



REPUBLIC OF SLOVENIA
ADVOCATE OF THE PRINCIPLE OF EQUALITY

2020

Annual Report
SYSTEMIC OVERVIEW



Annual Report of the Advocate of the Principle of Equality for 2020

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Ljubljana, April 2021



Miha Lobnik, Advocate of the Principle of Equality

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

The Annual Report for 2020 consists of two substantively distinct and completed parts. The first part of the Annual Report titled “Systemic Overview” presents an overview of the functioning of the equality body in the past year, both at the level of individual cases and at the structural level. Statistical data on the work performed in the past year show a wide range of tasks carried out by the Advocate in the field of equality, equal opportunities and equal treatment.

The second part of the Annual Report titled “Cases and Issues” focuses in more detail on the review of the results of the Advocate’s work, specifically on the work of the institution with regard to personal characteristics that led to discrimination (personal grounds), such as gender, age, disability, etc.. Presentation of the Advocate’s work on each personal ground is structured according to the equality body’s key functions - advisory, informing and support activities; discrimination investigations; assessments of the discriminatory character of regulations; the Advocate’s recommendations; research activities (highlights from the Advocate’s 2020 public opinion survey on discrimination); cooperation with civil society; and educational and awareness-raising activities.

For the fourth year in a row, the independent state authority for protection against discrimination recorded an increase in the number of received complaints of alleged discrimination and proposals for systemic solutions in the form of recommendations. The Annual Report reveals that we were successful in finding solutions to problems faced by individuals as well as in cooperating with the State and civil society, despite the difficult circumstances.

In the past year, the Advocate’s work was also significantly affected by the epidemic. It was a source of numerous problems and concerns for people. Due to the hardship of the Slovenian people, the Advocate also provided advisory assistance, received and addressed several complaints of discrimination and prepared several recommendations aimed at improving the situation of particular groups which were even more vulnerable as a result of the epidemic.

The Annual Report for 2020 comprehensively presents the Advocate’s contribution to a society of equal opportunities. I would hereby like to thank the employees for their professional and committed work. I would also like to thank all those who continue to support the functioning, activities and development of the Advocate of the Principle of Equality.

Miha Lobnik
ADVOCATE OF THE PRINCIPLE OF EQUALITY

Ljubljana, April 2021

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1 FUNCTIONING OF THE EQUALITY BODY

1.1 Legal bases for the Advocate's functioning

Protection against discrimination, as stipulated by the Protection against Discrimination Act¹ (PADA), is one of the fundamental human rights enshrined in Article 14 of the Constitution of the Republic of Slovenia² (the Constitution).

Pursuant to the PADA, the key role of the Advocate of the Principle of Equality (the Advocate) as an independent state authority is to guarantee effective exercise of this fundamental human right. Hence, on 21 April 2016, the National Assembly of the Republic of Slovenia (National Assembly) adopted the PADA, which entered into force on 24 May 2016. The PADA provides an appropriate national legal basis for setting up a new independent state authority, namely the Advocate. Concurrently, the PADA eliminated the violation of European Union (EU) law due to non-compliance with the European directives on equality, resulting in proceedings formally instituted against the Republic of Slovenia (RS) (violation no. 2014/2093).

In line with the EU acquis, the Advocate carries out the tasks of an equality body, whereby Slovenia ensures the implementation of Articles 15, 21, 23 and 39 of the Charter of Fundamental Rights of the European Union, and accurate transposition of the following directives:

- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin;
- Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation;
- Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services;
- Directive 2006/54/EC of the European Parliament and of the Council on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast);
- Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers.

THE ADVOCATE HIGHLIGHTS

Article 14 of the Constitution of the Republic of Slovenia (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 ground. All are equal before the law.

¹ Official Gazette of the Republic of Slovenia, no. 33/16 in 21/18 – Non-Governmental Organisations Act

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

1.2 The Advocate's functioning and operation in 2020

In line with the approved budget, the Advocate had EUR 1,141,888 at its disposal in 2020.

As a result of the emergency circumstances, the declaration of the COVID-19 epidemic and severely deteriorating economic indicators, the Government of the Republic of Slovenia suspended the implementation of the 2020 budget in accordance with the Implementation of the Republic of Slovenia Budget for 2020 and 2021 Act and introduced a reduction in spending rights amounting to 30 percent of the item of tangible assets. From this perspective, the Advocate allocated EUR 78,620 to alleviate the consequences of the epidemic.

With the supplementary budget for 2020, the National Assembly of the Republic of Slovenia, at the proposal of the Government of the Republic of Slovenia, allocated EUR 1,141,888 for the operation of the Advocate. In doing so, the Government of the Republic of Slovenia responded constructively to the Advocate's proposal regarding the urgent need for resources, namely EUR 78,620 to carry out the intended research.

On 7 December 2020, the Ministry of Finance (MoF) made a request for a relocation of unused balance in the budgetary reserve, i.e. the funds of individual budget users remaining in the budget at the end of the year. The Advocate contributed to increasing the funds of the budgetary reserve a total amount of EUR 10,000.

In the financial year 2020, the Advocate spent EUR 1,131,550 for the implementation of its statutory tasks. Of this, EUR 869,991 was earmarked for personnel costs, EUR 239,979 was earmarked for material costs and EUR 21,579 was dedicated to investments and investment maintenance.

