

**REPORT ON MEASURES TO COMBAT
DISCRIMINATION IN THE 13 CANDIDATE
COUNTRIES (VT/2002/47)**

**COUNTRY REPORT
SLOVENIA**

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CHAPTER 1: THE LEGAL FRAMEWORK, DEFINITIONS AND SCOPE

a. The legal framework

Article 1 (Racial Equality Directive and Employment Equality Directive)

a.1 Does national law guarantee the principle of equal treatment or non-discrimination with respect to the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation if so, what is the nature of the national legal framework (e.g. Are the anti-discrimination laws and provisions general or ground-specific)?

The Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia¹ stipulates that, in accordance with The Constitution of the Republic of Slovenia and with international agreements binding upon it, the Republic of Slovenia guarantees the protection of human rights and fundamental freedoms of all persons within the territory of the Republic of Slovenia, irrespective of nationality and without any discrimination whatsoever. Through this Document and The Declaration on the Independence of the Republic of Slovenia, the state has committed itself to respect for human rights and fundamental freedoms, respect for the principle of the inviolability of national borders, and the principles of international law which determine the legal succession to international agreements adopted by the SFR Yugoslavia and relate to the territory of the Republic of Slovenia.

The Constitution of the Republic of Slovenia² contains a *general* anti discriminative clause in *Article 14*. 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 or whatever other personal circumstance³. All persons shall be equal before the law. 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. 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. Marriage and family relations are based upon the equality of spouses in accordance with Article 53. Article 49 grants everyone access to any position of employment under the equal conditions. Article 52, Paragraph 1 provides for the protection and employment training to all disabled persons. Articles 46 and 123 of The Constitution guarantee citizens the possibility of conscientious objection for religious, philosophical or humanitarian beliefs⁴

The legal order of the Republic of Slovenia stipulates criminal sanctions in the event of violation of individual rights. The violation of equality, stirring up ethnic, racial or religious hatred, strife or intolerance and the crime of Genocide constitute criminal offences in The

¹The Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, Official Gazette of the Republic of Slovenia no. 1-4/1991. Temeljna Ustavna listina o samostojnosti in neodvisnosti Republike Slovenije, Uradni list Republike Slovenije št. 1-4/1991.

²The Constitution of the Republic of Slovenia, Official Gazette of The Republic of Slovenia no. 33/1991, 42/1997, 66/2000. Ustava Republike Slovenije, Uradni list Republike Slovenije številka 33/1991, 42/1997, 66/2000.

³This 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.

⁴**The Law on the Legal Status of Religious Communities**, Official Gazette of the Republic of Slovenia no. 15/1976, 42/1986 and 22/1991 (Zakon o pravnem položaju verskih skupnosti, Uradni list Republike Slovenije številka 15/1976, 42/1986 and 22/1991) derives from the constitution which guarantees equal rights of freedom of religion and religious communities and separation of the Church and State. It comprises of a prohibition on inciting or stirring up religious intolerance, hatred or strife (Article 4/1),

Penal Code⁵: Article 141 -Violation of Equality; Article 300 - Stirring up Ethnic, Racial or Religious Hatred, Strife or Intolerance and Article 373 - Genocide⁶. 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. 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, Paragraph 1 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.

Other provisions:

Statutes which regulate different fields of law do not have detailed specific anti-discrimination provisions yet, as defined in the Directives 2000/43/EC and 2000/78/EC. The exception is The Employment Relationship Act (ERA)⁷ which, in accordance with the Directives mentioned, explicitly prohibits discrimination in Article 6. The Government is aware of the defectiveness of the legislation in this area and is considering undertaking some positive action with the intention of complying with the two Directives.

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 perspective 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 third paragraph of Article 6 states that the discrimination referred to in Paragraph 1 of Article 6 shall be prohibited in both direct and indirect forms. 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. *Provisions of the ERA are not complete; they do not contain the definition of direct discrimination, harassment, nor*

⁵ The Penal Code, Official Gazette of the Republic of Slovenia no. 63/1994. Kazenski zakonik, Uradni list Republike Slovenije št. 63/1994.

⁶ In accordance with the international definition, Article 373 defines a crime of Genocide as the activities " aimed to the full or partial extermination of the certain national, racial or religious group". While defining the notion of the "war victim", **The Law on the war victims**, Official Gazette of the Republic of Slovenia no. 63/1995 (Zakon o žrtvah vojnega nasilja, Uradni list Republike Slovenije številka 63/1995) states that "under this law, war victims are all persons who were because of the political, national, racial or religious reasons expelled and sent to prison, concentration camps or forced labour by the German, Italian or Hungarian forces during the period between 6.4.1941 to 15.5.1945.

⁷ The Employment Relationship Act, Official Gazette of The Republic of Slovenia no. 42/2002. Zakon o delovnih razmerjih (ZDR), Uradni list Republike Slovenije številka 42/2002.

guidelines on discrimination. The provisions on the prohibition of discrimination are further contained in Article 4, Paragraph 1 of The Law on the Legal Status of Religious Communities which states that citizen's rights could not be limited because of their religious belief, membership of a religious community or attendance at religious ceremonies or manifesting religious sentiment in other ways. Religious communities, their representatives and members cannot have any special privileges or special protection. Membership of a religious community does not exempt an individual from general civic duties derived from The Constitution, Statutes and other provisions. Article 5 of the same Act prohibits provoking religious intolerance, hatred or conflict. *The Act amending the present law is in the process of being adopted and does not contain the same anti-discriminatory provisions as the Act in force.* Commentators state that the Act in force needs to be modernised because it was adopted in other social circumstances. The amending Act does not include anti-discriminatory provisions. It contains the principle of equality of religious communities in Article 21. The Associations Act⁸ was supplemented by The Act Amending and Supplementing the Associations Act⁹ which defines in Article 15, that a society ceases under the Act itself, if it actually ceases to operate or if, by its activities, it aims to undermine the constitutional set-up, or to execute criminal activities or the incitement of national, racial, religious or other inequality, or inflames national, racial, religious or other hatred and intolerance or incites violence or war. The competent body shall hold that such a society has ceased. The competent authority establishes the termination of the existence of the society by decree. The Political Parties Act¹⁰ defines parties as associations of citizens in Article 1. The register of political parties is kept at the Ministry of the Interior of the Republic of Slovenia. According to the Law on political parties, the right to establish a political party is however not an absolute right. Article 3 stipulates that in the Republic of Slovenia a party that incites violence, destruction of the constitutional order or demands secession, of any part of Slovenia, or intends to undertake or undertakes an anti-constitutional action is not allowed to register or act. The Media Act¹¹ states in Article 8 that it is forbidden to encourage, through dissemination of programme contents, national, racial, religious or any other form of inequality, to encourage violence and war, or to provoke national, racial, sexual or any other form of hatred and intolerance. Advertising should not encourage racial, sexual or national discrimination nor religious or political intolerance. According to Article 129, a fine of not less than 2.500,000 Slovenian Tolars (SIT)¹² is imposed on a publisher for an offence if, through their media, respect for human dignity is affected; racial, sexual and national discrimination or religious or political Intolerance is provoked. Discrimination on basis of sexual orientation is explicitly mentioned in The Penal Code, Article 141 and ERA, Article 6. The status of homosexuals is not especially defined in Slovenian legal system though some changes are to be made concerning status of homosexual communities by The Act amending and supplementing The Domestic Relations Act. However this does not mean that discrimination on grounds of sexual orientation is allowed. Sexual orientation discrimination is prohibited by Article 14 of The Constitution when interpreted properly.

⁸ The Associations Act, Official Gazette of the Republic of Slovenija, no. 60/1995 and 49/1998. Zakon o društvih, Uradni list številka 60/1995 and 49/1998.

⁹ The Act Amending and Supplementing the Associations Act, Official Gazette of the Republic of Slovenija no. 89/1999. Zakon o dopolnitvah in spremembah Zakona o društvih, Uradni list številka 89/1999.

¹⁰ The Political Parties Act, Official Gazette of the Republic of Slovenija no. 62/1994. Zakon o političnih strankah, Uradni list številka 62/1994.

¹¹ Media Act, Official Gazette of the Republic of Slovenija no. 35/2001. Zakon o medijih, Uradni list Republike Slovenije številka 35/2001.

¹² The conversion rate of The Bank of Slovenia on December 9th 2002 for 1 Euro is 229,85 Slovenian Tolars.

Provisions of International documents:

In accordance with Article 8 of the Constitution of the Republic of Slovenia, ratified and published international instruments constitute a part of the internal law. The 1991 Constitution of the Republic of Slovenia through Article 8 provides that statutes and other legislative measures have to comply with the generally accepted principles of international law and be in accordance with international agreements which bind Slovenia. As Slovenia is a party to relevant international human rights instruments, this provision binds Slovenia to respect the rights of individuals, belonging to national, ethnic, religious and linguistic minorities (Article 27 of the International Covenant on Civil and Political Rights) and to implement the principle of non-discrimination in accordance with the CERD Convention. *On March 7th 2001 Slovenia signed Protocol No.12 to The Convention for the protection of Human Rights and Fundamental Freedoms.*

a.2. What is the scope of these laws and provisions? Is the level of protection the same for all grounds? Is there a definition of the grounds racial or ethnic origin, religion or belief, disability, age and sexual orientation, in legislation or case law?

The aim of the laws and provisions mentioned is to guarantee the principle of non-discrimination which derives from Article 14 of The Constitution of The Republic of Slovenia. Even though equality and non-discrimination are principles in constitutional, criminal, labour law, etc, protection of individuals against discriminatory behaviour would be much higher if more specific provisions existed in Statutes governing different fields. Victims of discrimination could enforce their rights in a much more effective way.

The level of protection on the grounds listed is the same for all of them in principle. In order to ascertain the level of protection, we should examine fields of law to which the two Directives apply. Levels of protection are being increased in labour law with the entering into force of ERA for all the grounds mentioned, while the standards in most of the other areas remain at a level, that could not satisfy potential discrimination victims, as the provision about equality remain too general (see below in the answer 3.1 - Fields of application).

The Pension and Disability Insurance Act¹³ defines disability in Article 60. If the change in insured individual's medical status cannot be reversed by medical treatment or medical rehabilitation and those changes have been determined according to The Pension and Disability Act, and because of those changes his abilities to get or to retain a job or be promoted are decreased, he is granted disability status. *Definitions of the other grounds listed in the two directives do not exist in legislation or in case law.*

a.3. Does national law cover other grounds of discrimination (in particular nationality and membership of a national minority)?

Slovenian legislation regulates the status of autochthon minorities. Historical or autochthon minorities¹⁴ in Slovenia, which include Hungarian, Italian and Romany minorities, 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. There is a selective extent of provisions for the Romany minority protection.

¹³The Pension and Disability Insurance Act, Official Gazette of The Republic of Slovenia no. 106/1999, 72/2000, 81/2000, 124/2000, 52/2001, 109/2001. Zakon o pokojninskem in invalidskem zavarovanju (ZPIZ-1), Uradni list Republike Slovenije številka 106/1999, 72/2000, 81/2000, 124/2000, 52/2001, 109/2001.

¹⁴ Minority Protection, AI, 2002.

The second category are the new national minorities, which include nationals of countries and minorities of the former common state of Yugoslavia. They have migrated to Slovenia in the whole period of Slovenia's existence and particularly since the mid-sixties, primarily for economic reasons.

With the independence of Slovenia in 1991 these persons, citizen of the former Yugoslavia with a permanent residence in the Republic of Slovenia in compliance with Article 40 of Citizenship of the Republic of Slovenia Act¹⁵, could apply for the Slovenian citizenship under more favourable conditions. 170.000 persons were granted Slovenian citizenship in this way. The rest, who could not or did not want to apply for Slovenian citizenship lost their permanent residence permit on February 26, 1992 and thus became foreigners without a residence permit in Slovenia. The Settling of the Status of Citizens of Other SFRY Successors States in the Republic of Slovenia Act¹⁶ from 1999 has tried to amend such an unendurable situation for several thousand people by allowing the possibility of getting a residence permit. At the end of 2002 applications were still being processed.

The only constitutional provisions concerning nationals from the former Yugoslav Republics are to be found in the Article 61, Expression of National Affiliation¹⁷ and in Article 62, Right to Use One's Language and Script.¹⁸

The fact that only the Italian and the Hungarian minorities have the benefit of minority rights alarms the Committee for Elimination Racial Discrimination (CERD). The Committee has expressed concern for the minority groups, such as Croats, Serbs, Bosnians and Roma people that are not beneficiaries of the same level protection as the Italian and Hungarian minorities and recommends that Slovenia makes efforts to comply with the second paragraph of the Convention for the Protection of National Minorities to prevent the discrimination of persons or groups of other minorities¹⁹.

