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

COUNTRY REPORT
Slovenia
Maja Tratar
Meira Hot
State of affairs up to 8 January 2007

This report has been drafted for the **European Network of Legal Experts in the non-discrimination field** (on the grounds of Race or Ethnic origin, Age, Disability, Religion or belief and Sexual Orientation), established and managed by:

human european consultancy
Hooghiemstraplein 155
3514 AZ Utrecht
Netherlands
Tel +31 30 634 14 22
Fax +31 30 635 21 39
office@humanconsultancy.com
www.humanconsultancy.com

the Migration Policy Group
Rue Belliard 205, Box 1
1040 Brussels
Belgium
Tel +32 2 230 5930
Fax +32 2 280 0925
info@migpolgroup.com
www.migpolgroup.com

All reports are available on the European Commission's website:

http://europa.eu.int/comm/employment_social/fundamental_rights/policy/aneval/mon_en.htm

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INTRODUCTION

0.1 The national legal system

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

Slovenia is a democratic republic, governed by the rule of law. Laws, regulations and other general legal provisions must be in conformity with the Constitution. Laws must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly, whereas regulations and other general legal provisions must also be in conformity with other treaties ratified by the Government. Regulations and other general legal provisions must be in conformity with the Constitution and laws. Individual provisions and actions of state authorities, local community authorities and bearers of public authority must be based on a law or regulation adopted pursuant to law. All legislation in Slovenia may be subjected to revision by the Constitutional Court. If the Constitutional Court establishes that a law does not conform with the Constitution, it can repeal it in a whole or in part, and annul or repeal other regulations or general acts that are unconstitutional or contrary to law.

Under the Constitution itself, everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, financial status, birth, education, social status, disability or any other personal circumstance (Article 14). In April 2004 the National Assembly, which is the legislative body, adopted the Implementation of the Principle of Equal Treatment Act (IPETA)[1]. Besides that, only the Employment Relationship Act (ERA)[2] includes comprehensive anti-discrimination provisions, whereas other statutes mentioned in this report include provisions relating to anti-discrimination that are not as exhaustive as these two Acts.

0.2 State of implementation

List below the points where national law is in breach of the Directives. This paragraph should provide a concise summary, which may take the form of a bullet point list. Further explanation of the reasons supporting your analysis can be provided later in the report.
Has the Member State taken advantage of the option to defer implementation of Directive 2000/78 to 2 December 2006 in relation to age and disability?

The European Commission made an official notice to the Slovenian Government in June 2006 on the Slovenian failure to implement all the provisions of the Race Directive in the national law. Four issues had been raised by the Commission in this notice:

- That there is no explicit statement that discrimination on the grounds of race and ethnicity is forbidden also in disseminating information access to self-employment, housing, health security, education and vocational training;

[1] The Implementation of the Principle of Equal Treatment Act, Official Gazette of the Republic of Slovenia no. 50/2004. *Zakon o uresničevanju načela enakega obravnavanja*, Uradni list Republike Slovenije št. 50/2004.
[2] 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.

- that paragraph 1 of Article 2 of the Act Implementing the Principle of Equal Treatment does not provide an exception for a genuine and determining occupational requirement and the obligation of proportionality of the measures;
- that the national law does not provide efficient protection against victimisation (it only protects the victim, but there are no provision on protection of witnesses or other persons assisting the victim);
- and about the supposed lack of NGO standing to engage in judical proceedings on behalf of the victim

Taking in consideration the Commission's notice and the findings in this report, Slovenian law may be in breach of the Directives on the following points:

- There is no explicit statement that discrimination on the grounds of race and ethnicity is forbidden also in access to self-employment, housing, health security, education and vocational training;
- that paragraph 1 of Article 2 of the Act Implementing the Principle of Equal Treatment does not provide an exception for a genuine and determining occupational requirement and the obligation of proportionality of the measures;
- the national law does not provide efficient protection against victimisation (it only protects the victim, but there are no provision on protection of witnesses or other persons assisting the victim)
- the definition of indirect discrimination does not include a prohibition of measures which could potentially put a person in an unequal position, and only prohibits measures which have actually put a person in an unequal position and resulted in indirect discrimination.
- there is no explicit provision on duty to reasonable accommodation
- There is no common definition of intellectual disability.
- The Social Care Act is discriminatory, in that adults given "invalid status" under this act have the right to receive social benefits, but are automatically presumed as unable to live independently or to be employed regardless of their actual abilities. If they wish to work, they must renounce the "invalid status" and so lose their eligibility for social benefits.
- In order to claim entitlement to protection under the equality legislation, a person must first be officially recognized as disabled under the Pension and Disability Act (limitation of personal scope)
- The national designated body (the Advocate of the principle of equality) is not really independent as it functions under the Government Office for Equal Opportunities; furthermore its budget is determined by the Office;
- NGOs do not have legal standing to engage in judicial proceedings on behalf of the victim

Slovenia will prepare a law with changes and amendments to the IPETA as to follow the directions of the EC and implement the provisions of both Directives effectively.

In its notice, The Commission also commented, that it was not clear from the provisions in the national law, whether an employee can demand judicial protection even after the end of the employment. The Slovenian Government stated that Article 6 of the ERA/par. 1,guarantees judicial protections for victims of discrimination on the grounds of ethnicity or race. The protection refers to access to employment, during employment and also after the employment has ended. An employer is liable according to the civil rules on damages (Article 6, par.5 of the ERA). This means that an employee can file a lawsuit within five years after the damage occurred, which is the general staute of limitation. (Article 352 of the Obligations Statute).

The Slovenian Government named a working group on 12th October 2006 to prepare the changes and amendments to the current antidiscrimination Act which will implement the Comments made by the European Commission. The group already had two sessions where they drafted some provisions for the new law. The Act amending the Implementation of the Principle of Equal Treatment Act should be ready by April 2007. It should be debated in the Parliament by July 2007.

The Commission's notice was discussed in the Council for the Principle of Equal Treatment and in the Parliament Commission for Human Rights and Petitions. The Human Rights Ombudsman is also preparing a report focusing on the other changes which ought to be made in the IPETA. The report should be ready by the end of January.

The legislation in force, especially since the adoption of the IPETA, generally complies with the Directives. The problem of lack of information continued in 2006 even though there was significant progress compared to 2005. However, people are still not sufficiently informed of their rights and the options open to them in case of discrimination, which may be one of the reasons why the right to equal treatment is not enforced as widely as it could be .As 2007 is the Europan year of Equality, one of the focus of the national implementing body (The Ministry of Labour and Social Affairs) will be to raise awareness on the issue of discrimination. In 2005, seminars were organised by the Peace Institute for training NGOs in the field of discrimination, and the Office for Equal Opportunities held a conference on good practices in the field of discrimination and it also disseminated information about the rights of victims of discrimination. In 2006 the Human Rights Ombudsman also started with a range of seminars. According to the Ombudsman who has designated a special department to deal with discrimination issues, the national institutional structure, designed to fight discrimination is not efficient enough. It is their opinion that the system could be more successful by implementing practical experiences and expertise on the subject to a wider group of organisations, institutions and individuals, which face the problem of discrimination on a daily basis. Therefore the Ombudsman decided to start implementing a project called **"Strengthenig the national institutional structure for the fight against discrimination"** (Krepitev nacionalne institucionalne strukture za boj proti diskriminaciji) under **CRIS No. 2005/017-462.04**.,in cooperation with a partner from Austria - **Ludwig Boltzmann Institute of Human Rights (BIM))**. The purpose of the project was to prepare a series of educational seminars and workshops, aimed for training of Ombudsman's employees as well as civil servants and civil society which face the issue of discrimination. The Ombudsman believes that the seminars will also help increase the very low number of case law in relation to discrimination as well as to raise awareness. There is practically no relevant case-law where discrimination has been found to have occurred since the adoption of the IPETA (there were two cases of alleged discrimination under Article 6 of the ERA, but the court found no breach of relevant legislation).[3]

The Advocate of the Principal of Equality, which is the national designated equality body, has received 40 complaints since it started its work on 1 January 2005. In five cases, the Advocate stated her findings and assessed that a violation had occurred; in 18 cases, the Advocate did not deal with the cases as it was obvious that there was no violation of the ban on discrimination. The Advocate has not passed any cases to the Inspection Service yet as her written opinions in individual cases were respected and there was no need for further action. The cases investigated by the Advocate were published on March 2006 and are now available to the general public.[4] Prior to the publication of the official report on the work of the

[3] Information on www.ius-info.si.

[4] http://www.uem.gov.si/fileadmin/uem.gov.si/pageuploads/zagovornica_porocilo2005.pdf

Advocate, the national newspaper DELO published an article in which the Advocate presented her work.[5]

The Report for the cases undertaken in 2006 is not published yet but will be by March 2007. However some new cases are published on the internet site of the Office for Equal Opportunities.

Two opinions of the Advocate were also published by the Association of Free Trade Unions in Slovenia, as they were the initiators of the two cases concerned.

On 22 July 2005 a press conference was organised by the Party of Ecological Movements of Slovenia, in which the results of a survey on the quality of life of retired people were presented. The discussion was based on the fact that in 2006 age discrimination will be forbidden by law as required by the Directive, No survey had been conducted to research this topic, and so age discrimination could previously only be deduced on the basis of attitudes towards older workers on the labour market".
The Party made proposals amending tax policies and other laws which they believe represent discrimination against retired people by the State, however there was no response from the Government. According to the survey more than half of all retired workers would still be willing to work if they had the chance. They would work occasionally, in positions which made fewer physical and mental demands. However, due to administrative and organisational obstacles, they do not have equal access to the labour market (mostly due to taxes).

0.3 Case-law

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

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

a) The First Instance Court in Lendava
b) 27.12.2005
c) The case dealt with the incitement to ethnic, racial or religious strife, hate or intolerance which is a criminal offence according to Article 300 of the Penal Code. The defendant was accused of sending a message on the internet forum with the following content: » We would need Hitler. All gypsies must be killed!!!« with which he stirred ethnic intolerance towards Roma citizens. He also insulted the mayor of the town of Lendava as he drafted a message for the mayor which was also posted on the internet, entitled: Invasion of the Roma in Lendava. The defendant was found guilty and was punished with 6 months jail (conditional sentence).

a) The Supreme Court of the Republic of Slovenia
b) case number VIII Ips 265/2006 on November 11 2006
c) The plaintiff of Macedonian nationality did not succeed in the case he started against his employer. The Supreme Court confirmed the First and Second Instance judgments which stated that the sole fact of another person being hired for employment does not prove

[5] Information on: http://www.delo.si/index.php?sv_path=43,50&id=95547d36161f0bb31f2f3729b688fe8504&source=Delo

discrimination. The fact that secretary of the defendant asked the plaintiff on which Academy he graduated does not prove discrimination on the ground of ethnicity. The defendant excused his actions by stating that they did not employ the plaintiff because it was questionable whether he will be able to perform the work, as he had several other activities. The Court also stated that the defendant did not violate anti discriminatory provisions by hiring a person who did not fulfil all the requirements for the employment but he did violate other provisions.

There is no other relevant case law in relation to the Implementation of the Principle of Equal Treatment Act. This is probably due to the fact that the general public is still not informed enough about what kind of treatment is discriminatory; this is also evident from the cases received by the Advocate as most of them were not cases of discrimination, even though the initiators were certain that they were victims of discriminatory treatment (mostly these cases were related to judicial and administrative procedures in which the people involved were not satisfied with the decisions – however the decisions did not violate the principle of equal treatment).
The Data gathered by the members of the Council for Equal Treatment on discrimination on the grounds of race/ ethnicity show that 2 cases of violation of Article 6 of the ERA were dealt by the Labour and Social Courts, however the Courts found no discrimination occurred. The Higher Labour and Social Court also dealt with violations of Article 6 ERA, but also found no violation of the Article. The Constitutional Court found a violation of Article 14 of the Constitution.
Data provided by the Labour and Social Courts on violations of principle equal treatment on the ground of religion or religious belief, disability, age or sexual orientation in employment showed only one case on alleged discrimination in the procedure of selecting a candidate. The matter is currently under revision in the Higher Labour and Social Court.
Data on cases of alleged discrimination on the grounds of race or ethnicity dealt by the Labour Inspectorate show 4 violations of Article 6 found in 2004 as well as 2003. There were no cases in 2005. The Inspectorate for culture and media, also dealt with alleged discrimination on the ground of race or ethnicity, however found no violation. As to discrimination on the grounds of race, religion or religious belief, disability, age or sexual orientation there were also no cases before the Labour Inspectorate in 2005. In 2004 there were three cases where discrimination on the ground of age was found, while 3 violations of anti discriminatory provision in the ERA were found in 2003. In all the cases, age was set out as selection criteria.

The Advocate of the Principle of Equal Treatment recently posted some new cases (2006) on her official internet website. In most of them no discriminatory actions were found, however in one of them she found discrimination on the ground of disability. The core of the dispute was, the fact that the Ministry of Labour, Family and Social Affair, which based on some regulations subsidizes the travel expenses on the Slovenian Railways for the blind an and partially sighted , does not cover the expenses for all the other disabled. Such treatment constitutes discrimination on the ground of disability according to the advocate's findings. The Advocate gave her recommendations to the Ministry and called them to give an official answer in 30 days, stating what changes they will make.

1. GENERAL LEGAL FRAMEWORK

Constitutional provisions on protection against discrimination and the promotion of equality

a) Briefly specify the grounds covered (explicitly and implicitly) and the material scope of the relevant provisions. Do they apply to all areas covered by the Directives? Are they broader than the material scope of the Directives?
The Constitution of the Republic of Slovenia[6] contains a *general* anti-discriminative clause in Article 14 (Chapter on Human Rights and Freedoms). Article 14 states that everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status, disability or any other personal circumstance.[7] All persons shall be equal before the law. Equality in the Constitution accordingly contains two different categories: equality in the law and equality before the law. This constitutional provision binds state bodies as they enact other legal provisions and it has a substantial effect on the judicial and administrative branch in their decision-making.

Under Article 15, human rights and fundamental freedoms shall be guaranteed judicial protection and the right to obtain redress for the abuse of such rights and freedoms. Everyone shall be guaranteed equal protection of rights in any proceeding before a court and before other state authorities, local community authorities and bearers of public authority that decide on his rights, duties or legal interests.[8] Article 63 stipulates that all incitement to ethnic, racial, religious or other discrimination, as well as the inflaming of ethnic, racial, religious or other hatred or intolerance, shall be unconstitutional. The Constitution guarantees everyone the right to freely express affiliation with his nation or national community, to foster and give expression to his culture and to use his language and script. It therefore protects minority rights as well as individual rights. Among other freedoms the Right to vote in Article 43 includes also: The right to vote shall be ***universal and equal***. The law shall provide measures for encouraging the equal opportunity of men and women in standing for election to state authorities and local community authorities

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

Article 52, Paragraph 1 protects disabled people and guarantees them professional training. Articles 46 and 123 give citizens the right to conscientious objection for religious, philosophical or humanitarian beliefs. Article 41 ensures that religious and other beliefs may be freely professed in private and public life. Religious communities shall enjoy equal rights and they shall pursue their activities freely.[9] Expression of National Affiliation and the Right to Use One's Language and Script are stipulated in Articles 61 and 62**:** 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. Everyone has the right to use his

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[6] The Constitution of the Republic of Slovenia, Official Gazette of the Republic of Slovenia no. 33/1991, 42/1997, 66/2000, 24/2003, 69/2004. *Ustava Republike Slovenije, Uradni list Republike Slovenije številka* 33/1991, 42/1997, 66/2000, 24/2003, 69/2004.
[7] This rule must be respected even in cases of the temporary suspension and limitation of human rights in case of war or emergency, Article 16 of the Constitution.
[8] Article 22 of the Constitution of the Republic of Slovenia
[9] Article 7 of the Constitution of Republic of Slovenia

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

Everyone has the right to health care under the conditions stipulated by law (Article 51). Freedom of education is guaranteed by Article 57. According to this Article, the State shall create opportunities for citizens to obtain a proper education. Citizens have the right to social security including a pension, under the conditions stipulated by law.[10] Article 74 ensures free economic enterprise. Article 76 states that citizens are free to establish operate and join trade unions. The Constitution also contains a very general provision that the State shall create opportunities for citizens to obtain proper housing.[11]

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

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

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

b) Are constitutional anti-discrimination provisions directly applicable?

Constitutional anti-discrimination provisions are directly applicable as derived from Article 15 of the Constitution, which states that human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution. Judicial protection of human rights and fundamental freedoms, and the right to obtain redress for the violation of such rights and freedoms, shall be guaranteed. If no other procedure provides for the legal protection of the constitutional rights of the individual, the Constitutional Court (which has the jurisdiction to review administrative acts) also decides on the legality of individual actions and acts that intrude upon the constitutional rights of the individual. A constitutional provision defines that anyone who demonstrates legal interest may request the initiation of proceedings before the Constitutional Court. Unless otherwise provided by law, the Constitutional Court decides on a constitutional complaint only if legal remedies have been exhausted

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

In our opinion, this constitutional equality clause could be invoked against private actors (for example against employers). The constitutional equality clause is a general principle of law. Similar and equal relationships shall be treated in the same way. Consequently, a relationship that substantially differs from another shall be interpreted and dealt with differently.[12]

[10] Article 50 of the Constitution of Republic of Slovenia
[11] Article 78 of the Constitution of Republic of Slovenia
[12] The equality clause is nuanced enough to allow different situations to be treated differently.

2. THE DEFINITION OF DISCRIMINATION

2.1 Grounds of unlawful discrimination

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

In April 2004 the Government of Republic of Slovenia adopted the Implementation of the Principle of Equal Treatment Act (IPETA), which came in force on 7 May 2004, and it is in conformity with both Directives. According to this Act, equal treatment is required irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, state of health, disability, language, religious or other conviction, age, sexual orientation, education, financial status, social status or other personal circumstances. Discriminatory acts shall be prohibited in every field of social life and especially in the fields of employment, labour relations, participation in trade unions and special interest associations, education, social security, and access to and supply of goods and services.

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

The Employment Relationship Act (ERA) regulates employment relationships and is *lex specialis* in relation to the Implementation of the Principle of Equal Treatment Act (IPETA). However an individual who has faced discrimination in the field of employment can rely on the IPETA if it is more favourable or exact in his case. The ERA was adopted in 2002 in accordance with the Directives and explicitly prohibits discrimination. Regarding Article 6, Paragraph 1 of the ERA, during recruitment, in the course of employment and upon termination of a contract of employment, an employer may not put a prospective employee or current employee in an unequal position on the basis of sex, race, age, state of health or disability, religious, political and other convictions, sexual orientation, or ethnic origin, membership of a trade union, national or social origin, family status, financial situation or other personal circumstances. Article 5 of the Vocational Rehabilitation and Employment of Disabled Persons Act[13] explicitly prohibits direct and indirect discrimination during the recruitment and employment of disabled persons, in connection with the termination of employment and also in the procedures defined by this law. These are the procedures used to define the status of a disabled person and the procedure for acquiring the right to vocational rehabilitation.

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

Slovenian legislation regulates the status of autochthonous minorities. Historical or autochthonous minorities in Slovenia, which include Hungarians and Italians, are legally protected in a relatively integrative manner - protection is extended by several constitutional

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[13] Vocational Rehabilitation and Employment of Disabled persons Act, Official Gazette of the Republic of Slovenia no. 63/2004. *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov, Uradni list RS št.* 63/2004

provisions and about 80 acts of law and regulations which deal with various issues for minorities.

2.1.1 Definition of the grounds of unlawful discrimination within the Directives

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

Is there a definition of disability on national level and how does it compare with the concept adopted by the European Court of Justice in case C-13/05, Chacón Navas, Paragraph 43, according to which "the concept of 'disability' must be understood as referring to a limitation which results in particular from physical, mental or psychological impairments and which hinders the participation of the person concerned in professional life"?

The term disability is defined by Article 60 of the Pension and Disability Insurance Act,[14] but this definition is used as a reference in the equality legislation. The issue of definition has not arisen in the courts so far. Definitions of the other grounds listed in the two Directives do not exist in legislation or in case law.
The status of "disabled" is granted if the impairment in the insured individual's health cannot be reversed by medical treatment or medical rehabilitation, those impairments have been determined according to the Pension and Disability Act, and those impairments result in decreased ability to get or to retain a job or be promoted According to the Vocational Rehabilitation and Employment of Disabled Persons Act, the term "disabled" applies to a person who has obtained the status of a disabled person according to the aforementioned Act or according to any other regulation, and to a person for whom consequences of a permanent physical or mental malfunction or disease have been ascertained by an administrative decision, and whose chances are substantially reduced of obtaining or retaining a job or obtaining promotion. As can be noted the definition of disability in the national law differs to the one adopted by the European Court in Chacon Navas. The definition of Slovenian law connects the impairments to medical treatment which can not reverse the damages. It presumes that disability could also be seen as a disease (resulting from a disease), while the Court makes a strict distinction between the disease and disability. The person for whom such an administrative decision has been made can be granted the status of a disabled person according to the Pension and Disability Insurance Act or according to the Vocational Rehabilitation and Employment of Disabled Persons Act.
Slovenian legislation continues to use outdated and stigmatising terms both with respect to people with disabilities in general and to people with intellectual disabilities. NGOs have advocated for amending legislation that refers to adults with more severe intellectual disabilities as "children". There is no common definition of intellectual disability.
The status of people with disabilities is mainly determined by the Placement of Children with Special Needs Act 2000 (Placement Act); the Act on the Social Care of Mentally and Physically Disabled People 1983 (Social Care Act); and the Act on the Vocational Rehabilitation and Employment of People with Disabilities 2004 (Vocational Rehabilitation Act). The Social Care Act is discriminatory, in that adults given "invalid status" under this act have the right to receive social benefits, but are automatically presumed as unable to live independently, or to be employed regardless of their actual abilities. If they wish to work, they must renounce the "invalid status" and so lose their eligibility for social benefits.
However, adults with "invalid status" under the Social Care Act

[14]The Pension and Disability Insurance Act, Official Gazette of the Republic of Slovenia no. 20/2004, 54/2004 (56/2004, 62/2004, 63/2004 - corr.), official consolidated text. *Zakon o pokojninskem in invalidskem zavarovanju, Uradni list Republike Slovenije številka* 20/2004, 54/2004 (56/2004, 62/2004, 63/2004 – *popr), uradno prečiščeno besedilo*.

(including people with *mild, moderate* and *severe* intellectual disabilities) are entirely excluded from the provisions of the Vocational Rehabilitation Act. They are automatically determined as being incapable of paid employment, and cannot even register at an Employment Office as a job-seeker. They only have the right to "guidance, care and employment under special conditions", and receive social security benefits. Disability benefits cover the basic living costs of a person with intellectual disabilities living at home with their family, but would not allow them to live independently. In the case that an individual with intellectual disabilities who has "invalid status" according to the Social Care Act moves into paid employment, he or she loses the entitlement to the disability allowance and other benefits connected to this status.

Concerning sexual orientation, a law on same-sex partnerships, which regulates the registration of same-sex partners, was adopted in July 2005, but it also does not include a definition of sexual orientation. There is no definition of religion, however the Legal Status of Religious Communities in the Socialist Republic of Slovenia Act defines and regulates Religious Communities in the Republic of Slovenia. A new act that will regulate this field is the Religious Freedom Act that is currently in the process of adoption.(it should be adopted in the beginning of February 2007).

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

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

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

d) Please describe any legal rules (or plans for the adoption of rules) or case-law (and its outcome) in the field of anti-discrimination which deal with situations of multiple discrimination.

There are no such rules so far.

2.1.2 Assumed and associated discrimination

a) Does national law prohibit discrimination based on assumed characteristics? e.g. where a woman is discriminated against because another person assumes that she is a Muslim, even though that turns out to be an incorrect assumption.

National law does not explicitly state that discrimination based on assumed characteristics shall be prohibited. In our opinion, a judge could interpret the provision of the IPETA which states "equal treatment shall be available, irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, state of health, disability, language, religious or other conviction, age, sexual orientation, education, financial situation, social status or other personal circumstances", using the argument *a maiori ad minus* (that is, "what includes more, also covers less").

b) Does national law or case law prohibit discrimination based on association with persons with particular characteristics (e.g. association with persons of a particular ethnic group)? If so, how?

