

OMBUDSMAN

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HOW TO PROTECT YOUR RIGHTS

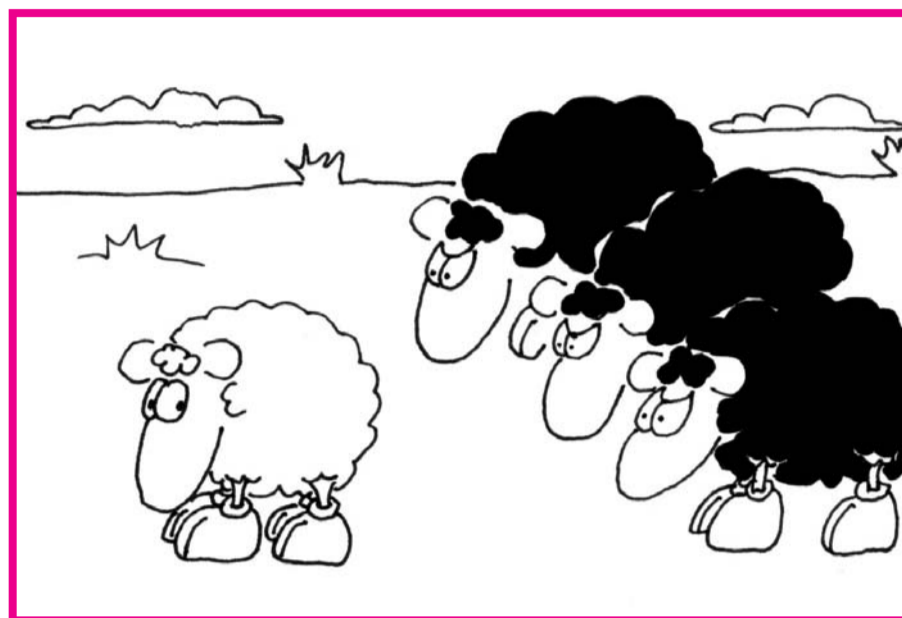
A commitment to a social rainbow of different lifestyles



different people, and pointing out possible ways of preventing these occurrences. Ever since the institution of the Human Rights Ombudsman was founded, the Ombudsman has been warning of the unacceptability of discrimination. In recent years we have intensified these efforts. Discrimination is one of the more serious violations of human rights because it is a serious violation of Slovenia's Constitution and a series of international acts that Slovenia has adopted and with which it must therefore act in accordance. Unfortunately, however, we are observing that the majority of people do not know when their actions are discriminatory, and likewise many do not realise when they themselves are the victims of discrimination. The situation is even worse in the case of intolerant speech, which is an initial phase that unconsciously leads to ever worse forms of discrimination. Intolerant speech by public figures is particularly dangerous, since through their actions they provide an example for ordinary citizens; I am thinking here above all of politicians, who should refrain from all forms of hostile propaganda. Through their appearances they should encourage citizens towards a tolerant coexistence of differences, which is something that enriches every society. Too often, however, and unfortunately they are not aware of this, they sow the seeds of hatred and conflict.

Indifference to the problems of others is a negative characteristic of which we Slovenians should not be proud and which should be substituted as quickly as possible by a responsible attitude towards our fellow human beings, be they similar to us or different. If we remember the resistance of neighbours to nurseries or schools for children with special needs, homes for the disabled or for single mothers and their children, not to mention communities for recovering drug addicts or Roma settlements, we cannot be proud of our attitude towards others. It is therefore high time that we consider our behaviour and change it, since only in this way will we contribute to ensuring that we all live better in a society enriched by a rainbow of different lifestyles.

With this issue of the Ombudsman's newsletter we conclude the project we have been carrying out over the last six months in conjunction with the European Commission as the provider of funds, and the Ludwig Boltzmann Institute of Vienna as a collaborating institution. The purpose of the project was above all to acquaint the Slovenian public with the problems of discrimination and to begin teaching state officials to recognise discrimination. Various types of discrimination have been presented in over a dozen seminars to different target groups who, in our opinion, should be especially aware of this urgent and also current problem. We also expect them to use the knowledge they have gained in their work and to pass it on, and in this way create a kind of network of individuals who will spread this knowledge and thus contribute to creating a more tolerant society. Some time ago the National Assembly adopted the Ombudsman's proposal to set up, at the Ombudsman's Office, a group that would monitor more actively discriminatory situations in Slovenian society, study them, report on them and combat such occurrences. Above all through education and promotion. And this issue of the Newsletter is dedicated, among other things, to this: acquainting the citizens of Slovenia with the occurrences of discrimination and intolerance, drawing attention to the unacceptability of these occurrences, pointing out individual positive examples of the tolerant coexistence of



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MATJAŽ HANŽEK, Human Rights Ombudsman



L E T ' S F A C E D I S C R I M I N A T I O N !

About the Let's Face Discrimination! project

The Office of the Human Rights Ombudsman, together with its Austrian partner, the Ludwig Boltzmann Institute for Human Rights, has been running a major project entitled Let's Face Discrimination! The project began with a public presentation at the National Assembly, the formation of a discrimination expert working group at the Human Rights Ombudsman's Office, and an intensive training scheme for the expert team which included the Train the Trainer seminar. Nineteen people participated in the training scheme: nine of us were from the Ombudsman's office, one came from the Office for Equal Opportunities, and the rest were selected from various professional spheres and included two police officers (teachers at the Police Academy), a university professor, a young researcher, a teacher/assistant from the National School for Leadership in Education, a Roma assistant, a labour inspector, an official from the Ministry of Labour, Family and Social Affairs, and an official from the Ministry of the Interior. The response of the participants was extremely positive. The majority of them expressed their willingness and resolve to use the knowledge they had gained in their working environment, and many of them also took part in continuing the project.

**Andreja Trtnik Herlec, lecturer,
National School for Leadership in Education**

"As an educator of educators (teachers and head teachers) I have already participated in a number of Train the Trainers seminars run by both Slovenian and foreigners. I was very impressed by the trainer team. They had a good knowledge of both the theoretical background and of practical cases, and were excellent at role-playing and improvising responses to our questions, provocations and special requests. They made sure that we all felt comfortable and got involved. The group also became very lively. It was a real privilege to get to know, in such a short time, so many interesting, sincere and professional people! I think it's fair to say that if no-one from the sphere of education had taken part in this training scheme, it would have been a serious strategic error. I will continue to take part in the project with the greatest happiness and will attempt to transfer its objectives and contents to the area of education. Together we can discover: a great deal of work still awaits us in the fight against discrimination."

Martina Bofulin, young researcher at the Institute for Ethnic Studies

"The seminar pleasantly surprised me with its emphasis on an interactive approach. The leaders of the seminar fulfilled my expectations because they set in front of us, decisively and uncompromisingly, the mirror of our prejudices and stereotypes. Or rather, with their help, we did it ourselves. Here too, just like in real life, the group dynamic played an important role, and this contributed to a deeper understanding of the phenomenon of discrimination in various environments. Within the framework of the seminar I perhaps would have liked a more marked emphasis on the deconstruction of certain notions such as race, gender, etc., but at the same time I enjoyed the tolerant and respectful mode of communication in the group – an occurrence which is all too rare in our society."

LAW ENFORCEMENT WITHOUT DISCRIMINATION

At the end of June, in collaboration with the Police Academy, we organised a seminar entitled "Law Enforcement Without Discrimination", the most important element of which consisted of activities designed to raise participants' awareness of the importance of performing police functions without discrimination of any kind. The seminar was attended by 45 police officers from various police stations. For the first time, trained staff from the discrimination department at the Ombudsman's office put ourselves to the test as part of the training team.

Tanja Cmrečnjak Pelicon, National Labour Inspectorate

*Dream a dream of a new tomorrow when the people learn to love their fellow man.
Dare to hope for a peaceful morning when we've learned to walk together hand in hand.
If we all will dare to dream dreams of a new and brighter day.
If we work to make them come true we will surely find a way.
Dream a dream of the world we long to see.
Dare to hope for the day when men are free.
Maybe someday we can see our dreams come true. (Ed Robertson, Dream a dream)*

This song, which I sang in a choir many years ago, echoed in my ears when I came home on Friday, the last day of the Train the Trainers seminar. That's it! This seminar more than exceeded my expectations, it opened my eyes and reminded me of the dreams I had when I was young and have put away in a dusty cupboard during years of study and work. During the seminar this cupboard slowly opened and its contents got me thinking again. Where is my mission? Why did I choose this career? Am I – not just as trained lawyer but also as a human being – sufficiently open and willing to help people and even to give them strength in the fight against discrimination? Over the course of years of working for a state body which is, moreover, an inspectorate, it is easy to lose one's youthful idealism. The everyday routine stifles – surprisingly quickly – the fire that drove you to choose a career in which you thought you could change the world and make it a better place. Questions are an inevitable part of the work of an inspectorate employee: how far do our competences reach, if I issue such and such a measure will I overstep my authority, am I really sure that I can punish this offender with such and such a sanction, without leaving myself (or the state, on whose behalf I am acting) open to liability for damages? The answers to these questions all too often lead us to a point where it seems safest to say that our powers are very limited and that we cannot do anything more for the victim of a violation. So we surround ourselves with a wall of incompetence and can thus close the case. The Train the Trainers seminar had such an effect on me that I began to ask myself: What can I do for the victim, what can I do to help prevent discrimination, where are my prejudices, how do I recognise them and confront them? I saw my life, my work and, finally, the situation in society, from a different point of view, as though I had climbed onto the highest rooftop and from this vantage point seen more clearly what was going on around me. And most importantly: at the seminar I gained experience of what it feels like to be the victim of discrimination. All of this was made possible by exercises that at first glance seemed like a game (sometimes quite a cruel game), but when we analysed them I realised what parts of my being had been affected by these exercises. Not only because of the proficiency and ease with which the experienced trainers conducted the exercises, but also because of the openness and willingness to cooperate on the part of the participants, who shared with others their sincere feelings and thoughts. Now, more than two months after the seminar, I am assembling the consequences that it has left in me. The first is that it has given rise to a desire that seems stronger than ever before: the desire to help others become aware of their own prejudices and recognise the trap of discrimination into which it is so easy to slide. And the second consequence: the seminar has left me with many more questions than answers. Now I understand that the purpose of the seminar was not to give us straightforward answers – which I consider to be the basic purpose of the majority of seminars and lectures in this world. The Train the Trainers seminar was different. It imposed no all-embracing or universally applicable truths. All definitions were left open, so that everyone could take from them what he or she needed or was ready to accept. The air in the lecture room, where we sat in a circle and where none of us had anywhere to hide, filled with hundreds of questions. Questions which I know will not abandon me so easily. They are, however, questions that will help show me the path in the future, questions against which I will again and again be able to check whether, as a human being and a person in the legal profession, I have done everything that could be done in a given situation for a victim of discrimination. If nothing else, I had to take part in the seminar in order to learn how I must never again allow such questions to end up, along with my youthful dreams, in a dusty cupboard, since you never know whether someone will be successful in bringing them out into the open again.



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At the end of the two-day seminar we asked the participants to tell us what they thought about the seminar and what they would like to see at similar training sessions in the future. The participants confirmed that training of this type is absolutely necessary, not only for them but also for their colleagues and for future police officers. They were extremely satisfied with the interactive approach – since this gave them the opportunity to express their opinions, needs and difficulties. In general we can conclude that the collaboration of the Ombudsman and the Police was very successful and that a willingness exists for further collaboration between the two institutions in our common fight against discrimination.

The content of the seminar thus focused on the understanding of discrimination, its forms and mechanisms. The seminar used interactive methods such as brainstorming, mind mapping, group work, the snowball technique and so on, where a key role was played by the participants themselves. This type of training enabled the participants to get to know the methods (awareness-raising activities) that can be used to carry out similar education on non-discrimination in various environments, in other words as an additional element to curricula that focus on discrimination, the social psychology of prejudices, various forms of repression, violations of human rights, etc.

SANCTIONS AND REMEDIES

In September the Ombudsman held a three-day seminar entitled "Sanctions and Remedies". This was designed above all for the inspection services, who have a particularly important role to play in efforts to eliminate discrimination.

The first part of the seminar was devoted to activities designed to help recognise discrimination and confront prejudices, stereotypes and other forms and mechanisms of discrimination. In the second part, the participants deepened their understanding of key concepts and definitions, deriving from Community law and the relevant directives of the European Council. The third part focused on Slovenia's legal system, and in particular on certain open questions relating to practice in this area. These include the limits of the competences of individual bodies, the need for coordination among them, and the application (or otherwise) of the principle of shared burden of proof in individual procedures. We also considered the legal position of the victim of discrimination and of those who offer them (legal) aid.

At the end of the seminar we asked the participants how they could contribute to eliminating discrimination and what they would need in order to do so. They expressed the opinion that it is vital to adopt preventive measures and to educate and inform the general public of the harmful consequences of discrimination, which is something that requires interconnection between various organisations and the support of the mass media.