As at 31 December 2020, 22 civil servants were employed by the Advocate in addition to the Head of the Institution.

With the declared epidemic of the infectious disease COVID-19, which marked almost the entire year 2020, the Advocate ensured smooth operation of the equality body and promptly responded to the health and safety requirements by taking into account the relevant needs and notifications of state authorities thus organising an efficient work process also in the form of work from home, in line with the instructions given.

2 ACTIVITIES OF THE EQUALITY BODY

2.1 The Advocate's tasks and activities

The European Commission's June 2018 Recommendations on Standards for Equality Bodies and the European Commission Against Racism and Intolerance (ECRI) General Policy Recommendation on Equality Bodies to Combat Racism and Intolerance at National Level of February 2018 address three key functions of equality bodies. These are also followed by the Advocate of the Principle of Equality (Advocate).

Providing information, advice, and advocacy

Providing independent assistance and support to people experiencing discrimination, advising, and participating in selected court proceedings. In addition, Article 38 of the Protection Against Discrimination Act (PADA) also allows the Advocate to trigger constitutionality and legality review proceedings before the Constitutional Court.

Receiving complaints and conducting discrimination investigation proceedings

Conducting discrimination investigation proceedings in individual cases where the equality body investigates and decides on whether discrimination took place in a specific case (the procedure is run as an administrative procedure and ends with a legally binding declaratory decision).

Research, monitoring, issuing recommendations, and awareness raising

Work at a systemic level, which includes research and analysis of the state of discrimination at the national level on the basis of which the Advocate drafts and publishes independent reports, issues recommendations and proposes special (positive) measures. Tasks at the systemic level also include: monitoring the general state of discrimination, awareness raising, education activities, exchange of available information within the European Union, and other international cooperation.

Pursuant to Article 19 of PADA, the Advocate acts “/.../ as an independent state authority with competences as determined by this Act. The Advocate shall conduct their tasks as per this Act or other acts independently within the framework of, and on the basis of, the Constitution and law.”

Article 21 of PADA describes in more detail the Advocate's tasks and powers. Hence, in order to provide a better overview of the work performed, a brief explanation of the tasks conducted in the previous year is presented with regard to each of the tasks defined in Article 21.

2.2 Overview of tasks and activities carried out under Article 21 of PADA

The following is a summary overview of the activities and tasks of the equality body arising from Article 21 of PADA and their implementation in 2020. The activities were carried out across different departments.

Systemic tasks were performed by the Department for Systemic Monitoring, Awareness Raising and Prevention in the Field of Discrimination (Department A), which also includes international cooperation.

Tasks in the field of providing information and advice and tasks concerning discrimination investigation procedures were performed by the Department for Discrimination Investigation, Counselling and Advocacy (Department B).

Coordination between the departments and the head of the equality body was performed by the Cabinet of the Advocate (Cabinet).

The Department of General, Personnel and Financial Affairs (Department D) performed all the tasks of the secretariat and administrative and technical support.

I.

Conducting independent research on the situation of people with certain personal grounds, particularly gender, nationality, racial or ethnic origin, religion or belief, disability, age, sexual orientation and other issues regarding discrimination against people with certain personal grounds (first indent of Article 21 of PADA)

Question	How much and what kind of independent research was conducted in 2020?
Answer	In 2020, the Advocate conducted three independent researches.
Explanation	In 2020, the Advocate conducted three independent researches: <ul style="list-style-type: none">• public opinion survey Perceptions of and Experiences with Discrimination in Slovenia in 2020;• research “Accessibility of Insurance for People Living with HIV”;• research on the situation in care homes for the elderly in the first wave of the epidemic.
Implementation	This activity was carried out by Department A ³ in coordination with the Cabinet. ⁴
Chapter	13. The Advocate’s research activities

³ Department A - Department for Systemic Monitoring, Awareness Raising and Prevention in the Field of Discrimination

⁴ Cabinet – Cabinet of the Advocate

II.

Publishing independent reports and making recommendations to state authorities, local communities, holders of public authorisations, employers, business entities and other bodies regarding the established situation of people with certain personal grounds, i.e. relating to preventing or eliminating discrimination and adopting special and other measures to eliminate discrimination (second indent of Article 21 of PADA)

