



REPUBLIC OF SLOVENIA

ADVOCATE OF THE PRINCIPLE OF EQUALITY

REGULAR ANNUAL REPORT 2018

Ljubljana, April 2019

Foreword of the Head of the Institution, Advocate of the Principle of Equality

2018 was the second full operational year of the Advocate of the Principle of Equality as an independent body. This was a year of several milestones – both within and outside the new body. We began the year with a slightly increased budget (EUR 500,000), which allowed us to primarily focus on setting up the full infrastructure of the institution (premises, IT system, etc.) and human resource growth (hiring new employees).

On 25 May 2018, we started operating as a fully independent body, as the Ministry of Labour, Family, Social Affairs and Equal Opportunities stopped providing administrative and technical assistance on this date. Thus, in the second part of the year, we met all requirements and started carrying out all the tasks necessary for legal and effective functioning of the body, completely independently.

In June 2018, the European Commission issued recommendations to EU member states regarding the requirements and standards for work of equality bodies. These recommendations clearly list the tasks that equality bodies – such as the Slovenian Advocate of the Principle of Equality – must undertake, as well as the necessary requirements. On this basis, the Advocate has prepared an action plan and a financial plan, which represented a starting point for the revised budget for 2019. The new government listened to the arguments of the Advocate, and was one of the first in the European Union to implement the recommendations of the European Commission. This is undoubtedly a good sign. The significant increase of our budget for 2019 (EUR 1,100,000 annually) compared to the previous budget follows EU recommendations, and provides a good opportunity to complete the process of establishing the new institution. Such a decisive step towards supporting institutional protection from discrimination has not, and will not, remain unnoticed in Brussels.

If many important decisions were made regarding infrastructure and human resources in the first half of 2018, the results were already noticeable in the second half in the scope and quality of work. By the end of 2018, we completed most of our backlog. We completed most reported cases from the period before the establishment of the new body and its first year of operations, as well as half of the cases reported in 2018.

This Report presents activities of providing counsel and support, as well as consideration of discrimination complaints by individuals. Regarding these tasks, the body provides advice and assistance to those who are – or believe they are – victims of discrimination. We are already seeing the first successfully resolved cases, with perpetrators accepting our explanations and warnings, and eliminating discrimination. There are still some challenges ahead. The Council of Europe's European Commission against Racism and Intolerance (ECRI) has studied the situation in Slovenia in the previous year, and will issue a report in June of this year. This report will show how this international institution assesses the state of protection from discrimination in Slovenia. As our experience so far shows, Slovenia does not yet have a sufficiently effective system for sanctioning those that, despite warnings, do not abandon their contentious practices.

The applicable national legislation on the prevention and discrimination investigation states that the Advocate determines the existence of discrimination and issues a warning to the perpetrator, while inspectorates act as offence authorities. Our practice so far has shown that there are not enough inspectorates for all areas where discrimination occurs. We need a fundamental and multidisciplinary deliberation on how to upgrade our existing system, to make it more effective and transparent, also from the perspective of potential persons reporting rights violations, as our organisation was, ultimately, established for them.

Although sanctioning perpetrators of gross violations in individual cases in accordance with the experience of other European countries makes sense, it is not sufficient to achieve broader societal change in the area of discrimination prevention. A more tolerant society and environment, where everyone – regardless of their personal circumstances and related special characteristics – feels equal, respected and included, can not be created only by sanctions. All parties in societal structure must be constantly encouraged. Using clear explanations of the problem of discrimination, we must repeatedly call on and invite people to avoid discriminating against others.

These efforts also include various forms of awareness-raising for the general public and particular public segments, including public events often targeted at specific target groups. This year, the Advocate

started making trips across Slovenia, meeting representatives of local communities, economic, social and related institutions, non-governmental organisations, and other agents of social life on the local level. We prepared an educational leaflet to inform the general public and promote dialogue on the problem of discrimination.

In meeting with the highest representatives of the government, the Advocate presents discrimination-related issues and warns of the challenges he faces, both from a legal and practical perspective. The current government expresses an adequate level of understanding and support for the area of work of the Advocate and the needs of the institution. Per our initiative, ministries appointed contact persons in charge of monitoring the issue of discrimination, ensuring constant contact with our experts, who provide regular explanations and consultations to ministries in reviewing situations and preparing and implementing measures. Thus, the government can contribute to the prevention of discrimination on the systemic level and promote the enforcement of the principle of equality in practice.

In the previous year, we continued our working meetings with various representative of civil society and groups directly affected by discrimination. Dialogue is the foundation of a relationship, and a good relationship is the starting point of good cooperation. What is true for government institutions, is also true for non-governmental organisations: progress is only possible if as many people as possible strive together for the common goal. The Report was designed to present the work performed in all three main departments of the institutions: in providing counsel and assistance to individuals, in decision-making processes and all activities undertaken in cooperation with non-governmental, local, governmental, national and international organisations. In the chapter on the consulting activities of the Advocate, the Report presents the work invested into providing consultations, as well as the scope of use and the results of these activities. In the systemic part, the Report follows the same logic, describing the work invested into preparing meetings, as well as the description of effects of this segment of Advocates activities.

The body regularly monitors and implements most up-to-date European practices in its area of activity. This year, the Report includes EU recommendations for activities of equality bodies, and two special international reports on ethnic minorities and disability. By publishing translations of these documents, we wish to share, in the Slovenian setting, the material showing the analysis of circumstances in Slovenia as seen by others, from the outside. For every step forward, even in this area, it is essential that we look into a mirror now and then, and face what this look from the outside tells us. (How do other see us?) Only when we notice and identify something as a problem, can we begin thinking together about solutions and long-term changes that could prevent such problems.

The translation of the report by the United Nations Special Rapporteur on minority issues highlights, among other issues, the importance of gathering data on minorities. Without such data, which represents an unavoidable step towards analysing the circumstances and defining the problems, it is not possible to plan and implement effective measures for their resolution. An opportunity for establishing the framework for data collection on equality has presented itself in adopting the new Personal Data Protection Act (PDPA).

The second international document represents the translation of the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities regarding the initial Slovenian report on implementation of the Convention on the Rights of Persons with Disabilities (CRPD). These observations also indicate the need for changes of the existing system, including a change of understanding of the concept of disability and its scope.

Slovenia is therefore facing many challenges in terms of protection against discrimination. If it responds appropriately and comprehensively, implementing the necessary creative adjustments, it will once again catch up to the most developed states, which have recognised equality as the key factor of social development.

I would like to thank my dedicated team and everyone who worked with us in 2018.

Miha Lobnik
HEAD OF THE INSTITUTION, ADVOCATE
OF THE PRINCIPLE OF EQUALITY

Ljubljana, April 2019

Summary

The 2018 Annual Report of the Advocate of the Principle of Equality is composed of five main and three additional sections.

The five main sections represents an overview of the following topics:

- the process of establishing the body in the last year **and a short overview of the body's tasks and powers** in accordance with Article 21 of the Protection Against Discrimination Act (PADA);
- activities in the area of **counselling and investigation of discrimination**;
- activities within the framework of the **body's systemic tasks**;
- **discrimination in work and employment**;
- **international and bilateral cooperation** of the body.

The Report also includes the following:

- the translation of the **report** by the United Nations **Special Rapporteur on minority issues**;
- the translation of the **Concluding Observations of the UN Committee on the Rights of Persons with Disabilities** regarding the initial Slovenian report on implementation of the Convention on the Rights of Persons with Disabilities (CRPD);
- the translation of the **Commission Recommendation on standards** for equality bodies.

In the first section, we describe the process of establishing the body, as well as a **brief overview of carrying out the tasks** defined by law. The short presentation explains the legal basis and the procedures for a formal establishment of the body to date. We describe how we established the spatial and other infrastructure conditions necessary for operation. We briefly describe the budgetary, financial and human resource conditions for the functioning of the body. This is followed by a description of **significant developmental and substantive changes** in the body in 2018, and a short overview of the Advocate's **execution of tasks and powers** in accordance with Article 21 of the Protection Against Discrimination Act. We list and describe all tasks of the body. For each task, we define the key question on how the task was performed. This is followed by a brief reply to this key question and a clarification. Finally, we explain which department of the body participated in the execution of each task.

The second section presents the area of **counselling and discrimination investigation procedures**. First, we present the **legal basis, method and scope** of exercising the powers of the body, and the challenges of legal regulation of the Advocate's powers. We present a **statistical report on completed cases** opened in the 2012–2017 period and in 2018, and the results of the procedures. In the next chapter, we focus on **anonymised individual cases** of counselling and discrimination investigations involving natural persons, by personal circumstances and areas of discrimination. The chapter also includes a subsection **on the protection of legal persons against discrimination**, which can be enforced only under specific legally prescribed conditions. We also detail **conduct that does not match the definition of discrimination** in accordance with the Protection Against Discrimination Act, as well as cases when the **Advocate can not investigate discrimination**. These are primarily issues subject to proceedings of other public authorities and issues that fall within the private sphere, which the Protection Against Discrimination Act does not regulate. This chapter also presents the **options for exercising protection against discrimination before ordinary courts** and the circumstances under which the Advocate can represent or accompany in judicial proceedings persons discriminated against.

The third section focuses on the **systemic tasks of the Advocate**, which are divided into four main chapters.

As part of monitoring the general situation of protection against discrimination and the position of persons with specific personal circumstances in the country, a special chapter is dedicated to a **review of data on processed cases of discrimination on the national level** (inspectors, police, prosecutors, courts, and the human rights ombudsman). This chapter also includes **an analysis of case law of labour courts until 2017**. The next chapter presents another perspective on monitoring the general situation in the country, in terms of the position of persons with specific personal circumstances, namely **dialogue and cooperation with non-governmental organisations**. In 2018, the Advocate attended meetings with 26 non-governmental organisations whose activities are related with the following personal circumstances: ethnic background or race, disability, age (youth), sexual orientation,

gender identity, and gender expression. This section in the third chapter also includes **special measures to improve the position of persons in less favourable actual position** due to specific personal circumstance, and an **analysis of ministries' responses on the implementation of special measures**. This is followed by a chapter on **raising awareness in the general public of particular public segments on the protection against discrimination** and **Advocate's activities** in various areas.

The fourth section highlights the question of **equality and non-discrimination in employment and work**. Various forms of discrimination related to employment and work are defined with illustrative examples, with special attention on modern standards for investigation discrimination in this area. These were formed by **case law of national courts, Court of Justice of the European Union, and the European Court of Human Rights**. In terms of the Advocate's activities, the importance of **distinguishing between workplace bullying and harassment as a special form of discrimination** is explicitly emphasised, which, because of different legal criteria, and especially (social) causes, require different responses, both in terms of prevention and sanctions. Special attention is also given to the Advocate's activities as part of drafting and adopting the **National Action Plan of the Republic of Slovenia on Business and Human Rights**. We also present arguments on the priority tasks of prevention of discrimination and inequality, as well promotion of equal opportunities, **should be addressed** by the action **from a perspective of greater number of personal circumstances and forms of discrimination**.

The fifth section presents the Advocate's international cooperation. This is intended to **share information on the current situation** in the area of discrimination, **exchange of best anti-discrimination practices, education** on current challenges of protection against discrimination, and on **joint planning** of responses. This section of the Report presents the **Advocate's meetings with representatives of international mechanisms for the protection of human rights** (UN, Council of Europe), **activities within the framework** of the European Network of Equality Bodies – Equinet (work groups, events and seminars, **regular exchange of opinions on specific cases**), activities within the framework of other international forums, and the Advocate's bilateral cooperation. We also present the concept of the **European project "Parents in the Workplace"**, which the Advocate will start implementing together with international partners in 2019.

The sixth section includes the translation of the **report** by the United Nations **Special Rapporteur on minority issues**. The report was prepared after the **Special Rapporteur, Dr.Fernand de Varennnes**, visited Slovenia between 5 April and 13 April 2018, and met with key governmental and non-governmental stakeholders working with minorities. Based on information gathered in the field, Dr.Fernand de Varennnes published a report on 8 January 2019, presenting the main findings regarding **the respect for and enforcement of human rights of minorities in Slovenia**.

The seventh section presents the translation of the **Concluding Observations of the UN Committee on the Rights of Persons with Disabilities** regarding the initial Slovenian report on implementation of the Convention on the Rights of Persons with Disabilities (CRPD). The Committee adopted the Concluding Observation in March 2018, and recommended that the **Concluding Observations be shared with various stakeholders**. The Committee recommended that governmental and non-governmental agents, experts, media, and persons with disabilities and their families be informed of the findings. **Furthermore, it recommended that the Concluding Observations be published on the government's websites on human rights**. Because the Slovenian translation of the Committee's Concluding Observation is still not available on the government's website on human right at the time of writing the Advocate's Annual Report, **the Advocate prepared its own unofficial translation of the Concluding Observations**, and included it in this 2018 Annual Report.

The eighth section includes the official translation of the **Commission Recommendation on standards for equality bodies**. EU directives stipulate that EU member states must **establish equality bodies**, and also define the **powers of these bodies**. EU member states have consequently established specialised public authorities, which differ significantly in their levels of **independence, resources** available for their work, **scope, type of powers, and areas** they focus on. **With the purpose of arranging and improving the independence and effectiveness of equality bodies**, the European Commission adopted recommendations, which we present as the final document in the 2018 Annual Report.

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1 INTRODUCTION

1.1 Establishment and development of the body

Legal basis

On 21 April 2016, the National Assembly of the Republic of Slovenia adopted the Protection Against Discrimination Act (PADA), which represents the legal basis for the formation of an independent public authority, Advocate of the Principle of Equality (hereinafter: Advocate). With this regulation, Slovenia took a step closer to fulfilling the requirements of the EU *acquis*. For non-compliance with EU directives on equality before the adoption of PADA, formal proceedings were initiated against the Republic of Slovenia for violation of the EU *acquis* (violation no. 2014/2093). PADA, the adoption of which resolved the violation, entered into force on 24 May 2016.

Formal establishment of the body

The first Head of the Institution for the Advocate of the Principle of Equality (hereinafter: Head of the Institution) of the new body was elected by the National Assembly on 25 October 2016. In October 2016, the handover and a review of documentation of the previous advocate – under a different mandate, in accordance with the Implementation of the Principle of Equal Treatment Act ¹(IPETA), and acting within the framework of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MLFSAEO) – was carried out. In November 2016, the formal establishment and registration procedures for the new body were started (registration number, tax ID number, seal, etc.). On 1 January 2017, the Advocate became a direct budget user; however, basic conditions for independent operation had not yet been established at that time.

Spatial conditions

The Head of the Institution Miha Lobnik started his work in October 2016 in one of the offices of MLFSAEO at Kotnikova 28 in Ljubljana. Between December 2016 and October 2017, the Head of the Institution and the first employees worked in two offices of MLFSAEO. A year after the election of the Advocate in the National Assembly, on October 2017, the body and its employees finally moved into independently leased premises at Železna cesta 16 in Ljubljana.

Financial conditions

In 2017, only EUR 200,000 of budgetary resources were allocated to the Advocate for its activities. Mid-year, the government of the Republic of Slovenia (hereinafter: Government) allocated an additional EUR 50,000 for the lease of independent premises. For establishment of the body and operation in the first independent budget year of 2017, the Advocate used a total of EUR 225,352 of budgetary resources. In spring 2017, the Advocate prepared the first independent, phased, substantive and financial plan for 2018 and 2019. The goal of the financial plan was to ensure appropriate organisational structure that would facilitate wider, legally projected effects of operation of such a body. For carrying out the minimal scope of legally defined duties and tasks in 2018, the Advocate projected a financial plan in the amount of EUR 1,110,000. With the budget changes, the Ministry of Finance allocated less than half of the necessary resources for 2018 to the Advocate – only EUR 500,000. In the second year of operation, the Advocate used a total of EUR 497,830 of budgetary resources for establishment and operation of the body. With the revised budget for 2019, the Advocate was allocated EUR 1,100,000, based on the presented action plan for 2019. With partial temporary suspension and transfer of certain programme activities to 2020, the above amount is currently in line with the Advocate's substantive and financial plan for 2019.

Human resource conditions

On 31 December, the Advocate of the Principle of Equality only employed one person – the Head of the Institution. A year later, on 31 December 2017, the body had seven employees in addition to the Head

¹ Official Gazette of the Republic of Slovenia, no. 93/07 – official consolidated text

of the Institution, which included three trainees. On 25 May 2018, in accordance with Article 50 of PADA, MLFSAEO ceased providing administrative and technical support to the Advocate. This provided the new body at MLFSAEO with 19 authorised persons with various duties (administration, financial management, budget, informatics, human resources, legal services). On 25 May 2018, the Advocate became responsible for ensuring suitable human resources and infrastructure for independent operation, which meant establishing its own independent secretariat, main office, human resources, financial and budgetary services, as well as transitioning to an independent IT operation. This was a comprehensive process for establishing independent operation of the entire body, which was completed towards the end of 2018. At that time, the installation of its own IT system was completed, which included a transfer of databases. After two years of operation, on 31 December 2018, the Advocate employed 16 people in addition to the Head of the Institution, which included one trainee.

Rules of Procedure

The process for drafting the Rules of Procedure began on March 2017, immediately after the first employee was hired. Due to some unclear statutory provisions, the Advocate included MLFSAEO in this process, and remained in constant dialogue on the topic of the Rules of Procedure and enforcement of PADA with the Ministry of Justice (MoJ) and the Ministry of Public Administration (MoPA). The above ministries have actively collaborated, along with MLFSAEO, in the adoption of PADA. Internal harmonisation of the Rules of Procedure, in accordance with individual positions of legal experts and guidelines of the Council of Europe's European Commission against Racism and Intolerance (ECRI), was conducted in 2018. In accordance with Article 32, paragraph 3, of PADA, the Advocate adopted the Rules of Procedure on 7 February 2019, which became effective on 16 February 2019.

1.2 Significant and substantive changes of the body in 2018

Protection against discrimination – as defined by PADA – is one of the basic human rights, based on Article 14 of the Constitution of the Republic of Slovenia². For enforcing this right in accordance with PADA, the role of the institution of the **Advocate of the Principle of Equality as an independent public authority** is essential. The Advocate provides independent assistance to victims of discrimination, conducts independent studies, research and analyses, and ensures awareness-raising and information for the general public and special public segments. Furthermore, it publishes independent reports and issues recommendations regarding discrimination, and **cooperates with related European institutions** and European Union (EU) bodies.

By resolving received discrimination complaints from persons discriminated against, the Advocate helps identify violations and eliminate various forms of discrimination. This activity also contributes to raising the general public awareness. The Advocate also **raises awareness and informs the expert and general public** by conducting studies. Its **reports are published on its website**, and presented to the public at round table discussions, consultations, conferences, and at other events. With its activities, it contributes to strengthening of **awareness on the importance of promoting equality and protection against discrimination**, as well as increased public recognition of this subject.

In 2018, the Advocate fulfilled its legally defined tasks. The body was less active in areas where, due to the current phase of establishment and insufficient financial and human resources, tasks couldn't be completed in full. When the new body was being established in 2018, the Advocate focused primarily on two aspects: **ensuring administrative and technical independence** and independent infrastructure, and **ensuring responsive investigation of individual discrimination complaints**. All this had to be done **with concurrent elimination of backlog from 2012 onwards**, which was passed to the Advocate from the previous, advocate before the new body was established, in accordance with PADA. In parallel with these priority tasks, the Advocate was also active **within the framework of systemic work**, i.e. **promoting equality and preventing discrimination**.

² Official Gazette of the Republic of Slovenia, no. 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121, 140, 143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, and 75/16 – UZ70a

INTRODUCTION

From 25 May 2018 onwards, the Advocate was responsible for ensuring suitable infrastructure for independent operation, which meant **establishing its own independent secretariat and main office**, human resources, financial and budgetary services, as well as an independent information and communication operation. The body therefore focused its attention on the **process of establishing an independent administrative and technical operation**.

This process lasted throughout the year, and was completed towards the end of 2018, when the transfer of the information and communication system was completed.

While implementing an independent administrative and technical operation of the body, the Advocate, in 2018, **also paid special attention to the operationalisation of tasks related to counselling, advocacy and investigation of discrimination**. The Advocate **provided independent assistance in seeking protection against discrimination** to every party that contacted the body in 2018 or earlier. Counselling was carried out by phone, in writing, or in person. It included analysis of legal position of reporting persons and relevant regulation, or judgments and decisions, which the reporting persons already received, as well as counselling on potential measures. The Advocate **clarified its powers and the requirements** necessary for **the start of a discrimination investigation procedure**. The Advocate **supported** people who have experienced discrimination and were already involved in other proceedings **by providing advice and assistance** for effective enforcement of their rights regarding the principle of equality.

Along with the described activities of counselling, advocacy and investigation discrimination, the Advocate also **worked within the framework of systemic tasks** in 2018. Work in this area was carried out primarily in the form of international cooperation, information and awareness-raising for various public segments, NGO dialogue, and monitoring the general situation of protection against discrimination in the Republic of Slovenia.

1.3 Overview of the performance of tasks and powers under Article 21 of PADA

Below, we prepared an overview of the body's tasks, as defined by Article 21 of PADA, and their execution in 2018. The work was carried out by several departments. Systemic tasks were carried out by the Department for systemic monitoring, awareness-raising and prevention of discrimination – Department A. Tasks of counselling and investigation of discrimination were carried out by the Department for investigation of discrimination, counselling and advocacy – Department B. Coordination between departments and the Head of the Institution was carried out by the Office of the Advocate (hereinafter: Office), which also coordinated international cooperation. The Department for general, HR and financial affairs – Department D – carried out tasks of the secretariat and administrative and technical support.

I.

Article 21, indent 1, of PADA – conducting independent studies on the position of persons with specific personal circumstance, particularly gender, ethnicity, race or ethnic background, religion or belief, disability, age and sexual orientation and other issues related to discrimination of persons with a specific personal circumstance.

Question	How many and what kind of independent studies were carried out?
Answer	In 2018, the Advocate carried out three independent studies.
Clarification	<i>In 2018, the Advocate prepared the Analysis of data by inspection bodies and the police regarding investigates cases of discrimination in 2017 (published in the 2017 Regular Annual Report).</i> <i>The Advocate also prepared the Analysis of labour court case law up to 2017 (published in Chapter 3.2.6 Analysis of labour court case law) and the Analysis of special measures for ensuring equality (published in Chapter 3.4 Special measures for ensuring equality).</i>
Execution	This activity was undertaken by Department A and Department B in coordination with the Office. ³⁴

³ Department A – Department for systemic monitoring, awareness-raising and prevention of discrimination

⁴ Department B – Department for investigation of discrimination, counselling and advocacy

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II.

Article 21, indent 2, of PADA – publishing independent reports and issuing recommendations to public authorities, local communities, bodies exercising public powers, employers, business entities and other persons in relation to determined position of persons with specific personal circumstances, specifically regarding prevention and elimination of discrimination and adopting special and other measures for eliminating discrimination.

Question	How many independent studies were prepared (published)?
Answer	In 2018, the Advocate prepared and published the first regular annual report for 2017.
Clarification	<i>The Report was published on the Advocate's website www.zagovornik.si⁵ and presented in the National Assembly on 3 October 2018.</i>
Execution	This activity was undertaken by Department A in coordination with the Head of the Institution and the Office.

Question	How many recommendations were issued (and to whom) regarding the position of persons with a specific personal circumstance (which), on the prevention/elimination of discrimination and implementation of special measures for eliminating discrimination?
Answer	In 2018, the Advocate issued a total of seven recommendations.
Clarification	<p><i>The recommendations issued in 2018 are substantively related to the necessary legislative changes or interpretations of regulations, and to measures that are not defined as obligatory, but, if implemented, would contribute to increased equality of vulnerable social groups.</i></p> <p><i>The recommendations were issued for the following personal circumstances: disability in four cases, and one case each for ethnicity, place of residence, and status of sole trader.</i></p> <p><i>Three recommendations were issued by the Advocate to legal persons, which, if complying with the recommendation, could eliminate discrimination in these specific cases.</i></p> <p><i>Three recommendations were issued to public authorities, which could eliminate systemic discrimination by amending the law.</i></p> <p><i>One recommendation was issued to various municipalities, which could reasonably promote increased actual equality by amending a regulation.</i></p>
Execution	This activity was undertaken by Department A and Department B in coordination with the Head of the Institution and the Office.

⁵ Available at: <http://www.zagovornik.si/wp-content/uploads/2018/11/Poro%C4%8Dilo-2017-.pdf>

III.

Article 21, indent 1, of PADA – carrying out inspection tasks pursuant to complaints under Chapter 5 of this Act, regarding compliance with the provisions of this Act or another act determining its powers.

Question	How many inspection tasks were carried out pursuant to complaints from Chapter 5?
Answer	In 2018, 99 discrimination investigations, initiated by discrimination complaints, were processed and closed. No inspection was undertaken in 2018.
Clarification	<p><i>In 2018, 99 discrimination investigations, initiated by discrimination complaints in accordance with Article 21, indent 3, of PADA, which combines several powers of the Advocate in discrimination investigation, were processed and closed. According to Chapter 5, the Advocate receives discrimination complaints from victims, third parties, and anonymous sources. The discrimination investigation procedure under Article 33 of PADA from Chapter 5 is by its nature a fact-finding administrative procedure, in which the complainant is a party to the proceedings, while the procedure under Article 42 of PADA from Chapter 7 is an inspection procedure, in which the complainant is not a party to the proceedings. The procedures before the Advocate are therefore not uniform, starting with an complaint and ending with an inspection decision; there are in fact two possible procedures: one is a fact-finding procedure while the other is an inspection procedure. Due to incomplete legal regulation, the Advocate considered and completed 99 fact-finding procedures and no inspection procedures in 2018. More details on the reasons for this situation are included in the following chapters: 2.2.6 Challenges in legal regulation of procedures and 2.2.7 Challenges in inspection procedures.</i></p> <p><i>In 2018, opinions, clarifications and recommendations by the Advocate were issued on the basis of PADA, while decisions were also published on the basis of the General Administrative Procedure Act ⁶(GAPA). Opinions were issued in cases received before 24 May 2016, when IPETA was still in effect.</i></p>
Execution	This activity was undertaken by Department B in coordination with the Head of the Institution and the Office.

⁶ Official Gazette of the Republic of Slovenia, no. 24/06 – official consolidated text, 105/06 – ZUS-1, 126/07, 65/08, 8/10, and 82/13

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IV.

Article 21, indent 4, of PADA – providing independent assistance to persons discriminated against in enforcing their rights related to protection against discrimination, as counselling and legal assistance for parties in other administrative and judicial proceedings related to discrimination.

Question	How many persons discriminated against were in 2018 provided independent assistance in administrative and other judicial proceedings related to discriminations?
Answer	In 2018, the Advocate provided independent assistance to 159 persons.
Clarification	<i>In 2018, the Advocate, as part of current procedures of counselling and investigation of discrimination, provided written advice to 144 persons, and to an additional 15 persons by phone, for a total of 159 persons. Of these, 155 persons were provided advice once, three persons were provided advice in two different cases, and one person was provided advice in three different cases.</i>
Execution	This activity was undertaken by Department B in coordination with the Head of the Institution and the Office.

V.

Article 21, indent 5, of PADA – raising general public awareness of discrimination and prevention measures.

Question	How was general public awareness of discrimination and prevention measures raised?
Answer	In accordance with international recommendations, the Advocate defined the communication goals, priority target groups, key messages, and various lines of communication.
Clarification	<p><i>In 2018, the Advocate define the goal of communication as increased recognition of the body in the general public and national administration. The key message was the establishment of the body and presentation of basic legal provisions regarding discrimination. The press releases were published by the Advocate on the new website www.zagovornik.si, on Facebook, and on Twitter. Furthermore, the Advocate organised a series of public events, where the general public could actively participate and learn about the discussion topics.</i></p> <p><i>Education for the general public and specific public segments in 2018 included general topics on discrimination and specific topic related to various personal circumstances and areas: gender, age, career advancement, discrimination in work and employment, and access to goods and services. In 2018, the Advocate organised seven education and training courses for general public and specific public segments. The Advocate organised round table discussions, titled “Challenges and Opportunities for Women in Business: Effect of Gender on the Career” and “Respect of Human Rights in the Economy”. The Advocate co-organised a conference titled “The Status of Self-Burdened” in Ljubljana and an event “Her World is our World” in Maribor. The Advocate was also a partner in organising the international conference by Equinet in Ljubljana, “Tackling Age Discrimination against Young People”, and collaborate as a partner in the organisation of a round table discussion titled “Overview: 70 Years of Human Rights”.</i></p> <p><i>The Advocate also organised a lecture at the Faculty of Law, on the topic of protection against discrimination and the role of an independent body.</i></p>

	<p><i>Furthermore, in 2018, the Advocate and its employees attended over 50 events, seminars, conferences, discussions, round table discussions in Slovenia, on various topics related to promotion of equality and protection against discrimination. At these events, the Advocate (the Head of the Institution or associates) often had an active role with an introductory address or substantive contribution on the topic of protection against discrimination.</i></p> <p><i>The Advocate also raised awareness in public authorities, specifically by holding meetings and organising presentations. In 2018, as part of the dialogue with public authorities, the Advocate of the Principle of Equality began systematically informing the highest state representatives about the work of the independent public authority. In official meetings, the Advocate met with the presidents of the Republic of Slovenia, the National Assembly and the National Council, the Human Rights Ombudsman, and the highest representatives of the Government and ministries.</i></p> <p><i>The Advocate started the process of establishing contact points across line ministries, and continued the cooperation in wider inter-ministerial groups and expert councils.</i></p>
Execution	This activity was undertaken by Department A in coordination with the Head of the Institution and the Office.

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VI.

Article 21, indent 6, of PADA – monitoring the general situation of protection against discrimination and the position of persons with specific personal circumstances in the Republic of Slovenia.

Question	How is the general situation of protection against discrimination and the position of persons with specific personal circumstances monitored?
Answer	The Advocate monitors the general situation of protection against discrimination in several ways, including research methods (own and international studies), situation analysis (within the country and using international comparisons), monitoring operation of other bodies, and analysing the Advocate's own work. Another source of information for the Advocate is also the dialogue, both with NGOs and state institutions.
Clarification	<p><i>Specifically, the emphasis in 2018 was on the following:</i></p> <ul style="list-style-type: none"> • <i>gathering and analysing data on discrimination cases investigated in 2018 (25 inspectorates and inspection bodies, Human Rights Ombudsman (hereinafter: Ombudsman), the police and the prosecution);</i> • <i>gathering and analysing data on case law in four labour and social courts in the 2004–2017 period;</i> • <i>gathering and analysing data on discrimination cases considered by courts in 2018 (44 local, 11 district, 5 higher, 1 supreme, 4 labour, and 1 administrative court);</i> • <i>structured dialogue with NGO representatives of various groups by personal circumstances or areas and forms of discrimination; dialogue with a total of 26 NGO representatives;</i> • <i>monitoring the work of 14 ministries in adopting and implementing special measures for the promotion of equality.</i>
Execution	This activity was undertaken by Department A and Department B in coordination with the Head of the Institution and the Office.

VII.

Article 21, indent 7, of PADA – proposals to adopt special measures to improve the position of persons in a less favourable position due to a specific personal circumstance.

Question	Which special measures were proposed to improve the position of persons in a less favourable position (which position) due to a specific personal circumstance (which circumstance)?
Answer	In 2018, the Advocate called on ministries to submit data on adopted and implemented special measures, which was then used to conduct an analysis of the current situation. After studying the actual situation, the Advocate will be able to prepare proposal for adopting special measures.
Clarification	<i>In 2018, the Advocate analysed the received responses by line ministries on implemented special measures. The data shows that ministries are relatively active in implementing measures for ensuring equality, but that some measures do not always meet all essential characteristics of special measures for ensuring equality under PADA. The Advocate notes that, in order to implement special measures in the terms of PADA, it is crucial to understand and monitor the situation of persons with a specific personal circumstance, which requires systemic and systematic gathering and processing of so-called equality data.</i> <i>After studying and evaluating the actual situation in individual line ministries, the Advocate will prepare potential proposals for adopting special measures.</i>
Execution	This activity was undertaken by Department A in coordination with the Head of the Institution and the Office.

VIII.

Article 21, indent 8, of PADA – participation in judicial proceedings due to discrimination, in accordance with this Act.

Question	In how many and which judicial proceedings, in accordance with PADA, has the Advocate participated?
Answer	In 2018, the Advocate has not yet participated, represented or accompanied any party in court proceedings due to discrimination.
Clarification	<i>In 2018, the Advocate's priority was processing the backlog of discrimination reports. The backlog occurred because of two reasons. When the Advocate started operating in accordance with PADA, it took over a large number of open cases from the previous advocate, who operated with a different mandate between 2012 and 2016 as part of MLFSAEO. Other reasons for the backlog were the urgent tasks of ensuring the basic conditions for the establishment of the new body.</i> <i>In 2018, the Advocate has not yet represented any party in court proceedings due to discrimination. In this regard, the Advocate defined the basic criteria for participation in judicial proceedings in the Rules of Procedure. According to these criteria, it will be possible to determine and select the cases in which such a form of strategic litigation would be reasonable.</i>
Execution	This activity will be undertaken by Department B in coordination with the Head of the Institution and the Office.

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IX.

Article 21, indent 9, of PADA – exchange of available information on discrimination with EU bodies.

Question	Which information is exchanged by the Advocate and with which EU bodies?
Answer	In 2018, the Advocate actively exchanged information on protection against discrimination, specifically with EU bodies and other stakeholders in Europe: most often within the framework of the European Network of Equality Bodies (Equinet) and other related national equality bodies in Europe.
Clarification	<i>For this purpose, the Advocate provided an English translation of the 2017 Regular Annual Report, which is published on the Advocate's website⁷, and submitted copies of the Report at international conferences and meetings of Equinet workgroups to other participants.</i>
Execution	This activity was undertaken by Department A and Department B in coordination with the Head of the Institution and the Office.

⁷ <http://www.zagovornik.si/wp-content/uploads/2018/06/Report-of-the-Advocate-of-the-principle-of-equality-for-2017-final.pdf>

Question	At how many European and international events on protection against discrimination did the Advocate participate?
Answer	<p>In 2018, the Head of the Institution or Advocate employees attended 30 international conferences or meetings of Equinet workgroups. In most cases, they actively participated and presented specific topics on protection against discrimination in Slovenia.</p> <p>In 2018, the Advocate exchanged available information on discrimination with other equality bodies in the EU by preparing and submitting its responses to received questions. In 2018, there were six such questions, while the Advocate requested information in two cases.</p>
Execution	This activity was undertaken by Department A and Department B in coordination with the Head of the Institution and the Office.

X.

Article 21, indent 10, of PADA – conducting other tasks defined by this Act.

Question	What are the other tasks defined by this Act?
Answer	The other tasks defined by this Act include consideration of initiatives for a constitutional review (Article 38 of PADA).
Question	How many initiatives for a constitutional review did the Advocate consider?
Answer	In 2018, the Advocate considered five initiatives for a constitutional review.
Clarification	<i>The Advocate has not yet decided to file a request for a constitutional review under PADA in any case. While establishing and creating the conditions for its operation, the Advocate endeavoured to operate in all areas defined by law. In 2018, the Advocate's priority was processing the backlog of discrimination reports. The backlog occurred because of two reasons. When the Advocate started operating in accordance with PADA, it took over a large number of open cases from the previous advocate, who operated with a different mandate between 2012 and 2016 as part of MLFSAEO. Other reasons for the backlog were the urgent tasks of ensuring the basic conditions for the establishment of the new body.</i>
Execution	This activity will be undertaken by Department B in coordination with the Head of the Institution and the Office.

2 COUNSELLING AND INVESTIGATION OF DISCRIMINATION

2.1 Introduction

This chapter presents the work of the body in carrying out the powers of counselling and support for those who experienced discrimination, as well as discrimination investigation procedures.

First, Chapter 2.2 presents the **legal basis for exercising powers** of the Advocate of the Principle of Equality and the three basic elements for exercising these powers: personal circumstance, area of social life, and types or forms of discrimination. We present the manner and scope of exercising the body's powers, the challenges of legal regulation of the Advocate's powers, and the relationship between the Advocate and individual competent inspectorates.

This is followed by Chapter 2.3, which presents the **statistical report on the Advocate's operation** in exercising the powers of counselling and support, as well as discrimination investigation procedures. For 2018, the Advocate also reports on completed cases, regardless of when they were received, while the 2016 and 2017 reports include only cases received in the given year or with the handover of cases from the period before the new body was established. Statistical data is also presented in tables and pictograms. The subchapter also includes data on the key types of procedural outcomes before the Advocates, such as clarifications, decisions and recommendations.

Chapter 2.4 includes a **substantive presentation of Advocate's work**, using **anonymised individual cases of counselling and investigation of discrimination** for natural persons. The cases are presented by personal circumstance and by area of social life. The chapter also includes a subsection on the protection of legal persons against discrimination, which can be enforced only under specific legally prescribed conditions. The described cases indicate the scope of Advocate's area of operation, defined in the Protection against Discrimination Act, while the cases allow insight into the operating principle of the Advocate and the variety of areas in which discrimination occurs in society.

While executing its powers, the Advocate can determine discrimination in certain reported cases or not. The question of which conduct matches the definition of discrimination under PADA and which conduct does not, is central in procedures of counselling and investigation of discrimination. **Conduct that does not match the definition of discrimination under PADA** is presented in Chapter 2.5. These can include permitted actions, as they fall under one of the exceptions of prohibition of discrimination, or actions that are not otherwise permitted, but do not represent discrimination but a violation of other regulation. Discrimination has also not occurred when differentiation is not based on personal circumstances, as defined by PADA, and when such conduct does not infringe on a person's rights, legal interests or benefits. There are also actions that are very similar to discrimination in terms of substances, but are as such not prohibited by law in its current form. Nevertheless, the Advocate encounters such conduct in the course of research and dialogues with individuals and non-governmental organisations (NGO).

There are specific cases when the Advocate **can not investigate discrimination**. These are primarily issues subject to proceedings of other public authorities and issues that fall within the private sphere, which PADA does not regulate. This topic is presented in Chapter 2.6.

The Advocate has not yet participated or represented any party in court proceedings in 2018. Expecting such activities in 2019, in accordance with PADA, Chapter 2.7 presents some **basic information on the application of legal means in courts**.

2.2 Legal basis

2.2.1 Regulations

The basic act, on the basis of which the Advocate exercises its powers, is the Protection against Discrimination Act, which defines the personal and material scope of powers of the Advocate. Personal scope refers to who can seek protection against discrimination. These are primarily natural persons or groups of persons, while a legal person can seek protection against discrimination only if exposed to discrimination due to personal circumstance of individuals (natural persons) associated with this legal person (Article 1, paragraph 3, of PADA), such as its members, founders, or members of management or administration. Material scope refers to areas where discrimination is prohibited in Slovenia.

PADA also defines the powers of the Advocate and individual forms of discrimination in relation to which the Advocate can implement measures (Articles 6–12).

In addition to PADA as the basic act, the Advocate can still apply the Implementation of the Principle of Equal Treatment Act, specifically in cases received before 24 May 2016, when PADA became effective. The Advocate conducts discrimination investigation procedures in accordance with the General Administrative Procedure Act. Proposals for consideration and questions received refer to many areas that are extensively regulated by legislation in Slovenia. Therefore, the Advocate applies all other regulation applicable in the Republic of Slovenia – the Constitution, laws, and implementing regulation.

2.2.2 Basic concepts

Existence of discrimination

In Article 2, PADA defines protection against discrimination due to different personal circumstances in areas of social life, in enforcing human rights and basic freedoms, in enforcing rights and obligations, and in other legal relationship in the political, economic, social, cultural, civil or other area. Discrimination is any undue actual or legally unequal treatment, differentiation, exclusion, limitation or failure to act due to personal circumstances, the result or consequence of which is hindrance, reduction or elimination of equal recognition, enjoyment or exercise of human rights and fundamental freedoms, other rights, legal interests and benefits.

To investigate discrimination, the following is necessary:

- determine the form of discrimination;
- define the area in which discrimination occurred;
- identify the personal circumstance that caused discrimination to occur;
- determine if the treatment infringes the person's rights, freedoms, interests or benefits;
- determine if the different treatment does not fall under the exception of prohibition of discrimination, which does not represent an offence.

Only conduct that includes all five elements is legally considered discrimination under PADA. Other unwanted, contentious or unjust acts that are not related to personal circumstances and/or do not infringe on the rights, freedoms, legal interests or privileges are not considered discrimination, but may represent other unlawful acts that fall under the jurisdiction of other authorities.

ADVOCATE'S HIGHLIGHTS

In 2018, the Advocate processed cases under PADA, except for cases received before 24 May 2016, when PADA entered into force. The latter cases were processed under IPETA.

Intent to discriminate

It is **not necessary** to prove perpetrator's intent to discriminate to establish the existence of discrimination; it is sufficient to establish that discrimination occurred or could have occurred. Therefore, the Advocate examines the actual effects of specific conduct on a person or group, and not the question whether or not the perpetrator intended to discriminate. Therefore, the perpetrator can not be exonerated by the argument that their intention was not to discriminate if the treatment actually produced discriminatory effects.

2.2.2.1 Personal circumstances

Article 1 of PADA defines the purpose and contents of the Act that provides protection against discrimination, specifically on the basis of specific personal circumstances. PADA reflects primarily the personal circumstances listed in the Constitution of the Republic of Slovenia and the Criminal Code (CC)⁸. These personal circumstances are gender, ethnicity, race or ethnic background, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, financial situation, education or any other personal circumstance.

Article clarifications on the proposal of PADA state that personal circumstances are *innate or acquired personal characteristics, features, conditions or statuses*, which are, as a rule, *permanently and inseparably* linked to a particular individual and their personality, in particular *identity*, or are *not easily* altered by the individual.

Based on the above, the Advocate also includes the following as other personal circumstances not explicitly listed in PADA: nationality (nationality of other EU member state, nationality of third country), pregnancy, parenthood, health condition, place of birth, skin colour, place of residence, etc. Personal circumstances can be linked to legal persons, when it is reasonable to do so under the circumstances, specifically due to personal circumstances of members, founders, or members of management or administration.

Protection against discrimination is provided under the law also for persons who are (legally or actually) associated with a person with a specific personal circumstance (e.g. by marriage or kindred relationship, association, etc.). Therefore, the perpetrator can not be exonerated by the argument that the person they discrimination against has no such personal circumstance, while a related person has such a personal circumstance. This is a form of discrimination we call discrimination by association (Article 5, paragraph 2, indent 1, of PADA).

Attributed personal circumstances

Protection against discrimination is provided under the law also for persons who are discriminated against because a specific personal circumstance is attributed to them. It is therefore not important whether or not a person actually has a specific personal circumstance if they were discriminated against as if they had this personal circumstance. Therefore, the perpetrator can not be exonerated by the argument that the person they discrimination against because of a specific personal circumstance (because it was attributed) does not actually have this personal circumstance (Article 5, paragraph 2, indent 2, of PADA).

⁸

Official Gazette of the Republic of Slovenia, no. 50/12 – official consolidated text, 6/16 – correction, 54/15, and 38/16

2.2.2.2 Areas of social life

Article 2 of PADA defines the areas of social life in which equal treatment and prohibition of discrimination is provided in accordance with European Union law. The listed areas are based on EU directives and case law of the Court of Justice of the European Union. In accordance with PADA, equal treatment applies only to areas of social or public life, i.e. areas where individuals (or legal persons in some cases) exercise their rights or perform their duties, and engage in legal transactions, but does not apply to private relationships (e.g. family, friendship or intimate relationships).

Areas of social life where protection against discrimination applies are particularly as follows:

Work and employment

- conditions for access to employment, self-employment and occupation (including selection criteria and recruitment conditions, regardless of the type of activity and on all levels of professional hierarchy, including promotion);
- access to all forms and to all levels of career guidance and counselling, vocational and professional education and training, advanced vocational training and retraining, including practical work experience;
- employment and working conditions, including termination of employment contracts and wages;

Trade union membership

- membership and involvement in worker or employer organisations or any organisation whose members perform a certain profession, including the benefits provided by such organisations;

Social right

- social protection, including social security and health care;
- social benefits;

Health care

- social protection, including social security and health care;

Education

- education;

Market of goods and services

- access to goods and services available to the public, including housing, and supply thereof.

ADVOCATE'S HIGHLIGHTS

Protection against discrimination is broadly defined in Slovenia. Victims can seek protection against discrimination due to any personal circumstance in any area of social life.

EU directives provide a narrower scope of protection – by gender only in the area of employment and access to goods and services, and based on religion or belief, age, disability and sexual orientation only in the area of employment.

The widest scope of protection is provided by EU directives in the event of racial discrimination, which is prohibited by EU law not only in employment, but also in the area of social protection, including health care, social benefits, education, and access to goods and services available to the public, including housing.

2.2.2.3 Forms of discrimination

In accordance with EU directives, PADA defines the concepts of direct and indirect discrimination, and defines conduct that is considered discrimination in addition to direct and indirect forms of discrimination. In accordance with the provisions of EU directives, discrimination includes harassment and sexual harassment, instruction to discriminate, while retaliatory measures against the person discriminated against or the person assisting the victim are prohibited (victimisation). Incitement to discriminate is also defined as a special form of discrimination.

Forms of discrimination are as follows:

- indirect discrimination (Article 6, paragraph 2, of PADA)
- direct discrimination (Article 6, paragraph 1, of PADA)
- harassment (Article 8, paragraph 1, of PADA)
- sexual harassment (Article 8, paragraph 2, of PADA)
- instruction to discriminate (Article 9 of PADA)
- incitement to discrimination (Article 10, paragraph 1, of PADA)
- public justification for neglecting or despising persons or groups of people due to personal circumstances (Article 10, paragraph 2, of PADA)
- victimisation (Article 11 of PADA)

PADA also defines severe forms of discrimination. The definition of severe forms of discrimination in accordance with Article 39, paragraph 3, of PADA is also relevant for determining compensation for non-pecuniary damages in judicial proceedings. The legislature also defined higher fines for offences with severe forms of discrimination, which the competent inspectorates can impose.

Severe forms of discrimination are as follows:

- multiple discrimination (Article 12 of PADA)
- mass discrimination (Article 12 of PADA)
- persistent, recurring discrimination (Article 12 of PADA)
- discrimination with consequences that are difficult to remedy (Article 12 of PADA)
- discrimination against children (Article 12 of PADA)
- discrimination against other weak persons (Article 12 of PADA)
- delivering or disseminating calls for racist, religious, national and sexual discrimination, inducing, inciting, instigating hatred and discrimination, and broader public haranguing that promotes discrimination (Article 10, paragraph 1, of PADA).

Thus, severe forms of discrimination, which PADA otherwise defined in Article 12, include delivering or disseminating calls for racist, religious, national and sexual discrimination, inducing, inciting, instigating hatred and discrimination, and broader public haranguing that promotes discrimination (Article 10, paragraph 1, of PADA). Even though this represents an aggravated form of incitement to discrimination, this form is defined elsewhere, specifically in Article 10, paragraph 1, of PADA. According to the Advocate's assessment, it would be more appropriate, also from a legislative drafting perspective, to include this aggravated incitement to discrimination (PADA classifies it as a severe form of prohibited conduct) in Article 12, with other severe forms of discrimination.

**Legal definition of discrimination as respective combination
of specific personal circumstance, area and form of discrimination**



LEGAL DEFINITION OF DISCRIMINATION



Discrimination is any undue actual or legally unequal treatment, differentiation, exclusion, limitation or failure to act due to personal circumstances, the result or consequence of which is a hindrance, reduction or elimination of equal recognition, enjoyment or exercise of human rights and fundamental freedoms, other rights, legal interests and benefits.

2.2.3 Body's powers

The Advocate's powers in investigation of individual cases are defined in Article 21 and Articles 33–44 of PADA. We can divide them into the following areas:

- a. providing independent assistance to persons subject to discrimination when enforcing their rights regarding protection against discrimination, in the form of counselling and legal assistance in other administrative and judicial proceedings related to discrimination (Article 21, indent 4, of PADA);
- b. procedure for investigating discrimination per discrimination complaint of person subject to discrimination (Article 33 of PADA);
- c. *ex officio* procedure for investigating discrimination (Article 34 of PADA);
- d. request for data and documents necessary for investigating discrimination (Article 37 of PADA);
- e. filing a request for a review of constitutionality and legality (Article 38 of PADA);
- f. representation of parties in judicial proceedings (Article 41, paragraph 1, of PADA);
- g. accompanying parties in judicial proceedings (Article 41, paragraph 4, of PADA);
- h. inspection (Article 42, paragraph 1, of PADA);
- i. referring cases to competent inspection services, if the procedure before the Advocate would not be reasonable (Article 42, paragraph 4, of PADA);
- j. referring cases to competent inspection services, if the perpetrator fails to comply with the Advocate's decision (Article 43 of PADA).

2.2.4 Exercise of powers

Until the end of 2018, the Advocate exercised its powers under:

- a. (providing assistance)
- b. (investigating discrimination per discrimination complaint)
- c. (*ex officio* discrimination investigation)
- d. (requests for data) and
- i. (referrals to competent inspection services).

In 2018, five applications for filing a request for a constitutional review were considered. The Advocate has not yet filed any requests for a constitutional review (e) and has not yet represented and accompanied any clients in judicial proceedings (f and g), as it primarily focused on resolving the backlog from the period before the body was established, and on considering newly received requests for counsel and discrimination complaints. Insufficient human resources also affected the exercise of the body's powers.