WORDS ARE DEEDS, SPEECH IS ACTION – DISCRIMINATORY DISCOURSE AND HATE SPEECH

As well as the seminars mentioned above, in September we also devoted our attention to the ethics of the public media. Alongside our permanent partners in the project, the Faculty of Social Sciences collaborated on the preparation of the conference "Words are Deeds, Speech is Action: Discriminatory Discourse and Hate Speech". The purpose of the conference was to open discussion on discriminatory public discourse, which on the one hand can create a basis and stimulus for various forms of discrimination, and on the other hand is itself a form of discriminatory practice.

In his paper Matjaž Hanžek pointed out that hate speech depends on a context of power and a desire to dominate. He talked about blatant and contemporary racism and about the role of the political and media fields in creating and maintaining them. He drew attention to the fact that politicians in particular often fail to understand the meaning of the words they say – or their effects. He added that it is important to place ourselves in the role of the person who is discriminated against, in order to understand more easily the phenomenon of discrimination and the effects of our actions. He also emphasised how dangerous discriminatory speech is for social cohesion: this is also the origin of a series of recommendations from the Council of Europe and the United Nations that warn against or even prohibit this type of speech.

The evaluation at the end of the seminar confirmed that the participants were satisfied with how the seminar was run, since its interactive approach contributed to greater awareness of the extent of discrimination. It also revealed a need for further education in this area. When actively addressing real cases of discrimination, participants expressed the need for more effective legislation, more clearly defined competences for inspectorates and increased powers for the Advocate for Equal Opportunities, which would contribute to the more effective elimination of discrimination in practice rather than merely on paper.

ACCESS TO GOODS, SERVICES AND HOUSING

The seminar entitled "Access to Goods, Services and Housing" was similar in content but adapted to a different target group. Those invited to participate included staff from the Market Inspectorate of the Republic of Slovenia, the Environment and Spatial Planning Inspectorate and the Consumer Protection Office, representatives of non-governmental consumers' organisations, the tenants' association and representatives of certain interest groups at the Chamber of Commerce and Industry, the Settlement Council at the Bank Association of Slovenia and the mediation council at the Slovenian Insurance Association and some of the larger municipal housing funds.

The participants were satisfied with the seminar since confronting prejudice and the mechanisms of discrimination to which they were subjected at the seminar will help them recognise discrimination in the future. They also expressed a need for further training in ways to eliminate discriminatory practices. They would also like to see policy pay more attention to the area of discrimination.



Participants at the Education Against Discrimination seminar preparing an action plan to eliminate discrimination in the area of education

EDUCATION AGAINST DISCRIMINATION

In September we also held a seminar entitled "Education Against Discrimination", the main purpose of which was to familiarise the seminar participants with interactive methods that enable them to realise and feel what discrimination is and how it affects the everyday life of individuals and groups.

Alexander Pollak, Researcher at the European Monitoring Centre on Racism and Xenophobia (EUMC), talked about discrimination in public speech and stressed, among other things, that the media play an essential role in defining the problems that concern the public. He pointed out that a changed social structure also involves changes to forms of expression, where a key role is played by the mass media. He sees the solution in the supervision of speech, above all in the analysis of media texts, since this would make it easier to evaluate and detect hate speech. Andraž Teršek discussed hate speech from the legal point of view. He explained that this area is partially regulated by the provisions of the Constitution and by criminal law, but he warned that the law should be a last resort for the elimination of hate speech, since over-regulation can seriously encroach on the freedom of expression.



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The afternoon part of the conference was given over to workshops on the legal aspects of hate speech, what we can do to prevent hate speech in real and virtual contexts, and analysis of discourses and hate speech. The conference ended with reports and findings from the above workshops, which produced fairly similar conclusions. The message of the conference was thus very clear. The most important thing for the recognition and elimination of hate speech is raising awareness and linking governmental and non-governmental organisations. Only this can create a critical mass capable of recognising and responding to hate speech and discriminatory speech and thus starting on the path towards a more tolerant society.

GENDER MAINSTREAMING AND MULTIPLE DISCRIMINATION

After a busy September we began the series of October seminars with a working discussion on gender mainstreaming and multiple discrimination, to which we invited the director of the Office for Equal Opportunities, the Advocate for Equal Opportunities and other staff from the Office for Equal Opportunities and representatives of the Human Rights Ombudsman's Office. Also invited were other members of the Government Council for the Implementation of the Principle of Equal Treatment. Ingrid Nikolay-Leitner, the head of the Austrian equal opportunities office, and Dieter Schindlauer, the founder and director of ZARA, the most important non-governmental organisation for the struggle against racism in Austria, also took part in the discussion.



Police officers at the Law Enforcement Without Discrimination seminar, organised by the Ombudsman in conjunction with the police service and the Ludwig Boltzmann Institute

The discussion centred on open questions raised in connection with the horizontal approach to the elimination of discrimination and the occurrence of multiple discrimination. We also gave special consideration to issues of extending approaches and policies created within the context of encouraging gender equality to other groups in society that are particularly sensitive because of characteristics that represent a possible basis for discrimination.

Owing to the absence of a suitable term in the Slovenian language, we should point out that there was discussion of policies for which the term diversity mainstreaming is used in the European context.

Certain institutional similarities exist between Slovenia and Austria, since in both countries there are bodies that were originally charged with monitoring the situation and the development of gender equality policies but which on the basis of antidiscrimination legislation have gained additional, significantly wider functions. Thus they have found themselves facing new opportunities, challenges and tests.

DISCRIMINATION AT THE WORKPLACE

Following the working discussion we held two seminars on discrimination in the workplace, the first devoted to the public sector, and the second to the private sector. The first part was devoted to activities designed to help recognise discrimination and confront prejudices, stereotypes and other forms and mechanisms of discrimination. In the second part, the participants deepened their understanding of key concepts and definitions deriving from Community law and the relevant directives of the European Council. The third part was devoted to the study of cases and Slovenia's legal system, and in particular to certain open questions relating to practice in this area.

In view of certain shortcomings in substantive law, there are also questions to be answered with regard to the coordination of competent bodies, while the question raises itself of the use (or otherwise) of the principle of shared burden of proof in individual procedures; we also gave particular consideration

to the legal position of the victim of discrimination and of those who offer him/her (legal) aid.

The participants of this seminar likewise confirmed the need for more effective legislation and systematic regulation in this area, the need to obtain additional knowledge about discrimination, and the need for connections between different institutions. They also expressed a need for greater inclusion of trade unions and employers in eliminating discrimination in the workplace.

RELIGIOUS FREEDOMS AND DISCRIMINATION OF PEOPLE ON THE GROUNDS OF THEIR RELIGION OR BELIEF

Meanwhile ISCOMET, in collaboration with the Human Rights Ombudsman and the Ludwig Boltzmann Institute for Human Rights, prepared a conference on Religious Freedoms and Discrimination of People on the Grounds of Their Religion or Belief. As well as recognised domestic experts, participants included experts from Denmark, Germany, Luxembourg, Northern Ireland, Poland and Sweden. The purpose of the conference was to draw attention to the open questions that believers, non-believers and religious communities are facing in Slovenia. The ban on discrimination on the basis of religion or belief is one of the explicitly stated bases for the prohibition of discrimination in all international instruments. Very often discrimination against individuals because of faith or belief is overlooked, because the prevailing society pushes belief into the private sphere of the individual. In this way the state attempts to evade its responsibility for guaranteeing equal opportunities for all differently-believing and non-believing citizens of Slovenia. The main message of the conference was thus that the state is obliged to adopt a normative regulation that will ensure the equality of all citizens of the Republic of Slovenia regardless of their religion and belief and will at the same time guarantee all religious communities active in Slovenia the right to perform their religious ceremonies.

ETHNIC AND RACIAL DISCRIMINATION

As part of the project we also prepared a seminar on ethnic and racial discrimination, at which we presented the stories of groups of people who are frequently – deliberately or otherwise – overlooked, disregarded and forgotten. At the beginning of the seminar, in the company of Dieter Schindlauer of ZARA, an Austrian anti-racism NGO, we "tripped up" over the term race, its ideological abuse and the significance of its inclusion in documents of international law. Later on, Petra Mikulan and Sekumady Conde of the African Centre presented the "Sankofa" project, which is introducing critical multicultural teaching to secondary schools on an elective contents basis. Martina Bofulin of the Institute for Ethnic Studies talked to us about the discriminatory media discourse that by no means contributes to a more tolerant attitude on the part of the majority population towards Chinese people in Slovenia. Miran Komac of the Institute for Ethnic Studies presented his view of the (un)readiness of our country for the processes of immigration and the formulation of a so-called integrational policy of consensus. He is convinced that policy should be aware of and emphasise the advantages enabled by immigration, and thus by greater cultural diversity in society.

Next, Sonja Gole Ašanin of the Refugees and Aliens Integration Section presented some of the most urgent issues faced by refugees in Slovenia. According to the information she provided, refugees suffer most discrimination when looking for accommodation, in health care and in employment. Klemen Slabina of the Faculty of Arts talked about the language problems experienced by the children of immigrant families. Ilija Dimitrijevič, president of the Union of Federations of Cultural Associations in Slovenia, presented the work of the Union of Cultural Associations of the Constituent Nations and Nationalities of the Former Yugoslavia in Slovenia, and their initiative to obtain the status of national minorities.

ROMA AGAINST DISCRIMINATION

This was followed by a seminar on discrimination against the Roma, the purpose of which was, on the one hand, to draw attention to the structural or



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institutional discrimination that the Roma in Slovenia have been experiencing for decades if not centuries, and on the other hand to show that there exists a not insignificant number of cases of good practice that are a beacon in the fight against discrimination and can indicate a path for the future.

The ombudsman, Matjaž Hanžek, began by saying that it is high time that the state did more in this area and stopped leaving the resolution of the problem to local communities. Miran Komac of the Institute for Ethnic Studies explained that 15 years after the adoption of the Constitution, the Roma bill envisaged by the Constitution is finally ready. The text of this bill, however, does not contain provisions on positive measures. No-one has tested the proposed solutions in practice and the last draft was not coordinated with the Roma community. The Roma community has to become the subject of its own development, while the state should do more to ensure the literacy of Roma councillors. Vera Klopčič of the Institute for Ethnic Studies talked about selected cases from judicial practice relating to members of the Roma community. She also warned that the controversial term indigenoussness, over which policy has frequently stumbled, is not suitable for the protection of minorities. In her opinion special rights should be granted on the basis of two criteria: traditional settlement and settlement in an area in significant number.

Jožek Horvat, the president of the Union of Roma of Slovenia, warned that discrimination against the Roma is increasing, and that this is particularly evident at the local level. Discrimination is also occurring within the Roma community itself.

The seminar continued with a presentation of examples of good practice. We listened to a presentation of good practice in the area of including the Roma in the educational process at the Janko Padežnik Primary School in Maribor, where head teacher Sonja Filipič stressed that the essence of educational work with Roma children lies in the constant search for appropriate methods, continuous assessment, respecting the tradition of the Roma way of life and culture, and constant cooperation with parents. Dejan Peklar gave a presentation of individual lessons with Roma children.

University student Samanta Baranja talked about the development of the inclusion of the Roma in the education system, while also mentioning the difficulties she encountered – and that other Roma children are still encountering – during schooling. She explained that there are ten Roma university students in Slovenia, which has given her the idea of founding a Roma academic club to bring these students together, motivate and encourage them, and organise meetings in order to compare experiences, exchange ideas, and so on. She drew attention to the need to guarantee a certain number of beds in halls of residence (these are currently only reserved for the two national minorities).

Nada Žagar of the Institute for Education and Culture (ZIK) in Črnomelj presented a project entitled "Careers Information and Advice for the Roma", which was based on the assumption that we do not know about the career and educational interests of the Roma, therefore making it difficult to advise and motivate them for education. Within the framework of the project, the ZIK and its project partners carried out research into the educational and vocational interests of the Roma and introduced a new professional profile, that of a Roma coordinator.

Nataša Brajdič and Branko Novak then presented an example of good practice in cooperation between the Roma and the police, and emphasised the importance both of educating police officers with regard to Roma customs and familiarising the Roma with the work of the police. They also presented a Roma language learning programme for police officers.

Brankica Petković of the Peace Institute talked about the right of the Roma to information and taking part in the media process, pointing out that this is a responsibility both of the state and of the industry itself. Neva Nahtigal talked about a successful project called "Training the Roma for Radio Journalism", a direct effect of which has been the launch of Roma radio production and a broadcast by the Roma Information Centre (ROMIC) Listen to the Roma, presented at the seminar by editor Monika Sandreli and journalist Romeo Horvat ("Popo").

Through the presentation of these examples of good practice, we also attempted to reflect on possible improvements and strategies in the fight against discrimination, and to show how important it is to cooperate with the Roma in planning similar strategies.

DISCRIMINATION ON THE GROUNDS OF SEXUAL ORIENTATION

Next came a seminar on discrimination on the grounds of sexual orientation, including a presentation of approaches, policies, strategies and projects aimed at eliminating this form of discrimination that might be useful for employers and teachers.

