Implementation Of The Equal Treatment Act and The Employment Relationship Act are relatively new Acts which is why there is no relevant or important case law yet within the national legal system. There have been two cases dealing with the Constitutional right to equality however they are not relevant or important for the application and interpretation of the Directives.

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?
b) Are constitutional anti-discrimination provisions directly applicable?
c) In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?

The Constitution of the Republic of Slovenia contains a general anti-discriminative clause in Article 14 (Chapter Human rights and freedoms). Article 14 states that, in Slovenia, each individual shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status, disability or whatever other personal circumstance. All persons shall be equal before the law. Equality in the Constitution accordingly contains two different categories: equality in the law and equality before the law. This constitutional provision binds state bodies while enacting other legal provisions and it substantially refers to the judicial and administrative branch of power when making decisions.

Under Article 15, human rights and fundamental freedoms shall be guaranteed judicial protection and the right to obtain redress for the abuse of such rights and freedoms. Everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on his rights.

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4 Information gathered on www.ius-info.si
6 This rule must be respected even in cases of the temporary suspension and limitation of human rights in case of war or emergency, Article 16 of the Constitution.
duties or legal interests\(^7\). Article 63 stipulates that all incitement to ethnic, racial, religious or other discrimination, as well as the inflaming of ethnic, racial, religious or other hatred or intolerance shall be unconstitutional. The Constitution guarantees everyone the right to freely express affiliation with his nation or national community, to foster and give expression to his culture and to use his language and script. It therefore protects minority rights as well as individual rights.

Article 49 of the Constitution grants everyone access to any position of employment under the equal conditions. This provision ensures that everyone will be guaranteed equal opportunities in the process of employment and equal access to fulfilment of the conditions that enable such equality. However the term equal conditions is not regarded as prohibiting age limits.

Article 52, Paragraph 1 provides for the protection and employment training to all disabled persons. Articles 46 and 123 guarantee citizens the possibility of conscientious objection for religious, philosophical or humanitarian beliefs. Article 41 ensures, that religious and other beliefs may be freely professed in private and public life. Religious communities shall enjoy equal rights and they shall pursue their activities freely\(^8\).

Everyone has the right to health care under conditions provided by law (Article 51). Freedom of education is guaranteed by Article 57. According to this Article the state shall create the opportunities for citizens to obtain a proper education. Citizens have the right to social security including pension, under conditions provided by law\(^9\). Article 74 ensures free economic initiative. Article 76 defines, that establishing, operating and joining trade unions shall be free. The Constitution also contains a very general provision, that the state shall create opportunities for citizens to obtain proper housing\(^10\).

Prohibition against harassment derives from the Constitution of the Republic of Slovenia. Article 34 stipulates the right to personal dignity and safety and Article 35 stipulates the protection of the right to privacy and personality rights.

Article 14 enumerates by example different grounds of discrimination (also those not covered by Directives: political or other beliefs, financial status, birth, education, social status). Although sexual orientation or age is not stated among various grounds on which the discrimination is prohibited, this can be derived from “any other circumstances”. Also ethnic origin is not explicit mentioned, but according to definition in IPETA ethnic origin is comprised with race.

Constitutional provisions apply to all areas, covered by the Directives. Constitutional provisions also grant absolute equality in other areas, such as criminal offence, right to vote, the freedom of scientific and artistic endeavour.

Are constitutional anti-discrimination provisions directly applicable?

Constitutional anti-discrimination provisions are directly applicable as derives from Article 15 of Constitution which defines, that human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution. Judicial protection of human rights and fundamental freedoms, and the right to obtain redress for the violation of such rights and freedoms, shall be guaranteed. If no other procedure provides for the legal protection of constitutional rights of the individual, the Constitutional court having jurisdiction to review administrative acts, also decides on the legality of individual actions and acts that intrude upon the constitutional rights of the individual. The Constitutional provision defines, that anyone who demonstrates legal interest may

\(^{7}\) Article 22 of The Constitution of the Republic of Slovenia
\(^{8}\) Article 7 of The Constitution of Republic of Slovenia
\(^{9}\) Article 50 of The Constitution of Republic of Slovenia
\(^{10}\) Article 78 of The Constitution of Republic of Slovenia
request the initiation of proceedings before the Constitutional Court. Unless otherwise provided by law, the constitutional Court decides on a constitutional complaint only if legal remedies have been exhausted.

*In particular, where a constitutional equality clause exists, can it (also) be enforced against private actors (as opposed to the State)?*

In our opinion this constitutional equality clause could be invoked against private actors (for example against employer). The constitutional equality clause is a general principle of law. Similar and equal relationships shall be treated in the same way. Consequently, such a relationship that substantially differs from another shall be interpreted and dealt with differently.\(^{11}\)

### 2. THE DEFINITION OF DISCRIMINATION

#### 2.1 Grounds of unlawful discrimination

*Which grounds of discrimination are explicitly prohibited in national law? All grounds covered by national law should be listed, including those not covered by the Directives.*

In April 2004 the Government of Republic of Slovenia adopted Implementation of the Principle of Equal Treatment Act (IPETA), which came into force on the 07th May 2004, and it is in conformity with both Directives. According to this Act, equal treatment on areas listed below, is required irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances. An action considered discrimination shall be prohibited in every field of social life and especially in the fields of employment, labour relations, participation in trade unions and interest associations, education, social security, access to and supply of goods and services.

The Act also enumerates grounds of discrimination, not covered by both Directives. Those are sex, language, financial state, education and social status. These personal circumstances are enumerated only comparatively, so implicitly there could also be other, not listed personal circumstances, that would be prohibited.

The Employment Relationship Act (ERA) regulates employment relationships and is lex specialis in relation to the Implementation of the Principle of Equal Treatment Act (IPETA). However an individual, who was discriminated in this field (in the field of employment) can rely on IPETA, if it is more favourable or exact in his case. ERA, adopted in 2002, in accordance with the Directives explicitly prohibits discrimination. Regarding Article 6, Paragraph 1 ERA, when recruiting, in the course of employment and upon termination of a contract of employment, an employer may not put a prospective employee or an employee, in an unequal position on the basis of sex, race, age, health condition or disability, religious, political and other convictions, sexual orientation, or ethnic origin. The Vocational Rehabilitation and Employment of Disabled Persons Act\(^{12}\) in Article 5 explicitly prohibits direct and indirect discrimination by the employing of disabled persons, during employment and in connection with the termination of employment and also in the procedures as defined by this law. These procedures are the procedure in which the status of a disabled person is obtained and the procedure for the acquisition of the right to vocational rehabilitation.

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\(^{11}\) The equality clause is nuanced enough to allow different situations to be treated differently

In accordance with the provisions of Article 141, Paragraph 1 of The Penal Code whoever deprives or restrains another person of any human right or fundamental freedom recognised by the international community or laid down by the Constitution or the Statute, or grants another person a special privilege or advantage on the grounds of nationality, race, colour, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, social status, birth, education, social position or any other circumstance, shall be punished by a fine or sentenced to imprisonment for a maximum of one year.

Slovenian legislation regulates the status of autochthon minorities. Historical or autochthon minorities in Slovenia, which include Hungarian and Italian, are legally protected in a relatively integrative way - the protection extends over some constitutional provisions and about 80 acts of law and regulations which deal with various aspects of the life of minorities.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

a) How does national law on discrimination define the following terms: racial or ethnic origin, religion or belief, disability, age, sexual orientation?

b) Where national law on discrimination does not define these grounds, how far have equivalent terms been used and interpreted elsewhere in national law? e.g. the interpretation of what is a ‘religion’.

c) Are there any restrictions related to the scope of ‘age’ as a protected ground? (e.g. a minimum age below which the anti-discrimination law does not apply.)

The term disability is defined in The Pension and Disability Insurance Act\textsuperscript{13} in Article 60, but it is used by reference in the equality legislation. However the definition issue did not arise in the courts so far. Definitions of the other grounds listed in the two directives do not exist in the legislation or in case law.

The disability status is granted if the impairment in the insured individual’s medical status cannot be reversed by medical treatment or medical rehabilitation and those impairments have been determined according to The Pension and Disability Act, and because of those impairments his abilities to get or to retain a job or be promoted are decreased. According to the Vocational Rehabilitation and Employment of Disabled Persons Act the term disabled applies to a person, who obtains the status of a disabled person according to the afore mentioned Act or according to other regulation, and to a person for whom consequences of a permanent physical or mental malfunction or disease have been ascertained by an administrative decision, and has therefore essentially diminished possibilities to get an employment, or keep his workplace or get a promotion. The person for whom such an administrative decision has been made can be granted the status of a disabled according to the Pension and Disability Insurance Act or according to the Vocational Rehabilitation and Employment of Disabled Persons Act.

Concerning sexual orientation, a draft of a law on the same-sex partnership union, which regulates registration of same-sex partners, has been in legislative procedure since April 2004, but it also does not include a definition of sexual orientation.

There is no data that equivalent terms have been used and interpreted in national law.

Acts that ensure equal treatment on the ground of age (especially IPETA, which prohibits discrimination most thoroughly) do not contain any restrictions related to this ground. There is no case law yet, relating to IPETA.

2.1.2 Assumed and associated discrimination

a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.
b) Does national law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?

National law does not explicitly define, that discrimination, based on assumed characteristics or association with persons with particular characteristics shall be prohibited. A judge could in our opinion interpret the provision of the IPETA, which states “equal treatment shall be available, irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances”, using the argument a maiori ad minus. (explanation: the definition, which includes more, also covers less).

2.2 Direct discrimination (Article 2(2)(a))

a) How is direct discrimination defined in national law?
b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below)
c) In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?

a) Paragraph 2 of Article 4 of IPETA states that “Direct discrimination on grounds of personal circumstance occurs when a person has been, is or could be treated less favourably than another person in an equal or comparable situation on grounds of such a personal circumstance. Paragraph 1 of Article 1 of IPETA lists grounds of discrimination, which include nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances.”

The third paragraph of Article 6 ERA states that the discrimination referred to in Paragraph 1 of Article 6 shall be prohibited in both direct and indirect forms

Direct discrimination could be extracted from the formulation in Article 6, Paragraph 1 stipulating that an employee shall not put a person in an unequal position in respect of gender, race, colour of skin…in employment, during the period of employment relationship and after the termination of the employment contract. Provisions of the ERA are not complete; they do not contain the definition of direct discrimination, harassment, nor guidelines on discrimination. However these provisions are contained in the IPETA (Para. 2 of Article 4 – direct discrimination, Para. 4 of Article 4 – instructions to discriminate and Art. 5 – harassment), which is the general anti-discrimination piece of legislation and thus covers also labour law as lex generalis.

b) The law does not permit direct discrimination.
c) There is no specification how a comparison is to be made. Relevant case-law would clarify the situation in this regard.

2.3 Indirect discrimination (Article 2(2)(b))

a) How is indirect discrimination defined in national law?
b) What test must be satisfied to justify indirect discrimination?
c) Is this compatible with the Directives?
d) In relation to age discrimination, does the law specify how a comparison is to be made?
a) Paragraph 3 of Article 4 of IPETA states that indirect discrimination on grounds of personal circumstance occurs when an apparently neutral provision, criterion or practice in equal or comparable situations and under alike conditions, put a person with a certain personal circumstance in a less favourable position compared with other persons, unless that provision, criterion or practice is objectively justified, by a legitimate aim and the means of achieving that aim are appropriate and necessary.

Indirect discrimination is defined also in ERA, which states that indirect discrimination shall be deemed to have occurred if seemingly neutral provisions, criteria and practices result in putting members of one sex, race, age, health condition or disability, religious, political and other convictions, sexual orientation, or ethnic origin in a less favourable position, unless these provisions, criteria and practices are founded on objective facts. ERA contains an explicit definition of indirect discrimination in Article 6, whilst it also prohibits direct discrimination.

b) According to the definition of indirect discrimination there must be an objective justification by a legitimate aim and the means of achieving that aim are appropriate and necessary.

c) The relevant legal provision is practically identical to the one contained in the relevant EU directives.

d) The law does not specify how a comparison is to be made.

2.4 Harassment (Article 2(3))

a) How is harassment defined in national law? Include reference to criminal offences of harassment insofar as these could be used to tackle discrimination falling within the scope of the Directives.

b) Is harassment prohibited as a form of discrimination?

c) Are there any additional sources on the concept of harassment (e.g. an official Code of Practice)?

a) The prohibition against harassment as an undesirable and negative phenomenon derives from the Constitution of the Republic of Slovenia. Article 34 stipulates the right to personal dignity and safety and Article 35 stipulates the protection of the right to privacy and personality rights.

Paragraph 1, Article 5 of IPETA defines harassment as any unwanted conduct, based on any kind of personal circumstance, which creates an intimidating, hostile, humiliating or offensive environment for a person or offends his or her dignity.

Provisions relating to the prohibition of harassment as a form of discrimination in the Slovenian legal system exists in ERA, which points out the importance of dignity of employees in employment as one of the aims of the Act – Article 1. Furthermore, the employer is obliged to guarantee, inter alia, the personality of an employee by respecting and protecting his/her personality and privacy- Article 44. Therefore, it is an identifiable concept in national law. A more sophisticated and detailed definition is provided in Article 45 ERA: The Employer is obliged to guarantee a working environment without exposing the employee to an unwanted conduct related to gender, which includes unwanted physical, verbal or non-verbal act, or other act based on gender by the employer or co-workers, creating intimidating, hostile or degrading employment
relationships and an environment that insults the dignity of men and women.\textsuperscript{14} If the victim refuses to confer sexual or other favours this should never constitute a legitimate reason to discriminate. If the employee claims by citing facts from which it may be presumed that the employer failed to act in accordance with the first two Paragraphs, it shall be for the employer to prove that there has been no breach. ERA provides sanctions if the employer fails to comply with this obligation. The employer is punished by a fine of 1.000.000,00 SIT (4167 EUR) as a legal person or 500.000,00 SIT (2083 EUR) as a natural person.\textsuperscript{15} As a result of sexual harassment, the employee might exceptionally give notice\textsuperscript{16} after notification of the breach (notification of acts of sexual harassment) in writing to the employer and labour inspector.\textsuperscript{17}

For reference to Penal Code see answer 6.5 (Sanctions and remedies).

b) Paragraph 2 of Article 5 of IPETA states that harassment referred to in the previous paragraph shall be deemed to be discrimination under the provisions of this act.

c) The Office for Equal Opportunities of the Republic of Slovenia recommends good practice measures in the field of sexual harassment for employers. That could well be used in cases of harassment based on grounds listed in both EU directives. The recommendations include:
- declaration on policy against sexual harassment,
- informing on policy against sexual harassment,
- training,
- advice and help for employees.\textsuperscript{18}

However there are no official good practice codes.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

Paragraph 4 of Article 4 of IPETA states that instructions with similar effect to that referred to in the previous paragraphs (which define equal treatment, direct and indirect discrimination) shall also be deemed to be direct or indirect discrimination.

