

# **ACT IMPLEMENTING THE PRINCIPLE OF EQUAL TREATMENT**

## **(Official Journal of the Republic of Slovenia, No. 93/07- UPB1)**

### **I. GENERAL PROVISIONS**

#### **Article 1** **(Contents and Purpose of the Act)**

- (1) This Act determines common bases and premises for ensuring the equal treatment of all persons in exercising their rights and duties and implementing human rights and fundamental freedoms.
- (2) For the purpose referred to in the previous paragraph, this act determines the subjects that create conditions for the implementation of the principle of equal treatment, through measures within the framework of their competence, and raise awareness amongst discriminated persons and alleged offenders, as well as in society as a whole. This act further establishes the institutional conditions for the activities of the Advocate of the Principle of Equality, who provides assistance to discriminated persons through consideration of cases of alleged unequal treatment under the provisions of this act.
- (3) This act also determines the common particularities which apply to the legal protection of discriminated persons in judicial and administrative proceedings, initiated on the grounds of violation of the ban on discrimination on the basis of personal circumstances, determined by law.

#### **Article 1.a** **(Transfer of European Community Directives)**

Within the contents and purpose of this Act, as specified in the previous Article, the following European Community Directives shall be transferred into the legal order of the Republic of Slovenia with this Act:

- Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Official Journal L No 39 of 14 February 1976, p. 40),
- Council Directive 86/378/EEC of 24 July 1986 on the implementation of the principle of equal treatment for men and women in occupational social security schemes (Official Journal L No 225 of 12 August 1986, p. 40),
- Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Official Journal L No 180 of 19 July 2000, p. 22),
- Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (Official Journal L No 303 of 2 December 2000, p. 16),
- Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Official Journal L No 269 of 5 October 2002, p. 15),
- Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (Official Journal L No 373 of 21 December 2004, p. 37),

- 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) (Official Journal L No 204 of 26 July 2006, p. 23).

## Article 2 (Application of the Act)

Equal treatment shall be ensured irrespective of sex, nationality, racial or ethnic origin, religious or other belief, disability, age, sexual orientation or other personal circumstance, in particular in relation to:

- conditions for access to employment, self-employment and occupation, including selection criteria and recruitment conditions irrespective of the type of activity and at all levels of the occupational hierarchy, including promotion;
- access to all forms and levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including practical work experience;
- employment conditions and working conditions, including termination of the employment contract and salaries;
- membership and participation in an organisation of workers or employers or any other organisation, whose members carry on a particular profession, including the benefits that such organisations provide;
- social protection, including social security and health care;
- social benefits;
- education;
- access to and supply of goods and services, which are available to the public, including housing.

## Article 2.a (Exceptions)

(1) The provisions of this Act do not exclude differentiated treatment on the grounds of a specific personal circumstance if such differentiated treatment is justified by a legitimate objective and the means of achieving that objective are appropriate and necessary.

(2) Differentiated treatment in the fields referred to in the first to the fourth indent of Article 2 of this Act on the grounds of sex, nationality, racial or ethnic origin, religious or other belief, disability, age or sexual orientation shall be prohibited, irrespective of the previous paragraph, except in the following cases:

- if due to the nature of particular occupational activities or the context of their performance such a characteristic represents an essential and determining occupational requirement and provided that the objective is legitimate and the requirement appropriate and necessary;
- on the ground of an individual's religious or other belief as regards occupational work in churches and other religious communities or other public or private organisations, the ethics of which is based on a religious or other conviction if due to the nature of this work or the context, in which it is carried out, the religious or other belief represents a legitimate and justified occupational requirement regarding the organization's ethics;
- on the ground of age if it is objectively and reasonably justified by a legitimate objective, including legitimate objectives of employment policy, labour market and vocational training, and if the means of achieving this objective are appropriate and necessary;
- if it is stipulated by a special law in accordance with the legal order of the European Union.