Question	How many independent reports were prepared (published) in 2020?
Answer	In 2020, the Advocate prepared and published 2 independent reports.
Explanation	<p>In 2020, the Advocate prepared and published its Annual Report for 2019 and one Special Report. The Annual Report for 2019 was presented in the National Assembly on 1 October 2020 at the 23rd regular session of the Committee on Labour, Family, Social Affairs and the Persons with Disabilities; on 1 July 2020 at the 31st session of the National Council, and on 20 May 2020 at the 39th session of the Commission of the National Council for Social Welfare, Labour, Health and Persons with Disabilities.</p> <p>In 2020, the Advocate also prepared and published a Special Report on the Situation of Intersex People in Medical Procedures, which was presented at the same sessions of the National Assembly and the National Council as the Annual Report.</p>
Implementation	This activity was carried out by Departments A and B ⁵ and the Cabinet, in coordination with the head of the equality body.
Chapter	Both independent reports are published as separate publications and are available on the website www.zagovornik.si .
Question	How many recommendations have been issued (and to whom) regarding the situation of persons with a particular personal ground (which) regarding the prevention / elimination of discrimination in 2020?
Answer	In 2020, the Advocate issued 48 recommendations.
Explanation	<p>Of the 48 recommendations, 43 were addressed to various ministries, state authorities, local communities and public agencies and institutions; 4 recommendations were issued to companies and 1 recommendation to non-governmental organizations.</p> <p>The recommendations, which referred to a personal ground, most often referred to: disability (17), health status (14), wealth status (11), age (8), citizenship (7), nationality and ethnic origin (6), social status (6), parenthood (5), one recommendation each concerned gender, sexual orientation, language, and education, and in 7 cases recommendations referred to general issues concerning protection against discrimination.</p>
Implementation	This activity was carried out by Departments A and B in coordination with the head of the equality body and the Cabinet.
Chapter	11. Recommendations by the Advocate

5 Department B - Department for Discrimination Investigation, Counselling and Advocacy



III.

Conducting tasks of supervisory inspection on the basis of complaints in Chapter 5 of this Act regarding the observance of the provisions of this or other acts determining the Advocate's competence (third indent of Article 21 of PADA)

Question	In 2020, how many complaints were considered by the Advocate triggering discrimination investigation procedures?
Answer	In 2020, the Advocate considered 129 complaints triggering discrimination investigation procedures.
Explanation	<p>In 2020, the Advocate considered 129 complaints triggering discrimination investigation procedures, out of which 64 were closed.</p> <p>In 2020, the Advocate issued 40 declaratory decisions and 12 other decisions, of which 10 concerned the termination of proceedings and 1 decision on dismissal of the case. In 9 cases concluded with a declaratory decision discrimination was found, in 14 cases discrimination was not found, and in 17 cases a rejection decision was issued.</p> <p>In 2020, the Administrative Court issued the first judgment regarding the Advocate's decisions, fully confirming the Advocate's position that affording business performance bonuses or Christmas bonuses based on the employee's presence at work constitutes indirect discrimination based on gender, parenthood and health status.</p> <p>On 31 December 2020, five more proceedings were pending before the Administrative Court, in which the parties to the administrative proceedings challenged the decision issued by the Advocate. Cases relate to the following topics:</p> <ul style="list-style-type: none">• discrimination against a legal person on the grounds of religion or belief in access to advertising services;• discrimination of a customer on the grounds of race or nationality during a check by security guards in a store;• discrimination against a person living with HIV when accessing dental care;• discrimination against women in the prison system;• treatment of a sports coach within one of the sports federations. <p>In 2020, the Advocate referred 7 cases to other inspectorates and authorities. In addition, in 2020, the Advocate issued 5 proposals to the competent inspections for the introduction of minor offence proceedings.</p>
Implementation	This activity was carried out by Department B in coordination with the head of the equality body and the Cabinet.
Chapters	3. Overview of the Advocate's work with individual cases 6. Discrimination investigation 7. Statistics of advisory activities and discrimination investigation procedures

IV.

Providing independent assistance to persons subject to discrimination when enforcing their rights regarding protection against discrimination in the form of counselling and legal assistance for clients in other administrative and judicial proceedings related to discrimination (fourth indent of Article 21 of PADA)

Question	In 2020, how many persons experiencing discrimination were provided with independent assistance in administrative and other judicial proceedings related to discrimination?
Answer	In 2020, the Advocate provided independent assistance to 246 people.
Explanation	<p>In 2020, the Advocate provided approximately 1,700 hours of counselling, in which it provided advice and legal assistance to 264 people.</p> <p>In 2020, the Advocate provided a total of 449 individual consultations and legal assistance, of which 175 were telephone consultations and 274 were written consultations.</p>
Implementation	This activity was carried out by Department B in coordination with the head of the equality body and the Cabinet.
Chapter	<ul style="list-style-type: none">3. Overview of the Advocate's work with individual cases4. Advisory, informing and support activities7. Statistics of advisory activities and discrimination investigation procedures



V.

Raising the awareness of the general public on discrimination and measures to prevent it (fifth indent of Article 21 of PADA)