National law does not explicitly prohibit discrimination based on association with persons with particular characteristics either. However, in our opinion a judge could interpret the provision contained in the IPETA in the same manner as stated in Section 2.1.2. a).

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

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

The Paragraph 3 of Article 6 of the ERA states that the discrimination referred to in Paragraph 1 of Article 6 shall be prohibited in both direct and indirect forms.

Direct discrimination could be extrapolated 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 the employment relationship and after the termination of the employment contract. Provisions of the ERA are not complete; they do not contain a definition of direct discrimination or harassment, nor guidelines on discrimination. However these provisions are contained in the IPETA (Paragraph 2 of Article 4 – direct discrimination, Paragraph 4 of Article 4 – instructions to discriminate and Article 5 – harassment), which is the general anti-discrimination law and thus covers also labour law as *lex generalis.* In the work programme of the Government of Republic of Slovenia for 2007 changes to the ERA have been foreseen. As a result the Ministry of labour, family and social affairs have started preparing amendments to the ERA that will also include a revision of articles 6 and 45 that regulate discrimination and sexual harassment.

b) Does the law permit justification of direct discrimination generally, or in relation to particular grounds? If so, what test must be satisfied to justify direct discrimination? (See also 4.7.1 below).

The law does not permit direct discrimination, however Article 2 of the IPETA states that the Act does not apply for objectively and reasonably justified differentiated treatment or restrictions on the grounds of a specific personal circumstance, determined by special laws aiming to achieve a legitimate purpose (e.g. protection of older employees in the Employment Relationship Act).

c) In relation to age discrimination, if the definition is based on ‘less favourable treatment’ does the law specify how a comparison is to be made?
There is no specification how a comparison is to be made. Relevant case-law would clarify the situation in this regard.

2.2.1 Situation Testing

a) *Does national law permit the use of 'situational testing'? If so, how is this defined and what are the procedural conditions for admissibility of such evidence in court.*

National law does not specify whether the use of "situational testing" would be admissible as evidence in courts. Article 22 of the IPETA very generally states that in cases of violation of the ban on discrimination under Article 3 of the IPETA, persons facing discrimination shall have the right to request a hearing of a case of violation of the principle of equal treatment in judicial and administrative proceedings in the manner determined by law.

The Civil Procedure Act only defines the following evidence: hearing of witnesses; hearing of experts; hearing of the parties to the case; and documents. The Act contains only one provision explicitly mentioning a court's option to reject evidence which is not important for the decision, meaning evidence which does not serve to determine legally relevant facts. As to other types of inadmissible evidence, Article 3 of the Act should be taken into account, as it states that the court shall reject evidence which would be contrary to the law or moral rules, and the provision on preclusion of evidence (the party has to produce evidence and state all the facts of the case during the main hearing of the case). The principle of economy of procedure is also to be taken into account when deciding on inadmissible evidence, as the court may reject evidence which would only delay the procedure or would entail unnecessary costs. As admissibility of evidence is decided by the court, and there is no rule in civil or administrative procedures stating situation testing as inadmissible evidence, we believe that situation testing could be permitted as evidence, however this will be decided on a case by case basis.

b) *Is there any reluctance to use situational testing as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law (European strategic litigation issue)?*

The situational evidence was not debated much on the national level, however some points have been made on the fact that it is a sensitive evidence to use and could easily be abused. The use of the evidence did not influence the national law so far, however the authors believe that, were a case brought to the courts using situational evidence, the Courts would see the evolution in other European countries as a guideline in deciding the admissibility of such evidence.

c) *Outline important case-law within the national legal system on this issue.*

There is still no case law on this issue

d) *Outline how situation-testing is used in practice and by whom (e.g. NGOs)*

It is still not used in practice

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

a) How is indirect discrimination defined in national law?

Paragraph 3 of Article 4 of the IPETA states that indirect discrimination on grounds of personal circumstance occurs when an apparently neutral provision, criterion or practice in equal or comparable situations and under similar conditions, puts a person with a certain personal circumstance in a less favourable position compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of

achieving that aim are appropriate and necessary. The Act amending the IPETA is predicted to be adopted no later than June 2007.

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

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

c) Is this compatible with the Directives?

The relevant legal provision is practically identical to the one contained in the relevant EU Directives.

d) In relation to age discrimination, does the law specify how a comparison is to be made?

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

2.3.1 Statistical Evidence

a) Does national law permit the use of statistical evidence to establish indirect discrimination? If so, what are the conditions for it to be admissible in court.

Complainants have a right to require or request the respondents to provide statistical data, but they are limited by the Personal Data Protection Act.[15] There has been no relevant case law so far where statistical data had been used.

b) Is the use of such evidence commonly used? Is there any reluctance to use statistical data as evidence in court (e.g. ethical or methodology issues)? In this respect, does evolution in other countries influence your national law?

No, so far statistical evidence has not been used yet to prove discrimination, which is why we can not state whether there would be any reluctance to use such evidence in Court. Up to date, the authors of the report , did not observe that evolution in other countries, had in any way affected Slovenian national law in regards to statistical evidence.

c) Please *illustrate the most important case law in this area.*
There is no case law in this area yet

d) Are there national rules which permit data collection? Please answer in respect of all 5 grounds.

[15] The Personal Data Protection Act in Slovenian is *Zakon o varstvu osebnih podatkov*. ZVOP-1 is its official acronym in Slovenian. This Act was published in the Official Gazette of the Republic of Slovenia, No. 86/2004, 5 August 2004.

Data collection is regulated by the Personal Data Protection Act, which determines that data can be collected only if permitted by law. It sets special conditions for collecting sensitive personal data. According to this law, sensitive personal data are data on: racial, national or ethnic origin; political, religious or philosophical beliefs; trade union membership; state of health; and entries onto or removal of crimes and misdemeanours from a person's criminal record or record of minor offences (kept on the basis of a law on minor offences). Biometric characteristics are also sensitive personal data if their use makes it possible to identify an individual in connection with any of the aforementioned circumstances. Sensitive personal data may only be processed in the following cases:
1. if the individual has given explicit personal consent for this, such consent as a rule being in writing, and in the public domain as provided by statute;
2. if the processing of this data is necessary in order to fulfil the obligations and special rights of a data controller in the area of employment in accordance with law, which also provides appropriate guarantees for the rights of the individual;
3. if the processing of data is necessary to protect the life or body of an individual to whom the personal data relate, or of another person, where the individual to whom the personal data relate is physically or contractually incapable of giving his consent pursuant to subparagraph 1 of this Article;
4. if the data are processed for the purposes of lawful activities by institutions, societies, associations, religious communities, trade unions or other non-profit organisations with political, philosophical, religious or trade union aims, but only if the processing concerns their members or individuals in regular contact with them in connection with such aims, and if they do not supply such data to other individuals or persons in the public or private sector without the written consent of the individual to whom they relate;
5. if the individual to whom the sensitive personal data relate publicly announces the information without any evident or explicit aim of restricting its use;
6. if they are processed by health care workers and health care staff in accordance with legislation for the purposes of protecting the health of the public and individuals and the management or operation of health services;
7. if this is necessary in order to assert or oppose a legal claim;
8. if so provided by another statute in order to promote public interest.

To summarise, the data protection law generally prohibits the processing of sensitive data but it does allow, under necessary and special circumstances, the data to be processed in order to assert or oppose a legal claim. Slovenian anti-discrimination law is relatively new (the Implementation of the Principle of Equal Treatment Act was only adopted in 2004),[16] and there is no relevant case law yet. There have been informal procedures brought before the Advocate of the Principle of Equality, however these cases did not question the interpretation of the limits of data protection as regards anti-discrimination.

2.4 Harassment (Article 2(3))

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

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

[16] The Implementation of the Principle of Equal Treatment Act, Official Gazette of the Republic of Slovenia no. 50/2004. *Zakon o uresničevanju načela enakega obravnavanja, Uradni list Republike Slovenije št.* 50/2004.

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

Provisions relating to the prohibition of harassment as a form of discrimination exist in the ERA, which lists the protection of the dignity of employees in employment as one of the aims of the Act in Article 1. Furthermore, the employer is obliged to guarantee, *inter alia*, the personality of an employee by respecting and protecting his/her personality and privacy- Article 44. Therefore, it is an identifiable concept in national law. A more sophisticated and detailed definition is provided in Article 45 of the ERA: the employer is obliged to guarantee a working environment which does not expose the employee to unwanted conduct related to gender, including unwanted physical, verbal or non-verbal actions, or any other action based on gender by the employer or co-workers, which creates intimidating, hostile or degrading employment relationships and an environment that insults the dignity of men and women.[17] A refusal to confer sexual or other favours should never constitute a legitimate reason to discriminate.

If the employee can cite 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. The ERA provides sanctions if the employer fails to comply with this obligation. The employer is punished by a fine of 1,000,000.00 SIT (4167 EUR) as a legal person or 500,000.00 SIT (2083 EUR) as a natural person.[18] As a result of sexual harassment, the employee might exceptionally give notice[19] after notification of the breach (notification of acts of sexual harassment) in writing to the employer and labour inspector.[20]

reference to the Penal Code, see Section 6.5 (Sanctions and Remedies).

b) Is harassment prohibited as a form of discrimination?

Paragraph 2 of Article 5 of the IPETA states that harassment referred to in paragraph 1 hall be deemed to be discrimination under the provisions of this Act.

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

The Office for Equal Opportunities of the Republic of Slovenia recommends good practice for employers in the field of sexual discrimination. That could well be used in cases of harassment based on grounds listed in both EU Directives. The recommendations include:

- a stated policy against sexual harassment,
- providing information on policy against sexual harassment,
- training,
- advice and help for employees.[21]

However there are no official codes of good practice

[17] These ERA provisions apply only to harassment based on gender.
[18] Article 229 of ERA.
[19] The employee may terminate the employment contract immediately.
[20] Article 112 of the ERA.
[21] See http://www.uem-rs.si.

2.5 Instructions to discriminate (Article 2(4))

Does national law prohibit instructions to discriminate?

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

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

a) *How does national law implement the duty to provide reasonable accommodation for disabled people? In particular, specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. e.g. does national law define what would be a "disproportionate burden" for employers or is the availability of financial assistance from the State taken into account in assessing whether there is a disproportionate burden?*

The national law does not contain an explicit provision on the duty to provide reasonable accommodation, neither does it specify when the duty applies, the criteria for assessing the extent of the duty and any definition of 'reasonable'. However, the new Act which will amend the IPETA, is actually implementing the duty to provide reasonable accommodation (Article 10b of the draft Act states: To guarantee the equal treatment of disabled people, reasonable accommodation shall be provided. Meaning that, the employers have the duty to take appropriate measures in a concrete situation, which will enable the disable person access, participation and promotion in employment or vocational training, unless such measures would constitute a disproportionate burden." The authors of the report are afraid that the cited provision remains to general and will not effectively implement the duty to provide reasonable accommodation (e.g. it does not define the meaning of "reasonable", nor the definition of disproportionate burden, etc).

However, there are indirect provisions which could constitute measures to provide reasonable accommodation in the Vocational Rehabilitation and Employment of Disabled Persons Act, ERA and in other pieces of legislation. All of these must be read together to get the whole picture of reasonable accommodation in Slovenia.

The Vocational Rehabilitation and Employment of Disabled Act was adopted in 2004 and amended in 2005. Article 2 states that the aim of the Act is to increase the opportunities for disabled people to be employed and to create the circumstances for them to equally participate in the labour market by eliminating obstacles and creating equal opportunities. The Act among other things regulates the employment of disabled people. Paragraph 1 of Article 36 states that disabled people can be employed either in an ordinary working environment, in companies for disabled people or in supported and sheltered employment (see Section 2.7). All of these relate to work that fit their capabilities. Article 51 states that support services can be supplied by specialists in regard to the rehabilitation and employment of the disabled, for the employer or in relation to the working environment. Article 15 states that services promoting employment rehabilitation include: counselling and motivating disabled people be active; compiling a report on the level of working ability, knowledge, working habits and professional interests; helping people to accept their disability and informing them about opportunities for training for work; helping to identify appropriate professional goals; developing social skills; assistance in searching for a suitable job; and analysing a disabled person's particular position and working environment, in order to produce a plan for adapting

the position and working environment. This plan includes: necessary equipment; training for the job or profession; expert help with training and education; shadowing the disabled person at work after they have been employed; evaluating the success of the rehabilitation process; evaluating the extent to which employment goals have been reached; and providing other employment rehabilitation services. The minister responsible for the disabled decides the amount payable for these services. They are financed from the national budget, the Fund for promoting the employment of disabled people and from other sources.

There is a system of incentives for hiring disabled people which includes:
- subsidising disabled people's wages;
- paying costs of adapting work stations and working equipment supplied to disabled people;
- exempting the employer from paying pension and disability insurance for disabled employees;
- rewards for exceeding quotas;
- yearly rewards for employers for good practice in the area of employment of disabled people;
- other incentives in the area of employing disabled people and reserving positions for disabled people and other development incentives.

The Act was designed to balance the rights of the disabled person with the duties of the State and the employer. Article 72 states that the employer lodges an application to get a refund for costs entailed in adapting a work station to meet the needs of a disabled person from the Fund. A plan detailing the necessary adaptations and a statement of intention to conclude an employment contract for an indefinite time has to be attached to it. The Fund decides whether to refund the costs, and appeals are decided by the ministry responsible for disabled people. The costs of supporting employment are also decided in the same way. The employer has to produce an individual plan of support for the disabled person and the employer (the plan is in fact produced by the employer). Fifteen hours per month of the disabled person's salary will be funded by the Fund if the disabled person has no other rights to employment rehabilitation under the Act, if he has an employment contract for an indefinite time and if the number of disabled employees exceeds the quota set by the Act.

All other cases require the employer to pay the costs himself. As can be seen, the system aims to balance the obligations of employers and the State, but no clear proportionality test has been established. The employer has to meet certain criteria in order to get benefits from public sources. Moreover, the employer must cover the costs incurred as a result of his obligation to ensure health and safety at work.

The employer's duty to provide reasonable accommodation could therefore also be derived from Article 200 of the ERA, but only to a certain extent.

However, the above described situation has its critics in practice. According to an article by Elena Pečarič, published in Social Work and Society, the right to rehabilitation is applied discriminatorily in practice. It is carried out only by some disability organisations, by means of "public" tender and only people with certain diagnoses have the right to it, although it is supposedly a common right. On top of that, it is based on the "medical model« of disability. The author is highly critical on the organisation of the right to rehabilitation, the policy of its organisers, as well as incompetence of the Health Insurance Institute (HII). She states that based on the principle of choice, every individual should be able to choose between several operators of these services but as it is now, the society signed an exclusive agreement, monopolizing the market of services intended for people with a common or similar diagnosis. HII did not form criteria to assess the quality of provided

services, as it performs no technical control and does not monitor the use of funds. It has no per-day service price list based on a given diagnosis, which is necessary when services are funded from state budget. People who actually need less resources and services, therefore often get more than they need and vice versa, people who need more help do not get all the services they should. The price list is formed by the societies even before the "public" tender is made public. The HII lets the societies implement the services as
they see fit, and does not take measures, even if expert opinions dictate that a certain individual needs a personal assistant. The HII thus allows for unmarked use of funds, discriminates against beneficiaries who cannot use the services they are entitled to, and violates internal acts and resolutions of the management board, as well as their own rules. Rehabilitation for persons with muscular dystrophy can not, for example, be implemented anywhere else but at Dom dva topola, owned by the manager of the Muscular Dystrophy Society.[22] (the paragraph is a short summary of the Article published by E. Pečarič and does not reflect the view of the authors).

The Pension and Disability Insurance Act allows an employer to terminate an employment contract with a disabled person on business grounds (this provision has been applicable since 1 January 2006). Article 101 of the Act states that an employer can terminate an employment contract on the ground of disability. In the latter case, the employer has to offer the employee another employment contract (with part-time work or in a different position), which means that reasonable accommodation considerations will have to be taken in account when offering a new contract for work in a different position. Reasonable accommodation considerations have to be taken into account in terminating the original employment.

The Disability Commission is a public body which ascertains a person's level of disability, which is used to define the amount and the variety of benefits a disabled person receives.

Article 1, Paragraph 1 of the IPETA lists state of health and disability among other prohibited grounds of discrimination and therefore makes a distinction between the two. However, other pieces of legislation, also covering concepts relating to reasonable accommodation, refer more to disability, with the exception of the Health and Safety at Work Act and ERA.[23] Article 6 of the ERA enumerates disability among other grounds on which discrimination is prohibited. Article 20, Paragraph 3 of the ERA states that a disabled person who has been trained for a certain job may conclude an employment contract for that job (factual capacity to perform the essential tasks of the job). Article 43 of the ERA states that the employer must secure the conditions necessary to protect the employee's health and safety in accordance with the provisions regulating security and health at work. Article 26, Paragraph 7 of the 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 in that post. Article 199 of the ERA states that the employer must protect disabled persons in relation to employment, vocational training, and retraining in accordance with the provisions in the Vocational Rehabilitation and Employment of Disabled Persons Act and in line with the provisions of the Pension and Disability Insurance Act. Article 200 of the ERA obliges the employer to guarantee the employee work in another job that meets the employee's requirements, part-time work, or occupational rehabilitation, and to give the employee cash benefits in accordance with pension and disability insurance provisions.

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[22] http://www.socwork.net/2006/2/countrynotes/pecaric/pecaric.pdf

[23] State of health and disability partly overlap, but health has a wider meaning; state of health includes disability; there is no definition of state of health in either in legislation or in case law; disability on the other hand is defined by the Pension and Disability Insurance Act;

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

The failure to provide reasonable accommodation is an infringement of the ERA, the IPETA and the Vocational Rehabilitation and Employment of Disabled Persons Act. A failure to provide reasonable accommodation could result in direct or indirect discrimination as disabled employees would not be in the same position as other employees and thus a breach of Article 6 of the ERA and Article 4 of the IPETA would occur (note that Paragraph 1, Article 1 lists state of health and disability as prohibited grounds of discrimination).[24] If an employer did not act in accordance with provisions regarding the protection of the disabled (ERA, IPETA, Health and Safety at Work Act, Pension and Disability Insurance Act and the Vocational Rehabilitation and Employment of Disabled Persons Act) and as a result of that the individual would be in a worse position compared to other employees (based on anti-discrimination provisions), it would provide a solid ground to claim that discrimination (either direct or indirect, depending on which definition is more relevant) has occurred. Article 5 of the Vocational Rehabilitation and Employment of Disabled Persons Act explicitly prohibits direct or indirect discrimination against disabled persons in relation to their employment, the duration of their employment contract and in relation to terminating an employment contract, and also in regard to other procedures mentioned by the Act. However the IPETA does not elaborate on reasonable accommodation and it does not define “ disproportionate burden”, thus the provisions of both EU Directives will be of great importance for the interpretation of employers’ and State obligations in this regard.

Situation in 2006

According to the Ministry of Labour, Family and Social Affairs Sector for the Disabled People, the year 2006 was very important in the field of employment of the disabled. The Vocational Rehabilitation and Employment of Disabled Persons Act, which was adopted in 2004 and amended in 2005, brought about many measures aimed to improve the positions of the disabled in the employment market.

The first evaluations of the Act show that the goals were reached. The Act positively affected the possibilities of the disabled people, to find an employment faster and easier, but still enjoying the same level of social security. In the first 7 months of 2006, 1107 unemployed disabled were employed, which is 40% more than in the same period in 2005 ,or even the same as in 2001,2002,2003 and 2004 combined. In 2006, the Ministry first gave concessions for perfuming vocational rehabilitation to private entities. In establishing the network of concessionaires, the Ministry followed the principles of rationality, economy, equal access for all disabled irrelevant of their place of residence, equal conditions for all the disabled irrelevant of the type of disability. Concessions were given to 12 private entities (Institutions and companies). The public Institute of the Republic of Slovenia for Rehabilitation, is also performing vocational rehabilitation tasks. In the first 6 months, 542 unemployed disabled were included in different programs with the concessionaires. The Ministry also made a public tender for performance of programs of social inclusion. These programs are aimed at the disabled people, who based on a decision by the Employment Office, have not been employed for a long period. These programs will preserve the disabled people abilities and their further inclusion in the social environment. Since 1 June 2006 there are 21 performers of social inclusion in Slovenia. Over 400 disabled persons are included in these programs. Another important step is the quota system, imposing the duty to employers to employ the disabled. The first experiences show that the employers welcomed the quota system, and are performing their obligations. However, the legislator did not arrange the collection of the obligations of the employers, if they are not following the quota provisions, satisfactorily. In order for the Fund of the Republic of Slovenia for the employment of the disabled persons to

[24]Article 229, Paragraph 1 of ERA states that an employer who infringes Article 6 (anti-discrimination clause) is subject to a fine of not less than 1,000.000 SIT.

have sufficient resources, it is necessary to change the provisions of the Act which regulates these field, as otherwise the missing resources of the Fund will have to be covered by the Budget of the Republic of Slovenia. (It is problematic to rely on the State as the Fund is primarily designed to be funded by the employers) as the first months since the establishment of the quota system, also showed that the number of employed disabled is larger than the estimated number and that there are many employers which employ more disabled, than they would have to according to the quota.
A high number of employers are also using the incentives given for hiring disabled people. One of those includes the exemption of the employer, from paying pension and disability insurance, for disabled employees employed above the quotas. These are than covered to the Pension and Insurance Institute by the Budget of the Republic of Slovenia. However, a supervisor should be named, who would supervise the expenditure of these resources, and it should be defined that the resources can only be used to improve the possibilities for the employment of the disabled. There are also no data or no accurate data on the employers which are connected (through ownership shares or business cooperation), which is why effective supervision on these provisions of the Act is not possible.

c) Has national law implemented the duty to provide reasonable accommodation in respect of any of the other grounds?

Reasonable accommodation is only implemented in respect of disability

d) Does national law require buildings and infrastructure to be designed and built in a disability-accessible way? If so, could and has a failure to comply with such legislation be relied upon in a discrimination case based on the legislation transposing Directive 2000/78?

Employers have to adjust doors, stairways, bathrooms, washrooms, etc. that are directly used by the disabled and those which are located within the workplace of disabled persons.[25] Article 101 of the Pension and Disability Insurance Act provides that the employer of a 2nd or 3rd category disabled[26] employee employed in Slovenia has to retain 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 Act allows the employer to terminate the contract. The employer is obliged to be guided by the Disability Commission's opinion on the employee's remaining capacity for work as well as by the 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 issues an opinion at the request of either of the employee or the employer. However it should be noted that these provisions protect only those whose disability is attested by a medical certificate in accordance with the Pension and Disability Insurance Act.

The Ministry of Labour, Family and Social Affairs is preparing an Act on Equal Opportunities for Disabled Persons, which was planned to be adopted in the first half of 2006. However, the Act is still not prepared. According to the Ministry, it will only be adopted by the end of 2007. The Act is highly awaited, as the Government has been drafting it for almost three years now, but still did not prepare a draft version.

[25] See Article 92 of the Rules on requirements for ensuring safety and health of workers at work, 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.
[26] Disabled employees are categorised in three categories according to their remaining capability to work. 1st category are not capable of work, 2nd and 3rd category are able to work but subject to certain limitations or after rehabilitation. See the Pension and Disability Insurance Act, Article 60.

In relation to the accessibility of buildings and infrastructure, there is a proposal in the process of adoption called Accessible Slovenia, which is a national strategy designed by a working group of specialists working under the Ministry of Labour, Family and Social Affairs. The aims of the proposal are to make all the buildings in public use accessible and to remove architectural and communicational obstacles in older buildings in public use and public areas. It also aims to make information available in proper formats to disabled people with sensory impairment (e.g. medicines to be available with information in Braille), and to make public transport accessible. The national strategy is long term, with some aims are to be achieved by 2010, 2015, and 2025. It is aimed not only at the disabled but also at other people with special needs e.g. elderly people and mothers with babies.