Slovenia has signed *inter alia* a Framework Convention for the Protection of National Minorities, which was ratified on March 25 1998. In the Declaration the Government of the Republic of Slovenia declared the autochthonous Italian and Hungarian minorities to be national minorities in accordance with the Constitution and internal legislation of the Republic of Slovenia. In accordance with the Constitution and internal legislation of the Republic of Slovenia, the provisions of the Framework Convention should apply also to the members of the Roma community, who live in the Republic of Slovenia²⁰.

By signing European Charter for Regional and Minority Languages, Republic of Slovenia declared that the Italian and Hungarian languages are considered regional or minority languages in the territory of the Republic of Slovenia and, in accordance with Article 2, paragraph 2 of the Charter, the Republic of Slovenia applies the provisions of part III of the Charter to these two languages. In accordance with Article 7, Paragraph 5, of the Charter, the Republic of Slovenia should apply the provisions of Article 7, Paragraphs 1 to 4, also to the Roma language.

¹⁵ Citizenship of the Republic of Slovenia Act, Official Gazette of The Republic of Slovenia No. 1/1991-I, 30/1991-I, 38/1992, 61/1992, 61/1992, 13/1994, 13/1995, 29/1995, 59/1999, 96/2002. Zakon o državljanstvu Republike Slovenije, Uradni list številka 1/1991, 30/1991-I, 38/1992, 61/1992, 61/1992, 13/1994, 13/1995, 29/1995, 59/1999, 96/2002.

¹⁶ The Settling of the Status of Citizens of Other SFRY Successors States in the Republic of Slovenia Act, Official Gazette of the Republic of Slovenia no. 61/1999. Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji, Uradni list številka 61/1999.

¹⁷ Everyone has 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.

¹⁸ Everyone has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other bodies performing a public function.

¹⁹ Committee For Abolition of Racial Discrimination final statements, August 10, 2000.

²⁰ Remark of the Government of the Republic of Slovenia.

b. The definition of discrimination
Article 2 (Racial Equality Directive and Employment Equality Directive)

b.1. Is there a definition in law of both direct and indirect discrimination? If so, does this conform to the definitions in the Directives?

The Constitution of the Republic of Slovenia in its Article 14 (Chapter Human rights and freedoms) declares the equality principle (as explained in answer a. The Legal framework). Equality in the Constitution 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. In our opinion this constitutional equality clause could be invoked even against private actors. Nevertheless, we see the constitutional equality clause as a general principle of law. The Constitution thus devotes significant importance to non-arbitrary application of legal provisions as a common value of the Slovenian legal system. Public authorities are bound to prohibit and eliminate all aspects of discrimination in all situations. 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. The principle of equal treatment and anti-discrimination is emphasised in the following constitutional provisions: Article 22 - Equal protection of rights in all proceedings; Article 43 - Equal right to vote; Article 49 declares freedom of work and appoints that everyone shall have access under equal conditions to any position of employment; Article 44 – Every citizen has the right, in accordance with the law, to participate either directly or through elected representatives in the management of public affairs; Article 53 – Marriage is based on the equality of spouses; Article 54 – Children born out of wedlock have the same rights as children born within it; Article 7 – Religious communities shall enjoy equal rights; they shall pursue their activities freely; Article 29 points out absolute equality to anyone charged with a criminal offence; Article 63 – Any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional.

Legislation does not contain more detailed legal definition of discrimination yet. The Act on Equal Opportunities for Women and Men²¹ in its Article 5 entails a definition of both direct and indirect discrimination. It deals with gender equality defined as an absence of any form of direct or indirect discrimination. The Equal Opportunities for Women and Men act refers to gender equality, which is guaranteed when men and women have equal participation in both the public and private sectors. Men and women shall have an equal position and opportunities to enjoy all rights and develop personal potentials in order to contribute to social progress. Men and women shall have equal benefits from social progress. So far the definitions conform with the Directives. ERA contains an explicit definition of indirect discrimination in Article 6, whilst it also prohibits direct discrimination. 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. Article 25, Paragraph 1 is also important in the context of anti-discrimination law in stipulating that employers shall not invite applications for vacancies exclusively for men or women, unless that is a necessary condition of the job. Article 25, Paragraph 2 stipulates that the publication of a vacancy shall not suggest any advantage to particular gender at employment unless

²¹Act on Equal Opportunities for Women and Men, Official Gazette of the Republic of Slovenia no. 59/2002. Zakon o enakih možnostih moških in žensk, Uradni list Republike Slovenije številka 59/2002.

Paragraph 1 applies. The following provisions explain the anti-discrimination clause in broad sense: Article 89 - Race, skin colour, sex, age, disability, marital status, family obligations, pregnancy, religious and political conviction, national and social origin cannot be admitted as reasonable grounds for termination of employment contract.²² Equality of men and women: Article 133 – The equality of payment is guaranteed to men and women. The employer shall guarantee equal remuneration for men and women workers for work of equal value. Provisions 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.

The legal order of the Republic of Slovenia stipulates criminal sanctions in the event of violation of individual rights. The violation of equality, stirring up ethnic, racial or religious hatred, strife or intolerance constitutes a criminal offence under The Penal Code in Article 141 "Violation of Equality". This definition is similar to Article 14 of the Constitution. Thus, by pointing out certain significant personal elements it is different from Directive's definition, although this does not lead to the conclusion that there is a conflict with Directive's definition.

b.2. Case law

- 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 Act²³. 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).²⁴

- Gender discrimination and age discrimination:

The Constitutional Court of Slovenia dealt with age and gender discrimination as far as it concerns an interference or even violation of human rights. According to Article 101 of the ERA which stipulated the *ex lege* termination of an employment relation so far as the employee had reached the age of retirement, unless employer gave the employee permission to continue working. This was substantially an employer's choice. In its ruling of 30 June 1994 no. U-I-32/94 the Constitutional Court decided that there was no violation of Article 101.

²² Sexual orientation is missing from Article 89 but according to Article 6, paragraph 1 an employer may not put employee in an unequal position upon termination of a contract of employment on the basis of sexual orientation.

²³ The Redress of Injustices Act, Official Gazette of the Republic of Slovenia no. 59/1996. Zakon o popravu krivic, Uradni list Republike Slovenije številka 59/1996.

²⁴ See legal analysis of national and European anti-discrimination legislation for Slovenia, by Vera Klopčič, 2001.

At the request of the initiator, the Constitutional Court, in its ruling on November 25 1999 decided that Article 101 is not in accordance with the Constitution. As a result, the National Assembly had to abolish the unconstitutional provision within one year of the Decision (U-I-49/98) being published in the Official Gazette.

The Constitutional Court passed the resolution, which states: » The legislator could define the reasons for the termination of the job, but has to respect constitutional rights. Freedom of work, free choice of employment and access to all jobs under equal conditions means also that the termination of the job must be regulated in the same manner: The criteria applied should not involve the personal elements cited in the Article 14 of the Constitution. In order to justify any distinction, an objective and non-arbitrary reason should be shown. «

As stated in point 15 of the constitutional ruling, the regulation, which states that the reaching of the age for retirement is the reason for *ex lege* termination of employment, *prima facie* seems to be equal for all workers. But according to regulations on insurance for retired persons, it means that employment terminates differently for some persons on the grounds of sex and indirectly also on grounds of age. If there is a possibility of achieving earlier retirement based on age, it could be a privilege, but if you have to terminate your employment earlier, it could be an act of discrimination²⁵.

Therefore, the Constitutional Court found out that Article 101 is much more a problem relating to age than gender discrimination, although women had to obtain employer's permission to continue working. New legislation, i.e. ERA, as amended by the Pension and Disability Act does not maintain similar provision because employees are stimulated to continue working in order to improve their pension benefits.

- *Generally*, there are few cases relating to discrimination and intolerance.²⁶ In the case of J.R. (his opinion was about homosexuals) the ŠKUC Association filed a criminal complaint alleging that a crime was committed by violation of Article 300 of The Penal Code. M.B. and V.K. also filed a complaint alleging there was a violation of Article 141, Article 270 and Article 146. The public prosecutor in Ljubljana rejected both criminal complaints alleging that opinions of dr. J.R »had been offensive to certain group of the population«. Therefore, those who were affected (aggrieved persons) by his statement should have filed a criminal complaint alleging a violation of Article 169 of The Penal Code »Insult«. Freedom of expression does not mean incitement and inflaming hatred and intolerance while the Constitution guarantees freedom of speech, expression and opinion. An act of incitement or inflaming hatred shall normally cause a discord. A perpetrator shall have this in his mind when he commits this criminal offence. Other criminal complaints were rejected. So far the public prosecutor in Ljubljana has received 11 criminal complaints against 16 offenders alleging there had been a violation of Article 300 of The Penal code. 9 of them have been rejected. Some of them have been submitted to the court. In the opinion of Blaž Kovačič (an interviewee), public authorities do not give significant importance to the matter and are not sensitive enough in this way.

b.3. Does national law define harassment, as defined in the Directives?

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. The basic provisions

²⁵ This used to be an example of direct discrimination on grounds of age. However, this case is no longer relevant as this provision has been repealed.

²⁶ This paragraph summarises an article from Slovenian magazine Mladina and is published on [www.mladina.si/tednik/200211/članek/ovadba-Potreben je fizični napad](http://www.mladina.si/tednik/200211/članek/ovadba-Potreben%20je%20fizični%20napad).

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. The 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. The refusal to carry out such an act by an employee shall not be a reason for discrimination in employment. 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 employer fails to comply with this obligation. The employer is punished by a fine of 1.000.000,00 SIT as a legal person or 500.000,00 SIT as a natural person.²⁷ As a result of sexual harassment, the employee might exceptionally give notice after notification of the breach in writing to the employer and inspector.²⁸

The extreme variation of unlawful harassment is defined as torture in The Executing Criminal Sanctions Act²⁹. Article 10, Paragraph 3 of the Act mentioned defines torture as any act by which a public servant or other person by order or agreement of an official, in order to obtain information or a confession, from this or a third person in order that the person be punished for an offence which he has committed or of which he is suspected, because of intimidation or the punishment of a third person or for any other reason is *based on discrimination* of any kind, intentionally causes serious physical or mental pain or suffering to a person against whom a criminal sanction is being imposed. When the proposal of The Penal code was submitted to The National Assembly of the Republic of Slovenia, there was a possibility to incriminate sexual harassment as a criminal offence. This idea was later rejected due to a failure to agree an exact definition for a criminal offence of »sexual harassment«. Secondly, it was emphasised that such a criminal offence requires serious effort in order to prove it. In a broad sense, harassment might be »Cruel behaviour« as defined in Article 146, »Neglect of the youngsters and cruel behaviour« in Article 210, Paragraph 2. Violence of human dignity by the abuse of official status and official rights is a criminal offence defined as a cruel behaviour of officials in cases where they insult or hurt an individual or in any way affect the human dignity of an individual.³⁰

Apparently, there is a difficulty in defining sexual harassment in the Slovenian legal system. Other forms of harassment are subject of criminal offences in The Penal code. In order to implement the principle of equal treatment and prohibition of harassment irrespective on different discriminative grounds in other legal areas (not just ERA) and to qualify and eventually punish acts of harassment, there needs to be a more general definition of harassment. This would make it easier to combat and eliminate it.

b.4. Are there any existing or forthcoming Codes of practice on harassment?

²⁷ Article 129 of the ERA.

²⁸ Article 112 of the ERA.

²⁹ The Executing Criminal Sanctions Act, Official Gazette of The Republic of Slovenia no. 22/2000. Zakon o izvrševanju kazenskih sankcij (ZIKS), Uradni list Republike Slovenije številka 22/2000.

³⁰ Legal analysis of national and European anti-discrimination law for Slovenia 2001, by Vera Klopčič.

Sexual harassment is defined in the new ERA which came into force on January 1 2003. Previously, there were no provisions in Employment law relating to harassment. Consequently, Codes of practice did not exist. The new legislation stipulates the prohibition of harassment as a legal basis for adopting Codes of practice.

b.5. Is it contrary to national law to give instructions to discriminate? Does this conform to the directives?

Instructions to discriminate are unconstitutional and this derives from The Constitution: »Human rights and fundamental freedoms provided by this Constitution may exceptionally be temporarily suspended or restricted during a war and state of emergency. Human rights and fundamental freedoms may be suspended or restricted only for the duration of the war or state of emergency, but only to the extent required by such circumstances and inasmuch as the measures adopted *do not create inequality based solely on race, national origin, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other circumstances.*«³¹ Therefore, measures to discriminate shall not be adopted even in war or state emergency. This concept conforms with the Directives and such instructions might be punishable under Article 141 or lead to a criminal offence under Article 300 of The Penal Code.³²

Although age, disability and sexual orientation are not stated among the various grounds on which discrimination is prohibited, this can be derived from any other circumstances. Therefore we find existing provision compliant with both directives provided the competent organs interpret it in that way too.