(3) Differentiated treatment in the fields referred to in the fifth to the eighth indent of Article 2 of this Act on the grounds of sex, nationality, racial or ethnic origin shall be prohibited, irrespective of Paragraph 1 of this Article, except in the following cases:

- concerning more favourable protection of women with regard to pregnancy and motherhood,

- concerning the provision of goods and services exclusively or especially to representatives of one sex, if such differentiated treatment is justified by a legitimate objective and the means of achieving this objective are appropriate and necessary,
- concerning insurance and related financial services, which are pursuant to the Council Directive 2004/113/EC determined by the Act that regulates insurance business,
- if it is stipulated by a special law in accordance with the legal order of the European Union.

### Article 3 (Ban on Discrimination and Victimisation)

- (1) Treatment, which is considered discrimination under Articles 4 and 5 of this Act, shall be prohibited in any area of social life referred to in Article 2 of this Act.
- (2) Discriminated persons and persons, who assist a victim of discrimination, must not be subjected to adverse consequences due to their actions, which aim to implement the ban on discrimination (ban on victimisation).

## II. DEFINITION OF TERMS

### Article 4 (Equal Treatment)

- (1) Equal treatment means the absence of direct or indirect discrimination on the grounds of any of the personal circumstance referred to in Article 2 of this Act (hereinafter: personal circumstance).
- (2) Direct discrimination on grounds of a personal circumstance occurs when a person has been, is or could be treated less favourably than another person in an equal or comparable situation on grounds of such a personal circumstance.
- (3) Indirect discrimination on grounds of a personal circumstance occurs when in equal or comparable situations and under alike conditions an apparently neutral provision, criterion or practice has put, puts or could put a person with a certain personal circumstance in a less favourable position compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate objective and the means of achieving this objective are appropriate and necessary.
- (4) Instructions within the meaning of the previous paragraphs shall also be deemed to constitute direct or indirect discrimination.

### Article 5 (Harassment)

- (1) Harassment is unwanted conduct, based on any personal circumstance, which creates an intimidating, hostile, degrading, humiliating or offensive environment for a person or offends his or her dignity.
- (2) Harassment referred to in the previous paragraph shall be deemed to constitute discrimination under the provisions of this Act.

Article 6  
(Special Measures)

(1) Special measures are temporary measures, designed to ensure actual equality of persons which are placed in a less favourable position, in particular due to their sex, nationality, racial or ethnic origin, religious or other belief, disability, age and sexual orientation. Specific measures may be adopted with the purpose of preventing or eliminating the consequences of such a position or as compensation for a less favourable position.

(2) Special measures shall be in particular:

- positive measures, which under the condition of equal fulfilment of the prescribed criteria and conditions give priority to persons with a particular personal circumstance and are applied in cases, when an obvious disproportion of the representation of persons with that particular personal circumstance exists;
- incentive measures, which give special benefits or implement special incentives for persons in a less favourable position.

### III. BEARERS OF DUTIES AND THEIR RESPONSIBILITIES

Article 7  
(General Definition)

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

(2) Offices and governmental services, operating in the field of equal treatment of persons regardless of personal circumstances, shall especially strive for implementation of the aim of this Act within the framework of their field of work.

Article 8  
(Cooperation with Social Partners and Non-Governmental Organisations)

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

Article 9  
(Government Council for the Implementation of the Principle of Equal Treatment)

(1) To monitor and evaluate the position of individual social groups the Government shall establish the Council for the Implementation of the Principle of Equal Treatment) as its expert and consultative body for implementation of the principle of equal treatment (hereinafter: the Council).

(2) In carrying out its duties, the Council shall cooperate with the competent state bodies and other institutions operating in the field of equal treatment of persons and prevention of discrimination based on personal circumstances.

Article 10  
(Duties of the Office for Equal Opportunities)

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

Article 10.a  
(Adoption of Special Measures)

- (1) Authorities, employers, educational and schooling institutions, political parties, civil society organisations and other subjects may adopt special measures referred to in Article 6 of this Act regarding the nature of their work and their area of activity.
- (2) The acts, in which the subjects referred to in the previous paragraph adopt special measures, shall define the purpose and reason for their adoption.