In 2006 the preparations for the new National Action Programme for the Disabled Persons began (2007-2013). In June 2006, an intersectional working group was named by the Ministry of Labour, Family and Social Affairs, in order to prepare the draft of the programme. The program aims at setting new goals in the area of disabled people protection. It will focus in improving all the aspects of the well being of each disabled person.
Therefore, the program is not only focused on social security (e.g. benefits), but includes informing and raising awareness of the public on the disabled, raising awareness of the disabled on their rights and possibilities, employment, education, health, culture, religious life, detecting physical and other forms of violence at the disabled, ensuring accessibility to buildings, ensuring equal treatment of the disabled and preventing unequal treatment of disabled women, ensuring independent living and self-organisation in disabled organizations. The working group first met in July and the Ministry was supposed to adopt the program by December 2006.

2.7 Sheltered or semi-sheltered accommodation/employment

a) *To what extent does national law make provision for sheltered or semi-sheltered accommodation/employment for disabled workers?*

Sheltered employment is defined in the Vocational Rehabilitation and Employment of Disabled Persons Act. The Act states that sheltered employment denotes employment of a disabled person at a workplace with an environment adapted to the abilities and requirements of a disabled worker, who does not meet the requirements of an ordinary employment position. Sheltered employment is mostly provided by employment centres (see below), but can also be provided by other employers, however the latter have to define sheltered employment in the company's statutes, or if the company does not have statutes, sheltered employment has to be defined in the declaration of safety (Article 41). According to the Vocational Rehabilitation and Employment of Disabled Persons Act, an employment centre is a legal person which has been established for the employment of disabled persons exclusively in sheltered working positions, subject to fulfilling technical, organisational and staff conditions. The Ministry of Labour, Family and Social Affairs defines the conditions to be met by an employment centre, while a special commission (also appointed by the same Ministry) establishes whether the centre fulfils the conditions.

Supportive employment denotes employment of a disabled worker at a place of work in a normal working environment where expert and technical support is provided to the disabled person and the employer and in relation to the working environment.

b) *Would such activities be considered to constitute employment under national law?*

These activities are considered to constitute employment under national law.

3. PERSONAL AND MATERIAL SCOPE

3.1 Personal scope

3.1.1 EU and non-EU nationals (Recital 13 and Article 3(2) Directive 2000/43 and Recital 12 and Article 3(2) Directive 2000/78)

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

The Constitution of the Republic of Slovenia guarantees human rights and freedoms to everyone. Slovenian citizenship is not being required for protection of these rights.

The IPETA ensures equal treatment to all persons, irrespective of personal circumstances. Nationality is therefore not a requirement for protection under this law.

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

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

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

Legal theorists are of the opinion that the status of legal persons is getting closer to status of natural persons. A legal person can also be a holder of rights and duties, with the exception of those that are explicitly relate to a human's biological or sociological nature.

The law differs in respect to the liability of natural persons and the liability of legal persons for harm caused by the acts of discrimination. A significant difference is in the amount of compensation prescribed by the law that the party in breach of anti-discrimination provisions has to pay. Based on the provisions of the IPETA, an act or omission relative to laws and other regulations, collective agreements and general documents, which has all the indications of discrimination, shall be a misdemeanour for which the offender shall be fined: (1) in the case of an individual offender (natural person): from 200 to 1,250 EUR; (2) in the case of a corporate body or an individual entrepreneur from 2,000 to 41,500 EUR; (3) in the case of a responsible person of a state body or of a self-governing local community: from 200 to 2,000 EUR. Fines are payable to the State, but victims can always request damages in the civil court.

When the act of discrimination amounts to a criminal offence, Article 4 of the Criminal Liability of Legal Entities Act[27] states that: "For a criminal offence, which the actor committed in the name, on the account of or for the benefit of a legal person, the legal person is also liable". According to Article 141, criminal offences are subject to a fine ranging from 2,000,00 EUR to 312,500 EUR, or up to the value of the damage caused or pecuniary advantage obtained, multiplied by hundred. Instead of paying a fine, the legal person can also be dissolved in cases where the activity of the legal person was wholly or predominantly abused for the purpose of executing the criminal offence. The same measure is prescribed for criminal offences against the employment relationship and social security (Articles 205, 206, and 209). While a natural person, as defined in the Penal Code, shall be punished with a fine or imprisonment (see Section 6.5 Sanctions and Remedies), sanctions for legal persons for the same criminal offences are fines or the dissolution of the legal person. According to Article 2 of the Criminal Liability of Legal Entities Act, the Republic of Slovenia and the local self-governing communities as legal persons are not liable for criminal offences.

3.1.3 Scope of liability

What is the scope of liability for discrimination (including harassment and instruction to discriminate)? Specifically, can employers or (in the case of racial or ethnic origin) service-providers (e.g. landlords, schools, hospitals) be held liable for the actions of employees? Can they be held liable for actions of third parties (e.g. tenants, clients or customers)? Can the individual harasser or discriminator (e.g. co-worker or client) be held liable? Can trade unions or other trade/professional associations be held liable for actions of their members?
The IPETA very generally defines the scope of liability(in which the offender is liable for discriminatory treatment) as every field of social life, and especially the fields of employment, labour relations, participation in trade unions and interest associations, education, social security, access to and supply of goods and services.

According to the general principles of damages, a person who has caused damage has to compensate for it, unless he proves that it was not his fault (liability for damages). The Code of Obligations[28] also regulates liability for others. An employer is, according to Article 147 of the Code of Obligations, liable for damage that an employee has caused during work or in connection with work to a third person, unless he proves that the employee acted properly. A legal person is liable for the damage caused to a third person while performing its function. A school is liable for the damage that a minor under the supervision of the school has caused to a third person, unless the school proves that the supervision was carried out according to due diligence or that the damage would have occurred even with due diligence. Slovenian legislation has no specific provisions on liability for other people in the field of discrimination. Emphasis should also be put on the fact that none of the general provisions of the Code of Obligations have been yet used in discrimination cases. Therefore the question remains open as to how these provisions would be interpreted by courts in cases where damages arose due to unlawful discrimination.

3.2 Material Scope

3.2.1 Employment, self-employment and occupation

[27] The Criminal Liability of Legal Entities Act, Official Gazette of Republic of Slovenia no. 59/1999, (12/2000 – corr.), 50/2004. *Zakon o odgovornosti pravnih oseb za kazniva dejanja, Uradni list Republike Slovenije številka* 59/1999, (12/2000 – *popr.*), 50/2004.
[28] Code of Obligations, Official Gazette of the Republic of Slovenia no. 83/2001, 32/2004. *Obligacijski zakonik, Uradni list Republike Slovenije št.* 83/2001, 32/2004

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

Employment contracts and the obligations and responsibilities of the respective parties arising from employment (including payment and bonuses) training for employees, protection of specific categories of workers and the role of trade unions, are fields that are regulated by the ERA. General provisions on the employment of persons by state bodies, local communities, institutions, other organisations and private individuals performing public services are also governed by the ERA, with the exception of some special provisions, which are contained in the Public Servants Act. The Employment and Insurance against Unemployment Act[29] regulates work of the Republic Bureau for Employment (which acts as an intermediary between workers and employers), active employment policies, insurance in case of unemployment and scholarships. These activities are performed as public services.

Contracts for work or contracts for services are defined by Article 619 of the Code of Obligations. According to Article 619, a contract for work is a contract where one party commits themselves to perform a certain task (such as to produce or repair a certain object or to perform a physical or intellectual task etc.), while the person placing the order (the other party) commits to paying for the task performed. The provisions of the afore-mentioned "Code" are very general and optional, meaning that in practice, people who want to work on the basis of a contract for work will mainly define their mutual rights and obligations in a specific contract. The Government is generally not in favour of contracts for work, which is why it tried to limit the extent of these contracts, as much as possible in the ERA. The limitation of contracts for work can clearly be deduced from Article 11 of the ERA, which states that cases in which elements of an employment relationship are found cannot be regarded as contracts for work.

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

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

The Civil Servants Act applies to employees in the armed forces if the Defence Act does not contain specific provisions.

[29] The Employment and Insurance Against Unemployment Act, Official Gazette of The Republic of Slovenia no. 5/1991 (17/1991, 2/1994 - corr.), 12/1992, 12/1993, 71/1993, 38/1994, 80/1997 69/1998, 67/2002, 2/2004, 63/2004. *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, 2/2004, 63/2004) .

3.2.2 Conditions for access to employment, to self-employment or to occupation, including selection criteria, recruitment conditions and promotion, whatever the branch of activity and at all levels of the professional hierarchy (Article 3(1)(a))

Is the public sector dealt with differently to the private sector?

Article 6 of the ERA stipulates that an employer when recruiting may not put a prospective or an actual employee in an unequal position on the basis of race, skin colour, sex, age, state of health or disability, religious, political and other convictions, trade union membership, ethnic or social origin, family status, financial situation, sexual orientation, or any other personal circumstances. (NB: the difference between "state of health" and "disability" is that disability is defined by the Employment and Disability Insurance Act, where the decisive criterion is the person's ability to work, whereas state of health is a personal circumstance, regardless of its impact on ability to work, which can be temporary. It is highly likely that the ERA includes state of health in this Article because persons with such conditions in some instances face discrimination, for example persons infected with HIV, hepatitis, etc. Equal treatment relating to state of health is covered by Article 1 of the IPETA) An employer may not advertise a vacancy exclusively for men or for women, unless a specific sex is a requisite condition for the performance of the work. In addition, a job advertisement 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 the work. Although these prohibitions apply to all the aforementioned grounds, discrimination on the ground of sex is emphasised since it was probably more intense in the period before adoption of the new ERA.

Prohibition of harassment as a form of discrimination exists in the ERA, which lists protecting the dignity of employees in employment as one of the aims of the Act. Furthermore, the employer is obliged to guarantee, *inter alia*, the personality of an employee by respecting and protecting his/her personality and privacy.

In the selection process the employer may only ask for information that directly relates to recruitment for a certain position (e.g. diplomas). It is explicitly forbidden to request information on family or marital status if this is not directly related to the employment relationship (the aim of this provision is to provide for the security of personal data and the direct effect is that the employer may not make a job conditional, for example by forbidding pregnancy).

The Office for Equal Opportunities in cooperation with the Employment Office of Slovenia started an awareness campaign on November 2006 titled: "You do not have to tell the employer – you can tell us! As stated in the previous paragraph, the ERA states in Article 26 that an employer may only ask for information that directly relates to recruitment for a certain position. The Office got a high number of anonymous employee's phone calls on their free of charge number (the number can be used for discrimination on all grounds protected by the Article 1 of the IPETA) which informed the Office, that employers were asking the candidates in the selection process about children, about planning the family and pregnancy and whether they are married or single. As the law clearly states that such questions are not to be asked, the Office decided to start the campaign. It is aimed both at the employers which they want to make aware of article 26, as well as the job seekers, to whom they want to give the opportunity to anonymously state, where and what happened. In the period between, 2nd November, to 31st January 2007, anybody will be able to make an anonymous complaint in all the regional offices of the Employment Office of Slovenia, as well on the internet sites of the Office for Equal Opportunities. In the first three months, the Office will raise awareness of the employers who violated Article 26, by sending them official letters warning them of their inappropriate questions. In the second phase, the violaters will be notified to the Labour Inspectorate, which will start an official procedure against the employers, who did not follow

the Office's instructions. The penalty for these violations is at least 4.000 euro for legal persons and 2.000 euro for physical persons.

Access to employment is generally the same for the public sector regarding anti-discrimination provisions, but there are some provisions in the recruitment process that differ to the provisions of the ERA. According to Article 7 of the Civil Servants Act, all civil servants are chosen through a public competition. In the course of a public tender all candidates must be treated equally and only professional qualifications should be considered in hiring an employee in the public sector. Article 29 of the Civil Servants Act regulates promotion of employees. It specifically states that when assessing a candidate for promotion only the qualifications and other professional skills should be considered, in addition to the quality of the employee's work. Both the ERA and IPETA apply to civil servants, but the Civil Servants Act is a special Act in comparison to the ERA and IPETA, and therefore regulates certain conditions for access to employment in the public sector differently, as described above.

There is no explicit prohibition against discrimination in the law which governs self-employment (the Companies Act). However, as mentioned before, the provisions on discrimination in the field of employment contained in the ERA apply to all employment relations, unless another Act imposes different provisions. There are no such provisions in any Act with respect to self-employment.

Even though the IPETA (which covers both the private and public sector) and the ERA apply to the public sector, we can conclude that the public and private sectors are not dealt with equally as the Civil Servants Act contains some specific provisions about selection criteria, recruitment and promotion.

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

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

The IPETA prohibits each of the grounds of discrimination covered by the Directives, *inter alia* in field of employment. Employment and working conditions are regulated by the ERA. The anti-discrimination clause in Article 6 (see Section 3.2.2) refers explicitly also to the course of employment and termination of a contract of employment. Under Article 89 of EAR, race, skin colour, sex, age, disability, marital status, family obligations, pregnancy, religious and political conviction, ethnic and social origin cannot be admitted as reasonable grounds for terminating an employment contract. Article 133 ensures the equality of payment between men and women. The employer shall guarantee equal remuneration for male and female workers for work of equal value. Although the ERA does not include any special provisions regarding equal pay for other grounds, such a claim is possible under Article 6. Again, the ground of sex discrimination is emphasised most probably because of special interest in the equality of men and women, since in the past this type of discrimination was prevalent. The Act also states that provisions included in individual and collective agreements or employers´ rules relating to professional activity that are contrary to the principle of equal payment are null and void. Article 200 of the ERA obliges the employer to guarantee a disabled employee work in another job that is suitable for the employee's abilities. According to Article 116 of the ERA, the employer cannot terminate the contract of a disabled employee of the 2nd or 3rd category for business reasons. Such action is possible only if the employer, in line with the provisions on pension and disability insurance, cannot find another working position for the disabled employee or to arrange for him to work part-time. The reasonable

accommodation standard has to be used when the disabled worker is in sheltered or supportive employment.

b) In respect of occupational pensions, how does national law ensure the prohibition of discrimination on all the grounds covered by Directive 2000/78 ?

The Pension and Insurance Act states that the conditions for access to occupational pensions can not be set differently according to sex. As to other grounds IPETA applies which prohibits unequal treatment in all the areas of social life (and therefore also in respect to occupational schemes).

3.2.4 Access to all types and to all levels of vocational guidance, vocational training, advanced vocational training and retraining, including practical work experience (Article 3(1)(b)) *Note that there is an overlap between 'vocational training' and 'education'. For example, university courses have been treated as vocational training in the past by the Court of Justice. Other courses, especially those taken after leaving school, may fall into this category. Does the national Anti-discrimination law apply to vocational training outside the employment relationship, such as that provided by technical schools or universities ?*

This area is not expressly covered by special anti-discrimination provisions, rather the general anti-discrimination provision in Article 6 of the ERA could relate to it. The ERA briefly regulates vocational training, presuming that it is regulated in detail by collective agreements or individual agreements.

Article 199 of the ERA states that the employer protects disabled persons in relation to employment, vocational training and retraining in accordance with provisions on training and employment of disabled persons and provisions on pension and disability insurance. Article 199 of the ERA protects disabled people by explicitly instructing the employer to follow the directions of both the Act on Vocational Rehabilitation and Employment of Disabled People and the Pension and Disability Insurance Act. The aim of this provision is to secure employment for disabled people by providing training appropriate for a position the disabled worker is able to perform. The Employment and Insurance in the case of Unemployment Act entitles an unemployed person to be included in an active employment policy programme. Priority inclusion in a programme is given to younger people and long-term unemployed persons, disabled persons, unemployed persons receiving unemployment allowance or social assistance and persons in need of training to be employed in jobs available on the market.

The national Anti-discrimination law does not explicitly apply to vocational training outside the employment relationships. The latter could only be implied through the IPETA, which prohibits unequal treatment in *all areas of social life*; therefore including vocational training outside employment relationships.

3.2.5 Membership of, and involvement in, an organisation of workers or employers, or any organisation whose members carry on a particular profession, including the benefits provided for by such organisations (Article 3(1)(d))

Discrimination regarding participation in trade unions and special interest associations is prohibited by Article 1 of the IPETA. Membership of trade unions is voluntary and is regulated by the statutes of each trade union. The ERA deals with the powers 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 an employment contract. The Act also contains provisions on the powers and protection of trade union organisers.

Employers and other professional bodies associate in a variety of bodies. The Chamber of Commerce and Industry is an independent, non-profit organisation which used to have compulsory membership for all enterprises that perform business activities and are registered in Slovenia. In 2006 the provisions on Chamber Commerce changed stating that membership for enterprises is no longer mandatory. Its activities are regulated by the Chamber of Commerce Act.[30] Membership of the Agricultural Chamber is compulsory for all farmers. Under the Attorney Act,[31] all attorneys-at-law must be incorporated in chamber.

Specific provisions about membership of and benefits provided by associations of workers, employers and other professional bodies are regulated in the particular statutes of these associations and not generally by national legislation.

After 12 years of preparation and negotiation among the social partners, the Slovenian parliament finally adopted the Law on Collective Agreements (LCA) on 4 March 2006. The LCA introduces free and voluntary collective bargaining.

The Law on Collective Agreements (LCA), which regulates collective labour relations, is one of the most important parts of the new labour legislation in Slovenia and represents an important shift towards the 'Europeanisation' of the Slovenian system of industrial relations and labour law. Finally adopted in March 2006 after 12 years of preparation, the LCA is in line with the International Labour Organisation (ILO) Conventions No. 87, 98 and 154 on freedom of association and collective bargaining, the Council of Europe's 1996 European Social Charter (Revised), and other European and international documents Content of the LCA

The new LCA sets out the parties to collective agreements, the content of the agreements and the procedures in relation to the conclusion of agreements. It also covers rules on validity, termination, resolution of collective disputes and other aspects, such as registration and publication of collective agreements. Finally, the law includes a chapter on transitional provisions addressing, among other issues, employer organisations with compulsory membership

While preparing the law, the government adopted a consensual approach, which meant that the government, employers and trade unions had to agree on as many provisions of the draft LCA as possible before the government submitted it to the parliament for adoption. Therefore, the Economic and Social Council of Slovenia (Ekonomsko socialni svet Slovenije, ESSS) (SI0207103F), the country's central body for tripartite cooperation, appointed a tripartite negotiating group to prepare the draft LCA.

The Association of the Free Trade Unions of Slovenia has held several debates in the past on the necessity of including equal opportunity provisions into the collective bargaining. They first started the debates on including the principle of equal opportunities into collective agreements in 2004. On their last meeting they debated on the appropriate technics of collective bargaining for equal opportunities. They concluded that the already established negotiatory teams, should be enriched by including members who are qualified for bargaining on equal opportunities. The teams must gather data on inequality, which should be analysed, and .on the basis o these analyses they should make recommendations on how to amend the collective agreements.

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[30] 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.

[31] Attorney Act, Official Gazette of the Republic of Slovenia 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.

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

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

In relation to religion or belief, age, disability and sexual orientation, does national law seek to rely on the exception in Article 3(3), Directive 2000/78?
The IPETA ensures equal treatment of all persons, irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, state of health, disability, language, religious or other conviction, age, sexual orientation, education, financial situation, social status or other personal circumstances in performing their duties and exercising their basic freedoms in every field of social life, *inter alia* in the fields of social security.

Social security, which embraces preventing and solving problems connected to the social situation of individuals, families and groups, is regulated through the Social Security Act.[32] Article 4 states the principle of equal access to social security services and financial social aid for all beneficiaries under the conditions set by law. The beneficiaries are Slovenian citizens with permanent residence in Slovenia and foreigners with a residence permit in Slovenia. Slovenian citizens who do not have permanent residence in Slovenia and foreigners without a permanent residence permit are entitled only to certain limited services provided by Social Security Act in cases and under the conditions set by this Act.
The Parental Protection and Family Benefit Act[33] regulates insurance for parental protection and the rights arising from this, family benefits, and the conditions and procedure for exercising individual rights. The Pension And Invalidity Insurance Act regulates the compulsory pension and disability insurance system on the basis of intergenerational solidarity. The criteria for determining claims to family benefits and insurance for pension and disability insurance are neutral. Social security provisions are generally not subject to age limits. However, should a person seeking protection be under age or have the status of student (and be younger than 26 years), the question whether he is eligible to receive some form of financial assistance is determined by looking into the social situation of persons with the duty to provide for him (which are mostly his parents). There are no other age limitations.

Health Care

Health care is not specifically covered by the IPETA. However, Article 1 includes “access to and supply of goods and services”, which includes access to health care.
The right of any person to health care under conditions set by law is one of the constitutionally guaranteed rights. The Health Care and Health Insurance Act[34] does not contain an explicit provision on discrimination in access to health care. It only neutrally defines groups of insurance with certain rights resulting from this insurance. Article 2 introduces a broad provision that everyone has a right to health care and a duty to contribute

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[32] Social Security Act, Official Gazette of the Republic of Slovenia no. 36/2004, official consolidated text. *Zakon o socialnem varstvu, Uradni list Republike Slovenije številka 36/2004, uradno prečiščeno besedilo.*
[33] Parental Protection and Family Benefit Act, Official Gazette of the Republic of Slovenia no. 110/2003, official consolidated text. *Zakon o starševskem varstvu in družinskih prejemkih, Uradni list Republike Slovenije številka 110/2003, uradno prečiščeno besedilo.*
[34] Health Care and Health Insurance Act, Official Gazette of the Republic of Slovenia no. 20/2004, official consolidated text. *Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, Uradni list Republike Slovenije številka 20/2004, uradno prečiščeno besedilo.*

to it according to their means. The Health Services Act[35] deals with the content and presence of health services, which can be performed as public or private health service. When carrying out their duties, health workers are obliged to treat all persons in the same circumstances equally and to respect their constitutional and lawful rights. The only priority allowed is when a person's medical condition necessitates urgent treatment.
Today, on the basis of the Health Care and Health Insurance Act almost the whole population of Slovenia is included in the mandatory health insurance scheme. However ,persons who do not have any residence status arranged in Slovenia remain outside the system. People without any status in Slovenia include: refugees, asylum seekers, the "erased citizens (citizens of different countries of former Yugoslavia, who had permanent residence in Slovenia before its independence. However, in February 1992, the authorities erased these people from the Register of permanent residents, leaving them without any status. Slovenia only started to consider their position in 1999, when the Constitutional Court ruled, the erasure of 1992 as unconstitutional. Even today around 4.000 people continue living in Slovenia without any status).", foreigners who are residing temporary in Slovenia. However these persons are also entitled to emergency health care. The national budget of the Republic of Slovenia covers the expenses for these groups.

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

This covers a broad category of benefits that may be provided by either public or private actors granted to people because of their employment or residence status, for example, e.g. reduced rate train travel for large families, child birth grants, funeral grants and discounts on access to municipal leisure facilities. It may be difficult to give an exhaustive analysis of whether this category is fully covered in national law, but you should indicate whether national law explicitly addresses the category of 'social advantages' or if discrimination in this area is likely to be unlawful.

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

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

This covers all aspects of education, including all types of schools. Please also consider cases of segregation in schools, affecting notably the Roma community. If these cases exist, please refer also to relevant legal/political discussions that may exist in your country on the issue.

The prohibition of discrimination in education is expressly regulated in the IPETA for all grounds that are mentioned in both Directives. Other acts listed below do not contain a specific binding anti-discrimination provision (each of them only defines discrimination in the education indirectly).

The main legislation on education is the Organisation and Financing of Education Act,[36] which guarantees the chance of achieving optimum development to individuals regardless of their sex, social and cultural background (it would cover race, ethnicity and Roma), religion, national origin and physical and mental abilities and sets this standard as one of the goals in the upbringing and education of children. Cultural background and national origin would

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[35] The Health Services Act, Official Gazette of the Republic of Slovenia no. 63/2004, 80/2004, official consolidated text. *Zakon o zdravstveni dejavnosti, Uradni list Republike Slovenije, št. 63/2004, 80/2004, uradno prečiščeno besedilo*.
[36] Organization and Financing of Education Act, Official Gazette of the Republic of Slovenia no115/2003, official consolidated text. *Zakon o organizaciji in financiranju vzgoje in izobraževanja, Uradni list Republike Slovenije, številka 115/2003, uradno prečiščeno besedilo.*

cover race and ethnicity and for example the Roma community. However, the educational goals are not legally binding and do not provide any safeguard against unequal treatment.