In a situation of victimisation by private actors e.g. if an employer instructs an employment recruitment agency not to send any Roma workers, is not explicitly covered by the valid legislation. In our opinion giving instructions to discriminate would constitute a violation of Article 6 of ERA if interpreted properly. However it would be appropriate if legislation explicitly covered instructions to discriminate and provided sanctions for such behaviour.

c. Scope

Article 3.1 (Racial Equality Directive and Employment Equality Directive)

c.1. Fields of application

c.1.1. Does the prohibition of racial and ethnic discrimination apply to all the fields of application listed in Article 3 of the Racial Equality Directive, including both the private and the public sector?

Ethnic and racial discrimination, direct and indirect, is explicitly forbidden in the way it is forbidden by Directive 43/2000 EC in the field of employment in the public and private sector. In other fields covered by the directive, provisions are too general and on a principle level only and thus do not offer sufficient security in concrete cases.

³¹ See Article 16 of the Constitution of the Republic of Slovenia. Various grounds such as age, disability and sexual orientation might be included under “*other personal circumstances*”.

³² There is no special or explicit rule concerning with instructions to discriminate by private actors but such an act might be punishable as leading to criminal offence e.g. Article 141.

c.1.1.1. *Employment*

Article 49 of the Constitution guarantees everyone access under equal conditions to any position of employment. The ERA, which was in force until January 1 2003 did not contain an anti-discrimination clause. The new ERA, which was passed by the parliament on April 24 2002 and came into force on January 1 2003 includes an anti-discrimination clause. There is no case law to date. Article 6 ERA explicitly prohibits discrimination on the grounds of racial or ethnic origin. According to information from free trade union associations, collective agreements that were concluded in the period after new ERA came into force do not include provisions about discrimination, and it is not expected that such provisions will be included in forthcoming collective agreements.

ERA *inter alia* shortly, with one provision, regulates vocational training (these are regulated in detail by collective agreements or individual agreements), so the anti-discrimination provision in Article 6 also relates to vocational training. Unless otherwise determined in a special law, this act shall also govern the employment of persons employed by state bodies, local communities, institutions, other organisations and private individuals performing public services.

The Public Servants Act³³ deals with specific questions concerning the employment of public servants, while ERA involves general issues. In the Public Servants Act the principle of equal access to all work posts under equal conditions is ensured. Education and qualification for public servants is regulated also in the law but there is no anti-discrimination provision. Education Programmes set out specific details in this regard. The Employment And Insurance Against Unemployment Act³⁴ 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 Act mentioned does not include specific non-discriminatory rules.

c. 1.1.2. *Social Security*

Social security activity, which embraces preventing and solving social status problems of individuals, families and groups, is regulated through the Social Security Act³⁵. Article 4 states similarly to the constitutional provision in Article 50 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 citizen with a permanent residence in Slovenia and foreigners with a residence permit in Slovenia. The Parental Protection And Family Benefit Act³⁶ regulates insurance for parental protection and the rights arising there from, 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

³³ The Public Servants Act, Official Gazette of the Republic of Slovenia no. 56/2002. Zakon o javnih uslužbencih, Uradni list številka 56/2002.

³⁴ Employment and Insurance Against Unemployment Act, Official Gazette of The Republic of Slovenia no. 5/1991 (17/1991, 2/1994 - popr.), 12/1992, 12/1993, 71/1993, 38/1994, 80/1997 69/1998, 67/2002 .Zakon o zaposlovanju in zavarovanju za primer brezposelnosti, Uradni list Republike Slovenije številka 5/1991 (17/1991, 2/1994 - popr.), 12/1992, 12/1993, 71/1993, 38/1994, 80/1997 69/1998, 67/2002 .

³⁵ Social Security Act, Official Gazette of the Republic of Slovenia no. 54/1992 (56/1992 - corr.), 42/1994, 1/1999, 41/1999, 36 /2000, 54/2000, 26/2001. Zakon o socialnem varstvu, Uradni list Republike Slovenije številka 54/1992 (56/1992 - popr.), 42/1994, 1/1999, 41/1999, 36 /2000, 54/2000, 26/2001.

³⁶ Parental Protection And Family Benefit Act, Official Gazette of the Republic of Slovenia no. 97/2001. Zakon o starševskem varstvu in družinskih prejemkih, Uradni list Republike Slovenije številka 97/2001.

family incomes and insurance for pension and disability insurance are neutral, however protection from unequal treatment of particular ethnic or racial groups is not sufficiently guaranteed.

c.1.1.3. *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 Act³⁷ 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 lax provision, with an indefinite content, namely everyone is supposed to have a right to health care and a duty to contribute to its fulfilment according to own resources. The Health Services Act³⁸ handles the content and attendance of health activities, which can be performed as public or private health service. Health workers when attending to their duties are to treat all people under equal conditions and in the same manner and respect their constitutional and lawful rights. The only priority given is when there is a need for health intervention.

c.1.1.4. *Education*

The Constitution of the Republic of Slovenia establishes free education and obligatory primary education, which is financed from public resources. The main legal source in the field of education is the Organisation And Financing of Education Act³⁹, which does not prohibit discrimination on the grounds of race or ethnic affiliation explicitly. It does however set equality as one of the upbringing and educational goals in Slovenia.

The education system in Slovenia shall aim at:

- guaranteeing optimum development to individuals regardless of their sex, social and cultural background, religion, national origin and physical and mental handicaps;
- educating for mutual tolerance, developing an awareness of the equal rights of men and women, respect for human diversity and mutual co-operation, respect for children's and human rights and fundamental freedoms, and fostering equal opportunities for both sexes and thereby the capacity to live in a democratic society;
- developing language proficiency and skills as well as promoting the awareness of the position of the Slovene language as the language of the Slovene state, and--in ethnically mixed areas--fostering and developing the Italian and Hungarian languages in addition to Slovene;
- guaranteeing equal educational opportunities in regions with special development problems;

The educational goals listed 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:

³⁷ Health Care and Health Insurance Act, Official Gazette of the Republic of Slovenia no. 9/1992, 13/1993, 9/1996, 29/1998, 77/1998, 56/1999, 99/2001, 42/2002, 60/2002. Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, Uradni list Republike Slovenije številka 9/1992, 13/1993, 9/1996, 29/1998, 77/1998, 56/1999, 99/2001, 42/2002, 60/2002.

³⁸ The Health Services Act, Official Gazette of the Republic of Slovenia no. 9/1992 (26/1992 - corr.), 45-I/1994, 37/1995, 8/1996, 59/1999, 90/1999, 98/1999, 31/2000, 36/2000, 45/2001. Zakon o zdravstveni dejavnosti, Uradni list Republike Slovenije, številka 9/1992 (26/1992 - popr.), 45-I/1994, 37/1995, 8/1996, 59/1999, 90/1999, 98/1999, 31/2000, 36/2000, 45/2001

³⁹ Organization and Financing of Education Act, Official Gazette of the Republic of Slovenia no. 12/1996 (23/1996 - corr.), 101/1999, 22/2000, 64/2001, 101/2001, 108/2002. Zakon o organiziranju in financiranju vzgoje in izobraževanja, Uradni list Republike Slovenije, številka 12/1996 (23/1996 - popr.), 101/1999, 22/2000, 64/2001, 101/2001, 108/2002.

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.

Access to professional and occupational education on 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.⁴⁰ The same provision, which is too general and therefore not in compliance with the Directive 2000/43 is to be found in the High School Act⁴¹ and Higher Education Act.⁴²

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 aspect of a child's physical and mental growth⁴³. The Act and other regulations set out the pre-school upbringing and primary school education of Romany children.

The Elementary School Act introduces goals for primary school education, which include:⁴⁴

- the development of literacy and an ability to comprehend, communicate and self-expression in the Slovenian language and in the areas declared nationally mixed, in the Italian or Hungarian language as well;
- 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.

There are special provisions for children of Slovenian citizens who reside in Slovenia, whose mother tongue is not Slovenian. In accordance with international contracts special lessons of their mother tongue and culture are organised and it is possible to organise Slovenian lessons 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 is organised through international agreements.

The pre-school, primary school, as well as primary and secondary vocational education of secondary technical, 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 Act⁴⁵.

c.1.1.5. Public access to and supply of goods and services

⁴⁰ Vocational and Technical Education Act, Official Gazette of the Republic of Slovenia no. 12/1996, 44/2000. Zakon o poklicnem in strokovnem izobraževanju, Uradni list Republike Slovenije številka 12/1996, 44/2000.

⁴¹High School Act Official Gazette of the Republic of Slovenia no. 12/1996, 59/2001. Zakon o gimanzijah, Uradni list Republike Slovenije številka 12/1996, 59/2001.

⁴² Higher Education Act, Official Gazette of the Republic of Slovenia no. 67/1993, 39/1995, 18/1998, 35/1998, 99/1999, 64/2001. Zakon o visokem šolstvu, Uradni list Republike Slovenije številka 67/1993, 39/1995, 18/1998, 35/1998, 99/1999, 64/2001.

⁴³ Kindergarten Act, Article, Official Gazette no. 12/1996, 44/2000. Zakon o vrtcih, Uradni list Republike Slovenije številka 12/1996, 44/2000.

⁴⁴ Elementary School Act, Official Gazette of the Republic of Slovenia no. 12/1996, 33/1997, 54/2000, 59/2001. Zakon o osnovni šoli, Uradni list Republike Slovenije številka 12/1996, 33/1997, 54/2000, 59/2001.

⁴⁵ The Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act, Official Gazette of the Republic of Slovenia no. 35/2001. Zakon o posebnih pravicah pripadnikov italijanske in madžarske narodne skupnosti na področju izobraževanja, Uradni list Republike Slovenije številka 35/2001.

The Public Utilities Act⁴⁶ determines the way and the forms of the exercising public utilities. Public utilities provide material property in the public domain, which is accessible to everyone under the conditions provided by statute or ordinance of the local community. (Article 5 of the Public Utilities Act). It also envisages the establishment of bodies which protect users of property in the public domain. Their competence is giving notes and proposals, while the obligation of the State and local community is to inform them about the adopting measures.

Ownership and leasing affairs are regulated in The Housing Act⁴⁷ which allocates the beneficiaries of social housing on the ground of their income and the income of their family members. Articles 79 to 96 introduce the Housing Fund of the Republic of Slovenia that gives out financial aid with loan repayments and loans with a favourable interest rate. The terms for benefiting from the fund's offers are based on non-discrimination. However, the Act does not contain specific provisions on prohibition of racial or ethnic discrimination.

c.1.1.6. *The Roma people*

Despite discrimination on the basis of racial or ethnic affiliation being forbidden by the Constitution and most of the legislation mentioned above having provisions on equal treatment of citizen in the fields covered by the Directive 2000/43, cases of discriminatory handling of certain groups of persons, in particularly Roma people, have occurred in practice.⁴⁸

c.1.1.6.1. Employment of Roma people

In Slovenia the unemployment rate among Roma people is 87 percent.⁴⁹ It is unofficially proved that discrimination in this field is common, however there are little cases reported and no actions taken against violators.⁵⁰

c.1.1.6.2. Education of Roma people

Enrolment of Roma children to primary schools for pupils with special needs is ten times higher than the average in the country. Teachers and members of the commissions for classification of children report that such a percentage is a consequence of their inadequate knowledge of the Slovenian language.

c.1.1.6.3. Lodging of Roma people

Prior to Slovenia's independence, Roma people had lived on state land. The land has been returned to former owners through denationalisation, which has led to many Roma

⁴⁶Public Utilities Act, Official Gazette of the Republic of Slovenia no. 32/1993, 30/1998, Zakon o gospodarskih javnih službah, Uradni list Republike Slovenije številka 32/1993, 30/1998.

⁴⁷ The Housing Act, Official Gazette of the Republic of Slovenia no. 18I/1991-I (19/1991I- corr.), 13/1993, 21/1994, 22/1994, 29/1995, 23/1996, 24/1996, 44/1996, 1/2000, 22/2000, 57/2001, 87/2002. Stanovanjski zakon, Uradni list Republike Slovenije številka 18I/1991-I (19/1991I- corr.), 13/1993, 21/1994, 22/1994, 29/1995, 23/1996, 24/1996, 44/1996, 1/2000, 22/2000, 57/2001, 87/2002.

⁴⁸ The response of the Government of the Republic of Slovenia is that the data available at the time of writing are not credible enough. Trustworthy information will be accessible in April 2003 at the Statistical Office of Republic of Slovenia.