Question	In 2020, how did the awareness raising among the general public take place with regard to discrimination and measures to prevent it?
Answer	In line with international recommendations, the Advocate set communication goals, priority target groups, key messages and different communication channels. Awareness raising took place throughout the year.
Explanation	<p>In 2020, the Advocate set as the goal of its awareness raising activities the equality body's visibility among the general public and state administration and the dissemination of information on protection against discrimination. The Advocate informs the public about all its activities through the institution's website and social networks Facebook and Twitter and through appearances by the head of the institution in the media (18). The Advocate also prepared 36 press releases and issued 7 e-newsletters and press kits.</p> <p>For greater transparency and accessibility of content, the Advocate rearranged the structure and supplemented the content of the website www.zagovornik.si, where 80 news items on the Advocate's work were published.</p> <p>In 2020, the Advocate conducted 9 educational workshops or lectures. Due to the Covid-19 epidemic, the Advocate focused mainly on educational activities intended for the interested public. The Advocate's awareness raising activities also took place with the institution's participation in 11 events in the field of protection against discrimination organized by other actors.</p> <p>The Advocate addressed a written inquiry to 314 civil society organizations, obtaining information on the situation of persons with a certain personal ground and on discrimination perceived by civil society organizations in their fields of work. With letters of support, it supported 10 projects, held 3 meetings at the initiative of representatives of groups of persons with a specific personal ground, attended 2 events organized by civil society and conducted one in-depth interview.</p> <p>The Advocate issued 8 publications in 2020, namely the Annual Report for 2019 (sent to 500 addressees), a Special Report on the Situation of Intersex People in Medical Procedures (sent to 62 addressees) and bilingual summaries of the Annual Report: Slovene-English (sent to 67 addressees), Slovene-Italian (sent to 79 addressees) and Slovene-Hungarian (sent to 70 addressees), and bilingual forms for reporting discrimination in the same languages.</p> <p>The Advocate additionally in a targeted manner distributed approximately 6.000 brochures with basic information about the Advocate, 2.000 brochures on the rights of pregnant women and parents, 1.000 Slovene-English forms for reporting discrimination, 625 Slovene-Italian forms and 560 Slovene-Hungarian forms.</p>
Implementation	This activity was carried out by Department A in coordination with the head of the equality body and the Cabinet.
Chapter	16. Education, awareness raising and communication

VI.

Monitoring the general situation in the Republic of Slovenia in the field of protection against discrimination and the situation of people with certain personal grounds (Sixth indent of Article 21 of PADA)

Question	How was the general situation in the field of protection against discrimination and the situation of persons with certain personal circumstances monitored in 2020?
Answer	In 2020, the Advocate monitored the situation in the field of protection against discrimination through inquiries, which included around 437 different legal entities.
Explanation	<p>In 2020, the Advocate requested 14 ministries and 4 constituent bodies to report on special measures taken and implemented. The Advocate requested 25 inspection authorities, the Human Rights Ombudsman, the Police, the Supreme State Prosecutor's Office and 66 courts in the Republic of Slovenia to provide information on discrimination cases dealt with in 2020.</p> <p>In addition, the Advocate conducted several substantively focused inquiries regarding:</p> <ul style="list-style-type: none">• insurance conditions for people living with HIV,• ensuring an inclusive educational process with the gradual opening of schools,• the state of discrimination as perceived by civil society organizations in their field of work,• past initiatives by disability organizations regarding the accessibility of elections for people with disabilities,• the situation of persons with intellectual disabilities in social welfare institutions,• inclusion of the Roma population at the local level in South-Eastern Slovenia and coexistence of the Roma and the majority population in the region,• data on new Coronavirus infections in care homes for the elderly.
Implementation	This activity was carried out by Departments A and B in coordination with the head of the equality body and the Cabinet.
Chapter	10. Data on discrimination investigations – other state authorities 12. Measures for the promotion of equal treatment and elimination of discrimination 13. The Advocate's research activity 15. The Advocate's cooperation with civil society



VII.

Proposing the adoption of special measures to improve the situation of people who are in a less favourable position due to certain personal grounds (seventh indent of Article 21 of PADA)

Question	What special measures have been proposed for adoption in 2020 to improve the situation of persons at a disadvantage due to a particular personal ground (which)?
Answer	The Advocate did not propose the adoption of special measures for the elimination of discrimination in 2020. However, in 2020 it issued several recommendations and called on the ministries to provide information on the special measures adopted and implemented.
Explanation	<p>In 2020, the Advocate did not propose the adoption of special measures for the elimination of discrimination, as it focused primarily on the circumstances in which groups of people with a certain personal ground found themselves due to the Covid-19 epidemic, which led to several recommendations regarding intervention laws for the mitigation of the consequences of the epidemic.</p> <p>In 2020, the Advocate also reviewed the responses received from ministries and government services on the special measures taken. The Advocate notes that for the implementation of special measures in the sense of PADA, it is crucial to know and monitor the situation of persons with a certain personal ground, which requires the systemic and systematic collection and processing of disaggregated equality data.</p>
Implementation	This activity was carried out by Department A in coordination with the head of the equality body and the Cabinet.
Chapter	11. Recommendations by the Advocate 12. Measures for the promotion of equal treatment and elimination of discrimination

VIII.

Participating in judicial proceedings involving discrimination as per this Act (eighth indent of Article 21 of PADA)

Question	In how many and which court proceedings did the Advocate participate in 2020 in accordance with PADA?
Answer	In 2020, the Advocate continued to represent the party in one court case initiated in 2019, and for the first time also intervened in the proceedings before the European Court of Human Rights.
Explanation	<p>In 2020, the Advocate continued to represent a party in court proceedings initiated in 2019. The Advocate's lawsuit was filed on 3 October 2019 before the District Court in Ljubljana against the Association of Cycling Judges of Slovenia, which no longer allowed the plaintiff to work as a cycling commissaire due to reaching the age of 70. The defendant introduced in its Statute a 70-years upper age limit for cycling commissaires despite the plaintiff's warnings. Despite the calls by the Advocate, who had previously found discrimination in the declaratory administrative procedure under PADA, the defendant did not change the discriminatory Statute. In the lawsuit, the Advocate claimed direct discrimination on the grounds of age and demanded an end to discrimination (by amending the Statute and issuing a license for a cycling commissaire), compensation for discrimination and publication of the judgment in the media.</p> <p>In 2020, the Advocate intervened for the first time in proceedings before the European Court of Human Rights. The third-party intervention (<i>amicus curiae</i>) was filed in the cases of Franc Toplak v. Slovenia and Iztok Mrak v. Slovenia (appeals nos. 34591/19 and 42545/19). In the cases, the Court will rule on whether Slovenia has ensured adequate accessibility of polling stations for people with disabilities who use wheelchairs.</p>
Implementation	This activity was carried out by Departments A and B in coordination with the head of the equality body and the Cabinet.
Chapter	5. Advocacy – representation in judicial proceedings



IX.