IV. THE ADVOCATE OF THE PRINCIPLE OF EQUALITY

Article 11  
(Institutional Organisation)

- (1) Cases of alleged violations of the ban on discrimination in accordance with this Act shall be considered by an Advocate of the Principle of Equality (hereinafter: the Advocate), who shall function within the Office.
- (2) The main purpose of considering cases of alleged violations of the ban on discrimination shall be discovery and warning. To this end, the Advocate shall provide general information and explanations regarding discrimination. When hearing a case he or she shall point out the discovered irregularities and recommend, how they should be eliminated. The Advocate shall also offer help to discriminated persons in other procedures for exercising rights related to the protection against discrimination.
- (3) If the number of cases, their complexity or particularities with regard to a specific personal circumstance should so require, a special Advocate may function for a specific personal circumstance.

Article 11.a  
(The Advocate's Workplace)

- (1) The Advocate is a special public service workplace, which is governed by the provisions of the Act and other regulations, which regulate the system of public servants in state bodies and the salary system in the public sector, except for the issues that are resolved by this Act in a different manner.
- (2) The Advocate shall be appointed by the Government for the period of five years on the proposal of the Director of the Office which shall be based on a public tender procedure.
- (3) The public tender procedure for the Advocate has to be completed within three months before the expiry of the appointment period referred to in the previous paragraph. In the same time period the Government may appoint the same official for the Advocate again without a public tender.

(4) In order to be appointed as Advocate, candidates must have at least a university degree in social sciences or humanities or an equivalent education, acquired according to the study programme of some other degree in accordance with the act, which regulates higher education, and at least three years of work experience in the field of implementation of the principle of equal treatment or human rights and fundamental freedoms.

(5) In the case of temporary absence of the Advocate exceeding three months, the Government shall authorise another person, who meets the conditions set out in the previous paragraph, to perform the Advocate's duties in accordance with this Act.

#### Article 11.b (Autonomy and Independence at Work)

(1) During consideration of cases of alleged violations of the ban on discrimination based on this Act, the Advocate shall perform his or her professional and organisational tasks autonomously, impartially and independently from instructions of the Director of the Office or the Government.

(2) In relation to the Advocate the Director of the Office shall exercise the rights and obligations of an employer regarding the rights and obligations arising from the employment relationship, which are not regulated in a different manner by this Act, in accordance with the provisions of the Act that regulates the system of public servants and implementing rules, issued on its basis.

#### Article 11.c (Termination of the Advocate's Activities)

(1) Before the expiration of the period referred to in Paragraph 2 of Article 11.a of this Act, the Government on the proposal of the Director of the Office shall relieve the Advocate of his or her duties in the following cases:

- if he or she demands so himself/herself,
- in the case of termination of the employment relationship due to an agreement on the annulment of the employment contract or cancellation of the employment contract by the Advocate,
- if he or she does not perform his or her duties in accordance with this Act.

(2) In the case referred to in the third indent of the previous paragraph, the Advocate shall be relieved of his or her duties if he or she does not perform his or her duties in reasonable time periods or if he or she performs them in an unprofessional manner.

(3) The Advocate's work shall also be terminated when the five-year appointment period expires unless he or she is appointed again in accordance with Paragraph 3 of Article 11.a of this Act.

#### Article 12 (Initiating a Hearing)

(1) The consideration of a case of an alleged violation of the ban on discrimination (hereinafter: consideration of a case) shall begin with a written or a verbal petition made on the record. The petition may also be anonymous, but in all cases it must include sufficient data for the case to be considered.

(2) The Advocate shall not consider petitions in cases, where it is obvious that there is no violation of the ban on discrimination.

Article 13  
(Time Limitation on a Petition)

The petition, referred to in the previous article, must be submitted as soon as possible and no later than one year from the moment the alleged violation occurred. However, the Advocate may consider a case even after expiry of this time period if he or she should deem the case to be so important or serious that consideration would be reasonable with regard to the objective of this Act.

Article 14  
(Informality of Proceedings)

- (1) Consideration of a case shall be informal and free of charge.
- (2) In order to consider the cases within his or her competence, the Advocate shall gather and process personal information on the petitioners and alleged offenders and information provided for the need of considering cases by other persons.
- (3) The processing and protection of the personal information referred to in the previous paragraph shall be governed by the provisions of the act that regulates the protection of personal information.