On order of the Office for nationalities of the Government of the Republic of Slovenia, the Institute for Ethnic Studies will also research Roma people in Slovenia.

⁴⁹ European Commission, 2000.

⁵⁰ Spremljanje pridruženja EU, Zaščita manjšin, 2001.

settlements becoming unlawful. From 105 settlements, only 31 have formally legalised status. Few of the settlements have running water and electricity. Local authorities have tried to move Roma people from an illegal hamlet, Kerinov Grm, to another location, but the will of other inhabitants prevailed. Strong protests were made, including threats to resist the move with force.

Only 40% of Roma people are autochthon and these are Slovenian citizens. Many others that were citizen of the former Republic of Yugoslavia were dispossessed of a residence permit in 1992 and have thus become foreigners without a residence permit in Slovenia. Such a status results in unregulated social and health security and access to education is rendered impossible.

c.1.2. Does the prohibition go beyond the scope foreseen in the Directive?

The Constitution of the Republic of Slovenia guarantees expression of national affiliation and the right to use one's language and script. The provisions mentioned are among the Human Rights and Fundamental Freedoms, granted by the Constitution.

The autochthonous Italian and Hungarian National Communities are guaranteed the right to use their national symbols freely and the right to establish organisations and develop economic, cultural, scientific and research activities, as well as activities in the field of public media and publishing by the Constitution (Article 64). In accordance with laws, these two national communities and their members have the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling. The geographic areas in which bilingual schools are compulsory is established by law. These national communities and their members are guaranteed the right to foster relations with their nations of origin and their respective countries. The state provides material and moral support for the exercise of these rights. In order to exercise their rights, the members of these communities can establish their own self-governing communities in the geographic areas where they live. On the proposal of these self-governing national communities, the state may authorise them to perform certain functions under national jurisdiction, and provides funds for the performing of such functions. The two national communities are directly represented in representative bodies of local self-government and in the National Assembly. The position of the Italian and Hungarian national communities and the manner in which their rights are exercised in the geographic areas where they live, the obligations of the self-governing local communities for the exercise of these rights, and those rights which the members of these national communities exercise also outside these areas, are all regulated by law. The rights of both national communities and their members are guaranteed irrespective of the number of members of these communities. Laws, regulations and other general acts which concern the exercise of these constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities.

c.1.3. Does the prohibition of discrimination on grounds of religion or belief, disability, age or sexual orientation apply to all the fields of application listed in Article 3 of the Employment Equality Directive, including both the private and the public sector?

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. Discrimination is prohibited in both direct and indirect forms. An employer may not put a perspective or an actual employee in an unequal position on the basis of race, skin colour, sex, age, health condition or disability, religious, political and other convictions, trade union membership, national and social status, 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. 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. This Act ensures equal access to all work posts under equal conditions.

Membership of trade unions 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 (for further details see answer “e.1” on victimisation).

Employers and other professional bodies associate in 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 Act⁵¹. Under the Attorneys Act⁵², all attorneys-at-law in Slovenia must be incorporated in chamber. The Small Business Act⁵³ includes provisions about Chambers for small businesses in Articles 33 to 42.

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. The law does not explicitly prohibit discrimination in this field.

The Pension and Disability Insurance Act grants special rights to disabled people, which include occupational rehabilitation, working at another job that fits the employee’s conditions and cash benefits. All listed measures enable disabled persons to participate in the working process as much as possible on an equal basis.

c.1.4. Does the prohibition go beyond the scope foreseen in the Directive?

Equality is guaranteed on the constitutional level as well as in the fields mentioned above and in the field of health care and education. (For further details see answers c.1.1. and c1.1.4.)

⁵¹ Chamber of Commerce Act, Official Gazette of the Republic of Slovenia, no. 14/1990, 49/1998, 19/2000, 94/2000. Zakon o gospodarski zbornici, Uradni list Republike Slovenije št. 14/1990, 49/1998, 19/2000, 94/2000.

⁵² Attorneys Act, Official Gazette of the Republic of Slovenija no. 18/1993, 24/1996, 24/2001, 48/2001. Zakon o odvetništvu, Uradni list republike Slovenije številka 18/1993, 24/1996, 24/2001, 48/2001.

⁵³ Small Business Act, Official Gazette of the Republic of Slovenia no. 50/1994, 36/2000, 61/2000, 42/2002. Obrtni zakon, Uradni list Republike Slovenije št. 50/1994, 36/2000, 61/2000, 42/2002.

Similar provisions are to be found in some particular legal provisions. In compliance with the Health Activities Act, health workers, when performing their duties, must treat all persons in the same conditions in the same manner and with respect for their constitutional and lawful rights. The only priority given is when there is a need for health intervention.

The Social Security Act provides for the right to social services and financial aid on the grounds of equal accessibility to all beneficiaries under the conditions set by an act of law. Education on different levels, from pre-school, primary, secondary and higher education is supposed to be accessible to all on equal terms. Provisions on that are scattered in acts of law governing particular fields.

The provisions stated above provide the principle of equality for accessing public goods similarly to the constitutional provision. However, none of the above regulations enforce the constitutional provision, nor do they contain an explicit prohibition of discrimination.

c.2. Exceptions and exemptions

Occupational Requirements

Article 4 (Racial Equality Directive and Employment Equality Directive)

c.2.1. Do such exemptions exist on the national level ?

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 act laying down the conditions for the performance of work for individual jobs. A collective agreement or an employer's general act 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. 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.⁵⁴ 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. The Defence Act⁵⁵ 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.⁵⁶ The Judicial Service Act⁵⁷ 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

⁵⁴ Police Act, Official Gazette of the Republic of Slovenia no. 49/1998 (66/1998- corr.), 93/2001, 56/2002. Zakon o policiji, Uradni list Republike Slovenije številka 49/1998 (66/1998- corr.), 93/2001, 56/2002.

⁵⁵ The Defence Act, Official Gazette of the Republic of Slovenia, no. 82/1994,44/1997, 87/1997, 87/2001, 47/2002 (67/2002 – corr.). Zakon o obrambi, Uradni list Republike Slovenije, številka 82/1994,44/1997, 87/1997, 87/2001, 47/2002 (67/2002 – popr.)

⁵⁶ 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.

⁵⁷ The Judicial Service Act, Official Gazette of the Republic of Slovenia no. 19/1994, 8/ 1996, 24/1998, 48/2001, 67/2002. Zakon o sodniški službi, Uradni list Republike Slovenije številka 19/1994, 8/ 1996, 24/1998, 48/2001, 67/2002.

specific sex for the post, except in the cases when a specific sex is a requisite condition for the performance of work. The legislation does not regulate what kind of posts could be advertised as exclusively based on sex criteria. The Public Servants Act⁵⁸, 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 specific work, in a working process or for the use of individual means for work, on the basis of a professional assessment of an authorised physician according to The Safety and Health at Work Act.

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.

c.2.2. Does national law define » genuine and determining occupational requirements« and, if so, how?

The legislation in force does not give any definition of genuine and determining occupational requirements. ERA uses the term “requisite condition for the performance of work” in relation to discrimination between men and women in Article 25. (See answer “c.1.3.”)

(particular provisions with regard to organisations the ethos of which is based on religion or belief)

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 priests. Religious communities manage those schools autonomously, determine their curricula and select the teachers. The Religious Communities Act, which is still in the process of being adopted (second reading), no longer contains this provision.

c.2.3. Does national law governing disability discrimination make any specific exception or provisions in relation to occupational health and safety rules?

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 c.3. Reasonable accommodation.)

c.3. Reasonable accommodation

Article 5 (Employment Equality Directive)

c.3.1 Are there specific national law provisions regulating the use of pre-employment medical examinations? If so, what are the main provisions/norms? What is the relationship between this body of law and the principle of equal treatment/prohibition of disability discrimination? How does this body of law relate to the duty to provide a “reasonable accommodation”?

⁵⁸ The present Act was adopted on June 11th 2002, entered into force on July 13th 2002, it will be used since June 28th 2003.

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. Article 26, Paragraph 5 of ERA regulates that a job applicant undergoes a medical examination at the employer's expense before signing the contract. The employee has to undergo medical examination when becomes employed for the first time or after a 6 month interruption between two jobs. The aim of such an examination is to determine whether an applicant is medically capable of performing the relevant job. ERA states that the medical examination should be done according to The Safety and Health at Work Act. Article 26, Paragraph 6 of ERA regulates that the medical examination must not take into account circumstances that are not directly related to the work at the position of employment concerned⁵⁹. ERA is based on anti-discrimination principles. 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. Article 43 ERA regulates that the employer must secure conditions for security and protection of health of the employee in accordance to 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 provisions on training and employment of disabled persons and provisions on pension and disability insurance. 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.

c.3.2. Does national law permit an employer to inquire about disabilities prior to entering into a contractual relationship with a prospective employee? If so, in which stage of the job application procedure? Are prospective employees required to disclose, prior to employment, disabilities that impact on the job performance? If so, how much and what type of information are they obliged to disclose? According to the law, what consequences follow if they fail or refuse to disclose the information?

The employer could inquire about disabilities of a prospective employee prior to entering into the contractual relationship. The prospective employee is sent to medical examinations after the interview and prior to the conclusion of the contract (see Article 26, Paragraph 5 of ERA above). Article 26, Paragraphs 2 and 3 ERA do not allow the employer to inquire about nor to link marital or family status, data about possible pregnancy and other data that are not in direct connection to the labour relationship or to the conclusion of the contract. Article 27 ERA regulates that a job applicant must submit to the future employer any data and certificates which prove, that the employee meets the criteria for that work. The employee must also inform the future employer about all facts that are known to the employee and are important for the labour relationship and about other circumstances that disable or limit considerably the employee in performing the duties from the contract or that could put at risk life or health of persons with whom the employee comes into contact with while performing his duties. Article 27, Paragraph 2 ERA states that the job applicant is not obliged to answer questions that are not in direct connection with the labour relationship. When the contract

⁵⁹The employer – who is a legal person - is fined at least 1,000.000 SIT if it does not act in accordance with Article 26 of ERA, the employer – who is a natural person is fined at least 500.000 SIT and the person responsible is fined with at least 80.000 SIT. See Article 229 ERA.

between the two sides is concluded, the employee must, according to Article 34 ERA inform the employer about vital circumstances that impact or could impact on the performing of the employee's contractual duties. The employee is liable if he does not disclose the data required by law. Failure to do so could result in dismissal either with a notice period⁶⁰ or without it or in disciplinary sanctions (in case of minor breaches)⁶¹.

c.3.3. Is the duty to provide reasonable accommodation defined by law? Is the failure to provide such accommodation considered to constitute direct or indirect discrimination and/or does it infringe other (labour law) standards? Does such a duty exist only with respect to people with disabilities or also with respect to people discriminated against on the other grounds covered by the two Directives?

The employer has to provide reasonable accommodation as described above (Articles 43 and 200 ERA). The failure to provide reasonable accommodation is an infringement of ERA and The Safety and Health at Work Act. A failure to provide reasonable accommodation could result in direct or indirect discrimination as disabled employees and employees who are protected against discrimination on other grounds or even other employees, who do not fit in categories listed in the two Directives would not be in the same position as other employees and thus a breach of Article 6 ERA - the general anti-discrimination provision - would occur.⁶² Article 116 ERA states that the employer must not terminate the contract of a disabled employee in the 2nd or 3rd category or because of a business reason unless it is not possible for the employer to allow the employee to work at another position of employment or to work part-time in accordance with pension and disability insurance provisions. The employer must not terminate the contract of a disabled person, who is not defined as job handicapped, for business reasons, unless it is not possible for the employer to allow the employee to perform suitable work in accordance to provisions of training and employment of disabled persons. If the contract has been terminated because of business reason or because of an incapability of the employee and the employee is absent from his work at the end of the pending period due to illness or injury, the labour relationship ends when the employee's medical capability to perform his work has been ascertained. If the employee's medical capability is not ascertained in a six month period after the end of the notice period, the labour relationship ends at that time. The protection mentioned is not applied when insolvency proceedings against the employer are commenced. Employers have to adjust doors, stairways, bathrooms, washrooms, etc. that are directly used by the disabled and the workplace of disabled persons.⁶³ Article 101 of The Pension and Disability Insurance Act regulates that the employer of a 2nd or 3rd category disabled⁶⁴ employee employed in The Republic of 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

⁶⁰The notice period before dismissal is required when an employee loses the job because of his inability to perform in accordance with the contract and in the case of the employee's breach of his contractual duties. See Article 88 ERA.

⁶¹Discipline sanctions include warning, fine, etc. See Article 175 ERA.

⁶²Article 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.

⁶³ 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.

⁶⁴ Disabled employees are categorised in three categories according to their remaining capacity to work. 1st category are not capable to work, 2nd and 3rd category are able to work but under certain limitations or after rehabilitation. See The Pension and Disability Insurance Act, Article 60.