In 2018, the Advocate did not carry out any inspection (h), but did carry out fact-finding procedures.

Furthermore, cases were not closed by referral to competent inspectorates (i), as the cases were first considered by the Advocate. As detailed below, the Advocate issued five decisions, with discrimination determined in one case. The Advocate still monitors the enforcement of the decision. If the decision is not enforced, the Advocate can exercise its powers (j) and refer the case to the competent inspection service.

Prioritising the backlog of cases from the 2012–2017 period and current cases in 2018, the Advocate has not yet decided to participate or represent any client in strategically chosen cases in judicial proceedings in 2018.

2.2.5 Work schedule with reporting persons and lines of communication

In accordance with the law and the Rules of Procedure, the Advocate can be reached by reporting persons and individuals with question via e-mail, by telephone, regular mail, and at the address of the body.

The Advocate's office hours are every workday, 10 AM to 12 noon, and afternoons between 3 PM and 6 PM on Wednesdays. During office hours, the Advocate's employees receive reporting persons personally at the offices of the body, at Železna cesta 16 in Ljubljana, by prior arrangement.

In 2018, the Advocate has also implemented the free-of-charge telephone line, 080 81 80. The Advocate has received 72 telephone calls via its regular and the new telephone line in 2018. Any correspondence in procedures under GAPA are filed in accordance with this Act. In other cases (counselling, support for victims of discrimination), the Advocate may communicate with the reporting person via e-mail, while observing the personal data protection regulation.

2.2.6 Challenges in legal regulation of procedures

Based on the Act, the Advocate investigates discrimination using the procedure under Chapter 5 of PADA; however, this is not explicitly defined in PADA. According to the provision of Article 33, a person who believes they have been discriminated against can file a discrimination complaint; however, it is not stated whether the law refers to an investigation using a procedure *sui generis*, the general administrative procedure, or the procedure defined by the Inspection Act⁹(IA). The inspection procedure is otherwise defined in Chapter 7 of PADA.

The Advocate believes that, if it the intent of the law was for a person to file a discrimination complaint with the purpose of initiating an inspection procedure, the Act would expressly stipulate so. As the Act does not expressly stipulate this, it is interpreted in a sense that two different procedures can be carried out before the Advocate – the discrimination investigation procedure and/or the inspection procedure. There is no explicit definition regarding a uniform procedure, similar to the inspection procedure, with subsidiary application of IA, or a definition that the Advocate can carry out two procedure for the same case. In the latter case, it would be necessary to define the criteria for either the first or the second procedure – i.e. either the procedure under Chapter 5 or the procedure under Chapter 7, which regulates the powers for exercising the inspection procedure.

Based on the clarification of PADA proposal, the Advocate would conduct a uniform procedure: starting with a discrimination complaint, followed by an inspection by the Advocate if discrimination were determined. However, this idea was not drafted in the legislation consistently, as provisions of Chapter 5 and Chapter 7 of PADA now indicate that these are two separate procedures. This can theoretically result in a potentially problematic situation, where two decisions could be issued in a single case – one under GAPA and the other under IA, with legal remedy possible against both. Considering the inconsistencies of such regulation with the general legal regulation in the Republic of Slovenia, the Advocate did not enforce the law in this way, but carried out only procedures under GAPA.

The procedure for investigating discrimination before the Advocate is defined in only four provisions of GAPA; however, these provisions do not provide adequate answers to all questions arising during the procedure. Therefore, the Advocate relies on another, more general procedural regulation; in this case, the most appropriate regulation is GAPA. The most common situation where this is required are, for example, general principles of procedure, determining powers, service of documents, language used in the procedure, necessary content of the application to be eligible for consideration, etc. Currently, PADA does not stipulate subsidiary application of GAPA when conducting a procedure under Chapter 5 for issues not covered by Chapter 5; however, such regulation is located in Chapter 7 of PADA, where IA is used in addition to GAPA.

Furthermore, regarding the discrimination investigation procedure under Chapter 5, PADA does not define how the procedure is completed, i.e. by issuing a decision (in the event of a substantive decision or decision on the merits of the case) or a conclusion (in the event of a procedural decision). As a public authority, the Advocate is obligated to act in accordance with the procedure prescribed by law, the results of which must be known in advance, and the rights and obligations of the parties and the possibilities of judicial protection must be defined. All of the above is defined by GAPA.

Article 37 of PADA, which regulates the procedure before the Advocate, defines certain investigatory powers of the Advocate. This includes the power of the Advocate to make enquiries with the perpetrator or other parties after receiving a discrimination complaint, and may request the data and documents necessary in accordance with the proportionality principle for investigating discrimination in this case. Per Advocate's request, public authorities, local communities, bodies exercising public powers, and legal and natural persons submit to the Advocate, free of charge, all data, including personal, and documents that the Advocate requires to determine whether or not discrimination occurred in the case under investigation. However, the issue of consequences when the person liable under PADA fails to respond by the deadline set by the Advocate remains unaddressed.

⁹

Official Gazette of the Republic of Slovenia, no. 43/07 – official consolidated text, and 40/14

2.2.7 Challenges in inspection procedures

In addition to the procedure regulated in Chapter 5 of PADA, which is initiated by a complaint from the victim, whereby this person is a party to the proceedings, Chapter 7 of PADA also regulates inspection procedures. According to IA, which applies as a subsidiary regulation in procedures under Chapter 7, the reporting person is not a party to the proceedings. These are mutually exclusive situations. The issues of the discrimination reporting person's status (whether or not they are a party to the proceedings) is important from the perspective of protection of identity. Their identity is protected in the inspection procedure; however, in a procedure initiated by a discrimination complaint and regulated by GAPA, the reporting person's identity is not protected. The fact that the complainant under Article 33 of PADA is a party to the proceedings indicates that Chapter 5 defines a procedure with the nature of a general administrative procedure, which requires the application of GAPA.

Provisions of Chapter 7, which define the inspection procedure, are inadequate in comparison to other regulation that regulate inspection procedures in specific areas. For example, they do not include provisions on the status of inspectors, authorised by the Advocate for independent inspections, inspectors' ID cards issued by MoPA, and any potential details on inspectors' powers. Under the current legislation, the inspector's decision-making independence is potentially limited, as all decisions are adopted under the law by the Head of the Institution, while Article 4 of IA explicitly states that an inspector must be independent in the performance of their duties.

If conditions for exercising the inspection function were precisely defined, they would have to include special conditions for such inspection procedures in addition to those defined by IA. A professional inspector's examination (as a requirement for the position of inspector) would have to include the basics of human rights law, with an emphasis on anti-discrimination law, in addition to knowledge on IA, GAPA, minor offence law, and inspection procedures.

Situations where a specific inspectorate has the powers to conduct minor offence proceedings in a specific area, but does not have the power to carry out inspection procedures, represent a special problem. In this regard, PADA states that minor offence authorities shall include competent inspectorates, which are responsible by law for inspection procedures in the field in which discrimination occurred, according to individual administrative fields (Article 44, paragraph 1, of PADA). According to the letter of the law, an inspection service, if it does not have explicit jurisdiction for conducting inspection procedures, does not have the power to issue fines for offences. However, the spirit of the law is also important, stating that sanctions fall under the purview of inspection services and not the Advocate. A deliberate interpretation of the law therefore requires that inspection services also have jurisdiction over offences in such cases. Otherwise, there is no competent authority with the purview for issuing sanctions.

ADVOCATE'S HIGHLIGHTS

In conducting discrimination investigation procedures, the Advocate applies as subsidiary regulation the provisions of IA, in addition to the provisions of Chapter 5 of PADA. IA regulates all procedural issues that the Advocate and the reporting persons may encounter during the procedure.

The procedure under Chapter 5 of PADA is by its nature a fact-finding administrative procedure, where the complainant, as explicitly stated by PADA, is a party to the proceedings.

The inspection procedure, regulated in Chapter 7 of PADA, by its nature differs from the fact-finding procedure: the complainant is not a party to the proceedings, and only the person liable is a party to the proceedings.

PADA therefore does not stipulate a uniform procedure, starting with a complaint by a reporting person or *ex officio*, ending with an inspection decision, but defines two separate procedures.

2.2.8 Relationship between the Advocate and sectoral inspectorates

Certain inspectorates (e.g. Market Inspectorate of the Republic of Slovenia and Labour Inspectorate of the Republic of Slovenia) actively and in accordance with PADA conduct inspections in events of discrimination in areas of respective jurisdiction, and will continue to do so regardless of the fact that the Advocate was given the powers to conduct inspections, as these powers and tasks fall under their purview in accordance with their respective basic acts. In these cases, considering the wide scope of Advocate's work, there is a potential for duplication of powers between the Advocate and sectoral inspectorates.

Some inspectorates (e.g. Inspectorate of the Republic of Slovenia for Education and Sport) refer cases of discrimination in their area of jurisdiction to the Advocate, even though both the inspectorates and the Advocate have jurisdiction according to PADA. If this practice becomes more common, the Advocate would face an increased number of complaints, while the existing network of inspection services with jurisdiction in individual areas, as well as their professional knowledge of areas, would not be reasonably utilised.

Based on the above, a legal delimitation of powers for conduction inspections under PADA needs to be implemented. There are some cases of overlapping inspection powers in other areas. The general principles in the event of overlapping powers are as follows: 1) in these cases, inspections should be conducted jointly, with participation of both bodies; and 2) bodies should coordinate their activities, preventing duplicate inspections. The Advocate follows these principle in practice in conducting inspections regarding discrimination. If the Advocate, after receiving a discrimination complaint, determines that an inspection was already conducted regarding specific conduct, the Advocate checks if the inspection examined the issues of discrimination and, if so, does not carry out an investigation. However, if an inspection was conducted, but did not examine the issue of discrimination under PADA, the Advocate conducts its discrimination investigation procedure.

In the future, this problem could be resolved in two ways. Either it should be specified which inspectorate covers which area, thereby ensuring that all legally defined areas of protection against discrimination are covered by inspections and offence authorities/powers. Or the Advocate should be given the function of offence authority and the legal basis for conduction inspections, which has an impact on the appropriate human resources in the institution.

2.3 Work on matters within the jurisdiction of the body – individual cases

In 2018, the Advocate also examined the unfinished cases received between 2012 and 2018, which were transferred to 2018, as well as newly received cases. Some of these unfinished cases received between 2012 and 2016 were received with the handover of cases from the previous advocate for the period before the new body was established. These were mostly initiatives and reports, which had to be considered in accordance with IPETA. Chapter 2.3.2 presents the case statistics for the 2012–2017 period and their outcomes, Chapter 2.3.3 presents the statistics of considered and closed cases in 2018, and Chapter 2.3.4 presents the outcomes of procedures before the Advocate.

2.3.1 Clarification on methodology

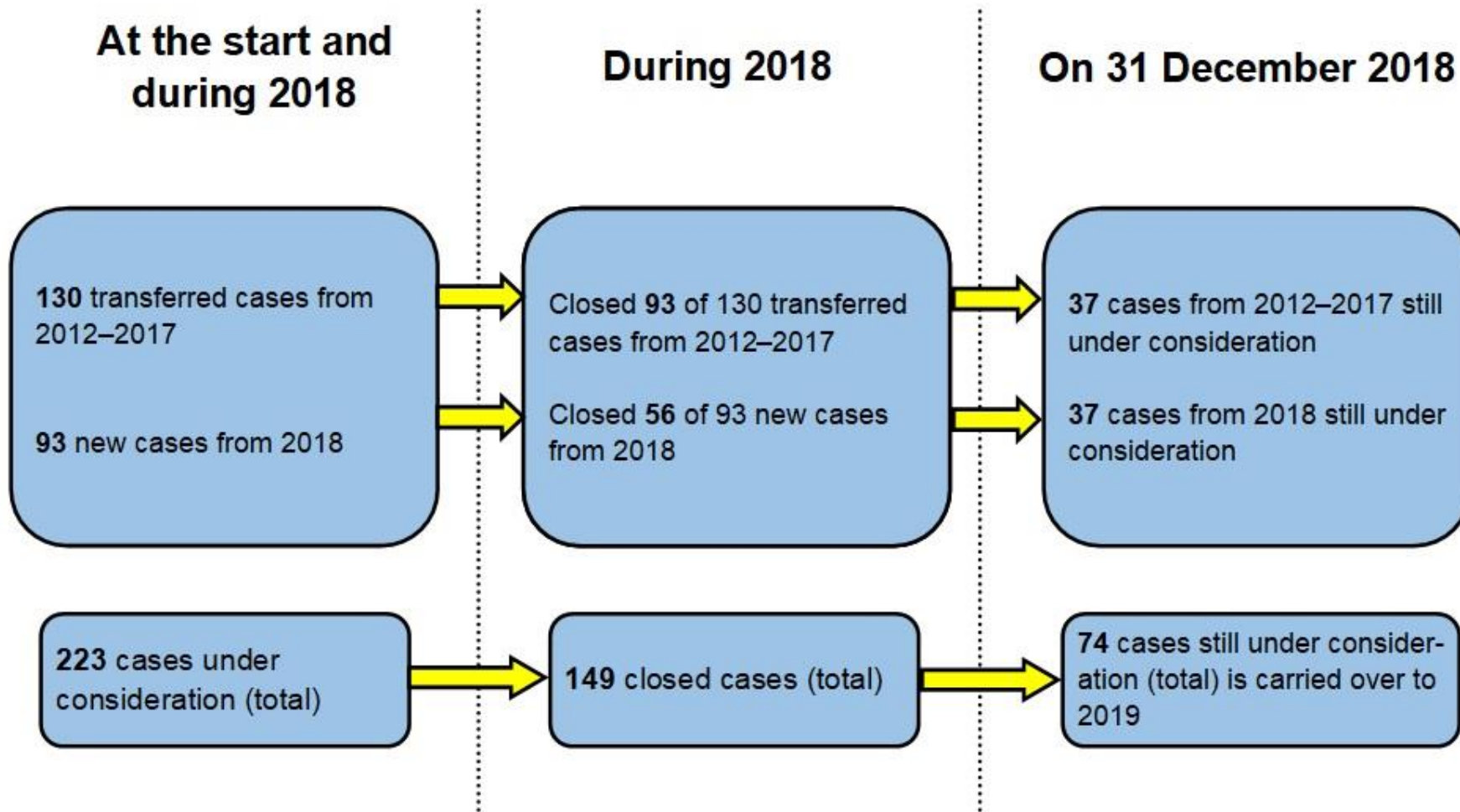
When preparing the statistical overview of cases closed in 2018, we used the new methodology for the first time. For 2016 and 2017, the Advocate reported on cases *received* in the given year or taken over with the handover of cases. For the 2018 report, the Advocate transitioned to the new system and is reporting on cases *closed* during the given calendar year, regardless of when they were received. A *closed* case means that the specific case or matter was closed in terms of the Advocate's powers, and not that the potential discrimination was eliminated. As the new body, since it was established in 2016, had a backlog of cases from the period before its establishment, which were yet to be considered or closed, this overview is more suitable to show the scope of work at this time. The report therefore shows the number of cases that the Advocate resolved in 2018, but which were received during previous years and considered in 2018. Furthermore, the Advocate received and regularly considered new cases in 2018.

The second significant change in the statistical report methodology for 2018, compared to the statistical report methodology for 2016 and 2017, is that up to and including 2017, the records included as cases under investigation only discrimination investigation procedures and not questions, requests for counsel, assistance and support, which the Advocate also provides to individuals. In 2018, the Advocate began including these cases in its statistical report. This resulted in an increased number of cases included in the statistical section of the report. The reason for this change is that a consideration of a question or request for counsel or assistance requires extensive engagement by an individual associate. In these cases, the Advocate opens a new file under a separate classification number, and work on such a case can span several week or months if counselling is more complex or if drafting answers to questions requires gathering data or an extensive study of specific issues.

The Advocate collects data required for the final statistical analysis for all cases under consideration. Key data includes data on the personal circumstance, area of discrimination and form of discrimination; however, the Advocate also collects data on the following: was the complaint submitted anonymously or was the reporting person known, was the complaint submitted jointly or by an individual reporting persons, reporting person's gender, was the complaint submitted directly by the victim or indirectly in another way, date of complaint receipt, closing date of the case, and case outcome. Previous reports, up to and including 2017, included statistical analyses of data for cases received, with data on personal circumstances, forms of discrimination and areas of life, gathered from complainants' statements, regardless of the actual existence of such elements.

However, for the 2018 report, in cases where discrimination was found, the Advocate can attest that elements alleged by the complainants were determined to be true, or that different elements were determined. In all other cases, where discrimination was not found, the statistical report still lists the personal circumstances, areas and forms of discrimination alleged by the complainants.

Statistics of closed cases in 2018



COUNSELLING AND INVESTIGATION OF DISCRIMINATION

2.3.2 Case statistics for the 2012–2017 period and until the end of 2018

Between 2012 and 2017, a total of 372 discrimination complaints and requests for counsel were received. Of these, 335 cases were closed by the end of 2018. After 31 December 2018, the Advocate still has 37 cases: 26 discrimination complaints, 11 questions or requests for counsel from the 2012–2017 period. This statistical data includes discrimination complaints and requests for counsel and support.

Table: Overview of closed and considered discrimination complaints received for the 2012–2017 period

YEAR	RECEIVED	UNDER CONSIDERATION on 31 December 2016	UNDER CONSIDERATION on 31 December 2017	UNDER CONSIDERATION on 31 December 2018	CLOSED (by 31 December 2018)
2012 (complaints)	45	32	2	0	45
2013 (complaints)	54	50	3	1	53
2014 (complaints)	46	44	3	2	44
2015 (complaints)	45	44	13	3	42
2016 (complaints)	68	61	45	9	59
2017 (complaints and counselling)	103	/	53	11	92
2012–2016 (counselling)	11	11	11	11	0
Total (2012–2017)	372	242	130	37	335
2018 (complaints and counselling)	93	/	/	37	56
				74	391

Note: The table shows the number of received complaints per year, and how many of these complaints in 2016, 2017 and 2018 remained under investigation on the last day of the respective year. The table shows that all remaining cases received in 2012 were closed in 2018.

There were 45 complaints received in 2012, and all were closed by the end of 2018. There were 54 complaints received in 2013, and 53 were closed by the end of 2018, while one case remains under investigation at the start of 2019. There were 46 complaints received in 2014, and 44 were closed by the end of 2018, while two cases remain under investigation. The body received 45 complaints in 2015, and 42 were closed by the end of 2018, while three cases remain under investigation. There were 68 requests and discrimination complaints received in 2016, and 59 were closed by the end of 2018, while nine remain under consideration at the start of 2019. The body opened 103 new cases in 2017 (79 discrimination complaints, while other cases represent questions, requests for counsel and other correspondence). At the end of 2018, 92 cases were closed, while 11 remain under consideration at the start of 2019. **At the end of 2018, there is a total of 37 open cases** received between 2012 and 2017, which were transferred under consideration in 2019. **In 2018, 93 new discrimination complaints and requests for counsel were received.** Of these, 56 were resolved in 2018, and 37 cases from 2018 were transferred under consideration in 2019.

The statistical overview above shows that the Advocate in 2018 opened and closed a majority of cases received from the previous advocate with the handover of cases from the period before the new body was established, as well as most cases received in 2017. As stated in the 2017 Report, the work of the body in 2017 was focused on establishing structural conditions for operations, while clarifying numerous legal questions related to powers and procedures. As presented by chapter 2.2.3 Powers of the body, these issues of powers and procedures were resolved in 2018 to such a degree that cases could be considered.

2.3.3 Statistics of cases closed in 2018

There were 130 cases carried over from previous years to be considered in 2018, of which 93 cases were closed in 2018. The Advocate received 93 additional new cases in 2018, of which 56 were closed before the end of 2018.

A total of 223 cases were considered in 2018. Of these, 149 cases were closed.

There are still 74 cases under consideration (37 from 2012–2017, and 37 from 2018) and carried over to 2019.

ADVOCATE'S HIGHLIGHTS

In 2018, the Advocate worked intensively on cases received – applications, complaints, and request for counsel and support, as is shown by statistical data. The Advocate dedicated much attention to eliminating the backlog of cases received with the handover from the previous advocate with a different mandate.

In 2017, the Advocate reported that 66 unclosed cases received between 2012 and 2016 were carried into 2018. Of these, only 15 cases were under consideration on 31 December 2018, while most of these old cases (51) were closed in 2018. At the same time, the Advocate considered cases received in 2017 and 2018.

A total of 149 cases were closed in 2018.

Closed cases include cases of **counselling** for persons in accordance with Article 21, indent 4, of PADA, as well as cases involving **discrimination investigation** procedures in accordance with Chapter 5 of PADA. Of the 149 cases closed in 2018, 33.56% (50 cases) involved counselling, and 66.44% (99 cases) involved discrimination investigations.

Counselling for individuals includes an examination of the person's position by identifying the problem, and determining whether or not the case falls within the jurisdiction of the Advocate. If the case falls within the jurisdiction of the Advocate – i.e. if the personal circumstance is presented and refers to an area of social life that is not part of individuals' private sphere (in which the Advocate has no powers) – the Advocate provides legal and other counsel to the party, with instructions on how to proceed. The Advocate explains its powers, possible measures and tasks, and finds the most suitable way to take action with the client. The Advocate also meets individuals who are not willing to act (e.g. submit a discrimination complaints), as they do not want to expose themselves or wish to remain anonymous, but require information and instructions on how to proceed if they decided to take action.

Some individuals enquire whether measures could be undertaken in their case even if they remained anonymous. In such cases, the Advocate explains that it depends on the circumstances of the case. If the case involves specific conduct related to a specific person and a specific perpetrator, anonymity can not be ensured, as it is impossible to investigate specific conduct in a way that does not reveal the identity of the reporting person. However, if the case involves several victims and discrimination occurs due to requisite conditions or wider practice, anonymity can be protected while conducting the investigation procedure.

Investigation of discrimination is conducted on the basis of discrimination complaints. The Advocate first examines each complaint to determine whether the burden of production has been met. This means that the Advocate checks if the complaint includes facts that justify the assumption that the prohibition of discrimination has been violated, if the complaint lists the personal circumstances that was the reason for unfair treatment, and if such treatment infringed on the rights, freedoms, benefits or legal interests.

The Advocate also checks if the complaint includes all necessary elements for investigation, as specified in Article 36 of PADA. If the burden of production is not met or if a complaint lacks the necessary elements, the Advocate asks the complainant to complete the complaint, in accordance with the regulation governing the general administrative procedure. When the Advocate receives a complete complaint, which has met the burden of production, the Advocate, in accordance with Article 37 of PADA, makes enquiries with the alleged perpetrator or other parties, and may request data and documents necessary in accordance with the proportionality principle for investigating discrimination in this specific

case. Per Advocate’s request, public authorities, local communities, bodies exercising public powers, and legal and natural persons submit to the Advocate, free of charge, all data, including personal, and documents that the Advocate requires to determine whether or not discrimination occurred in the case under investigation.

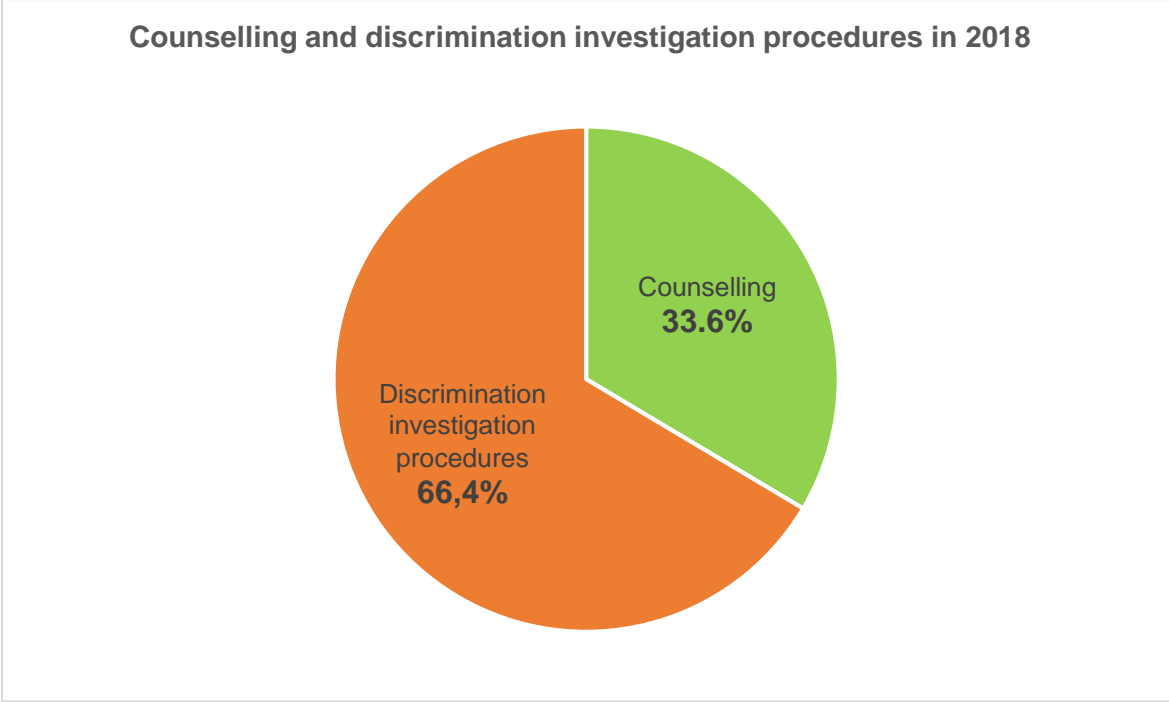
The Advocate has not legally defined mechanisms or sanctions for cases when the alleged perpetrator or other subjects fail to respond to data requests. Based on our experience, subjects called upon to produce data and answers responsively cooperate in procedures in most cases. When they fail to do so, the Advocate can only call upon them again to respond, and ultimately adopts a decision based on available facts and documentation. The nature of the discrimination investigation procedure, in which the rule of reversal of the burden of proof is essential, encourages the persons liable to participate in the procedure, because, in the event the complainant meets the burden of production, the burden of proof falls upon the persons liable, who must prove that they did not discriminate. If the persons liable fail to use the opportunity to present proof to establish that the complainant was not discriminated against, the consequences of the procedure for persons liable could be unfavourable.

Here we must repeat that the applications that the Advocate received when IPETA was still in effect were considered under IPETA. Therefore, in 2018 the Advocate also conducted informal procedures and issued opinions in accordance with Article 12–16 of IPETA, and not only procedures under PADA and GAPA.

Of the 149 cases closed in 2018, 33.56% (50 cases) involved counselling, and 66.44% (99 cases) involved discrimination investigations.

Table: Counselling and discrimination investigation procedure in 2018 – closed cases

Work on cases in 2018	Number	Percentage
Counselling	50	33.6%
Discrimination investigation procedures	99	66.4%
Total	149	100.0%



Below we present statistical data on cases closed in 2018 by personal circumstance, form of discrimination, and areas in which discrimination was alleged.

2.3.3.1 Alleged personal circumstances of discrimination

The most common alleged personal circumstance of discrimination in cases **closed in 2018** was **disability** (15 cases or 9.62%). This is followed by cases involving **personal circumstances of ethnicity, race, and ethnic background** (14 cases or 8.24%, of which eight cases are race-related and four cases are related to race or ethnic background). The alleged personal circumstance of **gender** occurred in eight cases (4.71%), followed by **religion or belief** (seven cases or 4.12%), age and sexual orientation (five cases, or 2.94%, each), social status, financial situation and place of residence (two cases, or 1.18%, each). The Advocate investigated one case of alleged discrimination due to language, nationality of other EU member state, and nationality of a third country (one case or 0.59%). In 2018, the Advocate closed no discrimination complaints, requests for counsel or questions, in which the alleged discrimination was due to the personal circumstances of gender identity, gender expression or education.

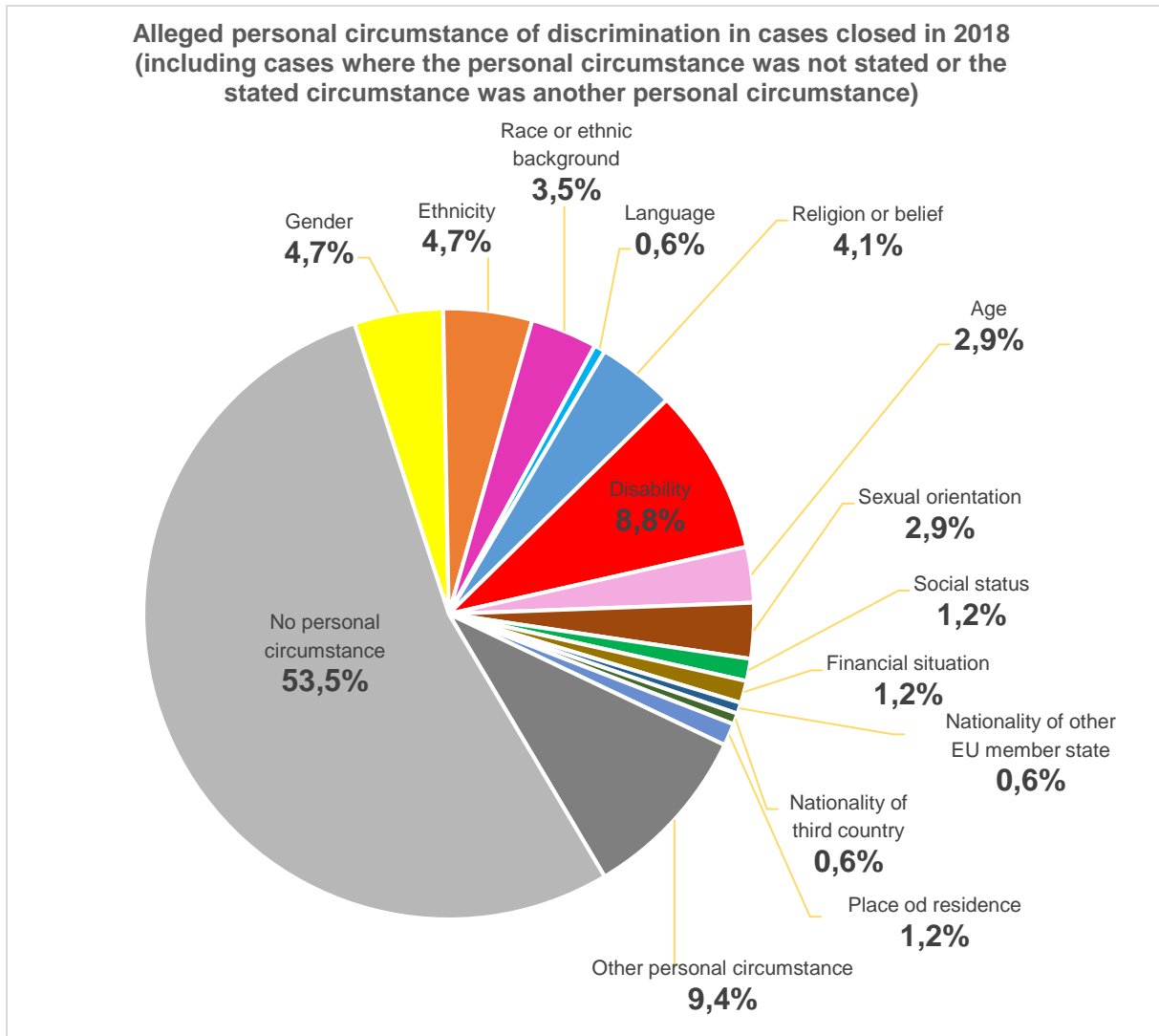
Other personal circumstances, such as place of residence, health condition, status of retired person, trade union membership, status of sole trader, and similar, were alleged in 16 cases (9.41%).

The statistical overview by personal circumstances also shows that in over half of the cases (91 cases or 53.53%) the personal circumstance was not listed or can not be discerned from the description of conduct; this indicates a low level of awareness of the fact that the personal circumstance is an essential element for investigating discrimination and the Advocate's exercise of powers.

In the table below, the sum of listed personal circumstances does not equal the total number of cases closed in 2018 (149). The reason for this discrepancy is that a complainant can allege discrimination on the basis of several personal circumstances simultaneously, or because the data on personal circumstance as the reason for discrimination is not given.

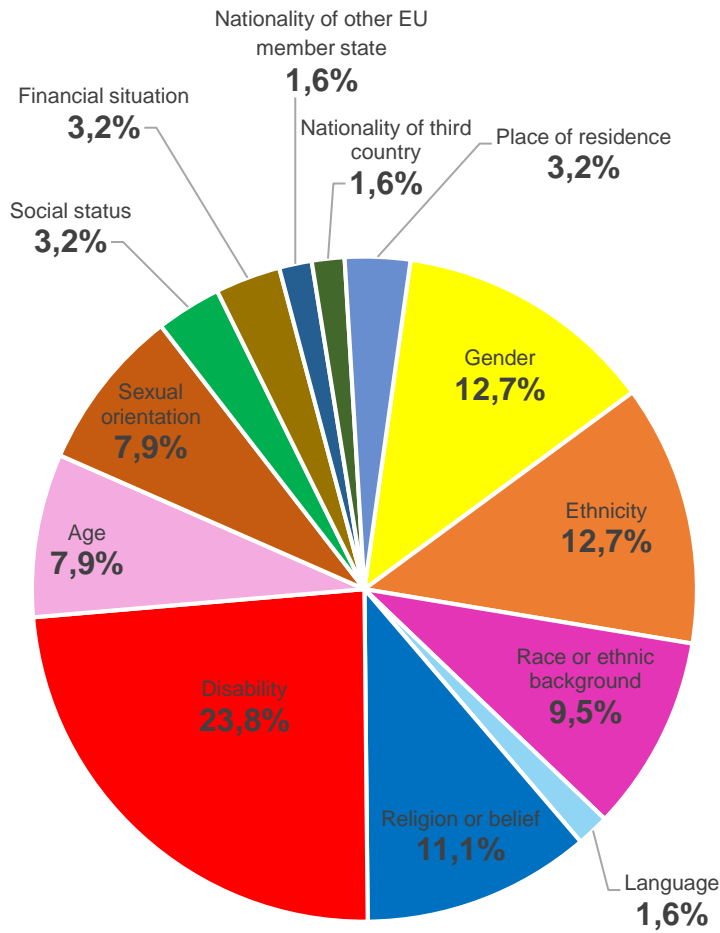
Table: Alleged personal circumstance of discrimination in cases closed in 2018

Alleged personal circumstances of discrimination	Number	Percentage
1 Gender	8	4.7%
2 Ethnicity	8	4.7%
2.1 Race or ethnic background	6	3.5%
2.2 Language	1	0.6%
3 Religion or belief	7	4.1%
4 Disability	15	8.8%
5 Age	5	2.9%
6 Sexual orientation	5	2.9%
7 Gender identity	0	0.0%
8 Gender expression	0	0.0%
9 Social status	2	1.2%
10 Financial situation	2	1.2%
11 Education	0	0.0%
12 Nationality of other EU member state	1	0.6%
12.2 Nationality of third country	1	0.6%
12.3 Place of residence	2	1.2%
Other	16	9.4%
No personal circumstance	91	53.5%



COUNSELLING AND INVESTIGATION OF DISCRIMINATION

**Alleged personal circumstance of discrimination in cases closed in 2018
(not including cases where the personal circumstance was not stated or
the stated circumstance was another personal circumstance)**



2.3.3.2 Areas of life where discrimination occurs

The majority of **cases closed** in **2018** was related to **employment and work**; 29 cases (26.61%) involved employment and working conditions, including termination of employment contract and wages; 27 cases (24.77%) involved conditions for access to employment, self-employment and occupation, including selection criteria and employment conditions, regardless of the type of activity and on all levels of professional hierarchy, including promotion.

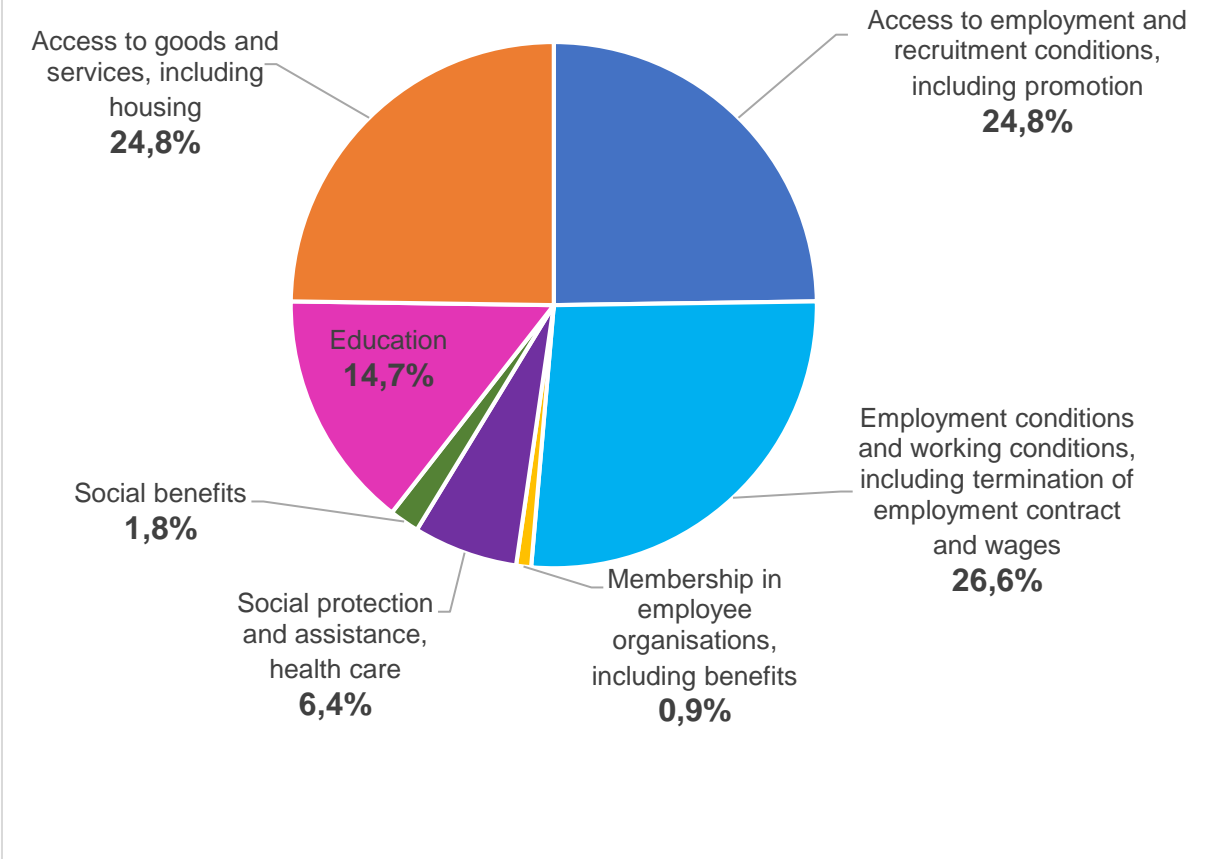
This was followed by access to goods and services available to the public, including housing, and supply thereof, with 27 cases (24.77%). The Advocate closed 16 cases (14.68%) in the area of education, and seven cases (6.42%) in the area of social protection, including social security and health care. This is followed by the area of access to social advantages (two cases or 1.83%), and the area of membership and involvement in worker or employer organisations or any organisation whose members engage in a particular occupation, including the benefits provided by such organisations (one case or 0.92%). Other cases were related to other areas, such as courts and various media.

In the table below, the sum of listed personal circumstances does not equal the total number of cases closed in 2018 (149), because a complainant can allege discrimination in various areas of life simultaneously or in other areas not explicitly defined by the law.

Table: Alleged areas of life in cases closed in 2018

Alleged area of discrimination	Number	Percentage
1 Conditions for access to employment, self-employment and occupation (including selection criteria and recruitment conditions, regardless of the type of activity and on all levels of professional hierarchy, including promotion)	27	24.8%
2 Access to all forms and to all levels of career guidance and counselling, vocational and professional education and training, advanced vocational training and retraining, including practical work experience	0	0.0%
3 Employment and working conditions, including termination of employment contracts and wages	29	26.6%
4 Membership and involvement in worker or employer organisations or any organisation whose members engage in a particular occupation, including the benefits provided by such organisations;	1	0.9%
5 Social protection, including social security and health care	7	6.4%
6 Social benefits	2	1.8%
7 Education	16	14.7%
8 Access to goods and services available to the public, including housing, and supply thereof	27	24.8%

Alleged areas of life in cases closed in 2018



2.3.3.3 Forms of discrimination

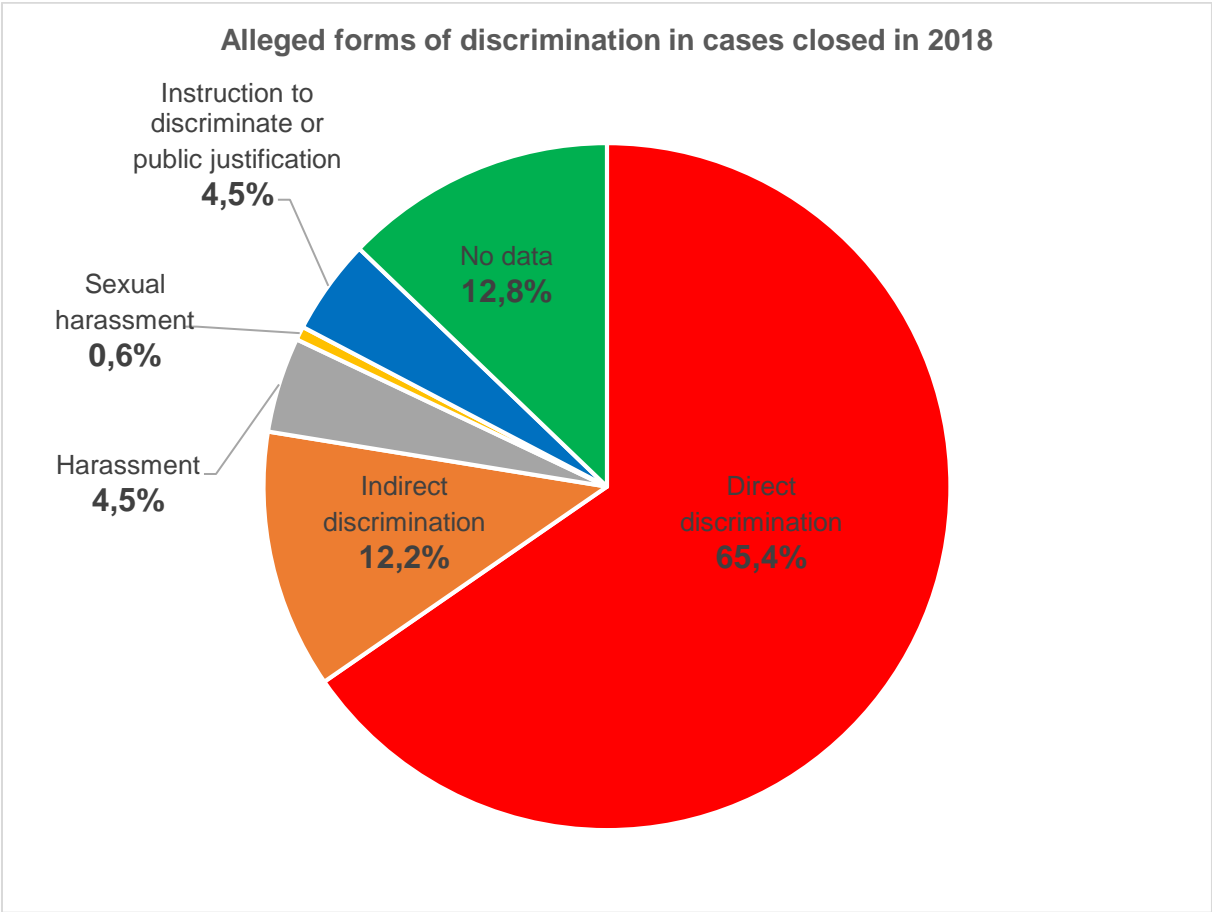
PADA defined several forms of discrimination. The most common alleged form of discrimination in cases closed in 2018 was **direct discrimination** (102 cases or 65.38%). The second most common alleged form of discrimination was indirect discrimination (19 cases or 12.18%), followed by harassment (7 cases or 4.49%) and incitement to discrimination (also seven cases or 4.49%), and one case of sexual harassment (0.64%).

The Advocate did not close any case in the area of instruction to discriminate and victimisation in 2018. In 20 closed cases (12.82%), no form of discrimination could be discerned, as the matter was not related to this area.

In the table below, the sum of listed areas of life does not equal the total number of cases closed in 2018 (149) – one case shows characteristics of several forms of discrimination simultaneously, and in several cases we can not define the form of discrimination because the case is not related to discrimination.

Table: Alleged forms of discrimination in cases closed in 2018

Alleged forms of discrimination	Number	Percentage
Direct discrimination	102	65.4%
Indirect discrimination	19	12.2%
Harassment	7	4.5%
Sexual harassment	1	0.6%
Instruction to discriminate	0	0.0%
Victimisation	0	0.0%
Incitement to discriminate or public justification for neglecting or despising	7	4.5%
No data	20	12.8%



2.3.4 Outcomes of procedures before the Advocate

The Advocate can close cases in different ways, depending on various factors. The first factor is legal basis. The previous law (IPETA) provided for opinions, which are no longer included in the new law (PADA). Opinions published in 2018 were therefore published on the basis of IPETA, specifically in cases the Advocate received before 24 May 2016, when PADA entered into force.

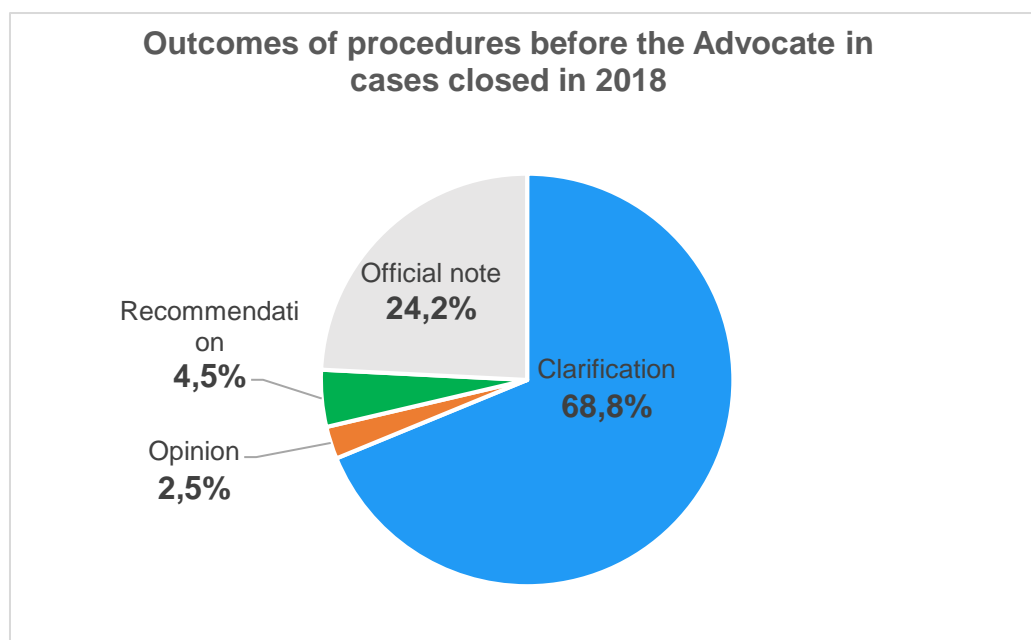
The second factor affecting how cases were closed is the type of powers exercised by the Advocate in a specific matter. In investigation of specific cases, there are two key powers from Article 21 of PADA, specifically the power to issue recommendations (Article 21, indent 2, of PADA) and to provide independent assistance to clients (Article 21, indent 4, of PADA), and the powers under Articles 33–44 of PADA. Therefore, in the event of questions and requests for counsel, support or assistance, the Advocate provides an **answer or clarification** to the client. In procedures for investigating discrimination, carried out under Article 33 or Article 34 of PADA, the Advocate has the power to issue decisions and to refer cases to other competent bodies. Furthermore, the Advocate can close cases in accordance with Article 38 of PADA by filing requests for a constitutional review with the Constitutional Court of the Republic of Slovenia.

Closures of procedures also depend on the responsiveness of the reporting person. If a reporting person is not responsive and, for example, fails to reply to a request for completion of an application, and the original application (proposal, request, letter, or similar) does not provide sufficient information for a specific reply, the procedure is closed with an official note. A procedure is closed with an official note also when the persona liable under PADA complies with the Advocate’s call to cease discriminatory treatment.

In the table below, the sum of listed outcomes does not equal the total number of cases closed in 2018 (149) – the outcome of one case can include several different documents (e.g. opinion and recommendation, or clarification and recommendation). In terms of content, the outcomes of cases are presented below in Chapter 2.4 Work on matters within the jurisdiction of the body – anonymised descriptions of cases. In 2018, the Advocate also issued five decisions, which are not included in the statistics – the reasons are described under 2.3.4.1 Decisions.