2.6 Reasonable accommodation duties (Article 2(2)(b)(ii) and Article 5 Directive 2000/78)

\textit{a) How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of ‘reasonable’. e.g. is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?}

\textit{b) Does failure to meet the duty count as discrimination? Is there a justification defence? How does this relate to the prohibition of direct and indirect discrimination?}

Article 49, Paragraph 3 of The Constitution of The Republic of Slovenia grants access under equal conditions to any position of employment. Article 52, Paragraph 1 of The Constitution guarantees protection and work-training to all disabled persons in accordance with the law. These activities are financed from public sources. Besides Constitutional provisions, there are provisions granting or relating to reasonable accommodation in the Vocational Rehabilitation and Employment of

\textsuperscript{14} These ERA provisions apply only to harassment based on gender.
\textsuperscript{15} Article 129 of the ERA.
\textsuperscript{16} The employee may terminate the employment contract immediately.
\textsuperscript{17} Article 112 of the ERA.
\textsuperscript{18} See http://www.uem-rs.si.
Disabled Persons Act, ERA, IPETA and in other pieces of legislation. All of these must be read together to get the whole picture of reasonable accommodation in Slovenia.

The Vocational Rehabilitation and Employment of Disabled Act has been adopted in 2004. Article 2 of the Act mentioned states that the aim of the Act is to increase the possibility of disabled being employed and to create the circumstances for their equal participation in the labour market by eliminating obstacles and creating equal opportunities. The Act among others regulates the employment of disabled (Paragraph 1 of Article 36 states that disabled people are employed in the ordinary working environment, in companies for disabled and in supporting and protecting employment. All of these relate to work, that fit their capabilities. Article 51 states that supportive services in rehabilitation and employment for the disabled, the employer or the working environment could be performed by specialists. Article 15 defines that services of employment rehabilitation include: counselling and motivating disabled to be active; preparing the opinion on the level of working abilities, knowledge, working habits and professional interests; helping accepting one’s disability and informing about possibilities of getting in training for work; helping in choosing appropriate professional goals; developing social skills; helping in searching an adequate job; analysis of a concrete working post and working environment of the disabled; producing the plan of adaptation of working post and working environment of the disabled; producing the plan of needed working equipment; training for the concrete working post or profession; expert help with training and education; following the disabled at working post after employment; evaluation of success of rehabilitation process; evaluation of reaching employment goals; and providing other employment rehabilitation services. These services are paid in the amount determined by the minister, competent for protection of the disabled. They are financed from the national budget, the Fund for promoting the employment disabled and from other sources.

There also exists a quota system of employment of disabled for all companies. Those companies that do not hire enough disabled people must pay contributions to the Fund for promoting the employment of disabled in the amount of 70% of minimum wage for each disabled that the employer must have hired according to the quota. There is a system of incentives for hiring disabled, which include:
- subsidising disabled people wages,
- paying costs of adapting working posts and working equipment to disabled,
- exempting the employer from paying pension and disability insurance for employed disabled,
- rewards for exceeding quotas,
- yearly rewards for employers for good practice in the area of employment of disabled people,
- other incentives in the area of employing disabled and keeping working posts for disabled and other development incentives.

The Act mentioned was designed in a way to balance the rights of the disabled person with the duties of the state and the employer. Article 72 states that the employer lodges the application to get the refund of costs for adapting the working post of the disabled to the Fund. The plan of adaptation and statement of intention to conclude an employment contract for indefinite time has to be attached to it. The Fund decides about refunding the costs of the adaptation of the working post, appeals are decided by the ministry in charge of protection of disabled. The costs of supporting employment are also decided in the same way. The employer has to produce an individual plan of support to the disabled and the employer and will be financed in the amount of 15 hours a month, if the disabled has no more rights to employment rehabilitation according to the present act, if he has an employment contract for indefinite time and if the disabled exceeds the quota according to the present act. However the quota system has not started yet, since the government has not adopted the regulation about the quotas (according to Article 105 this should have been done by 31th December 2004) The Ministry of labour, family and social affairs
envisages to start with quota system in June 2005. Fund has been recently established, but it has not started to work.

All other cases require that the employer pays the costs himself. As could be seen the system provides for balancing the obligations of the employers and the state, but no clear proportionality test is established. The employer has to meet certain criteria in order to get benefits from public sources. Besides that costs incurred as a result of the obligation of the employer to provide safety and health at work is paid by the employer.

The Pension and Disability Insurance Act allows that an employer terminates the employment contract to a disabled on business grounds, but this provision will not be applicable until the Government adopts the regulation, which sets the quotas for employment of disabled. The act mentioned introduces in Article 101 that an employer can terminate the employment contract on the ground of disability. In the latter case the employer has to offer the employee another employment contract (with part-time work or working at another post), which means that reasonable accommodation considerations will have to be taken in account when offering a new contract for working at another post.

The disability commission is a public body, which ascertains the level of disability, which in turn defines the amount and the variety of benefits a disabled gets.

Article 1, Paragraph 1 of IPETA lists health state and disability among other prohibited grounds of discrimination therefore making a distinction between the two. However other parts of legislation, also covering concepts relating to reasonable accommodation refer more to disability, with the exception of the Health and Safety at Work Act and ERA. Article 6 ERA enumerates disability among other grounds on which discrimination is prohibited. Article 20, Paragraph 3 ERA states that a disabled person, who is trained for a certain job, has the ability to conclude the contract for that job (factual capacity to perform the essential tasks of the job). Article 43 ERA states that the employer must secure conditions needed for security and protection of health of the employee in accordance with the provisions regulating security and health at work. Article 26, Paragraph 7 ERA states that the employer must inform the employee, prior to concluding the contract, of the work he will perform, the conditions of work and the employee’s duties and rights at that post. Article 199 ERA states that the employer protects disabled persons in relation to employment, vocational training, retraining in accordance with the provisions in the Vocational Rehabilitation and Employment of Disabled Persons Act and according to the provisions of the Pension and Disability Insurance Act. Article 200 ERA obliges the employer to guarantee the employee work at another job, that fits the employee’s conditions, part-time work, occupational rehabilitation, giving the employee cash benefits in accordance with pension and disability insurance provisions.

The employer’s duty to provide reasonable accommodation could therefore also be derived from Article 200 ERA, but only to a certain extent. The failure to provide reasonable accommodation is an infringement of ERA, the IPETA and the Vocational Rehabilitation and Employment of Disabled Persons Act. A failure to provide reasonable accommodation could result in direct or indirect discrimination as disabled employees would not be in the same position as other employees and thus a breach of Article 6 ERA and Article 4 of IPETA would occur (note that Para. 1 Article 1 lists state of health and disability as prohibited grounds of discrimination.) If an employer did not act in accordance with provisions regarding the protection of the disabled (ERA, 19 Health conditions and disability partly overlap, however health has a wider meaning; health condition includes disability; the definition of health condition does not exist neither in the legislation neither in case law; disability on the other hand is defined in the Pension and disability insurance act; 20 Article 229, Paragraph 1 of ERA states that the employer, who infringes Article 6 (anti-discrimination clause) is fined with not less than 1,000.000 SIT.
IPETA, Health and Safety at Work Act, Pension and Disability Insurance Act and the Vocational Rehabilitation and Employment of Disabled Persons Act) and as a result of that the individual would be in a worse position compared to other employees (based on anti-discrimination provisions), it would provide a solid ground to claim that discrimination (either direct or indirect depending on meeting the requirements of the definition) has occurred. Article 5 of the Vocational Rehabilitation and Employment of Disabled Persons Act explicitly prohibits direct or indirect discrimination of disabled persons in relation to their employment, the period they are employed and in relation to the end of the employment of the disabled, and also in regard to procedures in accordance with the present act. However the IPETA does not elaborate on reasonable accommodation, thus the provisions of both EU directives will be of great importance for the interpretation of employers’ and state obligations in this regard.

Employers have to adjust doors, stairways, bathrooms, washrooms, etc. that are directly used by the disabled and the workplace of disabled persons.\textsuperscript{21} Article 101 of The Pension and Disability Insurance Act regulates that the employer of a 2nd or 3rd category disabled\textsuperscript{22} employee employed in Slovenia, has to keep such an employee. Further, the employer has to reassign him to a job that suits the employee’s remaining capacity for work and his qualifications or training or he has to grant him occupational rehabilitation and part-time work, unless The Pension and Disability Act allows the employer to terminate the contract. The employer is obliged to follow the opinion of the disability commission about the employee’s remaining capacity for work as well as ERA and any Collective Agreements. When the employee thinks that the proposed job or the occupational rehabilitation do not correspond to his remaining capacity to work, the disability commission gives an opinion on that on the demand either of the employee or the employer. However it has to be noticed that these provisions protect only those whose disability is ascertained by medical certificate in accordance with the Pension and Disability Insurance Act.

The Ministry of Work, Family and Social Affairs is preparing an act on equal opportunities of disabled (its provisions are still being prepared), which should be adopted in the first half of 2006, according to the plan.

b) IPETA is \textit{lex generalis} in anti-discrimination matters, which means that the Act on professional rehabilitation and employment of disabled is the \textit{lex specialis}. If and employer breaches the provisions of the latter, he is responsible for that act and financial sanctions are prescribed in Articles 92 – 95. If those do not satisfy provisions of IPETA, the victim is entitled to compensation according to that Act or the ERA.

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)

\textit{Are there residence or citizenship/nationality requirements for protection under the relevant national laws transposing the Directives?}

\footnotesize{\textsuperscript{21} See Article 92 of The Rules on requirements for ensuring safety and health of workers at workplaces, Official Gazette of the Republic of Slovenia no. 89/1999. Pravilnik za zagotavljanje varnosti in zdravja delavcev na delovnih mestih, Uradni list Republike Slovenije številka 89/1999.}

\footnotesize{\textsuperscript{22} Disabled employees are categorised in three categories according to their remaining capability to work. 1\textsuperscript{st} category are not capable to work, 2\textsuperscript{nd} and 3\textsuperscript{rd} category are able to work but under certain limitations or after rehabilitation. See The Pension and Disability Insurance Act, Article 60.}
The Constitution of the Republic of Slovenia guarantees human rights and freedoms to everyone. Slovenian citizenship should not be required for protection of these rights. IPETA ensures equal treatment to all persons, irrespective of personal circumstances. Nationality is therefore not a requirement for protection under the afore mentioned law.

3.1.2 Natural persons and legal persons (Recital 16 Directive 2000/43)

*Does national law distinguish between natural persons and legal persons, either for purposes of protection against discrimination or liability for discrimination?*

IPETA does not distinguish between natural persons and legal persons for ensuring the equal treatment. In first paragraph it is written, that this act determines common basis and premises for ensuring the equal treatment for everyone. That could also be understood as protection for legal persons. The Act further defines, that equal treatment shall be available, irrespective of personal circumstances, which in our opinion could also cover a legal person. Constitutional provisions, especially the Chapter on Human rights and freedoms, which includes general anti-discrimination provision, are to be guaranteed to everyone, including legal persons, which can be holders of rights and duties, with exception of those that are explicitly connected with human biologic or sociologic nature. According to the practice of The Slovenian Constitutional Court, a legal person is entitled to enjoy the fundamental rights and freedoms; in case they are by their nature obtainable by a legal person (e.g. property rights, the freedom of entrepreneurship, equality, etc.).

Legal theorists are of the opinion that legal capacity of legal persons is getting closer to capacity of natural persons. Also legal person can be holder of rights and duties, with exception of those that are explicitly connected with human biologic or sociologic nature. The Law differs in respect of liability of natural person and the one of legal person for harm caused by the acts of discrimination. A significant difference is in the amount of compensation prescribed by the Law that the party in breach of anti-discrimination provisions has to pay. Arising from the provisions of IPETA an act or omission, committed by the implementation of laws and other regulations, collective agreements and general documents, which has all the indications of discrimination, shall be a misdemeanour for which the offender shall be fined: (1) if an individual offender from (natural person): 200 to 1,250 EUR; (2) if a corporate body or an individual entrepreneur from 2,000 to 41,500 EUR; (3) if a responsible person of a state body or of a self-governing local community: from 200 to 2,000 EUR. Fines are payable to the State, but victims can always request damages in the civil court.

When the act of discrimination amounts to a criminal offence, Criminal Liability of Legal Entities Act\(^\text{23}\) in Article 4 defines: “For a criminal offence, which the actor committed in the name, on the account of or for the benefit of a legal person, the legal person is also liable”. For a criminal offence according to Article 141 with a fine raging from 2,000,00 EUR to 312,500 EUR, or up to the value of the damage caused or pecuniary advantage obtained, multiplied by hundred. Instead of paying a fine, the measure for punishing a legal person is also the termination of the legal person, which can be taken if the activity of the legal person was in the whole or in predominant extent abused for the purpose of execution of the criminal offence. The same measure is prescribed for criminal offences against the employment relationship and social security (Articles 205, 206, 209). While natural person, as defined in Penal Code, shall be sanctioned with fine or imprisonment (see answer 6.5 Sanctions and remedies), sanctions for legal person for the same criminal offence are fine or the termination of the legal person. According to the provision of Article 2 of the Criminal

Liability of Legal Entities Act, the Republic of Slovenia and the local self-governing communities as legal persons are not liable for criminal offences.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?

IPETA very generally defines scopes of liability (in which offender is liable for discriminatory treatment); every field of social life, and especially fields of employment, labour relations, participation in trade unions and interest associations, education, social security, access to and supply of goods and services.

According to the general principles of law of damages, a person who caused the damage has to compensate for it, unless he proves, that it occurred without his fault (liability for damages). The Code of Obligations also regulates the liability for others. An employer is according, to Article 147 of the Code of Obligations, liable for the damage that the employee caused on work or in connection with work to a third person, unless he proves that the employee acted properly. A legal person is liable for the damage caused to a third person while performing its function. A school is liable for the damage, that a minor, who was under the supervision of the school, caused to a third person, unless the school proves, that the supervision was carried out according to due diligence or that the damage would occur even with due diligence. Slovenian legislation has no specific provisions on liability for other people in the field of discrimination. Emphasis should also be put to the fact that all the general provisions of the Code of obligations mentioned above, have not been used in discrimination cases yet. Therefore the question remains open, on how these provisions would be interpreted by courts, in cases where damages arose due to unlawful discrimination.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

Does national legislation apply to all sectors of public and private employment and occupation, including contract work, self-employment, military service, holding statutory office?