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.

c.3.4. How do courts determine whether accommodation is “reasonable” or whether it imposes a “disproportionate burden”? What type of criteria is used (medical, occupational, educational, grants etc.)? How does, under national law, a failure to provide a reasonable accommodation relate to the prohibition of (direct or indirect) discrimination?

As mentioned above, the employer must provide reasonable accommodation in accordance with Articles 43 and 200 ERA. The work place should be adjusted taking in consideration the disability of the workers. Companies which are granted “Company for disabled” status must employ at least 40% disabled staff in a year period. Employers that conclude contracts with disabled persons get tax discounts and other benefits.⁶⁵ The Supreme Court has dealt with cases where employees wanted to enforce their rights in relation to reasonable accommodation and confirmed the priority of medical criteria when dealing with the employer’s obligations in respect of accommodating the needs of disabled employees.⁶⁶ As a result of the legislation determining specific obligations for the employer and the state in relation to providing reasonable accommodation, there are no disputes whether the accommodation is reasonable or if it imposes a disproportionate burden.

d. Minimum requirements and positive action

d.1. Minimum requirements

Article 6 (Employment Equality Directive)

d.1.1 When is differentiation on grounds of age »objectively and reasonably« justified under national law? How is this test being applied?

During the procedure for the adoption of the Pension and Disability Insurance Act, the opinion that it is justifiable to determine different requirements for men and women prevailed. Therefore 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 insurance⁶⁷. 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

⁶⁵ Article 39 of the Act on qualifying and employing disabled persons, Official Gazette of the Republic of Slovenia no. 18/1976. Zakon o usposabljanju in zaposlovanju invalidnih oseb (ZUZIO), Uradni list Republike Slovenije številka 18/1976. It has to be mentioned, that a new law regulating this area is being discussed because the present one is out of date as it was passed in 1976 in a different socio-political climate.

⁶⁶ In the judgement no. VIII Ips 67/95 of November 7th, 1995 the question was whether the job to which the disabled employee had been assigned was adequate for the 3rd category employee. The plaintiff had previously gained that his employer had to move him to another working place with better microclimatic conditions, mostly sitting with no need for lifting over 15 kg, no need to kneel down, to stoop, to crouch, no standing and no need to walk for longer periods of time. The employee was not able to pack pizzas and other similar products in 25 kg bags and lift them, because it was done while standing and on the average half of the monthly working time. That was in contrast to the expert’s opinion, that it would be suitable for the employee to remain seated for approximately 75% of the working time and not be lifting over 15 kg. The Supreme Court rejected the employer’s revision request and had used the medical criteria. In the judgement no. VIII Ips 184/95 of September 24th 1996 the Supreme Court stated, that the only important criteria in deciding whether an employee could be granted work handicapped status and his remaining capacity for work or the complete loss of those, is medical.

⁶⁷ See Article 36 Pension and Disability Insurance Act with regard to Article 52 of the same Act.

burden women had to carry, members of Parliament thought it would be fair to determine lower age for women to be granted retirement.

In the opinion of some theorists, the determination of different assessment percentage for granting men and women old age pension is questionable. The Pension and Disability Insurance Act states that at a minimum insurance period of 15 years, the pension is determined on a 35% of assessment basis⁶⁸ for men and 38% of assessment basis for women (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. This seems to be the a further problem as these rules are used for the assessment of disability pension and pension for widows.

Regarding the differentiation on the grounds of age concerning active employment policies see answer d.1.8 on page 22.

d.1.2 Are any specific arrangements made in national law regarding age discrimination and occupational security schemes?

There are no special arrangements made in the Slovenian legal system that would deal with age discrimination and occupational social schemes. The whole system of pension insurance is set out in the Pension and Disability Insurance Act.

d.1.3 Is compulsory retirement permitted? Are there any national provisions on retirement? Do they allow fixing retirement ages by individual or collective labour agreements and, if so, what are the conditions?

There is only one situation in which compulsory retirement is permitted that is 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.

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. However, determining retirement ages in individual contracts would not be contrary to the provisions in the field of social security.

Nevertheless, there is no practice of determining retirement ages in collective agreements nor in individual contracts.

d.1.4 Are mandatory retirement ages fixed in national legislation / legally binding collective agreements? At what ages? What (if any) conditions/restrictions are imposed (e.g. not before

⁶⁸ 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.

state pension age/entitlement to (full) state pension)? Are rights to protection from unfair dismissal lost upon reaching this retirement age?

As already mentioned above, 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%)⁶⁹.

d.1.5 Are mandatory retirement ages (widely) imposed by employers (even if apparently in agreement with employees)? At what ages? Are rights to protection from unfair dismissal lost upon reaching this retirement age?

Employers in Slovenia do not impose ages 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.

d.1.6 Are early retirement schemes promoted by the State? If so, are they justified (or might they be justified)? By any of the examples provided in Article 6 of the Directive (legitimate employment policy, labour market and vocational training objectives etc.)?

As mentioned above, the Republic of Slovenia stimulates later and not early retirement. However, the previously valid Pension and Disability Insurance Act included a provision for early retirement which was the instrument for dealing with redundancy. Redundancy occurred after the attainment of independence of Republic of Slovenia due to the transformation to a new economic system and due to »hidden unemployment«.

In the new Pension and Disability Insurance Act, adopted in 1999, this provision is not incorporated. However there is Article 55 of this Act, which stipulates that an assessed pension, is subject to a reduction due to retirement before completing full retirement age (63 years for men and 61 years for women). Article 53 of the Pension and Disability Insurance Act stipulates that one who completes 40 years of working age for men (38 for women), but is not 63 year-old (61 year-old if women), their assessed pension is subject to reduction for max. 0,3% at age of 58 to min. 0,1% at age of 61.

Article 55 stipulates the exceptions to provision in article 53. The right to a full age pension which is not subject to reduction when one completes 40/38 years of work but is not 63/61 year-old, if employment relationship ceases due to the bankruptcy of employer, or the economic reasons, or if one is considered disabled under this act, or if the employment relationship ceases because the employer employs a younger employee.

Thus Article 55 imposes a new system similar to instituting early retirement which is objectively and reasonably justified. This is the only example of a situation when early

⁶⁹ see Article 50 and Article 51 Pension and Disability Insurance Act

retirement is promoted by the State although it is in the interest of State, that one contributes of the pension and social security scheme for as long as possible

d.1.7 Is selection of redundancy widely decided on age grounds?

Article 100 ERA sets the criteria for deciding on redundancy. The first criteria to be taken into consideration when deciding redundancy is the professional education of the employee and his work qualifications, as well as the required additional knowledge and aptitudes, followed by the criteria of his work experience, his performance at work, his years of active employment, his health condition, 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 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 just the opposite effect – some employers are being rude to employees they are trying to get rid of. 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. .

d.1.8 Is there obvious evidence of age discrimination in access to training opportunities?

There is no obvious evidence of age discrimination in this field. 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 49b Employment and Insurance for the Case of Unemployment Act⁷⁰ states: 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.

⁷⁰ Employment and Insurance for the Case of Unemployment Act, Official Gazette of the Republic of Slovenia no. 5/1991, 12/1992, 71/1993, 38/1994, 69/1998 and 67/2002. Zakon o zaposlovanju in zavarovanju za primer brezposelnosti, Uradni list Republike Slovenije številke 5/1991, 12/1992, 71/1993, 38/1994, 69/1998, 67/2002.

d.2. Positive action

Article 5 (Racial Equality Directive) and Article 7. (Employment Equality Directive)

d.2.1. Do specific measures exist in order to ensure or promote full equality or to compensate disadvantages linked with racial or ethnic origin, religion or belief, age, disability or sexual orientation ?

d.2.1.1 Measures for promoting full equality or to compensate disadvantages of Roma people⁷¹

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.«⁷² This is a legal basis for adopting acts and measures to protect Roma people but the same level of minority protection as applies to the other two autochthonous ethnic communities is not applied to the Roma people. The measures for achieving the effective equality of the Roma people are provided for in social government programs⁷³ and by provisions in different laws. Laws adapted to Roma people enable 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 Act⁷⁴ stipulates that Roma people, who are autochthonous indigenous to a particular area are to have at least one representative in the municipal council (Article 39, paragraph 5).

The organisation and Financing of Education Act⁷⁵ 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.

Case law⁷⁶

In its ruling concerning the political participation of Roma people at a local level (B.-II, point 7)(U-I-416/98-38 of 22 March 2001), the Constitutional Court of the Republic of Slovenia states that the constitutional provision in Article 65 of the Constitution » empowers the legislator to grant special rights, apart from the general rights held by everyone, to the Roma people as a special ethnic community. In granting special status and special rights to Roma

⁷¹ Roma community is specific ethnic community (remark of the Government of the Republic of Slovenia).

⁷² So far by nine different laws according to remark of the Government of the Republic of Slovenia.

⁷³ The Government prepared different new integration programmes e.g. the measures for achieving effective equality of the Romany community are provided in the governmental programme “ Help for Roma” (Program za pomoč Romom). It was adopted in 1995 and 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. 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 (remark of the Government of the Republic of Slovenia).

⁷⁴ The Local self-government Act, Official Gazzette of the Republic of Slovenia no. 57/1994, 14/1995, 26/1997, 70/1997, 10/1998, 74/98. Zakon o lokalni samoupravi, Uradni list Republike Slovenije številka 57/1994, 14/1995, 26/1997, 70/1997, 10/1998, 74/98,70/2000, 87/2001, 51/2002.

⁷⁵ The organisation and Financing of Education Act, Official Gazzette of the Republic of Slovenia no. 12/1996. Zakon o organizaciji in financiranju vzgoje in izobraževanja, Uradni list Republike Slovenije številka 12/1996.

⁷⁶ the case is taken from the Legal analysis of national and European anti-discrimination law for Slovenia 2001, by Vera Klopčič

people, the legislator is not restricted by the principle of equality which in the granting of human rights and fundamental freedoms prohibits any kind of discrimination based on nationality, race or any other circumstance defined in the first paragraph of Article 14 of the Constitution. 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.⁷⁷

In his submission for the review procedure, the applicant R.Š. stated that in the local elections in 1998 he had not been allowed to run for representative of the Roma people in the Novo Mesto Municipal Council and that in his opinion the Statute of the municipality of Novo Mesto, which lacks the provision which would give the Roma people the right to elect their representative in the Municipal Council, did not conform to the Constitution and Article 35 of the Local Self-government Act.⁷⁸ As a result a bill of amendments to Local self-government Act was drafted on 4 March 2002. In Article 14 (Article 101/a of the Local self-government Act was added) it specified that 20 municipalities should provide Roma people indigenous on its areas a right to have a representative in Municipal Council until local elections in 2002.^{79,80}

d.2.1.2. *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 Act⁸¹ 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.

⁷⁷ In a review of the constitutionality and legality of procedures in March 2001, the Constitutional Court *inter alia* established that Article 39, paragraph 5 of Local Government Act did not conform to the Constitution since it lacks conditions to guarantee right to representation in Statutes of the Municipalities. The parliament had to remedy this non-conformity (remark of the Government of the Republic of Slovenia).

⁷⁸ In the meantime the Statute of the municipality of Novo Mesto has been amended to conform with this ruling of the Constitutional Court of Slovenia.

⁷⁹ Fourteen statutes of municipalities conformed at the time of the elections in 2002. However, six of them have not been amended yet. In October 2002 the Constitutional Court of the Republic of Slovenia in its ruling (U-I-315/02-11) initiated by four representatives of municipalities established that Article 14 of Local Government Act complies with the Constitution of the Republic of Slovenia. Fifteen representatives of Roma people were elected for the first time at the last local elections in November 2002 (remark of the Government of the Republic of Slovenia).

⁸⁰ In a review of the constitutionality and legality of statutes of six municipalities which did not conform with the Local Government Act in November 2002 initiated by the Government of Republic of Slovenia, the Constitutional Court in its ruling (U-I-345/02-9) established their non-conformity. The Constitutional Court ordered municipalities to amend their statutes in 45 days after first municipal session and to issue writs for elections for Roma representatives in 30 days after announcement of amended statutes. However, Municipality of Grosuplje, Semič and Šentjernej still do not have Roma representatives (remark of the Government of the Republic of Slovenia).

⁸¹ The Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act, Official Gazette of the Republic of Slovenia no. 12/1982. Zakon o posebnih pravicah pripadnikov italijanske in madžarske narodne skupnosti na področju izobraževanja, Uradni list Republike Slovenije številka 12/1982.