Table: Outcomes of procedures before the Advocate in cases closed in 2018

Outcomes of procedures before the Advocate	Number	Percentage
Clarification	108	68.8%
Recommendation	7	4.5%
Opinion	4	2.5%
Official note	38	24.2%
Total	157	100.0%



In 12 cases investigated by the Advocate, the existence of discrimination was determined, specifically in the following different ways:

- by an opinion;
- after studying the subject matter and issuing a recommendation;
- by determining systematic discrimination.

Discrimination was not determined when the Advocate conducted discrimination investigation procedure but did not establish its existence, or when the Advocate did not conduct the discrimination investigation procedure because the case involved requests for counsel or answers to client’s questions. Other outcomes of Advocate’s exercise of powers in individual cases include clarifications issued to individuals, regarding issues that are within, or outside, the Advocate’s powers, when discrimination could have occurred, what persons can do in the event of discrimination, or clarifications on the procedure before the Advocate. These also involve cases in which the complaint was withdrawn, in cases of incomplete complaints submitted in a manner that prevented any decision, or correspondence submitted to the Advocate for information purposes.

Table: Did discrimination occur in this case (by cases received in specific year)?

Did discrimination occur in this case?			
Period	Yes	Neither yes nor no	No
2012–2016	4	10 – Incomplete complaint, Advocate has no powers, answers to questions and clarifications	14 – Discrimination is not alleged, clarification issued
2017	4	47 – Incomplete complaint, Advocate has no powers, for information purposes, complaint withdrawn, case is considered before the court, answers to questions and clarifications	31 – Discrimination is not alleged, clarification issued
2018	4	22 – Incomplete complaint, Advocate has no powers, for information purposes, complaint withdrawn, answers to questions and clarifications	49 – Discrimination is not alleged, clarification issued

* The table shows substantive outcomes of cases by specific year/period when the cases were received for consideration and not by years when the cases were closed. The data is therefore not comparable with the data in previous tables.

2.3.4.1 Decisions

In 2018, the Advocate, in the discrimination investigation procedures, issued the first five decisions under PADA in conjunction with GAPA, with discrimination established in one case. This type of document is not included in the statistics for 2018 or in the table “Outcomes of procedures before the Advocate”, as none of these cases were closed in 2018. The reason the case is not yet considered closed, even though a decision was issued, is that the Advocate in such cases continues monitoring the implementation of the decision, or waits for potential application of legal means against the decision by either party. That is why these cases are not included in the statistics of cases closed in 2018, but are presented below. Some of these cases are detailed in the substantive section of the report, in Chapter 2.4 Work on matters within the jurisdiction of the body – anonymised descriptions of cases.

Table: Advocate's decisions in 2018

No.	Advocate's decisions in 2018	Type of decision	Sector
0700-22/2018	The Municipality allegedly violated the prohibition of discrimination under PADA by not providing paid or free public transportation services for preschool children to the kindergarten in local communities where the family lives. Transportation of preschool children represents a high cost for the family. The complainant alleges discrimination due to social status and place of residence. The Municipality provides transportation services only for primary-school children because primary school attendance is mandatory. The Advocate did not determine discrimination under PADA.	Declaratory Discrimination was not found.	Public (municipality)
0700-34/2018	The reporting person alleges that the employer treats their work unequally based on the employment contract in comparison to other workers. The complainant also mentioned threats, insults and irregular payment of retirement benefits for their personal income. As grounds for alleged discrimination, the complainant highlights the personal circumstances of disability and education. The party's statements and means of proof did not establish facts that would justify the presumption that the prohibition of discrimination had been violated, and on which basis the alleged perpetrator would have to present proof that they had not violated this prohibition in this case, as stipulated by Article 40 of PADA.	Declaratory Discrimination was not found.	Private (employer)
0700-35/2018	A local society of persons with disabilities submitted a discrimination complaint regarding access to funds for disabled people's organisation. In the discrimination complaint, the complainant alleges discrimination of the society with the status of a disabled people's organisation, while expressing a suspicion that the foundation responsible for distribution of funds discriminates against humanitarian organisations that are not part of an association or societies that operate on a local level. In the complaint, the complainant listed disability, in addition to local affiliation and social status, as a personal circumstance. The Advocate determined that the society/complainant as a legal person does not enjoy protection against discrimination under PADA, as it is not discrimination due to personal circumstance of its members, founders, or management members.	Declaratory Discrimination was not found.	Public (fund operator)
0700-45/2017	The complainant alleges that the sports club is discriminating against him, as they prevent him from obtaining licence for a sport referee in a specific sports discipline. In his application, the complainant states that he submitted an application by e-mail for a referee licence for 2018 on December 2017, and again on January and March 2018; however, the sports club decided that the complainant is not entitled to the referee licence as he exceeds the age limit of 70 years, which Article 10 of the club's Articles of Association defines as a limit for actively performing the role of a referee. The Advocate determined that, by preventing the reporting person from obtaining a sport referee licence solely because of age, without individual examination of his capabilities, the club is violating the prohibition of direct discrimination due to age under Article 4 of PADA.	Declaratory Discrimination was found.	Private (society)

COUNSELLING AND INVESTIGATION OF DISCRIMINATION

No.	Advocate's decisions in 2018	Type of decision	Sector
0700-44/2017	The Advocate received an anonymous discrimination complaint, stating that the employees in a public institute conducting fieldwork are discriminated against on the basis of gender. Allegedly, men received different winter jacket and winter clothing for fieldwork than women, for performing identical work. The Advocate determined that the provision of work equipment for employees was appropriate, and that the institute, in the level of adopted internal by-laws, does not distinguish between employees based on gender, and, consequently, does not violate the prohibition of discrimination as defined by PADA when providing work equipment for its employees.	Declaratory Discrimination was not found.	Public (institute)

2.3.4.1 Recommendations

In 2018, the Advocate **issued seven recommendations** in accordance with Article 21 of PADA in procedures discrimination investigation. The recommendations issued are substantively related to the necessary legislative changes or interpretations of regulations, and to measures that are not defined as obligatory, but, if implemented, would contribute to increased equality of vulnerable social groups.

The recommendations were issued for the following personal circumstances: **disability** in four cases, and one case each for **ethnicity, place of residence, and status** of sole trader.

In terms of content, the seven recommendations were issued to the following parties:

- **three recommendations** to legal persons, which could eliminate discrimination in specific cases by implementing the recommendations;
- **three recommendations** to public authorities, which could eliminate systemic discrimination by amending the regulation;
- **one recommendation** for municipalities, which could reasonably promote greater equality by amending the regulation.

COUNSELLING AND INVESTIGATION OF DISCRIMINATION

Table: Advocate's recommendations in 2018

No.	Recipient of the recommendation	Content of the recommendation	Personal circumstance
		Outcome or recipient's response	
0701-6/2017	Municipality of Tolmin	During the renovation of the local theatre, the owner or work contractor did not ensure unobstructed access to the stage for wheelchair users. Based on its enquiry, the Advocate determined that stage and backstage access according to standard SIST ISO 21542: 2012 (Building construction – access and usability of constructed environment) is not required, as stage access needs to be provided only in new buildings. Based on the above, direct discrimination due to disability under PADA could not be established. Nevertheless, the Advocate issued a recommendation to the Municipality to weigh the possibility of providing unobstructed and permanent stage access to persons with reduced mobility, thereby creating the conditions for equal treatment and social inclusion of such persons, to ensure their greater participation in cultural life and other events offered by the theatre. The Advocate also emphasised the commitments from the UN Convention on the Rights of Persons with Disabilities.	Disability
		No response.	
0700-29/2016-MDDSZ	Cankar Hall	Per the complainant's complaint, the Advocate investigated the suspected discrimination that the complainant alleged regarding access to public cultural events organised in Cankar Hall. Visitors using wheelchairs have a limited number of places available, and tickets for these places are sold out very quickly. Article 9 of the Equalisation of Opportunities for Persons with Disabilities Act ¹⁰ (EOPDA) prohibits discrimination due to disability in access to public buildings and facilities, and stipulates an obligation to adapt public buildings and facilities; however, the deadline for such an adaptation is extremely long – 2025. Because Cankar Hall is the main Slovenian cultural centre and an information access point for culture-related events, also to established to provide a public service – culture and arts programme, co-financed by the Ministry of Culture (MoC), it is important that persons with disabilities are provided with access as soon as possible and in the widest scope possible. The Advocate issued a recommendation for Cankar Hall to examine this issue and weigh the options for increasing the number of spaces for visitors using wheelchairs, before the legal deadline for this adaptation.	Disability
		The person liable responded and explained that adaptations are being implemented, but gradually, as they have limited financial resource available for this purpose.	

¹⁰ Official Gazette of the Republic of Slovenia, no. 90/10, 50/14, and 32/17

No.	Recipient of the recommendation	Content of the recommendation	Personal circumstance
		Outcome or recipient's response	
0700-44/2018	Web portal editorial board www.lendavainfo.com	Under articles on one of the local web portals, a user posted discriminatory comments aimed at one of the recognised minorities. The complainant claimed that the comments represented a harassment of citizens belonging to this minority community. Based on the review of numerous publicly accessible posts by the specific user, the Advocate determined that there is a high likelihood that the comments represent discriminatory conduct towards citizen of a national community in the Republic of Slovenia, specifically in a manner that is recognised by PADA as recurring mass discrimination. This area is regulated in Slovenia by the Code of Hate Speech Regulation on Slovenian Web Portals, which all major media companies in Slovenia signed. The Code is not legally binding, but recommends commitments to consistent moderation of user content, with warnings issued to users and interventions in the event of hate speech. The Advocate found that the editorial board of the web portal was already aware of the significance of issues of hate speech and intolerance, as the portal published its rules for commenting, in which the editorial board call upon user to promote a tolerant and informed discussion free of hate speech, and had already deleted some comments intolerant of persons belonging to a national community. In this spirit and considering the judgement of the European Court of Human Rights in Delfi AS v. Estonia, the Advocate recommended, in accordance with Article 21, indent 2, of PADA, that the web portal continue to eliminate hate speech and intolerance, particularly in comments to published news and articles.	Ethnicity
		Following a review of the portal, we found that intolerant comments against the minority community were deleted.	

COUNSELLING AND INVESTIGATION OF DISCRIMINATION

No.	Recipient of the recommendation	Content of the recommendation	Personal circumstance
		Outcome or recipient's response	
0701-10/2018/4	National Assembly of the Republic of Slovenia Ministry of Infrastructure (Mol), for information purposes	An individual contacted the Advocate, asking for assistance regarding an exemption from payment of annual motor vehicle charge, which is regulated by the Motor Vehicle Charges Act ¹¹ (MVCA). The complainant is the mother of a disabled daughter, and, together with other family members, has a temporary residence permit in the Republic of Slovenia. As a foreigner living in Slovenia less than five years, she does not yet meet the criteria for a permanent residence permit. In May 2018, the administrative unit rejected the complainant's application for exemption from payment of annual charge on the grounds that the complainant does not meet the criteria of Article 9, paragraph 5, of MVCA, which stipulates that an exemption from payment for a minor can be claimed only by parents that provide a permanent residence to minors. According to the opinion of the Advocate, this interpretation of Article 9, paragraph 5, of MVCA is incorrect, and that the wording of Article 9, paragraph 5, regarding the "permanent residence" needs to be interpreted in the sense of minor and parents living in joint residence, regardless of the legal status of permanent or temporary residence. The Advocate issued a recommendation to the National Assembly of the Republic of Slovenia to begin the procedure of authentic interpretation of Article 9, paragraph 5, of MVCA, whereby entitlement to exemption from payment of annual motor vehicle charge would be assessed based on the joint residence of minor and parents, regardless if such joint residence represents a permanent or temporary residence.	Disability
		Response by the National Assembly: President of the National Assembly replies that the recommendation will be presented in the new legislative period. The new President of the National Assembly informs the Members of Parliament of the recommendation. The National Assembly responds and clarifies that they have received the recommendation and that it has been considered. The National Assembly submits to the Advocate a memorandum from Mol, in which the latter responds to the written question by a Member of National Council. The Ministry assesses that the case in question does not represent discrimination.	

¹¹ Official Gazette of the Republic of Slovenia, no. 54/17

No.	Recipient of the recommendation	Content of the recommendation	Personal circumstance
		Outcome or recipient's response	
0700-53/2016/6	Slovenian Traffic Safety Agency	A student driver contacted the Advocate because required an interpreter for the theoretical part of the test. Special terms are scheduled for taking the highway code test with the help of an interpreter (for Slovenian sign language, foreign language, assistance for person with dyslexia, or other special cases). If the student driver who wants to take the theoretical part of the test with an interpreter can not take the test in terms scheduled or no term is schedules for a specific location, the student driver can contact the Agency to arrange a suitable solution. The student driver contacted the Agency with a request for a morning term; however, the attached correspondence shows that the Agency was not willing to provide a morning term. In accordance with indent 2 of PADA, the Advocate issued a recommendation to the Agency to adjust the terms for student drivers that are taking the test with the help of an interpreter, ensuring that terms will be available in the same timeframes as tests taken without an interpreter.	Disability
		No response.	
0701-5/2015/8	Municipalities of Brezovica, Škofljica, Medvode, Ig, Grosuplje, Vodice, Dobrova-Polhov Gradec, Dol	The Market Inspectorate of the Republic of Slovenia asked the Advocate for an opinion whether or not subsidising the cost of the monthly pass for unemployed persons only in the area of the Municipality of Ljubljana (MoL) (first zone) is discriminatory, and if such and offer/practice can be construed as a violation of the principle of equality due to personal circumstances (unemployment, place of residence). The Advocate assessed that the measure to reduce the price of the pass, with the difference co-financed by MoL, is a so-called incentive measure in accordance with the provision of Article 6 of IPETA. It is intended for socially and economically weaker individuals, and aims to promote social justice. The measure is intended for unemployed persons for use in passenger transport within the area of MoL, and not for passengers on integrated lines. According to the Advocate, MoL does not act in conflict with the provisions of IPETA, as every individual municipality defines the manner and organisation of its city regular passenger service in its own territory. The law does not stipulate that municipalities need to subsidise transportation to all unemployed persons to municipalities where they have their permanent residence. However, there are no impediments to other municipalities implementing such measures, which the Advocate recommended to specific municipalities.	Place of residence
		No response.	

COUNSELLING AND INVESTIGATION OF DISCRIMINATION

No.	Recipient of the recommendation	Content of the recommendation	Personal circumstance
		Outcome or recipient's response	
0701-8/2017/2	Ministry of Labour, Family, Social Affairs and Equal Opportunities	The Human Rights Ombudsman informed the Advocate of the problem of Article 18.b of the Social Protection Act ¹² (SPA), which refers to different treatment of employees under an employment contract and sole traders when obtaining the status of a home care assistant. After studying the subject matter, the Advocate found that, based on applicable regulation, there are no justified grounds for distinguishing between the above categories of potential home care assistants. The Advocate therefore recommends to MLFSAEO, as the ministry drafting SAA, to begin drafting an appropriate amendment to Article 18.b of SAA, which will not discriminate between employed or self-employed persons.	Status of sole trader
		No response.	

ADVOCATE'S HIGHLIGHTS

At the time this Report was published, MLFSAEO, Mol and the Slovenian Traffic Safety Agency have not yet informed the Advocate whether or not they intend to implement the recommendation.

¹² Official Gazette of the Republic of Slovenia, no. 3/07 – official consolidated text, 23/07 – correction, 41/07 – correction, 61/10 – ZSVarPre, 62/10 – ZUPJS, 57/12, 39/16, 52/16 – ZPPreb-1, 15/17 – DZ, 29/17, 54/17, 21/18 – ZNOrg, and 31/18 – ZOA-A

2.4 Work on matters within the jurisdiction of the body – anonymised descriptions of cases

Below, we describe the Advocate's practice by subject matter using anonymised cases, specifically in cases where individuals contacted the Advocate with a request for counsel and assistance, and in cases of discrimination complaints. The Advocate investigated cases of discrimination on the basis of five received complaints filed by victims of discrimination (Article 33 of PADA), or as part of procedures that the Advocate can initiate *ex officio* if it receives an anonymous complaint, a complaint by a third party (not the victim) or if it becomes aware of discrimination in another way (Article 34 of PADA).

Below, we present the cases considered by the Advocate, by personal circumstance and area of discrimination.

2.4.1 Personal circumstances

2.4.1.1 Gender

In 2018, the Advocate closed eight cases related to gender. Areas covered by these cases included harassment, treatment of fathers in issues of custody and contacts with children, sexist use of language, and favourable treatment of women in access to sports events.

Case example

A club organised a sports event, where participation fee was planned lower for women than men. The Advocate received a complaint stating that such unequal charging represents discrimination based on (male) gender. The complaint was filed when IPETA was in effect. The Advocate determined the existence of gender-based discrimination in area of access to goods and services.

After determining the actual situation, the Advocate considered whether such treatment could fall under an exception of prohibition of discrimination under Article 2.a of IPETA, which states that the law does not exclude different treatment if such different treatment justifies a legal goal and the means for achieving this goal are appropriate and necessary. The goal of increasing the number of women participating in the event, as stated by the organiser, was recognised by the Advocate as legal and legitimate in terms of promoting participation of women, as underrepresented in the event, in recreational activities. However, the Advocate could not confirm the measure of lower participation fee, which the organiser implemented to achieve the goal of increased number of women participants, as necessary (required or unavoidable) to achieve this goal. The organiser could achieve higher participation of women at the event using other or different means (not necessarily by the participation fee discount), e.g. by advertising. In fact, the lower participation fee for women was not an effective measure to increase the number of participation of women, as the actual participation of women was actually lower with the reduced participation fee than before.

The Advocate also assessed whether such efforts to increase participating of women, considering the past experience of different gender participation at the event, could be considered as a special measure, i.e. incentive measure, which gives special benefits or implements special incentives for persons in less favourable positions (under Article 6, paragraph 2, indent 2, of IPETA). However, in this specific case, the Advocate did not recognise women as persons in a less favourable position than men due to their gender, i.e. that women could not afford to pay the same participation fee as men. The Advocate determined that this measure to achieve a specific goal could not be categorised as an incentive special measure.

(case no. 0700-28/2016-MDDSZ, opinion from 19 December 2018)

2.4.1.2 Race, ethnicity or ethnic background

In 2018, the Advocate closed 15 cases related to ethnicity. The areas covered by these cases included discriminatory ads by political parties, discriminatory media content and comments on web portals, access to employment, and discriminatory rental ads for apartments.

Case example

Under various articles on one of the local web portals, a user posted discriminatory comments aimed at one of the constitutionally recognised minorities. The complainant claimed that the comments represented a harassment of citizens belonging to this minority community.

Based on the review of numerous publicly accessible posts by the specific user, the Advocate determined that there is a high likelihood that the comments represent discriminatory conduct towards citizen of a national community in the Republic of Slovenia, specifically in a manner that is recognised by PADA as recurring mass discrimination. The comments affect persons belonging to the national community by creating a degrading, humiliating and offensive environment, or insult their dignity, as they do not recognised their sovereign national rights but present them as inferior. The Advocate is aware of the respect for free speech; however, the manner of presenting specific content in public statement can affect those that are the subject of this content or recipients of such statements. Furthermore, Article 10, paragraph 2, of PADA prohibits “public justification for neglecting or despising persons or groups of persons due to personal circumstances ... including justifying ideas of the supremacy or superiority of a person or a group of people with certain characteristics which arise from the aforementioned personal circumstances and which are supposedly superior to those who are not part of such group.”

The Advocate recognises public information via web portals as a type of area of public life, as part of access to goods and services available to the public. This area is regulated in Slovenia by the Code of Hate Speech Regulation on Slovenian Web Portals (Spletno oko, Faculty of Social Sciences, University of Ljubljana), which was signed by all major media companies in the Republic of Slovenia, as owners of their web portals. The Code is not legally binding, but recommends commitments to consistent moderation of user content, with warnings issued to users and interventions in the event of hate speech, specifically with the option to report hate speech by other users, as well as deleting questionable comments by web portal moderators.

The Advocate found that the editorial board of the web portal was already aware of the significance of issues of hate speech and intolerance, as the portal published its rules for commenting, in which the editorial board call upon user to promote a tolerant and informed discussion free of hate speech, and had already deleted some comments intolerant of persons belonging to a ethnic community. In this spirit and considering the judgement of the European Court of Human Rights in *Delfi AS v. Estonia*, the Advocate recommended, in accordance with Article 21, indent 2, of PADA, that the web portal continue to eliminate hate speech and intolerance, particularly in comments to published news and articles.

(case no. 0700-44/2018, opinion from 17 December 2018)

2.4.1.3 Language

In 2018, the Advocate closed one case related to language.

Case example

The Advocate received a request by the Inspectorate of the Republic of Slovenia for Education and Sport regarding an educational measure in a bilingual public kindergarten, which has an Italian language programme. Kindergartens in the bilingual territory have a rule that, if the programme is carried out in one language, children also become familiar with the other language. However, the educator in the kindergarten implemented an educational measure, specifically punishing any child for any Slovenian spoken word with a black mark; ten black marks resulted in a ban on playing in the playground for one day.

The Advocate assessed that this practice undoubtedly causes a deprivation in children, and has predominantly affected children from Slovene-speaking or bilingual families, as these children experience and use the Slovenian language more often in kindergarten when they were supposed to communicate in Italian, which could represent indirect discrimination. Considering that the kindergarten in question is Italian, and in which Slovene-speaking children are introduced to Italian, the educator pursued a legitimate goal; however, the question remains whether the means for achieving this goal were appropriate, necessary, and proportional. This, however, is a technical question regarding the appropriateness of educational measure employed by the educator in working with kindergarten children, which falls outside the jurisdiction of the Advocate.

The Advocate therefore issued an opinion to the competent inspectorate regarding the aspects of the case that falls under the jurisdiction of PADA, and the inspectorate has the jurisdiction to assess whether the educational measure is appropriate or not.

(case no. 0700-29/2018/2, answer from 17 October 2018)

2.4.1.4 Religion or belief

In 2018, the Advocate closed seven cases related to religion or belief. The areas covered by these cases included discriminatory media content, a rental ad for an apartment for a group of specific religion, question regarding the employer's provision of vegetarian meal, a request for religious identification in education, a conscientious objection in access to training or employment, treatment in the procedure for acquisition of citizenship, and provision of school meals without pork.

Case example

School administration issued notices to its pupils that they will start providing school meals without pork and pork products, and asked parents and guardians to opt in to the pork-free school menu for their children by signing the notice. The Inspectorate of the Republic of Slovenia for Education and Sport, which received the report stating that all pupils were not treated equally before the law, turned to the Advocate of the Principle of Equality for an opinion.

The Advocate assessed that this was a case of implementing the institute of appropriate/reasonable accommodation, specifically on the basis of personal circumstance of religion that prohibits consumption of pork. In Slovenian legislation, the institute of reasonable/appropriate accommodation is partially implemented only for the personal circumstance of disability. In substantive terms, however, measures for reasonable/appropriate accommodation can be adapted in other areas and in relation to other personal circumstances, not only for disability. With this measure, the school in question adapted school meals provided for school-age children to the religion of a group of children (or, indirectly, their parents; either Jewish or Islamic religion), as these children could otherwise be deprived of a school meal. The school also acted in accordance with the principle of best interests of the child, which is protected by the Family Code.

Such an implementation of the institute of appropriate/reasonable accommodation does not infringe on the rights of others and does not represent discrimination of those who do not require such accommodation. Based on the above, the Advocate found no elements of discrimination in the submitted case. (case no. 0700-57/2016, clarification from 21 November 2018)

2.4.1.5 Disability

In 2018, the Advocate closed 15 cases related to disability. The areas covered by these cases included access to employment, working conditions, social protection, access to kindergarten with a regular programme, access to goods and services, access to courts and polling stations, and the obligation of public authorities to respond in Braille.

Case example

During the renovation of the local theatre, the owner or work contractor did not ensure unobstructed access to the stage for wheelchair users. The complainant contacted the Advocate, alleging discrimination based on disability.

Based on its enquiry, the Advocate determined that the building was restructured based on a final building permit, and that it acquired an operating permit; it provided unobstructed access, entry and use of areas intended for visitors, and had three places for persons in wheelchair, which is over 1% of the theatre seats, as required by regulation. Stage and backstage access according to standard SIST ISO 21542: 2012 (Building construction – access and usability of constructed environment) is not required, as stage access needs to be provided only in new buildings, according to this standard. Furthermore, the Advocate determined that, after the building started operating, the need for stage access for persons with reduced mobility was rarely expressed, and when it was, the request was granted. Based on the above, direct discrimination due to disability under PADA could not be established.

Nevertheless, based on Article 21, paragraph 1, indent 2, the Advocate issued a *recommendation* to the Municipality to weigh the possibility of providing unobstructed and *permanent* stage access to persons with reduced mobility, thereby creating the conditions for equal treatment and social inclusion of such persons, to ensure their greater participation in cultural life and other events offered by the theatre. The Advocate also emphasised the commitments from the UN Convention on the Rights of Persons with Disabilities.

(case no. 0701-6/2017, recommendation from 27 November 2018)

2.4.1.6 Sexual orientation

In 2018, the Advocate closed five cases related to sexual orientation. The areas covered by these cases included discriminatory speech, discriminatory media content, selection of projects in calls for proposals, and discriminatory rental ads for real property.

Case example

On a web portal used by natural persons for advertising real property for sale or rent, the reporting person noticed an ad that included a statement that the real property is not available for rent to migrants, **gays** or “workers from former Yugoslavia”. The complainant contacted the Advocate with a request for clarification, whether or not the Advocate has jurisdiction over such matters. After receiving the question, the Advocate examined the website and found that the described ad is no longer posted. The Advocate then found that there was a news article posted about the questionable ad on a news site, together with a screenshot that showed the posted ad, and the user removed the ad after receiving a report on his own initiative.

Based on the ad description and the provisions of PADA, this case would most certainly fall within the jurisdiction of the Advocate, as this ad relates to the question of access to goods and services, specifically a rental apartment, which is explicitly included in PADA. The ad also refers to personal circumstances of race, ethnic background and sexual orientation, which Article 1, paragraph 1, of PADA explicitly lists as personal circumstances that are prohibited as reasons for discrimination, and nationality, which PADA includes under the term “any other personal circumstances”. Because the ad mentions several personal circumstances, provision of Article 12, indent 1, of PADA, which prohibits multiple discrimination, applies to the discrimination investigation. The fact that the real property for rent is privately owned is not important.

Pursuant to Article 2, paragraph 1, of PADA, the Advocate holds powers of investigation of discrimination not only in the public sector, but also in the private sector, i.e. lessors as natural persons and advertising available apartments or rooms online.

(case no. 0701-36/2018, clarification from 6 November 2018)

2.4.1.7 Gender identity and gender expression

In 2018, the Advocate considered no individual cases (discrimination complainants or requests for counsel) related to gender identity or gender expression.

2.4.1.8 Age

In 2018, the Advocate closed five cases related to age. The areas covered by these cases included access to employment or traineeship, access to benefit cards for retired persons, discriminatory media content, and access to goods and services.

Case example

After turning 70, the complainant was no longer allowed to continue working as a sport referee in a sports discipline. According to a provision of the Articles of Association of a society that grants licences for this activity, a referee's active career ends on 31 December in the year when the referee turns 70. The society explained to the Advocate that the reason for the inclusion of the age criteria in the Articles of Association was based on the rules of the international sports association, which include the same criteria.

The Advocate determined that this was indirect discrimination on the basis of age. The society in question is a professional sports society, which brings together natural persons engaged in a specific sport on a volunteer basis. As part of its competences, the society is the central or only refereeing organisation in Slovenia for this specific sport, and has, among other competences, the power to appoint referees for all events. In Article 4, the Societies Act ¹³(SA) stipulates that basic acts and other by-laws of societies must comply with this law and the legal order of the Republic of Slovenia, which undoubtedly includes PADA. Exercising the right to free association or rights of society members must be ensured without discrimination.

By implementing an age criteria, the society prevented regular members who have reached the age of 70 from exercising equal rights (right to be appointed a referee in competitions) or equal participation in society's activities (actively carrying out the duties of a referee). The Advocate assessed whether such differentiation of society's regular members falls under one of the exceptions of prohibition of discrimination under Article 13, paragraph 1, of PADA, which states that unequal treatment due to a specific personal circumstance does not represent discrimination under this Act if such different treatment is based on a legitimate goal and the means to achieve this goal are appropriate, necessary and proportional (Article 13, paragraph 1, of PADA). The Advocate found that the society failed to establish that, by implementing the age criteria for active performance of sport referee function, it pursued a specific legitimate goal, not did it establish that the measure (age criteria)

¹³ Official Gazette of the Republic of Slovenia, no. 64/11 – official consolidated text, and 21/18 – ZNOrg

was appropriate, necessary and proportional. Age by itself does not define the psycho-physical characteristics of persons. Such characteristics can not be determined by generalisation, but only on a case-by-case basis, e.g. with individual tests of competencies or ability.
(case no. 0700-45/2017, decision from 6 December 2018)

The area of age includes discrimination complaints and requests for counsel submitted by older citizens, e.g. because they can no longer find employment due to age, or because they are too old to claim a specific social benefit, which has an age limit. However, complaints can also be submitted by persons who can not claim certain rights, options or benefits because they are too young, as they can only be accessed by persons over a set minimum age. A frequent example of this are certain technical positions or functions, which include a requirement of life experience and maturity, which are presumed to be acquired (also) with a certain age. Such minimum age limits can be permitted if they are justified by a legitimate goal and congruent with the principle of proportionality. Situations where a certain benefit is available only for persons over the age of 18 are also common. The Advocate investigated one such case.

Case example

A client contacted the Advocate with a request for advice. The client's underage daughter, a recipient of widower's pension due to the death of her father, could not renew the benefit card for a specific retail chain, to which recipients of pensions are otherwise entitled. After the EU General Data Protection Regulation entered into force, the retailer updates its terms and conditions, and implemented a system wherein underage persons could not renew their benefit cards, which the client considered discrimination due to age.

The Advocate asked the retailer for an explanation and called upon it to renew the benefit card. The retailer responded and invited the client to arrange all formalities required to renew the card. Nevertheless, the client once again asked the Advocate and explained that her underage daughter, as the recipient of the pension, could not renew the card by herself, as the retailer asked for a signature of the client as her legal guardian. The client once again asked the Advocate to take action.

After examining the circumstances of the case and the legal bases, the Advocate explained to the client that, due to the EU General Data Protection Regulation, the retailer changed its membership to a contractual basis. However, a contract with an underage person can not be concluded directly in Slovenia, but requires a signature of their legal guardian. In this sense, this represents different treatment due to age; however, such treatment is permitted, as it falls under the exceptions of prohibition of discrimination in accordance with Article 13, paragraph 1, of PADA. Different treatment based on age is permitted. The legal goal pursued by the request that a contract with an underage person is signed by its legal guardian lies in ensuring the safeguards of legal transactions, and the measure (in this case, the requirement that the contract is signed by a legal guardian) is appropriate – the legal guardian is generally an adult and is considered to have legal capacity. The measure is also necessary, as a contract requires signatures of both parties to be valid, even if one of them is underage.

The Advocate also explained that receiving a pension, to which an underage person may be entitled under the Pension and Disability Insurance Act¹⁴ (PDIA), is not substantively directly related to the right to conclude contracts. The entitlement to receive a pension was already considered by the retailer, as the underage recipient was entitled to the discount card for retired persons. According to the Advocate's assessment, the retailer is not obligated to consider receipt of pension in such a way that an underage person could conclude a contract.

(case no. 0700-16/2018)

2.4.1.9 Social status

In 2018, the Advocate closed two cases related to social status.

Case example

¹⁴ Official Gazette of the Republic of Slovenia, no. 96/12, 39/13, 99/13 – ZSVarPre-C, 101/13 – ZIPRS1415, 44/14 – ORZPIZ206, 85/14 – ZUJF-B, 95/14 – ZUJF-C, 90/15 – ZIUPTD, 102/15, 23/17, 40/17, and 65/17

The complainant asked for counsel regarding social assistance benefits in cash, and highlighted as problematic the methodology for calculating property taken into account in assessing the entitlement to social assistance benefits in cash. According to the complainant, the latter represents discrimination of the lower class of society. The complainant also expressed her wish to remain anonymous. In this specific case, the Advocate could not take action to investigate discrimination against the complainant, as she wished to remain anonymous. The Advocate could only study the issue on a systemic level. In such cases, when the Advocate, after studying the issues, recognises a potential systematic problem in the area of unequal treatment, the case is transferred from the Department for investigation of discrimination, counselling and advocacy to the Department for systemic monitoring, awareness-raising and prevention of discrimination, which conducts activities of research, monitoring, and preparing systemic recommendations.
(case no. 0700-25/2017-MDDSZ, answer from 25 October 2018)

2.4.1.10 Financial situation

In 2018, the Advocate closed two cases of discrimination due to financial situation.

Case example

The complainant sent a letter to the Advocate, claiming the the director of a public institute claims as her own the only parking spot in front of the institute, for which she supposedly has no legal basis. Considering that the institute employs tens of people, with several times more users to the institute, of which at least half are socially disadvantaged, the complainant believed that this constitutes a violation of the principle of equality. The complainant asked the Advocate for a clarification, whether or not the Advocate has the jurisdiction to take action, and an advice on which public authority to contact regarding this matter.

The Advocate initially found that the reason for the different treatment of the director, in comparison to other potential users of the parking space, is in the position of employment, which is not a personal circumstance under PADA. Personal circumstances are innate or acquired personal characteristics, features, conditions or statuses, which are, as a rule, permanently and inseparably linked to a particular individual and their personality, in particular identity, or are not easily altered by the individual. At the same time, the position of employment is the reason for various benefits granted to persons working in a specific position. In this example, if the position of director (compared to other employees) does not justify the use of the parking space, the Advocate advised the complainant to refer the question to the institute council.

As a separate question, the Advocate examined a comparison of the position of director with the position of persons who use the institute's services, many of which are socially disadvantaged, which could potentially constitute different treatment on the basis of financial situation. However, for a more detailed assessment, the Advocate would require more specific information, e.g. is the public institute accessible by public transport, what is the price of parking at nearby parking spaces, how socially disadvantaged are persons using the institute's services, and would one parking space alleviate their position? For this purpose, the Advocate asked the complainant to submit a discrimination complaint, so that it can start the appropriate procedure. The complainant did not respond.

(case no. 0701-45/2018, clarification from 21 December 2018)

2.4.1.11 Education

In 2018, the Advocate closed no cases in which complainants alleged discrimination due to the personal circumstance of education.

2.4.1.12 Other personal circumstances

Place of residence

COUNSELLING AND INVESTIGATION OF DISCRIMINATION

In 2018, the Advocate closed two cases of discrimination due to place of residence. The areas referred to by these two cases were access to employment and access to public transportation.

Case example

The family with five children lives in a remote settlement that has no public transportation, while transportation of school-age children to school is provided by a school van. The family wanted to have their two kindergarten children take the school van, since transportation of both kindergarten children to the kindergarten represents a high cost for the family. The Municipality was not willing to provide transportation to the kindergarten for the two preschool children. In local communities where public transportation is organised, preschool children can use such transportation services if accompanied by adults. In the discrimination complaint, the complainant stated that, by not providing transportation for all preschool children, the Municipality wrongfully discriminated due to place of residence and social status.

While investigating the case, the Advocate determined that the public transportation in the municipality (transportation services do not reach the settlement where the complainant lives) is provided by a concessionaire on the basis of an optional service of general economic interest. Transportation for school-age children to the complainant's settlement is organised in accordance with the Organisation and Financing of Education Act¹⁵ (OFEA) and the Elementary school Act¹⁶ (BSA), which define the right to free transportation for elementary school pupils and thereby Municipalities' obligation to provide funds for this purpose. The Kindergartens Act¹⁷ (KA) does not define such right for preschool children. Elementary school attendance is mandatory, while kindergarten attendance is not (but is undoubtedly beneficial). Based on the above, the Municipality did not provide transportation for any preschool children (free or paid) in a manner provided to school-age children.

Therefore, the Advocate issued a declaratory decision, stating that the Municipality is not violating the prohibition of discrimination under the provisions of PADA by not providing paid or free transportation for preschool children in the complainant's settlement. Provision of transportation services only for school-age children is based on the constitutional right to education and on the obligation to attend school for all children between ages 6 and 15.

(case no. 0700-22/2018/11, decision from 25 October 2018)

National of third country or other EU member state

In 2018, the Advocate closed two cases related to discrimination due to nationality. The areas referred to by these two cases were access to a camp intended solely for foreigners and access to employment.

Case example

One of the largest companies for providing services in an industry that already employs many nationals of other countries set a requirement that all newly employed workers must be nationals of the Republic of Slovenia. The workers' legal advisers contacted the Advocate with the question, whether or not such a requirement complies with anti-discrimination regulation.

The Advocate explained that, in certain cases, nationality can be a requirement for employment, under the conditions that this is required by the nature of work and that such a requirement is proportional and justified by a legal goal. Generally, Slovenian nationality is not required to conclude an employment contract in Slovenia; employment of foreigners is additionally regulated, as such employees must meet the requirements of the legislation on the employment of foreigners.

¹⁵ Official Gazette of the Republic of Slovenia, no. 16/07 – official consolidated text, 36/08, 58/09, 64/09 – correction, 65/09 – correction, 20/11, 40/12 – ZUJF, 57/12 – ZPCP-2D, 47/15, 46/16, 49/16 – correction, and 25/17 – ZVaj

¹⁶ Official Gazette of the Republic of Slovenia, no. 81/06 – official consolidated text, 102/07, 107/10, 87/11, 40/12 – ZUJF, 63/13, and 46/16 – ZOFVI-L

¹⁷ Official Gazette of the Republic of Slovenia, no. 100/05 – official consolidated text, 25/08, 98/09 – ZIUZGK, 36/10, 62/10 – ZUPJS, 94/10 – ZIU, 40/12 – ZUJF, 14/15 – ZUUJFO, and 55/17

Employer's general requirement for nationality would not be compliant with PADA, and in individual cases the employer would have to justify which legitimate goals are pursued by this requirement, and how such a requirement complies with the principle of proportionality, i.e. the measure is appropriate and pursues such a goal, it is necessary, and the goal can only be pursued with the measure of nationality requirement.

(case no. 0701-5/2018, answer from 11 April 2018)

2.4.2 Areas of social life

2.4.2.1 Access to employment, self-employment and occupation

In 2018, the Advocate closed 27 cases related to employment, self-employment, and occupation. The areas covered by these cases included access to internship, which is limited in certain industries with an age limit of 30 years, exclusionary conditions in job postings (by gender and nationality), exclusion of candidates due to their medical conditions and similar.

Case example

A person being treated for HIV contacted the Advocate. After applying to the job posting, the person successfully attended the interview. The employer referred the person for a physical examination by an occupational and sports medicine specialist, where they found among the test results from the Clinic for infectious diseases and fever conditions, which established that the person was being treated for HIV. Consequently, the person was referred for several more blood tests and an additional examination at the Clinic for infectious diseases and fever conditions. Afterwards, the physician notified the person that they do not intend to issue a health certificate if the person does not receive additional vaccinations. The physician also delayed issuing the health certificate; the employer ultimately decided that no candidate is selected for the position. When the physician finally issued the certificate, it listed the diagnosis in bold, followed by the physician's opinion in normal text that the person is capable to perform the work. The person asked the Advocate for counsel.

Within the context of its powers to provide support and independent assistance to victims of discrimination, the Advocate provided continuing counsel and support to the client for several months. The Advocate notified the client that every employer is bound by the provisions of Article 6, paragraph 1, of the Employment Relationships Act¹⁸ (ERA), which explicitly prohibits discrimination due to medical condition, as well as by the provisions of Article 1, paragraph 1, of PADA, which prohibits discrimination due to any personal circumstance, which includes the medical conditions in question (e.g. HIV). If the person suffered humiliation due to their condition in the relationship with the physician, because of undergoing treatment for HIV, this could constitute harassment as a form of discrimination, which, like any other form of discrimination due to personal circumstance, is prohibited. The Advocate presented to the person their options for action and its own powers in such cases, but the person decided against submitting a discrimination complaint.

(case no. 0701-30/2018)

2.4.2.2 Access to career orientation and counselling

In 2018, the Advocate closed no cases related to access to all forms and to all levels of career guidance and counselling, vocational and professional education and training, advanced vocational training and retraining, including practical work experience.

2.4.2.3 Employment and working conditions, including termination of employment contracts and wages

In 2018, the Advocate closed 29 cases related to access to employment, self-employment, and occupation; this area therefore has the highest number of complaints. The areas covered by these cases included harassment and sexual harassment in the workplace, promotion, wages and terminations of employment. More complaints were related to workplace conditions, and involved a combination of inappropriate relationships, bullying and harassment.

Case example

The complainant claimed that the employer treated their work unequally based on the employment contract in comparison to his co-worker. The complainant also mentioned threats, insults and irregular

¹⁸ Official Gazette of the Republic of Slovenia, no. 21/13, 78/13 – correction, 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – Constitutional Court's Decision, and 22/19 – ZPosS

payment of retirement benefits for their personal income, which he receives through the employer, as he is employed as a part-time employer due to disability. As grounds for alleged discrimination, the complainant highlights the personal circumstances of disability and education.

In the discrimination investigation procedure, the Advocate found that the inappropriate attitude of the employer towards the client is due to other reasons, specifically because the client refused work orders given by the employer, whereby the client justified their refusal with the restrictions protecting the client from such additional work tasks. These restrictions were set by the Health Insurance Institute of Slovenia and defined the types of work that the worker was not allowed to perform. However, such restrictions do not mean that the employer is not entitled to give the worker certain additional tasks, if such tasks as appropriate considering the worker's disability. The Advocate found that the employer observes the essential restriction of work arising from the client's disability status, i.e. employing the client for part-time work.

Therefore, the Advocate did not determine discrimination. The Advocate concluded that the party's statements and means of proof did not establish facts that would justify the presumption that the prohibition of discrimination had been violated, and on which basis the alleged perpetrator would have to present proof that they had not violated this prohibition in this case, as stipulated by Article 40 of PADA.

(case no. 0700-34/2018, decision from 19 November 2018)

2.4.2.4 Membership in employee and employer organisations

In 2018, the Advocate closed no cases related to membership and involvement in worker or employer organisations or any organisation whose members perform a certain profession, including the benefits provided by such organisations.

2.4.2.5 Social protection, including social security and health care

In 2018, the Advocate closed seven cases related to social protection, including social security and health care. The areas covered by these cases included access to social relief, unequal treatment of persons with disability in determining the minimum pension, unequal access to pension based on gender, unequal treatment of employed and unemployed disabled workers in the transition period for retirement under the Pension and Disability Insurance Act, criteria for receiving the status of home care assistant, which differ from employed and self-employed, and access to reimbursement for health-care costs.

Case example

The complainant contacted the Advocate with a request for counsel related to retirement of disabled workers. In her complaint, she expressed the belief that, due to latest reform of the funded pension plan in the Republic of Slovenia and the latest amendments to the Pension and Disability Insurance Act (PDIA), disabled workers employed for a fixed term on 31 December 2012 were discriminated against. The transition period to the new retirement system was two years shorter for these disabled workers than for disabled workers who were unemployed on the cut-off date. According to the complainant, the legislature inappropriately categorised disabled workers employed for a fixed terms into the category of disabled workers with increased protection of rights, even though employment for a fixed terms constitutes precarious work and disabled workers (once again) enter long-term unemployment after their employment contracts expire. The complainant could not use the benefits, as she wished to remain active in the labour market and she endeavoured to work part time for a fixed time; this resulted in annulled period of employment under Article 405 of PDIA, delayed retirement age by several years, reduced pension and increased unemployment as recorded by the Employment Service of Slovenia (ESS).

After considering the issue, the Advocate clarified that the question of expected retirement represents a so-called protected legal position, which includes, to a certain extent, expected rights from pension insurance in addition to already obtained rights, but that individuals can not rely on the law not changing. In accordance with its powers, the legislature decided that the transitional provisions of

PDIA will define such general protection of expected rights (Article 391), as well as the protection of rights of certain special categories of society, which were intentionally treated as particularly vulnerable, including disabled workers. In the legislative procedure, the dominant argument was that there is a significant difference between employed and unemployed disabled workers, and a compromising amendment was proposed, whereby the proposed three-year transitional period remained in effect for employed disabled workers, while the transitional period for disabled workers registered with ESS was increased to five years. According to the Advocate's assessment, the legislature, by employing this differentiation and unequal treatment, pursued a legitimate goal, specifically to ensure additional protection of unemployed disabled workers, who are in a comparatively worse position and are becoming harder to employ with age, with their employment opportunities decreasing even more. According to the Advocate's view, the special protection of unemployed disabled workers as a particularly vulnerable group constitutes a type of positive measure. Therefore, the Advocate could not determine unlawful discrimination as defined by PADA. (case no. 0701-40/2018, clarification from 26 November 2018)

2.4.2.6 Social benefits

In 2018, the Advocate closed two cases related to social benefits. The areas referred to by these two cases were access to scholarship.

Case example

The complainant notified the Advocate that the municipal council in one of Slovenian municipalities intends to adopt an amendment to the rules on scholarships for students and pupils, whereby pupils who decided to continue their education in their home town would receive additional points in the procedure of assessing scholarship candidates. The complainant asked the Advocate for a clarification, whether or not this change complies with PADA.

The Advocate determined that the change of the rules implemented an additional criterion of "place of education" for the municipal scholarship for students and pupils. In accordance with the added criterion, candidates who attend school in their home municipality receive an additional 20 points, while candidates attending an education programme not available in the home municipality also receive the same number of points. The Advocate found that the two criteria are mutually exclusive, i.e. the 20 additional points are given either to persons attending an education programme in the home municipality or persons that do not have such options because their chosen education programme does not exist in the municipality, and are therefore attending an education programme in another municipality. Persons are therefore categorised in either of the two categories, thus ensuring equal treatment or balanced application of the new criterion. The basic differentiation thus occur only for people who decide to attend an education programme outside their home municipality even if the same education programme is carried out by educational institutions within the municipality. Based on the rules, such person are, in fact, treated unequally; however, such treatment is based on their personal decision on the place of education, which does not represent a personal circumstance under PADA, on the basis of which discrimination is prohibited. Accordingly, the Advocate explained to the complainant that the change of the rules is not contentious from the perspective of protection against discrimination.

(case no. 0701-23/2016, clarification from 28 December 2018)

2.4.2.7 Education

In 2018, the Advocate closed 16 cases related to education. The areas covered by these cases included all levels of education, from kindergarten, elementary school, high school to short-cycle college and institution of higher education. Application, complaints and questions referred to various issues, such as names of positions in job classification by gender, criteria for obtaining the status of an athlete in high school, relocation of student to another class, alleged chicanery by the educator, hall monitoring obligation for everyone, even those who do not eat the school snack, mandatory use of Slovene in taking the professional examination, and alleged discrimination in grading.

Case example

The Advocate was contacted for advice by parents of a daughter with cerebral palsy. They wanted to place their daughter in a regular kindergarten, which does not have a special programme for children with special needs, but has experience with such children, employs a specialised pedagogue, and the option to hire an assistant for the child with the help of the municipality. The kindergarten was willing to accept the child, but ultimately decided against it due to a whole range of additional conditions. The parents expressed their aversion to official health-care treatments, which they considered harmful, while medical staff at health examinations allegedly told them that only medical experts know what is best for their daughter, while the parents' opinion counts for nothing. They asked whether such conduct constitutes discrimination.

The Advocate presented the definition of discrimination and its powers in this area to the parents. After examining the case and applicable regulation (particularly Placement of Children with Special Needs Act¹⁹ (PCSNA)), the Advocate explained that conduct of professional staff does not constitute discrimination; in fact, it is the opposite: the care in implementing special measures allows their daughter to enjoy special benefits to reduce her normal exposure to potential unequal treatment due to disability. The Advocate expressed an understanding that attentive parents know their child best. At the same time, the Advocate urged the parents to comply with competent institutions – specialised physicians, Commission for placement of children with special needs, National Education Institute and competent ministries – who, with their expert knowledge and based on the legal order, follow the principle of the child's interests. The Advocate therefore proposed continued cooperation with competent institutions, mutual information, and establishing trust, with the purpose of enforcing the child's rights.

Regarding the complaint that the parents wanted to file against the Ministry of Education, Science and Sport (MESS), the Advocate explained that it is not an appeal body in procedures that are already conducted before other bodies, but can provide independent assistance in procedures for parents enforcing the rights related to protection against discrimination.

(case no. 0701-29/2018, answer from 24 October 2018)

2.4.2.8 Access to goods and services available to the public

In 2018, the Advocate closed 27 cases related to access to goods and services available to the public, including housing, and supply thereof. The areas covered by these cases included access to public transport, price differentiation for monthly parking for residents and non-residents, access to benefit cards for persons under the age of 18, cheaper access to sports events for women, access to a camp, and access to student home accommodations.

Case example

The Municipality set a 50% higher monthly parking price for non-residents than for residents. The service user submitted a complaint to the Market Inspectorate of the Republic of Slovenia, which asked the Advocate for an opinion whether such different pricing for monthly parking constitutes (direct) discrimination due to place of residence.