Employment contracts and the obligations and responsibilities of the respective parties arising from employment (including payment and supplements) education of employees, protection of specific categories of workers and the role of trade unions, are fields, that are regulated by ERA. General provisions on the employment of persons by state bodies, local communities, institutions, other organisations and private individuals performing public services are also governed by ERA, with the exception of some special provisions, which are in The Public Servants Act. The Employment And Insurance Against Unemployment Act regulates the mediation of employment.


and of work, which is exercised by the Republic Bureau for Employment, active employment policies, insurance in case of unemployment and scholarships. The activities are performed as public services.

The Contract for work or Contract for services is defined in Article 619 of the Code of Obligations. According to the provisions of the mentioned Article 619, Contract for work is a contract, with which one party binds herself to perform a certain task (such as to produce or repair a certain object or to perform a physical or intellectual work etc.), while the person placing the order (the other party) binds herself to pay for the performed task.

The provisions of the aforementioned Act, which define the Contract for work, are very general and optional, meaning that in practice, the persons who want to work on the basis of the Contract for work, will mainly define their mutual rights and obligations with the sole contract. The Government is generally not in favour of Contracts for work, which is why, it tried to lower the extent of these contracts, as much as possible in the ERA. The scope of limiting the Contracts for work can clearly be deduced from Article 11 ERA, which states that cases, in which elements of employment relationship are found, cannot be regarded as contracts for work.

Self-employed persons are individual private entrepreneurs, own-account workers performing their activity as the only or principal occupation (e.g. independent researchers) and farmers. They have the same position as an employer, which is why the provisions of ERA are not applicable to them. The Companies Act regulates the status of the individual private entrepreneur, while provisions concerning the position of farmers and own-account workers are included in the departmental legislation. None of these Acts prohibit discrimination.

The ERA, which contains anti-discrimination provisions, does not apply to persons who work on the basis of contract work or to self-employed persons. The IPETA guarantees equal treatment in the fields of employment and labour relations only generally and has no specific provisions for contract work and self-employment.

For employee in military service is in use The Public Servants Act, if Defence Act does not contain specific provisions.

*In paragraphs 3.2.2 - 3.2.5, you should specify if each of the following areas is fully and expressly covered by national law for each of the grounds covered by the Directives.*

**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))**

Article 6 of ERA defines that an employer when recruiting may not put a prospective or an actual employee in an unequal position on the basis of race, skin colour, sex, age, health condition or disability (The difference between these two categories is that disability is defined by The Employment and Disability Insurance Act, where the decisive criterion is the person’s ability to work, whereas a health condition is a personal circumstance of a person, regardless of its working ability, which can be temporary and may even not have any consequences to a person’s working ability. The EAR most probably included health condition in this Article because person with such condition are in some instances discriminated; e.g. persons infected with HIV, hepatitis, etc. Equal provision relating to health condition is embodied in Article 1 of IPETA.), religious, political and other convictions, trade union membership, ethnic or social origin, family status, material conditions, sexual orientation, or any other personal circumstances. An employer may not advertise a vacancy exclusively for men or exclusively for women, unless a specific sex is a requisite condition for the performance of work. In addition, the advertising of a vacancy may not imply that the employer favours a specific sex for the post, except when a specific sex is a requisite
condition for the performance of work. Although these prohibitions apply to all the aforementioned grounds, the discrimination on the ground of sex is emphasised since it was probably more intense in the period before adoption of the new ERA. Prohibition of harassment as a form of discrimination exists in ERA, which points out the importance of dignity of employees in employment as one of the aims of the Act. Furthermore, the employer is obliged to guarantee, *inter alia*, the personality of an employee by respecting and protecting his/her personality and privacy.

An explicit prohibition against discrimination with respect to self employment is not provided for in the laws governing it, namely The Companies Act. However, as mentioned before, the provisions on discrimination in the field of employment, contained in ERA apply to all employment relations, unless another Act imposes different provisions. There are no such provisions in any Act with respect to self employment.

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

*Note that this can include contractual conditions of employment as well as the conditions in which work is, or is expected to be, carried out.*

IPETA prohibits each of the grounds of discrimination covered by the Directives, *inter alia* in field of employment. Employment and working conditions are regulated by ERA. Anti-discrimination clause in Article 6 (see answer 3.2.2.) refers explicitly also to the course of employment and upon termination of a contract of employment. Arising from the provisions of Article 89 of EAR, race, skin colour, sex, age, disability, marital status, family obligations, pregnancy, religious and political conviction, ethnic and social origin cannot be admitted as reasonable grounds for termination of employment contract. Article 133 ensures the equality of payment to men and women. The employer shall guarantee equal remuneration for men and women workers for work of equal value. Although ERA does not include any special provisions regarding equal pay for other grounds, such request is included in the provisions of Article 6. Again, the ground of sex discrimination is emphasised most probably because of the special interest the legislator had on equality of men and women, since in the past this type of discrimination was prevalent. The Act also defines, that provisions embodied in individual and collective agreements or employers’ rules relating to professional activity that are contrary to the principle of equal payment are null and void. Article 200 of ERA obliges the employer to guarantee the disabled employee work at another job that fits the employee’s conditions. According to Article 116 of ERA the employer cannot terminate the contract of a disabled employee of the 2nd or 3rd category for business. Such action is possible only if the employer, according to the provisions on the pension and disability insurance, cannot find another working position for the disabled employee or to have him working part-time. The reasonable accommodation standard has to be used when the disabled worker is in the protective or supportive employment.

### 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))

*Note that there is an overlap between ‘vocational training’ and ‘education’. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category.*

This area is not expressly covered by special anti-discrimination provisions, rather the general anti-discrimination provision in Article 6 ERA could relate to it. ERA briefly regulates vocational training, presumed that is detail regulated by collective agreements or individual agreements. Article 199 ERA states that the employer protects disabled persons in relation to employment, vocational training and retraining in accordance with provisions on training and employment of
disabled persons and provisions on pension and disability insurance. Article 199 ERA protects the
disabled people by explicitly instructing the employer to follow the directions of both The Act on
professional rehabilitation and employment of disabled Act and The Pension and Disability
Insurance Act. The aim of this provision is to secure disabled person’s employment by training if
needed for the position the disabled worker is able to perform. The Employment and Insurance for
the case of unemployment Act enables the unemployed person to be included in the Active
Employment Policy Programme. Priority in inclusion into the Programme is given to younger
persons and long-term unemployed persons, disabled persons, unemployed persons receiving
unemployment allowance or social assistance and persons in need of training to be employed at
jobs available on the market.

This area is not expressly covered by anti-discrimination provision, but general anti-discrimination
 provision in Article 6 ERA could also relate to it. ERA regulates vocational training only briefly,
presuming that it is regulated in more details by collective agreements or individual agreements.

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))
The discrimination in the field of participation in trade unions and interest associations is
prohibited by Article 1 of IPETA. Membership of trade unions is voluntary and is regulated by the
statutes of a particular trade union. The ERA deals with the competence and activities of trade
unions and their relationship with employers. Article 6 states, that an employer may not put an
employee in an unequal position on the basis of trade union membership when recruiting, in the
course of employment and upon termination of a contract of employment. The Act also contains
provisions on the competence and protection of trade union organisers.

Employers and other professional bodies associate in a variety of bodies. The Chamber of
Commerce and Industry of Slovenia is an independent, non-profit organisation, with compulsory
membership for all enterprises that perform business activities and are registered in Slovenia. Its
activities are regulated by The Chamber of Commerce Act. Equally is the membership in The
Agricultural Chamber compulsory for all farmers. Under the Attorneys Act, all attorneys-at-law
in Slovenia must be incorporated in chamber.

Specific provisions about membership of and benefits provided by associations of workers,
employers and other professional bodies are regulated in the particular Statutes of these
associations and not in general, by statute.

Since The Collective Agreements Act is still in the legislative procedure (for more than 10 years)
and that the legislation governing collective bargaining and collective agreements is very old and
was written for another kind of economic system, there is no evidence of discrimination by trade
unions or employer’s association. According to the Representativnes of Workers Unions Act and
established practice of collective bargaining in Slovenia, the collective agreements are bargained
for and signed by the representative of trade unions and employers’ associations, after which the right and obligations contained in such agreements are obligatory for all the employees and employers in the activity the agreement is

28 Representativnes of Workers Unions Act, Official Gazette of the Republic of Slovenia, no. 13/1993, Zakon o reprezentativnosti
sindikatov.
intended for. Usually the Government cooperates in the collective bargaining with the social partners.

*In relation to paragraphs 3.2.6 – 3.2.10 you should focus on how discrimination based on racial or ethnic origin is covered by national law, but you should also mention if the law extends to other grounds.*

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

*In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?*

IPETA ensures the equal treatment of all persons, irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances in performing their duties and exercising their basic freedoms in every field of social life, inter alia in the fields of social security. Social security activity, which embraces preventing and solving social situation problems of individuals, families and groups, is regulated through the Social Security Act. Article 4 states the principle of equal access to social security services and financial social aid 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. The Parental Protection and Family Benefit Act regulates insurance for parental protection and the rights arising thereof, family benefits, conditions and the procedure for exercising individual rights. Pension And Invalidity Insurance Act regulates the compulsory pension and disability insurance system on the basis of intergenerational solidarity. The criteria for determining the rightful claimants for family incomes 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 underage or have a status of student (and be younger than 26 years), the question whether he is eligible to receive some form of financial assistance is determined by looking into the social situation of person with duty to provide for such seekers (which are mostly his parents). There are no other age limitations.

*Health Care.*

Health care is not specifically covered by IPETA. However, Article 1 includes “access to and supply of goods and services”, which includes access to health care. The right of any person to health care under conditions set by law is one of the constitutionally guaranteed rights. The Health Care and Health Insurance Act does not contain an explicit provision on indiscriminate access to health care. It only neutrally defines groups of insurance with certain rights resulting from this insurance. Article 2 introduces a broad provision that everyone has a right to health care and a duty to contribute to it according to person’s possibilities. The Health Services Act handles the content and attendance of health activities, which can be performed as public or private health service. When attending to their duties, health workers are

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obliged to treat all persons in the same circumstances equally and to respect their constitutional and lawful rights. The only priority allowed is when special circumstances of the health condition of a person call for an intervention which requires priority.

3.2.7 Social advantages (Article 3(1)(f) Directive 2000/43)

This covers a broad category of benefits that may be provided by either public or private actors, for example, discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of ‘social advantages’ or if discrimination in this area is likely to be unlawful.

IPETA ensures equal treatment in any area of social life and thus persons are protected against discrimination. See also answer 3.2.9 and 3.2.10.

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

This covers all aspects of education, including all types of schools.

Prohibition of discrimination in the field of education is expressly regulated in the IPETA for all grounds that are mentioned in both Directives. Other Acts, listed below do not contain a specific binding anti-discrimination provision (they all define discrimination in the field of education only indirectly).

The main legal source in the field of education is the Organisation and Financing of Education Act, which guarantees the optimum development to individuals regardless of their sex, social and cultural background, religion, national origin and physical and mental handicaps and sets this standard as one of the upbringing and educational goals in Slovenia. However, the educational goals are not legally binding and do not assure any safeguard against unequal treatment.

The Act mentioned contains provisions on public as well as private schools, for which it states: private schools carrying out state-approved education programs and private pre-school institutions carrying out programs for pre-school children shall meet the same requirements concerning the staff, premises and equipment as public pre-school institutions and schools, respectively. Education programs of private schools shall become state-approved when the council of experts in charge state that the schools meet the required educational standard. Hence, the law does prohibit discrimination between public and private schools.

Access to professional and occupational education as well as access to high school and higher education is the same for all Slovenian citizens, for Slovenians without citizenship and for foreigners under the condition of reciprocity or else under the condition of bearing the costs.

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

The Act and other regulations set out the pre-school upbringing and primary school education of

Romany children. In kindergartens they can be placed together with other children in interrelated departments or in special departments (only possible in the regions with high Romany population), depending on the decision of the kindergarten with the Municipality and the Centre for Social Work. In case the special department for Romany children is formed, The Direction on Standards and Employment Criteria in Pre-School Education ³⁸ allows for these departments to entail a smaller number of children as other departments, as well as fewer children per one employed pedagogue. The surplus of expenses that arise due to these special provisions regarding Romany children is covered by the State budget.

The Elementary School Act introduces goals for primary school education, which include: upbringing for mutual tolerance, respect for difference and co-operation with others, respect for human rights and fundamental freedoms and thus development of the ability for a life in a democratic society.³⁹

Special provisions govern cases of children of Slovenian citizens who reside in Slovenia but whose mother tongue is other than Slovenian. In accordance with international contracts special lessons of their mother tongue and culture are organised with possible Slovenian lessons to be organised additionally. The children who are of foreign citizenship or do not have citizenship and reside in Slovenia have the right to obligatory primary school education under the same conditions as Slovenian citizens. For them, lessons of their mother tongue and culture are organised through international agreements.

The pre-school, primary school, as well as primary and secondary vocational education, secondary technical education, professional education and secondary general education of the Italian and Hungarian national communities are regulated in The Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act.⁴⁰

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

Does the law distinguish between goods and services available to the public (e.g. in shops, restaurants, banks) and those only available privately (e.g. limited to members of a private association)? If so, explain the content of this distinction.

According to IPETA the access to and supply of goods and services shall be available, irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances. IPETA so does not distinguish between goods and services available to the public and those only available privately.

³⁷ Kindergarten Act, Article, Official Gazette no. 113/2003, official consolidating text. Zakon o vrtcih, Uradni list Republike Slovenije št. 113/2003, uradno prečiščeno besedilo.
3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

To which aspects of housing does the law apply? Are there any exceptions?

To which aspects of housing does the law apply? Are there any exceptions?
The Housing Act\textsuperscript{41} regulates types of residential buildings, conditions for maintaining and planning them, building and selling new apartments, task and competence of the Government and Municipalities on housing area and also ownership and leasing affairs.

In lease affairs beneficiaries of social rental flats have to fulfill general conditions, such as citizenship, permanent residence in the area, where the apartment is located, confirmation of income and the income of their family members. For other case of lease landlords may add even more conditions that have to be satisfied for the lease of a particular apartment. Such conditions could lead to discrimination on the basis of some personal circumstances, e.g. Romany people, since The Housing Act does not entail an anti-discrimination clause.