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). In this context Article 7, Article 8 and Article 15 are relevant. 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, paragraph 2). 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 Act⁸² is important for development of culture, language and schooling and implementation of special rights of national minorities.

d.2.1.3 Special measures in labour and social security legislation

New ERA (as the previously valid Employment Act) 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. *women*: prohibition on underground work (Article 186), prohibition on night work in industry and construction engineering (unless female employees are family members of the employer or are working at leading position – Article 153),
3. *pregnant women*: in case of a dispute concerning special protection of rights of a pregnant woman, the burden of proof lies on the employer (Article 187.2). The employer is not entitled to demand a female worker to provide any kind of information concerning pregnancy unless the pregnant woman is willing to provide employer with such information in order to assert her rights (Article 188). There is a prohibition of work which would jeopardise her health or health of the child (Article 189), right to limit working time or adjust working conditions (Article 189 paragraph 1), prohibition on overtime and night work provided that such work would jeopardise her health or health of the child (Article 190.2), an employer can not dismiss female employee while she is pregnant nor during the breast-feeding period and whilst exploiting her leave of absence (only non-regular dismissal is possible with the consent of the Work inspectorate, or if employer ceases to exist – Article 115.1)
4. *parents*: over-time and night work only with the employee's consent, if employee is taking care of no more than three-year old child or not more than seven-year-old child who is very ill or is mentally disabled and the employee takes care of the child by himself/herself (Article 190 paragraph 1 and Article 190 paragraph 3), paid parental leave (Article 191 and 192), right to breast-feed during working hours (Article 193), protection from dismissal during parental leave (Article 115.1)
5. *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 his consent until the employee fulfils the conditions for entitlement to old-age pension (Article 114)
6. *disabled persons*: under the provision of Article 199 ERA, disabled persons enjoy special rights according to regulations concerning training and employing disabled persons (Pension and Disability Insurance Act). Those who are still able to perform some kind of work shall be granted other appropriate job, part-time job, vocational rehabilitation, salary (loss)

⁸² Self-governing Ethnic Communities Act, Official Gazette of the Republic of Slovenia no. 65/1994. Zakon o samoupravnih narodnih skupnostih, Uradni list Republike Slovenije številka 65/1994.

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

7. *other employees*: worker and trade union representatives are entitled to special protection. They cannot be dismissed without the consent of the body to which he or she belongs (Article 113) provided that he or she performs their duties in accordance with the relevant regulations and collective labour agreements. They cannot be deprived of any rights arising from their status for reason of their activity (see Article 210 paragraph 2 ERA).

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 Employment and Insurance in Case of Unemployment 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 and employs a job seeker or employee whose work has become permanently dispensable as well as the job seeker who 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 (see Article 48a Employment and Insurance Against Unemployment Act).

d.2.2. Are there comparable specific measures in relation to gender discrimination?

The Equal Opportunities for Men and Women Act defines general and special measures. According to Article 7, special measures are temporary measures which aim to adopt equal opportunities of men and women and promote gender equality in certain areas of society, when an unbalanced representation of men and women or unequal status of one gender is established. Unbalanced representation is present when representation of one gender in certain areas of society or its part is lower than 40%. Special measures eliminate the impediments which cause an unbalanced representation or unequal status of one gender, or give an advantages in the sense of stimulating a lesser represented gender. Such measures must be reasonable and proportionate to the intention of the special measure. Beside stimulating and *programme* measures, the Act provides for positive action measures, which in respect of compliance with conditions and standards, as provided by the law, gives an advantage to the lesser represented gender until balance or equal representation is achieved. Article 8 stipulates that positive action can be adopted in all areas of society. Positive action is taken by means of action plans to stimulate and establish equal opportunities based on gender situation analysis. Action plans are subject to the consent of The Office for Equal Opportunities and define the reasons for adopting the positive action, its aims, the start of its implementation, monitoring, termination and supervision of implementation of positive actions.

CHAPTER 2: REMEDIES AND ENFORCEMENT

a. Judicial and administrative procedure

a.1. What judicial, administrative and conciliation procedures are available on the national level for the enforcement of the principle of equal treatment? Is action needed on the national level to comply with Articles 7.1 and 9.1 respectively?

The Constitution of the Republic of Slovenia guarantees the right to judicial procedures for the protection of human rights and fundamental freedoms in Article 15 paragraph 4: (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) and in Article 23 which declares the right to judicial procedure stating that everyone has the right to have any decision regarding his rights, duties and any charges brought against him, made without due delay by an independent, impartial court constituted by law. The Civil procedure Act⁸³ 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.⁸⁴ The above mentioned specialised Labour and Social Court uses the Civil procedure Act. The condition for initiating a civil procedure is that a plaintiff has a procedural and action capacity which is very similar to a legal and *business* capacity.

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 which is available in Slovenia. The Act amending and supplementing the Civil Procedure Act was adopted with a clear intention of stimulating alternative dispute procedures. The presiding judge is obliged to conduct a conciliation procedure before the trial. 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 (Article 100, Paragraph 1). This condition is being used by judges to instruct victims take the action before the civil court, since criminal judges are specialised in criminal procedure and penal law. 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 public 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.

The Human Rights Ombudsman in his Annual Report for 2001 draws attention to the fact that judges are inaccessible to parties to a procedure even in case of emergency when some things could be settled through telephone e.g. cancellation of the trial. The party who is in better a financial situation has the advantage it can afford a »better« attorney who is a personal friend of the judge and has personal access to the judge. The Judicial Order was supposedly modified following the intervention of Human Rights Ombudsman⁸⁵.

Since judicial procedures for human rights protection are customarily very 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

⁸³ Civil procedure Act, Official Gazette of the Republic of Slovenia 26/1999 and 96/2002 (Zakon o pravdnem postopku, Uradni list Republike Slovenije 26/1999 z dne 15.4.1999 in 96/2002)

⁸⁴ Article 1 of The Civil Procedure Act

⁸⁵ See Human Rights Ombudsman seventh Annual Report for 2001, page 27 also available on web page <http://www.varuh-rs.si>

Free legal aid Act was adopted with intention of remedying this situation,. This Act enables individuals to get an attorney at law at the expense of the State. Prior to the adoption of The Free legal aid Act, The Civil procedure Act and The Judicial Tax Act (Article 13) included 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.

Foreigners, who bring an action in to the Courts in Slovenia, must provide advance payment for the costs of the procedure at the demand of defendant which must be accepted by the court. Exceptions, as well as this rule, are contained in The International Private Law and procedure Act⁸⁶.

Administrative procedures

The principle of equality restricts the activities of administrative bodies and is one of fundamental principles of public administration. Effective rights and remedies against public bodies are essential for the effective protection of human rights.

The principle of equality limits any arbitrary activities of administrative organs and is one of basic principles which regulates the activities of administrative organs. Legal means for protection of individual rights in relation to public administration are relevant for the effective protection of their rights. The following formal administrative protection of individual rights is provided in our legal system:

- administrative procedure
- judicial review on administrative acts as judicial supervision
- constitutional protection in form of constitutional complaint.

The administrative procedure is regulated by The General Administrative Procedure Act⁸⁷. Administrative organs and other state bodies, local government bodies and public powers holders shall act in accordance with this Act, when applying provisions directly they render a decision on rights, duties and legal benefits of natural person, legal person and other parties (Article 1). In Slovenian national law, a general administrative procedure which is regulated by The General administrative Act and special procedures regulated in other statutes are provided. Therefore some procedural questions may be regulated differently in special statutes relating to General act (Article 3). According to Article 4 of The General Administrative procedure Act is *mutatis mutandis* applicable in other public law matters inasmuch as they are not regulated by special administrative procedures. It is important for the implementation of equal treatment that 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 whom a claim is filed. Parties also might be (a group of persons) as much as they can be holders of rights and duties (Article 42). The significant relevance is given to the provision in Article 62 which stipulates the use of the language in the procedure and the distinction between the official language and right to use one's own language. An administrative procedure is conducted in Slovene language. In ethnically mixed areas, the Italian and Hungarian languages are equal to the Slovene language. In the administrative procedure of ethnically mixed areas the use of the language of the national minority is guaranteed throughout the procedure provided that one of the parties uses that language. The

⁸⁶ International Private Law and Procedure Act, Official Gazette of Republic of Slovenia no. 56/1999. Zakon o mednarodnem zasebnem pravu in postopku, Uradni list Republike Slovenije številka 56/1999.

⁸⁷ The General Administrative Procedure Act, Official Gazette of the Republic of Slovenia no. 80/1999, 70/2000, 54/2002. Zakon o splošnem upravnem postopku, Uradni list Republike Slovenije številka 80/91999, 70/2000, 54/2002.

parties and other participants to the proceedings, who cannot use the language of the procedure 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.

Judicial protection and supervision of the activities of state bodies is guaranteed by Administrative litigation. Judicial protection of the rights and legal interests of citizens and organisations is guaranteed against decisions and actions of administrative bodies and bearers of public authority or in accordance with the statute of other state bodies and local communities bodies. 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. (see Article 1 paragraph 1, 2 and 3 The Judicial Review Act⁸⁸). 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.

Constitutional procedure

As it concerns constitutional protection, significant importance is attached to a constitutional complaint. 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.⁸⁹ Furthermore, the Constitutional Court decides whether to accept a constitutional complaint for adjudication on the basis of criteria and procedures provided by law. Any person may, under the conditions determined by the law, lodge a constitutional complaint with the Constitutional Court if he/she 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. The complaint should be lodged within 60 days of the day of the act.⁹⁰ A senate of 3 judges decides behind closed doors whether to accept a constitutional complaint and begin proceedings. The constitutional court may decide not to begin proceedings or accept a constitutional complaint for the to reasons listed in Article 55 of the Constitutional Court Act. 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 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

⁸⁸ The Judicial Review Act, Official Gazette of The Republic of Slovenia no. 50/1997 and 70/2000. Zakon o upravnem sporu, Uradni list Republike Slovenije številka 50/1997 in 70/2000.

⁸⁹ 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.

⁹⁰ 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.

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.^{91 92}

b. Associations

Are associations and other entities with a legitimate interest in ensuring compliance with anti-discrimination law entitled to engage in judicial and/or administrative procedures on behalf of or in support of the complainant? If so, how often do associations and other entities make use of this possibility and with what results?

The Civil procedure Act which is used for procedures before The Labour and Social Court enables the engagement of other subjects in litigation in various manners. The co-plaintiff or co-defendant arise in the situation when more than one person brings a law-suit into the court or when there is more than one defendant provided that there is a coherent legal relation or so-called legal community between them and their rights or obligations are based upon the same facts and legal basis or in case of solidarity of obligations or claims.

In some cases a third party may want to see that one of the parties engaged in civil proceedings succeed since that would be in the third party's interest. These are called interveners as they intervene in disputes between two parties. Such a third party may step in the procedure at any time until the end of a trial provided they have a legal interest. The mere declaration of entry is enough even though each party has a right to oppose the intervener's right to be involved in the procedure and submit to the court that it rejects the intervener's application.

Thus far we are not familiar with cases in which associations participated on behalf of or in support of a complainant. 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. However, very often trade unions will provide legal aid for their members through an attorney which is financed by the trade union. 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.

This way employees who would otherwise not have appropriate protection, can fully exercise their rights in all kinds of procedures.

There are of course other non-governmental organisations which follow other proceedings for the protection of human rights.

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

⁹¹ See Article 50 to 60 of the Constitutional Court Act, Official Gazette no.:15/94 (Zakon o ustavnem sodišču, Uradni list 15/1994)

⁹² This paragraph was included on the request of the Government of the Republic of Slovenia.

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 aggrieved party is not necessarily engaged in the administrative procedure. 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).

Associations and other entities, especially trade unions and non-governmental organisations might be engaged in proceedings on behalf of the parties in accordance with The Free legal Aid Act⁹³. Free legal aid guarantees the right to judicial protection based on the principle of equality in respect of the social position of individuals who require legal aid. The recipients of free legal aid are *inter alia* non-governmental organisations and other *non-profit* and registered entities of public interest in disputes concerning public interest activities or their aim irrespective of financial status.

c. Time limits

c.1. What is the situation concerning time limits?

The general time limit of five years in the law of torts is defined in The Code of Obligations⁹⁴, Article 352. The new ERA in Article 204 sets out a special time limit for those who first seek to protect an employee's rights directly with the employer:

Paragraph 1: if an employee believes that his employer is not fulfilling his obligations arising from an employment relationship or is violating any of the employee's rights, he shall have the right to demand that the employer rectifies the violation or fulfil his obligations.

Paragraph 2: if an employee believes that a written decision by his employer violates any of his rights, he shall have the right, within eight days of receipt of the decision which violates his right, to demand that the employer rectifies the violation. If, within a further period of eight days and after receipt of the employee's written request, the employer fails to fulfil his obligations arising from employment or fails to rectify the violation, the employee may request judicial protection before the competent labour court within 30 days.