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

Access to professional and occupational education[37] as well as access to high school[38]and higher education[39] is the same for all Slovenian citizens, for Slovenians without citizenship and for foreigners under the condition of reciprocity or else under the condition of bearing the costs.
Pre-school education which takes place in kindergartens is based on the principles of democracy and equal opportunities for children and parents taking into consideration the variety among children and maintaining the balance between different aspects of a child's physical and mental growth.[40] The Act and other regulations deal with the pre-school and primary school education of Roma children. In kindergartens they can be placed together with other children in mixed kindergarten classes or in special classes (only possible in the regions with a large Roma population), depending on a decision by the kindergarten, municipality and the Centre for Social Work. Where a special class for Roma children is formed, the Direction on Standards and Employment Criteria in Pre-School Education[41] allows these classes to include a smaller number of children than other classes, as well as fewer children per teacher**.** Elementary school classes specially for Roma children have only been set up exceptionally since the school year 2003/2004. The tendency to integrate Roma children in regular classes has prevailed in the majority of elementary schools. The Ministry of Education and Sport decided to change norms and standards and to introduce integration of Roma children in regular classes in all elementary schools. In accordance with the Rules Amending the Decree on Norms and Standards and Elements for the Classification of Posts Providing the Basis for the Organisation and Financing of the Programme of the Nine-Year Elementary School with the Budgetary Funds (Official Gazette RS, no. 82/03), there needs to be a total of 21 children in a class with more than three Roma in the 2003/04 school year. The new rules no longer provide for classes of exclusively Roma children, however as described below (page 25) in practice there are at least two schools in Slovenia where this model is still used.

There are 272 kindergartens in Slovenia, 40 of which are attended by Roma children, mostly in the south region of Slovenia (Dolenjska and Bela Krajina) and northeast region (Štajerska and Prekmurje). 157 Roma children have been placed in special classes.

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[37] Vocational and Technical Education Act, Official Gazette of the Republic of Slovenia no. 12/1996, 44/2000, 86/2004. *Zakon o poklicnem in strokovnem izobraževanju, Uradni list Republike Slovenije številka* 12/1996, 44/2000, 86/2004.
[38]High 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.
[39] Higher Education Act, Official Gazette of the Republic of Slovenia no. 100/2004, official consolidated text. *Zakon o visokem šolstvu, Uradni list Republike Slovenije številka 100/2004, uradno prečiščeno besedilo.*
[40] Kindergarten Act, Article, Official Gazette no. 113/2003, official consolidated text. *Zakon o vrtcih, Uradni list Republike Slovenije št. 113/2003, uradno prečiščeno besedilo.*
[41]Direction on Standards and Employment Critera in Pre-School Education, Official Gazette of the Republic of Slovenia no. 57/1997 (59/1997 - corr), 40/1999, 3/2000 (13/2000, 32/2000 – corrig.), 29/2002. *Odredba o normativih in kadrovskih pogojih za opravljanje dejavnosti predšolske vzgoje, Ur.l. RS, št.* 57/1997 (59/1997 - *popr*.), 40/1999, 3/2000 (13/2000, 32/2000 - *popr*.), 29/2002).

An improvement in the education of Roma children is expected with the Strategy for the Education of the Roma, adopted by the Ministry of Education in May 2004. It provides for Roma children to attend kindergarten at an earlier age (at least two years prior to the start of elementary school but at the latest at the age of four). This is reasonable mostly on the ground that earlier enrolment will improve their knowledge of the Slovenian language and help their earlier socialisation. Another measure is the introduction of Roma assistants in classes with Roma children, optional lessons in Roma language, and non-segregation of Roma children. While learning the Roma language is to be optional for Roma children, the Constitution and a special Act give the Italian and Hungarian minority the right to an education in the minority language and the right to adopt and to promote education (on the special rights of the two national minorities see below, p38).

However , according to the Amnesty International press release in November 2006, Romany children in Slovenia continue to face discrimination irrelevant of the strategies and programmes adopted by the Government. According to the mentioned report, which included the position of Roma in Bosnia and Herzegovina, Croatia and Slovenia , extreme poverty, discrimination in schools and the lack of truly inclusive and multicultural curricula violate the right to education of Romani children Free meals, textbooks and transportation are sometimes provided to Romani children. But even getting to school can be impossible when the school is too far away to reach on foot and children's clothes are not warm enough to cope with a bitter winter. Children are often unable to study or do homework in cold, overcrowded homes. As members of the Romani community in Slovenia told Amnesty International, "Some of us live in huts. How can the children do well at school?" Romani children are in some cases discriminated against by their own teachers. Negative stereotypes about the Roma's "way of life" or attitude toward education are often used to explain poor school attendance and grades, even by educators. Teachers, Romani children and parents generally acknowledge that many of the difficulties Romani children encounter in primary schools are due to linguistic barriers. Many Romani children have no or limited command of the language spoken by the majority population. At present, the languages spoken by Roma are virtually absent from schools of the three countries, unlike other minority languages. Other measures that could help overcoming language obstacles, such as improving access to pre-school education for Romani children and the employment of suitably trained Romani teaching assistants, have not been implemented in a systematic and comprehensive way. Romani culture and history in general are not included in a systematic way in school curricula. [42]

The above mentioned view is also shared by the authors of the 2006 report The Aspect of Culture in the Social Inclusion of Ethnic Minorities for Slovenia.
According to their observations despite considerable efforts – financial means and organization of training and lectures – that Slovenia has already dedicated to the inclusion of the Roma in educational system, the achieved results are not satisfying. The share of the Roma children, who successfully progress in the education vertical, is essentially lower in comparison with the rest of Slovenia's population. The dropout of Roma children is much higher than amongst other primary school pupils. A large number of the Roma children do not complete the primary school education. Actually, a high portion of children, who attend primary school, end their education with the5th or 6th class. The number of Roma children attending primary school is slowly increasing, but it is still only a part of the Roma population who successfully complete their primary education.[43]

[42]report, False start: The exclusion of Romani children from primary education in Bosnia and Herzegovina, Croatia and Slovenia, http://www.amnestyusa.org/regions/europe/document.do?id=ENGUSA20061105001
[43]Mitja Žagar, Ph. D., Miran Komac, Ph. D., Mojca Medvešek, Ph. D. Romana Bešter, Ph. D**. :** The Aspect of Culture in the Social Inclusion of Ethnic Minorities, The Institute for Ethnic Studies, Ljubljana, Slovenia
http://www.ecmi.de/download/working_paper_33.pdf

In NAP/inclusion 2004-2006 the educational situation of the Roma is considered one of the main obstacles for their social inclusion: »Members of the Roma community are characterized by a low level of education and inadequate functional literacy. Owing to their deficient knowledge of Slovenian, Roma children have difficulties as soon as they enrol in kindergarten or primary school. All of this creates problems with inclusion in society. Slovenia will try to invest greater effort in including Roma children in full-time education« (NAP/inclusion 2004-2006, p. 20).

In 2005 there was a big public discussion on a proposed new model of education in the Bršljin Elementary School, near Novo Mesto. In April 2005, the parents of some non-Roma children at Bršljin elementary school started a school boycott. They requested that the 86 Roma pupils at Bršljin elementary school be dispersed evenly across the schools in the Novo Mesto municipality. In the absence of an agreement, the Minister of Education proposed a solution, but according to experts, the Human Rights Ombudsman and NGOs, the proposed model was actually segregating Roma children. 23 Professors of the three Slovenian universities stated that the proposed pilot model was in breach of the Elementary School Act, which stipulates that children from the fourth to the eight grade of elementary school can only be divided for a total of one quarter of all the educational hours. The model prepared by the Ministry of Education envisaged special classes for Roma children from the 1st to the 8th grade of elementary school. The justification for the division was according to the Ministry the knowledge and skills of children. Parents of the Roma children threatened to boycott classes and not send their children to school unless a more reasonable model of education was proposed, but that did not happen. The Human Rights Ombudsman demanded information on the procedure for adopting the model and the criteria on which the division was to be made. The Ministry claimed that the division was not made based on ethnic origin but on the grounds of knowledge. NGOs insisted that this was direct discrimination, but the Ministry of Education claimed such division was justified due to the fact that Roma children were not well adapted and did not have skills equal to other children. The Ministry therefore did not reconsider its decision but carried on implementing the model. The model has not been challenged in the Constitutional Court.

In 2006 The Human Rights Ombudsman demanded the above mentioned school in Novo Mesto to provide an answer on the recent developments in the implementation of the new model.. The answer provided to the Ombudsman, showed that the school can not be accused of ethnic segregation, however the work of the national and local authorities was still to be criticised. The core of the problem, is the fact that the Strategy for the Education of the Roma, is not being exercised in practice. Another problem is the systematisation of the Romany assistants who would be contributors in the education system There are currently no members of the Roma Community, who would fulfil the conditions to qualify as a assistant (nobody has a high school degree, which is an essential requirement for a person to be part of the schooling system). Currently there are 2 Roma co-operators at the School, one working as a family coordinator, and the other in charge of the liaisoning with the Roma Community..

According to the educational authorities, a number of measures have been taken to find a solution. One of them was the introduction, from the first year onwards, of ability-based streaming for certain subjects. This measure, which runs counter to the standard practice of streaming only after the third year, has resulted in a *de facto* segregation. Additional professional support and Roma assistants have, however, been made available to the school, according to the educational authorities.[44] The model was criticised in the Human Rights

[44] Council of Europe, Commissioner for Human Rights: *Follow up Report on Slovenia 2003-2005*; 29 March 2006;

Ombudsman's report[45] as well as in the report of the Commissioner for Human Rights of the Council of Europe (29 March 2006).

In 2004/2005 there were 1547 Roma children attending elementary schools, approximately 40 in secondary schools, while only five Roma students were attending university (however the latter information is not completely accurate as data could only be found for the regions of Štajerska and Prekmurje).[46]

The Elementary School Act introduces goals for primary school education, which include: educating children to encourage mutual tolerance, respect for difference, co-operation with others, and respect for human rights and fundamental freedoms, and thus prepares them for life in a democratic society.[47]

Special provisions govern children of Slovenian citizens who reside in Slovenia but whose mother tongue is other than Slovenian. In accordance with international agreements, special lessons in their mother tongue and culture are organised, with the possibility of Slovenian lessons organised in addition. Children who are of foreign citizenship or do not have citizenship and reside in Slovenia have the right to obligatory primary school education on the same terms as Slovenian citizens. For them, lessons in their mother tongue and culture are organised free of charge, through international agreements. The Strategy for the Education of Roma in Slovenia states that this model should be used in solving the problem of education of Roma children.

Pre-school, primary school, as well as primary and secondary vocational education, secondary technical education, professional education and secondary general education for the Italian and Hungarian national minorities are regulated in the Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act.[48]

On 12 September 2006 the Members of the Party of Youth of Slovenia gathered 3.834 signatures for a proposition for the changes to the Kindergarten Act. After they filed the list of signatures, the procedure started, according to the rules of Procedure of the National Assembly which sets a deadline, in which they have to gather 5000 signature, for an official proposition of the Act to be filed in the Parliament.
The Aim of the Act changing the current Kindergarten Act, is to abolish the long term discrimination of preschool children. By changing the law, they want to guarantee equal opportunities for all the children, irrelevant of the status of their parents. The current situation distinguishes among children due to the high prices of preschool upbringing. Therefore, the new law is to change the financing of kindergarten by taking the model of elementary school and high school. In all these cases the legislator arranged for public financing of schooling, except in the case of preschool upbringing. The described opinion is also shared by the trade unions in Slovenia, which strongly believe all children should be involved in pre-school education; they believe kindergartens could contribute greatly to the fight against discrimination by raising awareness on tolerance and equality .

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[45] http://www.varuh-rs.si/index.php?id=879&L=6

[46] Information included in: *The Strategy of the Education of Roma in Slovenia prepared by the working group for the strategy of inclusion of Roma in the education* and on http://www.uvn.gov.si/index.php?id=99

[47] Elementary School Act, Official Gazette of the Republic of Slovenia no. 12/1996, 33/1997, 54/2000, 59/2001, 71/2004. *Zakon o osnovni šoli, Uradni list Republike Slovenije številka* 12/1996, 33/1997, 54/2000, 59/2001, 71/2004.

[48] 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 members of the second generation of ethnic groups of the former Yugoslavia, faced a high level of discrimination on the ground of their ethnic origin, according to a survey on Slovenian Integration Policies. The, so called second generation, are children of emigrants from the countries of former Yugoslavia, who were born and raised in Slovenia. They faced a high level of intolerance in school. (A quote from the research states: "When I was in school the teacher told us for a whole hour that we smelled that we are stupid and so on).
Discrimination practices in education are even greater among Roma children as they are seen as incompetent and unable to reach higher standards. (Another quote from the research states: "when I was in elementary school all the children were sent to the textile high school. It was immediately assumed that if you are Roma you have to go to textile school. You could not attend medical or economy school."

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

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

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

With regards to access to goods and services, Article 25 of the Consumer Protection Act, should also be considered, as it states that providers must sell goods and provide services to all consumers, under the same conditions.

3.2.10 Housing (Article 3(1)(h) Directive 2000/43)

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

The Housing Act[49] regulates types of residential buildings, conditions for maintaining and planning them, building and selling new apartments, tasks and competences of the Government and municipalities concerning housing and also matters connected with ownership and leasing.

In order to rent a social flat, people have to fulfil general conditions, such as citizenship, permanent residence in the area where the apartment is located, and confirmation of income and the income of their family members. For other types of lease, landlords may add even more conditions that have to be satisfied in order to lease a particular apartment. Such conditions could lead to discrimination on the basis of some personal characteristics, for example for Roma, since the Housing Act does not include an anti-discrimination clause.

The Housing Fund was first established for privatising formerly "publicly-owned" apartments, and is now primarily concerned with solving housing problems. It is worth mentioning that Slovenia has one of the largest percentages of owner-occupied residences

[49] The Housing Act, Official Gazette of the Republic of Slovenia no. 69/2003, 18/2004. *Stanovanjski zakon, Uradni list Republike Slovenije številka* 69/2003, 18/2004.

(more than 80%). When new apartments owned by the Fund are sold (for approximately 20% below market price) some categories of buyer are given preference, as a type of positive action measure: (1) buyers who were saving in the National Housing Scheme, (2) young families (parents not older than 30 or 35), (3) younger people (not older than 30 or 35) and (4) families with large numbers of children. Apart from the first criterion, none of these criteria could impact adversely on the Roma, since it is in accordance with their way of life to have more children, and at younger age. On 23 November 2005 the European Centre for Monitoring Racism and Xenophobia issued a report stating that the Roma population in Slovenia is territorially segregated. It states that they are subject to very bad housing conditions with poor infrastructure as well as low standards of hygiene. Even though Slovenia has dedicated certain funding to the improvement of the Roma settlements(e.g. the Implementation Programme of Assistance to municipalities in order to resolve the most urgent public utility infrastructure problems in Roma settlements for 2005), the housing situation of the Roma in Slovenia remains in urgent need of improvement.

The before mentioned view of the ECMR was confirmed in October 2006, when a series of alarming events took place in Ambrus, a small settlement in central Slovenia. A Roma family (31 members) fled their settlement into the nearby woods following an incident of Monday, October 23rd, 2006, in which one of the locals was attacked by a man who lived with the Roma, although he is not a Roma himself. Some 300 locals, enraged, gathered at a meeting, urging the state to move the Roma from their village to a more appropriate location. Shortly after the incident, Minister of the Interior Dragutin Mate, appeared at the site as the negotiations started. He surrendered to the demands of the villagers' crowd and self-willingly ordained a deportation of all present Roma to the Centre for foreigners Postojna (detention centre, for rejected asylum seekers awaiting deportation). the Government's position is that an agreement was achieved between Minister Mate and the head of the Strojan family, Mirko Strojan and that the family was not forcibly deported, as stated in some media, but rather relocated with their consent. The story continued with demolition teams which pulled down the homes of the Roma family in Ambrus, on land the family legally owned. The brick houses and wooden cabins of the Strojan family were built without the proper documentation and on the land where it is not allowed to build any buildings, houses, etc. The demolition was carried out under police protection after local authorities declared two small brick houses and three wooden cabins had been illegally erected on land the 31-member Strojan family owned. On several occasions the family has already received the rulings from the Inspectorate that the houses and other buildings should be pulled down. In the time of the execution of the ruling the family was staying in the Centre for foreigners Postojna. The family, including 14 children, was relocated from centre to a former military barracks in the suburb of Ljubljana late in October after local villagers threatened to kill members of the family. There, as the members of the family have reported to the press, the family is feeling well.
However, the Act does not contain any specific provisions prohibiting racial or ethnic discrimination; neither does the IPETA explicitly refer to housing, but rather generally to "every field of social life", and especially to "access to and supply of goods and services", where housing can be included under either of these categories.

'Ensuring suitable living conditions for all' is listed as the third among the six priorities identified in the National Action Plan on Social Inclusion of Slovenia (NAPSI). It states that the number of 'non-profit' housing units should be increased and a new system of rent subsidisation should be implemented (in accordance with the provisions of the 2003 Housing Act). The gap between demand and supply has been recognised as the main problem in the area of housing. First, there is a lack of apartments and other forms of housing for vulnerable and at-risk groups of the population together with a decline in the construction of housing for rental. The reason for this has been the major reductions

in both municipality and state budgets for new housing construction and a lack of suitable land for housing construction. Second, a large divergence between the price of property and purchasing power is evident, especially in urban and regional centres. Slovenia has one of the highest cost levels for newly constructed dwellings in Europe, relative to income.

4. EXCEPTIONS

4.1 Genuine and determining occupational requirements (Article 4)

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

The national law does not provide an exception for genuine and determining occupational requirements; however there are some provisions in some special laws on these requirements. The changes, which the Government will make to the national anti-discrimination law, will implement Article 4 and specifically provider an exception for occupational requirements.

An employee who concludes an employment contract must fulfil the conditions for the performance of the work as determined by law and collective agreements and as required by the employer. An employer shall be obliged to issue a general code laying down conditions for the performance of work for individual jobs. A collective agreement or an employer's general code sets special terms for carrying out one's duties in a particular post in accordance with legal provisions. There is a legal constraint on testing an applicant's knowledge and abilities or assessing their state of health 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 that he fulfils the conditions for performing the work. In addition, there are some occupational requirements. The Judicial Service Act[50] stipulates the lowest age for candidates who are able to apply for judicial posts in Article 8. Article 9 of the Constitutional Court Act states, that only a Slovenian citizen, who is a legal expert and at least 40 can become a judge at the Constitutional Court.
According to the ERA, it is only permitted to advertise a vacancy exclusively for men or for women in cases when a specific sex is a requisite condition for the performance of the job. In addition, a job advertisement may not imply that the employer favours a specific sex for the post, except in cases where a specific sex is a requisite condition for the performance of the work. The legislation does not regulate what kind of posts could be advertised as exclusively based on sex criteria. The Public Servants Act,[51] which governs the status of public servants in state organs and local community administration organs, introduces a special condition in Article 79. For positions in bodies which under the law are obliged to use the language of self-governing national communities as an official language, knowledge of that language shall also be stipulated as a condition. An employer shall determine special health requirements which workers must fulfil in order to take up a particular position (for all positions), to participate in a work process or for the use of certain methods and means (requirements to work in a specific work process and the requirements to use certain means of work, e.g. certain tools, equipment, etc.), on the basis of a professional assessment of an authorised physician in line with the Safety and Health at Work Act. Each individual has to

[50] 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 Rebublike Slovenije številka* 19/1994, 8/ 1996, 24/1998, 48/2001, 67/2002.
[51] The present Act was adopted on 11 June 2002, entered into force on 13 July 2002, and it has been used since 28 June 2003.

pass an individual health test prior to concluding an employment contract by which his capacity to work in a certain position, to work in a work process and to use certain working equipment is ascertained.

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

4.2 Employers with an ethos based on religion or belief

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

The national anti-discrimination law does not provide an exception for employers with an ethos based on religion or belief; however the new Act will implement this..
The Law on the Legal Status of Religious Communities includes a provision in Article 10 which allows the establishment of religious schools by religious communities for training priests. Religious communities manage those schools autonomously, determine their curricula and select the teachers. The law does not limit the autonomy of religious communities explicitly, however it does set out some general principles, which they are also obliged to follow. In their activities, which are regulated with autonomous internal rules, religious communities are limited by the legal order of the Republic of Slovenia and the principle of publicity. As they are limited by the legal order in Slovenia, they should also follow the obligations under the IPETA. If, e.g. religious organizations would hire only people from that church for cleaning jobs in that churches school, that could constitute discrimination under the IPETA. However, judicial interpretation is required on the latter
(there were no disputes so far relating to the issue, therefore the authors can not state whether the principle of autonomy would prevail over the IPETA as part of the legal order of Slovenia.

There is a new act which will replace the existing law on the Legal Status of Religious Communities but it is still in the process of being adopted. The new Act does not currently propose to change the above mentioned provision in Article 10. The IPETA does not limit the Law on the Legal Status of Religious Communities' provision for these communities to select their teachers (religious communities select the teachers autonomously).

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

There are no specific provisions or case –law in this area.

4.3 Armed forces and other specific occupations

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

The Defence Act[52] states that candidates wishing to perform military service professionally should, among other requirements, in principle, not be older than 25 years or 30 years for officers.[53] Paragraph 3 of Article 88 states that anyone who wants to professionally engage in military service has to fulfil specific requirements, among others that he is physically and mentally capable.

b) Are there any provisions or exceptions relating to employment in the police, prison or emergency services (Recital 18, Directive 2000/78)?
When the Police Act was amended in 2003 (Official Gazette of the Republic of Slovenia, No. 79/03) the maximum age limit was stricken from the Act and is no longer a requirement for this kind of employment 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 employment without any chance of reviewing the employer's decision.

Point 1 of Paragraph 1 of Article 1 of the Police Act requires that a policeman has adequate mental and physical capabilities. Besides that, Article 71 states that a policeman has to pass a test of these capabilities every three years before a committee appointed by the General Director of Police. The policeman can repeat the test a total of two times in a row. If he fails the first time, he has to repeat it after three months, if he fails the second test; he has the right to a third one in another three month's time. The Minister of the Interior decides the contents and criteria to determine capabilities and the contents and the procedure for the test.

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

4.4 Nationality discrimination

Both the Race Directive and the Framework Employment Directive include exceptions relating to difference of treatment based on nationality (Art 3(2) in both Directives).
a) How does national law treat nationality discrimination?

Nationality discrimination is not explicitly prohibited in national law. The Constitution, IPETA and ERA do not list nationality (note the difference from ethnic origin) as one of the grounds of prohibited discrimination. However the provision of the IPETA prohibits unequal treatment owing to "any other personal circumstances", therefore nationality discrimination could be included as a ground on which discrimination is prohibited.

Paragraph 2 of Article 88 for instance states that a person who wants to join the armed forces has to be a citizen of Slovenia. People with dual citizenship are not allowed to professionally engage in defence activities.

In its ruling of 23 September 1998 concerning a procedure initiated by V.K. of Koper, the Constitutional Court ruled that the words "Slovenian nationality" must be removed from the Paragraph 3 of Article 2 of the Redress of Injustices Act.[54] The case was initiated by a citizen

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[52] 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.*)

[53] Ministry of Defence states in its advertisements that applicants must be a maximum of 25 years old and that the contract will be ended when the individual is 45 years old.