The Housing Fund of the Republic of Slovenia, which has been established firstly for the purpose of privatizing the formerly “publicly-owned” apartments, has after the fulfilment of that aim primarily concerned with solving the issues regarding housing. It is worth mentioning that Slovenia has one of the largest percentages of apartments owned by their residents (more than 80\%). When selling new apartments, owned by the Fund, app. 20\% under the marker price, in the course of positive action some categories of buyers are given preferences: (1) buyers who were saving in the National Housing Scheme, (2) young families (parents not older then 30 or 35), (3) younger people (not older then 30 or 35) and (4) families with more children. None of these criteria, except the first one, could impact adversely to Romany people, since it is in accordance with their way of life to have more children, and at younger age.

However, the Act does not contain any specific provisions on prohibition of racial or ethnic discrimination; neither does the IPETA explicitly refer to the field of housing, but rather generally to “every field of social life”, and especially to “access to and supply of goods and services”, where housing can be included under any of those two categories.

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

Does national law provide an exception for genuine and determining occupational requirements? If so, does this comply with Article 4 of Directive 2000/43 and Article 4(1) of Directive 2000/78?

An employee who concludes an employment contract must fulfil the conditions for the performance of work determined by law and collective agreements and demanded by the employer. An employer shall be obliged to issue a general code laying down the conditions for the performance of work for individual jobs. A collective agreement or an employer's general code sets special terms for attending to one's duties in a particular post in accordance with the legal provisions. There is a lawful restraint that testing the applicant's knowledge and abilities or health capacity assessment is not to be relied upon in circumstances which are not in direct connection to the work at the level applied for. An employer may only request that a candidate submit evidence of the fulfilment of conditions for the performance of work. There are some occupational

requirements already determined by acts of law listed below. The Judicial Service Act\textsuperscript{42} sets the lowest age for candidates, who are able to run for judicial posts in Article 8. According to ERA advertising a vacancy exclusively for men or exclusively for women is permitted only in cases, when a specific sex is a requisite condition for the performance of the job. In addition, the advertising of a vacancy may not imply that the employer favours a specific sex for the post, except in the cases when a specific sex is a requisite condition for the performance of the job. The legislation does not regulate what kind of posts could be advertised as exclusively based on sex criteria. The Public Servants Act\textsuperscript{43}, which governs the status of servants in state organs and local communities administration organs, introduces a special condition in Article 79. For work posts in bodies which under the law are obliged to use as an official language the language of self-governing national communities, knowledge of that language shall also be stipulated as a condition. An employer shall determine special health requirements which workers must fulfil for working at a working post (for all working posts), in a working process or for the use of individual means for work (the requirements to work in a specific working process and the requirements to use certain means of work, e.g. certain tools, equipment, etc.), on the basis of a professional assessment of an authorised physician according to The Safety and Health at Work Act. Each individual has to pass an individual health test prior to concluding an employment contract by which his capacity to work at a certain working post, to work in a working process and to use certain working equipment is ascertained according to requirement set earlier.

The legislation defines by way of exception occupational activities in which a distinction on the grounds of their character or circumstances, on the grounds of religion, sex, age and disability is permitted, e.g. members of the army, members of the police, judges, etc. However it is not permitted to discriminate on grounds one’s sexual orientation. The IPETA contains a general test of justification and/or proportionality in relation to possible occupational exceptions. Paragraph 1 of Article 2 of IPETA states that the provisions of that act do not exclude objectively and reasonably justified differentiated treatment or restrictions on the grounds of a specific personal circumstance, determined by special laws aimed to achieve a legitimate purpose.

4.2 Employers with an ethos based on religion or belief

\textit{a) Does national law provide an exception for employers with an ethos based on religion or belief? If so, does this comply with Article 4(2) of Directive 2000/78?}

\textit{b) Are there any specific provisions or case-law in this area relating to conflicts between the rights of organisations with an ethos based on religion or belief and other rights to non-discrimination?}

\textit{a) The Law on the Legal Status of Religious Communities includes a provision in Article 10, which allows the establishment of religious schools by religious communities for training priests. Religious communities manage those schools autonomously, determine their curricula and select the teachers. The Religious Communities Act, which will replace the existing law, is still in the process of being adopted (second reading), no longer contains this provision.}

\textit{b) There is no relevant case-law in this regard.}


\textsuperscript{43} The present Act was adopted on June 11\textsuperscript{th} 2002, entered into force on July 13\textsuperscript{th} 2002, it will be used since June 28\textsuperscript{th} 2003.
4.3 Armed forces and other specific occupations

a) Does national law provide for an exception for the armed forces in relation to age or disability discrimination (Article 3(4), Directive 2000/78)?

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?

a) The Defence Act\textsuperscript{44} sets out that candidates wishing to perform military service professionally should, among others, in principle, not be older than 25 years or 30 years for officers.\textsuperscript{45} Paragraph 3 of Article 88 states that whoever wants to professionally engage in military service has to fulfil specific requirements, among others that he is physically and mentally capable of professionally performing military service.

b) For performing working tasks in the police, a candidate is to fulfil additional conditions besides those set by regulations on employment in state agencies. One of the supplementary conditions is the age of the applicant not exceeding 30 years.\textsuperscript{46} The Police Act determines furthermore that an unsuccessful applicant does not have the right to be notified of the reasons leading to the decision. This provision enables arbitrary and discriminatory decisions on employing without any chance of reviewing the employer's decision.

Point 1 of paragraph 1 of Article 1 of the Police Act requires a policeman has adequate mental and physical capabilities. Besides that Article 71 states that a policemen has to pass a test of these capabilities every three years in front of a commission appointed by the general director of the police. The policeman can repeat the test a total of two times in a row. If he fails the first time, he has to repeat it in three months time, if he fails the second test, he has the right to a third one in another three months time. The contents and criteria to determine the capabilities and the contents and the procedure of the test is determined by the minister of the interior.

In both cases (police and armed forces) the age requirement is absolute and does not depend on the ability of the individual to perform required tasks. It still has to be seen whether these exceptions in the legislation are in accordance with the two Directives.

4.4 Nationality discrimination

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).

a) How does national law treat nationality discrimination?

Nationality discrimination is not prohibited in national law. The Constitution, IPETA and ERA do not list nationality (note the difference from ethnic origin) as one of the explicitly enumerated grounds of prohibited discrimination (however it could fall under the scope of IPETA, as the law covers also ‘or any other personal circumstance’). Even though social benefits are given to both nationals and non-nationals having permanent residence. Paragraph 2 of Article 88 for instance states that who wants to perform professionally in the armed forces has to be citizen of Slovenia. People with dual citizenship are not allowed to professionally engage in defence activities.


\textsuperscript{45} Ministry of Defence lists in advertisement as a condition for professional soldiers that one has to be maximum 25 years old and the contract will be ended when the individual is 45 years old.

- Constitutional Court: Discrimination against Non-Slovenian citizens of the Republic of Slovenia:

In its ruling of September 23 1998 concerning a procedure initiated by V.K. of Koper, the Constitutional Court of the Republic of Slovenia ruled that the words »Slovenian nationality« must be removed from the third paragraph of Article 2 of The Redress of Injustices Act. The case was initiated by a citizen of the Republic of Slovenia of Serbian ancestry, according to whom the third paragraph of Article 2 of the Redress of Injustices Act gives certain citizens rights which are denied to the non-Slovenian citizens of the Republic of Slovenia. According to point 10 of the grounds for the Constitutional Court’s ruling, the Republic of Slovenia belongs to all its citizens (Article 3 of the Constitution). Therefore, in the granting of this right, the Act should not discriminate between individuals with different personal background (the first paragraph of Article 14 of the Constitution of the Republic of Slovenia). As a result, the part of the provision of the third paragraph of Article 2 of the Redress of Injustices Act, which grants certain rights only to the individuals of »Slovenian nationality« thereby excluding other possible beneficiaries, does not conform to the Constitution (point 12 of the grounds of the ruling).

b) Are there exceptions in anti-discrimination law that seek to rely on Art 3(2)?

There are different conditions for foreign nationals to enter Slovenia and reside there, depending on their nationality. Such matters are governed by national and EU aliens legislation.

4.5 Family benefits

Work-related benefits include, for example, survivor's pension entitlements, free or discounted travel for certain family members, free or discounted health insurance, parenting leave to care for the child of a partner, etc.

a) How does the law treat work-related family benefits that are restricted to opposite-sex couples (whether married or unmarried)?

b) Is there an exception in the national law, particularly in relation to sexual orientation discrimination, for national laws on marital status and work-related benefits dependent thereon (Recital 22, Directive 2000/78)?

c) In states where other forms of legally-recognised partnership exist (e.g. registered partnership), does the law permit restrictions on work-related family benefits that exclude such couples?

Slovenian legislation does not recognise same-sex partnerships and as a result of that same-sex couples do not benefit from work-related benefits. The Act on registration of same-sex partnerships was in procedure for adoption during the last legislative period (2000-2004). The new government is preparing a new act for adoption in the parliament, while the new opposition has lodged their proposal to regulate same sex partnerships. The Government’s proposal, prepared by the Ministry of work, family and social affairs has just recently been sent to NGO’s for their revue and proposals. The NGO’s strenuously object to the proposal in its present form. The NGO’s stress that the proposal does not address the issues of inheritance, social insurance, pension and disability insurance, or health insurance between the partners. They question the purpose of such proposed act, for it appears is if it does not substantially regulate the relationship at all, except for registration of the same sex partnership by the official authorities.

Since same-sex partnerships are not recognized in Slovenia yet. An employer could grant benefits to same-sex partners of his employees by his own will. This would not be based in legislation in

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force, nor would represent discrimination as other employees would still get benefits related to their marriage or partnerships. Even though employers in the public sector could not grant any benefits except of those that are based in the actual legislation in force. However, there is no exception in Slovenia’s legislation permitting discrimination based on sexual orientation.

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?

Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?

In the wider sense, the provisions of the Act on professional rehabilitation and employment of disabled represent positive action, aimed to enhance disabled people possibilities in the labour market. Article 20, Paragraph 3 of ERA states that a disabled person, who is trained for a certain job, has the ability to conclude the contract for that job. A disabled person qualified to perform specific types of work shall have the health capacity to conclude a contract of employment for that type of work. (For more details see answer 2.6. Reasonable accommodation.)

When concluding an employment agreement the employee has to fulfil medical requirements for that specific working post, which is determined by medical examination and medical certificate. If the employee is medically capable for a certain post, then the employer cannot say, employing him would jeopardise other employees or customers. An individual is also excluded from deciding by himself to accept a health and safety risk regardless of medical certificate in relation to a specific post (and medical requirements to work there). Article 20 of the Health and Safety at Work Act states that an authorised doctor performs inter alia such tasks as determining causes of disability as a consequence of work and proposes how to cope with them and prevent them, he is involved in professional rehabilitation process and gives advice regarding other suitable work; he proposes to the employer the adoption of measures aiming at strengthening the health of employees, who are exposed to greater risks for injuries and damages of health when they are working.

Health and Safety at Work legislation sets general and strict rules, which have to be followed by both employers and employees. Providing health and safety at work is an employer’s obligation. In the act in force there is no exception regarding the possibility of posing a threat to health and safety based on ethnic origin or religion, thus turbans, hair, beards, jewellery, etc. are not permitted if runs counter to health and safety rules.

4.7 Exceptions related to discrimination on the ground of age

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78?

b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?

Article 25 of the Employment and Insurance for the Case of Unemployment Act entails provisions, which provide direct discrimination on the ground of age that is objectively and reasonably justified by a legitimate aim. It provides unemployed workers older than 50 years with a right to receive monetary compensation for unemployment for 18 months instead of just 12 like other
workers in the same situation (that is with insurance of 25 years or more), and the unemployed workers older than 55 years with a right to receive compensation for 24 months.

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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.

Several provisions of The Employment Relationship Act are intended for the protection of younger and older workers with regard to the working conditions and working environment. In particular, the Law provides for the special protection of older workers, that is for workers older than 55 years, with regard to the length of working hours, stating that an older worker may conclude an employment contract for shorter working hours if he partially retires. Additionally the Act imposes limitations of overtime and night work, which prohibit the employer to order an older worker to work overtime or night hours. Several provisions of the Act are intended for special protection for workers which have not yet reached 18 years of age. These workers may not be exposed to certain kind of working conditions, such as working under the earth surface or under water, being exposed to greater risks for health due to exceptional cold, heat, noise or vibrations, and conditions which present greater risk of working accidents. A worker, younger than 18 may not work for more than 40 hours per week, or during the night between 22.00 and 06.00 the next day, and has the right to 7 extra days of paid holiday.

Regarding the persons with caring responsibilities, The Employment Relations Act states that temporary absence of a worker from work for reasons of caring for a family member or a disabled person cannot be a criterion for determining redundant workers. On the other hand, the fact that a worker is a sole provider for a family with underage children has to be considered as a significant factor when determining criterion for redundant workers, as well as the fact that a worker is a parent of 3 or more children. Family status of a worker is also considered in the Act’s provisions regarding the use of workers annual holidays and in the obligation the Act imposes upon the employer to enable the worker to adjust his or her working and family obligations.

4.7.3 Minimum and maximum age requirements

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment and training?

The law sets the minimum age for entering into an employment contract at 15 years as a general rule, and for working on a ship at 16 years. In addition, for certain professions, such as judges, the minimum age requirement is set at 30 years of age. (Judicial Service Act) 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 after a worker reaches certain age limit. These exceptions apply for employees in the police and armed forces (see chapter 4.3) and for judges. Under the Judicial Service Act the minimum age requirement for a person to apply for judicial mandate is 30 years. Given the nature of judicial work and its serious responsibilities, it may be considered that this exception is objectively justified.

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There is no obvious evidence of age discrimination in the field of training opportunities. However, The Act Supplementing and Amending the Employment and Insurance for the Case of Unemployment Act has imposed *inter alia* a rule, by which age is one of criteria considered when including unemployed person in an *Active employment policy programme*. Article 49 of The Employment and Insurance for the Case of Unemployment Act states, that when deciding who to include in an active employment programme, the following criteria shall be considered: the situation in the labour market in a particular region or job sector, the costs of inclusion in the programme, personal, occupational, working and other faculties of unemployed individual and *their age*, probability of successful completion of programme, unemployed person’s wishes concerning the type of programme which that person wishes to join.

Priority in inclusion into active employment programme is given to younger and long-term unemployed persons, disabled persons, unemployed persons receiving unemployment allowance or social assistance and persons in need of training to employ themselves at jobs available.

