

ACT IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT

I. GENERAL PROVISIONS

Article 1 (Contents and purpose of the act)

- (1) This act determines common bases and premises for ensuring the equal treatment of all persons in performing their duties and exercising their basic freedoms in every field of social life, and especially in the fields of employment, labour relations, participation in trade unions and interest associations, education, social security, access to and supply of goods and services. This shall be available, irrespective of personal circumstances such as nationality, racial or ethnic origin, sex, health state, disability, language, religious or other conviction, age, sexual orientation, education, financial state, social status or other personal circumstances.
- (2) For the purpose referred to in the above paragraph, this act determines subjects that create conditions for the implementation of the principle of equal treatment, through measures within the framework of their competence and a raising of awareness amongst discriminated persons and alleged offenders, as well as in society as a whole. This act also introduces institutional preconditions for the activities of the Advocate of the Principle of Equality, an institution providing assistance to discriminated persons by dealing with cases of alleged unequal treatment under the provisions of this act.
- (3) This act also determines common particularities valid for the legal protection of discriminated persons, by means of judicial and administrative proceedings, initiated on the grounds of violation of the ban on discrimination on the basis of personal circumstances, determined by law.

Article 2 (Application of the act)

- (1) The provisions of this act do not exclude objectively and reasonably justified differentiated treatment or restrictions on the grounds of a specific personal circumstance, determined by special laws aimed to achieve a legitimate purpose.
- (2) Assistance referred to in the second paragraph of Article 1 of this act does not interfere with competencies held on the basis of law by the Human Rights Ombudsman in relation to state bodies, bodies of local authorities and holders of public authority, nor with the fields of other forms of protection and assistance provided by relevant laws in individual legally regulated fields of social life.
- (3) This act does not affect special forms of advocacy carried out by advocates, on meeting special conditions and under professional rules, in order to represent

certain groups of persons in the realisation and enforcement of their legal rights in accordance with special act.

Article 3
(Ban on discrimination and victimisation)

- (1) An action considered discrimination under Articles 4 and 5 of this act shall be prohibited in every field of social life referred to in Article 1 of this act.
- (2) In the event that, in spite of the ban referred to in the preceding paragraph, an act or omission should occur that is discrimination under Articles 4 and 5 of this act, the discriminated person must not be subjected to adverse consequences due to his/her actions (ban on victimisation).

II. DEFINITION OF TERMS

Article 4
(Equal treatment)

- (1) Equal treatment is the absence of direct or indirect discrimination on the grounds of any kind of personal circumstance referred to in Article 1 of this act (hereinafter: personal circumstance).
- (2) 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.
- (3) Indirect discrimination on grounds of personal circumstance occurs when apparently neutral provision, criterion or practice in equal or comparable situations and under alike conditions put a person with a certain personal circumstance in a less favourable position compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.
- (4) Instructions with similar affect to that referred to in the previous paragraphs shall also be deemed to be direct or indirect discrimination.

Article 5
(Harassment)

- (1) Harassment is 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.
- (2) Harassment referred to in the previous paragraph shall be deemed to be discrimination under the provisions of this act.

Article 6 (Positive measures)

Positive measures are temporary measures, determined by law, designed for the prevention of a less favourable position of persons with a particular personal circumstance or for the compensation for a less favourable position.

III. BEARERS OF DUTIES AND THEIR RESPONSIBILITIES

Article 7 (General definition)

Within the framework of their competencies, the National Assembly of the Republic of Slovenia, the Government of the Republic of Slovenia (hereinafter: the Government), ministries and other state bodies and bodies of self-governing local communities shall establish conditions for equal treatment of persons, regardless of any kind of personal circumstance, through raising awareness and monitoring the situation in this field, as well as through measures of a normative and political nature.

Offices and governmental services, active in the field of equal treatment of persons regardless of personal circumstances, shall especially strive for implementation of the aim of this act within the framework of their field of work.

Article 8 (Co-operation with social partners and non-governmental organisations)

In the elaboration of solutions and proposals for the attainment of the purpose of this act, the Government and competent ministries shall co-operate with social partners and non-governmental organisations that are active in the field of equal treatment.

Article 9 (Council of the Government for the implementation of the principle of equal treatment)

- (1) The Government shall establish a Council as its expert and consultative body for implementation of the principle of equal treatment (hereinafter: the Council).
- (2) The Council shall perform the following duties in particular:
 - it will provide for implementation of the provisions of this act,

- it will monitor, ascertain and assess the position of individual groups within society with regard to implementation of the principle of equal treatment,
- it will 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,
- it will submit proposals for the promotion of education, awareness-raising and research in the field of equal treatment of persons,
- it will perform other duties, determined by the decree establishing it.