[54] The Redress of Injustices Act, Official Gazette of the Republic of Slovenia no. 59/1996. *Zakon o popravi krivic, Uradni list Republike Slovenije številka* 59/1996.

of the Republic of Slovenia of Serbian ancestry, according to whom Paragraph 3 of Article 2 of the Redress of Injustices Act gives certain citizens rights which are denied to 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 granting this right, the Act should not discriminate between individuals with different personal backgrounds (Paragraph 1 of Article 14 of the Constitution). As a result, Paragraph 3 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).[55]

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

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

4.5 Work-related family benefits

Some employers, both public and private, provide benefits to employees in respect of their partners. For example, an employer might provide employees with free or subsidised private health insurance, covering both the employee and their partner. Certain employers limit these benefits to the married partners or unmarried opposite-sex partners of employees. This question aims to establish how national law treats such practices. Please note this question is focused on benefits provided by the employer. We are not looking for information on state social security arrangements.

(a) Does national law permit an employer to provide benefits that are limited to those employees who are married?

Married and unmarried opposite-sex partners are treated equally according to the Act regulating family relations, therefore if an employer limited work-related benefits to married partners, this would be a breach of the Constitution. Moreover the IPETA prohibits discrimination based on any personal circumstances, therefore in our opinion if an employer limited benefits to married employees, this would constitute a breach of this law as well, and would give solid ground for a claim of discrimination.

In 2006 the NGO ŠKUC LL, The Association of Employers of Slovenia and the Free Trade Unions of Slovenia published two Handbooks (Ukrepi proti diskriminaciji v zaposlovanju za sindikate Tatjana Greif, Škuc) entitled Measures to combat discrimination. The two Handbooks were designed to target Trade unions and Employers. The Handbooks explain anti-discrimination provisions in the national laws, elaborate on what constitutes discriminatory actions, cite cases of discrimination which happened in Slovenia, (but on which the victims never made official complaints), and give their recommendations. The latter are aimed at Employers, to raise their awareness on what constitutes discriminatory action, and to help the Unions assist the victims. The recommendations, include a specific urge to the employers, not to provide benefits only limited to married couples or opposite-sex couples.

(b) Does national law permit an employer to provide benefits that are limited to those employees with opposite-sex partners?

[55] See the *Legal analysis of national and European anti-discrimination legislation for Slovenia*, by Vera Klopčič, 2001.

In June 2005 Slovenia adopted a new Act[56] regulating the registration of same-sex partnerships which will enter into force in June 2006. The new Act was adopted by the National Assembly, even though the opposition parties obstructed it and did not vote, as in their opinion the Act limits the rights of same-sex union partners. Moreover the Act was strongly criticised by NGOs working to combat discrimination on the grounds of sexual orientation, as its provisions do not address the issues of inheritance, social insurance, pension and disability insurance, or health insurance between the partners. The new Act also contains no provisions on work-related family benefits so the IPETA would apply if the employer limited benefits to opposite-sex partners, as Article 1 of this Act prohibits discrimination based on sexual orientation and there are no exceptions

4.6 Health and safety

Are there exceptions in relation to disability and health and safety (Article 7(2), Directive 2000/78)?
Are there exceptions relating to health and safety law in relation to other grounds, for example, ethnic origin or religion where there may be issues of dress or personal appearance (turbans, hair, beards, jewellery etc)?
In the wider sense, the provisions of the Vocational Rehabilitation and Employment of Disabled Persons Act represent positive action, aiming to enhance the prospects of disabled people in the labour market. Article 20, Paragraph 3 of the ERA states that a disabled person who is qualified to do a certain job can conclude an employment contract for that job. A disabled person who is qualified to perform a specific type of work should also have the physical capacity to do that type of work in order to conclude an employment contract. (For more details, see Section 2.6. Reasonable Accommodation.)

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

Health and safety at work legislation sets general and strict rules, which have to be followed by both employers and employees. Ensuring health and safety at work is an employer's obligation. In the Act, there is no exception regarding health and safety issues resulting from ethnic origin or religion, thus turbans, hair, beards, jewellery, etc. are not permitted if that runs counter to health and safety rules.

56 The Registration of Same-sex Partnerships Act, Official Gazette of the Republic of Slovenian, *Zakon o registraciji istospolnih partnerskih skupnosti (ZRIPS)*

4.7 Exceptions related to discrimination on the ground of age

4.7.1 Direct discrimination

a) Is it possible, generally, or in specified circumstances, to justify direct discrimination on the ground of age? If so, is the test compliant with the test in Article 6, Directive 2000/78, account being taken of the European Court of Justice in the Case C-144/04, Mangold ?

It is possible to justify direct discrimination on the ground of age and the test is in compliance with Article 6 of the Directive (Article 2 of the IPETA covers objectively and reasonably justified differentiated treatment or restrictions on the grounds of a specific personal circumstance determined by special laws aiming to achieve a legitimate purpose)
b) Does national law permit differences of treatment based on age for any activities within the material scope of Directive 2000/78?
Article 25 of the Employment and Insurance in the case of Unemployment Act contains provisions which allow direct discrimination on the ground of age if it is objectively and reasonably justified by a legitimate aim. It provides unemployed workers older than 50 years with a right to receive unemployment benefits for 18 months instead of just 12 months as is the case for other workers in the same situation (that is, with insurance of 25 years or more), and the unemployed workers older than 55 years with a right to receive compensation for 24 months.
b) Does national legislation allow occupational pension schemes to fix ages for admission to the scheme or entitlement to benefits under it taking up the possibility provided for by article 6(2) ?

The Pension and Disability Insurance Act, introduced two types of supplementary pension insurance in the year 2000: compulsory (for insured persons performing particularly hard work and work harmful to health, and insured persons performing professional activities, which cannot be successfully performed after attaining a certain age) and voluntary. Voluntary supplementary scheme is an option offered in particular to younger generations of the employed population, who will clearly have to use their own savings to provide for their social security in their old age due to a gradual decrease
In pensions earned in the mandatory insurance scheme. Mandatory insurance is financed on a pay as- you-go basis, while supplementary pension and disability insurance is based on funded schemes. The law states that a person has to be included in the mandatory insurance scheme to be admitted to the voluntary scheme. Therefore, even though the law does not explicitly fix ages for admission it is implied that the minimum set age to enter is 15 (the law states that all the employed and self employed are to be included in the mandatory insurance. However one can join on a voluntary basis at the age of 15).

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

Are there any special conditions set by law for older or younger workers in order to promote their vocational integration, or for persons with caring responsibilities to ensure their protection? If so, please describe these.
Several provisions of the Employment Relationship Act are intended to protect younger and older workers with regard to working conditions and working environment. In particular, the law provides for the special protection of older workers, that is for workers older than 55 years, with regard to the length of working hours, stating that an older worker may conclude an employment contract for shorter working hours if he partially retires. Additionally, the Act imposes limitations on overtime and night work, which prohibit the employer from ordering

an older worker to work overtime or at night. Several provisions of the Act are intended to protect workers who have not yet reached 18 years of age. These workers may not be exposed to certain kinds of working conditions, such as working underground or under water, exposure to increased health risks due to exceptional cold, heat, noise or vibrations, and conditions which present a greater risk of accidents. A worker who is younger than 18 may not work for more than 40 hours per week, or at night between 22.00 and 06.00 the next day, and has the right to seven extra days of paid holiday.
The Employment Relationships Act contains some provisions designed to protect workers due to pregnancy and parenthood. They are to enjoy special protection according to Article 187 of the Act. Furthermore, in case of a dispute regarding the exercise of special protection due to pregnancy and parenthood, the burden of proof is shifted on the employer. The mentioned provision, also set an obligation on the employer, to enable workers to easily reconcile of their family and employment responsibilities. Moreover, the Act also offers protection with regard to night work and overtime work; it states that a worker, who takes care of a child under the age of three, may be ordered to work overtime or at night only upon his written consent. A written consent, for overtime work or night work, is also required in circumstances where, one of the employed parents of a child under seven ,or a child who is severely ill, or of a severely physically or mentally disabled child, is living alone with a child and caring for the child. There are no other provisions in the law offering special protection for persons with caring responsibilities.

4.7.3 Minimum and maximum age requirements

- Differences of treatment on grounds of age

The Employment Framework Directive permits, but does not require, Member States to include some further exceptions that would allow differential treatment on grounds of age including:

- setting special conditions on access to employment and training, on employment and occupation, including dismissal and pay, for young people, older workers and people with caring responsibilities in order to protect them or to promote their vocational integration;
- fixing minimum age, experience or seniority for access to employment or advantages linked to employment;
- fixing maximum age for recruitment, based on the training requirements of the post or the need for a reasonable period of employment before retirement.[57]

Any such exception must still be objectively and reasonably justified by a legitimate aim, which could include legitimate employment policy, labour market or training objectives, and the means of achieving that aim must be appropriate and necessary.[58]

Are there exceptions permitting minimum and/or maximum age requirements in relation to access to employment (notably in the public sector) and training?
The law sets the minimum age for entering into an employment contract at 15 years as a general rule, and for working on a ship at 16 years. In addition, for certain professions such as judges, the minimum age requirement is set at 30 years of age (Judicial Service Act). There are no maximum age requirements for employment set as a general rule. However, for certain professions there are maximum age conditions prescribed for entering employment as well as for obligatory termination of employment on reaching a certain age. These exceptions apply to employees in the police and armed forces (see chapter 4.3) and to judges. Under the

[57] *See* Article 6 of the Employment Framework Directive.
[58] *See* Article 6/1 of the Employment Framework Directive.

Judicial Service Act,[59] the minimum age requirement for a person to apply to be a judge is 30 years. Given the nature of judicial work and its serious responsibilities, it may be considered that this exception is objectively justified.

The Defence Act[60] states that candidates wishing to perform military service professionally should, among other requirements, in principle not be older than 25 years or 30 years for officers. Paragraph 3 of Article 88 states that anyone who wants to professionally engage in military service has to fulfil specific requirements, including that he is physically and mentally capable of professionally performing military service. The Ministry of Defence states as a condition in its advertisements that candidates must be a maximum of 25 years old and that the contract will be ended when the individual is 45 years old, but the employer has to reallocate the employee to a different position, or help the employee qualify for another position (Article 93 of the Defence Act).

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

4.7.4 Retirement

In this question it is important to distinguish between pensionable age (the age set by the state, or by employers or by collective agreements, at which individuals become entitled to a state pension, as distinct from the age at which individuals retire from work), and mandatory retirement ages (which can be state-imposed, employer-imposed, imposed by an employee's employment contract or imposed by a collective agreement).

a) Is there a state pension age, at which individuals must begin to collect their state pensions? Can this be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?

There is no state pension age at which individuals must begin to collect their pension; moreover the State actually encourages longer employment with bonuses; men who continue working after 40 years of work and women who continue after 38 years of work are awarded a correspondingly higher pension. The intention is to encourage people to continue working, because as long as they work they contribute to the system, while on the other hand they

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[59] Judicial Service Act, Official Gazette of the Republic of Slovenia No. 16/1994, 8/1996, 24/1998, 45/1999, 101/1999, 48/2001, 67/2002, 105/2002, 2/2004, 71/2004. *Zakon o sodniški službi (ZSS), Uradni list Republike Slovenije št.* 16/1994, 8/1996, 24/1998, 45/1999, 101/1999, 48/2001, 67/2002, 105/2002, 2/2004, 71/2004.

[60] 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.)

receive their pension for a shorter period of time. In fact, if a man claiming old-age pension has neither reached full pensionable age nor accumulated 40 years of service, his old-age pension is permanently reduced by a certain percentage. The rate of reduction depends on the age a claimant has reached at the date of pension grant and the number of months missing up until the full pensionable age. The greatest possible reduction in this respect may thus amount to 18%. For women, such reduction will be applied after 2015 and will gradually reach a maximum of 10.8%. Despite these benefits, the average age of retirement in Slovenia is still one of the lowest in Europe.

People can also choose to defer their pensions. Article 178 of the Pension and Disability Insurance Act gives an individual who continues working after retirement the opportunity to be elected to statutory office or to perform an employment or an economic activity. In this case their pension entitlement is frozen, because they are not entitled to receive double payments.

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 pension insurance while women have to be 61 (full age) years old and have 38 years of pension insurance.[61] This difference is based on the different social status of men and women over the past three decades. Although women held full time jobs just like men, they had to take care of children and the household after coming home from work. Due to this additional burden, Members of Parliament thought it would be fair to fix a lower retirement age for women. There have been no changes regarding the retirement age since the amending act of the Pension and Disability Insurance Act in 1999. This Act was a part of a large reform of the pension system. It raised the age limit for entitlement to a full pension, but also provided for a transitional period.

In the past year there were some changes in the field of pension and disability insurance. One of the essential novelties introduced by the Act Amending the Pension and Invalidity Insurance Act is the mode of pension adjustment. In future, the pensions should be adjusted in accordance with the growth of average monthly salaries paid to persons employed with legal entities, as published by the Statistical Office in the Official Gazette of the Republic of Slovenia (Uradni list Republike Slovenije). The basis for adjustment is the pension to which the beneficiary was entitled in the month preceding the month of adjustment or at the time of assessment if the assessment was carried out in the month of adjustment. The current arrangement provides for the growth of pensions equal to the difference between the growth of salaries and the growth of pensions. When the growth of salaries is not perceived or when a decline in the growth of salaries occurs, such a situation leads to lagging of pensions behind the growth of salaries.

The amendments to the Act eliminate the property census in acquiring the right to a part of widow's/widower's pension paid in addition to old-age or invalidity pension to which a widow/a widower is entitled on grounds of her/his own insurance. As the result would be a huge increase in number of beneficiaries, the transition to such arrangement will be gradual. There is a restriction in respect of maximum payment, so that the total amount of one's own pension plus the part of widow's/widower's pension cannot exceed the old-age pension based on the assessment rate for 40 years of pension qualifying period (male). Such limit is adjusted in the same manner as the pensions.

The changed pension system will provide for bonuses for longer employment, provide for insurance and relevant rights even on the basis of short employments and promote saving within the voluntary insurance scheme. Thus a more just distribution of obligations and entitlements from the pension system should be facilitated.

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

The provisions relating to the reduction of the old-age pension due to certain earnings of the pensioner who has not attained 63 or 61 years of age, were deleted with the above mentioned changes made to the Pension and Disability Insurance Act in 2006. According to previous arrangements, when the average monthly additional income was exceeding 55% of minimum average monthly salary for a calendar year for which the personal income tax had been calculated, the pension was reduced by 5% to 31% depending on the amount of additional income of the pensioner

The Pension and Disability Insurance Act states that with a minimum insurance period of 15 years, the pension is determined as 35% of the assessment basis[62] for men and 38% of the assessment basis for women, and for each next year of insurance period, 1.5% of the assessment basis is added (see Article 50, Pension and Insurance Disability Act). This is supposedly justified since after 40 years for men and 38 years for women, the assessment percentage should be equal – 72.5% of the assessment basis.

There is only one situation in which compulsory retirement is permitted is in a case of complete disability. In this case, the employment relationship ceases when the decision asserting complete disability is transmitted to the employee (see Article 119 of the 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

b*) Is there a normal age when individuals can begin to receive payments from occupational pension schemes and other employer-funded pension arrangements? Can payments from such occupational pension schemes be deferred if an individual wishes to work for longer, or can an individual collect a pension and still work?*

There are three different systems of occupational pension schemes. The first one is obligatory and it is paid by government; it is provided for persons who work in health-damaging circumstances or who are not able to continue to work in the same workplace after a certain age. The other two systems are voluntary and they can be organised on individual or collective basis. A person is entitled to occupational pension once he fulfils the conditions for a state pension. There is also no maximum age set in the law when the individual has to retire.

c) Is there a state-imposed mandatory retirement age(s)? Please state whether this is generally applicable or only in respect of certain sectors, if so please state which. Have there been recent changes in this respect or are any planned in the near future?

There are no generally applicable provisions in the legal order which fix mandatory retirement ages. The Pension and Disability Insurance Act only fixes minimum age and minimum working years for entitlement to a pension, but it is not mandatory for an employee to retire when he fulfils the conditions for retirement.
Amendments to Article 162 of to the Civil Servants Act in 2005, did fix a mandatory retirement age for civil servants. The provision stated that an employment contract will terminate by law, once the employee reaches the full age and pension insurance, unless the employee reaches a different agreement with his supervisor. However, this provision was deemed unconstitutional with a judgment of the Constitutional Court on 16.11.2006. (Odločba o razveljavitvi drugega odstavka 162. člena Zakona o javnih uslužbencih in 86. člena sprememb in dopolnitev Zakona o javnih uslužbencih, Ur.l. RS, št 131/2006 Odl.US: U-I-227/06-27).

[62] 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 in the succesive 18 years of employment which were most favourable for the employee. Pension is assessed at 72.5% of the assessment basis.

d) Does national law permit employers to set retirement ages (or ages at which the termination of an employment contract is possible) by contract, collective bargaining or unilaterally?

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

e) Does the law on protection against dismissal and other laws protecting employment rights apply to all workers irrespective of age, if they remain in employment or are these rights lost on attaining pensionable age or another age (please specify)?
For these above questions, please indicate whether the ages are different for women and men.'
The law protecting against dismissal apply to all workers irrespective of age and are not lost on attaining pension age.

4.7.5 Redundancy

a) Does national law permit age or seniority to be taken into account in selecting workers for redundancy?
Article 100 of the ERA sets the criteria for selecting workers for redundancy. The first is the professional education of the employee and his work qualifications, as well as additional knowledge and abilities required. Next are length of work experience, performance at work, years of active employment, state of health, and social circumstances. The criteria of work experience and years at work obviously discriminate on ground of age. Usually someone with more years at work and with more work experience keeps their job - which means, of course, someone 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 encourage older workers to retire by buying them the remaining insurance period, which could be regarded as constructive dismissal, that is the employer pays the remaining pension and disability insurance contributions (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 the Slovenian legal order and is taken into consideration when deciding on redundancies.

Furthermore it has to be taken into consideration that older employees enjoy special protection. Employees who are more than 55 years old (51 if employee is a woman; see Article 236 of the ERA), can not be dismissed without their consent. However, this provision, which was incorporated into the ERA with the clear intention of according special protection to certain categories of employees, has just the opposite effect – some employers are rude to employees whom they are trying to get rid of, which can in extreme cases amount to harassment on the basis of age. Rudeness can reach such a level that these employees are forced into submitting their resignation, which furthermore results in the loss of the right to unemployment indemnity payments since resignation is taken as a termination of the employment with the consent of the employee.
b) If national law provides compensation for redundancy, is this affected by the age of the worker?
Compensation for redundancy, in cases covered by law, is not affected by the age of the worker, except in the cases already discussed above (see Section 4.7.1)

4.8 Public security, public order, criminal offences, protection of health, protection of the rights and freedoms of others (Article 2(5), Directive 2000/78)

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

The Defence Act[63] prohibits striking by military personnel during military duty. Workers performing administrative and specialist tasks have to assure undisturbed performance of military and other tasks and duties during a strike, where these tasks and duties are connected to fundamental duties of citizens, private businesses, institutions and other organisations relating to national defence as well as the undisturbed performance of activities relating to civil defence.

The Police Act[64] requires police officers to ensure during a strike, *inter alia*, the following tasks: safeguarding life and the personal safety of people and property; prevention, detection and investigation of criminal acts; insuring public safety and securing national borders and carrying out border controls. According to the Act, the Government also has to assess these restrictions on the right to strike and compensate for them in the form of increased salary.

4.9 Any other exceptions

Please mention any other exceptions to the prohibition of discrimination (on any ground) provided in national law.
An exception worth mentioning is positive discrimination towards Italian and Hungarian ethnic minorities in the Constitution (see Section 5). There are no other exceptions to the prohibition of discrimination in the Slovenian legal system.

5. POSITIVE ACTION (Article 5 Directive 2000/43, Article 7 Directive 2000/78)

What scope does national law provide for taking positive action in respect of racial or ethnic origin, religion or belief, disability, age or sexual orientation? Please refer to.
any important case-law or relevant legal/political discussions on this topic.

Article 6 of the IPETA states that positive action consists of temporary measures, defined by law, designed to prevent a less favourable position for persons with a particular personal circumstance or to compensate for a less favourable position. After the date that the IPETA came into force, there has been no authorisation granted for positive action.

b) Do measures of positive action exist in your country? Which are the most important? Refer to measures taken in respect of all 5 grounds, in particular refer to the measures related to disability and any quotas for access of disabled persons to the labour market and any related to Roma

Article 65 of the Constitution stipulates: "The status and special rights of the Roma living in Slovenia are regulated by law." Government social programmes[65] provide measures aiming at ensuring the equality of the Roma. One of the most important and still current is the

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[63] Defence Act, Official Gazette of the Republic of Slovenia No. 103/2004. *Zakon o obrambi (Zobr-UPB1), Uradni list Republike Slovenije št.* 103/2004

[64] Police Act, Official Gazette of the Republic of Slovenia No. 102/2004. *Zakon o policiji (ZPOL-UPB2), Uradni list Republike Slovenije št. 102/2004.*

[65] For example, the Government Employment Programme for Roma entitled "Equal opportunities" was produced by the Ministry of Labour in May 2000 and is intended to promote integration into society and increase employment.

Government programme for assisting Roma people from 1995,[66] and there are also provisions in different special laws.[67] In January 2005 the Government requested the Office for National Minorities to draft an act regulating the status of the Roma population. On 21 February 2006, a public debate about the act regulating the status of the Roma community was held in the National Council (The National Council is, in accordance with the Constitution, the representative of social, economic, professional and local interest groups. The forty-member National Council comprises 22 representatives of local interests, six representatives of non-commercial activities four representatives of employers and four of employees and four representatives of farmers, crafts and trades and independent professionals). All the participants agreed that the act was necessary, and that it should most importantly contain provisions regulating the organisation of the Roma community at national and local level as well as financing.. The Act has also been discussed by the Commission for the Protection of the Roma Community. The Slovenian Government has finally adopted a draft law proposal on the Roma community in December 2006 and transferred it to the National Assembly for further negotiations. The Act obliges Slovenia to create conditions for the inclusion of Roma in the education system, and to devote special attention to the employment, and education of the Roma. Both the state and local authorities should also improve the housing situation of Roma. In June 2006 and in November 2006 the Act was also discussed by the Commission of the Government of the Republic of Slovenia for the Protection of the Roma Ethnic Community. The Commission discussed the provisions of the Act and agreed with the final wording of the Act (to which some small corrections had to be made). The Slovenian Government adopted a draft law proposal on the Roma community on 23 November 2006 and transferred it to the National Assembly for further consideration and adoption. In January 2007 the National Council discussed the draft law proposal and in general supported it. In the beginning of March 2007 the Committee of the national Assembly on Domestic Policy, Public Administration and Justice as a competent body will discuss the draft act proposal. It is expected that the Act on Roma Community will be adopted by the end of March 2007 and valid by the end of April 2007. The Act defines the scope of special rights of Roma Community, the jurisdiction of state authorities and the local community authorities in exercising those rights, and the organisation of the Roma community in order to implement their rights and obligations. It also sets financial obligations of the Republic of Slovenia and its local self-governing communities for guaranteeing special rights of Roma community.

The laws adopted grant the Roma political participation in public and private affairs and offer a legal basis for solving problems related to their social exclusion (poor living conditions, a high rate of unemployment and lack of access to education). The Local Self-government Act[68] 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 term “autochthonous” refers to peoples who have lived in Slovenia for centuries, in a territory in which these peoples do not consider themselves to be foreigners or immigrants. In fact they justifiably feel they are the primary, native inhabitants of this territory. The Local Self-government Act lists 20 municipalities which were obliged to ensure the right of the Roma community to have a representative in the local council until regular local elections in 2002. Only 14 municipalities complied with their obligation by the set time. However, now all municipalities except one (Grosuplje) have a Roma representative in the local council. This distinction between Roma communities on the basis of being autochthonous is in fact

[66] This programme primarily encompasses attempts to regulate their living conditions, their integration into society at large, to provide opportunities for education, employment, and preventive health protection, and for the development of culture, services providing information and preservation of their identity and tradition.

[67] To date there are 12 different laws according to statements by the Government.