Maja Pan of Amnesty International used interactive methods and audiovisual aids to present the everyday life of gays and lesbians and the stigmatisation and discrimination that they experience in various environments. Next, Tatjana Greif of Škuc LL presented the project "Partnership for Equality", aimed at raising awareness and training social partners for the introduction of antidiscriminatory policies in employment and on the labour market, with an emphasis on homosexuals as a vulnerable group.

Constanze Pritz-Blazek of the Austrian equal opportunities office presented two international projects designed to raise awareness about discrimination on the basis of sexual orientation. These were: Triangle (Transfer of Information Against the Discrimination of Gays and Lesbians in Europe), a project run by an international network of partners with specific goals in the

Alexander Pollak, Researcher at the EUMC, on the importance of media analysis at the conference
Words are Deeds, Speech is Action



areas of awareness-raising and education for the purpose of reducing discrimination. The working programme ended with the preparation of a manual for teachers, educators and counsellors. Also presented was the project of the Zentrum für Migranten, Lesben und Schwule (MILES) in Berlin, which provides support and advice for gays and lesbians and carries out awareness-raising activities aimed above all at migrant communities. Andres Delgado, former secretary of Office of the Ombudsman against Ethnic Discrimination (Sweden), presented the work of the Swedish Ombudsman against Discrimination on Grounds of Sexual Orientation in eliminating homophobia in the workplace.

DISCRIMINATION ON THE GROUNDS OF AGE AND DISABILITY

The last in the series of seminars that we held within the framework of the project was entitled "Discrimination on the Grounds of Age and Disability". The seminar proved to be a good opportunity to better acquaint ourselves with the wider problem of some groups that are particularly vulnerable to discrimination, and served at the same time as a working discussion on the challenges, dilemmas, good practices and weaknesses that can be observed in the prevention of discrimination on the basis of disability and age. We focused above all on open questions relating to discrimination on the basis of disability and age, particularly in employment, in the workplace and in accessing goods and services.

Invited participants included NGOs that are in close daily contact with the potential victims of discrimination and that can contribute through a variety of activities to preventing and eliminating discrimination on the basis of age and disability. The discussion also involved Dieter Schindlauer, the founder and director of ZARA, the most important Austrian NGO in the fight against racism, and the umbrella organisation the Litigation Association, which represents the victims of discrimination before the courts, and Andres Delgado, the former secretary of the Office of the Ombudsman against Ethnic Discrimination. At the seminar we exchanged opinions and proposals for improving existing practices in confronting discrimination on the basis of age and disability, and established an open dialogue and debate on strategies and plans for the elimination of discrimination on the basis of disability and age. We will provide a summing up of the project at a **closing conference** on 8 December 2006 at the Law Faculty and conclude it with a gala reception at the National Museum on Human Rights Day (10 December).



L E T ' S F A C E D I S C R I M I N A T I O N !

Terms and definitions

DISCRIMINATION

Means the **unequal treatment of a person in the exercising of his or her rights and obligations in comparison with someone else on grounds of** national origin, race, ethnic origin, sex, state of health, disability, language, religious or other belief, age, sexual orientation, education, financial status, social position or **any other personal circumstance**. Discriminatory conduct can have the nature of active conduct (action, service) or passive conduct (failure to act, omission). The purpose of the perpetrator does not matter, merely the actual effect of such conduct which causes discrimination: rendering impossible, or depriving a person of, the equal recognition, enjoyment or exercising of his or her rights and obligations in the political, economic, social or cultural fields, or in any other area of life in society.

DIRECT DISCRIMINATION

We talk about **direct discrimination** when a person in comparable circumstances is treated less favourably than someone else on grounds of national origin, race, ethnic origin, sex, state of health, disability, language, religious or other belief, age, sexual orientation, education, financial status, social position or **any other personal circumstance**.

An example of direct discrimination could be, for example, refusing admission to a pub to a same-sex couple. The Ombudsman dealt with such a case in 2001. On that occasion he warned that offering of goods and the provision of services, which include the services of establishments such as restaurants and bars, must be non-discriminatory. A person performing a commercial activity must provide his or her goods or services to everyone without differences, which have no basis in regulations.

Another example of direct discrimination could be a job advertisement reading as follows: "Woman, 30 or under, required for secretarial work."

INDIRECT DISCRIMINATION

We talk about **indirect discrimination** when apparently neutral provisions, criteria or conduct in an identical or similar situation place one person at a disadvantage compared to another person because of their national origin, race or ethnic origin, sex, religious belief, disability or state of health, sexual orientation or other personal circumstance.

An example of indirect discrimination could be tender conditions for research projects which stipulate that the head of research must hold a contract of employment in a research organisation. In this way older scientists are indirectly discriminated against because they are retired and are thus prevented by a call for tenders of this type from presenting themselves as candidates for research projects.

INSTRUCTIONS

Instructions, which can cause discrimination, are also direct or indirect discrimination. In such cases the violation of the prohibition of discrimination is the responsibility both of the person who carries out the action or omission, and of the person who issued such instructions or guidelines.

An example of instructions that lead to discrimination could be the owner of a nightclub instructing employees not to allow persons with certain characteristics (e.g. Roma) onto the premises.

HARASSMENT

Another form of discrimination is **harassment** based on any personal circumstance that creates an intimidating, hostile, degrading, humiliating or offensive environment for a person and offends their dignity. The decisive factor is the understanding of such conduct as unwanted on the part of the victim. Harassment can take many different forms: from unwanted proposals, suggestive remarks or comments, insulting or hostile speech and threats of violence to physical abuse (physical, sexual violence, etc.). In the workplace superiors and other employees who witness harassment are (co-)responsible, and must therefore put a stop to harassment and prevent it from occurring.

Examples of harassment include verbal allusions to sex, sending pornographic e-mails to a female co-worker or, for example, unremitting remarks concerning the ethnic origin of a co-worker.

DISCRIMINATION BY ASSOCIATION

We talk about **discrimination by association** when a person is treated unfavourably because he or she is connected to a person who is discriminated against on grounds of personal circumstances.

Discrimination by association is for example experienced by the parents of a child with special needs (in a wheelchair), since they too are denied access to certain places or goods (e.g. a cinema).

This form of discrimination can be experienced by partners of different ethnic or racial origin, where on the basis of the personal characteristics of one of the partners, the other partner also suffers discrimination despite not having this personal characteristic. An example could be insults from neighbours because one member of a couple is foreigner.

MULTIPLE DISCRIMINATION

We talk about **multiple discrimination** when two or more personal circumstances that are the basis for discrimination coincide.

A woman of Albanian origin who satisfied all the advertised conditions responded to a public call for applications, without success. At the interview she heard a number of inappropriate comments and the position was awarded to a less well qualified male Slovenian. In such a situation she could have been simultaneously the victim of discrimination because she was a woman and because she was of Albanian origin.

VICTIMISATION

We talk about **victimisation** when a person who has been the victim of discrimination faces unpleasant consequences as a result of his or her action in connection with a violation of the prohibition of discrimination.

An example of victimisation would be a female employee being fired after bringing harassment charges against an offender and her employer.



L E T ' S F A C E D I S C R I M I N A T I O N !

Prohibition of discrimination in certain regulations and sanctions

CONSTITUTION OF THE REPUBLIC OF SLOVENIA

Article 14 (equality before the law)

In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status, disability or any other personal circumstance.

All are equal before the law.

The principle of equality in other provisions of the Constitution of the Republic of Slovenia: **Article 7** - Equality of religious communities; **Article 13** - Aliens in Slovenia enjoy all rights except those rights that pursuant to the Constitution or law only citizens of Slovenia enjoy; **Article 16** - Temporary suspension and restriction of human rights and fundamental freedoms contrary to the prohibition of discrimination is not possible even during a war or state of emergency; **Article 22** - Equal protection of rights in proceedings before state authorities, local community authorities and bearers of public authority; **Article 29** - Legal guarantees in criminal proceedings with absolute equality; **Article 34** - Right to Personal Dignity and Safety; **Article 35** - Inviolability of physical and mental integrity, privacy and personality rights; **Article 43** - Equality of the right to vote, measures for equal opportunities for the sexes in standing for election; **Article 49** - Equal access to positions of employment; **Article 122** - Employment in the state administration is also covered by the principle of open competition; **Article 53** - The principle of equality of spouses; **54. člen** - Equal position of children born out of wedlock; **Article 61** - The right to express national affiliation, the right of a person to foster and give expression to his culture and to use his language and script; **Article 62** - The right of a person to use his language in the exercise of his rights and duties and in procedures before the state and other bodies performing a public function; **Article 63** - Prohibition of incitement to discrimination of any kind and of inflaming hatred and intolerance.

IMPLEMENTATION OF THE PRINCIPLE OF EQUAL TREATMENT ACT (ZUNEO)

The Act introduces the concept of equal treatment, which means the absence of discrimination.

- Defines the common starting points for ensuring the equal treatment of every person in exercising his/her rights and obligations in any area of life in society, irrespective of his/her personal circumstances. The prohibition of discrimination clearly binds everyone who could affect the legal position (rights and duties) of any other person through his/her conduct. In addition to the personal circumstances cited by the Constitution, it also cites ethnic origin, state of health and sexual orientation (**Article 1**).
- Prohibits indirect and direct discrimination and also defines harassment as a form of discrimination (**Articles 4** and **5**).

- Prohibits victimisation - a person who is a victim of discrimination may not be exposed to unfavourable consequences as a result of measures taken because of discrimination (**Article 3**).

Provides that the prohibition of discrimination does not preclude objectively and reasonably justifiable different treatment or restrictions on the basis of a specific personal circumstance defined by special laws for the achievement of a legitimate purpose (**Article 2**).

- Permits positive measures - temporary measures defined by law that are designed to prevent the disadvantaged position of persons with specific personal circumstances act as compensation for the position of disadvantage (**Article 6**).

- Defines the possibility of a complaint to the Advocate for Equal Opportunities (**Article 11**).

It gives inspectors the power to act in cases of discrimination (**Articles 20** and **21**).

- Transfers the burden of proof to the offender, when in administrative or judicial procedures a victim of discrimination cites facts that justify the assumption that the prohibition of discrimination has been violated. The alleged offender must then prove that he has not violated the principle of equal treatment or the prohibition of discrimination (**Article 22**).

The ZUNEO defines the duty of state bodies to work with social partners and NGOs in the prevention of discrimination (**Article 8**).

All forms of discrimination that occur in the implementation of laws and other regulations, collective agreements and general acts in a specific area of life in society regulated by law are defined as a general offence punishable by a fine. These fines range from SIT 50,000 to SIT 10,000,000 (**Article 24**)

EMPLOYMENT RELATIONSHIP ACT (ZDR)

An employer may not place a jobseeker (candidate) or an employee during an employment relationship and in relation to the termination of employment in an unequal position because of personal circumstances. Besides the personal circumstances cited by the Constitution, it also cites skin colour, state of health, membership of a trade union, national and social origin, family status and sexual orientation (**Article 6**). Women and men must be guaranteed equal opportunities and equal treatment in employment, promotion, training, education, retraining, salaries and other receipts deriving from the employment relationship, absences from work, working conditions, working hours and notice (**Article 6**).

Direct and indirect discrimination are prohibited (**Article 6**).

In the procedure of protection of rights because of discrimination, the burden of proof is transferred to the offender. The latter must prove that different treatment is justified by the type and nature of the work (**Article 6**).

The employer must actively ensure a working environment in which no worker is exposed to unwanted conduct of a sexual nature that creates an intimidating, hostile or degrading working environment and working relations and offends the dignity of men and women at work, including such conduct on the part of superiors and co-workers (**Article 45**).

The prohibition of termination of a contract of employment on discriminatory grounds (**Article 89**).

The ZDR contains numerous provisions on special protection in relation to employment, work and termination of employment of certain particularly sensitive groups such as adolescents, pregnant women and nursing mothers, the elderly, the sick, the socially at-risk, the disabled, trade union members, older employees, etc.

It defines special offences (**Articles 229, 230, 231**). Offenders are punished by fines ranging from SIT 50,000 to SIT 1,000,000.

Equal Opportunities for Women and Men Act (ZEMŽM)

- Defines measures for the prevention of discrimination and the equalisation of opportunities between the sexes.

- Defines the possibility of a complaint to the Advocate for Equal Opportunities for Women and Men in the case of discrimination (**Article 20**).

Defines certain special offences (**Articles 33-35**). Offenders are punished by fines ranging from SIT 50,000 to SIT 500,000.

Employment Rehabilitation and Employment of Disabled Persons Act (ZZRZI)

Defines measures for the prevention of discrimination and increasing the employability of disabled persons and establishing conditions for their equal participation on the labour market by removing obstacles and creating equal opportunities.

Defines the offence of failure to pay liabilities deriving from a quota (**Article 92**). Fines range from SIT 100,000 to SIT 10,000,000.

Consumer Protection Act (ZVPot-OCT2)

Orders the sale of goods and provision of services to all consumers under the same conditions (**Article 25**).

Defines a special offence (**Article 77**). Offenders are punished by fines ranging from SIT 300,000 to SIT 10,000,000.