### 4.7.4 Retirement

*a) What is the retirement age? Have there been recent changes in this respect or are any planned in the near future?*

*b) Does national law require workers to retire at a certain age?*

*c) Does national law permit employers to require workers to retire because they have reached a particular age? In this respect, does the law on protection against dismissal apply to all workers irrespective of age?*

*For both of the above questions, please indicate whether the ages different for women and men.*

For entitlement to a full old-age pension (dependant only on years at work), men have to be at least 63 (full age) years old and have 40 years of a pension insurance while women have to be 61 (full age) years old and have 38 years of pension insurance.\(^{50}\) This differentiation is based on different social status men and women have had in the past three decades. Although women were employed working in full time jobs just like men, they had to take care of children and the household after coming home from work. Due to this additional burden women had to carry, members of Parliament thought it would be fair to determine lower age for women to be granted retirement.

There have been no changes regarding the retirement age since the amending act of The Pension and Disability Insurance Act in 1999. This Act was a part of a large reform of the pension system in Slovenia. It raised the age limit for entitlement to a full pension, but also provided for a transitional period. Since then there have been no changes in this area.

The Pension and Disability Insurance Act states that with a minimum insurance period of 15 years, the pension is determined as 35% of assessment basis\(^{51}\) for men and 38% of assessment basis for women, and for each next year of insurance period, 1.5% of assessment basis is added (see Article 50 Pension and Insurance Disability Act). This is supposedly justified since at the insurance period of 40 years for men and 38 years for women, assessment percentage should be equal – 72.5% of the assessment basis.

There is only one situation in which compulsory retirement is permitted, that is in case if full disability is ascertained. In this case, the employment relation ceases when the decision asserting full disability is handed to the employee (see Article 119 ERA). This, however, does not constitute age discrimination, since this rule applies to all employees equally. Except in this case, there is no basis for compulsory retirement.

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\(^{50}\) See Article 36 Pension and Disability Insurance Act with regard to Article 52 of the same Act.

\(^{51}\) The amount of pension for a man who is 63 years-old and has 40 years of insurance age is assessed in following manner: the assessment basis is determined as the average remuneration the employee has received in successive 18 years of employment which were most favourable for the employee. Pension is assessed at 72.5% of the assessment basis.
Since pension and disability retirement is fully governed by the Pension and Disability Insurance Act, determining retirement ages in collective agreements would be contrary to the objectives of the Pension and Disability Insurance Act. In theory, the state should be arranging and taking care of the whole system of pension and disability insurance, although implementation of Pension and Disability Insurance Act is entrusted to a relatively independent legal entity: Pension and Disability Insurance Institution.

There is no practice of determining retirement ages in collective agreements or in individual contracts.

There are no provisions in the legal order of the Republic of Slovenia which would fix mandatory retirement ages. The Pension and Disability Insurance Act fixes minimum age and minimum working years for the entitlement to a pension. The system stimulates later retirement; one who continues to work after completion of 40 years of work for men or 38 years of work for women, is awarded with higher assessment percentage. The assessment percentage rises normally 1.5% for each year of work (for 39/37 years of work assessment percentage is 71%, for 40/38 years is 72.5%, for 41/39 years of work the assessment percentage is 75.5%)\(^52\).

Employers in Slovenia do not impose age thresholds for mandatory retirement. On the contrary, the Pension and Disability Insurance Act encourages people to continue working after they have completed the requirements for retirement (see Article 51 and 53, Pension and Disability Insurance Act). The reason for this kind of stimulation is the fact that the legislator is trying to lower the cost of the pension and disability insurance system. The legislator’s intention was to stimulate people to continue working, because as long as they work they contribute to the system, while on the other hand they receive their pension for a shorter period of time.

### 4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?
b) If national law provides compensation for redundancy, is this affected by the age of the worker?

Article 100 of ERA sets the criteria for determining redundant workers. The first criterion to be taken into consideration is the professional education of the employee and his work qualifications, as well as the required additional knowledge and aptitudes. This is followed by the criteria of his work experience, his performance at work, his years of active employment, his health condition, and his social circumstances. The criteria of work experience and years at work obviously discriminate on ground of age. Usually one with longer years at work and with more work experience keeps their job that is, of course, one who is older. It is an example of positive discrimination since older workers are less likely to get a new job. Employers usually try to retire elder employees by “buying them insurance period, which could be regarded as constructive dismissal”, that is the payment of the rest of contributions for pension and disability insurance (in which case employee is not entitled to a redundancy payment). Age is not exactly the most important criteria when deciding redundancy, but it is present in Slovenian legal order and is being taken into consideration when deciding upon a redundancy. Furthermore it has to be taken into consideration that the elder employees enjoy special protection. Employees, who are more than 55 years old (51 if employee is a woman; see Article 236 ERA), can not be dismissed without their consent. However, this provision, which was incorporated in ERA with the clear intention of providing certain categories of employees a special protection, has

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\(^52\) see Article 50 and Article 51 Pension and Disability Insurance Act
just the opposite effect – some employers are being rude to employees they are trying to get rid of, which can in extreme cases amount to harassment on the basis of age. Rudeness can reach such a level that those employees are forced into submitting a note of resignation, which furthermore results in their losing a right to indemnity for unemployment since resignation is taken as a termination of the employment with the consent of the employee.

Compensation for redundancy, in cases provided by law, is not affected by the age of the worker, except in cases already discussed above (see chapter 4.7.1)

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)

Does national law include any exceptions that seek to rely on Article 2(5) of the Framework Employment Directive?

The Defence Act\textsuperscript{53} prohibits the strike of military personnel during military duty. Workers performing administrative and expert matters have to assure during the strike undisturbed performance of military and other tasks and duties, in connection with carrying out fundamental duties of the citizens, private businesses, institutions and other organizations on the field of national defence as well as undisturbed performance of the civil defence tasks.

The Police Act\textsuperscript{54} requires police persons to perform during the strike, among others, the following tasks: safeguarding of life, personal safety of people and property; prevention, detection and investigation of criminal acts; insuring public safety and securing national border and performing border control. According to the Law the Government also has to asses these restrictions on the right to strike and compensate for them in the form of increased salary.

There are no other relevant exceptions.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.

An exception worth mentioning is the positive discrimination of Italian and Hungarian ethnic minorities in the Constitution of the Republic of Slovenia (see chapter 5). There are no other exceptions to the prohibition of discrimination incorporated in Slovenian legal system.


What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation?

Do measures of positive action exist in your country? Which are the most important? Refer, in particular, to the measures related to disability and any quotas for access of disabled persons to the labour market.

Measures for promoting full equality or to compensate disadvantages of Roma people\textsuperscript{55}

\textsuperscript{53} Defence Act, Official Gazette of the Republic of Slovenia No. 103/2004. Zakon o obrambi (Zobr-UPB1), Uradni list Republike Slovenije št. 103/2004


\textsuperscript{55} Roma community is specific ethnic community.
The Constitution of the Republic of Slovenia in its Article 65 stipulates: »The Status and special rights of Roma people living in Slovenia, are regulated by law.« The measures for achieving the effective equality of the Roma people are provided for in social government programmes, one of the most important and still current is the Government programme for assisting Roma people from 1995, and by provisions in different departmental laws. However a special bill for the protection of the position and rights of the Roma people has not been adopted yet.

Laws adapted enable to Roma people political participation in public and private affairs and offer a legal basis for solving problems in their social exclusion (bad living conditions, a high rate of unemployment and education). The Local self-government Act stipulates that Roma people, who are autochthonly (indigenous), to a particular area are to have at least one representative in the municipal council. The term autochthonous refers to the inhabitants of Slovenia, who have lived here for long centuries, on a territory on which this people do not consider themselves to be foreigners or immigrants. In fact they justifiably feel as primary, native inhabitants of this territory. The Local self-government Act lists 20 municipalities which were obliged to ensure the right of the Rom community to have a representative in the local council until the regular local elections in 2002. Only 14 municipalities complied with their obligation by the set time. At present, all municipalities, except one (Grosuplje) have a Rom representative in the local council.

The Local Self-government Act also provides for establishing (although not obligatory) committees for Rom-related questions as working bodies of the local councils. Such a committee should discuss, recommend and propose on issues related with the Rom community. Furthermore, these committees would significantly contribute to loosening the tensions between the Rom community and the majority population if they were established in most of the municipalities. This is, however, not the case. The suggested amendment of the Local Self-government Act, currently in the legislative procedure, entails an obligatory establishment of committees dealing with questions related to the Rom people at the local councils.

The organisation and Financing of Education Act in Article 25 sets out the competence of the Council of Experts of the Republic of Slovenia for General Education in adopting supplementary (additional) programmes for the education of Roma children. Article 81, Paragraph 7 provides resources for various activities and projects which are necessary to perform educational activities from the National Budget of the Republic of Slovenia (resources for preparing and financing schoolbooks, resources for education members of Roma people and to secure partly resources for education in primary schools).

The constitutional authorisation from Article 65 allows the legislator to grant special (additional) protection to the Roma people and its members, which in the theory of law is known as a positive discrimination or positive protection.

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56 E.g. Governmental Employment Programme for Roma “Equal opportunities” was prepared by Ministry of Labour of the Republic of Slovenia in May 2000 and is intended to regulate integration into society and to increase employment.
57 This programme primarily encompasses the attempts to regulate their living conditions, their integration into society at large, to provide opportunities for education, employment, preventive health protection, and for the development of culture, services providing information and preservation of their identity and tradition.
58 So far by nine different laws according to remark of the Government of the Republic of Slovenia.
Country Report Slovenia on measures to combat discrimination

**Special measures for national minorities**

The position of national minorities is regulated by the Constitution, ratified international documents, legislation and statutes of the municipalities in the Slovenian legal system. Italian and Hungarian national minorities enjoy some special rights beside all human rights and fundamental freedoms. Special rights of Italian and Hungarian national minorities are provided as a collective (they belong to entire community) or individual rights to members of national minority. The Constitution of the Republic of Slovenia guarantees autochthonous Italian and Hungarian minorities the following special rights:

- the right to freely use their national symbols,
- the right to establish organisations, to foster economic, cultural, scientific and research activities, as well as activities associated with the mass media and publishing.

In accordance with the Constitution and The Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act\(^{60}\) members of national minorities have the right to an education in the minority language and the right to adopt and to promote education. This act determines geographic areas, where bilingual schooling is compulsory. The same Act stipulates that the members of the Italian or Hungarian national minorities must be among the teachers who perform consultancy and supervisory work in educational organisations (Article 28). The Constitution guarantees the right to foster contacts with the wider Italian and Hungarian communities living outside Slovenia, and with Italy and Hungary respectively. The state shall give financial support and encouragement to the implementation of these rights (Article 64). The Italian and Hungarian ethnic communities shall be directly represented at the local level and shall also be represented in the National Assembly (Article 64, paragraph 3). Self-governing communities established by The Self-governing Ethnic Communities Act\(^{61}\) is important for development of culture, language and schooling and implementation of special rights of national minorities.

**Special measures in labour and social security legislation**

ERA imposes special protection of some categories of employees.

1. **juveniles:** prohibition on night work and certain types of work (Article 197 and Article 195), more days of leave of absence, weekly rests, breaks during working hours (article 196 and 198), prohibition on hard work (Article 195)

2. **old-age employees (more than 55 year-old employees):** possibility of partial retirement and part-time work(Article 202), over-time and night work can not be undertaken without the consent of the employee (Article 203), employment relation can not be terminated without the consent of the employee, up until the employee fulfils the conditions for entitlement to old-age pension (Article 114). The only exception is if he is guaranteed the right to a compensation out of the unemployment insurance untill he fulfils the minimum conditions for the old-age pension. This protection does not apply in the case of the termination of the existence of the employer.

3. **disabled persons:** under the provision of Article 199 ERA, disabled persons enjoy special rights according to regulations concerning training and employing disabled persons (Vocational Rehabilitation and Employment of Disabled Persons Act) and Pension and Disability Insurance Act. Those who are still able to perform some kind of work shall be granted other appropriate job, ( in accordance with Article 200 of ERA the employer must assure the employee the performance of another job appropriate for his remaining work capability. ) part-time job, vocational

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rehabilitation, salary (loss) compensation (Article 200), protection from redundancy, unless there is no other appropriate job or part-time job (Article 116).

The Employment and Insurance in the case of unemployment Act deals with the protection of old-age employees and the long-term unemployed. (Article 48a). The Act stipulates a possibility of reimbursement of half of the costs of the contributions of gross wages for pension and disability insurance, for cases of sickness or injuries outside work, for injuries during work or in the course of employment, for a period of up to two years, to the organisation or employer, if the organisation or employer employs certain categories of employees (unemployed person who has been registered at the Bureau for more than 12 months without interruption, an unemployed person who is more than 50 years-old and receives unemployment allowance or social assistance, a first-time job seeker who has been registered at the Bureau for at least six months, a job seeker who is receiving unemployment allowance or social assistance) for various period of time. If an organisation or employer who has more than 50 employed person employs a job seeker or employee whose work has become permanently dispensable as well as if the job seeker employs themselves, the Bureau may reimburse the costs from paragraph one of the present article for up to three years as follows: 100% for the first year, 50% for the second year and 25% for the third year (Article 48a Employment and Insurance Against Unemployment Act).

Special measures related to disability and any quotas for access of disabled persons to the labour market.

Vocational Rehabilitation and Employment of Disabled persons Act, which was adopted recently provides different forms, measures and stipulations for employment of disability people.

Disabled worker can assert vocational rehabilitation, including services, which are executed as a public service with an aim to qualify disabled worker for suitable work, to employ disabled worker, to retain employment and to be promoted or to alter their professional career, under conditions determined by law. Vocational rehabilitation contains (particularly of:

- counselling, motivating disabled workers to an active role and assistance at accepting their (own) disability.
- preparing opinion about the level of ability for work, knowledge, working habits and professional interests
- assistance at selecting suitable professional objectives and search of suitable work or employment
- developing social skills and expertness
- analysis of an individual place of employment and working environment of disabled worker and elaboration of scheme of adjusting it
- qualifying for a specific place of employment or at a selected vocation

After the vocational rehabilitation program finishes, and based on the evaluation of disabled persons chances for employment, the Employment service of Slovenia assures assistance at seeking employment at suitable places of work, in companies employing disabled people, supportive or protective employment or incorporating them in active employment policy programmes.

Protective employment denotes an employment of disabled person in a place of employment and working environment, adjusted to the abilities and requirements of the disabled worker, who does not meet the requirements for an ordinary employment position.