[68] The Local Self-government Act, Official Gazette 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.

discriminatory as was also noted by the UN Human Rights Committee, Amnesty International and the European Roma Rights Centre. The Committee states in its report its concern about the difference in the status between the so-called "autochthonous" (indigenous) and "non-autochthonous" (new) Roma communities in the State party [..] The State party should consider eliminating discrimination on the basis of status within the Roma minority and provide to the whole Roma community a status free of discrimination, and improve its living conditions and enhance its participation in public life."[69]

The Local Self-government Act also provides for committees on Roma issues as working bodies of the local councils, although these are not obligatory. Such a committee should discuss issues related to the Roma community and make recommendations and proposals. Furthermore, these committees would significantly contribute to decreasing the tensions between the Roma community and the majority population if they were established in most of the municipalities. This is, however, not the case. The suggested amendment of the Local Self-government Act, currently going through the legislative procedure, entails the obligatory establishment of committees dealing with questions related to the Roma people by local councils.

Another measure for promoting the position of the Roma community is included in the new Act on Radio Television Slovenia,[70] which came in force on 12 November 2005 and stipulates that gradually, Roma radio and television shows are to be included on the public channel, RTV. According to Article 3 of this Act, public service includes the making, preparation, and broadcasting of radio and television programmes for the Roma ethnic community.

According to Article 3 of the Act on Promoting Regional Development, which came in force on 5 November 2005, one of the goals of regional development is to include developing areas populated by both autochthonous minorities and Roma communities. It also stipulates that a Roma representative should be a member of the Regional Development Council in regions populated by Roma communities (representatives to be appointed by the Roma community).

Article 25 of the Organisation and Financing of Education Act sets out the competences of the Council of Experts of the Republic of Slovenia for General Education in adopting supplementary (additional) programmes for Roma children. Article 81, Paragraph 7 provides resources to be allocated from the national budget for various activities and projects (funds for writing and financing schoolbooks, resources for educating the Roma and partial funding for their education in primary schools).

The constitutional authorisation provided by Article 65 makes it possible to grant special (additional) protection to the Roma community and its members, which in the theory of law is known as a positive discrimination or positive protection.

Special measures for national minorities

The position of national minorities is regulated by the Constitution, ratified international documents, legislation and statutes of the municipalities. The Italian and Hungarian national minorities enjoy some special rights in addition to every human right and fundamental freedom. The Roma are not considered a national minority on a par with the Italians and Hungarians as they are considered to be a special ethnic community or minority, with specific ethnic characteristics (language, culture, etc). Slovenia ratified the Framework Convention for

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[69] http://www.errc.org/cikk.php?cikk=2384

[70] The Radio and Television Slovenia Act, *Zakon o Radioteleviziji Slovenija Ur.l.*

the Protection of National Minorities on 25 February 1998. The Republic of Slovenia[71] at that time, in accordance with the Constitution and national legislation, stated in writing that it considered the autochthonous Italian and Hungarian minority as national minorities. However the provisions of the Convention also apply to the Roma living in Slovenia.
Even though the Roma Community is not offered similar self-governance as the Hungarian and Italian National Community it is organised in the Roma Union of Slovenia. This is an umbrella organisation for Roma societies and represents them in all discussions with national authorities (its president as s Roma representative participated in a working group for the preparation of the Roma Community Act). It is also increasingly active in directing and coordinating the activities of the Roma societies, organising mass meetings of Roma and other cultural events every year. The Union has two offices, one in Murska Sobota for the region of Prekmurje, and one that was recently opened in Novo Mesto.

The special rights of Italian and Hungarian national minorities are either collective rights, accorded to the whole community, or individual rights accorded to members of the national minority. The Constitution guarantees autochthonous Italian and Hungarian minorities the right to freely use their national symbols and the right to establish organisations to foster economic, cultural, scientific and research activities, as well as activities associated with the mass media and publishing.

In accordance with the Constitution and the Special Rights for Members of the Italian and Hungarian National Minorities in the Field of Education Act,[72] members of national minorities have the right to education in the minority language and the right to adopt and to promote education. This Act stipulates the geographic areas where bilingual schooling is compulsory. The same Act stipulates that members of the Italian or Hungarian national minorities must be among the teachers who perform consultancy and supervisory work in educational organisations (Article 28). The Constitution guarantees the right to foster contacts with the wider Italian and Hungarian communities living outside Slovenia, and with Italy and Hungary respectively. The State shall give financial support and encouragement to the implementation of these rights (Article 64). The Italian and Hungarian ethnic communities shall be directly represented at local level and shall also be represented in the National Assembly (Article 64, Paragraph 3). Self-governing communities established by the Self-governing Ethnic Communities Act[73] is important for the development of culture, language and schooling and implementation of special rights of national minorities. Roma communities are not offered similar self-governance (as stated above, the Act lists 20 municipalities which are to have a Roma representative in local councils, but there is no representative in the National Assembly), however their status is expected to improve with the new Act on the Status of Roma Communities, expected to be adopted by the end of 2006.

Slovenia's efforts to combat discrimination against minorities in the country, are highlighted as an example of best practice in a new EU report, adopted today by the Committee of the Regions (CoR), the Brussels-based assembly, where local politicians meet to have their say on proposed European laws and strategy.

The report, which focuses on the role of local and regional authorities in tackling discrimination in the enlarged EU, was drafted by **Boris SOVIC**, Mayor of Maribor, in

[71] Government Office for National Minorities; www.uvn.gov.si/index.php?id=99
[72] 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.
[73] 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.*

collaboration with **Eberhard SINNER**, Minister of State and head of the Bavarian State Chancellery in Germany.

Examples of successful Slovenian policies, spotlighted in the consultative paper, include: measures to guarantee the status and protection of the Roma Community, a project aimed at integrating Roma children into mainstream education, an awareness raising programme on the dangers of xenophobia, and a scheme to encourage the development of non-profit rental housing schemes. The report, requested by the European Parliament, notes that the Slovenian Constitution guarantees minorities the right to use their own language as an official language, in the area where they live. Mr Sovic, former secretary of State in the Ministry for Economy and Member of the PES group, agrees with his German counterpart, that being able to speak the official language of the community where minorities live, increases the possibility of effective integration.[74]

Special measures in labour and social security legislation

The ERA imposes special protection of some categories of employees:

1. juveniles: prohibition on night work and certain types of work (Article 197 and Article 195), more holiday entitlement, weekly rests, breaks during working hours (Articles 196 and 198), prohibition on heavy work (Article 195);
2. older employees (over 55 years): option of partial retirement and part-time work (Article 202), overtime and night work can not be undertaken without the consent of the employee (Article 203), employment relationship can not be terminated without the consent of the employee, until the employee fulfils the conditions for entitlement to old-age pension (Article 114). The only exception is if he is guaranteed the right to compensation from unemployment insurance until he fulfils the minimum conditions for an old-age pension. This protection does not apply in the case of the termination of the existence of the employer.
3. disabled persons: under the provision of Article 199 of the ERA, disabled persons enjoy special rights according to regulations concerning the training and employment of the disabled (Vocational Rehabilitation and Employment of Disabled Persons Act) and the Pension and Disability Insurance Act. Those who are still able to perform some kind of work shall be granted another appropriate job, (in accordance with Article 200 of the ERA, the employer must ensure the employee's transfer to another job appropriate for his remaining work capability) a part-time job, vocational rehabilitation, compensation for loss of earnings (Article 200), and protection from redundancy, unless there is no other appropriate job or part-time job (Article 116).

The Employment and Insurance in the Case of Unemployment Act deals with the protection of older employees and the long-term unemployed (Article 48a). The Act stipulates that the State will reimburse the employer or organisation for half the contributions towards pension and disability insurance taken from an employee's gross wages for a period of up to two years if the employer or organisation employs certain categories of unemployed people (an unemployed person who has been registered with the Unemployment Bureau for more than 12 months without interruption; an unemployed person who is more than 50 years old and in receipt of 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 periods of time. If an organisation or employer which has more than 50 employees takes on a job seeker or an employee who has been made redundant, or if the job seeker becomes self-employed, the Bureau may reimburse the costs

[74] 15/06/2006 - Slovenian anti-discrimination policies highlighted as best practice in Sovic -Sinner report for EU Committee of the Regions; press release;

detailed by Paragraph 1 of the this Article for up to three years as follows: 100% for the first year, 50% for the second year and 25% for the third year (Article 48a Employment and Insurance in the Case of Unemployment Act).

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

The Vocational Rehabilitation and Employment of Disabled Persons Act, which was amended recently, provides different forms of employment for disabled people, in addition to measures and regulations.

A disabled worker can claim a vocational rehabilitation programme, including services, which are provided as a public service with the aim of qualifying disabled workers for suitable work, to employ disabled workers, to help them retain employment and to be promoted or to change career. Vocational rehabilitation consists in:

- counselling and motivating disabled workers to assume an active role and assistance in accepting their disability
- preparing opinions about disabled people's level of ability for work, knowledge, working habits and professional interests
- assistance in selecting suitable professional objectives and in searching for suitable work or employment
- developing social skills and expertise
- analysing the position and working environment of a disabled worker and producing a plan for adapting it
- helping disabled people qualify for a specific job or selected profession.

After the vocational rehabilitation programme finishes, and based on an evaluation of the disabled person's chances of taking up work, the Employment Service provides assistance in seeking employment at suitable places of work or in companies employing disabled people, finding supportive or sheltered employment or incorporating them into active employment policy programmes.

There is also a quota system for employing disabled people which applies to all companies (the mandatory proportion of disabled people to be employed out of the total of all employees working for a certain employer). The quota, which differs according to the main activity of the employer, was set by a Government regulation following a proposal by the Economic and Social Council. The Regulation was adopted on 13 December 2005 and came into force on 1 January 2006 (a year later than envisaged by the Vocational and Rehabilitation of Disabled Persons Act, which set the date 13 December 2004) The duty for quotas applies to all companies which employ at least 20 employees (employers who have at least 20 employees are obliged to employ 2 – 6 % disabled persons, out of the total number of employees). Companies which do not meet the quota must pay contributions to the Fund for Promoting the Employment of Disabled Persons equivalent to 70% of the minimum wage (the minimum wage since August 2005 has been 510 euros per month, so the employer would be obliged to pay 358 euros to the Fund) for each disabled person that the employer should have hired according to the quota.

On 30th August 2005 the Association of the Employed Disabled Persons of Slovenia and the Chamber of Commerce signed an agreement on guidelines on disability in employment. It specifically obliges employers to take special care to ensure equal opportunities for the disabled in the workplace, to increase employment possibilities for the disabled by

reintegrating them in the working process and enhancing possibilities for promotion, by promoting accessible and safe employment positions, and by enhancing the contributions of the disabled to the business success of the companies. This measures are strictly aimed at promoting equal opportunities and treatment of the disabled in employment and do not constitute discrimination against other employees in the company. In order to reach the goals of the agreement, employers, employed disabled and disability organisations will work together according to the principles of tolerance, understanding and mutual respect

6. REMEDIES AND ENFORCEMENT

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

a)What procedures exist for enforcing the principle of equal treatment (judicial/ administrative/alternative dispute resolution such as mediation)? In relation to each, please note whether there are different procedures for employment in the private and public sectors. In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

With the enforcement of the IPETA, the Advocate of the Principle of Equality started working within the Office for Equal Opportunities (see Section 7) on 1 January 2005. The procedure lead by the Advocate is informal and free of charge. After the Advocate finishes investigating an individual case, s/he issues an opinion about the circumstances of the case and recommendations. If the perpetrator does not follow the Advocate's recommendations within a certain timeframe, s/he can pass the case to the relevant inspectorate (see below, Section 7).

Administrative procedure

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

The administrative procedure is regulated by the General Administrative Procedure Act.[75] Administrative organs and other state bodies, local government bodies and bearers of public authority shall act in accordance with this Act . According to Article 4 of the General Administrative Procedure, the Act is *mutatis mutandis* applicable in other areas of public law in as much as they are not regulated by special administrative procedures. Any natural person or legal person in private or public law can be a party to an administrative procedure, who can file a request to begin proceedings, or against whom a claim is filed. A group of persons may also be a party, in as much as it can be holder of rights and duties (Article 42). Parties and other participants in the proceedings who cannot use the language of the procedure (in ethnically mixed areas, the Italian and Hungarian languages are equal to the Slovenian language) because they do not understand it or due to a disability, have the right to use an interpreter. The public authorities must notify the parties of their right to an interpreter. According to Act on the Use of Slovenian Sign Language,[76] deaf persons have the right to use

[75] The General Administrative Procedure Act, Official Gazette of the Republic of Slovenia no. 80/1999, 70/2000, 54/2002, 73/2004. *Zakon o splošnem upravnem postopku, Uradni list Republike Slovenije številka* 80/91999, 70/2000, 54/2002, 73/2004.

[76]The Act on the Use of Slovenian Sign Language, Official Gazette of the Republic of Slovenia no 96/2002. *Zakon o uporabi slovenskega znakovnega jezika, Uradni list RS št.* 96/2002.

an interpreter, who has to be provided by the public authorities and paid by them for up to 30 hours per year.

In the administrative procedure, it is not obligatory for a party to be represented by a lawyer; any physical person with business capacity can represent them

Payment[77] for applications and decisions is regulated by the Administrative Fees Act.[78] The Act makes an administrative tax exemption possible.

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

Administrative litigation procedures guarantee legal protection and monitoring of the activities of state bodies. An administrative court has jurisdiction to review administrative acts and rules on 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, an administrative court also decides on the legality of individual actions and acts that pertain to the constitutional rights of the individual.[79] In this case, the administrative court ascertains the illegality of the act, prohibits such an act, grants compensation for damage and provides adequate measures in order to rectify interference with constitutional rights and to restore the previous state of affairs.

Civil and criminal procedure

A civil procedure shall be used for claiming material and immaterial damages arising from a violation of the principle of equal treatment. However, the parties may pursue a conciliation or mediation procedure. The Act Amending and Supplementing the Civil Procedure Act was adopted with the clear intention of stimulating alternative dispute resolution. Article 309 of this Act states that if someone intends to bring an action, he can firstly try to reach a compromise at a local court, situated in the area where the opposite party has residency. The costs of such a procedure are covered by the person submitting the case. According to Article 305a of the Act on Civil Procedure, after the Court receives a response to a law suit, it is obliged to arrange a conciliation hearing before the trial. The parties are also allowed to reach a settlement during the civil procedure (that is, reach a compromise in court). A settlement can cover the whole claim or just a part of it, and it can also include a settlement of other moot questions among the parties. If the parties agree to an alternative dispute resolution procedure, the court can interrupt the civil procedure for a maximum of three months.

The Civil Procedure Act[80] is a procedural act used in disputes arising from personal or domestic relations, relations concerning property and other civil law relations in which natural

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[77] For example, the fee for application is 50 points, for appeal 200 points, for a decision 200 points, for an application for Slovenian citizenship 2000 points. The current value of 1 point is 17 tolars.

[78] The Administrative Fees Act, Official Gazette of Republic of Slovenia no. 40/2004, official consolidated text. *Zakon o upravnih taksah, Uradni list Republike Slovenije št. 40/2004, uradno prečiščeno besedilo.*

[79] The Judicial Review Act, Official Gazette of the Republic of Slovenia no. 50/1997 and 70/2000, 11/2003. *Zakon o upravnem sporu, Uradni list Republike Slovenije številka* 50/1997 in 70/2000, 11/2003.

[80] The Civil Procedure Act, Official Gazette of the Republic of Slovenia 63/2004, official consolidated text. *Zakon o pravdnem postopku, Uradni list Republike Slovenije 63/2004, uradno prečiščeno besedilo*.

or legal persons engage, with the exception of specific disputes which fall within the jurisdiction of special courts or other bodies. Special Labour and Social Courts use the Civil Procedure Act, if the Labour and Social Courts Act[81] does not contain a special provision to the contrary.

Criminal procedure is regulated by the Criminal Procedure Act and 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 in the criminal procedure itself. Under this procedure, victims can take over the prosecution of certain criminal offences if the public prosecutor withdraws the charges. In such cases, the so-called victim as a private prosecutor has the same procedural rights as a public prosecutor except for those to which public prosecutor is entitled as an agent of the state.

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

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

A party can represent himself in first instance procedures . Alternatively, he can choose anybody to represent him before the local court (dealing with disputes over subjects with a maximum value of 2,000,000 tolars or 8333 EUR), while in other courts, the authorised person has to be an attorney at law or someone who has passed the bar examination. A special mitigating provision is in procedures before labour or social courts, where a worker can be represented by a trade union representative, if the latter has acquired the title of a graduate lawyer. In procedures before a higher court or the Supreme Court, a trade union representative can only appear if he has passed the bar examination.

A court fee has to be paid to file an action, which is determined on the basis of the Court Fees Act[82] according to the value of the subject of the dispute.[83] In social or labour disputes which do not relate to property, the amount of the fee is 250 points (4,750.00 tolars or 20 EUR). Court fees are not payable in collective labour disputes and some social disputes. In addition, a worker does not have to pay a court fee for individual labour disputes about entering employment, existing employment or termination of employment. Claims, decisions and appeals in procedures relating to the rights of disabled persons are free from court fees under the Vocational Rehabilitation and Employment of Disabled Persons Act.

The unsuccessful party also has to pay the opposite party other expenses incurred. The court can determine that the employer has to bear all the expenses for taking evidence, even if the worker did not wholly succeed with his claim in the given labour dispute. In disputes over the termination of employment, the employer covers the expenses of the procedure irrespective of the outcome of the procedure.

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[81] The Labour and Social Courts Act, Official Gazette of the Republic of Slovenia no. 19/1994, 20/1998, 42/2002, 2/2004. *Zakon o delovnih in socialnih sodiščih, Uradni list Republike Slovenije št.* 19/1994, 20/1998, 42/2002, 2/2004.
[82] The Court Fees Act, Official Gazette of Republic of Slovenia, no.20/2004, official consolidated text, *Zakon o sodnih taksah, Uradni list Republike Slovenije št. 20/2004, uradno prečiščeno besedilo*.
[83] For example, if the plaintiff's claim is worth 1,000,000.00 SIT, the fee for the claim would be 900 points, that is 17,100.00 tolars.

Article 68 of the Labour and Social Courts Act,[84] adopted on 19 December 2003 and which entered into force on 1 January 2005, determines that in social disputes over the right to social insurance and social security, the social insurance institution has to cover its expenses irrespective of the result of the action.

Since judicial proceedings for human rights cases are customarily expensive, discrimination on grounds of the material (social) status of a person have not been brought. Individuals of poor financial means cannot afford the lengthy and expensive procedure. The Free Legal Aid Act[85] was adopted with intention of remedying this situation. This Act enables individuals to acquire the services of an attorney at law at the expense of the State. The Judicial Tax Act (Article 13) includes the possibility of an exemption from judicial tax. An individual who proves that his survival or the survival of those who he is obliged to support would be jeopardised if he pays judicial taxes, may be exempted from this payment.

There are no provisions relating the physical accessibility of the courts by disabled persons, nor are there any provisions that decisions or information should be provided in Braille. There are also no special procedures for dealing with individuals with a learning disability.

The Human Rights Ombudsman in his Annual Report for 2003 draws attention to the length of judicial proceedings,[86] as some procedures take five years or more. Despite the encouraging developments in clearing judicial backlogs at certain courts, the situation remains unsatisfactory.

Constitutional procedure

Any person who believes that his/her human rights and basic freedoms have been violated by a particular act of a state body, local community body or statutory authority may lodge a constitutional complaint with the Constitutional Court.

Both the Constitution and the Constitutional Court Act state that the Constitutional Court rules on a constitutional complaint only if other legal remedies have been exhausted.[87] Furthermore, the Constitutional Court decides whether to accept a constitutional complaint for adjudication on the basis of criteria and procedures provided by law. The complaint should be lodged within 60 days of the act.[88] A panel of three judges decides behind closed doors whether to accept a constitutional complaint and begin proceedings. The rejection or acceptance of the complaint must be decided unanimously by the panel. 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 panel or Constitutional Court may suspend the application of the particular act if its implementation would cause irreparable damage, or they may decide to suspend a certain law or other regulation on the basis of which the individual act was adopted. The Constitutional Court shall then issue a

[84] The Labour and Social Courts Act, Official Gazette of Republic of Slovenia, no. 2/2004. *Zakon o delovnih in socialnih sodiščih, Uradni list Republike Slovenije, št.* 2/2004.

[85] The Free legal Aid Act, Official Gazette of the Republic of Slovenia no. 66/2001, 50/2004. *Zakon o brezplačni pravni pomoči, Uradni list Republike Slovenije številka* 66/2001, 50/2004.

[86] See Human Rights Ombudsman Seventh Annual Report for 2001, p.27, also available on web page http://www.varuh-rs.si/cgi/teksti-eng.cgi/Index?vsebina=/cgi/teksti-eng.cgi%3Fpozdrav

[87] The Constitutional Court may exceptionally decide on a constitutional appeal if a violation is probable and if certain irreparable consequences would occur to the appellant as a result of the implementation of a particular act.

[88] In special cases, the Constitutional Court may exceptionally rule on a constitutional complaint which has been lodged after the time limit. In such circumstances, judges become aware of cases with different backgrounds and consequences that derive from a violation. The time limit cannot therefore be interpreted strictly and the judges should consider when the relationship ended.

decision declaring that the appeal was unfounded or it shall accept the appeal and partly or completely revoke and rescind the act which 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 rule on a contested right or freedom if such a procedure is necessary in order to undo the consequences that have already occurred on the basis of the individual abrogated act, or if such is the nature of the constitutional right or freedom, and if a decision can be reached on the basis of information on record.[89]

According to Article 22 of the Constitutional Court Act, the Constitutional Court is competent for assessing the constitutionality and legality of regulations and general acts issued for the exercise of public authority. This shall include assessing the conformity of laws and other regulations with ratified international treaties and the general principles of international law. In some cases where a regulation is unconstitutional, it does not conform with international treaties, however there is no indication that the Court would invalidate a regulation solely for failing to conform with international treaties.

b) Are these binding or non-binding?

The procedures described above are binding, except for the procedure before the Advocate for Equality.

c)Can a person bring a case after the employment relationship has ended? In relation to each, please note whether there are different procedures for employment in the private and public sectors.
In relation to the procedures described, please indicate any costs or other barriers litigants will face (e.g. necessity to instruct a lawyer?) and any other factors that may act as deterrents to seeking redress (e.g. strict time limits, complex procedures, location of court or other relevant body)?

According to the ERA, a person can bring a case after the employment relationship has ended. Article 204 of the Act states that should the employer not fulfil his obligations arising from the employment relationship and/or not rectify any violation within eight working days of receipt of the worker's written request, the worker may request judicial protection before the competent labour court within 30 days from the expiry of the time limit stipulated for the fulfilment of obligations and/or rectification of the violation by the employer. It further states that a worker may request that the employment contract be declared illegal, or request other methods of terminating the employment contract, and/or a decision on the disciplinary responsibility of the employer within 30 days from the day of the service or the day when he learnt about the violation of the right, before the competent labour court. The ERA further stipulates that claims arising from an employment relationship shall lapse after five years. The same judicial protection applies for the public sector. The procedure is defined in Article 25 of the Civil Servants Act ("Civil servant may request judicial review in a competent labour court within 30 days after being served with the order of the appellate commission or within 30 days after the deadline for issuing the order of the appellate commission has expired"). However, prior to the judicial review, an appeal against the decision on the rights and obligations arising out of civil servant's employment relationship, has to be made to the Appeals Commission with the Government of the Republic of Slovenia. Judicial redress can be sought, only after the Commission gives a decision on the appeal.
In employment relationships dispute, the employer has to carry its costs of the procedure (even if the employee loses the dispute). An employee can seek legal support with the trade

[89] The Constitutional Court Act, Official Gazzette of Republic of Slovenia no.:15/1994, 64/2001. *Zakon o ustavnem sodišču, Uradni list Republike Slovenije št.* 15/1994, 64/2001.

union, of which he /she is member. He can also engage an attorney at law to represent him/ her at Court. If latter is the case legal fees are also to be bared by the employee. (they are reimbursed by the other party if the employee wins the dispute).
In the addition to provision of ERA already mentioned in the report there is always the possibility of binging a case under the general provisions of IPETA. The Advocate or the Labour Inspectorate can pursue a complaint, in accordance with their own administrative procedural rules, filed against the discriminator, even after the employment relationship has ended

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

Please list the ways in which associations may engage in judicial or other procedures
a) in support of a complainant
The IPETA enables cooperation between the complainant and NGOs in judicial and administrative proceedings, but the provision is very general. Article 23 says that non-governmental organisations shall have the right to take part in judicial and administrative proceedings initiated by alleged victims of discrimination.