Aliens Act (ZTuj-1-OCT3)

State bodies and other bodies, organisations and associations shall through their activity provide protection against all forms of discrimination on grounds or racial, religious, national, ethnic or other difference of aliens (**Article 82**).

Societies Act (ZDru-1)

Activity in a society is based on the equality of membership (**Article 2**).

Founding a society whose purpose, objectives or activity encourage national, racial, religious or other inequality, inflame national, racial, religious or other hatred and intolerance, or encourage violence or war is not permitted (**Article 3**).

A society that carries out the activity under Article 3 of this Act shall have its activity prohibited by court order (**Article 42**).

Protection of Public Order Act (ZJRM-1)

Incitement to intolerance shall be punished as an offence (**Article 20**). Offenders shall be punished by a fine of SIT 200,000.

Media Act (ZMed)

Prohibition of incitement of inequality, intolerance, violence and war and fomenting of hatred through dissemination of programme contents (**Article 8**).

Defines a special offence in the case of advertising (**Article 47**). Offenders shall be punished by a fine of SIT 2,500,000 (**Article 129**).

The Penal Code (KZ RS)

A violation of equality (**Article 141**) is committed by anyone who merely on grounds of personal circumstances deprives someone of any human right or fundamental freedom or who on the basis of such differentiation gives someone a special right or privilege.

It is punishable by a fine or imprisonment for up to one year. The same punishment will apply to anyone who persecutes an individual or organisation for their commitment to equality.

A violation of rights deriving from employment or unemployment (**Article 206**) is committed by anyone who refuses or limits a person's right to free employment under equal conditions.

It is punishable by a fine or imprisonment for up to one year.

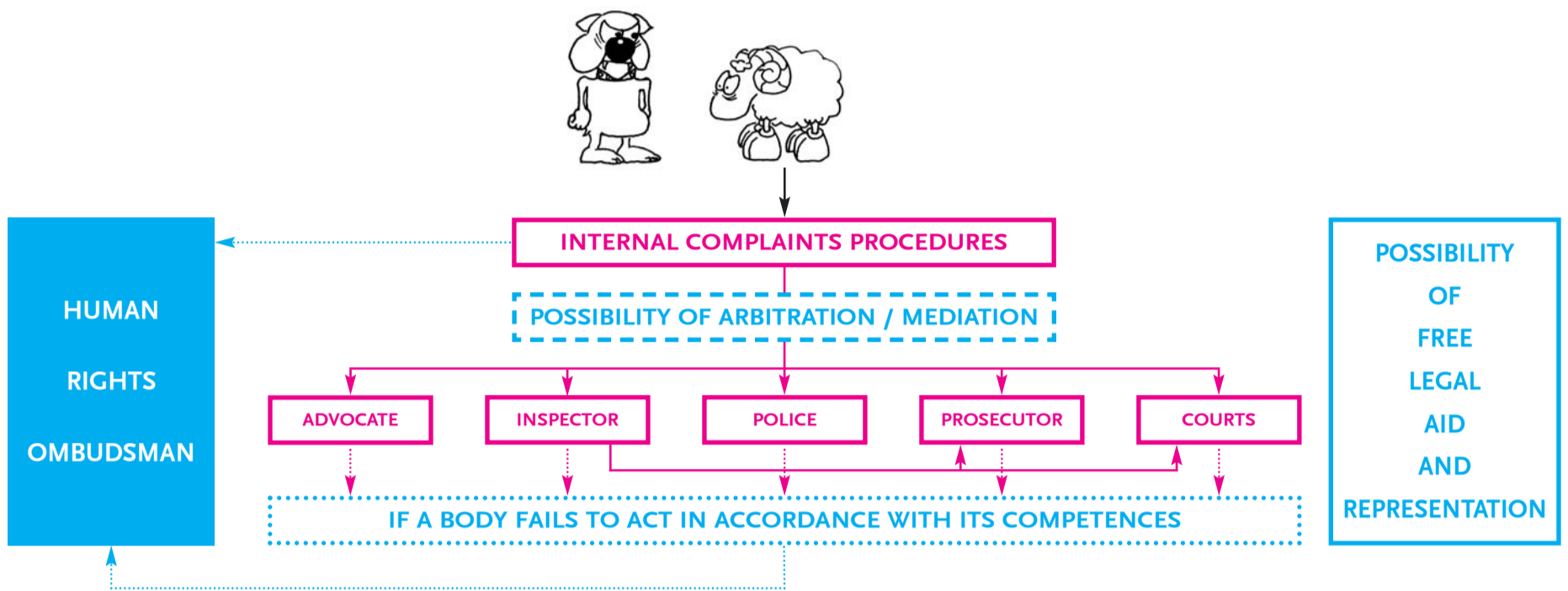
Incitement to hatred, discord or intolerance (**Article 300**) is committed by anyone who provokes or inflames national, racial or religious hatred, discord or intolerance, propagates ideas of the superiority of one race over another, assists racist activity in any way, or denies, diminishes the importance of, applauds or advocates genocide.

This is punishable by imprisonment for up to two years. If the action is committed with compulsion, maltreatment, endangering safety, defamation of national, ethnic or religious symbols, damage to another's property, desecration of monuments, memorials or graves, the offender shall be punished by imprisonment of up to five years. Material, objects and instruments for these purposes shall be taken away or their use rendered impossible.



L E T ' S F A C E D I S C R I M I N A T I O N !

What to do if you are the victim of discrimination



Unfortunately it is most usually the case that victims of discrimination in Slovenia do not use legal remedies to protect their rights. If anything, their action is usually limited to informal objections in a procedure in which they have been exposed to unequal treatment. This is bad, above all because these measures are in most cases inadequate, and furthermore they can have no effect on the general social climate or people's attitude towards the phenomena of discrimination. The reasons for such a state of affairs are almost certainly manifold and many-layered. They should be sought both on the side of the victims and, more broadly, in the inadequate sensitivity of the authorities that are required to act in the case of violations and, above all, in the unsatisfactory level of general awareness in society about what discrimination is and how harmful it is. A considerable part of the reason for the poor practice in this sphere should be ascribed to inadequate knowledge of the available defence mechanisms, the low level of confidence in these mechanisms, that have still to take off in practice, fear of retaliatory measures (victimisation) as a result of taking action, which would further worsen the position of the victim, and fear of the potential costs of taking action. The victims of discrimination are most often left to their own devices and it is difficult for them to find suitable help in protecting their rights against violators who are usually stronger from all points of view. Below we offer a brief description of legal means before the institutions to which an affected person can turn when he/she considers himself/herself to be the victim of discrimination. The majority of the means described are not mutually exclusive.

BEFORE TURNING TO THE COMPETENT INSTITUTIONS

If you believe that you have been discriminated against (treated unequally on the basis of personal circumstances of any kind) by an individual institution or enterprise, you should first of all attempt to resolve the problem within the institution in which your rights have been violated. All public bodies are required to set up and maintain **internal complaints procedures** via which affected individuals can complain about different types of conduct or omission as a result of which, in their opinion, their right to equal treatment has been violated. It is possible, for example, to lodge an appeal against the conduct of bodies of the public administration (ministries, administrative units, inspectorates, etc.) under Article 5 of the Public Administration Act (ZDU). In connection with the work of the police, a complaint in relation to the protection of human rights may be filed under Article 28 of the Police Act, and so on. In principle all state bodies, local government authorities and other holders of public authority (e.g. public institutions such as schools, hospitals, university faculties, etc.) are required to respond to warnings of irregularities within a reasonable deadline. In the case of discrimination in the workplace, employers must respond appropriately to written notifications of a violation of rights. Businesses dealing with customers (e.g. banks, insurance companies) also have internal procedures for dealing with complaints and comments from customers. It is always a good idea to begin by finding out in detail about mechanisms of this type. It is advisable to use them as a first step in your response to unequal treatment. Even if the procedure is unsuccessful, it is recommended that you proceed in this way in order to obtain evidence that can be used in any further steps taken in other procedures. All your complaints and responses should therefore be in writing, and we recommend that you always keep copies of complaints and proof that you have used complaints procedures (including the date). Whenever you use such procedures, you should always be careful (e.g. in the case of delays in decision-making in a case) not to miss the deadlines stipulated for the filing of other legal remedies.

EXTRAJUDICIAL SETTLEMENT OF DISPUTES

In some cases mechanisms are available for the extrajudicial settlement of disputes. These are usually only applicable if the parties involved agree on such a method of resolving disputes. For the protection of the rights of workers, they are guaranteed – under some collective agreements – in **arbitration** procedures. Under the Banking Act, for the purpose of extrajudicial settlement of disputes you may appeal in writing to the Settlement Council at the Bank Association of Slovenia. The possibility of free **mediation** (assistance in reaching an agreed settlement of a dispute) is provided by the Mediation Centre at the Slovenian Insurance Association. In some professions it is also possible to lodge **complaints over violation of professional ethics** in a specific field. It is necessary to familiarise yourself beforehand with the corresponding professional codes of ethics, which usually describe procedures and time limits for lodging complaints. Such procedures exist for doctors, lawyers, social workers, advertisers, journalists, and so on.

THE HUMAN RIGHTS OMBUDSMAN

You can apply to the Human Rights Ombudsman in cases where **your rights have been violated by state bodies, local government bodies or other holders of public authority**. The Ombudsman also supervises these bodies from the point of view of respecting the principles of justice and good management. You

cannot, then, apply directly to the Ombudsman when the violators are subjects of private law, enterprises or individuals as natural persons who do not hold public authority. In this case you must first report the matter to other competent bodies, while the Ombudsman can supervise whether these have acted in a timely and correct manner. Procedures involving the ombudsman are **informal** and **free of charge** but the complaint must be in writing. The Ombudsman guarantees the **confidentiality** of the procedure and therefore **does not deal with anonymous complaints**. Neither, as a rule, does he deal with cases in relation to which judicial and other procedures are already under way (except in the case of delaying of the procedures or clear abuse of authority). In the complaint, in which you must **describe the inadmissible conduct** to which you have been exposed, it is necessary to state whether you have already used legal remedies and, if so, which. The **time limit for lodging a complaint is as a rule one year** from the decision of the body that discriminated against the victim or from an actual decision that resulted in a diminishing of protection from discrimination. If the Ombudsman does not take on the complaint, he must communicate to the complainant in the shortest possible time an explanation of the other possibilities available for the protection of rights. The Ombudsman has access to all data that the bodies under his supervision have at their disposal, while these bodies are also obliged to provide him with all explanations and information he may request. When dealing with a complaint, the Ombudsman issues a report in which he states whether a violation of the right to equality was involved; this report is forwarded to the parties to the procedure. In the report the Ombudsman also proposes how to eliminate the irregularity. The body responsible for the violation is obliged to reply to the Ombudsman explaining what has been done to eliminate the violation. The Ombudsman may also influence the bodies of authority with his opinions, recommendations and proposals, above all via his annual reports to the National Assembly. After a complainant has exhausted all legal remedies, the Ombudsman may, with the consent of the person affected, file a complaint before the Constitutional Court of the Republic of Slovenia. In connection with a complaint with which he is dealing, he may also file a request for a constitutional review of laws and other regulations.

All complaints addressed to the Ombudsman must be **signed** and marked with the personal details of the complainant, and must contain the circumstances, facts and proofs (copies of documents, complaints filed, decisions, etc.) on which the complaint is based. When a complaint is filed by someone else on behalf of the person affected, the consent of the person affected must be obtained. In view of the signature requirement, it is best to send the complaint by post. A complaint may also be made orally as a deposition at the Ombudsman's office. Urgent explanations and advice are available every day during normal office hours from the free telephone advice line.

ADVOCATE FOR EQUAL OPPORTUNITIES

Unlike the Human Rights Ombudsman, the Advocate for Equal Opportunities also deals with cases in which the alleged offender is not a government body but, for example, a natural person, an enterprise, a trade union, a society, etc. You may file a complaint (in writing or made orally as a deposition) with the Advocate for Equal Opportunities **within one year** of the alleged violation and, in exceptional circumstances, after this period. In the complaint you must **describe the inadmissible conduct** to which you have been exposed. A complaint may also be filed by someone else on behalf of the person affected, and **may also be anonymous**, but it must contain sufficient details to be dealt with. The complaint is informal, which means that after dealing with it the Advocate issues a non-binding opinion. Together with the opinion she proposes a way of eliminating the violation. The procedure is **free of charge**. The procedure takes place **independently of procedures** before the court or other bodies and you are also entitled to it even if other legal remedies have not yet been exhausted or used at all. If the Advocate finds that an individual violation has all the signs of discrimination and the offender fails to eliminate the identified irregularities, the Advocate will pass her opinion and the entire case to the **competent inspectorate**.