Ensuring the exchange of available information on discrimination with bodies of the European Union (tenth indent of Article 21 of PADA)

Question	How much and what information did the Advocate exchange in 2020 in the international field?
Answer	In 2020, the Advocate carried out 42 exchanges of information on discrimination within the European Union and international organizations.
Explanation	<p>In 2020, the Advocate carried out 42 mutual exchanges of information with European and international institutions in order to monitor the state of discrimination. Of these, it carried out 15 exchanges of information with Equinet working groups and 27 with other international organizations.</p> <p>In 2020, the Advocate attended 50 international expert consultations, conferences, and other events, mostly online. This includes 22 Equinet meetings, 22 other international events and meetings, and 6 bilateral events.</p> <p>For the purpose of exchanging information, the Advocate also translated into English a summary of the Annual Report for 2019, which is published on the Advocate's website, and sent copies of the report to Equinet members, foreign embassies in Slovenia and Slovenian embassies abroad.</p>
Implementation	This activity was carried out by Department A and B in coordination with the head of the equality body and the Cabinet.
Chapter	17. The Advocate's international cooperation
Question	How many international events in the field of protection against discrimination did the Advocate participate in in 2020?
Answer	In 2020, the Advocate participated in 50 international expert consultations, conferences, and other events.
Explanation	<p>In 2020, the Advocate participated in 50 international expert consultations, conferences, and other events, mostly online. This includes 22 Equinet meetings, 22 other international events and meetings, and 6 bilateral events.</p>
Implementation	This activity was carried out by Department A and B in coordination with the head of the equality body and the Cabinet.
Chapter	17. The Advocate's international cooperation

X.

Conducting other tasks determined by this Act (tenth indent of Article 21 of PADA)

Question	What are the other tasks set out in this Act?
Answer	Other tasks determined by this Act include the consideration of initiatives for the review of constitutionality of regulations (Article 38 of PADA).

Question	How many initiatives for the review of constitutionality of regulations were considered by the Advocate in 2020?
Answer	In 2020, the Advocate considered 42 initiatives for the review of constitutionality of regulations.
Explanation	<p>In 2020, the Advocate received 33 new initiatives to start constitutionality or legality review proceedings. Together with 9 transferred cases from previous years, the Advocate dealt with 42 assessments of constitutionality or legality in 2020.</p> <p>In 2020, the Advocate adopted 13 assessments of the discriminatory character of regulations. In five of these assessments, the Advocate assessed the regulations as discriminatory, and in eight cases it did not recognize the discriminatory character of the regulation. Of the five cases where it assessed the regulations as discriminatory, in one case the Advocate submitted to the Constitutional Court of the Republic of Slovenia a request for review of constitutionality, and in four cases it issued recommendations to relevant authorities to amend the regulations.</p> <p>In 17 cases, the Advocate did not carry out a detailed assessment of the discriminatory character of regulations initiated by the parties, as the preliminary analysis of regulations did not reveal discrimination.</p> <p>12 cases were carried over into 2021 for further consideration.</p>
Implementation	This activity was carried out by Department B in coordination with the head of the equality body and the Cabinet.
Chapter	8. Assessing the discriminatory character of regulations



3 THE WORK OF THE ADVOCATE DEDICATED TO INDIVIDUAL CASES

3.1 Legal basis for work dedicated to individual cases

The basic legal act for the exercise of the Advocate's (Advocate of the Principle of Equality) powers is the Protection against Discrimination Act (PADA), which outlines the personal and material competence of the Advocate. Personal competence refers to the question of who can exercise the right to protection against discrimination. These are primarily natural persons or groups of persons. Legal entities may exercise the right to protection against discrimination only if subject to discrimination due to the personal grounds of natural persons associated with the respective legal entities (Article 1(3) of PADA), for example, their members, founders, management or managers. Substantive competence refers to areas in which discrimination is prohibited in Slovenia.

Furthermore, the PADA also stipulates the Advocate's fields of competence and individual forms of discrimination in which the Advocate may take action (Articles 6–12).

Discrimination investigation proceedings are being conducted by the Advocate in line with the provisions of the General Administrative Procedure Act (GAPA). Complaints and questions received from clients concern a number of areas that are comprehensively regulated in Slovenia. On that account, other regulations currently in force in the Republic of Slovenia are being applied by the Advocate, such as the Constitution, laws and bylaws.

THE ADVOCATE HIGHLIGHTS

Article 15 of the Constitution of the Republic of Slovenia (Exercise and Limitation of Rights)

Human rights and fundamental freedoms shall be exercised directly on the basis of the Constitution.