The Civil Procedure Act, which is used for civil procedures, and also when sensible for the proceedings at the Constitutional Court or at the Labour and Social Court, determines that a third party who has a legal interest (meaning a personal interest based on statute or other regulations) in the success of one of the parties can intervene at any time until the end of the proceedings. This party can be represented in the court only by an attorney or by a law society with the exception of a local court – where anybody with a business capacity can represent a party (see Section 6.1). Article 16 of the Labour and Social Courts Act states that a worker can be represented by a trade union representative if the latter has acquired the title of graduate lawyer. In procedures in front of higher courts or the Supreme Court of Slovenia a trade union representative can only appear if he has passed the bar examination. This provision is not included in the new Labour and Social Courts Act, which entered into force on 1 January 2005, but the final provisions state, that Article 16 of the old Act will remain in force until 31 December 2007.

Administrative procedure
According to the General Administrative Procedure Act, anyone who has a legal interest is entitled to participate in administrative proceedings (as a participant). The individual must allege protection of rights and legal benefits in order to demonstrate legal standing. A 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 may be affected by a decision during the proceedings (Article 44). A professional organisation which is recognised in certain activities directly connected with the relevant rights and duties may represent an individual during administrative proceedings (Article 54, Paragraph 3). The party is entitled to invite an expert in 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 party (Article 61).

Article 179 of the ERA defines the role of trade unions or workers' representative bodies in disciplinary procedures. It states that an employer must notify the employee's trade union of a 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 include an explanation for it. The employer must discuss that opinion within eight days and take a position regarding the statements made in the opinion. Furthermore, Article 208 ERA 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 interest of their members *vis-à-vis* the employer.

b) on behalf of one or more complaints (please indicate if class actions are possible)
According to the Constitutional Court, societies and other associations do not have the right to challenge regulations that interfere with the legal status of their members or other persons. They only have legal interest if the regulation in question interferes directly with their rights, legal interests or their status as a legal person. The Constitutional Court exceptionally recognises a society or association's legal interest in filing a petition in the name and in the interest of its members when it has been established with the purpose for which the action has been filed (for example the Society of Erased Persons[90]). The Helsinki Monitor for Human Rights cannot represent the petitioners. Pursuant to Article 86 of the Civil Procedure Act, which is applied *mutatis mutandis* concerning representation in proceedings before the Constitutional Court, only a natural person can be authorised to represent a party. A legal entity can represent a party if it is a law firm.[91]
Class actions are not possible.

The Official Note of the European Commission on the failure to implement some provisions of the Race Directive was also discussed in the Council for the Implementation of the Principle of Equal Treatment. As explained by the representative of the Office for Equal Opportunities, the Slovenian government stated they will change the law on certain points. However, concerning the point on the conditions for the involvement of NGOs in judicial procedures, the Government stated that according Article 23 of the IPETA, NGOs can be involved in judicial and administrative procedures. They further cited the Administrative procedure Act, and the above mentioned Article 54. They concluded that NGOs can take part in Administrative procedures. However, according to a legal opinion published on the internet by Neža Kogovšek, LLM and Gruša Matevžič NGOs, do not have legal standing in judicial matters. Their legal stand point was: »According to the national law, the only legal person who can be a representative at the Courts is a law society, meaning that NGOs, as legal person, do not have legal standing at the Court. The only way to involve an NGO is for the victim to give authorisation for representation to one of the employees of the NGO. If the latter is the case two situations can arise: NGO employs an attorney at law, in which case he/she, as a physical person will be representing the victim. However, no NGO in Slovenia actually employs an attorney at law. In second case (which is actually far more common in Slovenia), employees of NGOs, can be authorised to represent a victim, however only in disputes of little value or administrative procedures. (as in higher instances only an attorney at law can be a representative). In all the other procedures they do not have legal standing. As a consequence, it is obvious, that the current legal situation does not give standing to NGOs to represent victims in judicial matters. Even though IPETA states they have the right to be involved in judicial procedures, this right is not further developed«.[92]

[90] Constitutional Court decision no.U-I-296/02-8 from date 20.11. 2003
[91] Constitutional Court decision no. U-I-246/02 from 3. April 2003, published in Official Gazette RS, No. 36/2003.
[92] http://www.etcgraz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/__268_lanki/prevod_pravnega_mnenja.doc

6.3 Burden of proof (Article 8 Directive 2000/43, Article 10 Directive 2000/78)

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

The IPETA states in Paragraph 2 of Article 22 that if a person who alleges discrimination quotes facts in judicial and administrative proceedings, as well as before other competent bodies, that justify his claim that the ban on discrimination[93] has been violated, the alleged offender must prove that he or she did not violate the principle of equal treatment or the ban on discrimination in the case being heard.

Article 6, Paragraph 4 of the ERA states that when a candidate or employee alleges facts during a dispute 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. In criminal law, the burden of proof lies with the public prosecutor or private prosecutor since it would be inappropriate if it were the defendant who had to prove that there was 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.

6.4 Victimisation (Article 9 Directive 2000/43, Article 11 Directive 2000/78)

What protection exists against victimisation? Does the protection against victimisation extend to persons other than the complainant? (e.g. witnesses, or person that help the victim of discrimination to present a complaint)

Article 3 of the IPETA prohibits victimisation. Article 16 sets out the actions to be taken by the Advocate of the Principle of Equality (for more about the Advocate, see Section 7) when ruling in a case where the initiator faces victimisation. The Advocate in the course of examining the case shall order in writing the corporate body or other legal entity where the violation of the ban on discrimination is alleged to have occurred to apply appropriate measures to protect the person concerned from victimisation or adverse consequences that have resulted from victimisation. In the event that an alleged offender has not followed the Advocate's order and the person is still be subjected to victimisation, the inspector shall have the right and duty to prescribe appropriate measures that, in the circumstances that have arisen, protect the person concerned from victimisation, or to prescribe the rectification of the adverse consequences of victimisation.

Article 76 of the ERA states 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 type 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. If an employer insults an employee or acts violently, or if the employer does not prevent such behaviour from other employees, the employee affected may, according to Article 112 of the ERA, end the contract with no notice period after eight days if he has notified the employer

[93] This provision applies to all grounds of discrimination listed in Directives.

and the Labour Inspectorate in writing. The employee gets indemnity money and monetary compensation. He may register at the Unemployment Bureau and is entitled to state benefits and monthly sums of money for a certain period of time. Article 113 and 210 of the ERA protect trade union representatives from losing their jobs, reductions in their wages, disciplinary proceedings or being placed in a worse position because of their trade union activities.
Article 3 of the IPETA ensures only that a person who has faced discrimination must not be subjected to adverse consequences due to his/her actions. Witnesses or other people are not protected from victimisation under the IPETA. The Criminal Procedure Act[94] 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.

6.5 Sanctions and remedies (Article 15 Directive 2000/43, Article 17 Directive 2000/78)

a) What are the sanctions applicable where unlawful discrimination has occurred? Consider the different sanctions that may apply where the discrimination occurs in private or public employment, or in a field outside employment.
a) Article 26 of the Constitution 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 a function or activity under state authority, local community authority or as a bearer of public authority. Any person suffering damage also has the right to demand compensation directly from the person or body that has caused the damage.

Article 24 of the IPETA defines that a discriminatory action shall be a minor offence for which the offender shall be fined, and sets the range of fines from 50,000 SIT (208 EUR) to 300,000 SIT (1250 EUR) for an individual who commits a misdemeanour, and from 500,000 SIT(2083 EUR) to 10,000,000 SIT (41666 EUR) for a legal person or an individual entrepreneur. An official of a state body or a self-governing local community shall be fined from 50,000 (208 EUR) to 500,000 SIT (2083 EUR) for a minor offence. "For some offences, the Minor Offences Act stipulates a fixed penalty, for others, it sets a range of possible The size of the fine will be limited by law, and take into account the seriousness of the offence and negligence or intent on the part of the offender.[95] The fine contributes towards state revenue.

Article 25 of the IPETA states that irrespective of the provisions of the previous article, a law regulating a certain field may specifically determine circumstances in which discrimination is prohibited, define offenders, and prescribe sanctions for a misdemeanour within the limits referred to in the previous the preceding article. Article 6, Paragraph 5 of the ERA, stipulates the employer's liability for damage in accordance to the provisions of tort law, when the employer infringes an anti-discrimination provision. Article 81, Paragraph 4 of the ERA states that the termination of a contract (with or without a notice period) based on one of the grounds listed in Article 6 is not valid. Article 229, Paragraph 1 of the ERA states that an employer who is a legal person can be fined at least 1,000.000 SIT (4167 EUR) if it discriminates against job applicants or employees, and an employer who is a natural person can be fined at least 500.000 SIT (2083 EUR), and the person responsible can be fined at least 80.000 SIT (333 EUR). Article 141 of the Penal Code punishes individuals who commit the criminal offence of violating equality. In accordance with Article 141, Paragraph 2, anyone

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[94]The Criminal Procedure Act, Official Gazette of the Republic of Slovenia no. 96/2004, official consolidated text. *Zakon o kazenskem postopku, Uradni list Republike Slovenije številka 96/2004, uradno prečiščeno besedilo.*
[95] Minor Offences Act, Official Gazette of the Republic of Slovenia no. 55/2005, official consolidated text (ZP-1-UPB2). *Zakon o prekrških, Uradni list RS št. 55/2005, uradno prečiščeno besedilo*

who persecutes an individual or an organisation due to his or its advocacy of equality, shall be punished. In the event of an 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 term of three years. Article 300 of the Penal Code stipulates that anyone who provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas relating to the supremacy of one race over another, shall be sentenced to imprisonment for a maximum term of two years. If the offence has been committed by coercion, maltreatment, endangering a person's safety, desecration of national, ethnic or religious symbols, damaging of movable property of another, or 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 detailed by Article 300, Paragraph 1, as well the facilities for their production, duplication and distribution, are to be confiscated. Article 206 of the Penal Code states that anyone who limits or restricts a person's right to free access to any position of employment on equal terms, as required by law, is fined or imprisoned for up to one year. Article 205 of the Penal Code imposes punishment upon anyone who violates basic rights of employees, which includes anyone who deprives the worker of a right he or she is entitled to by deliberately violating *inter alia* the rules governing the conclusion or termination of an employment contract, salary, the protection of women, and young and handicapped persons. Article 209 of the Penal Code punishes those who deliberately fail to act in line with the rules governing social security and therefore deprive an individual of a right or place a limit on it. An offender is punished with a fine or up to one year's imprisonment. The Public Prosecutor's Office in Ljubljana has dealt with cases of alleged violations of Articles 300, 141 and 270 of the Penal Code (violation of human dignity by abuse of office or of official authority), and Article 146 (maltreatment)**.** The Public Prosecutor's Office suggested to individuals who filed charges that they should instigate procedures in accordance with Article 169 of the Penal Code (insult), Article 169 and dismissed the charges. Relevant case law does not exist in Slovenia.

Articles 230 to 233 of the **Execution of Judgments in Civil Matters and Insurance of Claims Act**[96] regulate the reinstatement of an employee to his position of employment after this has been awarded following a legal procedure. Article 233 states that an 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 his reinstatement (the nature of the damages is pecuniary, and there is no statutory upper limit). The sum payable is stipulated by the court and should amount to 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 this regulation. If the court decides partially in favour of the employee, the employee can seek full compensation before the court.

Sanctions for legal persons which are responsible are mentioned in Section 3.1.2.

b) Is there any ceiling on the maximum amount of compensation that can be awarded?
According to the general principles of the law on damages, anyone can demand compensation for the damage he/she has suffered due to discriminatory action. General rules about legally protected damage and conditions for recognising this are included in the Code of Obligations. The legislation contains no upper limit on compensation that can be awarded by a court decision. There is no information about the amounts of compensation which have been awarded in cases of discriminatory treatment.

[96]The Execution of Judgments in Civil Matters and Insurance of Claims Act Official Gazette of The Republic of Slovenia no. 40/2004, official consolidated text. *Zakon o izvršbi in zavarovanju, Uradni list Republike Slovenije številka 40/2004, uradno prečiščeno besedilo*. http://zakonodaja.gov.si/rpsi/r08/predpis_ZAKO1008.html

c) Is there any information available concerning:
- the average amount of compensation available to victims
- the extent to which the available sanctions have been shown to be - or are likely to be - effective, proportionate and dissuasive, as is required by the Directives?

There is no information on the average compensation available to the victim, given the lack of relevant case law and it is therefore not possible to assess whether sanctions are effective, proportionate and dissuasive.

7. SPECIALISED BODIES

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

When answering this question if there is any data regarding the activities of the body (or bodies), include reference to this (keeping in mind the need to examine whether the race equality body is functioning properly). For example, annual reports, statistics on the number of complaints received in each year or the number of complainants assisted in bringing legal proceedings.

a) Does a 'specialised body' or 'bodies' exist for the promotion of equal treatment irrespective of racial or ethnic origin?

The IPETA adopted in April 2004 established the Council of the Government for the Implementation of the Principle of Equal Treatment (Article 9) and the Advocate of the Principle of Equality (Articles 11-19). The Advocate of the Principle of Equality started working on 1 January 2005, whereas the Council for the Implementation of the Principle of Equal Treatment held its first session in May 2005. Both bodies cover all grounds covered by the IPETA and are not only limited to race and ethnicity. There are no equality bodies whose mandate is limited to the promotion of equal treatment irrespective of racial or ethnic origin.

The above mentioned Act also imposes additional duties on the Office for Equal Opportunities,[97] a special Government body which has in the past been limited to the field of equal treatment of women and men. The Act expands its activities to co-ordinating the activities of individual ministries and government services related to the implementation of the Act as well as performing technical and administrative duties for the Council (Article 10). In addition to its responsibilities for promoting equal treatment of men and women, the Office's work entails co-ordinating policy formulation and drafting regulations for preventing and suppressing discrimination, particularly by transposing EU regulations on the equal treatment of persons regardless of the racial or ethnical origin and general frameworks for equal treatment in employment and work.

The Advocate of the Principle of Equality functions within the Office for Equal Opportunities in order to hear cases of alleged violations of the ban on discrimination. According to the IPETA, there may be a special Advocate of the Principle of Equality dealing with a specific personal circumstance (a special advocate for equal opportunities of men and women does work within the Office for Equal Opportunities). The Advocate and the Council work independently. The Advocate is the body primarily intended to provide independent assistance to victims of discrimination.

[97] Website address: http://www.uem-rs.si.

The Vocational Rehabilitation and Employment of Disabled Persons Act[98] adopted by the Parliament in May 2004 established the Institute of the Republic of Slovenia for Rehabilitation. Its tasks are: (1) harmonisation and coordination of professional development in this area, (2) production of standards for vocational rehabilitation services, research work and s standards for the training and qualifications of specialists and people working to provide vocational rehabilitation ,(3) preparation of methodology for assessing the professional achievements of disabled people and monitoring in this area, and (4) other tasks related to carrying out the provisions of this Act. Funding shall be allocated from the national budget.

To encourage the recruitment and retention of disabled employees, the Act also established the Fund for Promoting the Employment of Disabled People. It started functioning in 2005, but it did not perform its tasks as the Regulation on Quotas had not been adopted and therefore it had no funds. The Regulation on Quotas entered into force on 1 January 2006 and the Fund has been performing its tasks since then. The Fund decides on the rights and obligations of the disabled and employers as arising from the Vocational Rehabilitation and Employment of Disabled Persons Act. The latter imposes upon employers which employ 20 or more workers to have a certain proportion of their workforce made up by disabled people (a quota). Employers who do not fulfil the quota have to pay penalties into the Fund. On the other hand, the Act also provides financial incentives for employing disabled workers, for example subsidies for the salaries of disabled workers and bonuses for exceeding the quota. The Fund is the body primarily intended for deciding upon these measures. Its funding is provided by the payments from employers for not fulfilling the prescribed quota of disabled workers, from the Retirement and Disability Insurance Fund, the annual state budget, donations and other sources. Penalties collected are intended mainly to subsidise the salaries of disabled people and to finance other incentives.

To improve the coordination of activities in dealing with the issue of Roma in Slovenia, the Government has established the Commission of the Government of the Republic of Slovenia for the Protection of Ethnic Roma Community.[99] The first Commission was established in 1993 with the Order of the Government on the Appointment of the Members of the Commission of the Government of the Republic of Slovenia for the Protection of the Roma Ethnic Community No. 021-05/93-8/2-8, 29 July 1993. Since then the membership of the Commission has been changed several times, but in general there were 4 mandates. A new Commission was established by a Government decree [100] on 5 May 2005. So far it has been convened on six occasions, Representatives of the Roma ommunity are also members of the Commission. The task of the Commission includes monitoring the implementation of constitutional obligations and legal provisions for the protection of Roma ethnic community, producing proposals regarding the protection of the Roma ethnic community, facilitating the exchange of views between the Roma community and state organs regarding all questions that concern the Roma ethnic community, and discussing practical issues connected to the application of the special rights of the Roma ethnic community.

There is also a similar governmental commission which deals with the issues concerning Italian and Hungarian National Communities. Its membership includes representatives of Italian and Hungarian National Communities. Finally, there is a Commission for National Minorities (meaning for Italian and Hungarian National Communities) which is a special working body of the National Assembly.

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98 Vocational Rehabilitation and Employment of Disabled Persons Act, Official Gazette of the Republic of Slovenia No. 63/2004. *Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov (ZZZRZI), Uradni list Republike Slovenije št.* 63/2004.

99 Order of the Government on the Appointment of the Members of the Commission of the Government of the Republic of Slovenia for the Protection of the Roma Ethnic Community No. 1174/01,12 April 2001.

100 Order of the Government on the Appointment of the Members of the Commission of the Government of the Republic of Slovenia for the Protection of the Roma Ethnic Community No. 117-44/2005, 5 May 2005

Since the principle of equal treatment and the ban on discrimination is incorporated in the Constitution as the first provision among those ensuring fundamental human rights (Article 14), the Human Rights Ombudsman[101] is another specialised body for lodging *informal* complaints and is 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 proceedings,[102] and 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 may monitor, all information 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 improperly delayed procedures or clear abuse of power. One important competence of the Ombudsman is, together with the plaintiffs, to serve complaints due to the violation of human rights to the Constitutional Court. He can also address the Constitutional Court with proposals for the assessment of the constitutionality of regulations without the prior establishment of his legal interest by the Constitutional Court, as is necessary for other petitioners (Article 23, 50 and 52 of the Constitutional Court Act[103]). The proceedings are separate from other legal remedies. If the petitioner has not yet resorted to legal remedies, the Ombudsman advises the petitioner to do this 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 transmit original documents between the petitioner and a state body. The Rules of Procedure specify that the Ombudsman does not have to show the file to any party in the proceedings. Whenever possible, the Ombudsman first tries to settle the dispute through mediation. Much use is made of the institution of the Ombudsman in Slovenia.[104] The Human Rights Ombudsman issues annual reports on the exercise of human rights, which are considered by the National Assembly. In these reports, while dealing with individual cases, he also makes proposals for amendments to legislation. At the end of individual chapters of the report, details are given of those state and administrative authorities which did not respond to the Ombudsman's recommendations and proposals.[105]

In 2007 the Human Rights Ombudsman special department for antidiscrimination issues, dealt with 17 cases. It was surprising to them that there were no cases in connection to employment relationships, even though they were alerted many times on the problem of »mobbing«. The Ombudsman's department also observed that there is a lack of effective measures available to the Advocate. The procedure at the Advocate ends with the written opinion; the problem is if the recommendations are not followed by the offender. The Advocate can refer the case to the inspection, which after studying the case decides whether

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101 The basis for the institution of a Human Rights Ombudsman is found in Article 159 of the Constitution. 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.

102 The Rules of Procedure of the Ombudsman stipulate that the Ombudsman performs his work in the Slovenian language. However anyone who is not familiar with the Slovenian language may lodge a petition in his/her own language.

103 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.

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

105 Such a practice proved to be successful in the sense of the "soft" pressure it produced, aimed at ensuring the respect of human rights and a more sensitive approach within state structures.

to start the misdemeanour procedure. The question is whether this three step procedure is actually necessary and effective. According to their findings it is disputable that an inspector, when deciding upon instituting formal procedure, firstly has to asses whether there has been violation of the principle of equal treatment in a concrete case, as pursuant to the IPETA the Advocate in her written opinion already gives this assessment. It is not clear why it is necessary to make this assessment once again. Especially because the Advocate Counsel is supposed to be a body qualified to elaborate this assessment. In certain cases the problem is also to identify the competent Inspection Service as the discriminatory action might not fall under any Inspection (as it happened in one of the cases they dealt with).

b) Describe briefly the status of this body (or bodies) including how its governing body is selected, its sources of funding and to whom it is accountable.
Article 1 of the Government Decree on the Establishment, Organisation and Competencies of the Council of the Government of the Republic of Slovenia for the Implementation of Equal Treatment states that the members of the Council are appointed for a mandate of 5 years, unless they are *ex officio* members of the Council as a result of their function (e.g. the President of the Council has to be the Minister of Education according to the decree; his membership is therefore defined by his function). They are appointed by the Government on the proposals of organisations whose members have to be represented on the Council. The members of the body are: two representatives of the Italian and Hungarian minority, a representative of the Roma community, a representative for equal treatment irrespective of belief, and six members of NGOs involved in equal treatment relating to different personal circumstances (e.g. a representative of an NGO active in promoting equal treatment irrespective of sexual orientation). Representatives of expert institutions include a representative of the Institute for Social Protection, a representative of the Institute for Ethnic Studies, a representative of the Peace Institute, and a representative of the Institute of Public Health.

It does not have its own budget. During its session on 12 September 2005, one of the members made a point about the need for the Council to be granted financial resources by the Government, in order to carry out some surveys and projects. However, no such resources have yet been made available by the Government.

The Advocate of the Principle of Equal Treatment does not have its own budget, but is financed from the budget of the Office for Equal Opportunities. The budget, which is actually provided for the activities of the Office for Equal Opportunities, is fixed by the “Republic of Slovenia Budget Implementation Act” for each separate budget period (for example, in 2005 it was the “Republic of Slovenia Budget for 2005 and 2004 Implementation Act”). The Advocate is a civil servant employed by the Office for Equal Opportunities, and is therefore selected through public competition in accordance with the Civil Servants Act.

c) Describe the competences of this body (or bodies), including a reference to whether it deals with other grounds of discrimination and/or wider human rights issues.
According to the Act Implementing the Principle of Equal Treatment, the Council has the following duties: (1) to ensure the implementation of the provisions of the Act, (2) to monitor, ascertain and assess the position of individual groups within society with regard to implementation of the principle of equal treatment, (3) to submit to the Government proposals, initiatives and recommendations for the adoption of directives and measures that are necessary for the implementation of the principle of equal treatment, (4) to submit proposals for the promotion of education, awareness-raising and research in the field of equal treatment of persons, and (5) to perform other duties, outlined by the law establishing it. The body deals with all grounds enumerated in Article 1 of the IPETA. The Council consists of 24

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

The main responsibility of the Advocate is to investigate cases of alleged violations of the ban on discrimination.

d) Does it / do they have the competence to provide assistance to victims, conduct surveys and publish reports and issue recommendations on discrimination issues?
The Council is a consultative body whose main responsibility is to issue recommendations, and to monitor the positions of individual groups with regard to the IPETA, but it does not provide assistance to victims. It is designed to combat systematic discrimination.
The main responsibility of the Advocate is to hear cases of alleged violations of the ban on discrimination. This process begins with a written or verbal complaint, which may be anonymous, but must include sufficient data for the case to be heard. The hearing is informal and free of charge, and the Advocate and other employees of the Office for Equal Opportunities must keep confidential all information presented during a hearing. After the complaint, the Advocates conduct a hearing of a case. The Advocate has the right to request the persons involved to provide him with appropriate explanations within a specific time-limit and the right to summon all persons involved and interview them. If a person is subjected to harmful consequences due to the violation of the ban on discrimination (victimisation), the Advocate orders the corporate body or other body where the violation of the ban on discrimination is alleged to have occurred to apply appropriate measures to protect the person from victimisation or its consequences. Finally, the Advocate issues a written opinion in which he states his findings and assesses whether discrimination has taken place. Both parties are informed of his findings. The Advocate also has the right to point out any irregularities discovered, issue a recommendation on how these should be rectified, and order the alleged offender to inform him within a specific time-limit of any measures taken. An individual or corporate body can also apply to the Advocate for an opinion on whether a particular act, service or omission of his or hers could be considered a violation of the principle of equal treatment because of personal circumstances. Finally, the Advocate produces an annual report by the end of March, which the Office for Equal Opportunities submits to the Government for adoption.