When drafting the opinion, the Advocate conducted the procedure under IPETA, as the complaint was submitted before PADA entered into force. The Advocate determined that the Services of General Economic Interest Act²⁰ (SGSIA) does not define a legal basis for price differentiation based on the user's place of permanent residence. Such treatment places persons with permanent residence in other municipalities and live there, persons who have temporary residence in the municipality, and persons who actually live in the municipality, but do not have a permanent residence address registered there, in an unfavourable position. Such treatment is not included in exceptions of prohibition of discrimination under Article 2a of IPETA. The legal goal is to cover the costs of management and maintenance for the service of general economic interest. However, such price

¹⁹ Official Gazette of the Republic of Slovenia, no. 58/11, 40/12 – ZUJF, 90/12, and 41/17 – ZOPOPP

²⁰ Official Gazette of the Republic of Slovenia, no. 32/93, 30/98 – ZZLPPO, 127/06 – ZJZP, 38/10 – ZUKN, and 57/11 – ORZGJS40

differentiation, which distinguishes by permanent residence of parking area users, is not an appropriate and necessary measure to achieve the goal. The rationale provided by the municipal company and the Municipality for this price differentiation was, in fact, completely unspecific and generalised, with no enclosed calculations or simulations of different pricing policy attached, which would indicate that the goal can be pursued in only this specific way.

The Advocate also examined the argument that permanent residents have contributed significantly to the construction of infrastructure (including parking area) in the municipality with payments of tax and non-tax liabilities, which constitute revenues for the municipality's budget. The Advocate agrees that permanent residents of municipalities co-finance construction of municipal infrastructure with part of their taxes and contributions. While residents with a permanent residence in the territory of the municipality contribute with taxes and contributions to the municipal budget, which is used to finance construction and maintenance of municipal infrastructure and operations of the public undertaking that carries out the public service of parking area management, permanent residents of other municipalities are not burdened by such contributions (to the municipal budget), i.e. do not contribute to the municipal budget in the municipality in the above manner. However, this statement is also unspecific and generalised, as it in no way explains the manner and the extent to which implementation of public parking areas was already financed from tax and non-tax liabilities. The generalised statement that permanent residents have already contributed their share, while permanent residents of other municipalities should now contribute an arbitrarily defined and significantly higher share, does not withstand the assessment of the proportionality test. Based on the above, the Advocate believes that the municipal company and the Municipality have not shown such pricing differentiation to be an appropriate and required (necessary) measure to achieve the otherwise legal goal.

(case no. 0700-37/2015, opinion from 4 December 2018)

The housing areas covered by these cases included criteria for non-profit housing rental, criteria for housing rental provided by the Pension and Disability Insurance Institute of Slovenia (PDIIS), discriminatory advertising for housing rental on web portals, and access to housing for refugees.

Case example

A Syrian refugee family was given international protection in Slovenia. After obtaining the status and the expiry of their right to stay in the integration house, the family looked for a housing rental with the help of a volunteer. After the family arrived to view the real property, the owner immediately became angry and said, "This will not work." He did open the door to the apartment, but did wish to participate in the apartment tour. Even though the members of the family do not understand Slovenian, the conduct of the owner made his position quite clear, so they wanted to leave. The volunteer who submitted the discrimination complaint also explained that almost all refugees in the housing rental market face systematic discrimination by private owners that rent out real property, specifically on the grounds of ethnic background, race, religion or refugee status. Some owners will not even allow refugees to take a tour of the apartment, and refuse a tour when talking over the telephone with the volunteer who help refugees look for an apartment. Consequently, refugees are forced to accept worse or smaller accommodations than what they can afford, or need, paid excessively high rent for rental property in a very poor condition, or are forced to move to a neighbourhood in which they do not wish to live or is located very far from schools attended by their children, according to the complainant.

When the Advocate learns of discrimination from a third party and not from a victim's discrimination complaint, the Advocate can start a discrimination investigation *ex officio*, but requires the victim's consent. Without the victim's consent, the Advocate can initiate the procedure *ex officio* only when the person discriminated against can not be determined, there is a larger group of persons discriminated against, or in cases generally important for protection against discrimination, which the Advocate determines on a case-by-case basis. Accordingly, the Advocate asked the complainant to provide the consent of persons discriminated against; however, due to fear of exposure, they were not willing to provide their consent. Based on the above, a discrimination investigation procedure was not conducted in this case; however, the Advocate made a commitment to examine this issue on the systematic level.

(case no. 0700-38/2017, clarification from 4 September 2018)

2.4.3 Forms of discrimination

2.4.3.1 Incitement to discrimination / hate speech or discriminatory speech

The Advocate received several complaints related to so-called hate speech or discriminatory speech. The complaints referred to anti-immigration parties' election posters, anti-refugee cover of a printed publication, call for submission of an anti-immigration story by one media company, and a radio show based on discriminatory and stereotypical jokes about migrants, LGBTIQ+ persons, older people, and other vulnerable groups.

In these cases, the Advocate has limited possibilities to take action. Under PADA, the Advocate can investigate discrimination cases within the context of two statutory provisions. The first is the provision of Article 10 of PADA, which gives the Advocate the legal basis for investigating discrimination, i.e. a complaint can result in an issued declaratory decision in accordance with GAPA, or in an inspection procedure conducted in accordance with Article 42 of PADA.

The provision of Article 10, paragraph 1, prohibits any **incitement to discrimination**. This is defined as any incitement of other persons to action that resulted in, results in, or could result in discrimination according to the provisions of this Act. In this regard, severe forms of prohibited conduct include particularly delivering or disseminating calls for racist, religious, national and sexual discrimination, inducing, inciting, instigating hatred and discrimination, and broader public haranguing that promotes discrimination.

According to Article 10, paragraph 2, of PADA, the Advocate can issue declaratory decisions and conduct an inspection procedure in cases of **public justification for neglecting or despising** persons or groups of persons due to personal circumstances, including **justifying ideas of the supremacy or superiority** of a person or a group of people with certain characteristics which arise from the aforementioned personal circumstances and which are supposedly superior to those who are not part of such group.

However, the legal regulation has one significant shortcoming – Article 10, which defines the forms of hate speech and discriminatory speech, is explicitly excluded from minor offence provisions, specifically Article 34 of PADA, which stipulates the fines for violations of specific provisions of PADA. This means that the competent inspectorate can not sanction a perpetrator for violation of Article 10 of PADA. The reason for such regulation is supposedly in the intent of the legislature to avoid certain subject matters falling under the jurisdiction of different regulations. In other words, if a certain matter constitutes a criminal offence, the offence can not be simultaneously defined as a minor offence. Under Article 10 of PADA, the Advocate can only investigate discrimination according to the provisions of GAPA; however, in the event of non-compliance with the declaratory decision, there is no minor offence authority to which the Advocate could refer the matter for the purpose of sanctions. The Advocate can only submit a criminal complaint to the competent state prosecutor's office.

2.4.4 Protection of legal persons against discrimination

According to PADA, the primary subjects of protection are natural persons, or groups of natural persons, to whom personal circumstances defined by the Act refer to. A legal person can seek protection against discrimination only if exposed to discrimination due to personal circumstance of individuals (natural persons) associated with this legal person (Article 1, paragraph 3, of PADA), such as its members, founders, or members of management or administration. In 2018, the Advocate closed one case in which a legal person invoked protection against discrimination.

Case example

A society of persons with disabilities that operates on a local level submitted a discrimination complaint, alleging discrimination due to the manner of financing of the societies of persons with disabilities, as part of associations. Financing is regulated by the Rules on standards and criteria for use of funds of the foundation for financing disabled people's organisations and humanitarian organisations in the Republic of Slovenia. The complainant believed that the society is entitled to funds under the Rules because of its status as a disabled people's organisation; however, under the current practice, the local societies' applications for funds are never considered – societies should receive all funds through associations of societies. The society alleged discrimination due to the local nature of the society and membership of the society in the association.

After investigating the case, the Advocate determined that, in this case, the society as a legal person is not protected against discrimination in the area of financing, based on the above Rules. There was no indication that the society was treated unfavourably due to any reason related to personal circumstances of members, founders, or persons in management or administration. Personal circumstances are defined as characteristics of individuals (natural persons) and not those of legal persons. Furthermore, personal circumstances are associated with the identity and personality of a person, and can not be equated with the status or position of a legal person. The Advocate assessed that the society is treated in the described manner because of the legal status of the society operating on a local level. The legal is a characteristic associated with a legal person, and is not related to personal circumstances of members, founder, or persons in management or administration. Furthermore, the circumstances of society's local operation can not be equated to a personal circumstance of place of residence or an individual's place of origin.

The fact that all other societies which operate only on the local level, are, due to this, not directly (only indirectly, through associations of societies) entitled to financing in accordance with the Rules, confirms that the legal status of the person represents the reason for such treatment in the area of financing. Considering its findings, the Advocate did not determine discrimination under PADA. (case no. 0700-35/2018, decision from 7 December 2018)

2.5 Conduct that does not constitute discrimination under PADA

Examination of received discrimination complaints, questions, requests for counsel and other correspondence from clients showed that 91 cases (58%) closed in 2018 did not represent matters related to (un)equal treatment, as no personal circumstance was stated or identified. Of the 149 cases closed, discrimination was determined in only 12 cases. In most cases, discrimination was not determined or investigated (in cases of counselling). This indicates that there is a need for better information on what constitutes discrimination, as well as on the difference between discrimination and other unwanted, contentious or even illegal acts or wrongdoings alleged by complainants before the Advocate. Below we present the most common situations where the Advocate did not determine discrimination.

What does not constitute discrimination under PADA:

- **specific exceptions** of prohibition of discrimination (based on different personal circumstances);
- individual's **choice or decision**, which is not a personal circumstance;
- **absence of infringement** of rights, legal interests or benefits;
- **conduct that does not infringe** on the rights of others.

2.5.1 Exceptions of prohibition of discrimination

Not every unequal treatment is prohibited. Situations in which different treatment is legally permitted are defined under Article 13 of the Protection Against Discrimination Act. Article 13, paragraph 1, of PADA defines the **general exception of prohibition of discrimination**: an exception is permitted if such different treatment is based on a legitimate goal and the means to achieve this goal are appropriate, necessary and proportional. This is a so-called **three-part proportionality test**. In each case, the Advocate must first determine whether specific conduct pursues a legitimate goal. If so, the Advocate examines whether the means to achieve this goal are appropriate, i.e. is it possible, by the nature of the matter, to achieve the goal pursued using these means? The Advocate then determines whether the means are necessary, i.e. can this goal be achieved only with these means, or can it be achieved using other means? Finally, the Advocate determines if the means are proportional, i.e. can the goal be achieved using more lenient means? Here, we must emphasise that the listed general exceptions of the prohibition of discrimination can not be applied for the personal circumstances of gender, race or ethnicity, religion or belief, disability, age or sexual orientation. These personal circumstances enjoy special protection under PADA, as the result of transposition of provisions of EU directives in the area of prohibition of discrimination. Accordingly, different treatment due to these personal circumstances is permitted only within the framework of **specific exceptions**.

The first specific exception for the area of employment and work is defined under Article 13, paragraph 2, of PADA, which defines the concept of *significant and decisive vocational requirements*. Therefore, different treatment in the area of employment and work is permitted due to gender, race or ethnicity, religion or belief, disability, age or sexual orientation, only if the personal circumstance that is the basis of different treatment is necessary and important for carrying out the work expected from the person. The three-part proportionality test must be fulfilled.

The second specific exception is defined under Article 13, paragraph 3, of PADA for the personal circumstance of age and the area of employment and work. Under this exception, employer can treat persons differently due to age only if it is objectively and reasonably justified by a legitimate goal, including the legitimate goals of *employment policy, labour market, and professional education*, but the three-part proportionality test must again be fulfilled.

The third specific exception, defined in Article 13, paragraph 4, of PADA, is related to religious ethos and also applies to the area of employment. Under this exception, different treatment due to an individual's religion or belief in professional work in churches and other religious communities or in other public or private organisations, who ethics are based on religion or belief, does not constitute discrimination if the nature of such work or due to the context, in which it is performed, religion or belief represent a legitimate and justified occupational requirement based on the organisational ethics.

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The fourth specific exception, defined in Article 13, paragraph 5, of PADA, excludes from the prohibition of discrimination the more favourable protection of women due to pregnancy and motherhood, and also applies in the area of employment and work – such more favourable treatment therefore does not constitute discrimination against others who do not enjoy such protection.

The fifth specific exception, defined in Article 13, paragraph 5 of PADA, excludes from the prohibition of discrimination the supply of goods and services exclusively or primarily for persons of one gender, whereby the three-part proportionality test must again be fulfilled.

Article 13, paragraph 6, of PADA stipulates another matter, namely implementing a specific additional protection hierarchy. It states that, in general, unequal treatment based on gender, ethnicity, race or ethnic background is always prohibited in the areas of education, access to social protection and health care, social benefits, and goods and services (except for the above-described exception for goods and services for one gender), and can not be justified by the three-part proportionality test. In other words, under PADA, gender, ethnicity, race or ethnic background represent the most protected personal circumstances.

In conclusion, in every case of alleged unequal treatment, the Advocate examines whether such conduct could be included under one of the exceptions under Article 13 of PADA. First, the Advocate checks if the conduct in question falls under any specific exception, and then checks if it falls under the general exception. If the conduct can not be justified with the exceptions of the prohibition of discrimination, and fulfils all elements required for establishing the existence of discrimination, the existence of discrimination is established.

ADVOCATE'S HIGHLIGHTS

Exceptions of prohibition of discrimination mean that, in certain cases defined by law, different treatment of one person or group compared to another is permitted and does not constitute a violation of the prohibition of discrimination.

This means that not every differentiation of persons is prohibited. People often strive to be different from others – e.g. to acquire higher or specific education, to know more languages, have more experience, to move to a specific town, etc. On this basis, for example, one person becomes employed, another does not; one person is accepted to a specific school, another is not; one person pays a specific amount for a service, while another person pays a different amount.

In these and other cases, differentiation due to our personal circumstances is permitted. However, it is permitted **only under specific conditions defined by law**. The basic condition is the so-called three-part proportionality test, while individual personal circumstances require additional conditions to be met.

ADVOCATE'S HIGHLIGHTS

Not every unequal treatment is prohibited. Situations in which different treatment is legally permitted are defined under Article 13 of PADA. Article 13, paragraph 1, of PADA defines the **general exception of prohibition of discrimination**: an exception is permitted if such different treatment is based on a legitimate goal and the means to achieve this goal are appropriate, necessary and proportional – **the three-part proportionality test**.

2.5.2 Difference between discrimination and other injustices or irregularities

Situations that represent **another wrongdoing, irregularity or illegality, which is not based on an individual's personal circumstance**, also do not constitute discrimination. Even if the Advocate determines that there is a chance of a certain irregularity in the investigated case, the Advocate can not investigate discrimination if the case does not involve any personal circumstance. In such cases, there are many other legal remedies to address the irregularities, such as regular lines of appeal, judicial protection, sectoral inspectorates, and other specialised independent public authorities.

Determining the personal circumstances that could be grounds for the alleged treatment represents one of the first steps in the procedure before the Advocate, in order to determine if it has jurisdiction in the specific case. The legal arrangement in Slovenia gives the Advocate a wide scope of powers, as PADA, as well as Article 14 of the Constitution of the Republic of Slovenia, includes a wide range of protected personal circumstances, while both regulations include an open general clause ("any other personal circumstance"), which enables the Advocate to consider other personal circumstances not explicitly listed in the provisions. Such circumstances are determined by the Advocate in accordance with the definition of personal circumstances. A personal circumstance is not required only in cases of sexual harassment.

2.5.3 Choice, not personal circumstance

Within this context, the Advocate often encounters alleged personal circumstances that are supposedly the grounds for discrimination, but are found not to match the statutory elements of the definition of personal circumstances. In terms of law, personal circumstances are innate or acquired personal characteristics, features, conditions or statuses, which are, as a rule, permanently and inseparably linked to a particular individual and their personality, in particular identity, or are not easily altered by the individual. Other cases usually (but not necessarily) involve an individual's **choice or decision**. This can depend on other objective factors, preferences, wishes and life aspirations; however, these are not personal circumstances, in terms of innateness and inalienability.

Case example

An employee, who is a lacto-vegetarian, is not provided a warm meal by the employer, which would suit his meat- and egg-free diet. Therefore, he only occasionally eats some fruit and vegetables. The employee informed the director, who is also the company owner. The director promised several times to provide appropriate meals, but failed to do so because, supposedly, the company co-owner objects. The employee is therefore still hoping for a vegetarian meal; otherwise, the employee requests a meal allowance.

The complainant addressed a question to the Advocate, whether failure to provide a warm meal constitutes prohibited discrimination. The Advocate determined that PADA protects against discrimination occurring on the basis of personal circumstances that are innate or acquired, or are not easily altered by the individual. As of yet, PADA does not protect lacto-vegetarianism as a dietary choice, unless the diet is linked to one of the protected personal circumstances such as religion or belief or medical condition.

Article 6 of the Employment Relationship Act directly lists medical condition under personal circumstances, whereas PADA includes it under "other personal circumstances". If lacto-vegetarianism is a type of diet that the employee required **because of their medical condition**, the competent physician can issue an appropriate medical certificate. With this certificate, the employee can exercise their rights and the employer has to fulfil its obligation to the employee under the legal order (laws and collective bargaining agreement). **Only in this case is the employer obligated to provide a suitable diet meal plan; if the employer fails to do so, it must reimburse the employee for the cost of the meal.** If the employer does not provide a suitable diet meal plan in the above manner, the Advocate can determine indirect discrimination due to disregard of a medical conditions, which puts the employee in a less favourable position than others. Even if the employee has no prescribed lacto-vegetarian diet, the employee can still explain their reasons for wanting to arrange a suitable meal plan at work, or to have a meal allowance added to their wage. Even though the employer is not legally obligated to do so, there is still the possibility of an agreement (which is not in

conflict with the prescribed legal order). **The same applies** if the **employee would justify the type of diet with their religion** (case no. 0700-16/2017, clarification from 16 October 2018)

Case example

A school from another language region, registered in the Republic of Slovenia, is considered a foreign school using a foreign system. Such a school has no concession, which has been accredited but not type-approved. This means that children can be educated in the school (officially, they are considered home-schooled), while their certificate has to be verified as if the child attended school in another country. The school, like all other foreign schools in Slovenia, is obligated to include in its programme 140 hours of Slovenian language lessons per school year (in accordance with the Rules on the register of private schools and the Implementation of International Education Programmes Act²¹ (IIEPA)), which the Republic of Slovenia does not fund. The parents have to pay for these lessons themselves. The complainant asked whether children attending this school are discriminated against.

The Advocate based its investigation on Article 57 of the Constitution of the Republic of Slovenia, which stipulates that basic education is mandatory in Slovenia, and is financed by the Government using public funds. Parents are not obligated to enrol their child in public school, but are entitled to enrol their child in a private school or educate the child at home, as stipulated by the Elementary school Act. The complainant is officially educating her children at home, which complies with the above-mentioned principle of the law. In fact, the children attend a foreign school, for which there is no legal framework of education financing, and the school is not financed using public funds of the Republic of Slovenia. The Advocate determined that the complainant primarily objects to the regulation that requires 140 hours of Slovenian language lessons per school year without providing any funds. The complainant explained that she had enrolled her children in a foreign school because their father comes from the same language region, and that they might in the future move to this language region and attend local schools, so children need to have good command of the foreign language. The Advocate found no violations of the arrangement within its scope of powers. Enrolling a child in a school where lessons are conducted in a foreign language, and subsequently having to pay the cost for Slovenian language lessons, is a conscious choice made by the parents and not the result of a personal circumstance in terms of PADA.

(case no. 0701-17/2017, clarification from 27 November 2017)

2.5.4 Absence of infringement of rights, legal interests or benefits

When a description of the matter does not indicate an infringement of human rights, fundamental freedoms, other rights, legal interests or benefits, the case does not involve discrimination. Article 4 of PADA explicitly states that discrimination exists only in the event of any “undue actual or legally unequal treatment, differentiation, exclusion, limitation or failure to act due to personal circumstances, the result or consequence of which is hindrance, reduction or elimination of equal recognition, enjoyment or exercise of *human rights and fundamental freedoms, other rights, legal interests and benefits.*”

Accordingly, the Advocate first checks if the protected element that the complainant or reporting person pursues in its complaint or question is specified under the law, or if it can be defined in the applicable legal framework (even if it is not explicitly defined as a right). Such a right, interest or benefit can also be defined by a specific obligation, under any regulation, of the government, local community, other legal or natural person or any other person liable under PADA, mirroring the rights, legal interests or benefits. If such rights, legal interests or benefits on one hand, or such an obligation on the other, can not be identified, then the situation does not constitute discrimination under PADA.

In practice, the Advocate encounters such situations in cases of complaints against various priorities set by public authorities in their work. Public authorities prioritise certain areas within their sphere of work, meaning that they then carry out activities or campaigns involving specific issues (and not others), publish calls for tenders in which these priorities are defined (while other are not), and carry out similar activities. Complainants often perceive such prioritisation of certain issues and absence of others, more relevant to them, as discrimination. In such cases, the Advocate can not determine discrimination if there is no clearly prescribed relevant obligation to provide access to rights or benefits under the same conditions for all.

²¹ Official Gazette of the Republic of Slovenia, no. 46/16

2.5.5 Conduct that does not infringe on the rights of others

Conduct that does not infringe on the rights of others (special measures and appropriate/reasonable accommodation) also does not constitute discrimination. These are, for example, measures necessary to balance the starting positions and eliminate deficiencies for persons or groups with a specific personal circumstances, which would without such measures be in a considerably worse position than persons or groups without this personal circumstance.

In this context, this includes special measures that can be either incentive measures or positive discrimination (Chapter 3.4 Special measures to ensure equality). These measures are only intended for certain groups that are disproportionately exposed to discrimination, and are adopted with the goal of eliminating the less favourable position that is already established for these groups. Other persons who do not belong to this group, and therefore do not have access to these benefits, can not allege discrimination.

The same applies to the area of appropriate/reasonable accommodation. The institute of reasonable accommodation is defined in Article 5 of the Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, which states, "In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned."

The obligation to provide reasonable accommodation is also defined by the UN Convention on the Rights of Persons with Disabilities (CRPD); however, the Slovenian term "reasonable accommodation" is replaced by "appropriate accommodation" – for better understanding, we use both, but the Advocate considers "reasonable accommodation" the more appropriate term. It means "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."

In the Slovenian legislative framework, appropriate accommodation is further implemented only partially, specifically only in the area of disability, with the Vocational Rehabilitation and Employment of Persons with Disabilities Act²² (VREPDA) and in the Equalisation of Opportunities for Persons with Disabilities Act.

Accommodation related to other personal circumstances is not regulated in Slovenian regulation; therefore, persons liable under PADA have no obligations to implement accommodation. They can, however, offer such accommodation, as it represents the only way in certain areas to consistently enforce certain rights and freedoms. In practice, the personal circumstances of parenthood, religion, medical condition and similar can indicate a need for reasonable/appropriate accommodation. An example of such situation is the case related to appropriate accommodation in providing religion-based school meals, which the Advocate investigated in 2018 (Chapter 2.4.1.4 Religion or belief).

ADVOCATE'S HIGHLIGHTS

Special protection for vulnerable groups (e.g. breastfeeding mothers, younger or older workers), special measures for promoting employment of persons with disabilities, appropriate accommodation of workplace for persons with disabilities, specific categories of unemployed, minority protection and other measures intended only for specific groups of people, do not constitute discrimination under PADA.

²² Official Gazette of the Republic of Slovenia, no. 16/07 – official consolidated text, 87/11, 96/12 – ZPIZ-2, and 98/14

2.6 Obstacles to investigating discrimination before the Advocate

In addition to the situations when discrimination can not be determined, there are two more situation when discrimination can not be investigated by the Advocate because the Advocate does not have the relevant powers.

2.6.1 Open proceedings before other public authorities

The Advocate's powers are limited by PADA, and the Advocate must adhere to the principle of separation of powers and the principle of legality, according to which different public authorities or courts have jurisdiction over various areas of legal arrangements.

Pursuant to past decision of the Constitutional Court of the Republic of Slovenia (e.g. Decision no. U-I-92/12-13 from 10 October 2013), the Advocate can not enter into or monitor the management of individual judicial proceedings (administrative or other proceedings conducted in accordance with the law governing the administrative procedure and judicial proceedings), and can not examine the correctness of adopted decisions. In such proceedings, the reporting persons has the option to check the correctness (legality) of the procedure and challenge the final decision by the legal means defined by law for these procedures. Such encroachment into individual proceedings bypassing the hierarchically structured system of legal means would be in conflict with Article 2 of the Constitution of the Republic of Slovenia (principle of the rule of law), which includes the principle of multilevel decision making.

If an individual contacts the Advocate regarding a matter that is already under judicial proceedings before a different body, the Advocate is not an appeal body and can not investigate whether discrimination occurred in the proceedings. In such cases, the Advocate can exercise its powers to provide independent assistance to persons subject to discrimination when enforcing their rights regarding protection against discrimination, in the form of counselling and legal assistance in other administrative and judicial proceedings related to discrimination (Article 21, indent 4, of PADA)

Case example

The candidate applied to the posting for gynaecology and obstetrics specialisation, posted by the Medical Chamber of Slovenia. During the interview before the selection panel, the candidate informed the panel that she intends to exercise her conscientious objection to performing artificial abortion and prescribing contraception in the performance of her vocation. The selection panel rejected the application on the basis of points that the candidate received in the selection process. The candidate believed that she was treated unfavourably based on her belief.

The Advocate of the Principle of Equality made enquiries with the Medical Chamber of Slovenia and asked for more information on the procedure. The Advocate determined that the reporting person filed a complaint against the decision of the Medical Chamber of Slovenia to the Ministry of Health (MoH), which, as the appeal body, rejected her complaint. A lawsuit in the administrative dispute was permitted against the decision of the Medical Chamber, of which the reporting persons was informed in the legal instruction.

The Advocate responded to the report with a clarification that it can not interfere with individual administrative procedures entertained by other bodies, as parties have the option to check correctness (legality) of procedure and challenge decisions with legal means, as stipulated by law. The Advocate therefore can not act as an appeal body against the decision of the Medical Chamber, as only the administrative court has the power to do so in this specific case. However, the Advocate can provide counsel and support to reporting persons, and use substantive information on the matter in preventing and addressing discrimination on the systemic level. The clarification does not have the nature of a binding individual legal act, and its purpose is to inform the reporting person regarding the powers and procedures before the Advocate. (case no. 0700-25/2017/, clarification from 30 October 2018)

2.6.2 Private and other relationships outside legal regulation

The second obstacle that prevents a discrimination investigation occurs if the alleged discrimination occurs in an area outside legal regulation. These are primarily private and intimate relationships, which the law does not regulate, such as choice of partner, friendship, family, people-to-people contacts and neighbourly relations in areas that are not governed by law. There are many prejudices in these situations; but until such prejudices bump against legal regulation, discrimination can not be investigated under PADA. However, if such relationships cross the boundary of legal regulation and occur in areas of life governed by law, an investigation of discrimination is possible, as are other procedures before other competent bodies (criminal, compensation, inspection, etc.).

2.7 Use of legal means before the court

Aside from submitting a discrimination complaint to the Advocate, victims of discrimination can also use regular judicial channels. This means that they file a lawsuit with the competent court in accordance with Article 39 of PADA. With their lawsuit, they can demand three measures especially defined for cases of discrimination: 1) cessation of discrimination; 2) payment of compensation due to discrimination; or 3) publication of judgment in media.

PADA defines a special form of compensation that persons discriminated against can claim before the court from the perpetrator due to discrimination. A particular characteristic of the compensation is that it has a prescribed minimum amount of EUR500 and a maximum amount of EUR5,000. When determining the compensation, the court considered the duration of discrimination, exposure to severe forms of discrimination, and other circumstances of the case. It is evident from the description of compensation characteristics that it does not mention the amount of damages caused, which can indicate that, in addition to the compensation under Article 39, it is possible to claim damages before the court in accordance with the general principle of tort law. However, the final answer to this question can only be provided by the court in case law.

Regarding the publication of the judgment in media, PADA stipulates that the claim is granted if the court, considering the circumstances of the case, assesses that the publication of the judgment is necessary to eliminate the consequence of discrimination or to prevent discrimination in other similar cases. If the judgment is published, it is done so in anonymised form, meaning that the emphasis of the publication is on providing information to the public on the content, and not on exposing the perpetrator.

Based on Article 39 of PADA, such a lawsuit is filed as a civil procedure before a court of civil jurisdiction. A lawsuit for discrimination under the provisions of ERA and Labour and Social Courts Act can be filed in labour and social courts. PADA is applied as a subsidiary act in these cases. The situation regarding the use of legal remedies for discrimination is presented in Section 3 (Systemic Tasks of the Advocate), specifically in Chapter 3.2.5 Investigated cases of discrimination in 2018 – Courts, and 3.2.6 Analysis of case law.

As already mentioned in subsection 2.2.3 Powers of the body, the Advocate also has the power to represent and accompany the victim of discrimination in court proceedings (powers that have not yet been exercised in 2018).

The power to represent the victim in court proceedings is defined in Article 41 of PADA, which regulates the role of the Advocate and non-governmental organisations. This provision defines the special requirements that the Advocate must fulfil to represent persons discriminated against in lawsuits before courts; specifically, only a person employed by the Advocate and has passed the state bar examination can carry out procedural act on behalf of the Advocate (Article 41, paragraph 1, of PADA).

The same applies to non-governmental organisations, which can also represent persons discriminated against in judicial proceedings under PADA; however, such an organisation also needs to have the status of working in the public interest in the area of protection against discrimination or human rights protection (Article 41, paragraph 2, of PADA).

As evident from the above requirements for representation by the Advocate, one part of the requirements for representation is stricter than requirements for general representation before the court,

one part is equal, while the third part is less strict. The general requirements for representation before the court are defined under Article 86 and Article 87 of the Contentious Civil Procedure Act²³ (CCPA), which defines the requirements for authorised representation of parties in judicial proceedings.

- According to the provision of Article 87 of CCPA, any persons with legal capacity can act as an authorised representative before a local court, i.e. a state bar examination, as required by PADA for an employee of the Advocate, is not necessary. This means that the provision under PADA is stricter than that under CCPA.
- Furthermore, according to CCPA, an authorised representative in a proceeding before a district, higher and supreme court can only be an attorney or another person who has passed the state bar examination, which matches the requirement under PADA.
- According to Article 86 of CCPA, a party in proceedings with extraordinary legal remedies can carry out civil action only through an authorised representative who is an attorney. PADA does not define this requirement, and only requires a completed state bar examination for representation. It is also unclear if this section of PADA constitutes a law for a specific subject matter (*lex specialis*), and does not necessitate this requirement (that only an attorney can act as an authorised representative), or if the rules for authorised representatives in PADA refers only to representation in lawsuits and regular legal remedies, but not extraordinary legal remedies.

If the Advocate and the person discriminated against do not agree on representation, the Advocate can only accompany the party in the proceedings, if the persons consents. An authorisation does not need to be presented for accompanying a party; the person discriminated against only makes a statement in the proceedings that they are accompanied by a specific person, employed by the Advocate, and that they wish the person present in the proceedings.

The same applies if the party wants to be accompanied by an employee of a non-governmental organisation that has the status of working in the public interest in the area of protection against discrimination or human rights protection.

²³ Official Gazette of the Republic of Slovenia, no. 73/07 – official consolidated text, 45/08 – ZArbit, 45/08, 111/08 – Constitutional Court's Decision, 57/09 – Constitutional Court's Decision, 12/10 – Constitutional Court's Decision, 50/10 – Constitutional Court's Decision, 107/10 – Constitutional Court's Decision, 75/12 – Constitutional Court's Decision, 40/13 – Constitutional Court's Decision, 92/13 – Constitutional Court's Decision, 10/14 – Constitutional Court's Decision, 48/15 – Constitutional Court's Decision, 6/17 – Constitutional Court's Decision, 10/17, and 16/19 – ZNP-1

3 SYSTEMIC TASKS OF THE ADVOCATE OF THE PRINCIPLE OF EQUALITY

3.1 Introduction

In addition to **counselling and investigation of discrimination**, the Advocate of the Principle of Equality conducts **systemic tasks** defined in detail by Article 21 of the Protection Against Discrimination Act:

- a. conducting independent studies on the position of persons with specific personal circumstance, particularly gender, ethnicity, race or ethnic background, religion or belief, disability, age and sexual orientation and other issues related to discrimination of persons with a specific personal circumstance;
- b. publishing independent reports and issuing recommendations to public authorities, local communities, bodies exercising public powers, employers, business entities and other persons in relation to determined position of persons with specific personal circumstances, specifically regarding prevention and elimination of discrimination and adopting special and other measures for eliminating discrimination;
- c. raising general public awareness of discrimination and prevention measures;
- d. monitoring the general situation of protection against discrimination and the position of persons with specific personal circumstances in the Republic of Slovenia;
- e. proposals to adopt special measures to improve the position of persons in a less favourable position due to a specific personal circumstance;
- f. exchange of available information on discrimination with EU bodies.

This chapter details the following systemic tasks of the Advocate:

Chapter 3.2 presents **monitoring of the general situation of protection against discrimination and the position of persons with specific personal circumstances in the Republic of Slovenia** (work of inspectorates, Ombudsman, police and prosecutors). In 2018, the Advocate also prepared the Analysis of labour court case law up to 2017 (published in Chapter 3.2.6 **Analysis of labour court case law**).

Chapter 3.3 also describes **NGO dialogue**. The Advocate met with 26 different NGOs. The chapter describes the summaries of discussed subjects and **positions of NGOs regarding key question** in the area of discrimination that the participants highlighted.

Chapter 3.4 presents **Special measures for ensuring equality**. These are special measures **to improve the position of persons in actually less favourable position due to specific personal circumstance**. The Advocate **prepared an analysis of responses** submitted by various ministries regarding their understanding and implementation of special measures.

Chapter 3.5 describes **awareness-raising of discrimination in the general public and specific public segments**. It describes the **communication goals and various target groups** for awareness-raising activities. In 2018, the key emphasis of awareness-raising was on systematic **dissemination of basic information on the existence of the body**, and information on options under PADA related to protection against discrimination.

3.2 Monitoring the general situation in the country – data on investigated cases of discrimination on the national level

Pursuant to Chapter 3 of PADA, the Advocate monitors the general situation regarding discrimination in Slovenia. The Advocate monitors the general situation of protection against discrimination in several ways, including research methods (own and international studies), situation analysis (within the country and using international comparisons), monitoring operation of other bodies, and analysing the Advocate's own work.

In accordance with Article 16 of PADA, the Advocate and competent inspection services collect anonymised data on the number of investigated cases of discrimination by specific personal circumstance, form of discrimination, and area of discrimination. Once per year, the inspection services submit this data to the Advocate. The above data is collected and used for the purposes of monitoring, planning, and managing non-discrimination policies, as well as for scientific and research purposes.

As part of its tasks and powers under PADA, the Advocate monitors the general situation of protection against discrimination and the position of persons with specific personal circumstances in the Republic of Slovenia (Article 21, indent 6, of PADA). For the purpose of monitoring the general situation, the Advocate submitted a request to competent inspection services for data on the number of investigated cases of discrimination in 2018 by specific personal circumstance, form of discrimination, and area of discrimination. The Advocate also requested data from the Police, Prosecutor-General's Office, all courts, and the Human Rights Ombudsman.

The Advocate asked the Prosecutor-General's Office and the Police for data on cases that meet the definition of a crime under Article 297 of the Criminal Code, i.e. public incitement to hatred, violence or intolerance, and under Article 131 of the Criminal Code, i.e. violation of right to equality related to any personal circumstance (gender, ethnicity, race or ethnic background, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, financial situation, education or other), and could as such constitute acts of discrimination under PADA. The Advocate asked the Police also for data on minor offences under the Protection of Public Order Act²⁴ (PPOA).

The Advocate asked the courts for data on anonymised final judgments that are based on Article 14 of the Constitution of the Republic of Slovenia, PADA, IPETA, Articles 6, 6.a, 27 and 133 of the Employment Relationship Act, Article 6 of the Equalisation of Opportunities for Persons with Disabilities Act, and Article 3 of the Freedom of Religion Act²⁵ (FRA).

The Advocate also asked the Ombudsman for data on investigated cases related to discrimination in 2018, for purposes of monitoring and preparing a comprehensive assessment of the situation in the area of protection against discrimination.

²⁴ Official Gazette of the Republic of Slovenia, no. 70/06

²⁵ Official Gazette of the Republic of Slovenia, no. 14/07, 46/10 – Constitutional Court's Decision, 40/12 – ZUJF, and 100/13

3.2.1 Investigated cases of discrimination in 2018 – Inspectorates

The Advocate submitted a data request in accordance with Article 16 of PADA to 25 inspection bodies.

Of the 25 inspection bodies that the Advocate sent a request for anonymised data, 18 responded.

Of the 18 responses, 13 inspection bodies (the same number as the previous year) investigated no cases of discrimination by specific personal circumstance, form of discrimination and specific area in 2018. These inspection bodies are as follows:

1. Slovenian Maritime Administration – Port State Control
2. Inspectorate of the Republic of Slovenia for Agriculture, Forestry, Hunting and Fisheries
3. Chemicals Office of the Republic of Slovenia – Chemicals Inspection Service
4. Civil Aviation Agency of the Republic of Slovenia
5. Financial Administration of the Republic of Slovenia
6. Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning
7. Budget Supervision Office of the Republic of Slovenia – Budgetary Inspection Division
8. Infrastructure Inspectorate of the Republic of Slovenia
9. Agency for Communication Networks and Services of the Republic of Slovenia
10. Health Inspectorate of the Republic of Slovenia
11. Public Agency of the Republic of Slovenia for Medicinal Products and Medical Devices
12. Information Commissioner
13. Slovenian Radiation Protection Administration – Radiation Protection Inspection Service

Five inspectors submitted specific answers on investigating discrimination cases:

- Labour Inspectorate of the Republic of Slovenia
- Public Sector Inspectorate of the Republic of Slovenia
- Inspectorate of the Republic of Slovenia for Education and Sport
- Culture and Media Inspectorate of the Republic of Slovenia
- Market Inspectorate of the Republic of Slovenia

The Defence Inspectorate of the Republic of Slovenia and the Internal Affairs Inspectorate of the Republic of Slovenia did not respond to the Advocate. The following institutions also did not respond: Administration of the Republic of Slovenia for Food Safety, Veterinary and Plant Protection, Metrology Institute of the Republic of Slovenia – Metrology Supervision Division, Slovenian Nuclear Safety Administration – Radiation and Nuclear Safety Inspection Service, Inspectorate of the Republic of Slovenia for Protection against Natural and other Disasters, and Ministry of Public Administration – Information Society Directorate – Electronic Signature Inspector.

Below is a detailed overview of investigated discrimination cases, based on received responses of inspection bodies who informed the Advocate that they investigated cases of discrimination.

3.2.1.1 Labour Inspectorate of the Republic of Slovenia

In its response, the Labour Inspectorate of the Republic of Slovenia initially emphasised that it does not keep records or databases by investigated matters, but by found violations of the provisions of labour law, even in cases of established violations of the prohibition of discrimination. The main reasons for such recordkeeping are as follows:

- usually, more than one alleged violation of legislation is listed in one report, often many different and varied violations;
- allegations in reports are most often very meagre and do not include enough details for us to draw any conclusion regarding the existence of potential discrimination or any personal circumstances that would make a specific person or unspecified group of people feel discriminated against;
- definition of violations listed in a report by the perpetrator does not necessarily match the definitions of violations in subject-matter regulation or inspectorate's inspection findings in the specific case.

Additionally, regarding the violations found regarding the prohibition of discrimination, the Labour Inspectorate of the Republic of Slovenia emphasises that they do not keep records and statistics by personal circumstances that was the grounds of discrimination. However, as there were not many such violations in 2017, they analysed the specific cases involving discrimination for the purposes of the report.

Findings for 2018 indicate that labour inspectors found a violation of the prohibition of discrimination (violation of Article 6 of ERA) in a total of 17 cases. Most of these violations (15) were found with private sector employers, and only two were found with public sector employers. It is also interesting that only two cases involved discrimination of job candidates, while all other recorded cases involved discrimination of workers while they were employed.

With job candidates (2 cases), discrimination was related to the following personal circumstances:

- family situation of a worker (question during the interview related to the candidate's family situation and arrangement of child care in the event of illness);
- gender (the employer publicly posted the free job position only for female candidates, "we are looking for a capable girl ..."; however, the female gender did not represent an essential and decisive criterion for work, as the job position was related to marketing and website administration).

Discrimination of workers during the time of employment (7 cases) was recorded by inspectors in investigated cases on the bases of the following personal circumstances:

- personal relationship with the employer's person in charge or likeableness (unpopular workers had to do more overtime than is permitted under ERA, and had to work at less favourable times);
- family relationship with the employer's legal representative (only the related worker received the holiday pay);
- job position – only the director received the pay increment based on seniority, while other workers did not;
- employment with the employer on a specific day (Christmas bonus and part of salary were paid only to workers who were employed on a specific day);
- social status – two cases (workers in less favourable socio-economic position would receive their holiday pay sooner than others);
- medical condition (a worker that had been absent from work due to sick leave for six months received a 15-day volunteer work agreement for signing).

Several cases of determined discrimination in 2018 involved monetary claims by workers, specifically payment of holiday pay – this was paid to workers at different times (six cases), and payment of wages on different days (two cases); in some cases, discrimination was also determined due to payment of pay increment based on seniority and reimbursement of work-related costs.

In most cases of determined discrimination, inspectors took action by issuing warnings in reports, in accordance with the Minor Offences Act²⁶⁹ (MOA) or the Inspection Act, whereas an inspector issued a regulatory decision in two cases and a minor offence decisions with a notice in one case.

All cases of determined violation of the prohibition of discrimination, where the specific personal circumstance could be identified, involved direct discrimination.

3.2.1.2 Public Sector Inspectorate of the Republic of Slovenia

In 2018, the Public Sector Inspectorate of the Republic of Slovenia received six reports, in which reporting persons alleged claimed discrimination in employment or workplace bullying/chicanery, termination of employment contract, and recognition of rights arising from the employment relationship. Of those, five reports were related to alleged irregularities in public institutes and one was related to alleged irregularities in a private limited company. Because general labour regulations apply to

²⁶ Official Gazette of the Republic of Slovenia, no. 29/11 – official consolidated text, 21/13, 111/13, 74/14 – Constitutional Court's Decision, 92/14 – Constitutional Court's Decision, 32/16, and 15/17 – Constitutional Court's Decision

employment in public institutes and corporate entities, with regard to recognition of rights arising from the employment relationship and termination of employment contract, inspectors for the civil servant system did not have the relevant jurisdiction and referred all six cases for further consideration or examination to the Labour Inspectorate of the Republic of Slovenia. The inspectors investigated one of the above reports, related to alleged irregularities in assessing work performance of civil servants, but did not determine discrimination.

3.2.1.3 Inspectorate of the Republic of Slovenia for Education and Sport

In 2018, the Inspectorate of the Republic of Slovenia for Education and Sport received complaints alleging discrimination in assessment of knowledge, educational measures, cooperation with parents, working with children with special needs, and accommodation in assessment. Most received complaints (e.g. bad grade or educational measure, which constitute discriminatory treatment in the opinion of the complainant) referred to individuals' own perception of specific events or circumstances, but did not constitute discrimination under PADA. All investigated cases involved the area of education.

The legal basis of Article 2.a of the Organisation and Financing of Education Act is also relevant for the Inspectorate of the Republic of Slovenia for Education and Sport, which states that safe and supportive educational environment has to be provided in kindergartens, schools and other institutes for education children and adolescents with special needs, prohibiting any corporal punishment and any other form of violence towards or between children, any unequal treatment based on gender, sexual orientation, social and cultural background, religion, race, ethnic background and ethnicity, and particularities in physical and mental development.

The discrimination cases involved the following personal circumstances:

- ethnicity (lower grades in Slovenian language lessons for students who did not speak Slovenian as a native language, prohibition of communication in a non-Slovenian language, alleged unprofessionalism of a non-Slovenian educator, asking students about their ethnicity);
- language (mimicking other dialects in front of students, derision);
- religious belief (declaring religion by raising hands);
- other personal circumstances – medical condition or disability (not attending a trip);
- other personal circumstance (inappropriate terminology and use of words before students, receiving gifts for a higher grade, requests for placing students in another class).

Number of discrimination cases by form of discrimination:

- 14 cases of direct discrimination;
- one case of harassment;
- one case of justifying neglecting or despising persons or groups of people due to personal circumstances.

The inspections and additional enquiries regarding the above reports found violations of school legislation, resulting in measures taken based on jurisdiction, while direct discrimination was determined under PADA on the basis of ethnicity and disability (non-participation on a trip and inappropriate communication with students regarding religion). In the matter of non-participation on a trip, the Advocate in 2019 issued a decision that determined discrimination. Regarding the case of alleged declaring of religion, the Advocate in 2019 examined the procedure with the Culture and Media Inspectorate of the Republic of Slovenia and determined that the inspectorate appropriately addressed the report from the perspective of discrimination (no discrimination was determined), and that the procedure before the Advocate is not necessary.

3.2.1.4 Culture and Media Inspectorate of the Republic of Slovenia

In 2018, the Culture and Media Inspectorate of the Republic of Slovenia received six reports claiming alleged violations of Article 8 of the Mass Media Act²⁷ (MMA, hate speech). Investigations determined that in these specific cases, published programme content did not contain elements of hate speech, considering the provision of Article 8 of MMA, but only offensive or inappropriate description. According

²⁷ Official Gazette of the Republic of Slovenia, no. 110/06 – official consolidated text, 36/08 – ZPomK-1, 77/10 – ZSFCJA, 90/10 – Constitutional Court's Decision, 87/11 – ZAvMS, 47/12, 47/15 – ZZSDT, 22/16, and 39/16

to the Culture and Media Inspectorate of the Republic of Slovenia, hate speech is speech that threatens public law and order, and leads to a qualitative transition from words to action, as there must be a likelihood that words will lead to violence. According to the Culture and Media Inspectorate of the Republic of Slovenia, threats must be concrete and must manifest in direct danger of violating the physical and mental integrity of individuals, obstruction to exercise of rights and duties of people, public authorities, bodies of self-governing local community, and bodies exercising public powers in a public location. Acts of incitement must be of such nature that, in the environment and under the specific circumstances of their occurrence, violations of public law and order do not occur only because of timely cessation of hate speech.

After assessing the reports, the Culture and Media Inspectorate of the Republic of Slovenia found that, in most cases, programme content does not indicate the legal elements of incitement to violence or inequality and intolerance under MMA. Because of suspicion of criminal offence under Article 297 of the Criminal Code (suspicion of criminal offence of incitement to hatred, violence or intolerance), two cases were referred to the Police for investigation.

3.2.1.5 Market Inspectorate of the Republic of Slovenia

The Market Inspectorate of the Republic of Slovenia conducts inspections regarding access to goods and services available to the public. Inspections are conducted only on the basis of received reports. In 2018, the inspectorate investigated the following cases:

- The reporting person stated that a fuel retailer made the benefit card, which is also a payment card, conditional upon permanent employment. The inspection found no violation of the prohibition of discrimination.
- One of the ads posted on the web portal for room rentals stated that it was not intended for foreigners (“no foreigners”). It was determined that an error occurred with the ad, and the institute monitoring the web portal missed the ad. The ad was immediately removed and a warning was issued.
- A report was filed, claiming that entry to a fair was free only for persons with disabilities using wheelchairs, and not for all other persons with disabilities. Based on the Advocate’s opinion that discrimination exists because the benefit is not provided to all persons with disabilities, the Market Inspectorate of the Republic of Slovenia issued a warning.
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3.2.1.6 Analysis of inspection data regarding investigated cases of discrimination in 2018

Of the 25 inspection bodies that the Advocate sent a request for anonymised data, 18 responded. Seven inspection bodies did not respond to the request: Internal Affairs Inspectorate of the Republic of Slovenia, Administration of the Republic of Slovenia for Food Safety, Veterinary and Plant Protection, Metrology Institute of the Republic of Slovenia – Metrology Supervision Division, Slovenian Nuclear Safety Administration – Radiation and Nuclear Safety Inspection Service, Inspectorate of the Republic of Slovenia for Protection against Natural and other Disasters, Inspectorate of the Republic of Slovenia for Electronic Signature, and Defence Inspectorate of the Republic of Slovenia.

Of the 18 responses, 13 inspection bodies (the same number as the previous year) investigated no cases of discrimination by specific personal circumstance, form of discrimination and specific area in 2018. These inspection bodies are as follows: Slovenian Maritime Administration, Inspectorate of the Republic of Slovenia for Agriculture, Forestry, Hunting and Fisheries, Chemicals Office of the Republic of Slovenia, Financial Administration of the Republic of Slovenia, Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning, Budget Supervision Office of the Republic of Slovenia, Infrastructure Inspectorate of the Republic of Slovenia, Agency for Communication Networks and Services of the Republic of Slovenia, Health Inspectorate of the Republic of Slovenia, Public Agency of the Republic of Slovenia for Medicinal Products and Medical Devices, Information Commissioner, Slovenian Radiation Protection Administration – Radiation Protection Inspection Service.