The manner in which human rights and fundamental freedoms are exercised may be regulated by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom.

Human rights and fundamental freedoms shall be limited only by the rights of others and in such cases as are provided by this Constitution.

Judicial protection of human rights and fundamental freedoms, and the right to obtain redress for the violation of such rights and freedoms, shall be guaranteed.

No human right or fundamental freedom regulated by legal acts in force in Slovenia may be restricted on the grounds that this Constitution does not recognise that right or freedom or recognises it to a lesser extent.



3.2 Fundamental concepts

3.2.1 Existence of discrimination

Article 2 of the PADA provides protection against discrimination based on various personal grounds in various areas of social life, in the exercise of human rights and fundamental freedoms as well as in the exercise of rights and obligations and in other legal relations in the political, economic, social, cultural, civil or other spheres. **Discrimination stands for any unjustified de facto or de jure unequal treatment, distinction, exclusion, restriction or omission based on personal grounds with the aim or effect of obstructing, reducing or avoiding equal recognition, enjoyment or exercise of human rights and fundamental freedoms or other rights, legal interests and benefits.**

Identifying discrimination requires the following steps to be taken:

- identifying the form of discrimination;
- identifying the area of life, where discrimination took place;
- identifying the personal ground that led to discrimination;
- determining whether the treatment interferes with the person's rights, freedoms, benefits or advantages;
- establishing a causal link between a personal ground and the unequal treatment which interferes with the person's rights, freedoms, benefits or advantages;
- determining whether the unequal treatment falls within any of the exceptions from the prohibition of discrimination which do not constitute infringement of the law.

Legally speaking, only conduct that contains all the above elements constitutes discrimination under the PADA. Other undesirable, contentious or unjust practices not related to personal grounds or without prejudice to the rights, freedoms, legal interests or benefits shall not be considered discrimination. Nevertheless, these practices may constitute other types of unlawful conduct which fall under the competence of other authorities.

3.2.2 Intention to discriminate

In order to prove the existence of discrimination, the intention to discriminate is not relevant, it is sufficient to prove that discrimination indeed occurred or could occur. . In consequence, only the actual effects of a particular conduct on a person or a group are taken into account, and not the question of whether the offender intended to discriminate. Therefore, the offender cannot be exempted from liability by arguing that discrimination was not their intention, as long as their actions indeed gave rise to discriminatory effects.

3.2.3 Personal grounds

Article 1 of the PADA defines the purpose and subject matter thereof, which is to ensure protection against discrimination, on the basis of specific personal grounds. Primarily, the PADA summarises the personal grounds listed in the Constitution of the Republic of Slovenia (the Constitution) and in the Criminal Code (CC-1). These personal grounds are as follows: **gender, nationality, racial or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, property status, education, or any other personal ground.**

The explanatory memorandum to the Articles of the PADA proposal makes it clear that **personal grounds are congenital or acquired personal traits, characteristics, conditions or statuses**, which are, by and large, permanently and inextricably linked to a particular individual and their personality, in particular their identity, or can not easily be altered by the individual.

In view of the foregoing, the Advocate considers as **other personal grounds** not explicitly listed in the PADA, also **citizenship** (citizenship of another EU Member State or citizenship of a third country), **pregnancy, parenthood, health status, place of birth, skin colour, place of residence, etc.** Personal grounds can also be linked to legal entities, where appropriate in light of the grounds, in so far as there is a connection with the personal grounds of the members, founders or persons who manage or operate the legal entities.

Protection against discrimination is granted by the law also to persons who are in any way (de jure or de facto) associated with a person with a particular personal ground, (e.g. by marriage or kinship, social links). The offender cannot be exempted from liability by arguing that the person who was discriminated against has no personal ground, when a person related to them has. This form of discrimination is referred to as ‘discrimination by association’ (first indent of Article 5 par. 2 of PADA).

Protection against discrimination is granted by the law also to persons who are in any way discriminated against as a result of incorrect conclusions about the existence of certain personal grounds. If a person is discriminated against on account of a personal ground, it is irrelevant whether that person actually has that particular personal ground or not. Therefore, the offender cannot be exempted from liability by arguing that the person who was subject to discrimination due to a particular personal ground (attributed to them) in reality does not have this personal ground (second indent of Article 5 par. 2 of PADA).

THE ADVOCATE HIGHLIGHTS

Article 34 of the Constitution of the Republic of Slovenia
(Right to Personal Dignity and Safety)

Everyone has the right to personal dignity and safety.



3.2.4 Areas of social life

Article 2 of the PADA defines the areas of social life in which equal treatment and the prohibition of discrimination are ensured under the European Union law. The listed areas are derived from the European Union directives and from the case law of the Court of Justice of the EU. Pursuant to the PADA, equal treatment applies only to areas of social or public life (including civil and economic matters), i.e. to areas in which individuals (or in particular cases also legal entities) exercise their rights, perform their duties or engage in legal transactions, but does not apply to private relationships (e.g. family, friendships or intimate relationships). The exception to this is harassment, as such conduct violates the prohibition of discrimination also in private relationships.