(3) The Council shall consist of representatives of individual ministries and governmental services, non-governmental organisations, as well as expert institutions active in the field of equal treatment.

(4) In performing its duties, the Council shall co-operate with competent state bodies and other institutions in the field of equal treatment of persons and of prevention of discrimination on the grounds of personal circumstances.

Article 10 (Duties of the Office for Equal Opportunities)

The Office for Equal Opportunities (hereinafter: the Office) shall co-ordinate the activities of individual ministries and governmental services related to the implementation of this act as well as perform technical and administrative duties for the Council.

IV. ADVOCATE OF THE PRINCIPLE OF EQUALITY

Article 11 (Institutional organisation)

An Advocate of the Principle of Equality shall function within the Office in order to hear cases of alleged violations of the ban on discrimination. A special Advocate of the Principle of Equality (hereinafter: Advocate) may function for a specific personal circumstance, if the number of cases, their complexity or particularities with regard to a specific personal circumstance should require this.

Article 12 (Initiating the hearing of a case)

- (1) Hearing a case of an alleged violation of the ban on discrimination (hereinafter: hearing a case) shall start on a written initiative or on a verbal initiative that is protocolled. Such an initiative may also be anonymous, but in all cases must include sufficient data for the case to be heard.
- (2) The Advocate shall not hear initiatives where it is obvious that there is no case of violation of the ban on discrimination.

Article 13 (Time limitation on an initiative)

An initiative referred to in the previous article must be submitted as soon as possible, and not later than one year of the case originating. However, the Advocate may hear such a case even after the expiration of this time if she or he should consider the case to be so important or serious that hearing it would be reasonable with regard to the aim of this act.

Article 14 (Informality of proceedings)

- (1) Hearing a case shall be informal and free of charge.
- (2) The Advocate and other employees of the Office shall be bound by regulations on the protection of confidentiality and personal information with regard to all data of which they are informed when hearing cases.

Article 15 (Procedure of hearing cases)

- (1) Hearing cases shall generally be done in writing, whereby the Advocate shall have the right to request the persons involved to provide him or her with appropriate explanations within a specified time-limit. The Advocate shall have the right to invite all persons involved to an interview if he or she should consider that this would contribute to clarification of a case.
- (2) The Advocate shall cease hearing a case at the request of the initiator if the latter should show no interest in pursuing the case, or if he or she cannot continue hearing a case and conclude it with an opinion due to insufficient data.

Article 16 (Orders in the event of victimisation)

In the event of a discriminated person being subjected to harmful consequences due to his or her actions in relation to cases of violation of the ban on discrimination in the environment in which the violation is alleged to have been committed, the Advocate, already in the course of hearing the case, shall order in writing the corporate body or other body in law where the violation of the ban on discrimination is alleged to have occurred to apply appropriate measures to protect the discriminated person from victimisation or adverse consequences that have occurred from victimisation.

Article 17
(Written opinion)

- (1) Hearing a case shall be concluded by a written opinion in which the Advocate states her or his findings and an assessment of the circumstances of the case, in the sense of the existence of a violation of the ban on discrimination, and informs both parties about it.
- (2) In the opinion referred to in the previous paragraph, the Advocate shall have the right to point out irregularities discovered and to issue a recommendation on how these should be rectified, as well as call for the alleged offender to inform her or him, within a specified time-limit, of the measures taken.

Article 18
(Request for an opinion)

When in doubt, an individual or a corporate body shall have the right to apply to the Advocate with a request for an opinion on whether a certain act, service or omission of his or hers could be considered a violation of the principle of equal treatment because of personal circumstances.

Article 19
(Annual report)

- (1) Every year, not later than the end of March for the past year, the Advocate shall prepare a report on her or his work, which the Office shall submit to the Government for adoption.
- (2) In the event of there being more than one Advocates active within the Office in accordance with Article 11 of this act, the Advocates shall elaborate a joint report as referred to in the previous paragraph.

V. CEDING A CASE TO THE COMPETENT INSPECTION SERVICE

Article 20
(Cases to be ceded)

- (1) In the event of an alleged offender not rectifying established irregularities in accordance with the recommendations of the Advocate or if she or he does not inform her or him within the time-limit about the measures adopted and in a case in which in the opinion of the Advocate, an alleged violation has all the indications of discrimination under Articles 4 and 5 of this act, the Advocate shall send a written opinion referred to in Article 17 of this act to the competent inspection service.