Table: Overview of received data from inspection bodies regarding investigated cases of discrimination – comparison between 2017 and 2018

SYSTEMIC TASKS OF THE ADVOCATE OF THE PRINCIPLE OF EQUALITY

	Inspection body	Number of reports 2017	Number of determined cases of discrimination 2017	Number of reports 2018	Number of determined cases of discrimination 2018	Notes (2018)
1	Market Inspectorate of the Republic of Slovenia	7	4	3	2	Also submitted anonymised cases. In one case, the notice issued was based on the Advocate's opinion.
2	Labour Inspectorate of the Republic of Slovenia	/	11	/	17	The inspectorate does not keep records by received reports of discrimination, as a single report can include several allegations. Records are kept by investigated and identified cases.
3	Defence Inspectorate of the Republic of Slovenia	5	0	No response	No response	
4	Inspectorate of the Republic of Slovenia for Education and Sport	9	/	16	2	The inspectorate does not keep records by received reports of discrimination, as a single report can include several allegations. Records are kept by investigated and identified cases.
5	Culture and Media Inspectorate of the Republic of Slovenia	No response	No response	6	0	In four cases reported, the inspectorate assessed that no unlawful conduct occurred. Two cases were referred to the Police.
6	Public Sector Inspectorate of the Republic of Slovenia	0	0	6	/	All matters were related to labour regulations and were referred to the Labour Inspectorate of the Republic of Slovenia.

Note: When inspectorates responded and stated that they have no such reports, the number listed is 0.

In 2018, three inspectorate investigated discrimination, the same number as the previous year. The two most proactive inspectorates in this regard are the Market Inspectorate of the Republic of Slovenia and the Labour Inspectorate of the Republic of Slovenia. The Inspectorate of the Republic of Slovenia for Education and Sport referred many received reports to the Advocate (14 cases in 2017 and 2018), while resolving a few on its own within the framework of Article 2.a of OFEA.

Based on the inspectorates' data, discrimination is reported most frequently in the area of employment and work, and in the area of education. There were more reports in both these areas in 2018 than in 2017, which indicates better victims' awareness that discrimination is prohibited. There are also reports in the areas of access to goods and services, which includes the private sector. The number of these reports in 2018 decreased by over 50% in comparison to 2017. Reports were also submitted to the Culture and Media Inspectorate of the Republic of Slovenia, which is in a specific position, as MMA does

not include penal provisions for violation of Article 8, which refers to hate speech; therefore, in the event of suspected unlawful conduct, the Culture and Media Inspectorate of the Republic of Slovenia can only refer such cases to other competent authorities.

In the cases investigated, the inspectorate determined that persons were discriminated against on the basis of the following personal circumstances: gender, ethnicity, language, religion or belief, disability, medical condition, nationality, parenthood, social status, family relationship, and others.

ADVOCATE'S HIGHLIGHTS

Based on the inspectorates' data, discrimination is reported most frequently in the area of employment and work, and in the area of education. There were more reports in both areas in 2018 than in 2017.

In the cases investigated, the inspectorate determined that persons were discriminated against on the basis of the following personal circumstances: gender, ethnicity, language, religion or belief, disability, medical condition, nationality, parenthood, social status, family relationship, and others.

3.2.2 Investigated cases of discrimination in 2018 – Human Rights Ombudsman

In accordance with Article 21 of PADA, which tasks the Advocate with monitoring and assessing the situation of protection against discrimination, the Advocate also asked the Ombudsman for data on investigated cases related to discrimination in 2017. The Ombudsman presented cases of discrimination received in 2018 separately in its Annual Report, in the chapter Equality Before the Law and Prohibition of Discrimination.²⁸

Table: Cases related to equality before the law and prohibition of discrimination, as presented in the Human Rights Ombudsman Annual Report for 2018.

Area	Cases considered		Resolved and founded cases	
	2017	2018	Number of resolved cases	Number of founded cases
Equality before the law	4	1	1	0
Equal opportunities for persons with disabilities	11	24	22	4
Equal opportunities related to gender identity or sexual orientation	7	8	8	2
Equal opportunities related to race, ethnicity or ethnic background	30	5	5	1
Equality before the law and prohibition of discrimination – other	16	8	10	0
Total – equality before the law and prohibition of discrimination	68	46	46	7

In 2018, the Ombudsman investigated 46 cases involving equality before the law and prohibition of discrimination, which is less than a year before, when it investigated 68 cases. Of the 46 closed cases, one cases was related to equality before the law, 22 to equal opportunities for persons with disabilities, eight to equal opportunities related to gender identity or sexual orientation, five to equal opportunities related to race, ethnicity or ethnic background, and ten related to other cases of equality before the law and prohibition of discrimination. Seven closed cases out of 46 were well-founded. The Ombudsman's Report does not provide details on how many and which cases were related to prohibition of discrimination under PADA. It does state that some cases are not related to unequal treatment based on personal circumstances, on the basis of which discrimination is prohibited in accordance with PADA (e.g. unfounded unfavourable position of subordinate bond holders in accessing legal remedies regarding the termination of qualifying liabilities).

In addition to a statistical report on examined cases related to prohibition of discrimination, the Ombudsman also analysed some highlighted cases and areas of discrimination in the relevant section of the Report. In the area of discrimination against **persons with disabilities**, the Ombudsman points out discrimination of students with disabilities that has been on-going for several years, regarding transportation from the place of residence and place of education, and lack of appropriate basis for an appropriate accommodation of the education process for students with disabilities. The Ombudsman also pays special attention to the issue of accessibility of courts for persons with disabilities, and finds, on the basis of its enquiries, that appropriate access is provided in only 46% of buildings in which the courts operate, and only 20% of those buildings also provide a public toilet for persons with disabilities. Furthermore, the Ombudsman found that not all courts provide information on the rights of persons with disabilities to equal participating in the proceedings.

²⁸ Human Rights Ombudsman (2019) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, pp. 68–89, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf

In the area of discrimination due to **gender identity and sexual orientation**, the Ombudsman addresses three wider issues. The first is the legal recognition of gender, which is not regulated by law in Slovenia and is carried out only on the basis of implementing regulation, i.e. Rules on the implementation of the Civil Register Act.²⁹ Article 37 of the Civil Register Act states that the basis for a decision on gender change is a certificate of the competent medical institution, which indicates that the person changed their gender. According to the Ombudsman, this is contentious from the perspective of Resolution 2048 of the Parliamentary Assembly of the Council of Europe, which calls for elimination of requirements of sterilisation, other medical treatment, or medical diagnosis of mental disorder as conditions for legal recognition of gender. The second issue related to the permanent ban of blood donations for men who has same-sex sexual relationships. According to the Ombudsman, such a permanent prohibition could constitute discrimination based on sexual orientation, as it is not founded in law in Slovenia, but is based on the position of transfusion medical experts, while Article 52, paragraph 1, of the EU Charter of Fundamental Rights states that any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law. Finally, the Ombudsman addresses the issue of the discrimination and constitutional contentiousness of Article 2, paragraph 3, sentence 1, and Paragraph 3, paragraph 4, of the Civil Union Act³⁰ (CUA), which prevents adoption of a child to sex-sex partners in civil union or non-formal civil union. The Ombudsman assesses that this arrangement could constitute discrimination based on sexual orientation, an unpermitted encroachment on dignity and protection of privacy and personal data, and incompatibility with always greatest benefit for children.

Within the framework of alleged discrimination based on other personal circumstances, the Ombudsman lists three cases. In relation to the personal circumstance of **age**, the Ombudsman points out the alleged discrimination of arrangement in exercising the right to subsidised transportation, which is limited to 32 years of age for students. The Advocate is also examining this case in a discrimination investigation procedure. It is also clear from the Report that Ombudsman referred some reporting persons alleging discrimination to the Advocate.

The Ombudsman also points out two cases of alleged discrimination based on **nationality**, specifically the banks' refusal to open transaction account based on nationality, and allegedly discriminatory criteria of the nationality of the Republic of Slovenia for participation at the 64th competition for the 2019 Eurovision Song Contest.

²⁹ Official Gazette of the Republic of Slovenia, no. 40/05, 69/09, and 77/16

³⁰ Official Gazette of the Republic of Slovenia, no. 33/16

3.2.3 Investigated cases of discrimination in 2018 – Police

In accordance with Article 21 of PADA, the Advocate collects data on violations investigated by the Police, for the purposes of monitoring, logging and providing assessments of the situation in the area of protection against discrimination in the Republic of Slovenia. There are three areas that fall under scope of Police powers that are relevant for monitoring from the perspective of the Advocate's area of activity:

- Article 20 of the Protection of Public Order Act (**incitement to intolerance**)
- Article 131 of the Criminal Code (**violation of right to equality**)
- Article 297 of the Criminal Code (**public incitement to hatred**)

Provision of Article 20 of PPOA states that **incitement to intolerance with the purpose of inciting** national, racial, gender, ethnic, religious or political **intolerance** or intolerance related to sexual orientation is prohibited. This is an aggravated form of offences defined in Articles 6, 7, 12, 13 and 15 of PPOA (violent or reckless behaviour, indecent behaviour, damaging an official sign, mark or decision, writing on buildings, or destroying national symbols). Provision of Article 20 of PPOA therefore defines a *discriminatory motive* when carrying out some other violations of public law and order.

In relation to the criminal offences investigated by the Police, the Advocate also collects data on investigated cases that meet the definition of the crime under the following:

- Article 131 of CC, i.e. **violation of right to equality**, related to any personal circumstance (ethnicity, race, skin colour, religion, ethnic background, gender, language, political or other belief, sexual orientation, financial situation, birth, genetic heritage, education, social status or any other circumstances).
- Article 297 of CC, i.e. **public incitement to hatred, violence or intolerance**, related to any personal circumstance (gender, ethnicity, race or ethnic background, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, financial situation, education or other), and could as such constitute acts of discrimination under PADA.

Generally, as the Police and inspectorates use a different system of logging and recording discrimination cases, there was a problem of structured overview of data in a form defined by PADA: by personal circumstance, area and form of discrimination. The Police keeps records differently – by gender, age and nationality of perpetrators of minor offences and criminal offences. From the perspective of accurate monitoring of investigated discrimination cases on the national level in accordance with the requirements of PADA, there is a need for a systematic harmonisation of recordkeeping for investigated discrimination cases.

ADVOCATE'S HIGHLIGHTS

Within the area of Police activity, the Advocate monitors the number of offences investigated by the Police under Article 20 of PPOA. This article states that incitement to intolerance with the purpose of inciting national, racial, gender, ethnic, religious or political intolerance or intolerance related to sexual orientation is prohibited.

Generally, as the Police and inspectorates use a different system of logging and recording discrimination cases, there was a problem of structured overview of data in a form defined by PADA: by personal circumstance, area and form of discrimination.

From the perspective of accurate monitoring of investigated discrimination cases on the national level in accordance with the requirements of PADA, there is a need for a systematic harmonisation of recordkeeping for investigated discrimination cases.

3.2.3.1 Offences under the Protection of Public Order Act (Article 20 of PPOA) – incitement to intolerance

In 2018, the Police imposed sanctions in 46 minor offence cases under Article 20 of PPOA, which states that incitement to intolerance with the purpose of inciting national, racial, gender, ethnic, religious or political intolerance or intolerance related to sexual orientation is prohibited. The Police therefore determined offences under Article 20 of PPOA in two cases less than in 2017, and in four cases more than in 2016.

The most violations of Article 20 of PPOA, which defines the discriminatory motive, were committed in relation to Article 6 of PPOA (violent or reckless behaviour), which means that, in practice, most violations of the prohibition of discrimination in the area of offences occurred during brawls, fights, etc. The number of violations in relation to Article 7 of PPOA (indecent behaviour) dropped.

Table: Overview of measures under Article 20 of PPOA, which defines the discriminatory motive in certain offences – violations found

Article of PPOA	Number of violations		
	2016	2017	2018
6 violent or reckless behaviour	29	32	31
7 indecent behaviour	11	8	4
12 damaging an official sign, mark or decision	1	7	10
13 writing on buildings	1		
15 destroying national symbols		1	1
Total	42	48	46

3.2.3.2 Criminal offences under Article 131 of the Criminal Code – violation of right to equality

Article 131 of CC states that whoever due to differences in respect of ethnicity, race, skin colour, religion, ethnic background, gender, language, political or other beliefs, sexual orientation, financial situation, birth, genetic heritage, education, social position or any other circumstance deprives or restrains another person of any human right or liberty recognised by the international community or laid down by the Constitution or the statute, or grants another person a special privilege or advantage on the basis of such discrimination shall be punished by a fine or sentenced to imprisonment for not more than one year (paragraph 1). Whoever persecutes an individual or an organisation due to their advocacy of the equality of people shall be punished under the provision of the preceding paragraph (paragraph 2). In the event of the offence under paragraphs 1 or 2 of this Article being committed by an official through the abuse of office or official authority, such an official shall be sentenced to imprisonment for not more than three years (paragraph 3).

In 2018, the Police investigated criminal offences under Article 131 involving 5 individual suspects and 10 individual injured parties, which is comparable to previous years.

Table: Criminal offences under Article 131 of the Criminal Code – violation of right to equality, by years

Number of suspects or injured parties			
	2016	2017	2018
Number of suspects	5	5	5
Number of injured parties	11	13	10

3.2.3.3 Criminal offences under Article 297 of the Criminal Code – incitement to hatred, violence or intolerance

According to Article 297 of CC, whoever publicly provokes or stirs up hatred, violence or intolerance based on national, racial, religious or ethnic background, gender, skin colour, origin, financial situation, education social status, political or other belief, disability, sexual orientation or any other personal circumstances, and does so in a way that endangers or disturbs public law and order, or by using threats, insults or affronts, shall be punished by imprisonment of up to two years (paragraph 1). The same sentence shall be imposed on a person who publicly disseminates ideas on the supremacy of one race over another, or provides aid in any manner for racist activity, or denies, diminishes the significance of, approves, disregards, makes fun of, or advocates genocide, holocaust, crimes against humanity, war crime, aggression, or other criminal offences against humanity, as defined by the legal order of the Republic of Slovenia (paragraph 2). If the offence under preceding paragraphs has been committed by publication in mass media, the editor or the person acting as the editor shall be sentenced to the punishment, by imposing the punishment referred to in paragraphs 1 or 2 of this Article, except if it was a live broadcast and he was not able to prevent the actions referred to in the preceding paragraphs, or publication on websites that allow users to post content in real life or without prior supervision (paragraph 3). If the offence under paragraphs 1 or 2 of this Article has been committed by coercion, maltreatment, endangering of security, desecration of ethnic, national or religious symbols, damaging the movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be punished by imprisonment of up to three years (paragraph 4). If the acts under paragraphs 1 or 2 of this Article have been committed by an official by abusing their official position or rights, he shall be punished by imprisonment of up to five years (paragraph 5).

In 2018, the Police investigated 32 cases of suspected criminal offence of public incitement to hatred, violence or intolerance under Article 297 of CC, which is six more than in 2017 and 17 fewer than in 2016.

In accordance with Article 148, paragraph 9, of the Criminal Procedure Act³¹ (CPA), 13 criminal complaints were filed with the competent district state prosecutor's offices, while in 19 cases the Police submitted only reports to the district state prosecutor's offices.

Table: Overview of criminal offences investigated under Article 297 of the Criminal Code – incitement to hatred, violence or intolerance

	Number of investigated cases		
	2016	2017	2018
Criminal complaint	18	13	13
Report	31	13	19
Total	49	26	32

³¹ ³¹ Official Gazette of the Republic of Slovenia, no. 32/12 – official consolidated text, 47/13, 87/14, 8/16 – Constitutional Court's Decision, 64/16 – Constitutional Court's Decision, 65/16 – Constitutional Court's Decision, 66/17 – ORZKP153, 154, and 22/19

3.2.4 Investigated cases of discrimination in 2018 – Prosecutors

In accordance with Article 21 of PADA, for the purposes of monitoring, logging and providing assessments of the situation in the area of protection against discrimination in the Republic of Slovenia, the Advocate asked the Office of the State Prosecutor-General (OSPG) for data. OSPG submitted data on prosecution of criminal offences under Article 297 of CC – incitement to hatred, violence or intolerance. OSPG explained that it can only gather data for reporting on the basis of data entered into the register. In the register, OSPG keeps only the data on committed criminal offences, but never enters the motive that led the perpetrator to commit the criminal offence, except when the motive constitutes an aggravating circumstance and a legal element of the criminal offence, e.g. self-interest or revenge. OSPG could not provide the data of interest by circumstances, forms and areas of discrimination, but did submit the data on the number of criminal complaints received, adopted conclusions, and judgments issues for criminal offences under Article 297 of CC. OSPG did not submit data for prosecution under Article 131 of CC (violation of right to equality).

Table: Prosecution of criminal offences under Article 297 of CC – incitement to hatred, violence or intolerance

Event	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Received criminal complaints	21	8	21	63	83	34	13	20	37	13	32
Decisions on dismissed criminal complaints	22	5	6	29	37	36	13	30	19	19	15
Filed criminal charges or proposals for imposition of corrective measure or criminal sanction	1	3	5	5	26	15	1	2	1	2	6
Decisions of conviction			4	4	3	9	4	2		1	
Decisions of punitive order			1	3	13		2		1		1
Decisions of acquittal	2			1					1		1
Decisions of rejection			3			2					

The statistics show an initial increase of filed criminal complaints from 2008 to 2012, when the number of filed criminal complaints was highest, followed by a decreased from 2013 to 2018.

Here, we must point out that in 2013 OSPG adopted the legal position from 27 February 2013, stating the “hate speech” can not be a punishable offence in any case if the consequence of this action did not result in endangerment or disturbance of public law and order. In any event, there must be an objective possibility and likelihood (abstract danger is not sufficient) of public law and order violation, for the speech to be considered punishable.

Public authorities and other parties who usually file criminal complaints (e.g. Police) have implemented the legal position in practice as applicable guidelines, resulting in a significant decrease of filed criminal complaints.

Consequently, there has been a drastic decrease of the number of completed criminal proceedings, as well as the number of decisions of conviction and punitive order (from a total of 16 decisions of conviction and punitive order in 2012 to one punitive order in 2018).

This means that criminal prosecution of the most severe forms of hate speech (i.e. cases of public incitement to hatred, violence and intolerance) has come to a complete stop in Slovenia, and the drop in prosecution and sanctioning in this area lead to normalisation of such speech and also normalisation of discrimination, which is a worrying trend.

3.2.5 Examined cases of discrimination in 2018 – Courts

In accordance with Article 21 of PADA, for the purposes of monitoring, logging and providing assessments of the situation in the area of protection against discrimination in the Republic of Slovenia, the Advocate collected case law data related to discrimination. First, the Advocate searched the database (search engine) of the Supreme Court of the Republic of Slovenia – www.sodnapraks.si. Using the search engine, the Advocate identified 27 discrimination-related cases in 2018. Of the 27 decisions, only eight indicate the specific personal circumstance, while in other decisions plaintiffs made general allegations of discrimination without defining the personal circumstance and fulfilling other elements of burden of production. Discrimination was found in only one identified case (discrimination due to medical conditions – HIV status, when accessing medical services, ref. no. I Cp 494/2018, Maribor Higher Court).

According to the responses provided by the courts, they strive to constantly and regularly update the case law in the database at www.sodnapraks.si, using the special-purpose application; however, the search engine is not completely reliable. Based on the Above, the Advocate also directly asked the courts to provide the most comprehensive case law data. Consequently, the Advocate received one anonymised decision, related to a request for judicial protection against a decision issued by the Labour Inspectorate of the Republic of Slovenia. A few courts informed the Advocate that while decisions in the area of discrimination were issued in 2018, they are not yet final.

Generally, the courts' responses indicate that they either did not consider discrimination-related cases or they can not confirm that they considered no such cases, as the courts' registers do not allow simple gathering of data on considered cases. The courts do not keep case records by criteria such as articles of various laws that are of interest for the Advocate: personal circumstance, area or form of discrimination. Collection of data on all matters related to discrimination would therefore have to be done manually, which is not feasible due to limitations. Some courts have therefore conducted interviews with judges and asked them to identify case files that could involve discrimination. Even those courts that can provide data on discrimination cases do not keep records in such a way that would allow easy identification of final discrimination-related decisions and discrimination-related decisions under appeal. Furthermore, the question of discrimination can occur with other issues considered by the courts in specific cases. For example, discrimination could be the basis for decisions on compensation, lawsuits for illegal termination of employment contract, disciplinary procedures, monetary claims and similar. Decisions in the area of discrimination most often overlap with allegations of bullying.

Based on courts' responses, we can see that most discrimination-related cases are considered by labour and social courts. The Higher Labour and Social Court stated that, after a quick manual search through the register, using keywords "compensation – discrimination – worker" for 2018, it identified 17 cases received for consideration, of which nine cases were also closed. It is possible that the database contains other discrimination-related cases; however, if they were not defined as such in the register, they can not be identified this way. The opposite can also be true: discrimination could be listed under the type of claim, but the case in substantive terms does not involve the issue of discrimination.

Table: Overview of courts' decisions related to discrimination in 2018

Case no.	Outcome	Personal circumstance	Area	Form of alleged discrimination	Damages/ note	Court
I Cp 494/2018, conviction	Decision of conviction	Medical condition	Health care	Direct	Awarded damages EUR2,700	Maribor Higher Court
ZSV 640/2018	Approval of request for judicial protection, termination of minor offence proceedings	/	Work conditions – termination of employment contract	Harassment, victimisation	There can be no allegation of retaliatory measures if there was no harassment allegation.	Maribor Local Court
Pdp 466/2018	Decision of rejection	Gender, parenthood	Work conditions – termination of employment contract	Direct	Work process reorganisation during parental leave	Higher Labour and Social Court
Pdp 683/2018	Decision of rejection regarding the allegation of discrimination	Medical condition	Work conditions	Direct	Lower grade due to sick leave	Higher Labour and Social Court
Pdp 504/2018	Decision of rejection	Disability	Work conditions – termination of employment contract	Indirect	Decrease in production	Higher Labour and Social Court
Pdp 277/2018	Decision of rejection	Education	Work conditions	Direct	Work process reorganisation	Higher Labour and Social Court
Pdp 974/2017	Decision of rejection	Age and disability	Work conditions	Indirect	Limitation of leave days to 35	Higher Labour and Social Court
Pdp 898/2017	Decision of rejection	Religion or belief	Access to employment	Direct	Alleged discrimination due to a headscarf	Higher Labour and Social Court
VIII Ips 264/2017	Decision of rejection	Disability	Work conditions	Direct	Alleged discrimination in reassignment to another position	Supreme Court

3.2.6 Analysis of labour court case law

For the purposes of monitoring case law in the area of protection against discrimination in Slovenia before 2018, the Advocate conducted an analysis of decisions of the Ljubljana Labour and Social Court and the labour courts in Maribor, Celje and Koper. The Advocate requested all decisions issued in 2004 and later. While collecting the data from all courts in Slovenia, it soon became apparent that most cases of alleged discrimination are considered by labour courts.

The labour courts of first instance submitted 65 cases considered by the end of 2017 to the Advocate. The courts in Celje and Maribor also submitted second- and third-instance decisions (Higher Labour and Social Court and Supreme Court of the Republic of Slovenia) in addition to the first-instance decisions, while the courts in Ljubljana and Koper submitted only first-instance decisions. When reviewing the decisions, the Advocate investigated how many cases of discrimination are considered by the courts and in how many cases discrimination was found. The Advocate also examined the alleged personal circumstances and whether the courts define these personal circumstances. If so, the Advocate examined the sources used for this purpose (decisions of the Constitutional Court of the Republic of Slovenia, literature, online sources, dictionaries, other regulation, etc.). In cases where discrimination was found, the Advocate conducted an analysis of the form of discrimination found. The Advocate also examined how courts apply the rule of reversal of the burden of proof. In cases where discrimination was found, the Advocate also conducted an overview of the effects of the decisions. In the event of awarded damages, the Advocate examined whether the damages were effective and proportional to the damage incurred by the plaintiff, and whether the damages deter the employer from repeat violations. The Advocate also paid attention to any other peculiarities of individual decisions and whether or not case law was uniform in considering discrimination.

Due to the high quantity of requested decisions (the initial list for the period since 2004 included over 100 decisions; due to limited human resources, anonymisation would take over half a year), the Ljubljana Labour and Social Court reduced the list to the period from 2014 onwards. The court submitted 28 cases to the Advocate. Of the decisions submitted, 17 cases did not involve decision on discrimination, but allegations of bullying and a decision on defamation of honour and reputation in one case. In the remaining 11 cases, the court made decisions on discrimination. Discrimination was not determined in any of the cases. As the legal basis for consideration, the court always listed Article 6 of ERA, or, for older cases, Articles 6 and 6.a of the Employment Relationship Act³² (ERA) from 2002.

Among the alleged personal circumstances, the most often was age, followed by political conviction and disability, one case of medical condition and trade union membership, each. In all cases, the court of first instance decided that the alleged personal circumstance did not constitute grounds for alleged unequal treatment, i.e. in most cases, the defendant established that unequal treatment did not occur. The court did not specifically define the individual personal circumstance in any case. The alleged areas of discrimination referred to Article 6, paragraph 2, of ERA or ERA (2002): conditions for employment, promotion, training, salaries, work conditions, and termination of employment contracts. The alleged discrimination was direct in most cases, one case involved allegations of harassment, while one case involved allegations of sexual harassment, which as a specific form of discrimination is not related to a personal circumstance. Considering that the court did not find discrimination in any of the cases, it did not make any decision on the appropriate damages.

The **Maribor Labour Court** submitted 13 cases. Eight cases involved decisions on discrimination, while other cases were related to the area of bullying. Discrimination was determined in one case; however, in a re-trial based on the decision of the court of second instance, the court of first instance determined that discrimination did not occur. The other seven decisions also found no discrimination. As the legal basis for consideration, the court always listed Article 6 of ERA, or Articles 6 and 6.a of ERA (2002). The alleged personal circumstances included medical condition, disability, ethnicity, ethnic background, age and gender. In the decision in which the first-instance court determined discrimination, the defendant also appealed against the finding of discrimination, as the plaintiff did not state any personal circumstances that was allegedly the reason for unequal treatment by the defendant; the appeal was successful. In the re-trial, the court of first instance determined that no actual discrimination occurred. The Maribor Labour Court also did not define any personal circumstance. The alleged areas of

³² Official Gazette of the Republic of Slovenia, no. 42/02, 79/06 – ZZZPB-F, 103/07, 45/08 – ZArbit, and 21/13 – ZDR-1

discrimination referred to Article 6, paragraph 2, of ERA or ERA (2002): conditions for employment, promotion, salaries, work conditions, and termination of employment contracts. Almost all cases involved allegations of direct discrimination, while one case involved allegations of harassment. Regarding the damages, the court considered the amount of damages for mental distress in the first decision, which initially found discrimination, with the awarded amount equalling 0.1% of the plaintiff's claim. This claim was set too high from the perspective of established Slovenian case law; it equalled EUR6 million.

The **Koper Labour Court** submitted 20 cases at our request. In seven cases, the decisions did not involve discrimination but bullying. Discrimination was determined in six cases; it was not found in the other seven. Article 6 of ERA and Articles 6 and 6.a of ERA (2002) were always listed the legal basis for consideration. The alleged personal circumstances were trade union membership, ethnicity, language, and, in several cases, other personal circumstances, under which the court in one case included filing a lawsuit, plaintiff's allegation that the defendant caused damage, and a plaintiff's request to dismiss the relevant head; in other cases, the court included under personal circumstances the plaintiff's dissatisfaction with the method of calculating hours and their request to eliminate the violation. The court did not explain why it considered these circumstances as "other personal circumstances", and did in no case examine the definitions of the comprehensively listed personal circumstance in Article 6 of ERA. The alleged areas of discrimination referred to Article 6, paragraph 2, of ERA (or Article 6 of ERA (2002) in older decisions), i.e. conditions for employment, promotion, salaries, work conditions, holiday leave, and termination of employment contracts. The alleged forms of discrimination were direct discrimination, harassment and, in two cases, sexual harassment. According to the court's position on determining the amount of non-pecuniary damages, it needs to consider whether in the specific case the damages are effective and proportional to the damage incurred by the plaintiff, and whether they deter the defendant from further violations. The court defines the proportionality as follows: the damages must be determined in the correct relationship to the damage caused and the fundamental goal, i.e. prohibition of discrimination, while also having preventive and punitive functions, and do not merely exist as satisfaction for the injured party. The highest awarded damages in the submitted cases were EUR13,000; however, the damages awarded were never as high as the plaintiff sought. The awarded damages equalled 50% or less of the damages sought.

The **Celje Labour Court** submitted four cases to the Advocate, of which two were related to alleged discrimination. In both cases, the court decided that there was no discrimination occurred; however, in one case, the court of second instance granted the plaintiff's appeal and decided that the defendant failed to prove that it did not discriminate against the plaintiff. The legal basis for both decisions was Article 6 of ERA (2002). The alleged personal circumstances were trade union membership and, in the case where the second-instance court determined discrimination, allegations of fraud, unfairness, incompetence and negligence, which the court justified as being "other personal circumstances". The court did not define personal circumstances in detail in these two cases. The alleged areas of discrimination were salary inequality and work conditions. Both cases involved allegations of direct discrimination. In the case, the court of second instances determined damages in the amount of net salaries that the plaintiff would receive if the defendant and plaintiff concluded a fixed-term employment contract.

ADVOCATE'S HIGHLIGHTS

Of the 65 labour court decisions received, 34 decisions were related to determining discrimination. Of these 34 cases, discrimination was determined by eight decisions. The remaining 31 decisions involved allegations of bullying.

The courts uniformly stated that, even though Article 6 of ERA includes the rule of reversal of the burden of proof, this does not discharge the plaintiff's obligation of the burden of proof, as this is the only way to give the defendant a chance to fulfil its burden of proof and provide appropriate evidence.

The existence of a personal circumstance, which could represent grounds for discrimination, is not sufficient for the conclusion that discrimination exists.

Concluding observations

Of the 65 labour court decisions received, 34 decisions were related to determining discrimination. Of these 34 cases, discrimination was determined by eight decisions. The remaining 31 decisions involved allegations of bullying.

In other cases, the plaintiff did not even allege a personal circumstance or the personal circumstance did not constitute grounds for alleged unequal treatment, or the court decided that unequal treatment did not occur. The courts uniformly stated that, even though Article 6 of ERA (or Article 6 of ERA (2002)) includes the rule of reversal of the burden of proof, this does not discharge the plaintiff's obligation of the burden of proof, as this is the only way to give the defendant a chance to fulfil its burden of proof and provide appropriate evidence. The existence of a personal circumstance, which could represent grounds for discrimination, is not sufficient for the conclusion that discrimination exists.

In all cases, the courts define discrimination in accordance with Article 6 of ERA and, in older cases, with Article 6 of ERA (2002), which states that employers must ensure that job seekers being given access to employment or workers during their employment relationship and in connection with the termination of employment contracts are afforded equal treatment, irrespective of their ethnicity, race or ethnic background, national or social background, gender, skin colour, medical condition, disability, religion or belief, age, sexual orientation, family status, trade union membership, financial status or other personal circumstances in accordance with this Act, the regulations governing the implementation of the principle of equal treatment and the regulations governing equal opportunities for women and men. The courts did not state any other legal basis for determining discrimination in these decisions. From the decisions received, we can see that the courts allow a quite wide interpretation of "other personal circumstances", and include among them the following personal circumstances: filing a lawsuit, plaintiff's allegation that the defendant cause damage, plaintiff's request to dismiss the relevant head, plaintiff's dissatisfaction with the method of calculating hours and their request to eliminate the violation, and allegations of fraud, unfairness, incompetence and negligence.

The most common alleged form of discrimination was direct discrimination; indirect discrimination was not alleged in any case, while several cases involved harassment and three cases sexual harassment. In one case of sexual harassment as a special form of discrimination, the court decided that "dubious or covetous looks", with absence of any other verbal or physical conduct, do not represent sexual harassment. Non-verbal communication must violate the person's dignity and create a threatening, hostile, demeaning, humiliating or offensive environment. In another decision related to sexual harassment, the court decided that the verbal conduct violated the person's dignity and constituted a special form of discrimination; in a third case, the alleged verbal sexual harassment occurred on the way from work, by a third party, and the employer as the defendant could not be held responsible.

In conclusion, we see that discrimination-related case law is relatively scarce, that discrimination is rarely alleged before the courts, and that there are no extensive further interpretations of essential institutes of anti-discrimination law in case law, such as specific personal circumstances, individual forms of discrimination, and similar. Very few discrimination-related lawsuits succeed; that is why there are no damages awarded for discrimination, and we consequently can not determine whether sanctions are effective, proportional and deterring, as is required by European Union law on non-discrimination.

The above shows a need for greater public awareness-raising of the options provided by anti-discrimination law and the legal remedies available, as well as further education of specialised public segments, such as attorneys and judicial employees that create case law.

3.3 Monitoring the general situation in the country – dialogue and cooperation with NGOs

In accordance with Article 15 of the Protection Against Discrimination Act, the Advocate, working to form solutions and prepare proposals for achieving the purpose of the Act, cooperates with non-governmental organisations (NGOs) operating in the area of equal treatment, protection of human rights and fundamental freedoms, protection against discrimination of vulnerable groups, or legal or social assistance for persons discriminated against. The provision of Article 15 of PADA, which defines cooperation with social partners and non-governmental organisation, imposes an obligation to cooperate with NGOs not only to the Government, but also to other public authorities, which includes the Advocate.

NGOs in Slovenia are very important partners in dialogue, as they represent one of the forms of citizen participation in governance of country and society, and carry out publicly beneficial projects and programmes in key areas of protection against discrimination. NGOs detect problems and needs in society at an individual and systematic level, and act as important facilitators between individuals and government bodies. They also make tremendous contributions to effectively addressing areas of equal treatment, protection of human rights and fundamental freedoms through advocacy and direct assistance to persons discriminated against.

The role of non-governmental organisations as representatives of civic society in combating discrimination can include the following³³:

- providing a means for expressing and actively addressing the needs of people who are discriminated against;
- supporting victims of discrimination in their access to justice;
- promoting diversity and equality in society;
- establishing the mechanisms to influence decision-making;
- mainstreaming non-discrimination and equal treatment in policies;
- challenging authorities and corporations to act against discrimination;
- monitoring, documenting and denouncing discrimination;
- maintaining equality on the political agenda and encouraging mobilisation.

The Advocate supports activities by non-governmental organisations by:

- informing them of the tasks and duties of the Advocate and other bodies responsible for ensuring the principle of equality;
- promoting exchange of information on discriminatory practices that non-governmental organisations observe in the field;
- cooperates in substantive drafting and execution of awareness-raising and other projects by non-governmental organisations that address the challenges of unequal treatment.

In 2018, the Advocate invited NGOs to meetings on personal circumstances and areas of discrimination. The Advocate also organised two structured dialogue panel discussions with Roma organisations in Prekmurje and Dolenjska.

The work of systematic monitoring of NGOs and establishing a continual dialogue continued in 2018. The dialogues are intended to help analyse the situation in the field, which NGOs observe and respond to with their activities. In 2018, the Advocate began drafting a long-term action plan for systematic cooperation with non-governmental organisations as key players in reaching target populations with a specific personal circumstance, or based on different areas of discrimination.

The Advocate organised meetings with NGOs that carry out activities related to the following personal circumstances or areas of discrimination:

- ethnic background or race: over 70 invited Roma organisations, societies and Roma municipal councillors;

³³ European Commission (2005) Combating Discrimination – A Training Manual; available at: https://www.migpolgroup.com/old/public/docs/10.CombatingDiscriminationTrainingManual_EN_09.05.pdf

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- disability: Slovenian Association of the Blind and Visually Impaired, Slovenian Paraplegic Association, Muscular Dystrophy Association of Slovenia, Zveza Sožitje – Slovenian Association for People with Intellectual Disabilities, Civilian Invalids of War Association of Slovenia, and National Council of Disabled Persons' Organisations of Slovenia (NSIOS);
- age (youth): Youth Council of Slovenia, Ypsilon Institute;
- sexual orientation, gender identity and gender expression: Pride Parade Association, Institute for Culture of Diversity Open, TransAkcija, Legebitra, ŠKUC, ŠKUC LL, and DIH;
- area of employment and labour market: Workers' Counselling Centre.

In 2019, the Advocate had the first dialogue with NGOs conducting activities related to the personal circumstances of ethnic affiliation (nationalities of former Yugoslavia), and is preparing the first meeting with the representatives for the personal circumstance of religion or belief (religious communities). In 2019, the Advocate is also planning a dialogue with organisations actively promoting equality and prevention of discrimination due to the personal circumstance of gender.

Below, we present summaries of meetings with NGOs in 2018 related to the following topics:

- data on activities of the organisation and generally on discrimination;
- understanding the role of the Advocate in the work of NGOs;
- aspects of systemic discrimination;
- cooperation with other public authorities.

3.3.1 NGO dialogue with Roma organisations

The Advocate organised two panel discussions with Roma organisations. On 3 April 2018 in Murska Sobota, the Advocate organised a panel discussion with Roma organisations of Prekmurje, specifically in the form of a structured dialogue session. Furthermore, on 18 July 2018, the Advocate organised a structured dialogue session with Roma of Dolenjska, which was held in Novo mesto. Over 70 Roma organisations and Roma councillors were invited to a structured dialogue session, with the response in the region of Prekmurje significantly better than in the region of Dolenjska.

They lack information on the existence of PADA and discrimination-reporting options. They highlighted the issues of health care and social rights, and also noted the systemic discrimination.

They wish to have better communication with social work centres and the Office of the Government of the Republic of Slovenia for National Minorities.

Roma organisations and Roma municipal councillors invited to structured dialogue sessions:

Roma organisations and Roma councillors in Prekmurje: Športno-kulturno društvo "Romi" Pušča, Romska športna zveza Slovenije Pušča, Športno društvo Škorpigon Pušča, Športno društvo NK Pušča, Romsko društvo Ciganos's, Strelsko društvo Ali Kardoš Černelavci, Društvo športnih avtomobilov Pušča Black Angels, Romsko športno društvo Kamenci, Športno društvo Roma Vanča vas, Strelsko društvo "Tarča 007" Vanča vas, Športno društvo Asfalt Borejci, Nogometni klub Roma, Prostovoljno gasilsko društvo Pušča, Zveza Romov Slovenije, Občinsko romsko društvo Zeleno vejš, Romsko društvo Romani union, Romsko društvo Čapla, Romsko kulturno društvo Zelena Dolina, Romsko društvo Somnakuni čerhenja Občine Cankova, Romsko društvo Ređina – Občina Lendava, Romsko društvo Romano Jilo Občine Lendava, Romsko kulturno in turistično društvo Pušča, Romsko društvo "Rasto", Romsko društvo Pušča, Romsko društvo Zelenu dombu, Romsko izobraževalno kulturno-turistično društvo Černelavci, Romsko kulturno, turistično, športno društvo Amari bas-Naša sreča Vanča vas-Borejci, "Gitamo-m" – romsko društvo gomilica, Občinsko romsko društvo Romano vodji, Romano Pejtaušago – Romsko društvo Kamenci, Romsko društvo Dobrovnik, Kinološko društvo "Roma" Vanča vas – Borejci, Romski akademski klub, Društvo za razvoj kulture in glasbenega izobraževanja romske populacije – Nevo "di", Društvo upokojencev Pušča "Roma", Romsko društvo Iskrive zlate iskricice Občine Kuzma, Romsko športno kulturno društvo Mladost, Združenje Forum romskih svetnikov Slovenije, Romsko kulturno društvo Narcisa, Romsko kulturno društvo Pertoča, Romsko društvo Ciganos's, Evropska romska zveza – European Roma Union – Europakri Romani Unia, Romsko kulturno raziskovalno društvo Korak, Romsko ŠKD MLADOST, Branko Horvat, Dušan Horvat, Evgen Cener, Jože Horvat (Toni), Matej Horvat, Meri Horvat, Nataša Horvat, Rudolf Horvat, Stanislav Šarkezi, Verona Ratko.

Roma organisation and Roma councillors in Dolenjska: Romsko društvo Romano drom, Kulturno romsko društvo Vešoro, Romsko društvo Roma Semič, Romsko društvo Kham Metlika, Zveza romske skupnosti v Sloveniji – Bele krajine, Romsko društvo Čavora – Krško, Romsko društvo Rom Črnomelj, Romsko društvo Romano veseli, Romsko društvo Cigani nekoč – Romi danes, Romsko društvo kolo, Društvo Gele roma – Odšli so Romi, Henček Kosec, Valerija Hudorovac, Darka Brajdič, Bruno Brajdič, Željko Hudorovac, Matija Hočevar, Moran Jurkovič – Dane, Duško Smajek.

3.3.2 NGO dialogue on the personal circumstance of disability

The Advocate invited members of the Council for Persons with Disabilities of Republic of Slovenia, who are representatives of organisations of people with disabilities, operating at the national level and included in NSIOS.

The meeting was attended by representatives of the Slovenian Association of the Blind and Visually Impaired, Slovenian Paraplegic Association, Muscular Dystrophy Association of Slovenia, Zveza Sožitje – Slovenian Association for People with Intellectual Disabilities, Civilian Invalids of War Association of Slovenia, and representative of NSIOS.

The organisations see the role of the Advocate primarily in the area of legislative initiatives, awareness-raising, information, and participation in concrete projects.

3.3.3 NGO dialogue on the personal circumstance of age (youth)

Youth Council of Slovenia

The Youth Council of Slovenia (YCS) is an umbrella association of youth organisations operating at the national level. It brings together organisations with different interests, ideological and political convictions. The key purpose of YCS is to champion the interests of the youth, promote youth participation in policy-making that significantly affects their life and work. In this role, it contributes to creating a youth-friendly environment, in which they can develop into independent, responsible, supportive and active individuals and members of society. In a more narrow sense, it strives to improve the position of young people as a special social group.

They see cooperation with the Advocate primarily in joint gathering and analysis of data.

Cooperates with the Ministry of Labour, Family, Social Affairs and Equal Opportunities (MLFSAEO), Ministry of the Environment and Spatial Planning (MESP), and Ministry of Education, Science and Sport (MESS).

Ypsilon Institute

The Ypsilon Institute is a youth organisation working in the area of youth employment and entrepreneurship. They offer young people the opportunity to upgrade their skills for greater employability, promote self-employment, and provide support to help young people start their entrepreneurial journey.

They primarily see the role of the Advocate in drafting legislative initiative, cooperation in intergenerational projects, and participation in public discussions.

The Ypsilon Institute cooperates with MLFSAEO.

3.3.4 NGO dialogue on the personal circumstances of sexual orientation, gender identity, and gender expression

In 2018, the Advocate met with organisations working with the personal circumstances of gender identity, sexual orientation, and gender expression. Representatives of **Pride Parade Association, Institute for Culture of Diversity Open, Kvartir, TransAkcija, Legebitra, ŠKUC, ŠKUC LL, and DIH** attended the meeting.

The organisations see the role of the Advocate primarily in the area of legislative initiatives.

The problematic areas include intersexuality, peer violence between LGBTIQ+ youth, arrangement of legal recognition of gender, discrimination of persons with HIV, bisexuality and life of older LGBTIQ+ persons.

3.3.5 NGO dialogue on employment and the labour market

Workers' Counselling Centre

Workers' Counselling Centre is an organisation for advocacy, protection, promotion and development of work-related, social, and status rights of workers and other vulnerable groups. It was founded in 2016. They handle work code violations.

They see the role of the Advocate primarily in awareness-raising on PADA and education of workers on discrimination.

Several forms of discrimination were highlighted at the meeting, among them ethnicity-based segregation in the production process and termination of employment contract based on the personal circumstance of disability.

They cooperate with the Labour Inspectorate of the Republic of Slovenia and the Employment Service of Slovenia.

3.3.6 Analysis of challenges perceived by NGOs, highlighted in the dialogue

General challenges

How do NGOs see the role of the Advocate in their activities?

- Most NGOs pointed out that they see the role of the Advocate primarily in awareness-raising on what discrimination is, and in awareness-raising and reducing prejudices in the public.
- They also see the role of the Advocate in providing information on individuals' options in case of discrimination.
- Furthermore, they see a possibility for cooperation in organising joint educational activities.
- The Advocate should conduct research in the area of discrimination (they believe they do not have sufficient funds for such activities), take on court cases and legal matters. They are committed to continuous monitoring and cooperation.
- Some see the Advocate as an intermediate link in establishing communications between public authorities and NGOs.
- The Advocate should also prepare campaigns on discrimination by specific personal circumstance of discrimination, and actively participate in panel discussions and events organised by NGOs.

Main systemic issues related to discrimination

- NGOs find a strong correlation between personal circumstances that are the reason for discrimination and the systemic arrangement.
- Victims are often not informed or empowered to report discrimination.
- Some NGOs pointed out that they themselves do not know the scope of Advocate's activities.
- They pointed out a lack of studies and case law reviews.
- At the meetings, NGOs most often pointed out their lack of financial resources or even termination of funding.
- A large problem is also their general lack of human resources and exhaustion.

Cooperation of NGOs with public authorities and other institutions.

- Most NGOs are already cooperating with different government institutions in one way or another.
- For some, there are issues in establishing contact and communication.
- One of the main needs where the Advocate could provide assistance is in helping to establish cooperation with government institutions.

Specific challenges

Personal circumstance of ethnic affiliation – Roma community

In the dialogue with the Advocate, representatives of **Roma organisations in Prekmurje and Dolenjska** pointed out that they first learned about the existence of the law and the institute of the Advocate during the dialogue. During the discussion, the issue of health care was highlighted several times, because, according to their opinion, Roma people are not treated equally. They pointed out that just a few years ago, Roma women in one of the Slovenian maternity hospitals were giving birth in the smoking lounge for nurses and not in the delivery room. In the area of social rights, they pointed out the difficult communication with social work centres. They believe that Roma people are not appropriately informed of their rights. They also believe that social workers should work more in the field, in order to gain better contact with the Roma community and to get acquainted with the difficult living conditions in some settlements. They pointed out that certain matters only start moving along at social work centres once Roma councillors become involved. The issue of child marriage was also highlighted. They emphasised that the position of Roma women is particularly critical, as intersectional discrimination often occurs among them.

Regarding the labour market, they primarily mentioned the inability of Roma people to gain employment. Practice has shown that very often the problem is in their surname, as they are automatically excluded from the selection process because of it. The same situation occurs when their CVs show their place of residence – most Roma people from Prekmurje are therefore employed in Austria.

In communication with other (public) authorities, they have a feeling that they are not equal partners in dialogue. They believe they are being listened to, but not heard. They see the problem in the lack of dialogue between institutions dealing with Roma issues. They believe that the Office of the Government of the Republic of Slovenia for National Minorities needs to be reorganised, as it seems to represent the interests of the Government of the Republic of Slovenia and not the interests of minorities. Regarding the cooperation with bodies of the local self-government, they believe it all primarily depends on the municipal political tendencies – financial resources for the Roma issues are also dependent on the political tendencies. They have the best experience with the Ministry of Culture. Particularly the partners in dialogue during the visit of Roma organisations in Dolenjska highlighted the issues of infrastructure and unsuitable living conditions, which, in their opinion, still represents a problem that the Government and local communities do not address appropriately.

Several times, the discussion partners pointed out the experience of Roma people with the police. They believe that in this area, particularly in Prekmurje, there has been improvement in the last years, primarily due to education activities, in which they also participated. Certain issues remain, as Roma people are treated as inferior by the police.

In the area of education, they observe a great difference between Roma in Prekmurje and Dolenjska. The main obstacle remains the language, as some Roma children, when enrolling in school, do not speak Slovenian and consequently can not participate in lessons, while this issue is not addressed appropriately. In some town, segregation of Roma children still occur, particularly during lunch time.

In the area of legislation, they pointed out that the Constitution of the Republic of Slovenia does not distinguish Roma people as either indigenous or non-indigenous, while the laws do. The partners in dialogue pointed out that new-age Roma people in Slovenia have the status of foreigners, and that this needs to be resolved urgently.

Personal circumstance of disability

In the dialogue with representatives of organisations active in the area of the **personal circumstance of disability**, it was initially emphasised that the community of persons with disabilities needs to be informed of the existence of the Advocate and the services it provides. They believed that awareness-raising about the prohibition of discrimination based on disability should be conducted intensively in wider communities in which persons with disabilities live, as that is only way to effectively prevent marginalisation and social exclusion.

Under specific challenges, they highlighted the physical or built environment, which still represents an unsurmountable obstacle for many persons with disabilities, consequently preventing their increased independence and social inclusion. Furthermore, they pointed out challenges in the area of rights of people with intellectual disabilities and mental health issues. In this regard, they presented the

challenges in employment (aversion to employing parents with listed problems), replacement of the guardianship system with so-called supported decision-making, and questions related to voting rights.

As a special topic, the attendees highlighted the problem of the gap between the obligations imposed on Slovenia by the UN Convention on the Rights of Persons with Disabilities and the actual situation. They stressed that public authorities are not sufficiently aware of these obligations, or are not even informed about them, which consequently results in numerous violations of the UN Convention on the Rights of Persons with Disabilities. The attendees pointed out the problem of the translation of the UN Convention on the Rights of Persons with Disabilities, and the absence of a detailed national action plan as a foundation for implementing the binding provisions of the Convention. They also stressed a need for an independent body to supervise the implementation of the UN Convention on the Rights of Persons with Disabilities, as the Committee on the Rights of Persons with Disabilities already warned Slovenia.