Paragraph 3: cancellation of a contract of employment and a decision on an employee's liability to disciplinary action may be contested by the employee before the competent labour court within 30 days of receipt of the cancellation or decision from the employer. Paragraph 4: notwithstanding the deadlines referred to in the first and second paragraphs, the employee may initiate monetary claims arising from an employment before the competent labour court directly. Paragraph 5: an unselected candidate who believes that the selection process violated the legal prohibition of discrimination may, within 30 days of receipt of the employer's notification, request judicial redress before the competent labour court.

An individual contract can include an agreement between the employer and employee, that any possible disputes arising out of the employment relation will be settled through an

⁹³ The Free legal Aid Act, Official Gazette of the Republic of Slovenia no. 66/2001. Zakon o brezplačni pravni pomoči, Uradni list Republike Slovenije številka 66/2001.

⁹⁴ The Code of Obligations, Official Gazette of the Republic of Slovenia no. 83/2001. Obligacijski zakonik, Uradni list Republike Slovenije številka 83/2001.

arbitration body. If the arbitration body does not reach a decision within the time limit determined by both parties involved or within 60 days, the employee can bring an action before The labour and social court (Article 205 ERA). Furthermore, Article 206 stipulates that monetary claims shall become statute-barred five years from the day they arose.

The time limits for bringing actions in the case of judicial review of administrative acts are prescribed by Articles 21 and 26 of The Judicial Review Act⁹⁵. The time limit for bringing the action is 30 days from the service of the final individual act or individual actions and acts which intrude upon the constitutional rights of the individual.

d. The burden of proof

Does the principle of the shift or easing of the burden of proof in cases of discrimination exist under national law (constitutional, civil, penal, labour and administrative)?

The burden of proof in cases when discrimination is alleged by the plaintiff is explicitly arranged in the new ERA. Article 6 paragraph 4 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 whether 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. 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.

Are there comparable provisions in national law in relation to gender discrimination (this is covered by Directive 97/80/EC on the burden of proof in cases of discrimination based on sex)?

There are no special provisions in the Slovenian legal order which would specifically determine that in cases when discrimination on grounds of sex is alleged, the burden of proof rests with the defendant. Such a provision is not necessary since Article 6 paragraph 4 cites sex, among other grounds which shall not be a reason for differential treatment. However, it would be appropriate if such a provision was included in some other Acts regulating other fields of life, since the very definition of discrimination is only included in ERA.

⁹⁵ The Judicial Review Act, Official Gazette of the Republic of Slovenia no. 50/1997 and 70/2000. Zakon o upravnem sporu, Uradni list Republike Slovenije številka 50/1997 in 70/2000.

e. Victimisation

Article 9 (Racial Equality directive) and Article 11 (Employment Equality directive)

e.1. Does protection against victimisation, as defined in Article 9 and Article 11 respectively, exist in national law? Please make precise references to the relevant legal provisions and case law.

There is a lack of appropriate protection of individuals who would potentially be victimised as a result of their activities in order to enforce compliance with the principle of equal treatment.⁹⁶ In Article 21 of The Constitution of The Republic of Slovenia, respect of human personality and human dignity is granted in criminal and all other legal proceedings. The Penal Code deals with offences related to labour relationships and social security in chapter 22. Article 205 of The Penal Code punishes anyone who *inter alia* willingly breaks rules on ending a labour relationship or the rule on the protection of young and handicapped persons. The offender is punished with a fine or up to one year's imprisonment. The Criminal Procedure Act⁹⁷ 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. 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. According to laws regulating Civil proceedings, Criminal proceedings and Administrative proceedings, a judge or a person presiding over those proceedings could be eliminated from deciding in those proceedings if certain circumstances rise questions over his or her objectivity.⁹⁸

f. Sanctions

Article 15 (Racial Equality Directive) and Article 17 (Employment Equality) Directive

f.1. What provisions exist on the application of effective, proportionate and dissuasive sanctions, penalties and remedies in anti-discrimination cases? How do these compare to sanctions in other areas (e.g. labour law)? Do equivalent provisions already exist on the national level in other areas? Is multiple discrimination an aggravating circumstance?

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

⁹⁶ Depending on the facts of the case there could be a violation of other Penal Code articles (Articles 261, 244, 292, 206 and 209).

⁹⁷ The Criminal Procedure Act, Official Gazette of The Republic of Slovenia no. 63/1994, 6/1999, 111/2001. Zakon o kazenskem postopku (ZKP-1), Uradni list Republike Slovenije številka 63/1994, 6/1999, 111/2001.

⁹⁸ Eg. Article 37 of The Administrative procedure Act.

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. 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 states probably one of the most important anti-discrimination sanctions, by which 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 if it discriminates against job applicants or employees, the employer – who is a natural person is fined at least 500.000 SIT, and the person responsible is fined at least 80.000 SIT. Article 141 of The Penal Code (which has been mentioned in answer a. The legal framework) punishes individuals who commit the criminal offence of violation of equality, Article 300 of The Penal Code (which has been mentioned in the same answer too) punishes an individual who stirs up ethnic, racial or religious hatred, strife or intolerance. Article 206 of the 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 punishes anyone who *inter alia* willingly breaks working relations rules on the protection of 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. One of the most important Acts in the area of social security and social insurance is The Pension and Disability Insurance Act, which has been mentioned above. 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 (see answer b for further details). Articles 230 to 233 of The Execution and Insurance Act⁹⁹ 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. 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.

Other sanctions, penalties and remedies related to anti-discrimination cases are presented in the text in specific answers to the questions.

g. Dissemination of information

Article 10 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)

g.1. What action is being taken or is planned to ensure that anti-discrimination legislation has been or will be brought to the attention of the public?

⁹⁹The Execution and Insurance Act, Official Gazette of The Republic of Slovenia no. 51/1998, 75/2002. Zakon o izvršbi in zavarovanju (ZIZ), Uradni list Republike Slovenije številka 51/1998, 75/2002.

Pursuant to Article 154 of The Constitution of the Republic of Slovenia, regulations must be published prior to coming into force. A regulation comes into force on the fifteenth day after its publication unless otherwise determined in the regulation itself. 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. In order to provide more transparency in government, the Government Centre For Informatics implemented an urged access to information on Slovenian public administration. *In this framework there is free electronic access to The Republic of Slovenia Regulations Register, which enables reviewing of all regulations issued in Slovenia (adopted and in preparation).* In the Annual Report for the year 1998, the Ombudsman pointed out the importance of accessibility of information of a public nature, as a human right and fundamental freedom and establishing effective appeal procedures. The Human Rights Ombudsman's criticism of the practice by which the rulings of courts were only accessible through a commercial legal information service was taken heed of. As a result, following the publication of the Human Rights Ombudsman's report, both the Constitutional and Supreme Court of the Republic of Slovenia allowed free access to their *judicial practice through the official website of the Constitutional and Supreme Court of the Republic of Slovenia.*

It is laid down in legislation that information of a public character must be published in the media. Through broadcasting networks, information on adoption of new statutes is regularly disseminated. According to Article 4 of The Media Act Slovenia supports the dissemination of information of public interest. Article 45 requires public bodies obliged to present truthful, complete and up to date information about their work. Advertising should not encourage racial, sexual or national discrimination nor religious or political intolerance as stated in Article 47. With the new Salary System in The Public Sector Act,¹⁰⁰ adopted in April 2002, journalists employed by public radio and television stations (RTV Slovenija) are classed as public servants. That seriously puts into question their independence, is incompatible with European principles of financial and other forms of independence of public media networks and means the violation of international standards as regulated by the Recommendation of the Parliamentary Assembly Council of Europe and the EU directive.

Education on the human rights is a part of the compulsory programme in elementary and secondary Slovene schools, thus indirectly influences pupils to be tolerant and promote anti-discrimination principles. The government Office for Youth Affairs carries out a project financed by the Council of Europe entitled All Different All Equal in primary and secondary schools. This year the project has been implemented in the form of a daylong workshop entitled The Path To Tolerance in one primary and ten secondary schools. The following topics have been discussed: xenophobia, homophobia, racism and local patriotism. The evaluation test has shown that pupils think all these forms of intolerance, especially homophobia and racism, are present in Slovenia. In the year 2000 a legal clinic for law students was established at the Faculty of Law of the University of Ljubljana, with emphasis on human rights. The practical and theoretical programme of the Legal clinic is taking place in some non-governmental or government organisations: Foundation Gea 2000, PIC, the Ombudsman, The Ministry of Interior Affairs and the Administrative court. The Legal clinic gives students a fundamental knowledge and concrete valuable experiences in the field of respect and violations of human rights.

The manual entitled "First steps, Lessons on human rights", as already used in international handbooks, has been adapted to the particular circumstances of Slovenian schools. The issue of the respect for identity and cultural diversity and the building of tolerance within

¹⁰⁰ The Salary Sistem in The Public Sector Act, Official Gazette of The Republic of Slovenia no. 92/2002.Zakon o sistemu plač v javnem sektorju (ZSPJS), Uradni list Republike Slovenije številka 92/2002.

multicultural society has been presented as one of the main subjects. Za in proti (For and against), Zavod za kulturo dialoga Ljubljana, held in 2002, with the expert assistance of The GEA 2000 Foundation, a one week Summer camp concern the status of refugees and general human rights protection. The camp had a wide response among the school-age population and enable intense lessons and practical work concerning ethnic issues and human rights protection. A manual, seminars and a video cassette about the UN Declaration on Human Rights formed part of the activities in the Council of Europe project, All different - all equal and of those of the European Commission in Slovenia. These activities were partly sponsored by the Office of the Republic of Slovenia for Youth and the Ministry of Education and the Ministry of Foreign Affairs of the Republic of Slovenia. NGOs in Slovenia regularly prepare round table discussions concerning aspects of the protection of human rights, discrimination, diversity and tolerance, and the position of Roma, women, children and other vulnerable groups¹⁰¹.

Article 8 of The Media Act, a novelty in the field of the anti-discrimination legislation, explicitly prohibits the broadcasting of programme contents which stimulate national, racial, religious, sexual or other inequality, violence or war or provoke national, racial, religious, sexual or other hatred and intolerance. According to the third paragraph of Article 47, advertising must not lead to racial, sexual or national discrimination and religious intolerance. Article 129¹⁰² sets out a penalty of at least 2.500.000 SIT for the broadcaster – if a legal person if the respect for human dignity is damaged through its medium or if it leads to racial, sexual or national discrimination and political intolerance.

The Office for Equal Opportunities is in charge of the 2002EU project on sex equality. Following this project, The Office for Equal Opportunities performs a project on dissemination of information and raising public awareness about the new approach to cases of assumed discrimination. In this manner The Office for Equal Opportunities is organising a conference the on equal treatment of men and women which will be held in Ljubljana on 13 June 2003. In this conference they intend to present new developments in the area of equal treatment of men and women especially Equal Opportunities for Women and Men Act and Employment Relations Act¹⁰³.

g.2. What action is being taken or is planned to ensure - by means of information and training and where necessary by effective sanctions - that all officials and other representatives of the public authorities at every level abstain from any discriminatory speech or behaviour in the exercise of their functions? The purpose of the research is not to establish whether measures are appropriate and effective, but whether or not they exist.

Due to the Public Servants Act, provisions public employees are to perform their professional duties conscientiously, honourably and politically neutrally and impartially. Detailed guidelines are to be found in the The Public Servants Handling Code¹⁰⁴, which was adopted by the Slovenian Government on the recommendation of the Council of Europe. Under the code, public servants are not to act arbitrarily or to the detriment of any person of public or private law or group of persons when attending public duties. Furthermore, provisions of the code are used for determining the fulfilment of conditions for employing a public servant. A breach of the code can result in a disciplinary procedure against a public servant. A public servant who supervises and leads other public employees is responsible for their consideration of the code

¹⁰¹ More information at the internet addressees: Amnesty International Slovenije, <http://www.amnesty-international.si> and the Information and Documentation Centre of the Council of Europe in Slovenia, <http://www.idcse.nuk.si>

¹⁰² for exercising control a Media Inspector in the framework of the Ministry For Cultural Affairs has already been appointed.