- (2) A competent inspection service is an inspection service that by Law has jurisdiction in an individual administrative field for supervision of the implementation of laws and other regulations, collective agreements and general documents, where action that represents discrimination under the provisions of this act has occurred.

Article 21
(Competencies of the inspector)

- (1) If she or he should also consider that all the indications of discrimination under Articles 4 and 5 of this act can be established, the inspector shall be obliged to deal with the opinion of the Advocate and to propose to the competent body the introduction of a procedure due to a misdemeanour.
- (2) Before introducing a procedure due to a misdemeanour, the inspector may, depending on the circumstances of an individual case and within the framework of her or his competencies that he or she commonly makes use of in exercising supervision, perform other acts required to establish the actual circumstances of the misdemeanour, as well as to rectify its consequences. She or he may also request from the Advocate other possible data from hearing of a case of an alleged violation by the Advocate.
- (3) In the event of an alleged offender not having acted in accordance with the order of the Advocate referred to in Article 16 of this act and the discriminated person should still be subjected to victimisation, the inspector shall have the right and duty to prescribe appropriate measures that, in the circumstances that have arisen, protect the discriminated person from victimisation, or to prescribe the remedying of adverse consequences of victimisation.

VI. PARTICULARITIES OF LEGAL PROTECTION OF DISCRIMINATED PERSONS

Article 22
(Legal protection and the burden of proof)

- (1) In cases of violations of the ban on discrimination under Article 3 of this act, discriminated persons shall have the right to request with the hearing of a case of violation in judicial and administrative proceedings as well as before other competent bodies, under conditions and in a manner determined by law. They shall thereby be entitled to compensation according to general regulations of civil law.

- (2) In cases where the discriminated person quotes facts in the proceedings referred to in the previous paragraph, justifying the allegation that the ban on discrimination has been violated, the alleged offender must prove that he or she did not violate the principle of equal treatment or the ban on discrimination in the case being heard.

Article 23
(Role of non-governmental organisations)

In accordance with the law, non-governmental organisations shall have the right to take part in judicial and administrative proceedings initiated by discriminated persons because of violation of the ban on discrimination.

VII. PENAL PROVISIONS

Article 24
(Definition of misdemeanours and sanctions)

- (1) An act or omission, committed in the implementation of laws and other regulations, collective agreements and general documents in an individual field of social life, regulated by law, which has all the indications of discrimination under Articles 4 and 5 of this act, shall be a misdemeanour for which the offender shall be fined.
- (2) An individual that commits a misdemeanour referred to in the previous paragraph shall be fined from 50,000 to 300,000 SIT.
- (3) A corporate body or an individual entrepreneur at whose premises a misdemeanour referred to in the first paragraph was committed shall be fined from 500,000 to 10,000,000 SIT.
- (4) The responsible person of a state body or of a self-governing local community where a misdemeanour referred to in the first paragraph was committed shall be fined from 50,000 to 500,000 SIT.

Article 25
(Definition of misdemeanours in special laws)

Irrespective of the provisions of the previous article, a law regulating an individual field may, with regard to its content, specifically determine circumstances in which discrimination under Articles 4 and 5 of this act is prohibited, define offenders, and prescribe sanctions for a misdemeanour within the limits referred to in the previous the preceding article.

VIII. TRANSITIONAL AND FINAL PROVISIONS

Article 26 (Establishment of the Council)

The Government shall establish the Council referred to in Article 9 of this act within three months of this act entering into force.

Article 27 (Commencement of the activities of the Advocate of the Principle of Equality)

The Advocate shall begin her or his work within three months of this act entering into force

Article 28 (Levying of fines for misdemeanours)

- (1) Until the day the Misdemeanours Act (Official Gazette RS, No. 7/2003) enters into force, the fines stipulated by this act shall be levied in the misdemeanours procedure as fines within the limits stipulated for a fine in the third and fourth paragraph of Article 24 of this act.
- (2) Until the day the Misdemeanours Act referred to in the previous paragraph enters into force, an individual shall be fined for a misdemeanour specified in the second paragraph of Article 24, from 50,000 to 150,000 SIT.

Ur.I. RS, No. 50/2004
Ljubljana, 6 May 2004

Article 29 (Entry into force of the act)

This act shall enter into force on the day following its promulgation in the Official Gazette of the Republic of Slovenia.