In 2006 it was agreed at the Council for the Implementation of the Principle for Equal Treatment to start a data base on all the work undertaken by different stakeholders in the field of equal opportunities and fight against discrimination. The data base is run by the the Office for Equal Opportunities and published on it's the official web site.
The data base, which contains all the main activities undertaken by government offices, NGOs and other professional institutions, is mostly intended for the Institutions and individuals involved in the field of antidiscrimination. The data is based on a questionnaire, which was structured in accordance with the strategy of the European Commission in the field of anti-discrimination and equal opportunities. The Questionnaire contains the following areas:
a) researches on the fight against discrimination
b) education/trainings for different groups in the field of anti-discrimination
c) awareness raising and capacity building
d) networking of groups and individuals active in this field

These areas are further divided into the following areas: ethnicity, sex, health state, disability, religion/religious belief, sexual orientation, social inclusion

The Advocate of the Principle of Equality received 32 complaints in 2005 In 26 of these complaints, the Advocate concluded the procedure in 2005. In 7 cases the Advocate concluded the procedure with her written opinion – the Advocate assessed, that in 2 cases the violation of the ban of discrimination has occurred while in other cases the violation of equal treatment could not be established. In the rest of the cases the Advocate of the Principle of Equality could not issue an opinion due to several reasons. In some cases the one year time limit for initiating procedures had elapsed. In other cases the Advocate did not hear initiatives where it was obvious that there were no case of violation of the ban on discrimination (Article 12 of the IPETA), or if the initiator latter showed no interest in pursuing the case (Article 15 of the IPETA). There were also some cases, where the Advocate could not continue hearing a case and concluded it with an opinion due to insufficient data (Article 15 of the IPETA).

The cases she dealt with mainly related to unequal treatment on the ground of sex. In one of the cases, the Advocate assessed that the internal rules of the company "Probanka Maribor" were discriminatory, as women were forbidden to wear trousers in the workplace. After the Advocate gave her recommendations on how to rectify irregularities in the company's internal rules, the company informed the Advocate that the rules would be changed. Two cases were related to employment; in one an employee was rejected in an internal competition because she was on sick leave for too many days. In the other case, the employee was evaluated poorly in her annual appraisal because she worked only four hours a day, and was therefore unable to perform harder tasks. The Advocate assessed that supervisors cannot evaluate work which is not being performed, but should evaluate the work the employee is actually performing. In another interesting case, the Advocate found discrimination on the ground of sex and age. The air company Adria Airways, advertised a vacancy in which different heights for men (170 cm – 181) and women (160- 175 cm) were set out as a condition for the employment, as well as an age limit between 20-24. According to the Advocate, these conditions were discriminatory on the basis of age and sex.

The body does not have the task to conduct surveys, but it can issue recommendations, and more importantly raise awareness of the general public, potential victims and potential offenders, regarding actions which constitute discriminatory treatment, as regarding actions which can be taken in order to stop violations, or ensure they are not repeated.

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

The Advocate of the Principle of Equal Treatment does not have legal standing in judicial procedures, although she can institute administrative procedures against discrimination complaints. According to the IPETA, in the event of an alleged offender not rectifying established irregularities in accordance with the recommendations of the Advocate or if the offender does not inform the Advocate within the time limit stipulated about measures adopted the Advocate sends a written opinion to the competent inspection service (the inspection service that by law has jurisdiction in an individual administrative field for monitoring the implementation of laws and other regulations, collective agreements and general documents). If the inspector considers that all the indications of discrimination can be established, he is obliged to deal with the opinion of the Advocate and to propose the institution of misdemeanour procedures, as well as to take all actions within his competencies to establish the actual consequences of the misdemeanour and to rectify its consequences.

The Council on the Implementation of the Principle of Equal Treatment does not have legal standing to bring discrimination complaints

f) Is the work undertaken independently?

The IPETA states that the work of the appointed bodies shall be undertaken independently; however, in practice the body does not have its own budget, but is actually funded through the Office for Equal Opportunities, a government office. This raises doubts as to the Body's actual independence.

8. IMPLEMENTATION ISSUES

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

Describe briefly the action taken by the Member State
a) to disseminate information about legal protection against discrimination (Article 10 Directive 2000/43 and Article 12 Directive 2000/78)
Dissemination of information is one of the major problems in protection against discrimination in Slovenia. On one hand, there were several complaints made to the Office for Equal Opportunities in 2005 regarding discrimination which proved to be unfounded. On the other hand, there are many more cases where people face discrimination but are not aware of their legal rights and how to uphold them.
The establishment of the Council for Implementation of the principle of Equal Treatment and the Advocate of the Principle of Equality marked major progress in this area.

Pursuant to Article 154 of the Constitution, regulations must be published prior to coming into force. State regulations are published in the State Official Gazette, whereas local community regulations are published in the official publication determined by the local community.

The adoption of the IPETA was covered by the national media, but was not given enough media attention. Apart from that, some articles were published on this issue in the major newspapers (*Delo* and *Večer*) in December 2005 (cases dealt with by the Advocate were described in an article in *Delo*) and included an interview with an official from the Office for Equal Treatment, explaining the provisions of the Act. The Office for Equal Opportunities organised a conference entitled "The Principle of Equality: New Approaches and Practices" with the aim of publicising the Advocate (April 2005 – more than 100 participants from NGOs, ministries, trade unions, police, prosecutors, judges, experts and general public). Over 50,000 leaflets (on the Advocate of the Principle of Equality) have been disseminated, the Office for Equal Opportunities presents the Advocate on its webpage, and there were presentations on the IPETA for trade unions, students and other interested groups (in the form of round tables and workshops). Regarding the dissemination of information the free anonymous telephone number of the Office for Equal Opportunities should also be mentioned. All persons that feel that any of their rights have been violated or restricted can call. The vast majority of calls are of general nature, seeking information on issues of discrimination and protection against discrimination. This is one of more important means of informing people of their legal rights and how to uphold them.

A project carried out by ISCOMET (Institute for Ethnic and Regional Studies, Maribor, Slovenia) had a very important impact in awareness raising in Slovenia in the past year. The project had many different goals, the most important among them were: Raising the level of awareness and knowledge about the issues of non-discrimination among our focus groups and wider public in Slovenia, Promotion of implementation and monitoring of the EU Directives and other international legal standards on the field of non-discrimination and monitoring the implementation of the standards in Slovenia. Promotion of legal mechanisms available to victims of discrimination on national and international level, establishment of the national

communicational network and its inclusion in the adequate European networks with the objective to gather and spread information, knowledge and experiences on issues of non-discrimination. An integral part of the project were the training seminars aimed and organised for different groups, among them : professors in primary schools; Seminar and two workshops for policemen, customs officers, prison attendants and selected members of the Slovenian army units; seminar for judges, public prosecutors and attorneys at law; seminar and two workshops for constitutionally recognised minorities in Slovenia, seminar for constitutionally non-recognised minorities in Slovenia.[106] The closing conference of the seminars will be carried out on 12 February 2007. Other important products and results of the project are: information material published in the languages of the vulnerable groups in Slovenia (Albanian, Croatian, German, Hungarian, Italian, Macedonian, Serbian) which was widely disseminated among the members of the vulnerable groups in Slovenia., a Handbook intended to be a useful guide to those, who: a) due to their profession are in capacity to resolve matters related to discrimination; b) due to their position regulate certain issues in society and can through their acting cause discrimination and c) who could potentially confront discrimination on basis of their ethnic origin or religious belief in any aspect of everyday life.

The Peace Institute is the Slovenian implementing partner for the project entitled "Mapping the Capacity of Civil Society dealing with Anti-Discrimination" and organised a training event for NGOs active in the field of discrimination on 15 and 16 June 2005. This NGO also organised two conferences on combating discrimination in judicial proceedings, in June and October 2005, which were attended by judges and other important legal figures. These conferences and seminars were also mentioned in the national media. The mentioned NGO continued to organise seminars for the training of the judicial on antidiscrimination matters in 2006. In cooperation with the Supreme Court and some other professors of law at the Law Faculty they published a book on equality in judicial proceedings. They conducted a research focused on the levels of discrimination in judicial matters (e.g. Whether defendants of Roma ethnic group are discriminated in judicial proceedings). In 2006 the NGO ŠKUC LL, The Association of Employers of Slovenia and the Free Trade Unions of Slovenia published two Handbooks (Ukrepi proti diskriminaciji v zaposlovanje za sindikate Tatjana Greif, Škuc) entitled Measures to combat discrimination designed to educate and trains syndicates and the employers on antidiscrimination fight. They explain the provisions on discrimination contained in the national laws, explain what constitutes discriminatory actions, cite cases of discrimination which happened in Slovenia (but on which the victims never made official complaints) and give their recommendations to the employers(to raise their awareness what constitutes discriminatory action) and to the syndicates (to help them assist the victims of discrimination).

Other important developments in the dissemination of information were the first National Information Days and the conference on non-discrimination and equal rights in legislation for persons with disabilities which were organised by the Ministry of Labour, Family and Social Affairs – Disability Directorate with six non-governmental partners on May 30 and 31. The National Information Days were composed of two different activities: the conference was the central event and awareness raising events on non-discrimination and equal rights were accompanying events.

As was noted by the president of the Council for the Implementation of Equal Treatment the data gathered on cases of discrimination which were dealt by the competent bodies in Slovenia (The Advocate, Inspections, the Courts, the Human Rights Ombudsman) do not really represent the actual state of affairs in Slovenia. It was also noted that the official procedures are too long and employees do not see any real effect in starting a procedure

[106] http://www.iscomet.org/index.php?activities

against employers. Much more work is needed in the area of awareness raising, to which the authors of the reports also Concorde (as we have been observing in the past years the lack of information in Slovenia is the greatest challenge in the sufficient implementation of the Directives). The Council further debated which actions to undertake in order to raise awareness on the issue among the general public. The representative of the Ministry of Health stated that it should be a three level campaign:
_- education in kindergartens
- systematic solutions on the national level
- appearance of different minorities in the media and awareness raising

The Council concluded to form a special working group which will design in details further strategies for awareness raising.

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

Based on Article 8 of the IPETA, the Government and competent ministries have to co-operate with non-governmental organisations that are active in the field of equal treatment. However, the Government at present only provides some funding for NGOs for specific projects, some of which involve the dissemination of information regarding the issue of discrimination and upholding personal rights. In addition, the Government has given rights to certain NGOs that provide free legal assistance in the form of advice and representation. This enables people who believe they are victims of discrimination to decide if this is actually the case, and to find out what legal remedies are available to them.

c) to promote dialogue between social partners to give effect to the principle of equal treatment within workplace practices, codes of practice, workforce monitoring (Article 11 Directive 2000/43 and Article 13 Directive 2000/78) .

Article 8 of the IPETA states that the Government has to cooperate with social partners that are active in the field of equal treatment.

The Government's Economic and Social Council is carrying out a Phare project on social dialogue between the employers and employees regarding the principle of anti-discrimination. The Economic and Social Council was established by an agreement with the social partners in 1994. It has no constitutional or statutory basis. This tripartite organ has dealt with several important issues and its members have reached agreements on issues relating to pension reform, the ERA, pay, and the Safety and Health at Work Act. If the Constitution were to regulate 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 ignore agreements reached by the Council.

The main obstacle to greater effectiveness in the application of the principle of equal treatment in the workplace, codes of practice, and workforce monitoring is that the dialogue between social partners still fails to extend beyond the issues of pay and recently the length of the working day. Even when the Government takes part in social dialogue, the issue of discrimination barely reaches beyond declaratory statements, for none of the social partners pays it sufficient attention. Trade unions, however, provide victims proper legal assistance to of discrimination at work when they are enforcing their right before the courts and other state organs. Improvements in this field were expected with the establishment of the Council for the Implementation of the Principle of Equal Treatment, however as only two sessions have been held, no progress has been made so far.

8.2 Compliance (Article 14 Directive 2000/43, Article 16 Directive 2000/78)

a) Are there mechanisms to ensure that contracts, collective agreements, internal rules of undertakings and the rules governing independent occupations, professions, workers' associations or employers' associations do not conflict with the principle of equal treatment? These may include general principles of the national system, such as, for example, "lex specialis derogat legi generali (special rules prevail over general rules) and lex posteriori derogat legi priori (more recent rules prevail over less recent rules).

Under the Slovenian Constitution, all laws, regulations and rules have to comply with the Constitution (Article 153). Therefore, it would be unconstitutional for any of them to be contrary to the principle of equality, which is embodied in the Constitution. One of the basic powers of the Constitutional Court is to decide on the conformity of legislation and other regulations. The powers of the Constitutional Court are regulated by both the Constitution and the Constitutional Court Act. The Constitutional Court Act contains a special chapter on the assessment of the constitutionality and legality of regulations and general laws passed for the exercise of public authority. This chapter stipulates the legal consequences of a decision. Under Article 43, the Constitutional Court may completely or partly revoke a law which does not conform with the Constitution. Article 44 prescribes that a law revoked by the Constitutional Court shall not be valid in situations that occurred before the day such a decision came into the effect, if there had been no legal rulings on such situations by that day. Unconstitutional and illegal non-statutory regulations and general acts issued for the exercise of public authority shall be revoked by the Constitutional Court. Such acts or regulations shall be repealed by the Constitutional Court when it discovers that harmful consequences arising from the unconstitutionality have to be abolished. This repeal 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 regulated was not regulated or has been regulated in a manner in which cannot be vitiated or abolished, an assessment decision shall be adopted on this. The legislative or body which issued the unconstitutional or illegal regulation or general act must ensure that the unconstitutionality or illegality is abolished within the time limit set by the Constitutional Court.

b) Are any laws, regulations or rules contrary to the principle of equality still in force?
There is no obvious evidence of any laws, regulations or rules contrary to the principle of equality were still in force. Were this the case, such provisions would be subject to review by the Constitutional Court and consequently abolished.

9. OVERVIEW

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

Despite the fact that anti-discrimination provisions were adopted and programmes have been initiated promoting the equal treatment of certain groups, such as the disabled, older people and Roma, the results in practice have not yet reached a justifiable level. The average rate of unemployment among these groups still exceeds the state average. This fact leads to the conclusion that additional effort is required for improving the situation of underprivileged groups.

Another issue worth mentioning at this point is the problem of disseminating information among individuals who could be victims of discrimination, and thus are not aware of legal safeguards intended for their protection

The lack of knowledge on antidiscrimination legislation both on the national and EU level has also been observed among the members of the judicial system according to the outcomes of a questionnaire performed by the above mentioned ISCOMET. Their third seminar was prepared for selected representatives from various judicial institutions (judges, public prosecutors, state attorneys and attorneys at law) The newly adopted Slovenian law on the realization of the principle of equal treatment (ZUNEO) seemed to be to new to be better known by their interviewees, at least non of the representatives had any experiences with this law, and only one judge have had a case, where a non-governmental organization has taken part in the process. The guarantees of the ZUNEO act, concerning the rights of the discriminated persons to seek their protection in judicial or administrative proceedings, directs this persons in the opinion of the majority of their participants towards the principles stated in the Slovenian civil code (OZ) and the principles of the administrative procedural act (ZUP). None of the participants had any personal experience with cases that dealt directly with aspects of discrimination, and only two of interviewed judges could remember cases, when they made use of international documents as a direct source of law in this particular case.

Another problem in our opinion is the efficiency of the equality body. The body designated to investigate cases of discrimination is understaffed, it does not employ any staff specifically trained in discrimination issues (other than the Advocate herself), which gives us concerns about the actual capacity of the body to provide efficient assistance to victims of discrimination. It is also working on the premises of a government office , which could also prejudice its independent status. Furthermore, it does not have a separate budget, which restricts its activities and limits the number of employees. The result is that in practice the body cannot function as independently as it should according to the Race Directive but also according to national anti-discrimination law (the IPETA). The other concern is that according to the provisions of the IPETA, a special Advocate can be designated for a ground on which greater numbers of cases are based. The Advocate of the Principle of Equal Treatment currently works also as an Advocate for equal opportunities for men and women. We think that it was the intent of this provision for a different person to be named advocate for a special ground – the situation is unclear, but we think that the body would be more efficient if the advocates were different persons. This situation in our opinion does affect the work of the body.

The Council for the Implementation of the Principle of Equal Treatment should be given some additional financial resources from the national budget, which would enable it to carry out surveys on types of discrimination in Slovenian society and other necessary surveys. With some resources to manage itself, the body would be far more efficient in its tasks and subsequently its independence would be increased.

A final problem relating to the implementation of the Directives is the fact that there is no relevant case law and it is therefore hard to ascertain the efficiency of anti-discrimination legislation in practice. Situation testing has not been used yet and there were no cases where indirect discrimination was found by judges. The situation regarding the use and admissibility of statistical data remains uncertain for the same reasons.

At the end, the authors of the report, would also like to point out the fact, that despite the legislation, the level of xenophobia and discrimination is still high in Slovenia. Hate speech,

the issue of the erased[107], and the status of the Roma show that the law still needs to be enforced in practice and that education on discrimination from an early age as well as awareness rising, should be a priority in the future. Slovenia reached a boiling point last year when, Ambrus, a small community in central Slovenia, entered the media spotlight after a scuffle escalated into a stand-off between the locals and the Roma living in the vicinity. A Roma family (31 persons) fled their settlement into the nearby woods following an incident of Monday, October 23rd, 2006 in which one of the locals was attacked by a man who lived with the Roma, although he is not a Roma himself. Some 300 locals, enraged gathered at a meeting, urging the state to move the Roma from their village to a more appropriate location. They referred to ecological and safety reasons to prove their stance. The members of the Roma family dispersed in the nearby forest, terrified by villager's revengeful intentions. They did not come back, but stayed in the forest for days (and nights), sheltered only by two improvised tents. Amongst them were about twenty kids and one pregnant woman. Tensions reached a boiling point again, when the group of Roma returned to their homes after spending several days hiding in a nearby forest. The return of the 30 Roma sparked an angry reaction from the locals of Ambrus and surrounding villages. The crowd of local villagers appeared on the nearby road, shouting racist insults and holding clubs in their hands. They placed branches and logs on the middle of the road and burn the wood at the stake. They demanded instant leave of Roma and threatened to attack them, as well as their property, if their requirements would not be fulfilled. It needed about 200 members of the special police units to protect the group of Roma from the furious crowd. Shortly after the incident, Minister of the Interior Dragutin Mate appeared at the site as the negotiations started. He surrendered to the demands of the villagers' crowd and self-willingly ordered a deportation of all present Roma to the Centre for foreigners Postojna (detention centre, for rejected asylum seekers awaiting deportation). The Human Rights Ombudsman stated that the described situation means the end of the rule of law in Slovenia and he informed the Council of Europe about the developments. The NGOs active in the field of human rights were also outraged. However, the Government has stated that an agreement was achieved between Minister Mate and the head of the Strojan family, Mirko Strojan and that the family was not forcibly deported, as stated in some media, but rather relocated with their consent.

A leading European human rights expert has criticised Slovenia over what he called the "unacceptable" forced relocation of a Roma (Gypsy) family. The Council of Europe's Human Rights Commissioner Thomas Hammarberg was commenting on the 31-strong Strojan family, threatened by a local mob. He said it was "unacceptable" that they had had to leave "because the majority population in the area so required«. Speaking at a news conference in Ljubljana on Mr Hammarberg urged Slovenia's political and church leaders to spell out their opposition to racists and xenophobic behaviour."

The story continued with demolition teams which pulled down the homes of the Roma family in Ambrus, on land the family legally owned. The demolition was carried out under police protection after local authorities declared two small brick houses and three wooden cabins had been illegally erected on land the 31-member Strojan family owned. The family, including 14 children, was relocated from the village to a former military barracks 30 miles away late in October after local villagers threatened to kill members of the family.

[107] After Slovenia became independent, citizens of other republics of Yugoslavia having permanent residence in Slovenia could apply for Slovenian citizenship by the deadline of 26 December 1991. On 26 February 1992, at least 18,305(3) individuals were removed from the Slovenian registry of permanent residents and their records were transferred to the registry of foreigners. Those affected were not informed of this measure and its consequences. The "erased" were mainly people from other former Yugoslav republics, who had been living in Slovenia and had not applied for or had been refused Slovenian citizenship in 1991 and 1992, after Slovenia became independent. As a result of the "erasure", they became *de facto* foreigners or stateless persons illegally residing in Slovenia. In some cases the "erasure" was subsequently followed by the physical destruction of the identity and other documents of the individuals concerned. Some of the "erased" were served forcible removal orders and had to leave the country.

The general public's reaction to the events of Ambrus was very mixed. Many were outraged by the conduct of the State, and demanded the Government to revoke their decision or find a better placement for the Strojan Family. On the other hand, there were many voices supporting the Government and the inhabitants of Ambrus, in their decision on the relocation. There was no judicial complaint up to date of the report; however the family is represented by one of the most notorious lawyers in Slovenia. If the State does not find a satisfying location for the family by April 15, the lawyer shall initiate a judicial procedure.

II.
10. CO-ORDINATION AT NATIONAL LEVEL

Which government department/ other authority is/ are responsible for dealing with or co-ordinating issues regarding anti-discrimination on the grounds covered by this report?
According to the IPETA, the Office for Equal Opportunities is responsible for coordinating issues regarding anti-discrimination (Article 10).

Annex
1. Table of key national anti-discrimination legislation
2. Table of international instruments

ANNEX 1: TABLE OF KEY NATIONAL ANTI-DISCRIMINATION LEGISLATION

Name of Country Slovenia Date 07-01-07

Title of Legislation (including amending legislation)	In force from:	Grounds covered	Civil/Administrative/ Criminal Law	Material Scope	Principal content
This table concerns only key national legislation; please list the main anti-discrimination laws (which may be included as parts of laws with wider scope). Where the legislation is available electronically, provide the webpage address.	Please give month / year			e.g. public employment, private employment, access to goods or services	e.g. prohibition of direct and indirect discrimination or creation of a specialised body
Implementation of the Principle of Equal Treatment Act http://zakonodaja.gov.si/	May 2004	nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status	Civil Law Administrative Law	every field of social life, and especially in the fields of employment, labour relations, participation in trade unions and interest associations, education, social security, access to and supply of goods and services	prohibition of direct , indirect discrimination and harassment, creation of a specialised body
Vocational Rehabilitation and Employment of Disabled persons Act http://zakonodaja.gov.si	June 2004	Disabled person	Administrative Law Labour Law	employment	Positive action, creation of a specialised body

Employment Relations Act http://zakonodaja.gov.si/	Januar 2003	sex, race, age, health condition or disability, religious, political and other convictions, sexual orientation, or ethnic origin	Labour law	public employment, private employment	prohibition of direct and indirect discrimination and harassment
Constitution of the Republic of Slovenia http://zakonodaja.gov.si/	Dec 1991	national origin, race, sex, language, religion, political or other beliefs, financial status, birth, education, social status, disability	Constitutional law		

ANNEX 2: TABLE OF INTERNATIONAL INSTRUMENTS

Name of country: Slovenia Date 07-01-07

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