Article 15  
(Procedure of Consideration of Cases)

- (1) In general, the consideration of cases shall be conducted in writing, whereby the Advocate shall have the right to request the persons involved to provide him or her with appropriate explanations and additional information within a specified time-limit. The participants in the procedure are required to reply to the Advocate in the specified time or inform him or her about the reasons for failing to do so.
- (2) The Advocate shall have the right to invite all persons involved to an interview if he or she should consider that this would contribute to clarification of a case.
- (3) The Advocate shall cease consideration of a case at the request of the petitioner if the latter should show no interest in pursuing the case further or if he or she cannot continue to consider a case and conclude it with an opinion due to insufficient data.

Article 16  
(Orders in the Event of Victimisation)

If a discriminated person or a person, who is assisting a victim of discrimination, is being subjected to harmful consequences due to the measures taken in order to ensure implementation of the ban on discrimination, the Advocate shall, already in the course of consideration of the case, order in writing the legal person or other subject, where the violation of the ban on discrimination is alleged to have occurred, to apply appropriate measures to protect the discriminated person or the person, who is assisting a victim of discrimination, against victimisation or eliminate the consequences thereof.

Article 17  
(Written Opinion)

(1) Consideration of a case shall be concluded by a written opinion, in which the Advocate states his or her findings and an assessment of the circumstances of the case, in the light of the existence of a violation of the ban on discrimination, and informs both parties about it.

(2) In the opinion referred to in the previous paragraph, the Advocate shall have the right to point out the discovered irregularities and to issue a recommendation on how these should be rectified, as well as request the alleged offender to inform him or her within a specified time-limit of the adopted measures.

#### Article 18 (Request for an Opinion and Assistance)

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

(2) Anyone shall have the right to apply to the Advocate with a request for general information, advice, recommendations or other assistance regarding discrimination or regarding the implementation of rights related to protection against discrimination in other procedures.

#### Article 19 (Annual Report)

(1) Every year, not later than at the end of March for the past year, the Advocate shall prepare a report on his or her work, which the Office shall submit to the Government for adoption.

(2) If there are more than one Advocates functioning within the Office in accordance with Article 11 of this Act, the Advocates shall create a joint report within the meaning of the previous paragraph.

#### Article 19.a (Consideration of Cases according to the Equal Opportunities for Women and Men Act)

From the day of entry into force, the provisions of this Act, which regulate the consideration of cases of alleged violations of the ban on discrimination, shall be reasonably used also for the consideration of cases of unequal treatment due to sex according to the Equal Opportunities for Women and Men Act (Official Journal of the Republic of Slovenia, No 59/02).

### V. CEDING A CASE TO THE COMPETENT INSPECTION SERVICE

#### Article 20 (Cases to be ceded)

(1) The Advocate can cede a case to the competent inspection service if the alleged offender acts contrary to Paragraph 1 of Article 15 of this Act.

(2) If an alleged offender does not rectify the discovered irregularities in accordance with the recommendations of the Advocate or if he or she does not inform the Advocate within the time-limit about the adopted measures, the Advocate shall send the written opinion referred to in Article 17 of this Act to the competent inspectorate if he or



she is of the opinion that the alleged violation has all the indications of discrimination under Articles 4 and 5 of this Act.

(3) The competent inspectorate is an inspectorate that by law has jurisdiction in the individual administrative field for supervision of the implementation of laws and other regulations, collective agreements and general documents, where the action that constitutes discrimination under the provisions of this Act has occurred.

#### Article 21 (Competencies of the Inspector)

(1) The inspector shall be obliged to deal with the ceded cases or opinions of the Advocate and propose to the competent body the introduction of a procedure due to a misdemeanour, if he or she should also consider that all the indications of discrimination under Articles 4 and 5 of this Act can be established.

(2) Before introducing a procedure due to a misdemeanour, the inspector may, depending on the circumstances of an individual case and within the framework of his or her competencies for exercising supervision, perform other acts required to establish the actual circumstances of the misdemeanour, as well as to rectify its consequences. He or she may also request the Advocate for the data obtained during the consideration of a case of an alleged violation.