Supportive employment denotes an employment of disabled worker at the place of employment in regular working environment including expert and technical support to the disabled, the employer and working environment.
The Act introduces a quota system regarding employment of disabled workers. Employers, employing at least 20 people are obliged to employ 2 – 6 % disabled persons, out of the whole number of employees. The quota, which differs according to the main activity of the employer, is defined by The Government of the Republic of Slovenia upon the proposition of the Economic Social Council with a regulation, that has not been adopted yet. Employer, who does not fulfil the quota, is bound to monthly make an account and pay to the Fund for promoting the employment of disabled, a contribution for enhancing employment of disabled persons in the amount of 70% of minimal wage, for each invalid person that he should have employed, in order to fulfil the prescribed quota. (about publicly funded subsidies see answer 2.6.a)

Article 6 IPETA defines, that positive action are temporary measures, determined by law, designed for the prevention of a less favourable position of persons with a particular personal circumstance or for the compensation for a less favourable position. After the date that IPETA came in force, there has been no authorization granted for positive action.

6. REMEDIES AND ENFORCEMENT

6.1 Judicial and/or administrative procedures (Article 7 Directive 2000/43, Article 9 Directive 2000/78)

What procedures exist for enforcing the principle of equal treatment (judicial/administrative/alternative dispute resolution such as mediation)? Are these binding or non-binding?

Please note whether there are different procedures for employment in the private and public sectors.

In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

With the enforcement of the IPETA, an advocate of the principle of equality should have started working within the Office for equal opportunities (see answer 7). The procedure lead by the advocate is informal and free of charge. After the advocate ends the treat of the individual case he gives an opinion and if necessary, he can pass it on to the suitable Inspectorate.

Administrative procedure

The administrative procedure is used if a person was discriminated by a decision or by other actions of an administrative body.

The administrative procedure is regulated by The General Administrative Procedure Act. Administrative organs and other state bodies, local government bodies and public powers holders shall act in accordance with this Act, when applying provisions directly as they render a decision on rights, duties and legal benefits of natural person, legal person and other parties (Article 1). According to Article 4 of The General Administrative procedure Act is mutatis mutandis applicable in other public law matters in as much as they are not regulated by special administrative procedures. A party to an administrative procedure might be every natural person or legal person of private or public law, which has to file a request to begin proceedings, or against

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whom a claim is filed. Party also might be a group of persons as much as it can be holder of rights and duties (Article 42). The parties and other participants to the proceedings, who cannot use the language of the procedure (in ethnically mixed areas, the Italian and Hungarian languages are equal to the Slovene language) because they do not understand it or due to a disability, have the right to take an interpreter. The public authorities notify the parties of their right to an interpreter. According to the Act on the Use of Slovene Sign Language 63 a deaf person has the right to take an interpreter, who has to be provided by public authorities and paid them in the sum of 30 hours pro year.

In the administrative procedure, it is not obligatory for the party to be represented by a lawyer; any physical person with business capacity can represent the involved party. Payment 64 for the applications and decisions is regulated in the Administrative Fees Act 65. The Act includes a possibility of an administrative tax exemption.

Article 137 of the Law on the Administrative procedures states that if there are two or more parties with opposite interests involved in the procedure, the public officer, who is conducting the procedure, has to strive all through the course of the proceeding for the parties to settle, either in the whole of the subject or at least on some of the disputed facts. The settlement must always be transparent and precisely defined and it must not be in violation of public interest, public morals or legal benefits of others. A settlement is equivalent to an executive decision passed in an administrative procedure.

Judicial protection and supervision of the activities of state bodies is guaranteed by Administrative litigation. A court having jurisdiction to review administrative acts decides the legality of final individual acts with which state authorities, local community authorities and bearers of public authority decide the rights or duties and legal benefits of individuals and organisations, if other legal protection is not provided by law for a particular matter. If other legal protection is not provided, the court having jurisdiction to review administrative acts also decides on the legality of individual actions and acts that intrude upon the constitutional rights of the individual. 66 In the previous case the Administrative court ascertains the illegality of act, prohibits such act, grants compensation for damage and provides adequate measures in order to abolish an interference with the constitutional rights and to restore the previous state.

**Civil and criminal procedure**

A civil procedure shall be used for claiming material and immaterial damages arising out of the violation the principle of equal treatment. However there is a possibility that the parties pursue the conciliation or mediation procedure. The Act amending and supplementing the Civil Procedure Act was adopted with a clear intention of stimulating alternative dispute procedures. Article 309 of the aforementioned Act states that if someone has an intention to bring an action, he can firstly try to reach a compromise at the local court, situated on the territory, where the opposite party has residency. The costs of such a procedure are covered by the submitter. According to article 305a of the Act on civil procedures, after the Court receives an answer to the law suit, it is obliged to fix a conciliation hearing before the trial. The parties are also allowed to reach a settlement upon the disputed subject during the civil procedure (compromise in court). A settlement can comprise of the whole claim or just a part of it and it can also include a settlement of other moot questions

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64 For example fee for application is 50 points, for appeal 200 points, for decision 200 points, for application for grant slovenian citizenship 2000 points. Present value of 1 point is 17 tolar.
among the parties. If the parties agree to an alternative dispute procedure the court can interrupt the civil procedure for maximum three months.

The Civil procedure Act67 is a procedural Act used in disputes arising out of personal or domestic relations, relations concerning property and other civil law relations in which natural or legal persons engage, with the exception of specific disputes, which fall within the jurisdiction of specialised courts or other bodies. Specialised Labour and Social Court use the Civil procedure Act, if the Labour and Social Courts Act68 does not contain a special provision.

The criminal procedure which is arranged with The Criminal procedure Act 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 of the criminal procedure itself. The victims can takeover the prosecution of certain criminal offence if the public prosecutor withdraws the charges. In such cases, the so called victim as a private prosecutor has the same procedural rights as a public prosecutor except for those to which public prosecutor is entitled as an agent of the state.

Before requesting an institution of a criminal proceeding , the state prosecutor can assign the information of a minor criminal offence to the procedure of conciliation, but he has to consider the type and nature of the offence and also the type of personality of the offender. If a compromise is reached the prosecutor will dismiss the criminal information.

According to Article 443A of the Criminal Procedure Act, the judge can interrupt the trial during the criminal procedure for maximumly 6 months, if the state prosecutor announces, he is going to assign the matter to a conciliation procedure.

In the civil procedure on the first level and in the filing of regular legal means a party can appear by itself. If he authorizes a person to represent him, he can choose anybody for representation in front of the local court (disputes in which the value of the disputed subject is in the maximum 2.000.000 tolars or 8333 EUR), while on other courts the authorized person has to be an attorney at law or a person who passed the bar examination. A special, mitigating provision is in the procedures in front of labour or social courts, where a worker can be represented by a representative of the trade union, if he has acquired the title of a graduate lawyer. In procedure in front of higher court or at the Supreme Court of Slovenia the representative of the syndicate can only appear if he has passed the bar examination.

At the filing of the action in the court a court fee has to be paid, which is determined on the basis of the Court Fees Act69 according to the value of the subject of the dispute70. In the social or labour disputes of non-property nature the amount of the fee is 250 points (4.750,00 tolars or 20 EUR). Stamp duties are not paid in the collective labour disputes and some cases of social disputes. Also a worker does not have to pay court fee for individual labour disputes about enter, existence or termination of the employment. Claims, decisions and appeals in the procedures regarding the rights of disabled persons are free of court fees according to the Vocational Rehabilitation and Employment of Disabled Persons Act.

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70 for example if the value claim of the plaintiff is in the amount of 1.000.000,00 SIT , the stamp duty for the claim would be 900 points, that is 17.100,00 tolars.
The party that does not succeed in the litigation also has to pay the opposite party other expenses of the procedure. The court can determine, that the employer has to suffer all the expenses for the taking of evidence, even if the worker did not wholly succeed with his claim in the individual labour disputes. In the disputes about the termination of the employment the employer covers the expenses of the procedure no matter the outcome of the procedure. Article 68 of the Labour and Social Courts Act,\(^{71}\) acquired on the 19. December 2003, that comes in use on the 01. January 2005 determines, that in social disputes about the right for social insurance and social securities the social insurance institution has to cover its expenses no matter the results of the action.

Since judicial procedures for human rights protection are customarily expensive, discrimination on grounds of material (social) status of a person occurred in practice. Individuals of poor financial means cannot afford the lengthy and expensive procedure. The Free legal aid Act\(^ {72}\) was adopted with intention of remedying this situation. This Act enables individuals to get an attorney at law at the expense of the State. The Judicial Tax Act (Article 13) includes a possibility of a judicial tax exemption. An individual, who proves that his survival or survival of those who he is obliged to support would be jeopardised if he pays judicial taxes, can be exempted from this payment.

There are no provisions about the courts being physically accessible to the disabled persons, nor are there any provisions relating to the necessity that decisions or information should be provided in Braille. There are also no special procedures for dealing with individuals with a learning disability.

The Human Rights Ombudsman in his Annual Report for 2003 draws attention to the lengthy of the judicial proceedings,\(^ {73}\) some procedures take 5 or more years. Despite the encouraging developments in eliminating judicial backlogs at certain courts, no satisfaction can be derived from the state of the judiciary in terms of ensuring adjudication within reasonable deadlines.

**Constitutional procedure**

Any person, who believes that his/her human rights and basic freedoms have been violated by a particular act of a state body, local community body or statutory authority may, can, under the conditions determined by the law, lodge a constitutional complaint with the Constitutional Court. Both the Constitution of the Republic of Slovenia and the Constitutional Court Act state that the Constitutional Court decides on a constitutional complaint only if other legal remedies have been exhausted.\(^ {74}\) Furthermore, the Constitutional Court decides whether to accept a constitutional complaint for adjudication on the basis of criteria and procedures provided by law. The complaint should be lodged within 60 days of the day of the act.\(^ {75}\) A senate of 3 judges decides behind closed doors whether to accept a constitutional complaint and begin proceedings. The rejection or acceptance of the complaint is decided upon unanimously by the senate. A complaint shall be sent to the body which issued the particular act and against which the constitutional complaint was lodged in order to reply. If the complaint is accepted the senate or the Constitutional Court may suspend the implementation of the particular act if its implementation would cause irreparable damage or of a certain law or other regulation on the basis of which the individual act

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\(^{74}\) The Constitutional Court may exceptionally decide on a constitutional appeal if a violation is probable and if certain irreparable consequences would occur to appellant as a result of the implementation of a particular act.

\(^{75}\) In special founded cases the Constitutional Court may exceptionally decide on the constitutional complaint, which has been lodged after the time limit. In such circumstances judges shall be aware of cases with different background and consequences that derives out from violation. Therefore time limit cannot be interpreted strictly and the judges should consider when the relationship has ended.
was adopted. The Constitutional Court shall issue a decision declaring that the appeal was unfounded or it shall accept the appeal and partly or completely abrogate or vitiate the act that was the subject of the appeal and return the matter to the competent body. If the Constitutional Court abrogates an individual act, it may also decide on a contested right or freedom if such a procedure is necessary in order to undo the consequences that have already occurred on the basis of the individual abrogated act, or if such is the nature of the constitutional right or freedom, and if a decision can be reached on the basis of information on record.\textsuperscript{76}

According to Article 22 of The Constitutional Court Act the Constitutional Court is competent for the assessment of the constitutionality and legality of regulations and general acts issued for the exercise of public authority, which shall also consist of an assessment of the conformity of laws and other regulations with ratified International treaties and the general principles of international law. In some cases, when a regulation is unconstitutional, it is also in non-conformity with the International treaties, however there is no data, that the Court would invalidate a regulation for the sole reason, that it does not conform with the International treaties.

6.2 Legal standing and associations (Article 7(2) Directive 2000/43, Article 9(2) Directive 2000/78)

What are the criteria for an association to engage in judicial or other procedures:--

a) in support of a complainant;
b) on behalf of one or more complainants?

IPETA enables the cooperation between the complainant and NGOs in the judicial and administrative proceeding, but the provision is very general. It says, in Article 23, that in accordance with the law, non-governmental organisations shall have the right to take part in judicial and administrative proceedings initiated by discriminated persons. The Civil Procedure Act, which is used for civil procedures, and when sensible also for the proceedings at the Constitutional court or at the Labour and Social Court, determines that a third party who has a legal interest (meaning a personal interest based on statute or other regulations), for one of the parties engaged in civil proceedings to succeed, can step in a dispute as intervener at any time until the end of a trial. Party can be represented on the court, exception on the local court, only by an attorney or by a law society (see answer 6.1). Article 16 of the previous, replaced Labour and Social Courts Act provides that a worker can be represented by a representative of the trade union, if he has acquired the title of a graduate lawyer. The representative of the union can only appear in the procedure in front of a higher court or at the Supreme Court of Slovenia, if he has passed the bar examination. The New Labour and Social Courts Act, which entered in force on the 1st January 2005, does not include this provision any more, however the above mentioned Article 16, is still valid, as the final provisions of the new Act state, that Article 16 of the old Labour and Social Courts Act will stay in force until 31. December 2007.

According to the practice of Constitutional Court societies and other associations do not show standing for challenging of regulations that interfere in the legal status of their members or other persons. They only have legal interest, if the challenged regulation interferes directly into their rights, legal interests or into their legal status as the legal person. The Constitutional court, exceptionally recognises these subjects legal interest for filing a petition, in the name and in the interest of its members when, the society or association has been established with the purpose for which they filed the action (for example The society of the erased persons of Slovenia\textsuperscript{77}). Helsinki Monitor Association for Human Rights Promotion cannot be authorized to represent the

\textsuperscript{77} The constitutional decision no.U-I-296/02-8 from date 20.11. 2003
petitioners. Pursuant to Article 86 of the Civil Procedure Act, which concerning representation is applied mutatis mutandis in proceedings before the Constitutional Court, only a natural person can be authorized to represent a party. A legal entity can represent a party if it is a law firm.  

**Administrative procedure**

According to The General Administrative procedure Act whoever has a legal interest is entitled to participate in administrative proceedings (a participant). The individual must allege protection of rights and legal benefits in order to show standing. The legal interest is a personal interest based on statute or other regulations. Such a person has equal rights and duties as a party to proceedings unless another statute provides differently (Article 43). State bodies shall provide for the participation of all persons whose rights and duties might be affected by a decision during the proceedings (Article 44). The professional organisation which is recognised in certain activities directly connected with the relevant rights and duties might represent an individual in the administrative proceedings (Article 54, Paragraph 3). The party is entitled to invite an expert for special circumstances. This expert shall provide explanations and legal advice on behalf of or in support of the party concerning legal matters but is not entitled to represent the parties (Article 61).