Areas of social life where protection against discrimination applies

The colour scale used to indicate the case numbers refers to a particular area of social life, where the individual case occurred. The following colours indicate the relevant areas of life:

Work and employment

- Access to employment, self-employment and profession (including selection criteria and employment conditions, notwithstanding the type of activity or the level of occupational hierarchy, including promotion);
- access to all forms and all levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including internship;
- employment and working conditions, including termination of employment contracts and wages;

Membership in workers' or employers' organisations

- membership and inclusion in workers' or employers' organisations or any organisation whose members perform a certain vocation, including benefits provided by such organisations;

Social rights

- social protection, including social security;
- social benefits;

Health care

- health care;

Education

- education and schooling;

Goods and services market

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

Other

3.2.5 Forms of discrimination

In accordance with the EU directives, the PADA defines the concept of direct and indirect discrimination and outlines other practices that, in addition to direct and indirect forms of discrimination, are considered discriminatory. In line with the provisions of the EU directives, harassment and sexual harassment, as well as instructions to discriminate, are also considered as discrimination and reprisals against the discriminated person or a person assisting them (victimisation) are prohibited. Incitement to discrimination is considered a special form of discrimination, too.

Forms of discrimination are as follows:

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

The PADA also stipulates severe forms of discrimination. Pursuant to paragraph 3 of Article 39 of the PADA, the establishing of severe forms of discrimination is also relevant to determine the amount of compensation for non-pecuniary damage in judicial proceedings. In cases of offences involving severe discrimination, the legislator provides for higher fines, which can be imposed by the competent inspectorates.

Severe forms of discrimination are:

- **multiple discrimination** (Article 12 of PADA),
- **mass discrimination** (Article 12 of PADA),
- **persistent or repeated discrimination** (Article 12 of PADA),
- **discrimination with consequences that are difficult to remedy** (Article 12 of PADA),
- **discrimination directed at children** (Article 12 of PADA),
- **discrimination directed at other weak persons** (Article 12 of PADA),
- **delivering or disseminating racist, religious, national and sexually discriminatory appeals, inducing, abetting or inciting hatred and discrimination as well as broader public haranguing which promotes discrimination** (paragraph 1 of Article 10 of PADA).

THE ADVOCATE HIGHLIGHTS

Article 36 of the Constitution of the Republic of Slovenia
(Prohibition of Incitement to Discrimination and Intolerance and Prohibition of Incitement to Violence and War)

Any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional. Any incitement to violence and war is unconstitutional.



3.3 The Advocate's powers in investigation of individual cases

The Advocate's powers in investigation of individual cases are defined in Articles 33 to 44 of the PADA and in Article 21 of the PADA. They can be divided into the following areas:

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

Until the end of 2020, the Advocate implemented the following powers: providing independent assistance to persons subject to discrimination; investigating discrimination following a complaint lodged by a person subject to discrimination; investigating discrimination ex officio; requiring the submission of data necessary for investigating discrimination; filing requests for the review of constitutionality and legality; representing parties in judicial proceedings; referring cases to competent inspection services for initiating minor offence proceedings.

In 2020, the Advocate was not involved in accompanying parties in judicial proceedings.

In 2020, the Advocate carried out declaratory administrative proceedings ex officio and on the basis of the received complaints.

4 ADVISORY, INFORMING AND SUPPORT ACTIVITIES

4.1 The procedure of the Advocate's advisory activities

Advisory, informing and support activities include, first of all, the examination of the person's situation as to identify the problem and determine of whether it falls within the power of the equality body (the Advocate). If the matter falls within the power of the Advocate, i.e. if a personal ground is given and the matter concerns a field of life that falls under the Protection against Discrimination Act (PADA), the Advocate advises the client, explains its powers, possibilities of action and tasks and together with the client finds the most appropriate way for action.

In doing so, the Advocate also encounters individuals who are unwilling to take action (e.g. to lodge a complaint), as they want to keep a low profile or remain anonymous, but still need information and guidance on how to act if they decide to take action. Some individuals inquire whether action can be taken in their case even if they remain anonymous. In this case, the Advocate explains that this depends on the circumstances of the particular case; if the matter involves a specific conduct in relation to a specific person and a specific offender, then anonymity cannot be ensured, as an investigation of a specific conduct in a way that does not at the same time reveal the identity of the applicant is not possible. However, in cases of multiple victims and discrimination based on required conditions or widespread practice, anonymity can be ensured even during the proceeding in question.

If a client is already involved in other judicial or administrative proceedings, but the question raised with the Advocate is related to discrimination, the Advocate advises the client on how to raise the issue of discrimination in the ongoing proceedings. Additionally, the Advocate assists clients in writing complaints and other documents in proceedings before other state authorities, where these proceedings are related to discrimination or could lead to discrimination.

When the parties are not pleased with the outcomes of the proceedings before other authorities, the Advocate informs them on how to contest the outcomes using legal remedies provided for therein. The Advocate also provides advice to parties who claim to have been discriminated against in these proceedings. Strictly speaking, the Advocate does not act as a hierarchically superior authority to other state authorities performing tasks in their area of work through the conduct of administrative and judicial proceedings.

When a client directs a question or request for advisory to the Advocate regarding matters outside the field of the Advocate's powers, the Advocate refers the client to the competent authority or optionally advises them on other possible measures or legal remedies provided for in particular regulated areas.