(3) If an alleged offender did not act in accordance with the order of the Advocate referred to in Article 16 of this Act and the discriminated person or the person, who is assisting a victim of discrimination, should still be subjected to reprisals, the inspector shall have the right and duty to prescribe appropriate measures that, in the circumstances that have arisen, protect the discriminated person or the person, who is assisting a victim of discrimination, against victimisation, or to prescribe the remedying of the adverse consequences of victimisation.

### VI. PARTICULARITIES OF LEGAL PROTECTION OF DISCRIMINATED PERSONS

#### Article 22 (Legal Protection and the Burden of Proof)

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

(2) In cases where the discriminated person in the proceedings referred to in the previous paragraph establishes facts, which justify the likelihood that the ban on discrimination has been violated, the alleged offender must prove that he or she did not violate the principle of equal treatment or the ban on discrimination in the case at hand.

#### Article 23 (Role of Non-Governmental Organisations)

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

## VII. PENAL PROVISIONS

### Article 24

#### (Definition of Misdemeanours and Sanctions)

- (1) An act or omission, committed in the implementation of laws and other regulations, collective agreements and general documents in an individual field of social life, regulated by law, which has all the indications of discrimination under Articles 4 and 5 of this Act, shall be a misdemeanour, for which the offender shall be sanctioned with a fine.
- (2) An individual that commits a misdemeanour referred to in the previous paragraph shall be sanctioned with a fine from 250 to 1.200 Euros.
- (3) A legal person and an independent business person at whose premises a misdemeanour referred to in Paragraph 1 was committed shall be sanctioned with a fine from 2.500 to 40.000 Euros.
- (4) The responsible person of a state body or of a self-governing local community where a misdemeanour referred to in Paragraph 1 was committed shall be sanctioned with a fine from 250 to 2.500 Euros.

### Article 25

#### (Definition of Misdemeanours in Special Laws)

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

**The Act Implementing the Principle of Equal Treatment – ZUNEO (Official Journal of the Republic of Slovenia, No 50/04) contains the following transitional and final provisions:**

## VIII. TRANSITIONAL AND FINAL PROVISIONS

### Article 26

#### (Establishment of the Council)

The Government shall establish the Council referred to in Article 9 of this Act within three months after this Act enters into force.

### Article 27

#### (Commencement of the Activities of the Advocate of the Principle of Equality)

The Advocate shall begin his or her work within three months after this Act enters into force.

### Article 28

#### (Levying of Fines for Misdemeanours)

(1) Until the day the Minor Offences Act (Official Journal of the Republic of Slovenia, No 7/03) enters into force, the fines stipulated by this Act shall be levied in the misdemeanours procedure as fines within the limits stipulated for a fine in Paragraphs 3 and 4 of Article 24 of this Act.

(2) Until the day the Minor Offences Act referred to in the previous paragraph enters into force, an individual shall be sanctioned for a misdemeanour specified in Paragraph 2 of Article 24 with a fine from 50.000 to 150.000 Tolars.

Article 29  
(Entry into Force of the Act)

This Act shall enter into force the next day after its publication in the Official Journal of the Republic of Slovenia.

**The Act Amending the Act Implementing the Principle of Equal Treatment – ZUNEO-A (Official Journal of the Republic of Slovenia, No 61/04) contains the following transitional and final provisions:**

TRANSITIONAL AND FINAL PROVISIONS

Article 21

(1) The Government shall appoint the Advocate in accordance with this Act within six months after the Act enters into force.

(2) Until the appointment of the Advocate referred to in the previous paragraph, the Advocate's tasks according to this Act shall be carried out by the current Advocate in accordance with the provisions of this Act.

Article 22

On the day of entry into force of this Act, the provisions of Articles 8, 9 and 19 of the Equal Opportunities for Women and Men Act (Official Journal of the Republic of Slovenia, No 59/02) shall cease to be valid.

Article 23

This Act shall enter into force on the fifteenth day after its publication in the Official Journal of the Republic of Slovenia.