In the dialogue with the Workers' Counselling Centre, which operates in the **area of employment and labour market**, numerous contentious practices in the area of employment and work were pointed out, with explicit emphasis on the growing number of illegal intermediaries that take advantage of the desperation of foreign workers, as well as the practice of termination employment relationship before the end of the notice period. In terms of individual personal circumstances that are prohibited to be grounds for discrimination, the top two were ethnicity and nationality. They highlighted the practice of employers, where job seekers can not apply for the open position unless they are citizens of the Republic of Slovenia. Furthermore, they also pointed out the practice of segregating workers on the basis of ethnicity, where non-Slovenian workers were used for work in more difficult work conditions, e.g. at night, at the conveyer, overtime work, etc.

In addition to ethnicity, they also pointed out the personal circumstance of **disability**. They presented cases where cleaning service employees worked for a specific company for several decades, but, when they received the status of a person with disabilities, the employee terminated their employment contract with the argument that, due to their work limitations, they can no longer perform the work.

Personal circumstance of age – youth

Organisations that work in the area of the **personal circumstance of age – youth** (Ypsilon Institute, Youth Council of Slovenia – YCS) have in discussions with the Advocate primarily highlighted the problem young people face in accessing the labour market, which particular emphasis on employment in public administration institutions. They believe that this is the result of the economic crisis, which limited or even prevented inclusion of young people in the labour market. As a particular aspect of this problem, they pointed out the precarious form of labour, which prevent young people from earning a stable and decent income, thus also extending their period of “growing up”. They believe that these challenges need to be faced with systematic measures. Representatives of the Ypsilon Institute explicitly highlighted the problems of intersectional³⁴ discrimination of young people, specifically on the basis of the intersection of age, place of residence, and education; particular emphasis in this regard is the case of young people educated in social sciences, who have difficulties finding employment outside Ljubljana. YCS representatives listed housing issues as the most prominent area, which would required systemic legislative and programme changes focused on young people; however, they note that there is a lack of political will in this regard. If they encounter specific cases of discrimination of young people in their Housing Counselling Centre, they will contact the Advocate. Among the questions of intersectional discrimination, YCS representatives pointed out young women and young persons with disabilities, stating that in the future they hope to dedicate more attention to the latter area, specifically in terms of monitoring and advocacy.

³⁴ Intersectional discrimination occurs at the intersection of two or more personal circumstances that constitutes new content. In contrast to intersectional discrimination, multiple discrimination does not speak about “new content” established at the intersection of several personal circumstances, but perceives various forms of discrimination, which an individual faces, as a sum. A person with disabilities faces discrimination due to their disability, but if the person is also religious it can also be the basis for discrimination. Therefore, they have to face both discriminations, which does not mean that the combination of both experiences establish new content. Thus, the key difference between intersectional and multiple discrimination is the fact that intersection takes into account the cross-section of discriminations (the cross-section is the new content of discrimination), multiple discrimination on the other hand refers to the sum of discriminations. (Roman Kuhar, *At the Crossroads of Discrimination: Multiple and Intersectional Discrimination*, pp. 30–31)

Personal circumstances of sexual orientation, gender identity, and gender expression

Several specific challenges were presented in the Advocate's dialogue with representatives of non-governmental organisations working in the area of the personal circumstances of **sexual orientation, gender identity, and gender expression**.

In the area of the personal circumstance of **sexual orientation**, the participating organisations highlighted the problem of violence against homosexual youth in schools by peers, and the unresponsiveness of school administration, with consequent tolerance of such bullying, harassment and violence among peers. The participants believed that this challenge is not addressed systematically. They also emphasised the need for a safe house for LGBTIQ+ persons, including for young, who are rejected by their families and exposed to the risk of homelessness after their sexual orientation is revealed.

Furthermore, they highlighted the **issue of the position of older LGBTIQ+ persons**. Examples of highlighted problems include LGBTIQ+ persons, who move to residential care home, hiding their sexual orientation. They also mentioned a lack of national research on the position of older LGBTIQ+ person and, specifically, bisexual persons. For NGO representatives, the issue of complete equality or equalisation of same-sex couples' rights remains important.

In the area of the personal circumstance of **gender identity**, they highlighted the problem of legal recognition of gender. This is inappropriately arranged in Slovenia within the framework of the Rules on the implementation of the Civil Register Act, and needs to be systematically arranged by law. They also pointed out that the gender reassignment protocol (transitioning) is unclear in Slovenia, and that persons who want to change their gender are in most cases left to themselves. An additional problem is also the lack of regulation in the area of intersexuality and rights of intersexual persons.

The third problem pointed out in the dialogue was **discrimination of persons with HIV** when accessing health care and social services. The Advocate emphasised that, in such cases, the persons could submit a complaint directly to the institution of the Advocate, while participants explained that in most cases victims do not want to become exposed.

3.4 Special measures for ensuring equality

3.4.1 Concept of special measures for ensuring equality

Observing the prohibition of violations, in terms of ensuring equal treatment, can not ensure actual equality in some cases. Less favourable position of persons in society can be the result of various factors, from historical injustices that persons with specific personal circumstances endured, to different attitudes of social powers formed on the basis of stereotypes and prejudices, resulting in formation of structural imbalances in different areas of social life. Non-discrimination law primarily ensures so-called formal equality, on the basis of which persons have to be treated equally regardless of any personal circumstance. In order for society to develop towards actual equality, **instruments** were formed in human rights and non-discrimination law, **which can be employed by countries and private entities**, considering the historical inequality and marginalisation of certain groups, **to ensure actual equality of underprivileged persons and groups they belong to.**

The basic characteristic of special or specific measures (terminology differs between different legal instruments) is addressing the less favourable actual position of persons with a specific personal circumstance by privileged treatment when accessing rights to goods and services. Special measures thus do not represent only a shift of focus **from formal to actual equality**, but also a shift from individualised approach of non-discrimination to **collective understanding and addressing inequality**. By rejecting the possibility of applying specific measures, public authorities and private entities risk that their practices and rules may constitute indirect discrimination.³⁵

3.4.1.1 Legal regulation of special measures

On the level of the European Union (EU), the option to deviate from the principle of non-discrimination to ensure equality is included in its primary legislation, i.e. Treaty on the Functioning of the European Union, specifically in Article 157, paragraph 4, which states that "... the principle of equal treatment shall not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers", "with a view to ensuring **full equality in practice between men and women** in working life". Such a provision is also included in Article 3 of the so-called gender equality directive³⁶, which defines the positive action. An even wider scope of special measures is defined by Article 23 of the Charter of Fundamental Rights of the European Union, which is not limited to the area of employment and work, but includes "specific advantages in favour of the under-represented sex" in general. Special measures regarding gender are also permitted by the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).³⁷ In Article 4, it explicitly states that special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Even though equality of genders is the most often emphasised area of special measures, as established by the fact that the case law of the Court of Justice of the EU, related to special measures, is based exclusively on this area,³⁸ **ensuring actual equality by special measures is legally permissible or even required for other groups of persons with a protected personal circumstance**. Article 7 of the gender equality directive³⁹ thus allows member states the option to maintain and adopt special measures aimed at preventing or compensating for the underprivileged position, even for persons who

³⁵ FRA (2018) *Handbook on European non-discrimination law*, pp. 70–71.

³⁶ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast)

³⁷ Available at: http://www.mzz.gov.si/fileadmin/pageuploads/Zunanja_politika/Clovekove_pravice/Zbornik/I_CEDAW_-_Konvencija_o_odpravi_vseh_oblik_diskriminacije_zensk.pdf.

³⁸ Equinet (2014) *Positive Action Measures. The Experience of Equality Bodies*, p. 24.

³⁹ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

are actually in unequal position in employment and work due to religion or belief, disability, age or sexual orientation. The relevant article of the directive explicitly points out **persons with disabilities** and the importance of special measures to promote their inclusion in the work environment. The Convention on the Rights of Persons with Disabilities (CRPD)⁴⁰ also explicitly states that specific measures aimed at promoting or achieving actual equality of persons with disabilities do not constitute discrimination. We must also point out that so-called appropriate or reasonable accommodation does not fall within the framework of the special measure institute, as it does not infringe on the rights of other persons to equal treatment. Furthermore, appropriate accommodation is linked to the situation of a specific individual, while special measures are linked to an entire group that is in an unequal actual position.

International law and EU law therefore in principle allow member states and private entities to adopt and implement special measures to ensure actual equality, which means that they define such measures as an option, and not as an obligation. The exception to the above is the **International Convention on the Elimination of All Forms of Racial Discrimination**, which defines the adoption of special measures to ensure equality as a **positive obligation of states**. While the International Convention on the Elimination of All Forms of Racial Discrimination defines special or specific measures similarly to CEDAW and CRPD, Article 2, paragraph 2, of the Convention specifically states, “States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.” Special measures, as a required instrument of protection against discrimination, are therefore defined for persons in unequal actual position due to the personal circumstances of **ethnicity, race or ethnic background**.

The Slovenian legal order defines instruments for ensuring actual equality in Article 17 and Article 18 of the Protection Against Discrimination Act, and are called **special measures to ensure equality**. This legal basis allows public authorities, self-governing local communities, bodies exercising public powers, employers, educational institutions, business entities and other entities to adopt two types of special measures

- **incentive measures**, which provide special benefits to persons in a less favourable position;
- **positive action**, which gives advantage to people with certain personal circumstances when they meet the prescribed criteria and conditions to an equal extent, and which may be applied particularly in the case of evident disproportionality regarding the possibilities of accessing the enforcement of rights, or accessing goods, services or benefits.

In accordance with PADA, such measures must pursue the goal of eliminating the less favourable position of persons with specific personal circumstances, based on the established less favourable position, and passing the proportionality test. Furthermore, such measures can only be implemented until the less favourable position of the target group of persons is eliminated, which requires regular monitoring of the measures' effects and an assessment of the merits of their implementation.

The arrangement of special measures on the international, European, and Slovenian levels show that **PADA provides potential persons implementing such measures the widest potential scope of special measures, in terms of areas where they can be implemented, and in terms of personal circumstances of groups whose less favourable position these special measures are intended to eliminate**. Special measures as defined by PADA can be implemented in all areas governed by law, and can also be used for groups of persons with any personal circumstance on the basis of which discrimination is prohibited.

⁴⁰ Act ratifying the Convention on the Rights of persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities (Official Gazette of the Republic of Slovenia – Treaties, no.10/08)

3.4.1.2 Conditions for implementation of special measures

The legal arrangement of special measures in different areas provides the conditions that must be met for legally permissible deviations from the principle of equal treatment. The key conditions and starting point for planning special measures is the **determined less favourable position** of persons with a specific protected personal circumstance, which is based on unequal opportunities or social disadvantage, and must be **justified with clear quantitative and qualitative analyses** establishing the need for incentive measures and/or positive action. The key element in fulfilling this condition is so-called equality data, which shows the status, causes, and trend of inequality of persons with a specific protected personal circumstance in different areas of social life. European Commission's studies on the legal arrangements and practices of equality data gathering in member states have shown that there are significant shortcomings⁴¹ in this area in most member states, which, amongst other things, hinders planning of legitimate special measures and their effective implementation. Some international bodies believe that this condition, in addition to precise and disaggregated data, includes the obligation of prior consultation with communities that are targeted by these special measures.⁴²

The second wider condition is that the **proportionality test is fulfilled**.⁴³ This means that special measures have to be (actually) aimed towards eliminating the unequal position of persons with a protected personal circumstance, in terms of eliminating the cause for their unequal opportunities or providing compensation for the less favourable position. This condition must be fulfilled; otherwise, there could be legitimate discrimination complaints from persons excluded by special measures.⁴⁴ Measures must be appropriate and necessary, and must be based on objective and transparent criteria. This means that their goal can not be achieved by other means that do not encroach on equal treatment of persons not included in these special measures.

The last essential condition is the **temporary duration of special measures**. This condition is based on the very essence of special measures, which is to confront prejudices about certain social groups and their historical disadvantage (e.g. underrepresentation in certain areas of social life) by offering special incentives or privileged treatment to members of these groups.⁴⁵ Closely related to the temporary duration of special measures is also the requirement of constant monitoring of their effects, as special measures must not evolve into constant different treatment and must be terminated immediately when they achieve their goal – elimination of unequal actual position. Here, we should point out that, within the context of special measures, their **temporary nature is relative**, as the need for special measures depends on the individual case of actual unequal position. When positive action is intended to eliminate deeply-seated historical social inequality, the need for appropriate responses can persist for several decades (e.g. underrepresentation of women in decision-making positions, labour market access for persons with disabilities, inclusion and successfulness of ethnic minorities in education processes, etc.).

⁴¹ European Commission (2016) *European Handbook on Equality Data*; European Commission / Thomas Huddleston (2017) *Analysis and comparative review of equality data collection practices in the European Union: Equality data indicators: Methodological approach*; European Commission (2017) *Analysis and comparative review of equality data collection practices in the European Union: Legal framework and practice in the EU member states*

⁴² E.g. *General recommendation No. 32* of the Committee on the Elimination of Racial Discrimination, CERD/C/GC/32, 24 September 2009, paragraphs 21–26

⁴³ For summary of case law of the Court of Justice of the EU in this area, Equinet (2014) *Positive Action Measures The Experience of Equality Bodies*, pp. 19–23. Case law refers exclusively to special measures to ensure gender equality in the area of employment, but is fundamentally transferrable to other areas and other personal circumstances, according to the opinion of Equinet.

⁴⁴ *Prav tam*, p. 27

⁴⁵ FRA (2018) *Handbook on European non-discrimination law*, p. 71

3.4.2 Overview of implementation of special measures for ensuring equality – Ministries

In August 2018 and again in December 2018, the Advocate called upon all ministries to submit data on the special measures for ensuring equality undertaken in 2017 and 2018. Along with the request, the Advocate also provided to ministries the definition of special measures under Article 17 and Article 18 of PADA, as well as the conditions for their implementation, and also asked the ministries for data on the manner of monitoring and evaluating their implementation.

The definition of special measures was sent to the ministries because, in accordance with Article 14 of PADA, the ministries are defined as bodies exercising the wider tasks for ensuring the conditions for equal treatment of all persons, for raising awareness and monitoring the situation in this area, and **for proposing relevant measures of normative and political nature in their relevant spheres of work**. The Advocate presented an overview of these (wider) tasks in its 2017 Regular Annual Report; however, this year, the Advocate wanted to focus the attention on the implementation of special measures as the specific instrument for ensuring equality, which is available to public authorities and other entities. The purpose of the Advocate's enquiry was to **analyse the understanding of special measures by the ministries**, and preliminary **mapping of special measures** by area of implementation in accordance with Article 2 of PADA, and by specific protected personal circumstances in accordance with Article 1 of PADA.

All ministries submitted their responses; however, the Ministry of Public Administration and the Ministry of Defence (MoD) stated in their responses that they do not carry out any special measures for ensuring equality. MoD additionally stated that it will examine in detail the possibility of adopting special measures in the future.

Below, we present the summarised responses from ministries, in alphabetical order.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities initially explained that it has the competence for tasks related to (amongst other things) areas of employment relationship, pension insurance and disability insurance scheme, health and safety at work, employment policy at home and abroad, family policies, social assistance and related services, position and comprehensive protection of persons with disabilities, and equal opportunities for men and women. It is evident that the ministry covers more personal circumstances than are listed in PADA. The ministry conducts various programmes and measures aimed at promoting equal treatment and equal opportunities for everyone.

The first of the larger sets of programmes and measures represent social assistance programmes, which aim to prevent and resolve social distress of individual vulnerable groups of the population. The programmes are conducted on the basis of verification or guidelines published in calls for tenders for their (co-)financing. Each year, the ministry co-finances around 180 different social assistance programmes, which promote the development of network for providing assistance to individuals, families, and groups of people. As part of a pilot project for a comprehensive approach to social activation, it is developing a system for appropriate treatment and programme for persons who are farthest removed from the labour market. The ministry pointed out their social activation programme for women coming from other cultural areas. The entire project is financed by the European Social Fund (ESF).

In the area of persons with disabilities, the ministry is preparing Social Inclusion Programmes. The goal of these programmes is to maintain and develop working capacities of persons with disabilities, and promoting their social inclusion.

With active employment policy (AEP) measures, the Government intervenes in the labour market, with the primary purpose of increasing employment and reducing unemployment. The programmes are aimed at activating the group of unemployed people that represent a structural problem of the labour market and require an incentive to re-enter the labour market. AEP thus represents a wide range of programmes, which are carried out to address the needs of the labour market at all times, and are adapted to various groups of unemployed persons (young, older, long-term unemployed, persons with lower levels of education, etc.). The measures carried out are published in the AEP Catalogue, available on the ministry website. Once per year, the ministry informs social partners and the Government about the measures, in its Annual Report on State Measures on the Labour Market.

Another important task of the government is the implementation of preventative measures to assist families and individuals to reduce inequality and increase social inclusion, thus creating opportunities for healthy development of all family members. To more effectively achieve these goals, the government developed a model of programmes to support families, aimed at different types of assistance for families and represent, in a specific way, a supplement to other programmes and services, e.g. social assistance programmes and services. The programmes are primarily intended for children, adolescents, and their families, and have a positive effect on improving the quality of life of individuals and families, and are explicitly listed in the Family Code⁴⁶. Programmes are financed using public calls for proposals, for the maximum period of five years.

In conclusion, the ministry also stated that, in accordance with the practice of other states, special measures can be understood in very broad terms; however, in Slovenia we do not yet have the practice in adopting and assessing special measures on the basis of PADA. Currently, the ministry is implementing measures and conducting programmes that are based on their sectoral legislation, but are at least partially fulfilling criteria for special measures under PADA.

The **Ministry of Finance (MoF)** stated that, in the area of ensuring the right to equal treatment, equal opportunities or actual equality and participation in areas of social life for persons in less favourable situation due to a specific personal circumstance for their employees, they comply with all existing regulation that defines so-called positive discrimination. As examples, they listed part-time employment due to parenthood, and related compliance with the prohibition of overtime work, irregular working hours and rearrangement of working hours. They also pointed out the implementation of measures in the area of protection of dignity of employees, and appointment of two persons of different genders to provide counselling, assistance and information on measures related to protection against sexual and other harassment or bullying. In the supplementary response, they explained that they are not implementing special measures for ensuring equality, as they have not yet detected the need for such measures in their jurisdiction.

The **Ministry of Economic Development and Technology (MEDT)** stated that, as part of the Action Programme for Persons with Disabilities, they are implementing measures for ensuring access to tourism programmes for persons with disabilities and are encouraging travel agencies to organise tourist activities for persons with disabilities. In the Promotion of Tourism Development Act⁴⁷ (PTDA), they included an exemption from tourist fee for persons with disabilities or physical impairments. In the housing categorisation criteria, they added the criterion “disabled-friendly” housing. They have carried out a call for proposals for co-financing of social enterprises (among others, for employment of persons with disabilities). The ministry informed the Advocate that they have completed a study on social tourism – programme for seniors, and have carried out a call for proposals for co-financing youth co-operative and social enterprises (area of employment). They have implemented the following measures: promotion of women entrepreneurship (increasing women employment, particularly younger women with tertiary education), increasing the share of women and men in professions where they are underrepresented; increasing the share of women in managerial and management positions in the economy, and increasing the diversity in the administrative, management and supervisory bodies of companies in the amendment to the Companies Act⁴⁸ (CA) – according to the amendment, companies have to include a description of their diversity policy in the corporate governance statement.

The **Ministry of Education, Science and Sport (MESS)** sent to the Advocate an initiative for a meeting because of their need for a more detailed understanding of the institute of special measures and the feedback to their work report on implemented special measures for 2018. Based on the newly obtained information, the ministry then submitted to the Advocate an extensive response on special measures.

They state in their response that they categorise special measures into the following substantive groups:

1. Special measures for vulnerable and marginalised groups, intended for Roma people and children of immigrants, foreigners and emigrants
2. Special measures intended for children and young people with special needs
3. Special measures intended for ensuring gender equality

⁴⁶ Official Gazette of the Republic of Slovenia, no. 15/17, and 21/18

⁴⁷ Official Gazette of the Republic of Slovenia, no. 13/18

⁴⁸ Official Gazette of the Republic of Slovenia, no. 65/09 – official consolidated text, 33/11, 91/11, 32/12, 57/12, 44/13 – Constitutional Court’s Decision, 82/13, 55/15, 15/17, and 22/19 – ZPosS

4. Special measures for raising literacy
5. Special measures intended for integrating the market and education system
6. Special measures intended for young people

In the attachment, the ministry provided a detailed description of projects conducted in 2017 and 2018, which fall within the group of equality-promotion measures, with a short description of measures by individual personal circumstance and area.

In addition to these measures, the ministry has implemented many measures for the promotion of equality among students, e.g. subsidised school meals and in other areas such as free textbook borrowing, subsidised accommodations in student homes and school transportation for elementary school students and adapted transportation for students with reduced or severely reduced mobility. In the area of preschool, parents have reduced kindergarten fees depending on their income bracket. Children from socially underprivileged environments are given priority when enrolling in kindergarten. Departments with Roma students have more favourable standards, which means fewer students per employee.

In its first response, the **Ministry of Infrastructure (Mol)** wrote that, in relation to the personal circumstance of financial situation, it has a commitment based in law, i.e. the Energy Act⁴⁹ (EA), which states that the electricity and natural gas distribution system operators can not disconnect electricity to vulnerable household customers without notifying them of the possibility of emergency supply. As part of the cohesion policy, EUR5 million is reserved for alleviating energy poverty by subsidising costs in 500 low-income households. The Eco Fund has a programme for 100% co-financing of deep energy retrofitting and replacement of biomass heating systems for socially disadvantaged households. They also organise visits by an energy consultant with a free package of devices and advice for lower energy consumption.

In the area of transportation, the ministry in 2017 submitted a proposal of the Motor Vehicles Act⁵⁰ (MVA) and, among other things, eliminated the aggravating circumstance for persons with disabilities who are vehicle owners, but do not have a valid driving licence for the specific vehicle category. Under the new arrangement, several persons can be designated as drivers of such vehicles, and not just one, as stated in the previous act. This solution was implemented on the basis of the previous advocate's recommendation, who had a different mandate.

In the supplementary response, they listed some additional measures adopted for ensuring the principle of equality among employees in the last two years. They adopted the Rules on temporary work from home. Thus, employees who due to different circumstances have difficulties coming to work (e.g. family obligation and longer rehabilitation after injury) can temporarily work from home. With their Guidelines on company parking spaces, they made access to work easier for persons with disabilities. They also worked with the Institute for Rehabilitation and Education to help the person in the vocational rehabilitation programme to successfully integrate in the work environment.

In its response, the **Ministry of Agriculture, Forestry and Food (MAFF)** stated that they primarily focus on measures to prevent discrimination and violence against farmer women and girls. They also provide support for societies in the countryside, which work primarily in improving work and life conditions for farmer and countryside women.

The ministry has also implemented the equality principle within the ministry, in accordance with the Programme for effective management of older employees within the ministry. The goal of this programme is to suitably include older employees in their employee management system, so that the group of older employees continues to be a beneficial and creditable group of employees. They also mentioned the Association of Country Women of Slovenia, which strives to improve the position of its members and promotes gender equality, and consequently strengthens the self-confidence of its members.

In its first response to our request, the **Ministry of Culture (MoC)** submitted the document titled Evaluation of implementation of measures in the area of human rights and protection of cultural diversity,

⁴⁹ Official Gazette of the Republic of Slovenia, no. 17/14, and 81/15

⁵⁰ Official Gazette of the Republic of Slovenia, no. 75/17

based on the National Cultural Programme 2014–2017 (Evaluation). The title of the document indicated the period of the evaluation and the area it covers; the Evaluation was performed by the Cultural Diversity and Human Rights Service. The Evaluation highlights the annual calls for proposals and ministry's calls, which include priority criteria for multiple vulnerable groups; tender specification for Roma community and persons belonging to the German-speaking ethnic groups included, for example, priority criteria for younger people, elderly, and women. They also pointed out the call for proposals financed by the European Social Fund (ESF) for increasing social inclusion of vulnerable social groups in the area of culture, in which the four chosen operations included multiple vulnerable groups. They particularly emphasised that a suitable reporting methodology on such projects needs to be formed, which will enable evaluation of their effectiveness and suitable improvements for future measures.

Additionally, they pointed out that the very establishment of the Cultural Diversity and Human Rights Service, which forms, monitors, and promoted appropriate measures in all areas of culture, represents an exemplary measure, wherever it is presented. Furthermore, they state that in 2017 they have appointed a Coordinator for Equal Opportunities of Men and Women, which was followed by an amendment to the Prešeren Prize Act⁵¹ (PPA), which states that appropriate and equal representation of all areas of culture, as well as gender balance, have to be considered when forming the governing board and expert commission, and in selecting the nominees for Prešeren Prizes.

In the supplementary explanation to the request for data on special measures, the ministry said that the Evaluation listed numerous specific data on implementation of special measures in the area of culture, related primarily to the equalisation of cultural rights of persons belonging to minority ethnic communities. Every year, they submit data on such measures for persons with disabilities to MLFSAEO, as part of reporting on the implementation of the Action Plan for Persons with Disabilities.

The **Ministry of the Interior (Moi)** explained that they have not implemented any special measures for ensuring equality, but have carried out activities aimed at preventing discrimination. They have the Research and Social Skills Centre within the Police Academy, which is responsible for the areas of ethics, integrity, human rights, equal opportunities, and multiculturalism. They have conducted police officer training courses in the area of gender equality, and training courses for police officers and other public servants that interact with members of the Roma community, Italian and Hungarian national communities, and other minority ethnic groups. They emphasised their strengthened cooperation with Roma community in the field.

In their response, the Ministry of the Environment and Spatial Planning (MESP) stated that they consistently comply with the provision of Article 6 of the Employment Relationship Act on the prohibition of discrimination in candidate selection on the basis of a public notice of vacancy. All material sent to other EU member states and third countries for the assessment are translated to the official language of the recipient country. In the case of chimney sweeping services, all forms are also available in Hungarian and Italian. For persons with disabilities, they have built a ramp to their offices and designated special parking spaces, and provide special or adapted working tools for employed persons with disabilities. They also pointed out the new Rules on universal construction and the use of construction works from 5 June 2018 (on adaptation of construction works to the needs of persons with disabilities).

The **Ministry of Justice (MoJ)** submitted an extensive reply, which included measures related to the rights of national community members, measures related to rights of persons with disabilities, and the draft of the second periodic plan on implementation of the Resolution on the National Programme for Equal Opportunities for Women and Men for 2018 and 2019⁵². They highlighted the translation of some form into Italian and Hungarian, the amendment of implementing regulation on envelopes for service of documents by mail in judicial proceedings, and they also organised workshops on Italian and Hungarian legal terminology for judicial officers and court staff for managing bilingual proceeding. Due to the membership of a court interpreter for Slovenian sign language in the Expert Council and in permanent and temporary bodies, special position of deaf, hearing-impaired and deaf-blind persons was taken into consideration (based on the Court Experts, Certified Appraisers and Court Interpreters Act⁵³ (CECACIA) – effective on 1 January 2019). They are examining the option for a comprehensive arrangement of the language area of deaf-blind persons, who use an adapted sign language (so-called tactile sign

⁵¹ Official Gazette of the Republic of Slovenia, no. 54/17

⁵² Resolution on the National Programme for Equal Opportunities for Women and Men 2015–2020 (Official Gazette of the Republic of Slovenia, no. 84/15)

⁵³ Official Gazette of the Republic of Slovenia, no. 22/18

language) in their communication – to ensure their right to access documents in administrative and judicial proceedings. The ministry is striving to ensure better accessibility to court hearing for hearing-impaired persons who do not use the Slovenian sign language (installing equipment in first-instance courts that allows listening through headphones that eliminate background noise). They are also conducting training courses for public prosecutors and court staff regarding the right to legal protection for persons with disabilities and persons with special needs (deaf, hearing-impaired, deaf-blind, blind, partially sighted). They are planning to conduct a gender equality analysis in prisons, which is being carried out at the time of the report, and a gender equality analysis in the Slovenian judicial system, which is planned for 2019.

In its response, the **Ministry of Health (MoH)** highlighted 10 measures carried out in 2017 and 2018, and two measures that were carried out only in 2018. These measures were related to the area of HIV, sexually transmitted diseases and drug abuse; their effectiveness is assessed by the National Institute of Public Health. Subsequently, they supplemented their response with the measure “Successful Integration of Roma People in their Environment – Healthy Lifestyle”.

In their response, the **Ministry of Foreign Affairs (MFA)** reported that they have conducted activities related to equal treatment of all MFA employees in the following areas: hiring transparency and access to employment, promotion, membership in different organisations, and ensuring all workers’ rights. They highlighted priority parking for the employee with the status of a person with disability in the vicinity of the ministry, and the drafting of work-from-home guidelines. They also pointed out the excellent ratio of employed men and women in leadership positions, and the active policy for temporary replacement of women employees on maternity or parental leave.

3.4.3 Analysis of ministries' responses and challenges in understanding and applying the institution of special measures for ensuring equality

3.4.3.1 Clarification on methodology

When preparing the analysis of ministries' responses on the application of the institute of special measure for ensuring equality in 2017 and 2018, we used a methodology that allows a joint and cross-section review of all measures by individual personal circumstance under Article 1 of PADA and area of life under Article 2 of PADA for which an individual measure is used. With this methodology, we primarily wanted to determine which cross sections of these two variables occur most often, and in which areas of life and personal circumstances the information of measures was not submitted.

When situating a specific measure in the analysis, we considered all listed measures by the ministries, which considered such measures as special measures for ensuring equality. At this point, we did not assess whether or not the listed measures meet all legally prescribed criteria for special measures for ensuring equality, as defined by Article 17 of PADA. Some ministries listed measures undertaken by bodies within the ministry, while most only listed measures undertaken by the ministries directly. We analysed all measures whose description identified the related personal circumstance and area of life. If either the clear personal circumstance or area of life was missing, the measure was not included in the analysis. Considering that it is not uncommon for an individual measure to focus on several personal circumstances or several areas of life – therefore an intersectional measure – an individual measure was for the purposes of this analysis and to prevent duplication of data categorised under the personal circumstance or area of life that was considered the predominant or more important personal circumstance or area of life, according to the description. The measures listed by the ministries were either individual activities of ministries (smaller in substantive scale) or wider substantive sets, which included several substantively interconnected projects or programmes. Regardless of the substantive extent of the measures, we included them in the analysis.

3.4.3.2 Analysis of ministries' responses on the implementation of special measures, considering personal circumstances and the areas of life

All 14 ministries that the Advocate asked for information on implemented special measures for ensuring equality had responded with explanations or expanded responses. From the information received, we identified a **total of 73 measures** that the ministries recognised as measures for ensuring quality, which met the criteria for inclusion in the analysis.

Most measures related to individual **personal circumstance** were related to the personal circumstance of disability – 18 measures, which represents almost one quarter of all identified measures. In the second place by the number of measures are the personal circumstance of **ethnicity, race, ethnic background or language**, which are related to 17 measures. Together, these two groups of personal circumstances represent 48% of all measures included in the analysis. The next two personal circumstances are gender and age, with 10 measures each, followed by the personal circumstance of medical condition with seven measures. The personal circumstance of social status and financial situation were the subject of five measures, while the personal circumstances of sexual orientation, gender identity and gender expression were the subject of four measures. The personal circumstance of education was the subject of two measures, while the personal circumstance of religion was not the subject of any measure included in the analysis.

The majority of measures by **area of life** – 27 measures – were implemented in the **area of access to goods and services** available to the public, representing 37% of all identified measures. The second most common area is **employment and labour market**, which included 20 measures. Together, these two groups of area of life represent 65% of all measures included in the analysis. These areas are followed by the area of medical condition with 11 measures and education with 10 measures. Cultural rights and social protection were the subject of four and one measure, respectively.

In terms of the **intersection of personal circumstance and area of life**, most identified measures – 12 measures or 16% – addressed the personal circumstance of **disability in the area of access to goods and services**. This is followed by the personal circumstances of age in the area of employment,

personal circumstances of ethnicity, race, ethnic background or language in the area of access to goods and services, and the personal circumstance of medical condition in the area of health care, with seven measures each. These are followed by the personal circumstance of gender in the area of employment and the labour market with six measures. All other intersections of personal circumstances and areas of life occur in four or fewer measures. As many as 31 of the 54 intersections, which is 60% of all intersections, remain unaddressed in terms of measures that should primarily address a specific personal circumstance in the context of an area of life.

For four ministries (Ministry of Economic Development and Technology, Ministry of Education, Science and Sport, Ministry of Justice, and Ministry of Health), the analysis included 11 measures from a specific ministry, which is the highest number; together, their measures represent 60% of all measures. For three ministries (Ministry of Finance, Ministry of Public Administration, Ministry of Defence), no measures were identified that could be included in the analysis, either because the ministries failed to list any measures or because the listed measures did not meet the methodological criteria for inclusion in the analysis. The average number of measures per ministry was slightly over five.

The highest number of different personal circumstances, six, was addressed by measures of the Ministry of Education, Science and Sport, followed by the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which addressed five personal circumstances. On average, the ministries implemented measures related to just over two personal circumstances. Most areas of life, three, were addressed by the Ministry of Culture; on average, the ministries implemented measures to address just over one personal circumstance.

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Table: Measures for ensuring quality by personal circumstances and areas of life in 2017 and 2018 (ministries' responses)

		AREAS OF LIFE						
		employment and labour market	social protection	health care	education	access to goods and services	cultural rights	TOTAL
PERSONAL CIRCUMSTANCES	gender	6	0	0	1	3	0	10
	ethnicity, race or ethnic background, language	1	0	1	4	7	4	17
	disability	4	0	0	2	12	0	18
	age	7	1	0	1	1	0	10
	sexual orientation, gender identity and gender expression	0	0	3	1	0	0	4
	social status, financial situation	1	0	0	0	4	0	5
	education	1	0	0	1	0	0	2
	religion	0	0	0	0	0	0	0
	medical condition	0	0	7	0	0	0	7
	TOTAL	20	1	11	10	27	4	73

Table: Measures for ensuring quality by ministry in 2017 and 2018 (ministries' responses)

Ministry	Number of analysed measures	Number of personal circumstances	Number of areas of life
Ministry of Labour, Family, Social Affairs and Equal Opportunities	6	5	2
Ministry of Finance	0	0	0
Ministry of Economic Development and Technology	11	3	2
Ministry of Infrastructure	5	2	1
Ministry of Education, Science and Sport	11	6	2
Ministry of Public Administration	0	0	0
Ministry of Agriculture, Forestry and Food	2	2	1
Ministry of Culture	7	2	3
Ministry of the Interior	3	2	1
Ministry of Defence	0	0	0
Ministry of the Environment and Spatial Planning	5	2	2
Ministry of Justice	11	3	1
Ministry of Health	11	3	1
Ministry of Foreign Affairs	1	1	1
TOTAL	73		

3.4.3.3 Advocate's findings regarding ministries' submitted responses

Based on the review of submitted responses, the Advocate identified seven different categories of measures that the ministries *understood* as special measures for ensuring equality:

1. **Special measures for ensuring equality that meet the legally prescribed criteria** (addressing analytically established unequal actual position of persons, regularly monitored and checked, and adapted in the event of changes of the position of persons with specific personal circumstances). A representative example of such measures are active employment policies.
2. **Special measures for ensuring equality**, which meet most legally prescribed criteria, but have a **systematic instead of a temporary nature**. An example is the implementation of the Rules on norms and standards for the implementation of the primary school programme⁵⁴, which defines more favourable conditions for primary school classes that include Roma students.

The Slovenian legal order includes several measures on the systematic level, which deviate from the principle of equal treatment and address social imbalances and related less favourable position of persons with a specific personal circumstance. The system of quotas for employing persons with disabilities, as defined by Chapter VIII of the Vocational Rehabilitation and Employment of Persons with Disabilities Act, is used to promote access of persons with disabilities to the labour market, for example. Electoral law requires that candidate lists for National Assembly elections and European Parliament elections include at least 35 or 40% of both genders⁵⁵, which was a measure to address the underrepresentation of women in representative positions. Equality bodies in Europe highlight quotas for employment of persons with disabilities and gender quotas for election candidate lists as a frequent version of special measures for ensuring equality.⁵⁶ Both measures aim to eliminate the neglect of persons historically present in society, so their systematic arrangement is neither surprising nor contentious, since the temporary duration of specific measures – as presented above – is relative and dependant on the extent and social entrenchment of the relevant less favourable position of persons.

3. **Measures of appropriate accommodation**. Examples of such measures include providing special parking spaces for persons with disabilities or accommodation of judicial and administrative proceedings in a way that allows persons with disabilities to access information and to participate unobstructed in these proceedings (to the greatest extent possible).
4. **Measures intended for members of the indigenous Italian and Hungarian national communities on the basis of their constitutional status**. An example would be bilingual envelopes for service of documents by mail in judicial proceedings in municipalities with Italian and Hungarian national communities.
5. **Measures for exercising cultural rights and the preservation of cultural identity of members of minority ethnic communities**. Examples are measures by the Republic of Slovenia Public Fund for Cultural Activities for organising cultural projects by various minority ethnic communities and immigrants, or measures by MoC intended for Roma community and indigenous Hungarian and Italian community in the area of culture.

An effective system of minority protection is based on a two-pillar system, the first of which represents enforcement of the prohibition of discrimination in combination with providing appropriate special measures to ensure actual equality, and the second represents measures aimed at protecting and promoting the rights of a minority to its own cultural identity.⁵⁷ Even though these two pillars are connected and mutually supported, they are based on different

⁵⁴ Official Gazette of the Republic of Slovenia, no. 57/07, 65/08, 99/10, 51/14, 64/15, and 47/17

⁵⁵ Article 43 of the National Assembly Election Act (Official Gazette of the Republic of Slovenia, no. [109/06](#) – official consolidated text, [54/07](#) – Constitutional Court's Decisions, and [23/17](#)) and Articles 15 and 16 of the Election of Members of the European Parliament from the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia no. [40/04](#) – official consolidated text, [41/07](#) – ZVRK, [109/09](#), [9/14](#), and [59/17](#))

⁵⁶ Equinet (2014) Positive Action Measures. The Experience of Equality Bodies, pp. 36 and 40

⁵⁷ European Commission / Henrard, Kristin (2008) Equal Rights versus Special Rights: Minority Protection and the Prohibition of Discrimination, pp. 14–15

legal frameworks and traditions – the first on equality and non-discrimination law, the second on specific international legal and national legal instruments for protection of minorities. The first pillar is therefore related to ensuring equal access and enjoyment of rights in all areas of social life, while the second is related to rights whose holders are explicitly minority community members.

6. **Measures for training public servants for working with vulnerable groups.** An example is the training of police officers for working with members of Roma community or members of different national minorities.
7. **Research for the promotion of equal treatment and equal opportunities.** An example of these measures are the analyses planned by MoJ on gender equality in prisons and gender equality in the Slovenian judicial system.

Article 7 of the Equal Opportunities for Woman and Men Act⁵⁸ (EOWMA) allows implementation of special measures aimed at eliminating objective obstacles to balanced gender representation or equal position of persons of both genders. In addition to incentive measures and positive action, which are substantively equal to those of Article 17 of PADA, the law also includes programme measures in the form of awareness-raising activities and action plans for promoting and creating equal opportunities and gender equality, which could also include gender equality studies. However, the Advocate emphasises that such measures do not fall under the framework of special measures as defined by PADA, as their effects do not represent deviations from the principle of equal treatment. On the other hand, gender equality studies could represent the baseline condition for specific measures, i.e. for the purpose of establishing the unequal actual position of persons of a particular gender.

Considering the above, the Advocate finds that the **ministries have an insufficient understanding of special measures**, either in terms of PADA or in terms of other legal instruments. The responses show different categories of measures for promoting equal opportunities and equal treatment, which in most cases do not fulfil the legally prescribed criteria for special measures in terms of PADA. The Advocate also found insufficient understanding of specific measures because some ministries provided answers substantially similar to those received by the Advocate in 2017, when it carried out a review of the measures of holders of tasks in accordance to Article 14 of PADA⁵⁹, which states, “In their respective fields and within their competences, state authorities, local communities, self-governing national communities and holders of public authorisations shall provide conditions for the equal treatment of all people, irrespective of any personal circumstances, by raising awareness and monitoring the situation in this field and with measures of a normative and political nature. Ministries and governmental services responsible for the fields in Article 2 of this Act or for groups of people with certain personal circumstances shall prepare proposals of measures in their respective fields of work.”

A review of measures in relevant areas of social life and personal circumstances of group members they address shows numerous activities undertaken by the ministries and important for increased social inclusion and awareness of different vulnerable groups. Additionally, the Advocate finds that there is some **confusion regarding terminology** in some ministries – i.e. use of term “special measure” for many general measures for promoting equal treatment in their area of work, which leads to an imprecise notion of the concept of special measures for ensuring equality as a deviation from the principle of equal treatment, in order to address the unequal position of persons with a specific personal circumstance.

In conclusion, the Advocate emphasises that, in order to implement special measures in terms of PADA, it is crucial to **understand and monitor the (un)equal position of persons** with a specific personal circumstance, which requires **systemic and systematic gathering and processing of so-called equality data**. Based on the reports from various international organisations and their mechanisms for monitoring the enforcement of human rights and fundamental freedoms, the Advocate determined that there are significant shortcomings related to gathering and processing of equality data in Slovenia. The European Commission report on the legal framework and practices of equality data collection and processing in the EU member states (Report) shows that **there is almost no data on equality or**

⁵⁸ Official Gazette of the Republic of Slovenia, no. 59/02, 61/07 – ZUNEO-A, and 33/16 – ZVarD

⁵⁹ Compare to Regular Annual Report of the Advocate of the Principle of Equality for 2018, pp. 52–57.

discrimination on the systemic level in Slovenia. Regarding data on discrimination based on individual personal circumstances, the Report highlights: complete lack of data on gender identity; lack of official data on ethnic affiliation (available only as part of public opinion polling), lack of official data on sexual orientation (partially collected by non-governmental organisations; there is only a register of same-sex civil partnerships); some data on persons with disabilities is collected, but not on discrimination; courts do not collect data itemised by personal circumstances; in the area of criminal law, data on personal circumstances has to be searched for manually in the data collected by the police; there are no plans and public policy measures for collecting equality data.⁶⁰ The European Commission report on methodological approaches to equality data processing for EU member states paints a similar picture. The report, which analyses the legal regulation of equality and the reliability, validity, integrity and applicability of data, shows that, among the EU member states, Slovenia is ranked among those with the greatest methodological deficiencies in equality data collection and processing.⁶¹

The Advocate assesses that the use and successful execution of special measures will not be possible until official equality data clearly shows *actual* inequality of persons with a specific personal circumstance in society. In the future, availability of such data in Slovenia will depend on the legal regulation of personal data protection, which, in the experience of many European countries, represents one of the larger obstacles related to collection and processing of equality data.⁶² Therefore, as part of the public discussion on the amendment proposal for the Personal Data Protection Act (PDPA-2), the Advocate in March 2019 warned MoJ, as the drafting body, of the distinctly restrictive proposed interpretation of conditions for collecting and processing of so-called special categories of personal data⁶³, which could represent an insurmountable obstacle in gathering much equality data on the systematic level.

The Advocate therefore recommended to the body drafting the PDPA-2 amendment to specifically define, within the framework of provisions on the exceptions for the prohibition of collecting special categories of personal data, **promotion of equal treatment and equal opportunities, as defined by PADA, as a form of exercising essential public interest**, on which basis the processing of special categories of personal data in the public and private sector is allowed, considering applicable constitutional restrictions and restrictions related to observing the principle of proportionality.

⁶⁰ European Commission (2017) Analysis and comparative review of equality data collection practices in the European Union: Legal framework and practice in the EU member states, pp. 160–161.

Available at: https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45792.

⁶¹ European Commission / Thomas Huddleston (2017) Analysis and comparative review of equality data collection practices in the European Union: Equality data indicators: Methodological approach, pp. 6 and 49

Available at: https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793.

⁶² Katayoun, Alidadi (2017) Gauging progress toward equality? Challenges and best practices of equality data collection in the EU, European Equality Law Review 2017 / Issue 2, pp. 15–27.

⁶³ In accordance with Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), special categories of personal data represent personal data disclosing racial or ethnic origin, political opinion, religion or beliefs, trade union membership, genetic data, biometric data for the purposes of an individual's unique identification, data related to health status, and data related to an individual's sex life or sexual orientation. This data is also related to most personal circumstances that are prohibited as grounds for discrimination in accordance with PADA.

3.5 Raising public awareness of discrimination

As the Advocate's study from 2017 on the perception of discrimination in Slovenia has shown, only 1% of respondents was familiar with the institution of the Advocate of the Principle of Equality when it was established. Raising general public awareness of the existence of the body for protection against discrimination, the definition of discrimination, and the measures used to study discrimination, remains one of the top priorities of the body.

In 2018, the Advocate defined the goal of communication as increased recognition of the body in the general public and national administration. The key message included information on the establishment of the body and presentation of basic legal provisions related to discrimination. The press releases were published by the Advocate on the new website www.zagovornik.si, on Facebook, and on Twitter. Furthermore, the Advocate organised a series of public events, where the general public could actively participate and learn about the discussion topics. Public events included general topics on discrimination and specific topics related to various personal circumstances and areas: gender, age, career advancement, discrimination in work and employment, and access to goods and services.

Furthermore, in 2018, the Advocate and its employees attended over 50 events, seminars, conferences, discussions, and round table discussions in Slovenia, on various topics related to promotion of equality and protection against discrimination. At these events, the Advocate (the Head of the Institution or associates) often had an active role with an introductory address or substantive contribution on the topic of protection against discrimination.

In 2018, the Advocate also began systematically informing the highest state representatives about the work of the independent public body. The Advocate met with the President of the Republic of Slovenia, President of the National Assembly, Prime Minister of the Republic of Slovenia, President of the National Council, ministers and state secretaries, and the Human Rights Ombudsman.

3.5.1 Raising general public awareness with public events

In 2018, the Advocate raised public awareness by **organising public events** (round table discussion, panel discussions or conferences and lectures):

- Panel discussion “**Challenges and Opportunities for Women in Business: Effect of Gender on the Career**” (26 January 2018)
- Round table discussion “**Respect of Human Rights in Business**” (18 April 2018)
- Conference “**The Status of the Self-Burdened – Health-Care Problems of the Self-Employed**” (24 April 2018)
- Conference “**Tackling age discrimination against young people**” (29 June 2018)
- Public event “**Her World is Our World**” (25 May 2018)
- Round table discussion “**Overview: 70 Years of Human Rights**” (11 December 2018)
- **Panel discussion on the freedom of speech and hate speech** with the President of the Republic of Slovenia Borut Pahor (13 December 2018)

Panel discussion “Challenges and Opportunities for Women in Business: Effect of Gender on the Career”, 26 January 2018

On 26 January at the EU House, in cooperation with the Embassy of the French Republic, the Advocate organised a panel discussion, titled “Challenges and Opportunities for Women in Business: Effect of Gender on the Career”. Attendees at the round table discussion were: Tomislava Blatnik, representative of Samsic, a French company in Slovenija; Živa Humer, researcher at the Peace Research Institute; Melanie Seier Larsen, partner in Boston Consulting Group and member of leading team for Southeast Europe (TBC); Andreja Poje, executive secretary of the Slovenian Association of Free Trade Unions, and Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality.

Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, presented the activities of the new independent national body for protection against discrimination. The personal circumstance of gender and the area of employment and work are very important aspects in preventing discrimination, with legal basis in PADA.

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By organising the event, the Advocate of the Principle of Equality wished to bring attention to the following:

- area of unequal treatment and gender discrimination;
- recognition of women in entrepreneurship;
- best practice example: recognition of women in entrepreneurship has significantly increased in the EU, with France serving as an example of best practice, as it exceeded the goal of the European Commission (40% of women in management of companies and corporations);
- personal experiences of women in entrepreneurship, encouraging young women to take part in this area, while also contributing to eradicating stereotypical notions about the entrepreneurial world;
- challenges that need to be overcome if we wish to provide unobstructed and uncontentious participation of women in entrepreneurship.

Round table discussion “Respect of Human Rights in Business”, 18 April 2018

On 18 April in the EU House, the Advocate organised a round table discussion, titled “Respect of Human Rights in Business”. By organising the event, the Advocate wanted to draw attention to the United Nations guidelines on respect for human rights in business and the arrangement of systematic regulation of monitoring human rights in Slovenia.

The following persons participated in the round table discussion: Human Rights Ambassador in the Netherlands, Kees Vaan Baar; Dr. Melita Gabrič from the Ministry of Foreign Affairs, Igor Knez from the Chamber of Commerce and Industry of Slovenia, Dr. Jernej Letnar Cernic of the Faculty of State and European Studies, and Aleš Kranjc Kušlan of the Ekvilib Institute.

In the introductory address, the host of the round table discussion, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, presented the activities of the new independent national body for protection against discrimination and promotion of equality, “We work to protect the individual from discrimination, and also at the systemic level. In the discrimination perception study in Slovenia, which our body conducted at the end of 2017, as much as 34% of respondents believed that discrimination is most prevalent in the area of work and employment. Data also shows that almost half of those discriminated against in the last year, was discriminated against in the area of work and employment; that is why we decided to dedicate special attention to human rights in business.”

Conference “The Status of the Self-Burdened – Health-Care Problems of the Self-Employed”, 24 April 2018

On 24 April, in cooperation with Poligon Creative Centre and Asociacija Association, the Advocate organised the first comprehensive conference on the topic of health care of the self-employed. Speaker included self-employed persons, who spoke about their own experiences, and various experts and researchers in the field of health care, law, and work. The speaker presented their views on the issues faced by precarious workers. They agreed that precarious workers have a lot of problem particularly in the area of health care, as they have a difficult time exercising their right to sick leave. According to their opinion, work conditions also affect the health of precarious worker when they potentially find regular employment.