INSPECTORATES

Inspectorates supervise the implementation of laws in specific spheres. Thus for example in the case of employment and labour relations, a declaration is addressed to the Labour Inspectorate, if discrimination has occurred within the education system a declaration is filed with the Education Inspectorate, or in the case of violation of equal access to goods and services, with the Market Inspectorate, and so on. **A declaration may be filed by anyone** (by an NGO for example), not only by the victim, and may also be **anonymous**. The inspector must deal with declarations, complaints, reports and other applications in matters that fall within his competence **and inform applicants, at their request, of his findings and measures**. The applicant does not in principle have the status of a party to a procedure unless he or she explicitly requests and is granted this status. The inspection procedure is in fact designed above all

The text is partly taken and adapted from Baltič, A.: Diskriminacija, ne hvala! [Discrimination, No Thanks!], Mirovni inštitut [Peace Institute], 2005, pp 9-12



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to protect the public interest. After completing the procedure the inspector issues a resolution in which it is decided whether or not a violation has occurred. The inspector may **prohibit further discriminatory conduct** on the part of the offender and **order appropriate measures with which to protect the victim of discrimination from retaliatory measures**. If the inspector finds that a criminal offence has been committed, he may **lay information** against the offender. If the offender has committed a minor offence, the inspector shall carry out the procedure prescribed by the Misdemeanours Act and **impose a fine on the offender or propose that a court rule on this**. A list of all inspectorates with their addresses is provided in the Important Contacts section of this publication. You may also contact the competent inspectorate before deciding to initiate a judicial procedure.

COURTS

In **cases of discrimination, you or your authorised representative** may initiate an appropriate judicial procedure in which you request the protection of your rights (identification of a violation, a request for it to cease and elimination of consequences, enforcement of a pecuniary claim, etc.). In order to make it easier to prove discrimination, Article 22 of the Implementation of the Principle of Equal Treatment Act (ZUNEO) defines the **shared burden of proof** and in this way removes some of the burden from the victim of discrimination, who usually has insufficient data and evidence to prove unambiguously the existence of discrimination. It is therefore enough for the victim to prove grounds that justify a supposition of discrimination. Evidence that justifies a serious suspicion or sufficient doubt is therefore sufficient. In this case the burden of proof is shifted to the alleged violator of the prohibition of discrimination. In order to exonerate himself, he must prove that he has not violated this prohibition. Provisions on the shared burden of proof are used in judicial procedures and administrative procedures and before other competent bodies, with the exception of criminal procedures. In judicial procedures you should also **always refer to human rights** (e.g. the right to equality and the right to the protection of personal dignity and safety under Articles 14 and 34 of the Constitution). Before filing claims, we recommend that you seek the advice or assistance of a lawyer or other person versed in the law. Procedures and claims before a court can vary depending on the nature of the discriminatory conduct, for example:

- if someone has incurred damage through such conduct by a commercial enterprise, a damage action or civil procedure will be available;
- if discrimination has occurred in the employment process or at work, the victim will bring an action against the employer at the labour court;
- if discrimination has occurred in the exercising of social rights (e.g. rights deriving from unemployment insurance, health or pension insurance, etc.), the victim will bring an action before the social court;
- if discriminatory conduct has occurred in an administrative procedure, the victim will bring an action before the administrative court after exhausting the regular procedures for appeal against the contested decision;
- if the criminal offence of violation of equality has been committed, a declaration must be made to the police or information lodged with the prosecution service.

Civil procedure

In a civil procedure you can request the court to order the cessation of an action through which the inviolability of the person, personal and family life or any other personal right is violated, to prevent such an action or to remove its consequences. The court or other competent body may order the offender to cease the action. If he fails to do so he will have to pay a specific sum of money to the affected party, determined as a total or from a point in time. In the case of a violation of a personal right, a court can order publication of judgment or publication of correction at the cost of the injurer or order the injurer to revoke the declaration with which he committed the violation or to take some other action (e.g. a public apology) by means of which it is possible to achieve the purpose that is achieved through damages. If you have been caused material or immaterial damage by discriminatory conduct, you have the right to bring an action for damages before the civil division of the court. Material damage means a reduction of property (ordinary damage) or a prevention of increase of property (lost profit). Immaterial damage means causing a victim physical or mental pain or fear.

In civil or damages procedure, you have as the victim of discrimination the right to claim compensation for damage. You can claim this within three years of when you found out about the damage (relative period of limitation) or within five years of the damage being incurred (absolute period of limitation). If the damage incurred amounts to under SIT 2,000,000 the action shall be brought in the civil division of the local court in the place where the damage was incurred. If it exceeds SIT 2,000,000 the action shall be brought in the civil division of the district court.

Procedures before the labour and social courts

In the case of discrimination in employment, you may bring an action before the labour court within 30 days. If you believe that you have suffered discrimination with regard to the rights deriving from employment, you must first draw your employer's attention to the violation in writing. If within eight days of service of the request the violation has not been eliminated, you have the right to request judicial protection (elimination of discriminatory conduct, the right which is being curtailed) before the labour court, which means that you may bring an action within 30 days. If you have been dismissed for reasons of discrimination, you may request judicial protection within 30 days of the day of service of the order terminating the contract of employment or from when you found out about the violation. The 30-day time limit for bringing an action also applies to the social court.

Procedures before the administrative court

You may bring an action before the administrative court when you consider that you have been discriminated against by a final decision (against which an appeal is no longer possible) issued in an administrative procedure before an administrative body. The time limit for bringing the action is 30 days. In an administrative dispute the court decides on:

- the legality of final individual acts issued by state bodies, local government bodies or other holders of public authority;
- the legality of individual acts and actions through which the constitutional rights of the individual are encroached upon if other judicial protection is not provided;
- the legality of acts of state bodies, local government bodies and the holders of public authority, issued in the form of a regulation, that regulate individual relationships.

Criminal procedure

The Penal Code defines as criminal offences the violation of equality, incitement to hatred, discord or intolerance, the violation of equality in employment or unemployment, and certain other violations. You can find a more detailed description and sanctions prescribed for these criminal offences elsewhere in this publication. A **report** of a criminal offence shall be lodged with **the police**, who will take over the case and investigate it. If the police collect enough information, they will pass the information to the prosecutor's office. **Criminal information** may also be laid directly with the prosecutor's office. A report or information can be submitted by anyone and may also be anonymous. The prosecutor's office will further investigate the matter and if there is reasonable suspicion that a criminal offence has been committed it will request an investigation before the investigation department of the court. If the examining judge agrees with the reasonable suspicion he will issue an investigation order; if sufficient evidence is collected during the investigation, the prosecutor's service will present a charge against the alleged offender. It is not necessary for the victim, as the injured party, to take part in the criminal offence proceeding itself in this phase unless called as a witness. Periods of limitation are defined for the prosecution of criminal offences.

Fees and costs of the procedure

For protection in individual procedures, you have to pay a court fee or administrative fee when filing your claims (action, appeal). If you are in a financially weak position and payment of this fee would cause hardship to yourself or your dependants, we advise you to request **exemption from fees** at the same time as filing your claims. You must enclose appropriate confirmations of your financial position. Before filing claims for judicial protection, it is necessary to consider the other costs of the procedure. The costs of a judicial procedure, and sometimes of an administrative procedure, can be extremely high. In a **criminal procedure** you do not in principle need to worry about costs because you are not a party to the procedure. These are the defendant (the violator) and the public prosecutor. If the defendant is acquitted, all costs of the procedure are covered from the budget; if he is convicted, he himself must cover all the costs of the procedure, unless the court judges that in view of his financial position he will not be capable of doing so.

In **damages (civil) procedures** the situation is different. If you have brought an action for damages against a violator and you lose the case, you are obliged to settle all the costs incurred during the procedure. You have to settle your own costs, the costs of your lawyer, the court costs and also the costs of the other party and his lawyer. If your action is only partially successful (for example you are only awarded part of the damages claimed), these costs can still be a major burden. If you find yourself in such a situation and you are in a financially weak position, where paying the costs of the procedure would cause hardship to yourself or your dependants, we advise you to request exemption from the costs of the procedure in good time. This request must of course be explained and be accompanied by the appropriate confirmations (e.g. confirmation of the level of personal income, financial position from a social services centre, confirmation of the number of people living in a joint household, and so on).

In **social disputes** the state body against which the action has been brought usually covers its own costs irrespective of the outcome of the procedure. In **labour disputes** the employer covers his own costs irrespective of the outcome of the procedure. In **administrative disputes** each party covers its own costs if the court refuses the complaint or dismisses or halts the procedure. In cases where the court finds for the plaintiff, the plaintiff is awarded a lump-sum reimbursement of costs with regard to the procedural acts performed and the method of dealing with the matter in the administrative dispute procedure.

CONSTITUTIONAL COURT OF THE REPUBLIC OF SLOVENIA

Constitutional complaint

A constitutional complaint may only be filed because of a violation of human rights and fundamental freedoms. As a rule it may only be filed once regular recourse to the courts has been exhausted, including extraordinary legal remedies. The constitutional complaint must cite the individual act that is being challenged, the facts that justify the complaint and the allegedly violated human rights and fundamental freedoms. The constitutional complaint shall be filed within 60 days of the day of service of the individual act against which the constitutional complaint is possible. The filing of a constitutional complaint is not linked to the payment of court fees.

Initiative for review of constitutionality of regulations

An initiative for review of constitutionality of a law or other regulation before the Constitutional Court may be made by anyone demonstrating legal interest (standing). This criterion is met if the regulation directly and concretely encroaches on the affected party's rights or obligations or when a decision of the Constitutional Court (or non-compliance of the regulation with the Constitution) could improve or change the legal position of the affected party. The Constitutional Court reviews the conformity of laws with the provisions of the Constitution and ratified and published international treaties, while on this basis it must also observe the binding provisions of the sources of European law. Under the same conditions it is also competent to review the constitutionality and legality of implementing regulations and general acts issued for the execution of public authority. Instructions and forms for filing initiatives for review of constitutionality are available on the website of the Constitutional Court of the Republic of Slovenia (www.us-rs.si).

LEGAL AID AND REPRESENTATION

Representation

In order to file initiatives with the Advocate for Equal Opportunities, declarations with an inspectorate, information with the police and actions before any court (administrative, civil, labour, social) at the first and second instances, representation is not necessary or essential, which means that at this instance you do not need a lawyer to initiate these procedures. Sometimes it is enough to get in touch with an organisation that provides legal advice (see Important Contacts in this publication), and the staff can help you compile an application, initiative, declaration or complaint.

If however you do not wish to get involved in certain procedures yourself and do not wish to appoint a lawyer, in certain cases you may authorise any adult natural person who has not been deprived of contractual capacity to represent you. This applies to the following procedures:

- administrative procedure before administrative bodies,
- damages procedures before local courts (if the damage incurred amounts to under SIT 2,000,000),
- in criminal procedures.

In every case you must be careful whom you authorise to represent you. A person who does not act in your interest can do more harm than good, either through negligence (because he or she is not affected by the outcome) or because of a lack of legal knowledge. From the point of view of expertise, it is of course best to be represented by a lawyer.

Legal aid

Everyone has the right to a first free legal consultation about how to defend their rights. This consultation is enabled by officials at district courts, labour and social courts, the administrative court and the Legal Information Centre (see Important Contacts in this publication).

Assistance and advice with regard to the protection of rights deriving from employment are provided by labour inspectors, while **trade unions** usually provide legal assistance to their members. Some consumers' organisations provide **advice for consumers** by telephone (freephone), e-mail and in person, as a public service. A list of these organisations is available on the website of the Consumer Protection Office (www.uvp.gov.si).

From the point of view of expertise it is of course best, although also most expensive, **to appoint a lawyer to advise you and represent you in court**, since he or she is best qualified to represent your legal interests.

If you do not have sufficient funds to pay a lawyer to advise and represent you, you can request free legal aid. The conditions for this are regulated by the Free Legal Aid Act. In order to obtain **free legal aid** you must fill in a special form and submit it to the district court. You must enclose proof of your financial position (personal income, certificate from a social services centre), since **only those individuals who do not have sufficient funds to conduct a proceeding with the help of a lawyer in order to protect their interests, or who could suffer hardship as the result of paying a lawyer** are entitled to free legal aid.

The application must contain a description of the matter for which free legal aid is requested. Under the law it is possible to request free legal aid for all procedures (except for example contempt) and before all courts.

A list of lawyers offering free legal aid is available on the notice board of the Ministry of Justice (address: Župančičeva 3, 1000 Ljubljana, Slovenia, tel. +386 (0)1 369 52 00, fax +386 (0)1 369 57 83, e-mail: gp.mp@gov.si).



L E T ' S F A C E D I S C R I M I N A T I O N !