The special provision in ERA, Article 175, which defines a role of trade unions or workers' representative bodies in disciplinary procedures, an employer must notify the employer’s trade union of which the employee is a member of the disciplinary procedure in writing; if there is no such trade union or if the employee is not a member of it, the workers' council or the trade union organiser shall be notified. The trade union or other body may submit its opinion within eight working days. If they do submit an opinion, they must give an explanation of it. The employer must discuss that opinion within eight days and take a position regarding the statements contained in the opinion. Furthermore, Article 204 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 chairman. Trade union organisers have the right to exercise and protect the rights and interests of their members of the trade union vis-à-vis the employer.


*Does national law require or permit a shift of the burden of proof from the complainant to the respondent? Identify the criteria applicable in the full range of existing procedures and concerning the different types of discrimination, as defined by the Directives (including harassment).*

IPETA defines in second Paragraph of Article 22, that in cases where the discriminated person quotes facts in the judicial and administrative proceedings, as well as before other competent bodies justifying the allegation that the ban on discrimination has been violated, the alleged offender must prove that he or she did not violate the principle of equal treatment or the ban on discrimination in the case being heard.

Article 6 paragraph 4 ERA states, that when, in case of dispute, the candidate or employee alleges facts which justify the assumption that the prohibition of discrimination on the grounds from previous paragraph applies, the burden of proof rests with employer. Paragraph 3 of Article 45 has the same provision. Constitutional law has no explicit provision on the burden of proof. However, in cases of so called suspect motivation of the legislator (when there is doubt weather the measure adopted by the legislator is necessary) the burden of proof in the procedure before the Constitutional Court rests with the legislator. This is in accordance with the principle of proportionality which derives from the Article 2 of The Constitution of the Republic of Slovenia.

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79 Provision apply to all grounds of discrimination, listed in Directives.
In criminal law, the burden of proof lies on public prosecutor or private prosecutor since it would be inappropriate if it was the defendant who would have to prove that there is no basis for their conviction. Furthermore, such a rule would be contrary to the principle of a presumption innocence. Therefore we find Slovenian legislation compliant with both directives.


**What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses)**

IPETA in the Article 3 prohibits victimisation. *Article 16 defines acting of the advocate of the principle of equality (about Advocate see answer 7) when ruling the case of the initiator, who faces victimisation. The advocate, already in the course of hearing the case, shall order in writing the corporate body or other body in law where the violation of the ban on discrimination is alleged to have occurred to apply appropriate measures to protect the discriminated person from victimisation or adverse consequences that have occurred from victimisation. In the event of an alleged offender not having acted in accordance with the order of the Advocate and the discriminated person should still be subjected to victimisation, the inspector shall have the right and duty to prescribe appropriate measures that, in the circumstances that have arisen, protect the discriminated person from victimisation, or to prescribe the remedying of adverse consequences of victimisation.*

Article 76 ERA regulates, that after ending a labour relationship, the employer must return to the employee all of his documents and issue him a paper that certifies the kind of work the employee was doing. The employer must not include any information in the certificate that would render it more difficult for the employee to conclude a new labour relationship. The employee could, according to Article 112 ERA end the contract with no notice period in eight days after previously notifying the employer and the Labour inspectorate in writing. He could do so if the employer insults him or acts violently or if the employer does not prevent such behaviour from other employees. The employee gets indemnity money and monetary compensation and could register at the Unemployment Bureau of the Republic of Slovenia and is entitled to subsidies and monthly sums of money for a certain period of time. Article 113 and 210 ERA protect trade union representatives from losing their job or from lowering their wages or instituting disciplinary proceedings or putting them in a worse position because of their trade union activities.

Article 3 of IPETA ensures only that the discriminated person must not be subjected to adverse consequences due to his/her actions. Witnesses or other people are not protected from victimisation according to IPETA. The Criminal Procedure Act generally protects the identity of witnesses in criminal proceedings in Article 240, Paragraphs 5, 6 and 7. Witnesses are protected in cases where the disclosure of their identity could endanger their lives or those of their close relatives.


**What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.**

**Are there any ceilings on the maximum amount of compensation that can be awarded?**

**Is there any information available concerning the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?**

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Article 26 of The Constitution of The Republic of Slovenia 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 function or activity under state authority, local community authority or as a bearer of public authority. Any person suffering damage also has the right to demand, in accordance with the law, compensation directly from the person or body that has caused the damage.

According to the general principles of law of damages every person could demand a compensation for the damage he/she suffered due to the discriminatory action. General Rules about the legally protected damage and conditions for recognising it are included in the Code of Obligations. The legislation contains no upper limit on compensation acknowledged by a court decision. There is no information about the amounts of compensation, which were awarded in cases of discriminatory treatment.

Article 24 IPETA defines that discrimination action shall be a minor offence for which the offender shall be fined and defines fine from 50,000 (208 EUR) to 300,000 SIT (1250 EUR) for an individual that commits a misdemeanour, from 500,000 (2083 EUR) to 10,000,000 SIT (41666 EUR) for a legal person or an individual entrepreneur. The responsible person of a state body or of a self-governing local community where a minor offence was committed shall be fined from 50,000 (208 EUR) to 500,000 SIT (2083 EUR). According to the Minor Offences Act the fine is to be defined either in a range or in a fixed amount. It will be measured out to the offender in the limits given by the law, taking into account the seriousness of the offence and the negligence or intent of the offender.81 The fine is a state revenue.

Article 25 IPETA defines, that irrespective of the provisions of the previous article, a law regulating an individual field may, with regard to its content, specifically determine circumstances in which discrimination is prohibited, define offenders, and prescribe sanctions for a misdemeanour within the limits referred to in the previous the preceding article. Article 6, Paragraph 5 ERA, sets the employer’s liability for damage in accordance to tort law provisions, when the employer infringes the anti-discrimination provision. Article 81, Paragraph 4 of ERA defines, that the termination of a contract (with or without a notice period) based on one of the grounds listed in Article 6 is not valid. Article 229, Paragraph 1 ERA states that the employer – who is a legal person is fined at least 1,000,000 SIT (4167 EUR) if it discriminates against job applicants or employees, the employer – who is a natural person is fined at least 500,000 SIT (2083 EUR), and the person responsible is fined at least 80,000 SIT (333 EUR). Article 141 of The Penal Code punishes individuals who commit the criminal offence of violation of equality. In accordance with Article 141, Paragraph 2, whoever persecutes an individual or an organisation due to his or its advocacy of equality, shall be punished. In the event of the offence under the first or the second paragraph of Article 141 being committed by an official through the abuse of office or of official authority, such an official shall be sentenced to imprisonment for a maximum of three years. Article 300, of the Penal Code stipulates that whoever provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas on the supremacy of one race over another, shall be sentenced to imprisonment for a maximum of two years. If the offence has been committed by coercion, maltreatment, endangering of security, desecration of national, ethnic or religious symbols, the damaging of movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be sentenced to imprisonment for not more than five years. Materials and objects, which contain messages from Article 300, Paragraph 1, as well the facilities for their production, duplications and distributions, are confiscated. Article 206 of The Penal Code states that whoever limits or restricts anybody’s right to free access to any position of employment under equal conditions, as required by law, is fined or imprisoned up to one year. Article 205 of The Penal Code imposes punishment upon anyone who violates basic rights of

employees, which inter alia includes anyone who deprives the worker of a right he or she is entitled to by willingly violating inter alia the rules governing the conclusion or termination of the employment contract, salary, the protection of women, young and handicapped persons. Article 209 of The Penal Code punishes those who willingly fail to act in line with the rules in the area of social security and therefore deprive an individual of a right or place a limit on it. The person responsible for these crimes is punished with a fine or up to one year’s imprisonment. The Public prosecutor’s office in Ljubljana has dealt with cases of alleged violations of Penal Code Articles 300, 141, 270 (violation of human dignity by abuse of office or of official authority), 146 (maltreatment). The Public prosecutor’s office suggested to the individuals who filed charges to carry on procedures in accordance to The Penal Code Article 169 (insult) and dismissed the charges. Relevant case law does not exist in Slovenia.

Articles 230 to 233 of The Execution and Insurance Act\(^{82}\) regulate the return of the employee to his position of employment after he has been awarded that in legal procedure. Article 233 states that the employee who proposes to return to his position of employment could ask the court to decide, that the employer has to pay him sums of money that correspond to his wage from the end of court proceedings until the employee is returned to his job (Nature of the damages is pecuniary. There is no statutory upper limit). The amount of money is set by the court and should reach the level of the employee’s wage as if he had been working. The employee’s right to demand past wages to be paid is not affected by the regulation presented. If the court decides in favour of the employee just in part, the employee could seek full compensation before the court.

Sanction for legal persons, which are responsible beside natural persons are mentioned in answer 3.1.2.

According to information provided by the Labour Inspectorate 4 cases of discrimination in the workplace have been found to have occurred from January to November 2004 in accordance with ERA (the Inspectorate filed cases to the court for minor offences), no reports relating to IPETA have been filed in the period from adopting until now.

7. SPECIALISED BODIES

Body for the promotion of equal treatment (Article 13 Directive 2000/43)

Does a ‘specialised body’ or ‘bodies’ exist for the promotion of equal treatment irrespective of racial or ethnic origin? Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable. Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues. Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?

Does the body (or bodies) have legal standing to bring discrimination complaints or to intervene in legal cases concerning discrimination?

Is the work undertaken independently?

If there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For

example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

The Act Implementing the Principle of Equal Treatment, adopted in April 2004, establishes the Council of the Government for the Implementation of the Principle of Equal Treatment (Article 9) and the Advocate of the Principle of Equality (Articles 11-19). Article 26 of the Act states that the Council shall be established and the Advocate shall begin his or her work within 3 months of this Act entering into force. The Implementation of the Principle of Equal Treatment Act came into force on 7 May 2004. However, because of the general elections in Slovenia in autumn 2004 and the long process of establishing a new government, the Advocate of the Principle of Equality has started work on 1 January 2005, whereas Council for the Implementation of the Principle of Equal Treatment is expected to convene on its constitutive session by the end of March 2005.

The Act also imposes additional duties on the Office for Equal Opportunities, which is a special body of the Government and has in the past been limited to the field of equal treatment of women and men, expanding its sphere of activity to co-ordinating the activities of individual ministries and government services related to the implementation of the Act as well as performing technical and administrative duties for the Council (Article 10). In addition to its responsibilities in implementing equal treatment of men and women, the Office’s work in the field of implementation of the principle of equal treatment entails coordination of formation of policies and preparation of regulation in the field of prevention and suppression of discrimination, particularly by the transfer of EU regulation on the implementation of equal treatment of persons regardless of the racial or ethnical origin and general frames of equal treatment in employment and work.

According to The Act Implementing of the Principle of Equal Treatment, the Council has the following duties: (1) to provide for implementation of the provisions of the Act, (2) to monitor, ascertain and assess the position of individual groups within society with regard to implementation of the principle of equal treatment, (3) to submit to the Government proposals, initiatives and recommendations for the adoption of directives and measures that are necessary for the implementation of the principle of equal treatment, (4) to submit proposals for the promotion of education, awareness-raising and research in the field of equal treatment of persons, and (5) to perform other duties, determined by the decree establishing it.

The Council shall consist of representatives of individual ministries and governmental services, non-governmental organisations and expert institutions in the field of equal treatment. In performing its duties, the Council shall co-operate with competent state bodies and other institutions in the field of equal treatment of persons and of prevention of discrimination on the grounds of personal circumstances.

The Advocate of the Principle of Equality shall function within The Office for Equal Opportunities in order to hear cases of alleged violations of the ban on discrimination. A special Advocate of the Principle of Equality may function for a specific personal circumstance. The Advocate and the Council shall work independently. Advocate is the body primarily intended to provide independent assistance to victims of discrimination.

The main responsibility of the Advocate is to hear cases of alleged violations of the ban on discrimination. Hearing a case shall start on a written or verbal initiative, which may also be anonymous, but must include sufficient data for the case to be heard. Hearing of a case shall be informal and free of charge and the Advocate and other employees of The Office for Equal Opportunities shall be bound by confidentiality with regard to all data of which they are informed when hearing cases. After the complaint, the Advocates shall conduct a hearing of a case. The

83 Website address: http://www.uem-rs.si.
Advocate shall have the right to request the persons involved to provide him with appropriate explanations within a specific time-limit and the right to invite all persons involved to an interview. In the event of a discriminated person being subjected to harmful consequences due to his or her actions in relation to cases of violation of the ban on discrimination in the environment in which the violation is alleged to have been committed (events of victimisation), the Advocate shall order the corporate body or other body in law where the violation of the ban on discrimination is alleged to have occurred to apply appropriate measures to protect the discriminated persons from victimisation or adverse consequences that have occurred from victimisation. Hearing a case is concluded by a written opinion in which the Advocate states his findings and an assessment of the circumstances of the case, in the sense of the existence of a violation of the ban on discrimination and both parties are informed about it. The Advocate also has the right to point out the irregularities discovered and to issue a recommendation on how they should be rectified, and to call for the alleged offender to inform him, within a specific time-limit, of the measures taken. In the event of an alleged offender not rectifying established irregularities in accordance with the recommendations of the Advocate or if the offender does not inform him within the time-limit about the measures adopted and in case the alleged violation has all the indications of discrimination, the Advocate shall send a written opinion to the competent inspection service (inspection service that by Law has jurisdiction in an individual administrative field for supervision of the implementation of laws and other regulations, collective agreements and general documents, where action that represents discrimination under the provisions of this act has occurred). If the inspector considers that all the indications of discrimination can be established, he is obliged to deal with the opinion of the Advocate and to propose the introduction of procedure due to a misdemeanour, as well as to take all actions within the framework of his competencies to establish the actual consequences of the misdemeanour and to rectify its consequences. By the beginning of March 2005, the Advocate has since its establishment 2 months ago received 11 complaints of alleged violations of the ban on discrimination, none of which has yet been resolved.

An individual or corporate body also has the right to apply to the Advocate with a request for an opinion on whether a certain act, service or omission of his or hers could be considered a violation of the principle of equal treatment because of personal circumstances. Finally, every year, by the end of March, the Advocate shall prepare a report on her work, which The Office for Equal Opportunities shall submit to the Government for adoption.