Attendees at the round table discussion were: Taja Topolovec, co-founder and director Pod črto, mag. Alenka Sottler, artist, co-editor of blog Skozi oči prekariata, and Tea Jarc, activist and president of Trade union Mladi plus (‘Youth Plus’).

At the conference, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, presented the activities of the new body and the options at the disposal of the self-employed persons in cases of discrimination. He called upon all attendees to contact the counselling department of the Advocate if they need any advice or have any questions.

Conference “Tackling age discrimination against young people”, 29 June 2018

On 27 and 28 June in Ljubljana, the Advocate hosted a conference organised by the European Network of Equality Bodies Equinet and the European Youth Forum. The conference topic was youth

discrimination, which is particularly problematic when it occurs in connection with other personal circumstances such as gender, ethnicity, disability, social status, financial situation, or any other personal circumstance. In his introductory address, Miha Lobnik, Head of the Institute, stressed that discrimination on the basis of age is very common, which is also recognised by the Slovenian equality body. "The study conducted by the Advocate of the Principle of Equality has shown that persons who have already encountered discrimination were most often discriminated against because of their age, social status and medical condition." He warned that discrimination deters young people from participating in a democracy, as they do not have a feeling that their interests are included in national legislation; this is reflected in a low turnout of youth voters. "It is worrying that in the last parliamentary elections in Slovenia, only 12% of young people under the age of 30 voted."

At the conference, three substantive areas that are the most problematic for young people were formed:

- Young people lost confidence in public institutions. Many findings of domestic and foreign studies in the last five years primarily show a drop in young people's trust in certain central institutions of democracy.
- Young people are excluded from safety nets. Young people in the European Union have a hard time accessing affordable housing, as well as services in the area of mental health, which are particularly important for young people.
- Young people are not sufficiently informed of their rights and mechanisms of protection. Studies conducted by European equality bodies show that young people do not know enough about their rights and existing mechanisms of protection, and do not know who to turn to in the event of discrimination, which additionally reduces the effectiveness of efforts to combat discrimination and promote equality.

Public event "Her World is Our World, 25 May 2018

In cooperation with MFA and other partners, the Advocate organised an event for public awareness-raising on gender equality, titled "Her World is Our World", on 25 May 2018, between 9 AM and 6 PM in Maribor. At the event, participants could learn about the gender equality situation in Slovenia, the European Union, and in other countries across the globe.

Round table discussion "Overview: 70 Years of Human Rights", 11 December 2018

The Advocate participated as a partner in the round table discussion, titled "Overview: 70 Years of Human Rights", organised by the Faculty of Law of the University of Ljubljana and the Embassy of the Kingdom of the Netherlands. In the discussion, Miha Lobnik, Head of the Institution, emphasised the significance of the Universal Declaration of Human Rights, which represents the foundations for protection against discrimination in Slovenia, too. He presented the development of Slovenian legislation in this area, and the implementation of PADA in the last two years. He described how the body performs its tasks in practice, and warned about the key challenges in implementation of international principles in everyday life. Among these challenges, he especially highlighted the problem of different understanding of what discrimination actually is in legal terms, as it often does not match the people's experience of discrimination. The task of such institutions is more than just sanctioning individual cases; they also need to constructively contribute to spreading awareness and the significance of equality and tolerance in modern society.

On 14 December 2018, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, attended a panel discussion on the freedom of speech and hate speech with the President of the Republic of Slovenia Borut Pahor

At the invitation of the President of the Republic of Slovenia, Borut Pahor, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, attended a panel discussion on the freedom of speech and hate speech. At the panel discussion, participants attempted to answer the question on the limits to free speech. They all agreed that the freedom of speech is a fundamental democratic right, but did not find common ground on the definition of hate speech, and how to penalise such speech.

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the body's powers in the scope relevant for the question of hate speech. The Advocate operates in accordance with PADA. This act defines the forms of discrimination that are prohibited. Among them, at least three refer to

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speech, and not to actions or denial of rights. The prohibition of certain forms of discrimination therefore already constitutes a restriction of freedom of expression. The most important form of discrimination, relevant for hate speech, is *incitement to discriminate*. Article 10 of PADA stipulates that any incitement of other persons to action that resulted in, results in, or could result in discrimination according to the provisions of this Act is prohibited. PADA also stipulates that severe forms of prohibited conduct in the context of incitement to discrimination include particularly delivering or disseminating calls for racist, religious, ethnic and sexual discrimination, inducing, inciting, instigating hatred and discrimination, and broader public haranguing that promotes discrimination. Article 10 also defines as discrimination and prohibits public justification for neglecting or despising persons or groups of persons due to personal circumstances, including justifying ideas of the supremacy or superiority of a person or a group of people with certain characteristics. The Advocate can investigate these forms of discrimination, i.e. conduct the procedure to determine whether a speech meets the definition of incitement to discrimination. However, fines for violations are not possible, as violation of Article 10 of PADA is not defined as an offence in the penal provisions of PADA.

There are two more prohibitions of specific forms of speech: the first is the prohibition of *harassment* (Article 8 of PADA), and the second is *prohibition of instruction to discriminate* (Article 9 of PADA). If hate speech occurred in the workplace, and such speech also represented harassment based on a specific personal circumstances (e.g. creating an intimidating, hostile, demeaning, humiliating or offensive environment for a person, and insulting the person's dignity), the Advocate could investigate discrimination due to harassment, and the Labour Inspectorate of the Republic of Slovenia could impose a sanction for the offence. If a person gives instructions to discriminate and such instructions are verbal, i.e. speech, this represents a violation of PADA – it is not necessary for such instructions to have consequences. Competent inspection services can impose a sanction for the offence. The very existence of instruction (verbal or written) constitutes a violation of the law.

The discussion whether hate speech should be included in the absolute freedom of expression is, in a way, purely theoretical, as legislators of constitutional democracies, which includes Slovenia, have already clearly defined the restrictions in this area. These restrictions are in accordance with the European Convention on Human Rights, which in Article 10, paragraph 2, lists the permitted restrictions. They include the protection of rights of others.

As part of his work with the Faculty of Law of the University of Ljubljana, Miha Lobnik, Head of the Institution, also held a lecture on the topic of protection against discrimination and the role of the new body.

ADVOCATE'S HIGHLIGHTS

As part of raising awareness and informing the general public, the Advocate launched its website www.zagovornik.si in 2018.

In 2018, the Advocate also actively informed the public on Facebook and Twitter. The Advocate provided information on the functioning of the body, awareness-raising and information campaigns on current events and the options that persons discriminated against have.

On 31 December 2018, the Advocate's Twitter account had 355 followers; of these, 54% were male and 46% were female followers. 84% of the followers are Slovenian, while the remaining 16% come from other countries.

On 31 December 2018, the Advocate's Facebook page had 165 followers; of these, 40% were male and 60% were female followers. 97% of the followers are Slovenian.

In 2018, the Advocate received questions from journalists, most often relating to the treatment of Roma community members, disability, hate speech, alleged discrimination in the area of education, health care, work and employment, and the body's powers and tasks. Based on two questions posed by journalists, the Advocate decided to start an *ex officio* investigation of alleged discrimination.

ADVOCATE'S HIGHLIGHTS

In 2018, the Advocate and its employees attended over 50 events, seminars, conferences, panel discussions, round table discussions in Slovenia, on various topics related to promotion of equality and protection against discrimination. At these events, the Advocate often had an active role with an introductory address or substantive contribution on the topic of discrimination prevention.

3.5.2 Establishing cooperation and recognition of the body on the national level

In its General Policy Recommendation No. 2 on Equality Bodies to combat racism and intolerance at national level⁶⁴, the European Commission against Racism and Intolerance (ECRI) set the standards for functioning of equality bodies, and in Article 111 defined the dialogue with other public authorities. The European Commission emphasises that all legislative and executive bodies and equality bodies play an important role in promoting and achieving equality and preventing discrimination. For equality bodies to achieve these common goals to the greatest extent possible, it is important that they maintain regular dialogue with the highest decision-makers in legislative branch of power regarding key issues and implementation of recommendations. Regular annual reports, thematic reports and recommendations prepared by the equality body constitute the foundation and basis for regular exchange of opinion with the parliament as the legislature and government as the executive.

According to Article 112 of the Explanatory Memorandum of the General Policy Recommendation No. 2, annual reports should identify the core issues arising with respect to equality, discrimination and intolerance and the recommendations of the equality. They should also give an account of the activities of the equality body and the outcomes of these, including disaggregated data on discrimination complaints and their outcomes. The Explanatory Memorandum of the ECRI General Policy Recommendation No. 2 also states that the national legislation stipulates at least one annual meeting or dialogue with the legislature and highest representatives of the executive branch.

In 2018, as part of the dialogue with public authorities, the Advocate of the Principle of Equality began systematically informing the highest state representatives about the work of the independent public authority. At official work meetings, the Advocate visited and invited to the offices of the Advocate the highest representatives of the National Assembly, National Council, Office of the President of the Republic of Slovenia, Government, ministries and related body – the Ombudsman. The basis for the meeting was the first full-year regular annual report for 2017. The 2016 report included the first description of the situation and the development of the body two and a half months after official establishment.

3.5.2.1 National Assembly of the Republic of Slovenia

Meeting with the President of the National Assembly, Dr.Milan Brglez, 13 March 2018

At the meeting held at the office of the Advocate, Head of the Institution Miha Lobnik presented to the President of the National Assembly, Dr.Milan Brglez, the progress in establishing the body in 2018: strengthened staff, which is still very small considering the tasks of the Advocate. Financial resources increased slightly, but are still not sufficient for carrying out all tasks defined by law. Head of the Institution Miha Lobnik emphasised that the body can not carry out two-third of the prescribed tasks with such a small staff. Furthermore, the Advocate lacks the resources and staff to ensure legality of operation; this is particularly important because the two-year period, during which the administrative and technical matters (financial services, informatics, human resources, head office) are carried out for the Advocate by MLFSAEO, comes to an end in May 2018. Miha Lobnik handed the relevant material to the President of the National Assembly: organisation chart, agreement with MLFSAEO and a detailed work plan, based on the tasks from the Protection Against Discrimination Act and the ECRI General Policy Recommendation No. 2. The latter is a basic document of the Council of Europe's Commission, which precisely defines the tasks of equality bodies and the manner of their execution. The structure of the Slovenian equality body is based on this document and the tasks defined in PADA. The Advocate draws substantive arguments for the needs of the body from these two documents, in order to fully execute its tasks and powers.

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the 2017 Regular Annual Report to the National Assembly's competent Committee on Labour, Family, Social Affairs and Disability on 3 October 2018

⁶⁴ Unofficial translation of the ECRI General Policy Recommendation No. 2 is included in the 2017 Regular Annual Report of the Advocate of the Principle of Equality (2017), p. 104, available at: <http://www.zagovornik.si/wp-content/uploads/2018/11/Poro%C4%8Dilo-2017-.pdf>.

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the 2017 Regular Annual Report to the members of the Committee on Labour, Family, Social Affairs and Disability. He highlighted that the newly independent and autonomous state body requires the resources in accordance with the substantive and financial plan submitted in the spring of 2017. He also warned about the lack of procedural clarity in PADA.

The Advocate explained that the independent state body was formed two years ago, when Slovenia as a member of the EU was required to provide appropriate and independent protection against discrimination. Powers and competencies given to the Advocate by law justifiably raise people's expectations of assistance and support. However, the law is unclear and includes obstacles in many places: the body is simultaneously the victim's advocate and the decision-maker in the specific case; an individual's anonymity in the procedure can not be guaranteed, thereby exposing the individual; duplication of procedures, as there is a possibility of concurrent inspections by the Advocate and sectoral inspectorates, and the risk of different decisions on the same case; the law does not authorise the Advocate to impose sanctions; the law allows for the possibility of two different procedures – in accordance with the General Administrative Procedure Act and the Inspection Act, which leads to long-lasting procedures.

In his presentation of the Regular Annual Report, Head of the Institution Miha Lobnik presented in detail the Advocate's tasks under PADA to the members of the National Assembly in the new legislative session. The main points included the summary of the report, overview of activities in 2017, summary of the body's establishment, and the statistics of discrimination complaints. He pointed out the public opinion poll⁶⁵ included in the report, which showed that two-thirds of respondents believe discrimination is a problem equal to other problems in the country. One-third of respondents assesses that the discrimination situation in the country has worsened. The study also shows that people want more information and awareness-raising activities about the problem of discrimination in the country, and how they can find help.

After the presentation of the 2017 Regular Annual Report, the National Assembly adopted the following two measures:

“The Committee on Labour, Family, Social Affairs and Disability recommends to the Government of the Republic of Slovenia to revise the budget of the Republic of Slovenia for 2019 and provide higher financial resources to the Advocate of the Principle of Equality, which will allow the Advocate of the Principle of Equality to more effectively execute its statutory powers.”

“The Committee on Labour, Family, Social Affairs and Disability recommends to the Government of the Republic of Slovenia to prepare an amendment of the Protection Against Discrimination Act in cooperation with the Advocate of the Principle of Equality, in order to correct the existing lack of clarity that hinders the work of the Advocate of the Principle of Equality.”

Meeting with the President of the National Assembly, mag. Dejan Židan, in the National Assembly, 15 November 2018

At the first official meeting of the National Assembly in the new legislative period, Miha Lobnik, Head of the Institute, delivered to the President of the National Assembly, mag Dejan Židan, the 2017 Regular Annual Report and presented the powers and tasks, as well as the development and vision of the state body. He warned about the lack of financial resources and the legal deficiencies. The President of the National Assembly supported the efforts and pointed out that the body is conducting important work, which must be strengthened in the future.

Visit by the President of the National Assembly, mag. Dejan Židan, to the head office of the Advocate on Human Rights Day, 10 December 2018

On 10 December, Human Rights Day, the President of the National Assembly, mag. Dejan Židan, visited the Advocate. “At the Advocate of the Principle of Equality, every day is Human Rights Day,” said Miha

⁶⁵ Public opinion poll, Perception of Discrimination in Slovenia, published in the 2017 Regular Annual Report of the Advocate of the Principle of Equality (2018), p. 78

Lobnik, Head of the Institution, after the meeting on Human Rights Day and the 70th anniversary of the Universal Declaration of Human Rights. He thanked the President of the National Assembly for the support given to this new, younger institution for human rights. The President of the National Assembly expressed his wish for a consensus on the need for human rights protection, both in politics and society. He made assurances that they will listen to the initiatives for legislative amendment, which will define in detail the procedures conducted by the Advocate.

3.5.2.2 National Council of the Republic of Slovenia

Presentation of the 2017 Regular Annual Report to the National Council's Commission for Social Care, Labour, Health and Disabled, 30 May 2018

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the 2017 Regular Annual Report at the session of the Commission for Social Care, Labour, Health and Disabled. The Commission for Social Care, Labour, Health and Disabled issued a report highlighting the adequacy of the report, and called for suitable financial and personnel conditions for the functioning of the new body to be provided.

Meeting with the President of the National Council, Alojz Kovšca, 12 September 2018

Before the first plenary session of the National Council in the new legislative period, where the Advocate's 2017 Report was presented to the National Council, Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, met with the President of the National Council, Alojz Kovšca. The President of the National Council presented his vision for the National Council under the new mandate, and highlighted the powers and readiness for active cooperation. The Advocate thanked for the support and presented the development of the body so far, as well as the challenges faced in the last year.

Presentation of the 2017 Regular Annual Report to the plenary session of the National Council, 12 September 2018

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the 2017 Regular Annual Report to the councillors, and warned of the complex process of establishing a new independent state body. He summarised the financial, personnel, and infrastructural situation of the state body, expressing satisfaction that basic conditions for exercising statutory powers were established, and also expressed the expectation that in 2019 the Advocate will be provided with the resources that will allow it to comprehensively carry out the tasks under PADA.

After becoming familiar with the Report, the National Council adopted the opinion, in which it concluded that the Advocate can not conduct its tasks if it lacks the appropriate powers. Furthermore, the National Council found it unacceptable that the Advocate has to draw on resources earmarked for its operation, and which are currently very limited, to ensure that citizens are informed of its existence. The National Council's opinion states, "... the promotion of (particularly) a newly established body should be undertaken by the founder of the body, i.e. state. The National Council therefore recommends that the competent National Council's Commission for Social Care, Labour, Health and Disabled discusses the possibilities of informing citizens of Slovenia, in various ways and in visible locations (within institutions of public and state administration, via various e-portals, in offices of public institutions (e.g. Employment Service of Slovenia), etc.), of the contact information and powers of the Advocate and other bodies for protecting individual's rights (Ombudsman, Commission for the Prevention of Corruption, Information Commissioner, patient rights advocates, advocates for rights of persons with mental health issues, etc.), following the example of public information on police contact information and emergency telephone number.

3.5.2.3 President of the Republic of Slovenia

Meeting with the Secretary-General of the Office of the President of the Republic of Slovenia, Nataša Kovač, 19 February 2018

When the Secretary-General of the Office of the President of the Republic of Slovenia, Nataša Kovač, visited the Advocate, Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality,

presented the progress made in 2018 in establishing the new body, its organisational structure, and its working principle. The Advocate presented the new premises and the employee team to the guest.

Advocate of the Principle of Equality submitted the 2017 Regular Annual Report to the President of the Republic of Slovenia, Borut Pahor, on 5 November 2018

The Advocate of the Principle of Equality presented the first full-year report for 2017 to the President of the Republic of Slovenia, Borut Pahor. The Annual Report includes the development of the new independent body, and an overview of the investigation cases. He also informed the President that certain deficiencies of PADA became apparent in the process of building the institution, in the two years since the body was established. The law therefore needs to be amended, in order to allow for more effective support and assistance for victims of various forms of discrimination. Miha Lobnik, Head of the Institution, thanked the President of the Republic of Slovenia and the associates of its Office for the assistance and support in establishing the new body.

3.5.2.4 Dialogue and cooperation with the Government of the Republic of Slovenia

Meeting with the Prime Minister of the Republic of Slovenia, Dr.Miro Cerar, and presentation of the 2017 Regular Annual Report, 25 April 2018

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the 2017 Regular Annual Report to the Prime Minister, and presented the functioning of the body and the institution-building progress. He highlighted the personnel shortage and the lack of financial resources in the independent body, and presented in detail the new powers of the Advocate. The Prime Minister was informed of the development and work of the new institution so far, as assessed as positive the systematic and transparent development of the body. He called for further assistance of the Government in providing suitable conditions for a comprehensive establishment of the new institution.

Meeting with the State Secretary at the Office of the Prime Minister of the Republic of Slovenia, Dr.Anja Kopač Mrak, and presentation of the 2017 Regular Annual Report, 18 October 2018

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the development of the new independent state body to Dr.Anja Kopač Mrak, State Secretary in the Office of the Prime Minister Marjan Šarec, and presented the Regular Annual Report. Miha Lobnik initially summarised the key highlights from PADA, particularly the extremely wide scope of tasks and powers given to the new body. He expressed his satisfaction with establishing the basic conditions for the functioning of the body within two years, and the expectation that the Advocate would be provided with the financial resources in the next year that will enable the full performance of tasks under PADA, and the necessity for ensuring sufficient resources for the efficient functioning of the body in all areas of work.

Meeting with mag. Ksenija Klampfer, Minister of Labour, Family, Social Affairs and Equal Opportunities, and the presentation of the 2017 Regular Annual Report, 5 October 2018

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented the 2017 Regular Annual Report to the Minister of Labour, Family, Social Affairs and Equal Opportunities, and presented the development, powers and tasks of the independent body. They highlighted the common points of both bodies, i.e. area of equal opportunity and areas covered by the ministry: labour market and employment, social assistance, retirement and the status of retired persons. The Advocate cautioned the Minister about the first shortcoming of the law, which were revealed by the application of the law.

Meeting with the State Secretary of the Ministry of Public Administration, Mojca Ramšek Pešec, and presentation of the 2017 Regular Annual Report, 27 November 2018

Head of the Institution, Advocate of the Principle of Equality, Miha Lobnik met State Secretary Mojca Ramšek Pešec during his first official visit to MoPA, and informed her of the Regular Annual Report. They agreed on cooperation and quick response of the Ministry to the Advocate's requests for assistance in establishing the independent information infrastructure. At the meeting, they addressed the issues of Advocate's procedures and highlighted the dilemmas regarding concurrent inspectional jurisdiction of the Advocate and other inspectorates, and the execution of powers related to violations

under PADA in practice. The Head of the Institution thanked the State Secretary, and MoPA in general, for the assistance and support they provided so far in the numerous aspect of building and establishing the new and actually independent body.

Meeting with the Minister of Justice, Andreja Katič, and presentation of the 2017 Regular Annual Report, 27 November 2018

During his first official visit to MoJ, Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, met with the Minister Andreja Katič and informed her of the 2017 Regular Annual Report. He presented the development of the independent body, as well as its tasks and powers. He stressed the importance of resolving the lack of clarity of PADA to ensure effective functioning of the Advocate. The Minister supported the body's efforts to obtain suitable financial resources for independent functioning in 2019, and called for the quickest possible actual independence of the new body.

The Advocate shall continue holding work meetings with ministers in 2019.

3.5.2.5 Human Rights Ombudsman

Visit by Vlasta Nussdorfer, Human Rights Ombudsman, at the head office of the Advocate, 19 January 2018

Miha Lobnik, Head of the Institution, Advocate of the Principle of Equality, presented to the Human Rights Ombudsman Vlasta Nussdorfer the challenges that he faced as the Head of the Institution under developments in the first year after establishment: severe lack of personal and financial resources, as well as issues during the transitional period of establishment, during which the Advocate depended on MLFSAEO. He presented in detail the powers and tasks arising from the new PADA, and the duality of the Advocate's role, which acts simultaneously as the advocate and a neutral decision-maker, determining whether discrimination occurred in the specific case. He also presented the powers of the body in the private sector, in which the Ombudsman has no jurisdiction. He also emphasised that the Advocate is not an offence authority. In their discussion, the Advocate and the Ombudsman touched upon several substantive areas of human rights protection, and committed to cooperate in joint areas, from the perspective of their specific powers. The Ombudsman assessed the progress so far and the development of the new body as positive.

3.5.2.6 Appointment of contact persons by line ministries for cooperation

At the end of 2018, the Advocate started conducting activities related to the appointment of contact persons in ministries and public authorities. Under PADA, the Advocate is tasked with monitoring the situation in the area of protection against discrimination in the Republic of Slovenia, and the measures for enforcement of the principle of equality. In order to facilitate cooperation with the state administration, the Advocate called upon the competent authorities to appoint contact persons by areas or personal circumstances, who could, from the perspective of anti-discrimination legislation, monitor the line ministries' policies and communicate with the Advocate in the promotion of the principle of equality on the normative level.

Furthermore, Article 14 of PADA states, "In their respective fields and within their competences, state authorities, local communities, self-governing national communities and holders of public authorisations shall provide conditions for the equal treatment of all people, irrespective of any personal circumstances, by raising awareness and monitoring the situation in this field and with measures of a normative and political nature. Ministries and governmental services responsible for the fields in Article 2 of this Act or for groups of people with certain personal circumstances shall prepare proposals of measures in their respective fields of work."

Thus, the key task of line ministries, and thus of contact persons for the area of equality, is to submit to the Advocate for information purposes and opinion the current measures and measures under development (e.g. programmes, strategies, legislative acts and implementing regulation) in the area and within the framework of competence of the individual state authority, which in their opinion interferes or could indirectly interfere with the provision of protection against discrimination or equal treatment of all persons.

Appointment of contact persons in state authorities represents one of the activities for establishing a closer relationship with stakeholders responsible for implementing anti-discrimination measures, exchange of information, and providing support in enforcing the principle of equality. The Advocate organised the first meeting of with the contact persons at line ministries in March 2019.

3.5.2.7 Cooperation in inter-ministerial groups and specialist councils

In 2018, the Advocate and its employees participated in various councils of experts and inter-ministerial groups.

- **Council of Experts for Gender Equality**

The Council of Experts for Gender Equality is an expert advisory body operating within MLFSAEO. In November 2018, the Advocate attended and actively participated at the first session of the Council.

- **Council of the Government of the Republic for Dialogue on Religious Freedom**

The Council's primary purpose is to consider a wide range of matters (opinions, questions, requests and proposals) on religion freedom, which are submitted to the Council by its members, registered churches and other religious communities (via their representatives on the Council or directly to the Council's head office, Ministry of Culture), the Government, and ministries and various levels of government. The Council of the Government of the Republic for Dialogue on Religious Freedom did not convene a session in 2018.

- **Human Rights Ombudsman Council**

The Human Rights Ombudsman Council is a consulting body of the Ombudsman for the promotion and protection of human rights and fundamental freedoms and strengthening of legal safety, which operates in accordance with the principle of professional autonomy. In 2018, a representative of the Advocate attended two sessions of the Ombudsman Council.

- **Inter-ministerial Workgroup for Human Rights**

The Inter-ministerial Workgroup for Human Rights is coordinated and substantively guided by the Ministry of Foreign Affairs. Members of the group work in the area of international promotion and protection of human rights. In 2018, representatives of the Advocate attended and actively cooperated in four sessions of the Inter-ministerial Workgroup for Human Rights.

4 HIGHLIGHTED AREA OF DISCRIMINATION: EMPLOYMENT AND WORK

4.1 Introduction

Discrimination related to employment and in various stages of the work process constitutes a severe interference with human dignity. Pursuant to Article 1 of the Universal Declaration of Human Rights, which states that “All human beings are born free and equal in dignity and rights,” human dignity is unalienable and represents the basis for exercising human rights on equal basis, regardless of any personal circumstance. Respect for human dignity therefore necessarily means consistent respect for the principle of equality and prohibition of discrimination.

Many general universal international conventions on human rights, adopted under the auspices of United Nations (UN), have explicitly prohibited unequal treatment related to work (e.g. Articles 2 and 7 of the International Covenant on Economic, Social and Cultural Rights), as have those related to protection of persons with a specific personal circumstance (e.g. Article 5.(i) of the Convention on the Elimination of All Forms of Racial Discrimination, Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women, Article 27 of the Convention on the Rights of Persons with Disabilities). As early as 1958, the International Labour Organisation adopted Convention no. 111 concerning Discrimination in Respect of Employment and Occupation, binding contracting parties to promote equal opportunities related to employment and occupation, with the purpose of eliminating any discrimination in this area. Acts on the EU level also dedicate special attention to the area of work⁶⁶, partially or in full, which were initially transposed to the Slovenian labour law, and later to the Protection Against Discrimination Act.

The Advocate of the Principle of Equality has chosen this area also because of the worrying data regarding the understanding and treatment of work-related discrimination in Slovenia and related activities conducted in 2018. Below, we present the definition of the area of work-related discrimination and the most common forms of discrimination in this area, including an illustrative example with recent cases from case law and inspection practice. We particularly emphasise the importance of distinguishing between bullying and harassment as special forms of discrimination. We also present the Advocate’s activities within the framework of drafting and adopting the National Action Plan of the Republic of Slovenia on Business and Human Rights, which is the latest action document on the national level that explicitly addresses protection against work-related discrimination. In conclusion, we present the Advocate’s activities for integration with the private sector and some plans for future activities.

4.2 Work-related areas of protection against discrimination

In accordance with Article 2, paragraph 1, of PADA, the Advocate has jurisdiction for systematic and individual provision of protection against discrimination and equal treatment in relation to conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions, regardless of the type of activity and on all levels of professional hierarchy, including promotion; to access to all forms and all levels of career guidance and counselling, vocational and professional education and training, advanced vocational training and retraining, including practical work experience; employment and working conditions, including termination of employment contracts and wages; membership and involvement in worker or employer organisations or any organisation whose members engage in a particular occupation, including the benefits provided by such organisations. A special definition of areas where discrimination is prohibited is included in Article 6, paragraph 2, of the Employment Relationship Act, which represents a *special law* in the area of work-related discrimination.

In their protection against work-related discrimination, both PADA and ERA go beyond the framework of EU law, as European directives provide protection only for discrimination based on race or ethnicity, gender, religion or belief, disability, age and sexual orientation, while PADA and ERA explicitly list other personal circumstances – e.g. gender identity and gender expression, social status, financial situation, education, trade union membership, medical condition, while they both also allow other circumstances (“or any other personal circumstance”). Persons with an actual personal circumstance are not the only ones protected against discrimination; such protection applies to other persons who are exposed to less

⁶⁶ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, and Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

favourable treatment on the basis of an alleged personal circumstance (e.g. heterosexual persons whom the perpetrator assumes to be homosexuals).

4.3 Multitude of forms of work-related discrimination – Theory and practice

Direct discrimination is, for example, present when the conditions for employment – considering the exception of the prohibition of discrimination in employment, including the concept of significant and decisive vocational requirements – in accordance with the principle of proportionality – directly exclude persons with a specific personal circumstance.

Sectoral legislation explicitly focuses on prohibition of discrimination based on gender, and prohibits job postings for only men or women when the gender is not significant or decisive requirement for work, and such a requirement is not proportional and not based on a legitimate objective, and a job posting can not state that a specific gender has an advantage hiring, with consideration of the listed exceptions. Furthermore, special attention is paid to the family situation of persons seeking employment, who, when concluding an employment contract, are not obligated to provide information on their family situation or marital status and pregnancy or family planning, while the employer can not make the employment contract conditional on such information or on additional criteria related to the prohibition of pregnancy or suspension of maternity or prior signature of employment contract termination by the worker. Any less favourable treatment of employees related to pregnancy or parental leave constitutes discrimination (Articles 27 and 28 of ERA).

In the Advocate's report on investigations of work-related discrimination cases in 2018, the Labour Inspectorate of the Republic of Slovenia listed some illustrative examples of direct discrimination. In one case, the employer publicly, on a social network, advertised a vacant post, which was limited to female candidates only (as evident from "looking for a capable girl"). The Inspectorate determined that the candidate's gender did not represent a significant and decisive condition for performing the tasks of the advertised vacant post, as it involved working in marketing and website administration; the Inspectorate therefore determined gender discrimination (Chapter 3.2.1.1 Labour Inspectorate of the Republic of Slovenia). In another case involving discrimination during the time of employment, the employer demanded that the employee, who had been on sick leave for a month due to a medical condition, works for 15 days without payment, and also concluded an agreement with the employee that the employment contract will be terminated if she is again absent from work due to medical reasons before the end of the calendar year. The Inspectorate determined that the employer's actions constituted discrimination based on a medical condition (Chapter 3.2.1.1 Labour Inspectorate of the Republic of Slovenia).

Determination of indirect discrimination can also be based on statements regarding an entity's employment policy. In the past, the Court of Justice of the EU issued a judgment that the employer's public declaration, to the effect that it will not employ workers of a specific ethnicity or race, represents direct employment discrimination, as such statements seriously deter certain candidates from applying for the position, thereby creating an obstacle to their access to the labour market.⁶⁷

Indirect discrimination would occur if seemingly neutral employment conditions would place persons with a specific personal circumstance in a particularly less favourable position. Such conditions would be permitted if based on legitimate objectives and representing appropriate and necessary means to pursue such objectives, but would have to pass the proportionality test. Unequal or less favourable treatment would therefore not represent discrimination if the pursuit of a legitimate objective (which is generally based on the nature of work – concept of significant and decisive occupational requirements) does not include other means that could less severely infringe the right to equal treatment, or when unequal treatment represents the least possible damage necessary to achieve such an objective.

At the end of 2017, the Court of Justice of the European Union decided in case C-409/16 *Kallir*⁶⁸ whether the requirement of minimum height for the police academy enrolment in Greece represented discrimination. In the preliminary decision, the Court emphasised that the objective pursued by Greek authorities, i.e. ensuring operational qualification and good police operations, is legitimate. However, based on several reasons and circumstances, the Court determined that the requirement of minimum

⁶⁷ Judgment of the Court of the Justice of the European Union from 10 June 2008, case C-54/07

⁶⁸ Judgment of the Court of the Justice of the European Union from 18 October 2017, case C-409/16

height is not the appropriate measure to achieve this objective. Many police tasks are not related to the use of physical force, while physical force is not necessarily associated with physical height. The Court therefore found the Greek arrangement inappropriate, as the pursued objective could be achieved by less severe measures, such as special tests of physical fitness upon enrolment in the police academy. The Court of Justice of the European Union therefore established a requirement for close correlation of employment criteria and objectives pursued by these criteria, and set a strict proportionality test for exceptions of indirect gender discrimination.

A case with the substantively equal explanation, but the opposite outcome, is the decision by the Higher Labour and Social Court in 2018, in the case of a job candidate for employment in a hospital alleging employer's discrimination based on religion.⁶⁹ Amongst other things, the Court decided that the request for the candidate, who was a Muslim, to remove the headscarf while at work, as it is not part of the prescribed uniform, did not violate the prohibition of indirect discrimination. During the proceedings, the employer explained that all employees have to change into the prescribed work uniform at work, and into protective clothing in certain work areas, as this ensures lower risk of hospital-acquired infections. He explained that approximately 20% of staff is Muslim, and that no other Muslim female employee wears a headscarf in the workplace. He also explained that they employ nuns, who after arriving to work remove all their religious clothing and put on their work uniforms. The Court decided that the employer appropriately explained why all employees must wear service work uniform and, if needed, personal protective equipment, as they are required to prevent various hospital-acquired infections; therefore, service clothing is a condition for carrying out specific medical tasks, thus the requirement for the service uniform is proportional and justified by the legitimate objective to reduce the hygiene risk. Such conditions therefore did not constitute indirect discrimination based on religion.

Special forms of discrimination that are not otherwise related to less favourable treatment in accessing right, but to the very existence of the personal circumstance of the victim, are harassment and sexual harassment.

Harassment is any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment. As shown below, in accordance with the Slovenian legal order – harassment is substantively identically defined by Article 8, paragraph 2, of PADA and Article 7, paragraph 1, of ERA – it is necessary to distinguish between harassment and bullying, which are legally different aggravated forms of psychosocial risks in the workplace, and have at the same time different ground for occurrence and therefore require different investigations. The causal link between actions of the violator of the prohibition of harassment and the personal circumstances of the victim is required. As harassment exists not only in the effects of unwanted conduct, but with the very purpose of creating such effects, the approach to its investigation can be either subjective or objective. This means that the existence of harassment can be determined on the basis of the victim's perception of unwanted conduct, while the same findings do not require the victim to actually experience the effects of perpetrator's conduct, as it is enough for such conduct to be aimed at the victim due to their specific personal circumstance. Furthermore, the potential victim of harassment is not necessarily a person with a protected personal circumstance; a victim could also be someone who is harassed on the basis of a protected personal circumstance of a closely affiliated person. In case C-303/06⁷⁰, the Court of Justice of the EU decided that unwanted conduct towards an employee without any disability is linked to the disability of her child, who she provides an essential part of necessary care, and therefore violates the prohibition of harassment.

Sexual harassment is a special form of harassment that encompasses unwanted conduct of a sexual nature, and is not related to any personal circumstance. The illegality of sexual harassment is based on the very form of the action, i.e. verbal, non-verbal or physical abuse, and its effects, which violate the victim's right to personal dignity.

In conclusion, we would like to point out that **special measures for ensuring equality** in employment and work **do not constitute a violation of the prohibition of discrimination** if they fulfil the statutory criteria. Such measures are particularly characteristic for this area, and are regularly implemented nationally as part of the active employment policy. More information on special measures for ensuring

⁶⁹ Decision of the Higher Labour and Social Court, ref. no. Pdp 898/2017, from 8 March 2018

⁷⁰ Judgment of the Court of the Justice of the European Union from 17 July 2008, case C-303/06

equality, as well as on the practice of public authorities in Slovenia, can be found in Chapter 3.4 Special measures for ensuring equality.

ADVOCATE'S HIGHLIGHTS

Article 5 of the Council Directive 2000/78/EC states that in order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, **reasonable accommodation shall be provided in the workplace**. This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. Substantively similar provisions are also included in Article 2 and 27 of the Convention on the Rights of Persons with Disabilities and Article 2 of the Equalisation of Opportunities for Persons with Disabilities Act in connection with Articles 13 and 14 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act.

Appropriate accommodations in the workplace can vary depending on the specific case, and can include anything from material measures, such as installation of ramps, construction of toilet facilities for persons with disabilities, and ergonomic accommodations of the workplace, to organisation measures, such as shorter working hours and accommodation of training. In recent years, case law of the Court of Justice of the European Union and the European Court of Human Rights states that **denial of appropriate accommodation constitutes discrimination**, basing their decisions on Article 2, paragraph 3, of the Convention on the Rights of Persons with Disabilities, which represents the only binding act that *explicitly* defines the violation of the obligation to provide appropriate accommodation as discrimination based on disability.

4.4 Harassment and bullying – related but different occurrences

Here, we emphasise the need to **distinguish between harassment and bullying**. In 2018, the Advocate responded to questions of the Human Rights Ombudsman regarding examined cases of bullying and the relevant findings, and has also cooperated in this area in preparing the responses of the Ministry of Labour, Family, Social Affairs and Equal Opportunities for the Ombudsman. In both cases, the Advocate explained that **bullying**, as defined by Article 7, paragraph 4, of ERA – i.e. is any repeated or systematic objectionable or clearly negative and offensive treatment or behaviour directed at individual workers at the workplace or in connection with work – by itself and under the provisions of PADA does not fall within the Advocate's jurisdiction, as a *violation of the prohibition of various forms of discrimination does not represent the necessary condition of bullying*.

Harassment is any undesired behaviour associated with any personal circumstance with the effect or intent of adversely affecting the dignity of a person or of creating an intimidating, hateful, degrading, shaming or insulting environment.

Furthermore, the Advocate stressed the important difference in the *element of time*. While bullying represents repeated or systematic wrongful conduct, there is no such requirement for harassment or sexual harassment, meaning that the existence of violation of the prohibition of these forms of discrimination can be determined with a one-off (wrongful) conduct of the perpetrator. The listed normative differences do not mean that the Advocate can not act in cases of alleged bullying – the Advocate can act in cases where alleged bullying includes elements of harassment. This means that the perpetrator's conduct is based on a victim's specific personal circumstance.

Based on the cases received in 2017 and 2018, where persons contacted the Advocate regarding alleged bullying, and on the basis of the above-mentioned cooperation with other public authorities, we highlight the following findings:

- Persons who allege bullying and contact the Advocate in most cases **do not know the (legal) meaning of discrimination**. These persons allege bullying and unfavourable, unequal or otherwise unjust treatment; however, conduct of alleged perpetrators is not based on a victim's personal circumstance or other elements of discrimination. This does not mean that alleged conduct is not illegal; however, it does mean that investigation of such cases falls outside the statutory powers of the Advocate. Such cases indicate a **need for a more intensive awareness-raising for workers and the general public on the definition of work-related**

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discrimination, how it differs from bullying and unjustified unequal treatment, and the protection against discrimination options provided by the Advocate.

- Both bullying and harassment at work represent an unacceptable violation of dignity and psychological and physical integrity of employees. However, it is necessary to **distinguish the perpetrator's reasons and motives** that represent the trigger for such unacceptable conduct. Bullying generally arises from inappropriate work organisation, unclear employees' competences, unclear management and excessive workload⁷¹, or disputes between workers based on personal interests of the perpetrators (e.g. jealousy, economic interests, desire to demonstrate power).⁷² On the other hand, reasons for harassment (and discrimination in general) are most often found in stereotypes and prejudices that individuals express in the form of mental judgements based on generalisation of incorrect, misleading or incomplete information as intolerance or hostility towards a person or group of persons with a specific protected personal circumstance. Differentiating and separately addressing the reasons and motives for bullying and discrimination is therefore crucial, **especially from the perspective of preventive action**, which must be at the core of the fight against both forms of psychosocial risk, and for which an employer has a legal obligation and is liable for damages.⁷³ Because preventive action is primarily focused on the reasons of unacceptable conduct, training in the prevention of harassment at work must include awareness-raising on discrimination, breaking down prejudices and stereotypes, promotion of positive effects of diversity in the workplace, and connecting employers with national and civil society entities that work in the area of protection against discrimination.
- Despite the above differences, bullying and harassment can in practice **occur concurrently or mutually connected**. For example, bullying can include specific elements of harassment (specific unwanted conduct in a systematic pattern are based on the victim's personal circumstances), while harassment in a repeating pattern can reach the time standard of bullying, with the discriminatory conduct representing the trigger or first stage of bullying. Particularly in latter cases, it is essential that victims (and employers) are aware of the difference between harassment and bullying, as well as the possible ways to take action, as victims can turn to the employer and/or competent institutions at the first occurrence of unacceptable conduct.

Overview: Key differences between harassment and bullying

	HARASSMENT	BULLYING
Reason / motive	Intolerance and/or hostility based on stereotypes and social prejudices	Inappropriate work and organisational processes, excessive workload, personal reasons
Duration of conduct	one-off or multiple	Recurring or systematic
Personal circumstance of victim	Always present	Not necessary a condition

4.5 Discrimination related to work through the prism of the National Action Plan of the Republic of Slovenia on Business and Human Rights

⁷¹ Brečko, D. (2003). "Mobbing" – psihično in čustveno nasilje na delovnem mestu. *HR&M*, 1(1), 62–64, 63

⁷² Petrović, Aleksandra K. (2014) Problem razlikovanja diskriminacije i zlostavljanja na radu u pravnoj teoriji i praksi Republike Srbije, *Pravni vjesnik* 30(2), 77–85, 81.

⁷³ In accordance with Article 47, paragraph 1, of ERA and Article 24 of the Health and Safety at Work Act, employers are obligated to adopt appropriate measures to protect workers from sexual and other harassment or bullying in the workplace. If the employer fails to fulfil this obligation, it is liable to provide damages to the victim in accordance with Article 8 of ERA in the event of violation of the prohibition of discrimination or workplace bullying.

In June 2011, the United Nations Human Rights Council unanimously approved the Guiding Principles on Business and Human Rights⁷⁴, which were prepared by the former UN Special Representative of the Secretary-General on human rights and transnational corporations, John Ruggie. The Guiding Principles have a three-pillar structure, which forms a way for countries and companies to enforce internationally recognised human rights; the first pillar encompasses the states' duties in the protection of human rights, the second the responsibility of companies to respect human rights, and the third the access of victims of human rights violations perpetrated by companies to appropriate judicial and non-judicial mechanisms. Although the Guiding Principles do not provide precise, pre-defined solutions for complete elimination of impunity of business entities in their human rights violations, they do, however, help businesses in adopting more responsible business decisions and policies.⁷⁵

On 8 November 2018, the Government adopted the National Action Plan of the Republic of Slovenia for the Respect of Human Rights in Business (NAP)⁷⁶, which in many parts touches upon the Advocate's area of activity, as the **prevention of discrimination and inequality, and the promotion of equal opportunities**, was given **top priority in Slovenia** on the basis of findings of the document drafting process.⁷⁷ The Advocate welcomes this priority, as some studies conducted in recent years attest to the need for protection against discrimination – especially regarding work and employment – despite the absence of accurate and up-to-date national data. Thus, the Advocate's 2017 study on the perception of discrimination in Slovenia showed that as many as 48% of respondents who said they were discriminated against within the last 12 months (17% of all respondents) were discriminated in the area of work and employment.⁷⁸ These results almost completely match the results of the sixth European Working Conditions Survey, conducted two years before our study, in which 7% of all employed respondents in Slovenia replied that they were discriminated against in the workplace.⁷⁹

Within the framework of providing effective and appropriate non-judicial complaint mechanisms, as part of the comprehensive assistance system for business violations, NAP gives special attention to the Advocate, highlighting the Advocate as one of the key agents in the area of protection against discrimination within the sphere of respect for human rights in business. However, here we have to point out **certain shortcomings of NAP**, in terms of (in)adequately consideration of the scope of the fight against work-related discrimination and the planning of appropriate measures. The Advocate was invited to cooperate in the NAP drafting process. At the end of January, the Advocate submitted its comments and notes to the Ministry of Foreign Affairs, which coordinated the process. Below, we present the Advocate's contributions and key reasons for them:

- It was proposed that the key steps for further development of regulation and promotion of enforcement of human rights in business include **strengthening of the Advocate as an independent and autonomous state body for protection against discrimination**, which – unlike the Ombudsman – has the power to investigate discrimination complaints not only in the public, but also in the private sector. In fact, the European Commission against Racism and Intolerance recommended that Slovenia provides suitable conditions for effective functioning of the independent state body for protection against discrimination.⁸⁰
- In view of the specific highlighted personal circumstances that are prohibited as grounds for discrimination, NAP emphasises only the provision of equal opportunities for women and men, and employment and work of persons with disabilities, among the problem areas and related

⁷⁴ Available at:

http://www.mzz.gov.si/fileadmin/pageuploads/foto/1312/SMERNICE_OZN_za_spostovanje_clovekovih_pravic_v_gospodarstvu.pdf

⁷⁵ E.g. Deva, Surya (2012), Guiding Principles on Business and Human Rights: Implications for Companies, *European Company Law* 9(2), 101–109

⁷⁶ National Action Plan for the Respect of Human Rights in Business (NAP), adopted on 8 November 2018. Available at: http://www.mzz.gov.si/fileadmin/pageuploads/foto/0114/NAN_za_spostovanje_cp_v_gospodarstvu.pdf.

⁷⁷ Prav tam, p. 6.

⁷⁸ Regular Annual Report of the Advocate of the Principle of Equality for 2017, p. 5

⁷⁹ Eurofound, Sixth European Working Conditions Survey (EWCS), 2015.

⁸⁰ European Commission against Racism and Intolerance Report on Slovenia (fourth monitoring cycle), adopted on 17 June 2014, p. 17. As an independent state body for protection against discrimination has not yet been established when the report was released, ECRI also recommended that Slovenian establishes such a body and provides it with adequate human and financial resources for its operation.

measures. While the Advocate agrees that both areas are extremely important within the context of combatting work-related discrimination, the Advocate proposed that the text of the document **includes the legal definition of discrimination as defined by PADA, which is not limited in terms of personal circumstances**. In fact, the need for a wider definition of discrimination from the perspective of personal circumstances is justified by some studies. The Eurofound's 2015 European Working Conditions Survey, for example, shows that employees, when asked about a personal circumstance that was grounds for work-related discrimination against them in the last 12 months, highlighted age (3.9%), gender (1.6%), disability (1.5%), ethnicity (1.2%), race, ethnic background or skin colour (0.9%), religious affiliation (0.8%), and sexual orientation (0.2%).⁸¹ The 2015 Special Eurobarometer also shows different reasons for discrimination. Among the personal circumstances that could negatively influence employment in the event of equal job candidates, respondents in Slovenia highlighted age (62%), disability (58%), gender (39%), skin colour and ethnic affiliation (29%), sexual orientation (28%), expression of religious belief (27%), and gender identity (26%).⁸²

- Furthermore, it was proposed that the document **explicitly defines and emphasises the concepts of harassment and sexual harassment as special forms of discrimination in the workplace**. NAP does mention the above forms of discrimination within the framework of measures for the prevention of bullying in the workplace, and partially within the framework of measures for ensuring equal opportunities for women and men, and ensuring health and safety at work. Based on its own experience, the Advocate assesses that the concept of harassment is not well known in the general public, and should be clearly distinguished from bullying, for the purpose of forming more effective prevention strategies and assistance for victims; therefore, it requires explicit explanation and consideration.

The study on harassment and sexual harassment at the workplace, published in 2018 for the European Parliament by the European Commission⁸³, shows that the incidence of sexual harassment and harassment is relatively low in Slovenia – 0.7% of employees (0.1% of men and 1.3% of women) responded that they were the victim of sexual harassment within the last 12 months, and 5.5% of employees responded that they were the victim of bullying or harassment⁸⁴ (4.5% of men and 6.7% of women). These results most likely do not present the real situation, as explained by Eurofound's 2015 special survey. The special survey states that in Slovenia employees rarely report harassment and sexual harassment due to the fear of victimisation by the employer and loss of employment.⁸⁵ Furthermore, the study attributes the very low reporting rate for these forms of discrimination to the lack of social sanctions, which is the result of lack of awareness in society, leading to acceptance and indifference about these forms of negative conduct. Such acceptance and indifference is particularly characteristic for (former) transitional countries, which also include Slovenia, resulting in acceptance of harassment and sexual harassment as "part of work".⁸⁶ The study also categorises Slovenia among the countries where policies and procedures for the prevention and investigation of violence and harassment are still under development, and have been implemented by a small percentage of companies.⁸⁷

- Based on the above two indents, the Advocate proposed for the **wider area of work-related discrimination to be included in planned measures**, with three highlighted priorities, specifically improved informing and awareness-raising activities regarding the rights, with the

⁸¹ Ignjatović, Miroljub and Kanjuo Mrčela, Aleksandra (2017) Second report on psychosocial risks in the workplace in Slovenia, University of Ljubljana, Faculty of Social Sciences, p. 13. Available at: http://www.osha.mddsz.gov.si/resources/files/pic/IGNJATOVI_KANJUO_MRELA_Drugo_poroilo_o_psihosocialni_h_tveganjih_27.10.2017.pdf.

⁸² Special Eurobarometer 437: Discrimination in the EU in 2015, Report, p. 80. Available at: http://www.equineteurope.org/IMG/pdf/ebs_437_en.pdf

⁸³ Directorate General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs (2018) Bullying and sexual harassment at the workplace, in public spaces, and in political life in the EU, Study, p. 73. Available at: [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU\(2018\)604949_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/604949/IPOL_STU(2018)604949_EN.pdf).