Important contacts

ADVOCATE FOR THE PRINCIPLE OF EQUALITY AND THE ADVOCATE FOR EQUAL OPPORTUNITIES FOR WOMEN AND MEN - Office for Equal Opportunities

Erjavčeva 15, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 478 84 60; Fax: +386 (0)1 478 84 71
E-mail: uem@gov.si; Website: www.uem.gov.si

HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA

Dunajska 56, 1000 Ljubljana, Slovenia; Freephone: +386 080 15 30; Tel.: +386 (0)1 475 00 50; Fax: +386 (0)1 475 00 40
E-mail: info@varuh-rs.si; Website: http://www.varuh-rs.si

INSPECTORATES

Market Inspectorate

Parmova 33, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 280 87 00; Fax: +386 (0)1 280 87 40
E-mail: tirs.info@gov.si; Website: www.ti.gov.si

Labour Inspectorate of the Republic of Slovenia

Parmova 33, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 280 36 60, +386 (0)1 280 36 70; Fax: +386 (0)1 280 36 77, +386 (0)1 280 36 76
E-mail: irsd@gov.si; Website: www.id.gov.si

Labour Inspectorate of the Republic of Slovenia, Labour Relations Section

Parmova 33, 1000, Slovenia; Tel.: +386 (0)1 280 36 60; Fax: +386 (0)1 280 36 77
E-mail: jana.uran@gov.si; Website: www.id.gov.si/index.php?id=2747

Labour Inspectorate of the Republic of Slovenia, Health and Safety at Work Section

Parmova 33, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 280 36 60; Fax: +386 (0)1 280 36 77
E-mail: boris.ruzic@gov.si; Website: www.id.gov.si/index.php?id=2749

Ministry of Public Administration, Directorate for Management and Personnel, Civil Service System Inspectorate

Tržaška 21, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 478 1650
E-mail: gp.mju@gov.si; Website: www.mju.gov.si/index.php?id=6209

Ministry of Public Administration, Directorate for e-Government and Administrative Processes, Administrative Inspection Section

Tržaška 21, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 478 8651; Fax: +386 (0)1 478 8649
E-mail: gp.mju@gov.si; Website: www.mju.gov.si/index.php?id=132

Inspectorate for Education and Sport

Dunajska 22, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 474 48 45; Fax: +386 (0)1 474 48 58
E-mail: inspektorat-solstvo.mszs@gov.si; Website: www.mss.gov.si

Health Inspectorate

Parmova 33, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 28 03 802; Fax: +386 (0)1 28 03 808
E-mail: gp-zirs.mz@gov.si; Website: www.mz.gov.si

Environment and Spatial Planning Inspectorate

Dunajska cesta 47, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 420 44 88; Fax: +386 (0)1 420 44 91
E-mail: bojana.pohar@gov.si; Website: www.gov.si/irsop

Environment and Spatial Planning Inspectorate, Environment and Nature Section

Dunajska cesta 47, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 420 44 88; Fax: +386 (0)1 420 44 91
E-mail: tatjana.bernik@gov.si; Website: www.gov.si/mop/organi/irsop.htm

Environment and Spatial Planning Inspectorate, Spatial Planning Section

Dunajska cesta 47, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 420 44 88; Fax: +386 (0)1 420 44 91
E-mail: srecko.valic@gov.si; Website: www.gov.si/mop/organi/irsop.htm

Environment and Spatial Planning Inspectorate, Housing Section

Stanovanjska inšpekcija, Dunajska cesta 47, 1000 Ljubljana, Slovenia
Tel.: +386 (0)1 420 44 26; Fax: +386 (0)1 420 44 10
E-mail: mirko.pavsic@gov.si; Website: www.gov.si/mop/organi/irsop.htm

Social Inspectorate

Parmova 33, 1000, Slovenia; Tel.: +386 (0)1 280 36 60; Fax: +386 (0)1 280 36 77
E-mail: peter.stefanoski@gov.si; Website: www.id.gov.si/index.php?id=2754

Transport Inspectorate

Tržaška 19a, P.P. 355, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 478 83 00; Fax: +386 (0)1 478 81 49
E-mail: mzp.pirs@gov.si; Website: www.gov.si/pi-rs/

Internal Affairs Inspectorate

Kersnikova 2, 1501 Ljubljana, Slovenia; Tel.: +386 (0)1 428 58 70; Fax: +386 (0)1 428 58 71
E-mail: inz.mnz@gov.si; Website: www.inz.gov.si

Information Commissioner

Vošnjakova 1, p.p. 78, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 230 97 30; Fax: +386 (0)1 230 97 78
Website: www.ip-rs.si

Culture and Media Inspectorate

Metelkova 4, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 478 79 01; Fax: +386 (0)1 478 79 81
E-mail: aleksander.vidmar@gov.si; Website: www.kultura.gov.si/index.php?id=2790

FREE LEGAL AID

NGOs Legal Information Centre - PIC

Povšetova 37, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 521 18 88; Fax: +386 (0)1 540 19 13
E-mail: pic@pic.si; Website: www.pic.si

PIP Institute - ŠOUM students legal and information centre

Gospodsvetska 83/86, 2000 Maribor, Slovenia; Tel.: +386 (0)2 234 21 46
E-mail: pip@zavodpip.si; Website: www.zavodpip.si

Ljubljana District Court

Tavčarjeva 9, 1000 Ljubljana, Slovenia; Tel.: +386 (0)1 366 44 44; Fax: +386 (0)1 366 45 18
Free legal aid service: Tel.: +386 (0)1 431 60 90; Fax: +386 (0)1 232 16 64
Website: www.sodisce.si/okrolj

Krško District Court

Cesta krških žrtev 12, 8270 Krško, Slovenia; Tel.: +386 (0)7 488 17 00; Fax: +386 (0)7 492 29 72
Free legal aid service: Tel.: +386 (0)7 48 81 756, +386 (0)7 48 81 755; Fax: +386 (0)7 48 81 768
E-mail: urad.ozkk@sodisce.si; Website: www.sodisce.si/okrokr

Kranj District Court

Zoisova 2, 4000 Kranj, Slovenia; Tel.: +386 (0)4 27 11 200; Fax: +386 (0)4 27 11 203
Free legal aid service: Tel.: +386 (0)4 27 11 206; Fax: +386 (0)4 27 11 203
E-mail: urad.ozkr@sodisce.si; Website: www.sodisce.si/okrokr

Novo Mesto District Court

Jerebova 2, 8000 Novo mesto, Slovenia; Tel.: +386 (0)7 338 11 00; Fax: +386 (0)7 332 20 58
Website: www.sodisce.si/okronm

Ptuj District Court

Krempljeva ul. 7, 2250 Ptuj, Slovenia; Tel.: +386 (0)7 748 08 00; Fax: +386 (0)7 748 08 10
E-mail: urad.ozpt@sodisce.si; Website: www.sodisce.si/okropt

Celje District Court

Prešernova 22, 3000 Celje, Slovenia; Tel.: +386 (0)3 427 51 00; Fax: +386 (0)3 427 51 73
Free legal aid service: Tel.: +386 (0)3 42 75 175
Website: www.sodisce.si/okroce

Maribor District Court

Sodna ulica 14, 2503 Maribor, Slovenia; Tel.: +386 (0)2 234 71 00; Fax: +386 (0)2 234 73 06
Website: www.sodisce.si/okromb

Nova Gorica District Court

Kidričeva 14, 5000 Nova Gorica, Slovenia; Tel.: +386 (0)5 335 17 00; Fax: +386 (0)5 335 16 97
Free legal aid service: Tel.: +386 (0)5 335 18 11
Website: www.sodisce.si/okrong

Koper District Court

Ferrarska 9, 6000 Koper, Slovenia; Tel.: +386 (0)5 668 30 00; Fax: +386 (0)5 639 52 47
Free legal aid service: Tel.: +386 (0)5 66 83 349
Website: www.sodisce.si/okrokp

Murska Sobota District Court

Slomškova 21, 9000 Murska Sobota, Slovenia; Tel.: +386 (0)2 535 29 00; Fax: +386 (0)2 535 29 45
E-mail: urad.ozms@sodisce.si; Website: www.sodisce.si/okroms

Slovenj Gradec District Court

Kidričeva 1, 2380 Slovenj Gradec, Slovenia; Tel.: +386 (0)2 88 46 800; Fax: +386 (0)2 88 46 910,
E-mail: urad.ozsg@sodisce.si; Website: www.sodisce.si/okrosg

Ljubljana Labour and Social Court

Resljeva c.14, 1000 Ljubljana, Slovenia; Tel.: +386 (0)2 232 51 96; Fax: +386 (0)2 432 82 31
E-mail: urad.dslj@sodisce.si; Website: www.sodisce.si/dsslj

Koper Labour Court

Ferrarska 9, 6000 Koper, Slovenia; Tel.: +386 (0)5 668 32 70; Fax: +386 (0)5 639 52 51
Free legal aid service: Tel.: +386 (0)5 668 32 73
E-mail: www.sodisce.si/dsskp

Maribor Labour Court

Glavni trg 17, 2000 Maribor, Slovenia; Tel.: +386 (0)2 235 08 50; Fax: +386 (0)2 235 08 57
Free legal aid service: Tel.: +386 (0)2 235 08 64
E-mail: www.sodisce.si/dssmb

Celje Labour Court

Gregorčičeva 6, 3000 Celje, Slovenia; Tel.: +386 (0)3 548 42 21; Fax: +386 (0)3 544 26 67
Free legal aid service: Tel.: +386 (0)3 548 42 21, +386 (0)3 548 42 22; Fax: +386 (0)3 544 26 67
E-mail: urad.dsce@sodisce.si; Website: www.sodisce.si/dssce



The Human Rights Ombudsman in the fight against discrimination

The function of the Human Rights Ombudsman is to protect human rights and fundamental freedoms in relation to state bodies, local self-government authorities and bearers of public authority. The Ombudsman does this on two levels. The first level involves dealing with individual reports of violations of human rights or other irregularities. Here the Ombudsman establishes whether a violation has actually been committed and tries to eliminate its consequences. The second level involves dealing with wider issues important for legal security and includes systemic, promotional and preventive work. The first means eliminating a concrete violation, while the second means preventing potential violations. The two levels frequently overlap.

Essential to achieving this is the promotion of tolerance, which is inextricably linked to human rights. Tolerance does not simply mean passively "putting up with others and people who are different from yourself", but arises from the conviction that one must consistently respect the rights of people exactly as they are: universally accepted (applying to everyone without exception), inalienable (no-one may take them away from anyone for any reason) and indivisible (we cannot be entitled to some rights and not to others). The relationship is mutual: advocacy of human rights is a key element of tolerant behaviour; and without the decision to be tolerant it is impossible to achieve a proper level of respect and the exercising of human rights. The Ombudsman therefore devotes special attention to dealing with the occurrences of discrimination, since their prevention is a constituent part of human rights law. Discrimination is defined as the Ombudsman's special area of work and includes the sub-fields of national and ethnic minorities, equal opportunities (according to gender), and discrimination in employment. But because non-permitted discrimination takes innumerable forms it is possible to recognise elements of discrimination also in complaints submitted under other fields, particularly within the framework of constitutional rights - for example, in the sub-field of ethics of public speech (examples of xenophobia in the media and in the statements of politicians) or freedom of consciousness (for example, unlawful differences in treatment of religious communities).



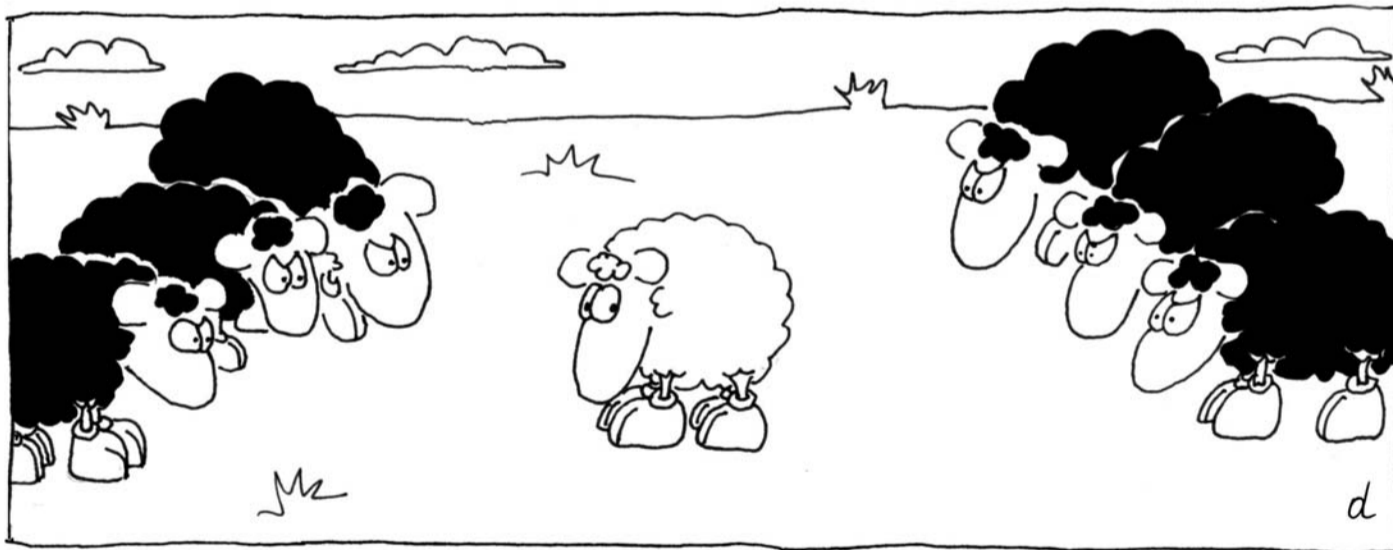
Group work by participants at the Sanctions and remedies seminar

rently unsocialised, violent, has no work ethics, and so on. Apparently this should also be the reason for deprivation of special assistance, social rights, etc. Residents are thereby perpetuating the vicious circle of mutual hatred and are not accepting adequate responsibility for the protection of their own rights. It is therefore not unusual that public bodies are unjustifiably blamed for the allegedly unbearable situation. In addressing individual complaints regarding the inadequate services provided by public authorities, we often have to provide complainants with the explanation that the liability for an individual minor or criminal offence can only rest with the individual. The complete evaluation of the liability of the whole ethnic minority, or stigmatization, is poisoning the social environment, promoting a general mistrust and dislike towards the Roma community. In this manner, the members of this community are put in a humiliating position, with such remarks constituting an insult to the Roma community as a whole.