¹⁰³ For further information see <http://www.ius-software.si/novice.asp?id=32460>

¹⁰⁴The Public Servants Handling Code, Official Gazette of the Republic of Slovenia no.8/2001. Kodeks ravnanja javnih uslužbencev, Uradni list Republike Slovenije številka 8/2001.

and for introducing an appropriate disciplinary procedure in case of a breach. The Ethical Principles In Social Security Code¹⁰⁵ binds social security workers to ethical handling. Their work has to be distinguished from political, religious, personal and institutional influence and interests that might hinder their human and professional judgement on whether it is an individual or the interests in opposition with common principals of social equity and welfare that is supported. Namely, every individual, family and group has a right to help no matter biological, personal, status, national, religious, ideological and political differences. Article 270 of The Penal Code sanctions a breach of human dignity by a misuse of official position or rights. An official person who mistreats, insults, lightly physically harms or treats someone in any other way that affects human dignity by a misuse of his official position or rights when attending his duties is penalised by up to three years' imprisonment. In case an official person uses force, threat or any other forbidden manner or means when performing its official duties with the intention of enforcing a confession or any other kind of statement from an accused, a witness, an expert or anyone else is penalised with a imprisonment between three months and up to five years according to Article 271. If it is an act of violence or if the perpetrator causes serious consequences to the accused in the criminal proceedings by forcing a confession, the perpetrator is penalised by a prison sentence from one up to eight years. Education and training for public officials, especially for law enforcement staff, includes the protection of human rights. The Committee under the CAT Convention (Convention on torture) recommends that the State party take the necessary steps to prevent the use of force by the police against members of the Roma population and other minorities, particularly in connection with arrest and detention. Concluding observations of the Committee against Torture Slovenia, 16/05/2000.CAT/C/24/8 (Concluding observations/Comments), E. Recommendations, Paragraph 2. The GEA 2000 Foundation published a Handbook International Human Rights standards for Law enforcement within the MATRA project, established human rights library, published CD ROM and book with legal regulation and best legal practise from the field of the human rights protection.

The level of training and knowledge in the area of the discrimination and human rights protection of the public officials does not seem to be sufficient for the purpose of the effective implementation of the two EU directives.

h. Social dialogue and NGOs

Article 11 and 12 (Racial Equality Directive) and Article 13 and 14 (Employment Equality Directive)

h.1. Has the government taken steps to promote dialogue with the social partners at national level? If so, what are the measures adopted and what are the results?

The Occupational and Professional Education Act provides in Article 16 for the application of apprentices' rights set by law and collective agreements with trade unions. Trade unions propose to examine agencies of chambers and schools, their representatives among acknowledged experts in the field of professional education. The right to join a trade union or form a trade union in an individual work place is one of the ways of guaranteeing the participation of workers. In the Republic of Slovenia, individual trade unions are parties to the concluding of collective agreements with the Government. In accordance with the Article 8 of the new ERA which came into force on January 1st 2003, an employer is to consult a trade union on preliminarily proposals of general acts in which an employer determines obligations

¹⁰⁵ The Ethical Principles in Social Security Code, Official Gazette of the Republic of Slovenia no. 59/2002. Kodeks etičnih načel v socialnem varstvu, Uradni list Republike Slovenije številka 59/2002.

which workers have to be acquainted with in order to be able to fulfil their contractual and other liabilities. If the opinion of the trade union is mediated within the lawful term, the employer has to discuss it and take a standpoint on it. In case there is no trade union a particular place of work, the rights otherwise managed in collective agreements according to the ERA are set by a general act of the employer, unless these are less favourable for a worker than the law or a collective agreement which would bind the employer. The employer has to notify workers immediately before the adoption of the general act. A trade union at the employer is considered as such provided it is representative and it appoints or elects a trade union organiser. For a corresponding adjustment to the new ERA a new Collective Agreements Act was formulated on June 11, 2002, The Public Servants Act has been adopted and has come into force on July 13, 2002 and will apply in practise a year after the publication in the Official Gazette, that is on June 28, 2003. Article 26 of The Public Servants Act sets that for the implementation of the social partnership in the area of labour relations in state bodies and local community bodies a standing body shall be established. The composition and manner of operation of the standing body shall be governed by the collective contract of state administrative bodies, other state bodies and local communities on the part of employers, and representatives of representative trade unions of the activities or occupations on the part of public servants, shall participate in the standing working body. In the specialised Courts for Labour and Social affairs, apart from the judge, the court must comprise worker and employer representatives .

According to Article 3 of The Act of Equal Opportunities for Women and Men, the Government of the Republic of Slovenia and competent Ministries shall co-operate with the social partners and non-governmental organisations (active in the field on equal opportunities) to formulate solutions and proposals for establishing the purpose of the act mentioned.¹⁰⁶

The Economic and social council carry 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.

h.2. Has the government taken steps to promote dialogue with non-governmental organisations at national level? If so, what are the measures adopted and what are the results?

The governmental sector often forgets the active role of the so-called third sector in the adoption of significant documents and decisions. This has improved in the last few months as the Government Office for European Affairs endeavours to establish co-operation with civil society organisations. Thus a *foundation pillar* and rules for participation and relations are supposed to be restored. An active role of the *Association of Slovenian Foundations* is recognised at the forming of the pillar.

It is evident that the role and significance of NGOs has only increased in recent years. Namely, NGOs have been invited to co-operate with the government in defining or amending

¹⁰⁶This paragraph was included on the request of the Government of the Republic of Slovenia.

legislation. As a result of NGO activities The Act Amending and Supplementing the Asylum Act has been adopted.¹⁰⁷ However proposals from NGOs are often not considered by the Government.

Together with research institutions and independent researchers, NGOs and relevant governmental or local authorities organise public round table discussions, and produce publications and information leaflets about actual problems in the implementation of the declared principles. Comparative policy studies provide explanations for current developments and alternative proposals that lead to surmounting stereotypes, prejudices, intolerance and exclusion.

According to the opinion of the Government Office for European Affairs the high level of fragmentation of the NGO sector presents an obstacle in ensuring the co-operation of NGOs with the government on an equal basis. That is why in the year 2001, the *Centre of Non Governmental Organisations* was established. With the intention of promoting the development of co-operation with NGOs, *The Commission of the Government of the Republic of Slovenia For Non Governmental Organisations* was recently established. For further development of the NGO sector some other questions as legal status, financing and NGOs social role etc. should be regulated.

¹⁰⁷ The Act Amending and Supplementing the Asylum Act, Official Gazette of Republic of Slovenia no. 67/2001. Zakon o spremembah in dopolnitvah zakona o azilu, Uradni list Republike Slovenije št 67/2001. Because of the activities of NGOs, the Temporary protection Act¹⁰⁷ has changed¹⁰⁷ in the way to enable durable regulation of the status to the persons who were more than ten years under the temporary protection status, what was unacceptability from the point of human rights issue and also not in compliance with the valid international regulation, further had NGOs active role in the area of equal possibility, disability, and many others fields.

CHAPTER 3: SPECIALISED BODIES

Article 13 (Racial Equality Directive)

Does such a specialised body exist on the national level? Are existing bodies addressing the issue of multiple discrimination? Where a body does not exist on the national level, are there plans to establish such a body?

In the Republic of Slovenia, a specialised body within the meaning of Article 13 of Racial Equality Directive does not exist, but there are plans to establish one in the future. The Human Rights Ombudsman has been created¹⁰⁸ in Slovenia as a superior 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 proceedings¹⁰⁹, 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 Act¹¹⁰). 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 mediation. In Slovenia, the institution of the Ombudsman is, in practice, frequently¹¹¹ 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

¹⁰⁸ The basis for the foundation of the institution of Human Rights Ombudsman in the Republic of Slovenia is found in the Article 159 of the Constitution of the Republic of Slovenia. The activities of the Human Rights Ombudsman are determined by **The Human Rights Ombudsman Act**, Official Gazette of the Republic of Slovenia no. 71/1993 and 15/1994 (Zakon o Varuhu človekovih pravic, Uradni list Republike Slovenije številka 71/1993, 15/1994) as well as in **The Rules of Procedure of the Ombudsman**, Official Gazette of the Republic of Slovenia no. 63/1995 (Poslovnik varuha človekovih pravic, Uradni list Republike Slovenije številka 63/1995). The duties and competencies of the Ombudsman are based on the classical Scandinavian model.

¹⁰⁹ 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.

¹¹⁰ The Constitutional Court Act, Official Gazette of the Republic of Slovenia no. 15/1994, 16/2001. Zakon o Ustavnem sodišču, Uradni list Republike Slovenije številka 15/1994, 64/2001..

¹¹¹ Data in English available on the internet: <http://www.varuh-rs.si>

administrative authorities which did not respond to recommendations and proposals by the Ombudsman¹¹².

In his Annual Report on human rights for 2001 the Ombudsman stated that his offices received many applications concerning discrimination based on sexual orientation. In case when homosexuals were denied their right to enter public premises, the Ombudsman issued a public announcement in which he stated that the execution of any activities in the public or private sector must be non-discriminatory. This is all the Ombudsman was able to do since he is not competent to settle disputes among individuals. The Ombudsman was also notified by the ŠKUC Society that a radio reporter indicated the connection between Hitler's acts and his homosexuality and also on inappropriate texts in two school books. In these two cases Ombudsman lacked competence and could not do anything. In a third case there was insinuation of a connection between homosexuality and child abuse in a registration form for membership to the Club of Educators. Here the Ombudsman was able to make the competent persons to withdraw this insinuation from the registration form.

¹¹² 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.

CHAPTER 4: COMPLIANCE AND IMPLEMENTATION

a. Screening

a.1. Does national law provide a mechanism for the abolition of laws, regulations and administrative provisions that are contrary to the principle of equal treatment?

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 vitiated 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 vitiated 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.

a.2. Is there a mechanism under national law by which provisions in agreements, contracts or rules relating to professional activity, workers and employers that are contrary to the principle of equal treatment can be declared null and void or amended?

Collective agreements, which will be regulated by the Collective Agreements Act which is currently being adopted by the National Assembly, are at the moment regulated by Articles 112 to 119 of F (Official Gazette of the Republic of Slovenia no. 14/90, 5/91 and 71/93). These provisions remained in force even after 1 January 2003. Until the adoption of Collective Agreements Act, the rule will still be that a collective agreement is contract between trade unions as representatives of employees and employers. The procedure of modification and amending collective agreements is set in the collective agreement itself in the so-called obligation part which only imposes obligations on the parties involved, while the normative part of collective agreement rights and duties oblige all employees and the employer. The latter can only be modified or amended unanimously, with an agreement between the contractual parties.

Of most importance is the fact that, at present, the legal nature of collective agreement is not defined. Theorists are fond of the opinion that a collective agreement is a legal act and not a classic contract, since the principle of direct effectiveness and an *erga omnes* effect is imposed by the old ERA, Article 112. Under Article 30 ERA, provisions of individual contract which are contrary to provisions on contractual parties' minimum rights and obligations arranged with an Act, collective agreement or general employer act are not taken into

consideration. In such a case, provisions of the Act, collective agreement or general employers' act are used to disregarding the provisions of the contract.¹¹³

Violation of discrimination prohibition constitutes a breach of the employer's obligations and a violation of an employee's rights. The employee is therefore entitled to file a complaint in accordance with Article 204 ERA (see above).

A contract containing provisions which are contrary to Article 6 ERA shall be invalid – this rule can be derived from Article 133 paragraph 2, which states that any provisions of a contract of employment, collective agreement or employer's general act that contravenes the preceding paragraph (principle of equal payment for equal and equivalent work to all employees irrespective of sex) shall be null and void. The rules on how this provision is enforced are contained in Articles 11, 12, 13 and 14 ERA¹¹⁴.

¹¹³ - Article 30 (invalid provisions of contracts of employment): (1) Those provisions of a contract of employment which contravene the general provisions on the minimum rights and obligations of contracting parties determined in this Act, collective agreements or an employer's general acts shall be deemed to be null and void from the moment of conclusion of the contract of employment.

¹¹⁴ - Article 11 (applicability of the general rules of civil law): (1) Conclusion, validity, termination and other issues related to contracts of employment shall be subject to the general rules of civil law, unless otherwise determined by this or another law. (2) If there are elements of an employment relation in accordance with Article 4 and in connection with Article 20 of this Act, work may not be performed on the basis of civil-law contracts, except for cases determined by law.

- Article 12 (nullity and contestability of contracts of employment): If a contract of employment is null and void or contestable, the nullity or annulment shall take effect as soon as they are determined, on condition that both contracting parties have, up to that moment, effectively fulfilled the rights and obligations arising from employment, except for cases under Articles 19 and 21 of this Act.

- Article 13 (establishing the nullity of contracts of employment): (1) The nullity of a contract of employment shall be monitored ex officio by the court and may be referred to by any interested person. (2) The nullity of a contract of employment shall be established before the competent labour court. (3) The right to establish the nullity of a contract of employment shall not expire.

- Article 14 (establishing the contestability of contracts of employment): (1) The contestability of a contract of employment shall be established before the competent labour court. (2) The right to demand the annulment of a contestable contract of employment shall expire 30 days after the day the entitled person discovered the reason for contestability or after the day of cessation of duress. (3) This right shall expire in any case one year from the day the contract was concluded.