⁸⁴ The study explains that, in the case of Slovenia, the concept of bullying/harassment includes cases that the Slovenian legislation defines either as harassment or as bullying. Prav tam, p. 72.

⁸⁵ Prav tam, pp. 19–20.

⁸⁶ Prav tam, p. 50.

⁸⁷ Prav tam, pp. 54–55.

emphasis on training activities for employers and employees, provision of appropriate conditions for systematic and comprehensive investigation of specific cases of discrimination in the workplace, and reinforcement of the Labour Inspectorate of the Republic of Slovenia as the inspection and sole offence authority, responsible for imposing fines in this area.

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The listed proposals for amendment of NAP draft were unfortunately not adopted, which the Advocate explained at the presentation of NAP at the 21st session of the Inter-ministerial Workgroup for Human Rights, held on 12 December 2018. After the Advocate once again provided the comments and highlighted the substantive shortcoming of the document in the area of discrimination, MFA included the Advocate in the Contact Group for Monitoring NAP Implementation.

4.6 Advocate's completed and future efforts in the area of work

At the end of 2018, the Advocate began more intensely **establishing cooperation with private-sector entities**. Based on investigated discrimination complaints, where violations were committed by companies, it became apparent in several cases that violations occur due to **lack of awareness on the side of employers**, who, after receiving our official clarifications and recommendation, ceased their violations without any further procedure. In establishing cooperation with the private sector, the Advocate promotes priority application of **preventive measures of awareness-raising, identification and promotion of best practices and measures** for the promotion of equality, which cover various personal circumstances, and which some companies have already implemented, while such programmes are also promoted by public institutions and state co-financing programmes.

On 18 April 2018 in Ljubljana, the Advocate organised a **round table discussion, titled "Respect of Human Rights in Business"**. By organising the event, the Advocate wanted to draw attention to the United Nations guidelines on respect for human rights in business and the systematic arrangement of monitoring the respect for human rights in business in Slovenia. In the introductory address, the **host of the round table discussion, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality**, presented the activities of the new independent state body for the prevention of discrimination and promotion of equality, and explained how the UN guidelines relate to his work. A special guest welcomed the participants at the event, Human Rights Ambassador in the Netherlands, Kees Vaan Baar, who explained that the Netherlands has a national plan, which represents the foundation for constant dialogue with non-governmental organisations, companies, and other stakeholders. He emphasised that the adoption of the national plan contributed to an improved and increased care and awareness of companies on these issues.

Later, various speakers presented their positions on the discussed topic. Dr. Melita Gabrič (MFA) said that as a member of the EU and UN we are committed to the respect of guidelines of these organisations, particularly in the area of human rights. She explained that, when drafting NAP, they considered the guidelines of other countries and researched the best practices of those countries that have already adopted an action plan. Igor Knez (Chamber of Commerce and Industry of Slovenia) believed that there is a high level of understanding of universal human rights in Slovenia; however, this does not mean there is no room for improvement. He emphasised that more needs to be done in awareness-raising and implementation of best practices from abroad. Dr. Jernej Letnar Černič (Faculty of State and European Studies) emphasised that Slovenia, considering the regions where it is located, is very advanced in the respect for human rights in business. However, he believes that the respect for human rights in the private sector generally exists only at the level of principle, as UN guidelines are not legally binding. According to him, the Slovenian Constitution imposes an obligation on companies to respect human rights, which is also important when Slovenian companies employ workers abroad. Aleš Kranjc Kušlan (Ekvilib Institute) highlighted Directive 2014/95/EU on disclosure of non-financial and diversity information as the legal framework that resulted in a significant change; according to him, before this directive was adopted, companies only stated in their reports that they respect human rights and do not detect any violations. At the event, the panellists called for equal treatment of each individual and emphasised the importance of equality bodies, which must be given independence and autonomy. They agreed that Slovenia is too hesitant when it comes to adopting international treaties on companies' obligations to respect human rights.

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So far, the Advocate **also provided counselling and recommendations** for companies, primarily in the area of employment; however, as has been shown in practice, private-sector employers either do not know about the Advocate and the range of services its provides, or believe that the Advocate primarily investigates specific discrimination complaints. The Advocate therefore assesses that a **wider awareness-raising campaign** will be required in the future, presenting to companies the possibilities for cooperating with the institution and the possible ways to prevent discrimination, which will have a **preventive effect of reducing violations**, primarily in the area of employment and employee management.

As a special form or strategy of discrimination prevention, we highlight **diversity management in employment and work**, which means managing differences between employees based on their personal circumstances, as well as promoting the understanding of the advantages of a diverse workforce. Slovenia does not have a comprehensive and coherent strategy in this area; however, there are some relevant project for the promotion of diversity management, such as the Diversity Charter of Slovenia⁸⁸, which was founded in 2017 as part of the EU Platform of Diversity Charters. In Slovenia, there are already several good practices in place to promote diversity in the workplace, in the form of various certificates and recognitions awarded by public institutions, local communities and private entities.⁸⁹ Nevertheless, the Advocate assesses that this area requires further attention in the future, as data shows that a large segment of public is still not fond of the promotion of diversity in the workplace. The 2015 Special Eurobarometer has shown the following in Slovenia:

- 66% of respondents support employer and worker training in the area of diversity (EU = 80%).
- 65% of respondents support monitoring of employment procedures in order to provide equal opportunities to persons affiliated with groups that are at risk of discrimination, and are equally qualified as other candidates (EU = 77%).
- 57% of respondents support monitoring workforce compositions in order to assess workplace representation of groups that are at risk of discrimination (EU = 69%).

Public support for measures for ensuring diversity in Slovenia is therefore significantly below the EU average, and has fallen almost 10% between 2012 and 2015. However, when asked **whether the promotion of diversity in the workplace, based on specific personal circumstance, is suitable in Slovenia**, the respondents' answers were much more in line with the EU average (the table below shows the percentage of "yes" answers).⁹⁰

Table: Number of respondents who believe that promoting diversity in the workplace in relation to specific personal circumstances is appropriate in Slovenia (percentage of "yes" answers)

	Age (<30 years)	Gender	Ethnic affiliation	Religion or belief	Disability	Age (>50 years)	Sexual orientation	Gender identity
SI	59	54	50	49	42	47	35	31
EU	58	58	50	49	49	47	42	33

⁸⁸ <https://www.raznolikost.eu/>

⁸⁹ E.g. certificate **Include.all**, which is awarded by the Managers' Association of Slovenia since 2017 to highlight companies with a special attitude to diversity and balance in employment and work; **Family-Friendly Enterprise Certificate**, which is awarded by the Ekvilib Institute since 2007 to highlight companies that provide employees with reconciliation of professional and family life; certificate **Older Worker-Friendly Company**, which was in 2018 awarded to eleven companies for the first time by the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia in cooperation with newspaper Dnevnik, highlighting companies that have an above-average employment of elderly workers and ensure their personal growth and development; **Disabled-Friendly Company**, a special certificate for employers for their good practices in employing persons with disabilities, awarded since 2017 by MLFSAEO; **Certificate LGBTIQ+-Friendly**, awarded by the Municipality of Ljubljana in cooperation with non-governmental organisations, Legebitra, ŠKUC, and TransAkcija, and with which employers make a commitment that their organisation provides an inclusive and sensitive environment for LGBTIQ+ workers etc.

⁹⁰ Prav tam, p. 86

For the purposes of identifying specific needs of the private sector, specific activities and drafting an awareness-raising plan, the Advocate started **preparing a private sector analysis**, which will be started at the beginning of 2019 and will encompass three parts. The first part will represent **collection and analysis of data on systematic arrangement of the area** of protection against discrimination in the private sector, which will be based on cooperation with competent ministries, state administration, and other stakeholders. The second part will be represented by an **overview of measures to promote equality in companies**: material, workshops, co-financing programmes and creation of recognitions, which can serve as sources of information for successful diversity and equality management in companies. The third part of the analysis will represent **field data collection** as part of Advocate's campaign, which will be conducted in 2019 in different Slovenian regions. Before visiting, the Advocate's associates will conduct a discussion and presentation of the body in chambers of commerce and industry and chamber of craft covering specific municipalities. During each visit, the Advocate will also visit at least **one company in the region**, known for good practices in promoting equality in the company. During the visit, a **bilateral dialogue** will be held, in which the Advocate will present the potentials of mutual cooperation, legal advice, and recommendations, while collecting information from other companies on their needs in the area of positive action for ensuring employment equality. After the visit, companies will **receive material** with Advocate's advice and recommendations.

Based on the analysis results, the Advocate will draft a plan for awareness-raising and cooperation with corporate entities, which will systematically address the needs of the private sector.

In conclusion, we highlight the **Advocate's cooperation with the Employment Service of Slovenia in the area of protection of rights of workers from other EU member states against discrimination based on nationality**. Article 4 of the Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers describes the bodies for the promotion of equal treatment and provision of support of equal treatment of Union workers and members of their family, where the Advocate, along with the Employment Service of Slovenia, is the body responsible for the promotion, monitoring and support of equal treatment of Union workers and members of their family without discrimination on grounds of nationality, which includes conducting or ordering independent studies and analysis on discrimination.

The contact point of the Employment Service of Slovenia for promotion of equal treatment of EU workers is part of the EURES network of public employment services and national partners from 32 EU/EEA member states and the Swiss Confederation. In 2019, they are planning to commission a study on the **needs in the field of integration of workers from other EU member states and their family members into the Slovenian social and work environment**, and has therefore in 2018 invited the Advocate of the Principle of Equality to prepare a substantive draft of the study.

The study findings will be available in the future, and will involve the following substantive subsets:

- actual **compliance with European and national legislation in ensuring the principle of equality** for EU workers in Slovenia;
- presentation of **integration programmes for EU workers** in Slovenia, with examples of employers' best practice;
- **comparative analysis** of arrangement of EU workers' rights by EU member states, and a proposal for amendment of national legislation.

5 INTERNATIONAL AND BILATERAL COOPERATION

5.1 Introduction

Pursuant to the Protection Against Discrimination Act, the Advocate of the Principle of Equality is tasked with international cooperation and data exchange, as discrimination research findings and monitoring results in Slovenia have to be continually submitted to European institutions, in accordance with the research models. Thus, protection against discrimination and promotion of the equality principle have, in addition to the dimension representing the core of Advocate's activities, an important international dimension. The latter aims to share information on the current situation in the area of discrimination, exchange of best anti-discrimination practices, education on current challenges of protection against discrimination, joint planning of responses, and cooperation with international mechanisms for supervising implementation of international obligations of the Republic of Slovenia in the area of protection against discrimination and human rights protection in general. Advocate's international and bilateral work also includes activities, events and meetings with diplomatic representatives of other countries in the Republic of Slovenia, and with related equality bodies from other countries.

5.2 Meetings with representatives of international mechanisms for the protection of human rights

In April 2018, the Advocate met with the **United Nations (UN) Special Rapporteur on minority issues, Dr. Fernand de Varennes**, as part of his nine-day visit to Slovenia. As an independent expert, the Special Rapporteur on minority issues is part of the special procedures⁹¹ of the UN Human Rights Council, in charge of various areas of human rights. As part of his mandate⁹², the Special Rapporteur on minority issues primarily promoted implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities⁹³, including by dialogue with national governments, independent public authorities and representatives of civil society, primarily relying on existing international standards and national legislation on protection of minorities. The purpose of his first visit was to review and monitor the situation and fulfilment of commitments made by the government with its accession to key universal and regional supervisory mechanisms on human rights and protection of minorities. He met with representatives of competent public authorities, non-governmental organisations, and in the field with some groups of persons belonging to minority communities.

At the meeting, the Advocate presented the development of the body to the Special Rapporteur, and substantively defined the areas where discrimination due to personal circumstances of ethnic affiliation, race, religion and language can be detected. This was followed by Special Rapporteur's questions. He wished to know more about the work of the new national body for the principle of equality – about the number of received complaints by persons belonging to minorities, cases of segregation of Roma children in schools, the situation with the Muslim religious community in Slovenia, and a general thematic overview of the main questions related to minorities in Slovenia. The Special Rapporteur was also interested in Advocate's functional capabilities and operational capacities. They also highlighted the need to amend PADA to remove the conflict of laws that currently affects PADA.

After receiving the draft report by UN Special Rapporteur on minority issues, the Advocate assisted the Ministry of Foreign Affairs with substantive contributions to the Government's response to the draft document. In key recommendations from the final version of the Report of the Special Rapporteur on Minority Issues (Chapter 6.1 Report of the United Nations Special Rapporteur on Minority Issues) from the visit to Slovenia, which relate to the Advocate's work, the Special Rapporteur recommends:

- Adopting a multi-year financial plan that adequately reflects the current or expanded tasks of the body, including managing campaigns for the promotion of respect of human rights and tolerance for diversity, and awareness-raising with an emphasis on Roma people, minorities, and migrants.

⁹¹ <https://www.ohchr.org/en/hrbodies/sp/pages/welcomepage.aspx>

⁹² <https://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/SRminorityissuesIndex.aspx>

⁹³ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by Resolution No. 47/135 of the UN General Assembly on 18 December 1992.

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- A review of PADA with the purpose of eliminating the current lack of clarity and inconsistencies, and a consideration of the possibilities of using limited sanctions for ensuring more effective legal means for victims of discrimination.

In April 2018, the Advocate also met with the delegation of the Council of Europe's European Commission against Racism and Intolerance (ECRI)⁹⁴, which visited Slovenia as part of its five-year regular supervision. ECRI is the Council of Europe's independent human rights monitoring body in EU member states, specialised in issues of racism, discrimination on the basis of race, ethnic affiliation or ethnicity, skin colour, nationality, religion or language, xenophobia, anti-Semitism and intolerance. ECRI consists of 47 experts, which member states appoint on the basis of their independence and impartiality, moral authority, and expertise in the subject area. As part of its activities, ECRI monitors the situation in individual countries, analysing the situation on the normative and practical level, and issues specific recommendations on identified problems in the area of racism and intolerance.

At the meeting, the Advocate presented to the ECRI delegation the scope of its operations, and highlighted the obstacles and challenges it faces in forming a fully functional national equality body, emphasising that, so far, ensuring the conditions and legality of the institution's operations represents most of its workload. Furthermore, the Advocate presented the problem of lack of clarity and the ambiguity of certain provisions of PADA regarding the Advocate's powers and the competent inspection services in the discrimination investigation procedure in individual cases. He also emphasised the lack of awareness, both in public authorities and the general public, about the existence of the institution of the Advocate, its mandate, accessibility, and services.

At the time of preparation of the Advocate's 2018 Regular Annual Report, the ECRI report on the fifth monitoring cycle has not yet been adopted and published. Nevertheless, the Advocate emphasises that ECRI, in its fourth monitoring cycle report on Slovenia in 2014, highlighted – as one of the three specific recommendations that require priority implementation by the authorities – the establishment of a fully independent specialised public authority for combating discrimination, including racial discrimination.⁹⁵ In the conclusions on the implementation of the recommendations in the interim monitoring report, adopted in June 2017, ECRI concluded that the recommendation had been fulfilled with the adoption of PADA and the establishment of the Advocate.⁹⁶ However, here we must point out that the ECRI recommendation included two parts in the main section of the report, and called for providing adequate financial and human resources for appropriate functioning of the body.⁹⁷ According to the Advocate's assessment, this recommendation has not been fulfilled by the time of the ECRI delegation visit in April 2018.

⁹⁴ <https://www.coe.int/en/web/european-commission-against-racism-and-intolerance/>

⁹⁵ European Commission against Racism and Intolerance Report on Slovenia (fourth monitoring cycle), adopted on 17 June 2014, pp. 16–17, 41. Available at: <https://rm.coe.int/fourth-report-on-slovenia-slovenian-translation-/16808b5c3a>.

⁹⁶ ECRI Conclusions on the Implementation of the Recommendations in respect of Slovenia Subject to Interim Follow-up, adopted 23 June 2017, p. 5.

Available at: <https://rm.coe.int/ecri-conclusions-on-the-implementation-of-the-recommendations-in-respe/16808b78bb>.

⁹⁷ European Commission against Racism and Intolerance Report on Slovenia (fourth monitoring cycle), p. 17, paragraph 37

5.3 Activities within the framework of the Equinet network

The key for the Advocate's international cooperation is Equinet – European network of equality bodies⁹⁸. Equinet brings together 49 organisations from 36 European countries, which are empowered to counteract discrimination as national equality bodies across a wide range of personal circumstances. Through its work, Equinet encourages national equality bodies and supports their independence and effectiveness as promoters of a more equal society. Its work is supported and financed by the Rights, Equality and Citizenship Programme 2014–2020, whose goals include the promotion of equality and fundamental rights, and increasing awareness of rights guaranteed by the citizenship of the European Union (EU).

In order to strengthen the voice and importance of equality bodies in the wider European debate on the prevention of discrimination and the implementation of the principle of equality, Equinet encourages regular exchange of sectoral information, data and knowledge; organises seminars and training for employees of national equality bodies; organises cooperation within four Equinet Workgroups (policy making, equality law, communication strategies, gender equality); prepares publications and opinions on specific topics and policies on equality and non-discrimination at the European level.

In 2018, representatives of the Advocate participated in all four Workgroups and two Equinet forums (clusters), and attended four panel discussions and trainings organised by Equinet.

5.3.1 Equinet workgroups and Equinet forums

Equinet international network of equality bodies includes the following Workgroups, with active participation of the Advocate's associates:

- **Equality Law** Workgroup
- **Policy Formation** Workgroup
- **Gender Equality** Workgroup
- **Communication Strategies** Workgroup
- **Research and Data Collection** Workgroup
- **Freedom of Movement** Workgroup

→**The Equality Law Workgroup** is a permanent platform for legal staff of equality bodies to exchange experience and share expertise, in order to improve the level of legal protection from discrimination. The Workgroup focuses on the interpretation of complex legal problems and a comparative analysis of EU and national legislation and case law in the field of equality and anti-discrimination law. In 2018, the Workgroup also focused on the issue of mandatory retirement age and related case law of the Court of Justice of the EU; the issue of intersectional discrimination based on age and other personal circumstance; preparing the report on discrimination based on age and monitoring and analysing cases of the European Court of Human Rights (ECHR), relevant for the work of equality bodies.

A representative of the Advocate attended the meeting of the Equality Law Workgroup held on 8 May 2018 in Brussels. The first part of the meeting was dedicated to reviewing current developments, highlighting the progress made in the fight against hate speech in the context of multinational corporations' growing acceptance of the Code of conduct on countering illegal hate speech online⁹⁹, drafted by the European Commission. The central part of the meeting focused on the main topic of the work group in 2018, i.e. age discrimination. Various cases encountered by equality bodies were presented, but which were mostly discrimination against the elderly ("youth" as such was not at the forefront of age discrimination) in different areas of social life (employment, access to the market for goods and services, access to health services). Part of the meeting was dedicated to a discussion of Equinet's pilot project, whose aim is to implement an ECHR case monitoring system, specifically with the purpose of possible intervention by Equinet in the court as an *amicus curiae*.

⁹⁸ <http://www.equineteurope.org/>

⁹⁹ https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300

The Equality Law Workgroup acts as a support **forum for exchange of opinions** on issues encountered by equality bodies in **individual discrimination investigation cases**. In 2018, the Advocate cooperated in eight such exchanges; in six cases, the Advocate provided answers to other equality bodies, and asked for information in two cases. In its responses, the Advocate explained the arrangement of free public transport for persons with disabilities and the arrangement of disability pension rights; rules on appearance of male and female police officers; criminal law arrangement of special motives for criminal offences perpetrated on the basis of hatred of groups or persons with actual or alleged personal circumstance; arrangement of special measures for ensuring equality; minor offence law and criminal law arrangement of protection against discrimination and types of personal circumstances protected by criminal law. Based on its own cases, the Advocate obtained comparative information on the methods of investigation of cases that are already involved in administrative, inspection or judicial proceedings; on special discounts for specific social groups, provided by private suppliers of goods and services; and on the consideration of immutable legal status of a legal person as a circumstance against which discrimination would be prohibited.

→ **Policy Formation Workgroup** is intended as support for Equinet's dialogue with EU institutions, particularly through the preparation of Equinet perspectives on certain issues of equality, diversity and tackling discrimination, which are based on contributions and experience of national equality bodies and aim to inform EU institutions in these areas. In 2018, the Workgroup also focused on preparing the Equinet perspective on the role of equality bodies in addressing the issue of hate speech.

A representative of the Advocate attended the meeting of the Policy Formation Workgroup held on 29 November 2018 in Brussels. The key points of the meeting were the final stage of the preparation of Equinet perspective on the role of equality bodies in tackling hate speech, preparation of Equinet recommendation on hate speech before the upcoming European Parliament elections and the role of equality bodies in achieving sustainable development goals of the 2030 Agenda for Sustainable Development. The Advocate's representative emphasised that – unlike many other equality bodies – Article 10 of PADA defines hate speech, which is not in itself a legal category, as a special form of discrimination, i.e. incitement to discrimination; thereby placing this issue firmly within the Advocate's purview.

→ **Gender Equality Workgroup** is a permanent platform for staff members of national equality bodies working on gender equality, and seeks to identify and analyse good practices and current challenges in the relevant field, both on the national and European level. Using different methods, such as publications, various oral and written interventions, the Workgroup aims to improve the effective promotion of gender equality and to combat gender discrimination. In 2018, the priorities of the Workgroup were, amongst others, an analysis of the Work-Life Balance Directive and its implications for equality bodies; identification of challenges regarding the changing legal landscape of rights of transsexual persons, and integration of the principle of gender equality in Equinet's work. A representative of the Advocate attended the meeting of the Gender Equality Workgroup held between 10 and 12 April 2018 in Sophia.

→ **Communication Strategies Workgroup** is Equinet's permanent platform for staff members of equality bodies working on communication. The Workgroup is mandated to explore how national equality bodies can share information with various public segments, enhance their strategic approach to communicating the values of equality and non-discrimination, and build capacity of equality bodies in these areas. In 2018, the Workgroup focused on tackling online discriminatory and hate contents using positive narratives, organisation of Equinet seminar on the topic of hate speech from the perspective of the mandates of equality bodies, and preparation of report on implementing the equality and non-discrimination agenda in political and election campaigns. In 2018, the Advocate's representative attended one Communication Strategies Workgroup meeting.

→ **Equinet Research and Data Collection Cluster** is a forum where representatives of European equality bodies meet twice per year. Its aim is to provide a platform for exchange of good practices in the field of data collection on equality, and the design, implementation and distribution of studies. The Advocate's representative attended two meetings in 2018. The topics were related to the challenges posed by the General Data Protection Regulation (GDPR) in the field of data collection on equality, followed by a number of research reports – case studies. The group also helped form the

recommendation on data collection for received discrimination complaints and related questions. Use of empirical equality data in judicial proceedings to prove discrimination was also an important topic.

→ Equinet Cluster – Freedom of movement is a forum working on the following issues: providing a platform for regular exchange of information and updates on free movement, facilitating a discussion on the challenges in this area, providing training on investigating complaints related to freedom of movement, studying the link between equality and non-discrimination and new functions of free movement, promotion of cooperation with other information services. The Advocate's representative attended one meeting in 2018.

5.3.2 Seminars and other events within the framework of the Equinet network

In 2018, representatives of the Advocate attended various seminars and other events within the Equinet network of equality bodies:

- Conference **“Poverty and Discrimination: Two Sides of the Same Coin”** (Dublin, 22 March 2018)
- Conference **“Investing in Equality”** (Brussels, 1 June 2018)
- Conference **“Tackling age discrimination against young people”** (Ljubljana, 27 and 28 June 2018)
- **Regular Annual General Meeting of the European Network of Equality Bodies – Equinet** (Brussels, 7 November 2019)
- Seminar **“Not on our watch: Tackling Hate Speech Seminar”** (Rome, 19–21 November 2019)

On 22 March 2018 in Dublin, Ireland, a representative of the Advocate attended the conference **“Poverty and Discrimination: Two Sides of the Same Coin”**, which was organised by Equinet and the Irish Human Rights and Equality Commission (IHREC).

The aim of the conference was to find or highlight the link between poverty and discrimination, and to discuss the possibilities of breaking the vicious cycle of social exclusion, both on the national and the EU level. The key part of the conference focused on defining the socio-economic status as a statutory personal circumstance, on which basis discrimination is prohibited. In this respect, the experience of France was particularly highlighted, where many personal circumstances were introduced into anti-discrimination legislation suddenly and without serious consideration (including socioeconomic status), which led to many cases where protection based on personal circumstances was not provided in accordance with the legislator's intent. There were also examples from Belgium, where legislation prohibiting discrimination on the basis of socio-economic status implemented through the circumstances of fortune and social origin, and Hungary, where the national equality body tried to resolve discrimination on the basis of socio-economic status through the personal circumstances of financial status and social and ethnic origin. The main message of the conference was that in this time, when the global problem of poverty is becoming worse, identification and recognition of the socio-economic status as a personal circumstance, which can lead to discrimination, is an important measure to tackling inequality. Current anti-discrimination legislation in European countries varies greatly, and the aforementioned status as a “personal circumstance” is not uniform in terminology and substance in most cases. Where this status is not yet recognised, it is important to start the process for its legal recognition; where it is already defined as a circumstance on the basis of which discrimination is prohibited, it is essential that competent institutions begin consistently investigating such cases. It is a fact that there is not a lot of practice in this area, as this is a new circumstance on one hand, and on the other, a circumstance that is oftentimes linked to a wider range of other personal circumstances and other factors.

On 1 June 2018 the Advocate's representative attended the **Equinet conference “Investing in Equality”**¹⁰⁰, organised as a venue for discussion on equality and non-discrimination as fundamental horizontal values in the next EU multiannual financial framework and the contribution of EU funds to preventing discrimination and promoting equality. The participants also identified the ways to ensure political commitments to promoting equality, discussed the implementation of current equality legislation

¹⁰⁰ <http://www.equineteurope.org/Equinet-Conference-Investing-in-Equality>

and the need to complete the European legal framework of quality, and looked for ways for national equality bodies to contribute effectively to this goal.

In 2018 in Ljubljana, the Advocate hosted the Equinet conference titled “**Tackling age discrimination against young people**”¹⁰¹, which was held between 27 and 28 June 2018, and was attended by 50 participants from across Europe. The fundamental purpose of the seminar was to strengthen the capabilities of national equality bodies and youth organisation in addressing inequality and age discrimination against young people, and to improve the cooperation of equality bodies and youth organisations. The main findings of the seminar showed that young people have lost their confidence in public institutions, that they are excluded from social protection safety nets, and that they are not fully aware of their rights and the mechanism they can use to protect their rights.

Regular Annual General Meeting of the European Network of Equality Bodies – Equinet, Brussels, 7 November 2018

At the Regular Annual General Meeting of the European Network of Equality Bodies – Equinet, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, presented the development and activities of the Slovenian equality body. The general meeting approved the Strategic Plan for the period of 2019–2022 and the Work Plan for 2019, and welcomed three new members – from Georgia, Moldova, and Spain, bringing the total number of members to 49, from 36 European countries.

In the introduction to the Strategic Plan for the period of 2019–2022, titled *A new beginning*, the Chair of Equinet Board Tena Šimonović Einwalter and Equinet Executive Director Anne Gaspard emphasised that Equinet, as a strong, engaged and innovative network, will continue strengthening and providing expert support to members, and therefore promoting the principle of Equality in Europe. The goal of the network is to empower national equality bodies or advocates of the principle of equality to provide protection against discrimination, in order to be able to help people in this situation with the most effective assistance and support.

Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, highlighted that the Slovenian national body has improved its human resources in the second half of 2018, which allows it to provide assistance and support for individuals, and to promptly investigate discrimination complaints. A new Government took office in September 2018 in Slovenia, which has expressed a suitable attitude and an understanding of the urgency for improving the financial and human resources of the body. As the Head of the Institution told Equinet members, the above inspires hope that the Government, in its revised budget for 2019, will provide the necessary financial resources for uninterrupted functioning of the body, so that it can carry out and fulfil all its legal obligation in accordance with the recommendations of the European Commission (see Section 7, p. 179: Commission Recommendation (EU) 2018/951 on standards for equality bodies).

Seminar “Not on our watch: Tackling Hate Speech Seminar”, Rome, 19–21 November 2019

In cooperation with the Italian equality body UNAR, the European Network of Equality Bodies – Equinet organised a three-day seminar on the dangers of hate speech. At the seminar, representatives of most of the 38 Equinet member states bodies, or representatives of a majority of Equinet members (48 members), discussed hate speech. The Chair of Equinet Board, Tena Šimonović explained in detail the contents of the ECRI Recommendations no. 15.

Representatives of the following international organisation and institutions attended the seminar: European Commission (Directorate-General for Justice and Fundamental Rights Policy), Council of Europe (ECRI), European Court of Human Rights (ECHR) and representatives of government and non-governmental organisations. The seminar was also attended by a representative of Facebook, who explained Facebook policy on removing posts that are identified as hate speech. Niall Crowley, Equinet Executive Board Advisor, highlighted the need for upgrading the current approach to tackling hate speech. According to him, the current project approach needs to be upgraded with a long-term strategy. Representatives of the European Commission focused on the presentation of the Code of conduct on countering illegal hate speech on social networks. Participants also exchanged best practices on how individual equality bodies can address the problem of increased incidence of hate speech in society. The representative of the European Commission presented the Code of conduct on countering illegal

¹⁰¹ <http://www.equineteurope.org/Equinet-Conference-Investing-in-Equality>

hate speech on social networks, while the representative of the European Court of Human Rights, Onur Andreotti, presented three specific cases of hate speech.

5.4 Other international events

In 2018, the Advocate of the Principle of Equality and its associates also attended other international events:

- Training “**Gender Equality Planning**” (London, 26 February and 2 March 2018)
- “**Conference on Tackling Religious Intolerance and Discrimination**” (Rome, 22 October 2018)
- Seminar “**Hate Speech and Limits on Freedom of Expression on Social Media**” (Trier, 26–27 November 2018)
- “**Regional Conference on the Role of National Institutions in Human Rights Protection and Combating Discrimination**” (Sarajevo, 28–29 November 2018)
- **European Equality Law Network Seminar** (Brussels, 30 November 2018)

Between 26 February and 2 March 2019, the Advocate’s representative attended the “**Gender Equality Planning**” training course, which was organised by the British organisation for public policy training International Centre for Parliamentary Studies. The purpose of the training was to get acquainted with the process of implementation of the principle of gender equality in the organisational structures and cultures of different political and economic institutions. The lessons learned, which the Advocate can employ to plan and execute its future work, include knowledge of the role of gender in development planning; how the principle of gender equality can be integrated into strategic planning processes; drafting legislation proposals to promote gender equality and prevent discrimination; evaluating the results of gender equality initiatives.

On 22 October 2018 in Rome, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, attended the “**Conference on Tackling Religious Intolerance and Discrimination**”, organised by the Organisation for Security and Cooperation in Europe (OSCE) and the Italian Republic, which holds OSCE Chairmanship in 2018. The main topics of the conference were the role of educational institutions and media in promoting mutual respect and understanding in local environments. Only about 4% of people in Europe are Muslim, and not 20%, explained conference participants at the end of the conference, where they discussed the misuse of media to artificially inflate fears, including on the basis of made-up numbers.

On 26 and 27 November in Trier, Germany, the representative of the Advocate attended the seminar “**Hate Speech and the Limits on Freedom of Expression on Social Media**”, which was organised under the auspices of the Academy of European Law (ERA). The purpose of the participation was to acquire new knowledge in the area of legal treatment of hate speech and to find solutions on how to effectively counter it, while simultaneously respecting the right to freedom of expression, privacy and free economic initiative. The seminar topics included, among other things, the latest ECHR case law in the relevant area (e.g. *Delphi AS v. Estonia*, *Smajić v. Bosnia and Herzegovina*) and the current interpretation of Article 17 of the European Convention on Human Rights regarding the prohibition of abuse of rights, highlighting the importance of finding a balance between the right to freedom of expression and the prohibition of discrimination (the right not to be discriminated against), and the importance of weighing rights on a case-by-case basis or according to the circumstances of the particular case. Part of the seminar was dedicated to a presentation of different tactics for addressing online hate speech in practice, with a presentation of models of some global companies, such as Facebook (a tactic of so-called counter speech, which promotes inclusiveness in posts and counterbalances hate content) and Google (techniques of automatic detection and filtering of contentious online content). Participants also highlighted the pitfalls of disproportionate limits on the freedom of expression by censorship, and the question whether private content providers are today taking on the role of arbiters, assessing the appropriateness and acceptability of certain online content.

On 28 and 29 November in Sarajevo, Miha Lobnik, Head of the Institute, Advocate of the Principle of Equality, attended the “**Regional Conference on the Role of National Institutions in Human Rights Protection and Combating Discrimination**”. Conference participants discussed the role of national

institutions in human rights protection and combating discrimination, cooperating with international and non-governmental organisation, exchange of best practices, and strengthening mutual cooperation. In his presentation, Miha Lobnik, Head of the Institution, emphasised the importance of equality bodies in combating discrimination.

The Advocate had several bilateral side meetings. He submitted the 2017 Regular Annual Report and the study on discrimination in Slovenia to the Croatian Gender Equality Ombudsman, Mrs. Višnja Ljubičić, and presented the development and operations of the Slovenian equality body to the Bosnian Human Rights Ombudsmen, Mrs. Nives Jukić and Mrs. Jasminka Džumhur. The conference was organised by the Council of Europe and the Ombudsmen of Bosnia and Herzegovina.

On 30 November 2018, two representatives of the Advocate attended the annual **European Equality Law Network Seminar**¹⁰² in Brussels, which was attended by representatives of the European Commission, national governments, equality bodies, non-governmental organisations, and academic community. The representatives of the Advocate attended four seminars that were substantively directly related to the current and planned Advocate's area of activity. The seminars examined the current practice of ECHR and the Court of Justice of the EU on discrimination, application of legal frameworks on discrimination and gender equality, with consideration of the rights of intersexual and transsexual persons, application of the prohibition of harassment as a legal mechanism for addressing hate speech, and (non) compliance of the Employment Equality Framework Directive (2000/78/EC) with essential requirements of the UN Convention on the Rights of Persons with Disabilities in the area of equality and non-discrimination.

5.5 Bilateral cooperation

Bilateral cooperation is part of international cooperation on a specific level between two countries. This includes specific answers and best practices, which facilitate more effective operations of national equality bodies. Bilateral cooperation facilitates a first-hand exchange of opinions and best practices.

5.6 European international project – Parents at Work

In June 2018, the Advocate and partners from three European countries successfully registered an international project **Parents at Work, as part of the Rights, Equality and Citizenship Programme**, financed by the European Commission. The project aims to establish cooperation with employers and to improve detection of gender discrimination in order to adequately protect parents at work.

The project partnership is composed of four equality bodies: the **Belgian Institute for the Equality of Women and Men** as the project coordinator and applicant, and three project partners: **the Slovenian Advocate of the Principle of Equality, Portuguese Commission for Equality in Work and Employment, and the Bulgarian Commission for Protection against Discrimination**. The project was approved in October 2018. The project will officially start in September 2019, and will last 24 months; however, the preparation procedure was already started at the end of 2018.

The project addresses the **discrimination of parents at work during pregnancy and after pregnancy in terms of work-life balance and parental leave** (for men and women), especially considering the low number of discrimination complaints, which is still relatively high. Employers often do not intend to discriminate against pregnant workers, but face practical and organisational issues when dealing with parents and future parents. On the other hand, workers are not aware of their rights and the options for reporting discrimination.

The project will examine these issues using a **multilateral approach**. On one hand, by **encouraging employers to cooperate in preventing unfavourable treatment**, as this results in advantages both for them and their employees. And on the other, by raising **awareness and providing support** to persons who believe they were treated less favourably, or even fired, because of their pregnancy, by helping to draft a list of necessary means of proof and establishing contact with institutions that can help gather additional means of proof and provide appropriate support in resolving the case.

¹⁰² <https://www.equalitylaw.eu/>

The goals of the project are as follows:

- mutual learning between partners for developing a employers and companies integration strategy, for the purpose of collection and dissemination of best practices and the development of cross-border tools for effective work-life balance;
- awareness-raising and information for employers on the rights of pregnant women and parents, promotion of measures that improve the work-life balance in the private sector;
- improve investigation techniques in cases of discrimination on the grounds of pregnancy/parenthood;
- awareness-raising for labour inspectorates regarding discrimination of pregnant women and parents;
- improve the recognisability of labour inspectorates and equality bodies in informing and raising awareness of employees of organisations, which can help them investigate their case and support them in reporting discrimination.

The two main target groups for this project are **employers and labour inspectorates** or other organisation, responsible for investigation discrimination in the labour market, as well as **employed pregnant workers and employed parents and other gender equality bodies**.

As a project partner, the Advocate will organise the second partnership meeting with mutual learning meeting in Slovenia, participate in collecting best practices on the national level, organise a national conference for employers, help in the development of the tool and electronic learning material for the conference, participate in the preparation of the best practices textbook and in conducting training for legal capacity in the legislative framework of labour inspectors.

The total project budget is EUR712,980, with the EU providing funds of up to EUR570,384. In the period of three years, the Advocate of the Principle of Equality is expected to receive part of non-reimbursable funds in the amount of EUR114,246, while its own contribution will about to EUR28,561.

6 HOW INTERNATIONAL INSTITUTIONS SEE US (UN)

6.1 Translation of the report by the United Nations Special Rapporteur on minority issues

The UN Special Rapporteur on minority issues operates within the framework of so-called UN special procedures. The key task of special procedures is to appoint independent experts with powers to report and advise on human rights – either within a specific subject matter or on a situation in a specific country. Special Rapporteurs are appointed by the United Nations Human Rights Council, and they can operate individually or within smaller Workgroups. With the support of the Office of the High Commissioner for Human Rights, Special Rapporteurs visit countries and conduct thematic studies, take measures regarding alleged violations and matters of a structural nature by sending messages to states, convening expert meetings that contribute to the development of international human rights standards, and participate in advocacy and raising awareness. Special Rapporteurs provide annual reports to the Human Rights Council, and very often to the United Nations General Assembly.

The tasks of the UN Special Rapporteur on minority issues, whose mandate was established in 2005, include:

- promoting the implementation of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities;
- examining the ways and means to overcome existing obstacles to comprehensive and effective exercise of minority rights;
- defining best practice examples and possibilities for technical cooperation of governments with the Office of the High Commissioner for Human Rights;
- integrating a gender perspective into the work of the Special Rapporteur;
- considering the position of non-governmental organisations and close cooperation with them.

The UN Special Rapporteur on minority issues also directs the work of the Forum on Minority Issues, and submits the annual report, which includes recommendations, to the Human Rights Council and the UN General Assembly.

The UN Special Rapporteur, Dr. Fernand de Varennes, visited Slovenia between 5 April and 13 April 2018 and met with key governmental and non-governmental stakeholders primarily working with minorities. Based on information gathered in the field, Dr. Fernand de Varennes published a report on 8 January 2019, presenting the main findings regarding the respect for and enforcement of human rights of minorities in Slovenia.

The main issues identified by the Special Rapporteur were related to data broken down by personal circumstances, the national system for the protection of human rights, Roma people, effectiveness of implementation and comprehensiveness of minority protection legislation, hate speech and incitement to violence, dead people and sign language, the “erased” and minorities from former-Yugoslav countries.

The Special Rapporteur prepared a set of recommendations and findings in order to help the Slovenian Government and other relevant stakeholders in their efforts to take on the challenges and implement human rights of persons belonging to national or ethnic, religious or language minorities in Slovenia.

6.2 Translation of the Concluding Observations of the UN Committee on the Rights of Persons with Disabilities regarding the initial Slovenian report on implementation of CRPD

On 13 December 2006, after three years of demanding international negotiations, the United Nations General Assembly adopted the Convention on the Rights of Persons with Disabilities, aimed at promoting and protecting human rights, freedoms, and the dignity of all persons with disabilities. The adoption of the convention thus further reaffirmed the international community's commitment to guaranteeing fundamental rights and dignity for every individual without discrimination; furthermore, the adoption represented a significant impetus for changes in our understanding of persons with disabilities and disabilities themselves. The then Secretary-General of the United Nations, Kofi Annan, said at the time of the adoption of the Convention that nothing will change overnight, but change comes more rapidly with the law behind it.¹⁰³

At the session on 2 April 2008, the National Assembly adopted the Act ratifying the Convention on the Rights of Persons with Disabilities and Optional Protocol to the Convention on the Rights of Persons with Disabilities¹⁰⁴ (CRPD), which made provisions of CRPD directly legally binding for Slovenia. The Convention also established the Committee on the Rights of Persons with Disabilities, which today consists of 18 independent experts from different countries, elected by contracting states. In accordance with the Convention, contracting states are required to report periodically to the Committee on the measures they have taken to fulfil the Convention's obligations and on the progress made. The Committee therefore represents part of a so-called treaty body system, designed to monitor the situation and promote human rights on the basis of various international human rights instruments under the auspices of the UN.

Although Slovenia should have submitted its first report in accordance with the CRPD to the Committee as early as June 2010, it did not do so until July 2014, and an oral presentation of the report before the Committee took place in February 2018. On the basis of a written report, an oral presentation by representatives of the Government and several shadow reports by non-governmental and other organisations, the Committee prepared concluding observations, in which it provided many recommendations for improving the implementation of the Convention in Slovenia. In Chapter IV Follow-up, the Committee also recommended that Slovenia transmit the concluding observations of the Committee "for consideration and action to members of the Government and the National Assembly, officials in relevant ministries, the judiciary and members of relevant professional groups, such as education, medical and legal professionals, as well as to local authorities, the private sector and the media, using modern social communication strategies." Additionally, the Committee recommended dissemination of concluding observations to persons with disabilities and their families, and also recommended that the concluding observations be published on the Government's website on human rights.

In light of the recommendations made, and considering that a Slovenian translation of the Committee's concluding observation was not available on the Government's website on human rights at the time of drafting the Advocate's Report¹⁰⁵, the Advocate prepared its own unofficial translation of concluding observation, which is available below. In preparing the translation, the Advocate also paid particular attention to the specific terminology, as the Committee itself noted in light of the (in)adequate Slovenian translation of the Convention; furthermore, this issue was also raised by Slovenian experts.¹⁰⁶ The Advocate hopes that the dissemination of concluding observation in Slovenian will contribute to a more comprehensive understanding of the issue of disability in Slovenia, and result in a quicker implementation of the Committee's recommendations.

¹⁰³ United Nations (2006) General Assembly Adopts Ground-breaking Convention, Optional Protocol on Rights of Persons with Disabilities. Available at: <https://www.un.org/press/en/2006/ga10554.doc.htm>

¹⁰⁴ Official Gazette of the Republic of Slovenia – Treaties, no. 10/08

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http://www.mzz.gov.si/si/zunanja_politika_in_mednarodno_pravo/clovekove_pravice_v_slovenski_zunanji_politiki/mednarodnopravni_dokumenti_s_podrocja_clovekovih_pravic_in_porocanja_slovenije/

¹⁰⁶ On 3 December 2018, the Fran Ramovš Institute of the Slovenian Language, Research Centre of the Slovenian Academy of Sciences and Arts, organised a Discussion on the Terminology of Disability. A recording of the discussion is available at <https://www.youtube.com/watch?v=eHcvEXpwwsl&t=4488s>.

7 COMMISSION RECOMMENDATION (EU) 2018/951 ON STANDARDS FOR EQUALITY BODIES

Context and significance of the Commission Recommendation on standards for equality bodies

EU directives stipulate that EU member states must establish equality bodies, and also define the powers that these bodies must exercise. EU member states have consequently established specialised public authorities, which differ significantly in their levels of independence, resources available for their work, scope, type of powers, and areas they focus on.

In order to achieve the goal of a proper and equal functioning of equality bodies in the EU, the European Commission has adopted recommendations in this area, which the Advocate of the Principle of Equality presents in Slovenian in its report. The purpose of the recommendations is to close the gap between the standards of equality bodies in the individual EU member states, to increase the level of independence and effectiveness, thereby ensuring that individuals and groups discriminated against can exercise their rights.

Slovenia has already fulfilled the recommendations concerning the scope of the mandate; the Advocate already has powers in areas and for personal circumstances that EU directives do not directly dictate. The Advocate also has most of the powers listed in the recommendations, and its organisation mostly meets the standards regarding independence and accessibility.

Specific recommendations particularly relevant for Slovenia in 2018 refer to the area of provision of human, technical and financial resources, and premises and infrastructure, for the functioning of the equality body. "The Member States should ensure that each equality body is provided with the human, technical and financial resources, premises and infrastructure necessary to perform its tasks and exercise its powers effectively. The resources assigned to equality bodies should take into account the powers and tasks assigned to these bodies. Resources can only be considered adequate if they allow equality bodies to carry out each of their equality functions effectively, within reasonable time and within the deadlines established by national law."

Member states should provide equality bodies with an adequate budget and resources, so that they can effectively conduct awareness-raising activities to inform the general public of its existence and the options for filing discrimination complaints.

With the revised budget for 2019 and the determination of the adequate budget for the Advocate, Slovenia fulfilled the recommendations in this area.

Challenges remain in the area of coordination and cooperation, in particular the obligation to provide timely and transparent counselling with the Advocate on policy and legislative proposals, and developments in matters that fall within the Advocate's purview.

The report also states that member states should enable equality bodies with legal capacity to adopt binding decisions to impose appropriate, effective and proportional sanctions.

LIST OF ACRONYMS AND ABBREVIATIONS USED

8 LIST OF ACRONYMS AND ABBREVIATIONS USED

AEP	Active employment policy
NARS	National Assembly of the Republic of Slovenia
ECRI	European Commission against Racism and Intolerance
EC	European Commission
Equinet	European network of equality bodies
ERIO	European Roma Information Office
ECHR	European Court of Human Rights
ESF	European Social Fund
EU	European Union
EA	Energy Act
FRA	European Union Agency for Fundamental Rights
CRPD	Convention on the Rights of Persons with Disabilities.
CC	Criminal Code
LGBTIQ+	Lesbian, gay, bisexual, transgender, intersex, queer/questioning, asexual and many other terms
MLFSAEO	Ministry of Labour, Family, Social Affairs and Equal Opportunities
MoF	Ministry of Finance
MEDT	Ministry of Economic Development and Technology
MIDIS	European Union minorities and discrimination survey
MESS	Ministry of Education, Science and Sport
MoPA	Ministry of Public Administration
MoC	Ministry of Culture
MAFF	Ministry of Agriculture, Forestry and Food
CRPD	Convention on the Rights of Persons with Disabilities
MKPI	Act ratifying the Convention on the Rights of persons with Disabilities and
Optional Protocol to the	Convention on the Rights of Persons with Disabilities
MoI	Ministry of the Interior
MoL	Municipality of Ljubljana
MoL	Municipality of Ljubljana
MESP	Ministry of the Environment and Spatial Planning
MoD	Ministry of Defence
MoJ	Ministry of Justice
YCS	Youth Council of Slovenia
MoH	Ministry of Health
MoI	Ministry of Infrastructure
MFA	Ministry of Foreign Affairs
NAP	National Action Plan for the Respect of Human Rights in Business
NSIOS	National Council of Disabled Persons' Organisations of Slovenia
NSIOS	National Council of Disabled Persons' Organisations of Slovenia
NGO	Non-governmental organisation
OSCE	Organisation for Security and Cooperation in Europe
UN	United Nations
UN	United Nations
RS	Republic of Slovenia
Ombudsman	Human Rights Ombudsman
OSPG	Office of the State Prosecutor-General
Government	Government of the Republic of Slovenia
Advocate	Advocate of the Principle of Equality
MVCA	Motor Vehicle Charges Act
ERA (2002)	Employment Relationship Act from 2002
ERA	Employment Relationship Act
SA	Societies Act
EOWMA	Equal Opportunities for Woman and Men Act
CA	Companies Act
SGSIA	Services of General Economic Interest Act
EOPDA	Equalisation of Opportunities for Persons with Disabilities Act

IIEPA	Implementation of International Education Programmes Act
IA	Inspection Act
PPOA	Protection of Public Order Act
CPA	Criminal Procedure Act
MMA	Mass Media Act
MVA	Motor Vehicles Act
OFEA	Organisation and Financing of Education Act
BSA	Basic School Act
MOA	Minor Offences Act
PDIIIS	Pension and Disability Insurance Institute of Slovenia
PDIA (1999)	Pension and Disability Insurance Act from 1999
PDIA	Pension and Disability Insurance Act from 2012
CCPA	Contentious Civil Procedure Act
PPA	Prešeren Prize Act
CUA	Civil Union Act
ESS	Employment Service of Slovenia
CECACIA	Court Experts, Certified Appraisers and Court Interpreters Act
PTDA	Promotion of Tourism Development Act
SPA	Social Protection Act
IPETA	Implementation of the Principle of Equal Treatment Act
PCSNA	Placement of Children with Special Needs Act
GAPA	General Administrative Procedure Act
PADA	Protection Against Discrimination Act
PDPA-2	Proposed Personal Data Protection Act
KA	Kindergartens Act
FRA	Freedom of Religion Act
VREPDA	Vocational Rehabilitation and Employment of Persons with Disabilities Act

LIST OF ACRONYMS AND ABBREVIATIONS USED

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