It is customary for the Ombudsman, in cases where dissent among local residents is noticed, to investigate and request information not only from the bodies to which the allegations in the complaint relate, but also those bodies that could, within their authority, have a positive impact upon solving the situation. We also always aim to obtain an inside view into the wider issues of the area affected, for example, security evaluation and living conditions; communal, spatial planning and ecological problems; the needs of local residents. The solutions can often be pointed out only by getting the complete picture. In practice, we have often found that an eruption of dissent and aggravation of the relationship between local residents is often a result of a lack of common dialogue or a lack of willingness for a continuous resolution of the smaller, daily misunderstandings.

Although some local communities do react to occurrences of tension by calling a meeting with all the local residents concerned, police representatives, an appropriate municipality officer and administrative units. In one such meeting, a representative from the Office for National Minorities was also present. Such readiness of administrative authorities to openly confront local residents and tackle all relevant interests is welcomed by the Ombudsmen, since it can be labelled as an **example of good practice**. With such an approach tension generally settles down as a result of which local residents and authorities show a readiness for better mutual cooperation.

Unfortunately we have come across cases which have not been as encouraging and where the sincerity of the expressed intention on cooperating with



THE ROMA

Among complaints that stand out are the cases that, in one way or another, have its base in **various disagreements and various outlooks on solving the Roma problem**. In many complaints we have come across criticism on the allegedly poor work of the state administration, especially the police and the inspectors for the environment and spatial planning, as well as local self-government authorities. Unfortunately, in such complaints the inappropriate behaviour of those affected is frequently observed – especially the lack of use of all available legal remedies. Too often we come across an extremely negative attitude of the complainers towards the Roma population, which is appa-



LET'S FACE DISCRIMINATION!



Barbara Cohen, an independent legal adviser for the area of discrimination, at the conference dedicated to the presentation of the Let's Face Discrimination! project

members of the Roma community has been questionable. For example, there are attempts that have been going on for more than a year to include **representatives of the Roma community in a village committee**, which makes it seem that the Roma are not welcome, and the municipal council keeps delaying their nomination. In considering wider issues, the Ombudsman has for a number of years been warning regarding the problems associated with the legal regulation of special rights of the Roma community. The Ombudsman

believes that the non-regulation, or the scarce regulation of special rights, is the very reason for the unclear position of the members of the Roma community. In this context, the Ombudsman has concluded that this is the key element for the systematic reasons for misunderstandings, disputes and open expressions of non-tolerance towards the Roma community that are occurring in society. Deficient, indefinite and unresolved legislation is always a very good base for the occurrence of discriminatory treatment.

The existent partial regulation imposes a burden for giving special rights to the members of the Roma community mainly onto the municipalities. Since the state does not contribute sufficient funds to satisfy this burden, this creates understandable dissatisfaction in the local communities as giving these special rights to the Roma community is perceived as an additional **financial burden** which causes damage to other local projects. Such a situation is favourable for awakening a resistance towards the special rights of the Roma community.

THE RIGHT OF MINORITIES TO USE THEIR OWN LANGUAGE

The coastal self-regulatory Italian community has warned us of protecting **the right to use the official language in state administration bodies**. The Italian community has filed a petition with the Constitutional Court for assessing the constitutionality of the provisions of the Public Administration Act which provided that in the areas where two national communities live, the state administration operates in the Italian or Hungarian language **if a person that belongs to the Italian or Hungarian community uses the Italian or Hungarian language**. Therefore, the individual had to state that he/she belonged to the community in question. The Public Administration Act was changed prior to the decision of the Constitutional Court and the procedure in the matter U-I-217/03 was suspended prior to giving a substantive decision in the matter. It is our opinion that the legislator has appropriately responded to the warnings of the national communities since we have concluded that the allegations on the unconstitutionality of the Public Administration Act were substantiated. It is our opinion that a requirement for additional conditions, in order for the state administration to operate in an official language in areas where the communities in question live, was in breach of Article 11 of the Constitution according to which, in the areas where the communities in question live,

the official language includes the language of the national communities in question. The Public Administration Act narrowed the possibility of only using the official language with the members of the minorities, therefore limiting the use of the official language to a personal right of the members of the minorities. The Act also unjustifiably demanded that, in order to use their language, the members of the minority groups had to express their national identity which is in direct contradiction with the meaning and purpose of defining the language of the minorities as the official language. It is our opinion that such interference in the freedom of free (non)expression of the

national identity of the members of both minority groups, and at the same time limiting the right to use the language which is by the Constitution defined as the official language – the right that belongs to all citizens – cannot have any constitutionally justified reason.

The members of both minority national groups often stress that they do not want their language to become only a "household language". We have been warned that in areas where members of both minorities exist, there is often no feasibly assured **possibility to operate in the Italian or the Hungarian official language within the state administration, including the courts**. According to their evaluations, this situation is linked to the employment of civil servants or people that are not competent in the given language even though they should be. The use of the language of the national minorities is in administrative, judicial and other formal procedures officially guaranteed; however, in practice, the use of the minority language is often associated with various additional difficulties, despite the fact that the members of the minority community only wish to use their language and do not even insist that the bodies operate in this language. We have been warned that the members of the minority groups are often in a dilemma as to whether to insist on using their language since, in the event that the language of the minority group is used, it is almost certain that the lengthening of the court procedure, due to a nomination of a court interpreter and translator, will occur.

Hannes Tretter, director of the Ludwig Boltzmann Institute for Human Rights, on the legal aspects of hate speech



CONSTITUTIONALLY UNRECOGNISED MINORITIES

It is important to stress that we notice an occurrence of alleged breaches of those individual rights through which the Constitution guarantees **protection of the identity of certain minority communities not (directly) addressed by the Constitution itself**. In certain localities we have come across opinions that the use of a foreign language offends the feelings of the majority population (we have dealt with several cases concerning the use of the German language). Occasionally we are confronted with deliberations on **the concept of minority and when a community should be given special (minority) rights**. The authors of these deliberations state that there is no base to give minority status to any groups in Slovenia that are not constitutionally recognised. They strive for integration of foreigners according to the melting pot concept. The Ombudsman has to explain over and over again that the protection of mem-



Yippee, yippee



Lisa, come home at once



You mustn't play with her, you'll get dirty

bers of all minority groups, for example ethnic, religious, linguistic, is an important indicator of a democratic society. The standards and directions of international communities that recommend an acceptance of measures directed towards the preservation of cultural identity of immigrants are a direct contradiction to the idea of the melting pot. This of course does not mean that nations do not have the possibility for active integration policy. In fact, the contrary is true. An inclusion of all parts of the population, including members of minorities, in all areas of social life is very important. We therefore express regret that with the adoption of the new Radiotelevizija Slovenija Act,



L E T ' S F A C E D I S C R I M I N A T I O N !

the legislator has not paid much consideration to the special cultural needs of some ethnic minorities living in Slovenia, especially the nationals from areas of the former Yugoslavia, who have expressed a wish that the new Act explicitly protect their interests for such special broadcasts.

DISCRIMINATORY ALLOCATION OF NON-PROFIT RENTED HOUSING

In one of the complaints we warned about the alleged discrimination in the Rules on Allocating Non-profit Apartments for Rent, which in a public tender for non-profit apartments treats women and women with children, the victims of domestic violence, more favourably.

We have already expressed an opinion that the Rules are not sufficiently defined to enable everyone to clearly see that the preferential category of female applicants for non-profit apartments refers only to women and women with children, the victims of domestic violence, that are temporary residing in mothering homes, shelters, safe houses and so forth. We have warned about non-recognition of fundamentally equal situations in which the applicants could be male (with children). We have therefore suggested to the Ministry for the Environment and Spatial Planning to amend the Rules appropriately.

The complainant alleging that he was a victim of domestic violence, in subsequent deliberations of the complaint, drew our attention to the treatment of the municipality in the public tender for allocating non-profit apartments for rent. The municipality did not grant him the status of a victim of domestic violence, not because he was male, but because he was not residing in a safe house. Since legal remedies were not fully exhausted, the Ombudsman did not mediate in this part. The Ombudsman did, however, mediate due to a



You can't come in here because you're ... hmmm ... too ugly

long deliberation of the complaint at the Office for Equal Opportunities, where the Advocate for Equal Opportunities for Women and Men and the Advocate for the Principle of Equality work. The standpoint of the Advocate for the Principle of Equality is that the content of the Rules concerning the additional point-gaining of the female applicants was discriminatory towards the male population.

According to the Advocate no discrimination occurred in the part where the Rules give women and women with children residing in safe houses and shelters the right to apply for an apartment outside the place of their permanent residence, since the safe houses are not intended for men. Only when, and in the case that safe houses become available to men, would the provision be deemed discriminatory. It is our opinion that the Advocate did not consider such a case as a typical example of indirect discrimination. Even though male victims of violence do not currently have the option of residing in safe houses, it is precisely this apparently neutral measure that has discriminatory effects. It is not possible to exclude that male victims of domestic violence (or their children) could also be forced to leave the place of their permanent residence for the same substantive reasons, in which case the same substantive need to apply for non-profit apartments could be apparent in the place where they had fled to. The Advocate, too, suggested an amendment to both provisions of the Rules. The Rules were amended appropriately in 2006.

Representatives of the anti-discrimination department at the office of the Human Rights Ombudsman in the role of reporters at the conference Words are Deeds, Speech is Action



QUESTIONABLE BUSINESS ETIQUETTE OF A BANK

At the same time as the Advocate, we considered a case of an attempted introduction of new business etiquette in a bank that attempted to prescribe a dress-skirt code for females. You can read more about this case in the last issue of the Ombudsman's Newsletter.

ALLEGATION OF DISCRIMINATION AMONG SOCIETY MEMBERS

A number of people notified us of a resignation statement by which members irrevocably resigned from a certain society for the deaf and partially deaf. The society explained that their members' rights were limited due to the fact that they were not deaf but partially deaf. They were limited in participating in the board functions of the society and thereby, in the possibility to stand as a candidate or have a right to be elected as a board member of the society. The complainants were warned of the right to free association and of the principle of equality.

According to the Societies Act anyone can become a society member under equal conditions (defined by the society's internal regulations) and can participate in the society. We brought to attention the possibility for a judicial remedy in civil law as well as the contents of the Implementation of the Principle of Equal Treatment Act. This Act concerns non-discriminatory implementation of the principle of equality in any area of social life. It is without a doubt that a disability is a personal circumstance. The complainants



A representative of the Human Rights Ombudsman and a representative of the Ludwig Boltzmann Institute discuss discrimination with police officers



LET'S FACE DISCRIMINATION!

were therefore made aware of the possibilities in approaching the Advocate for the Principle of Equality who can also evaluate activities within the private sector. The question, however, that does arise is which inspector could petition an administrative offence.

CONSCIENTIOUS OBJECTION IN EDUCATION

It was an interesting case, when a school, and then also a secondary school teacher, asked for our assistance on a dilemma regarding the conscientious objection of the teacher in the case of Saturday employment obligations on the grounds of his religion. More on this in issue nine of the Ombudsman's Newsletter.

RELIGIOUS PROVISION IN THE ARMED FORCES

We touched upon the fundamental question of admissibility of **spiritual and religious provision for those employed in the Slovenian army**. The state interprets its duty to ensure the effective delivery of the freedom of religious expression fairly loosely. The Rules have its legislative base in the Defence Act which ensures a right to religious and spiritual provision during army service. The logistics of this support and the manner of executing this right, however, are regulated by the Rules on the Organisation of Religious and Spiritual Support, whereas individual living situations are regulated by the Rules on Service in the Slovenian Army. The Rules regulate the manner for providing religious provisions to the members of those religious communities whose priests are not employed by the Slovenian army. The army chaplain must organise religious services for these soldiers by inviting the clerics of the given religious communities into individual army units. Two questions could be presented as to whether in practice equality is sufficiently guaranteed, and whether the religious activity of soldiers disturbs those that do not want to be exposed. We believe that, considering the existing legislation, a question on equality of all persuasions/beliefs could be posed as there is no equal duty of the state to ensure spiritual support for citizens that do not have religious persuasions but have different spiritual needs. It cannot be

Dieter Schindlauer, director of ZARA, an Austrian anti-discrimination NGO, at the presentation of the Let's Face Discrimination! project



Train the Trainers seminar participants in the role of judges during a court simulation



EXPRESSION OF RELIGIOUS BELIEF IN SCHOOL

A secondary school pupil, worried due to events in other countries, asked for our explanation for possible ways to protect her rights in the hypothetical case should complica-

tions arise as a result of her decision to **cover her hair with a headscarf** according to Muslim customs. More on this in issue nine of the Ombudsman's Newsletter.