The Vocational Rehabilitation and Employment of Disabled Persons Act, adopted by the Parliament in May 2004 established The Institute of the Republic of Slovenia for Rehabilitation. Its tasks are: (1) harmonization and coordination of professional development in this area, (2) preparation of standards for the services of vocational rehabilitation, research work and standards for training and qualification of expert workers and performers of vocational rehabilitation, (3) preparation of methodology for assessment of the working achievements of disabled and supervision in this area, and (4) other tasks dealing with carrying out the provisions of this Act. The funding for carrying out these tasks shall be provided in the annual budget of R Slovenia.

To enforce the employment of the disabled and to preserve their workplaces, the Act also establishes the Fund for Promoting the Employment of Disabled. The Fund shall decide on the rights and obligations of the disabled and employers as arising from The Vocational Rehabilitation and Employment of Disabled Persons Act. The latter imposes upon employers which employ 20 or more workers to employ disabled within a certain part of the entire number of employees (a quota). Those employers not fulfilling the quota have to pay penalties into the Fund. On the other hand, the Act also provides for financial benefits for employment of disabled workers, e.g. subvention of

salary for disabled workers, bonus for exceeding the quota, etc. The Fund is the body primarily intended for deciding upon these measures. The funding for its operation shall be provided from the payments of employers for not fulfilling the prescribed quota of disabled workers, from the Retirement and Disability Insurance Fund, the annual state budget, donations and other sources. Collected payments are intended mainly for the subventions of wages of disabled under this Act and for financing other encouragements.

To improve the coordination of activities and efficaciousness of harmonization in dealing with the issue of Roma in Slovenia, the Government has established the Commission of the Government of the Republic of Slovenia for the Protection of Ethnic Roma Community85. The task of the Commission include observation of carrying out the constitutional obligations and legal provisions of Slovenia for the protection of Roma ethnic community, preparation of propositions regarding the protection of the Roma ethnic community, the exchange of views between the Roma community and state organs regarding all questions that concern the situation of Roma ethnic community, and discussing actual questions regarding the realisation of special rights of the Roma ethnic community.

Since the principle of equal treatment and the ban on discrimination is incorporated in the Constitution of the Republic of Slovenia as the first provision among those ensuring fundamental human rights (Article 14), the Human Rights Ombudsman86 is another specialised body for lodging informal complaints as an independent and unbiased form of informal protection available to individuals in relation to state authorities, local self-government authorities and bearers of public authority. Any person who believes that his/her human rights or fundamental freedoms have been violated by an act or deed of a body may lodge a petition with the Ombudsman to start proceedings87, the Ombudsman can also institute proceedings on his own initiative. The procedure is free of charge. By law, the Human Rights Ombudsman has above all the authority to obtain, from the state and other bodies which he can monitor, all data without regard to the degree of confidentiality, to perform investigations and in this capacity to call witnesses for questioning. At any time he may perform an inspection of any state body or institution which restricts personal freedom, e.g. psychiatric institutions. He does not have the authority to monitor the work of judges and courts except in cases of improper delay of procedures or clear abuse of power. One important competence of the ombudsman is the serving of the Constitutional Court, together with the plaintiffs, with constitutional complaints due to the violation of human rights. He can also address the Constitutional Court with proposals for the assessment of the constitutionality of regulations without the prior establishing of his legal interest by the Constitutional Court, as is the case for other petitioners (Article 23, 50 and 52 of The Constitutional Court Act88). The proceedings are separate from other legal remedies. If legal remedies have not yet been availed to, the Ombudsman advises the petitioner to do so first. According to the Rules of Procedure, when commencing proceedings, the Ombudsman makes inquiries of the body to which the petition refers. As a rule, the Ombudsman does not convey the original documents between the petitioner and a state body. The Rules of Procedure specify that the Ombudsman is not liable to show the file to any party in the proceedings. Whenever possible, the Ombudsman first tries to settle the dispute through

87 The Rules of Procedure of the Ombudsman stipulate that the Ombudsman performs his work in the Slovene language. However anyone who is not familiar with the Slovene language may lodge a petition in his/her own language.
mediation. In Slovenia, the institution of the Ombudsman is, in practice, frequently\textsuperscript{89} used. The Human Rights Ombudsman issues annual reports on the exercise of human rights in Slovenia, which are considered by the National Assembly. In these reports, while dealing with individual cases, he also makes proposals for amendments to legislation. At the end of individual chapters of the Report, details are given of those state and administrative authorities which did not respond to recommendations and proposals by the Ombudsman\textsuperscript{90}.

**8. IMPLEMENTATION ISSUES**

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

Describe **briefly** the action taken by the Member State

*a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)*

Dissemination of information is one of the major problems in protection against discrimination. Various complaints to the Office for Equal Opportunities in 2004, where persons believed they were discriminated, were not a case of discrimination, whereas there are much more cases of persons being discriminated and not knowing whether they have any legal rights in this regard and how to enforce them. There is a major progress expected regarding this issue with the establishment of the Council for Implementation of the principle of Equal Treatment and the Advocate of the Principle of Equality under the Principle of Equal Treatment Act, which is expected soon, since the new Government has taken position in December 2004. Especially the Advocate is expected to bring a lot more attention to the issue of equal treatment through its tasks and responsibilities.

Pursuant to Article 154 of The Constitution of the Republic of Slovenia, regulations must be published prior to coming into force. State regulations are published in the official gazette of the state, whereas local community regulations are published in the official publication determined by the local community.

The fact that The Act Implementing the right of Equal Treatment was adopted was published by the national media. Apart from that, there have been some articles published on this issue in the major newspapers in Slovenia (Delo and Večer) in December 2004, which included an interview with an official from the Office for Equal Treatment, explaining the provisions of the Act. The dissemination of information improved with the establishment of the Advocate of the Principle of Equality. There is no evidence that the Government or any of its bodies have taken any other steps to inform the general population of Slovenia about legal protection against discrimination. As mentioned, this situation is expected to improve with establishment of the Council for the Implementation of the Principle of Equal Treatment.

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

Arising from the provision of Article 8 of IPETA, the Government and competent ministries have to co-operate with non-governmental organisations that are active in the field of equal treatment. However, the Government at present only provides some funding for NGO’s for their specific

\textsuperscript{89} Data in English available on the internet: http://www.varuh-rs.si
\textsuperscript{90} Such a practice proved to be successful in the sense of the "soft" pressure it produced, aimed ensuring the implementation of human rights and a more sensitive approach within the state structure.
projects, some of which are intended for dissemination of information regarding the issue of discrimination and the question of enforcement of a person’s rights in the case of discrimination. In addition, the Government has granted concessions to certain NGOs that deal with free legal assistance for this purpose that is to give advice and legal representation to the seekers. Through such forms of legal assistance persons that believe they were victims of discrimination are advised on weather this is the case and what actions they are able to take for securing their rights.

Apart from that, there is no evidence that there has been any encouragement of the dialogue with NGO’s by the Government or its bodies with a view to promoting principle of equal treatment. Again, the situation is expected to improve with establishment of the Council for the Implementation of the Principle of Equal Treatment.

c) 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)

Also arising from Article 8 of IPETA, the Government has to cooperate with social partners that are active in the field of equal treatment. The Economic and Social Council of the Government is carrying out the Phare project on the social dialog between the employers and employees regarding the anti-discrimination principle. The Economic and social council was established by an agreement of the social partners in 1994. It has no constitutional or statutory base. This tripartite organ has dealt with several important topics and its members representing different social partners have reached agreements on issues relating to pension reform, ERA, wages, The Safety and health at work Act. If The Constitution regulated the role and the function of the council it would guarantee its position in promoting social dialogue. The Government is nevertheless able to propose legislation to the parliament and could avoid agreements reached in the council.

The main obstacle to greater effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring is that the dialogue between social partners still fails to reach beyond the issues of salary and lately the length of working day. Even when the Government takes part in social dialogue, the issue of discrimination barely reaches beyond declaratory statements, for none of the social partners is giving it the appropriate concern. Trade unions, however, provide victims of discrimination at workplace proper legal assistance when they are enforcing their right before the courts and other state organs. Improvement in this field is expected with establishment of the Council for the Implementation of the Principle of Equal Treatment.


a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment?

Under Slovenian Constitution all laws, regulations and rules have to be accordant with the Constitution(Article 153). Therefore, if any of them were to be contrary to the principle of equality, which is embodied in the Constitution, would be unconstitutional. One of the basic powers of the Constitutional Court is to decide on the conformity of the law and other regulations. The Powers of the Constitutional Court are regulated both by The Constitution of the Republic of Slovenia and by The Constitutional Court Act. The Constitutional Court Act contains a special chapter dedicated to the Assessment of the Constitutionality and legality of regulations and general acts issued for the exercise of public authority. This chapter stipulates the Legal consequences of a decision. Therefore the Constitutional Court may under Article 43 completely or partly vitiate a
law which does not conform with the Constitution. It is prescribed under Article 44 that a law vitiated by the Constitutional Court shall not be valid in situations that occurred before the day such a decision came into the effect, if by that day such situations had not been legally decided upon. Unconstitutional and illegal non-statutory regulations and general acts issued for the exercise of public authority shall be abrogated or vitiatiated by the Constitutional Court. Such acts or regulations shall be abolished by the Constitutional Court when it discovers that harmful consequences arising from the unconstitutionality have to be abolished. This abolition shall be retroactive (Article 45). If the Constitutional Court under Article 48 determines that the law, other regulation or general act for the exercise of public authority was unconstitutional or illegal because a certain matter which it should have ordered was not ordered or is ordered in a manner in which cannot be vitiatiated or abolished, an assessment decision shall be adopted on this. The legislator or body which issued the unconstitutional or illegal regulation or general act issued for exercising public authority must ensure that the unconstitutionality or illegality is abolished within the time limit set by the Constitutional Court.

b) Are any laws, regulations or rules contrary to the principle of equality still in force?

There is no obvious evidence of any laws, regulations or rules contrary to the principle of equality were still in force. Were this the case, such provisions would be under judicial revision by the Constitutional Court and consequently abolished.

9. OVERVIEW

This section is also an opportunity to raise any important considerations regarding the implementation and enforcement of the Directives that have not been mentioned elsewhere in the report.

The Constitution of the Republic of Slovenia guarantees equality and prohibits discrimination. Besides the Constitution only IPETA and ERA include comprehensive anti-discrimination provisions.

Despite the fact, that the anti-discrimination provisions were adopted and based on them the programmes were started for promoting the equal treatment among certain groups, such as disabled, elderly, Roma, the results in practice have not jet reached a justifiable level. There is still significantly higher rate of unemployment among these groups than it is the state average unemployment rate. This fact draws to the conclusion that there is additional effort required for improving the situation of underprivileged groups.

Another issue worth mentioning at this point is the problem of dissemination of information among individual persons, which could be victims of discrimination, thus are not aware of provisional safeguards intended for their protection. This may be improved in the near future with the work of the Advocate for the Principle of Equality, who has been appointed in January 2005.

10. COORDINATION AT NATIONAL LEVEL

Which government department/other authority is responsible for dealing with or coordinating issues regarding anti-discrimination on the grounds covered by this report?

According to IPETA Office for Equal Opportunities is responsible for coordinating issues regarding anti-discrimination (Article 10)
Country Report Slovenia on measures to combat discrimination

ANNEX
1. Table of key national anti-discrimination legislation
2. Table of international instrument
**Annex 1: Table of key national anti-discrimination legislation**

Name of Country: Slovenia

Date: December 2004

<table>
<thead>
<tr>
<th>Title of Legislation (including amending legislation)</th>
<th>In force from:</th>
<th>Grounds covered</th>
<th>Civil/Administrative/ Criminal Law</th>
<th>Material Scope</th>
<th>Principal content</th>
</tr>
</thead>
<tbody>
<tr>
<td>This table concerns only key national legislation; please list not more than 10 anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.</td>
<td>Please give month / year</td>
<td></td>
<td></td>
<td>e.g. public employment, private employment, access to goods or services</td>
<td>e.g. prohibition of direct and indirect discrimination or creation of a specialised body</td>
</tr>
<tr>
<td>Implementation of the Principle of Equal Treatment Act</td>
<td>May 2004</td>
<td>nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status, any other personal circumstance</td>
<td>Civil Law Administrative Law</td>
<td>every field of social life, and especially in the fields of employment, labour relations, participation in trade unions and interest associations, education, social security, access to and supply of goods and services</td>
<td>prohibition of direct, indirect discrimination and harassment creation of a specialised body</td>
</tr>
<tr>
<td>Vocational Rehabilitation and Employment of Disabled persons Act</td>
<td>Jun 2004</td>
<td>Disabled person</td>
<td>Administrative Law Labour Law</td>
<td>employment</td>
<td>Positive action, creation of a specialised body</td>
</tr>
<tr>
<td>Employment Relations Act</td>
<td>January 2003</td>
<td>sex, race, age, health condition or disability, religious, political and other convictions, sexual</td>
<td>Labour Law</td>
<td>public employment, private employment,</td>
<td>prohibition of direct and indirect discrimination and harassment</td>
</tr>
<tr>
<td>Constitution of the Republic of Slovenia [<a href="http://zakonodaja.gov.si/">http://zakonodaja.gov.si/</a>]</td>
<td>Dec 1991</td>
<td>National origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status, disability</td>
<td>Constitutional Law</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

<table>
<thead>
<tr>
<th>Instrument</th>
<th>Signed (yes/no)</th>
<th>Ratified (yes/no)</th>
<th>Derogations/ reservations relevant to equality and non-discrimination</th>
<th>Right of individual petition accepted?</th>
<th>Can this instrument be directly relied upon in domestic courts by individuals?</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Convention on Human Rights (ECHR)</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
<td>Yes</td>
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<tr>
<td>Protocol 12, ECHR</td>
<td>yes</td>
<td>no</td>
<td>no</td>
<td>yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Revised European Social Charter</td>
<td>yes</td>
<td>yes</td>
<td>Declaration on Part II, Articles 13, 18 (2).</td>
<td>Ratified collective complaints protocol? yes</td>
<td>Yes</td>
</tr>
<tr>
<td>International Covenant on Civil and Political Rights</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
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<tr>
<td>International Convention on Economic, Social and Cultural Rights</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
<td>-</td>
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</tr>
<tr>
<td>Convention on the Elimination of All Forms of Racial Discrimination</td>
<td>yes</td>
<td>Yes</td>
<td>no</td>
<td>yes</td>
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<td>Convention on the Elimination of Discrimination Against Women</td>
<td>yes</td>
<td>yes</td>
<td>no</td>
<td>yes</td>
<td>Yes</td>
</tr>
<tr>
<td>ILO Convention No. 111 on Discrimination</td>
<td>yes</td>
<td>yes</td>
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