We have come across a response to an alleged attempt to limit or even **prohibit any expression of religious or national persuasions of pupils** that is enforced in a certain primary school. The matter was deliberated upon only indirectly, in the context of a discussion in a professional magazine for those employed in the field of education and training. Children enjoy their human rights and fundamental freedoms in accordance with their age and majority. The Ombudsman sees the sense in social endeavours geared towards a co-existence between nations and various religious groups, particularly in edu-



... there's no room for you here so just turn around and be on your way ...

cating about tolerance and accepting difference. Limitation measures and prohibitions cannot be sufficient in themselves, but could in fact have the opposite effect (in the given example the real question was an issue of age discrimination in expressing free persuasions of one's own beliefs and national affiliation).

ANTI-SEMITISM IN A WEB FORUM

We have also dealt with several cases where complainants perceived the situation to be a matter of **insulting religious feelings and creating intolerance** as well as anger in the public media. As an example we cite the claims made by an extreme Nazi group on the Internet that could be understood as open threats to the representative of the Jewish community of Slovenia. The threats were based only on the fact that they concerned a representative of the given community and had an express racist and anti-Semitic foundation.

RELIGIOUS PROPAGANDA OF THE MUNICIPALITY MAYOR

We have come across a website of a certain municipality where in the category news from the municipal building, the mayor aims to persuade the readers, in the competition between religions or religious practices, to use "centuries long experiences that have shown to be good with our ancestors", that are "the best, as confirmed by the number of churches throughout Slovenia, dedicated to the Holy Spirit". The website also states "an astonishment that many influential and known personalities publicly swear to, for our world, new and foreign methods and fall for them". These teachings and methods are rejected as "artificial, often exotic" and "foreign". Then it gives the principles on how the Evil Spirit enters into a person and provides the solution against this: "a conversation with a priest founded on thorough confession and a serious Christian life". It also presents thoughts about the meaning of "true religion". At the end, the mayor gives an invitation to visit the website with express religious content and provides directions on becoming a good



L E T ' S F A C E D I S C R I M I N A T I O N !



Katarina Krapež on the Stopline project at the What Can We Do to Prevent Hate Speech in Real and Virtual Contexts? workshop

Christian. After a closer look at the municipality's official website we came across a number of direct links to other sites with predominantly religious themes. We have concluded that this website relates only to the Roman Catholic Church, its individual institutions, and organisations that support its activities.

The content of the mayor's thinking is a declaration on religious issues and even a call to local residents to respecting religious practices that are according to the mayor's conviction the most correct ones. From this we have concluded that the mayor is expressly propagating religious teachings or beliefs. The key factor is the fact that the mayor is doing so in his function as mayor, using the official municipality media. We have concluded that **such contents have no connection with the mayor's authorities or with the municipality's authority** as represented by the mayor. This content can also not be regarded as news from the municipal building as it

Permitted public declarations (in public places, in the media, at public meetings prior to elections...) can have a legitimate influence even on public decisions (election outcome, individual authority decision). However, a mayor cannot spread religious promotion in his public function and with public funds that could appear as backing from public authorisations to such action. In this example it is important to recognise that the mayor tried to promote one religious persuasion and thereby place one religious community, or the Christian religious communities, in a better position when compared to other religious communities whose teachings and methods he expressly rejects as "artificial, often exotic" and "foreign", putting them in a less favourable position due to the authority of his public office. Our intervention was not successful and therefore the complaint is substantiated. An allegation of preferential and unequal treatment of religious communities is also confirmed.

EXPRESSION OF INTOLERANCE AND OTHER ABUSES OF PUBLIC EXPRESSION

Intolerance in the media

Professional ethical journalist code discourages the use of **stereotypes**, especially when these refer to sensitive personal circumstances (gender, sexual orientation, race, ethnic origin, religious persuasion and so forth). We cited our reservations on the contents of the so-called "black chronicles" in a certain local newspaper that includes reports by the commander of the police station on the activities of the police. Our attention was drawn to an article entitled "Thieving Gypsies". The article concerned a description of an event in which three persons, allegedly of Roma origin, stole a larger sum of money from a local elderly resident. On the basis of the circumstances it was possible to conclude that the article was intended as a warning to the local residents that they ought to be more careful should similar circumstances arise (considering the detailed description of the manner in which the crime was committed).

clearly relates to the mayor's personal religious persuasion and not to the public matters within the authority of the municipality.

In the given example, a question of conflict between the freedom of an individual public expression of religion or other persuasion on the one hand (positive religious freedom), and the freedom of non-expression of any persuasion on the other hand (negative religious freedom) arises. With issues concerning the assurance of freedom of consciousness and expression of religious persuasion, the principle of separation of state and religious communities must be understood as an additional constitutional principle that guarantees that the state must be neutral on such issues. It must not favour any religious or non-religious persuasion, but must enable all to express or not express their persuasion. No one must be burdened with the expressions of religious persuasion of others as a result of acts by the authorities (for example, to be forced to participate in religious ceremonies or in some other way be forced into confrontation with other religious or non-religious persuasions).

It is our opinion that it is **inadmissible for religious propaganda material to appear in the public media of a municipality**, also in the form of a website, **disguised as news from the municipal building**. This is a general rule regardless of the content of the material concerned. It is our opinion that all public bodies should appear neutral towards all religious and other world-wide known teaching (for example, atheist), in accordance with Article 7 of the Constitution, thus not expressly supporting nor rejecting any belief. Official public offices and official public media should not be used for promoting religion. When citizens act as representatives of an authority, they should not abuse their public office for promotional religious activities. This does of course not mean that the mayor would have to completely distance himself from his official position when expressing his religious persuasions, or that he would not be able to publicly express his own persuasions as mayor.



... and now you and I are going to go behind the sheepfold over there for a bit, or there'll be no more fresh grass for you ...

However, we concluded that the exposure of the Roma origin of the perpetrators of the committed crime could be questionable since in this particular case the perpetrators were unknown. The title of the article also reminds of another heavily grounded stereotype that all gypsies are supposed to be thieves. Therefore more care in marking the ethnic origin of the perpetrators by the writer would not have gone amiss, even at the price of affecting the sensational description of events.

In the case of the "Vroč" television show (meaning "Hot" in Slovenian) broadcast on TV Paprika, in which, among others, a known member of parliament gave certain contested statements, we have, in the light of the above mentioned, filed a complaint with the Journalist Honorary Arbitration Board to deliberate on the (non)acceptance of such public discourse in the media. We recommended that the body consider all the circumstances including the fact that the author of the contested media contents is a public person – a politician. The complaint was also filed with the intent of removing ambiguities from the Code of Journalist Etiquette, which only lists certain individual personal circumstances in cases of inciting violence and discriminatory discourse.



L E T ' S F A C E D I S C R I M I N A T I O N !

Participants in the Law Enforcement Bodies Against Discrimination seminar present their views of discrimination



Internet and electronic media

With the **Act Ratifying the Convention on Cybercrime and additional Protocol to the Convention on Cybercrime concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems** Slovenia, too, has bound itself to limiting hate speech and other discriminatory practices within cyber space. This obligation, apart from legislative provisions, also demands effective mechanisms for limiting their occurrence. Slovenia is unfortunately one of the few EU countries that do not yet have a call centre for reporting illegal or harmful contents on the Internet. The contents that are evaluated as illegal are reported to the persecution bodies who act appropriately. In these circumstances, it is not surprising that complainants in a number of complaints warn us about the contested contents on the Internet, especially with reference to various vulnerable groups and demand action from the Ombudsman. We have thus publicly warned about the **problem of spreading intolerance over the Internet**. We did this in the case of an anonymous complaint that

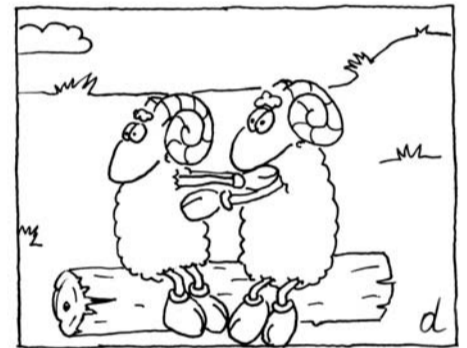
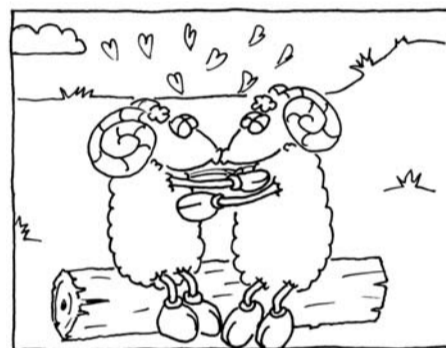
warned of a certain Internet forum where controversies on the situation of the so-called erased flared up. The matter was referred to the Prosecutor in accordance with the Criminal Procedure Act. But the Ombudsman did at the same time express his opinion that the matter concerns an allegation that a crime under Article 300 of the Penal Code was committed. The prosecution did approve such legal classification and agreed to refer the matter to the police with instructions to seek out the perpetrators. The Ombudsman also intervened due to the unacceptable manner of discussion on the **Radio Television Slovenia website**. In one of the forums, hate speech and even an open call to violence towards homosexual people appeared. All users of the forum are notified of the Rules of the Forum and their acceptance is a condition for inclusion in the forum. The Rules, among others, prohibit offending or labelling co-speakers and instigating sexual, racial, national or religious intolerance. This is supervised by the administrators at the Radio Television Slovenia who can in cases of more serious violations temporarily withhold publication of a message, delete an individual theme or answer, or block a given theme without warning. They can also exclude from the forum users that incite intolerance, promote criminal activity and similar. Due to a special position of the Radio Television Slovenia we decided to intervene, despite the anonymity of the complaint. After our intervention, special warnings for the administrators on respecting the Rules were issued, the theme in question was fully blocked and deleted. Some other themes were deleted, also. In two complaints addressed to the Ombudsman for Human Rights we were warned about **cases of hate speech on private websites**. The first complaint relates to a call for intolerance and hate on the Internet forum of the Večer newspaper, in which the complainant exposed an inflammation of ethnic intolerance. The second complaint relates to the inflammation of intolerance based on gender and a call to violence on the Internet forum of the Delo newspaper.

With these two complaints a wider issue relating to the possibility of protecting human rights in such instances arose. It is our opinion that **certain websites and their contents which are contributed by users and checked by an editor should be regarded as media within the definition of the Public Media Act**. There seem to be no barriers for such an interpretation when sections are published daily or periodically (for example, readers' comments or blogs alongside programme contents in Internet issues of newspapers and multimedia portals). Users' comments for instance are fundamentally of the same nature as readers' letters in the printed media. If something can be classed as media in accordance with Article 8 of the Public Media Act, it must not release programme contents that encourage national, racial, religious, sexual or other inequality, encourage violence and war, provoke national, racial, religious, sexual or other hatred and intolerance. The Public Media Act does not prescribe a sanction for violating this article unless the violation occurred in a publication. We have concluded that such a deficient legal base prohibits the enforcement of classical procedures of supervisory inspection and the enforcement of misdemeanour procedures. The inspection services can therefore act only as an instructor, through verbal conversation with the editor of the website, recommending an active role in preventing the publication of intolerant and hateful opinions of Internet forum participants. The Ministry of Culture has been notified about **cases of media content published on the Internet which we have not been able to trace in the media**

register. Such deficiencies are very frequent even in the cases of widely used and known public websites. In such a way the **Radio Television Slovenia multi-media web portal is not registered in the media register**. If the portal is not registered with the Ministry of Culture prior to starting its activity, programme contents are not permitted to be published according to the Public Media Act; otherwise a misdemeanour has been committed. On the basis of our enquiries at the Ministry of Culture regarding this practice, we have concluded that the Inspectorate of the Republic of Slovenia for the Media has until now only been an observer in this very unregulated situation. The Inspectorate has nevertheless recently summoned numerous Internet publishers of recognised media (perhaps even due to our intervention) to begin with their media registration procedures. Due to this deficiency it is very difficult or even impossible to enforce judicial remedies.

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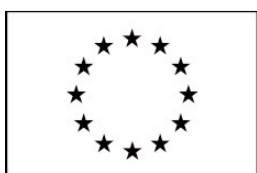
Due to this deficiency it is very difficult or even impossible to enforce judicial remedies.



Get out of here now, you perverts! You're giving my pasture a bad name.

Due to this deficiency it is very difficult or even impossible to enforce judicial remedies.

Group work by participants in the Law Enforcement Bodies Without Discrimination seminar



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