4.2 Office hours and communication with clients

The Advocate's office hours are Monday to Friday from 10 to 12 am, and on Wednesdays additionally from 3 to 6 pm.

In accordance with the law and the rules of procedure, the Advocate is available to complainants and persons with questions or concerns at the e-mail address (gp@zagovornik-rs.si), on a toll-free telephone number (080 81 80), by ordinary post (Železna cesta 16, Ljubljana) and at the physical address of the equality body. During the office hours and by prior arrangement, the Advocate's employees are available to the complainants for advisory services in person at the official headquarters of the equality body on Železna cesta 16 in Ljubljana. During the epidemic, the advisory in person at the headquarters of the Advocate was not carried out in accordance with the instructions of the National Institute of Public Health.

4.3 Statistics of advisory, informing and support activities

In 2020, the Advocate **completed 189 advisory matters in writing, in 175 cases advisory assistance was provided by telephone**, where the clients were informed about the Advocate's powers and opportunities for action in case of discrimination, received advisory in relation to proceedings pending before other state authorities as per discrimination, and were offered support and assistance in writing applications and letters related to the protection against discrimination.

Cases that the Advocate keeps as advisory, informing and support matters can be resolved in various ways. In the event of questions and requests for advisory received, the Advocate provides support and assistance to the client by giving an oral or written answer or explanation. In some cases, the Advocate manages to settle the matter by inquiring with the offender. Based on one of the cases, the Advocate issued a special report in 2020: The situation of intersex people in medical procedures.

The resolution of the proceedings also depends on the responsiveness of the complainant. If the complainant fails to respond to a request for supplementation, and the original application does not contain sufficient information to prepare an explanation, the proceeding ends with a formal note.

Table: Outcomes of proceedings before the Advocate for cases completed in 2020

Outcomes of proceedings before the Advocate	Number	Percentage (%)
Written explanation	139	74
Informal resolution of the case	15	8
Referral to a competent authority	4	2
Formal note on the closure of the case	20	10
Advisory assistance (written question received, advisory assistance provided by telephone or at a meeting in person)	7	4
The Advocate is not competent	1	0,5
Other (proposal not to initiate proceedings, transfer between departments)	3	1,5
TOTAL	189	100



5 ADVOCACY – REPRESENTATION IN JUDICIAL PROCEEDINGS

5.1 Advocacy and representation of clients in judicial proceedings

The power to represent and accompany victims in judicial proceedings initiated on the basis of Article 39 of the PADA is defined in Article 41 of the PADA, where the role of the Advocate and non-governmental organisations is stipulated. This provision sets out the special conditions to be met by the Advocate for **the representation of persons subject to discrimination in actions before the courts**. The Act stipulates that only a person who is employed with the Advocate and has passed the state bar examination may perform procedural acts on behalf of the Advocate (paragraph 1 of Article 41 of PADA).

The same rules apply to a non-governmental organisation with the power to represent discriminated persons in court proceedings pursuant to the PADA, at the same time such organisations must have the status of an entity acting in the public interest in the field of protection against discrimination and protection of human rights (paragraph 2 of Article 41 of PADA).

If the Advocate and the discriminated person do not agree on representation, the **Advocate may only accompany the person in the proceedings**, provided that the person consents thereto. To enable the presence of the Advocate in judicial proceedings, an authorisation is not required – it suffices that the person subject to discrimination states that a certain person employed with the Advocate is accompanying them and that they wish them to be present during the proceedings.

The same applies if a person wishes to be accompanied by an employee of a non-governmental organisation with the status of an entity acting in the public interest in the field of protection against discrimination and protection of human rights.

5.2 The first case of representing a client in court

In 2020, the Advocate continued to represent the client in the court proceedings initiated in 2019.

The action was filed on 3 October 2019 before the District Court in Ljubljana against the Slovenian Association of Cycling Judges, which no longer allowed the complainant to judge competitions due to reaching the age of 70. The defendant introduced a restriction in its statute on the activities of cycling judges to the age of 70, despite the complainant's warnings. In doing so, the defendant referred to the rules of the International Cycling Union, which contain the same restriction. Despite the call of the Advocate, stating that discrimination was found during the investigative administrative procedure under the PADA, the defendant did not amend the discriminatory statute.

In the action, the Advocate contended that direct discrimination took place on the grounds of age and demanded the discriminatory approach to end (by amending the statute and issuing a license for the cycling judge), compensation for the discrimination and publication of the judgement in the media. The key arguments put forward by the claimant in the action relate to the fact that the defendant did not demonstrate the legitimate aim of setting the age limit, nor showed that such an age limit would be an appropriate and necessary mean for the pursuing of particular objectives. The claimant pointed out that the prohibition of discrimination on the grounds of age is a fundamental principles of the law of the European Union, according to the case law of the Court of Justice of the European Union. The claimant also stated that referring to the rules of the International Cycling Union was not appropriate, as the rules of an international non-governmental organisation could not prevail over a national law nor over the law of the European Union. Regarding the aim to ensure that cycling judges are able to perform their function, the complainant stated that it would be much more appropriate to regulate the issue of assessing the ability to perform the function by individually testing a person's ability. The proceedings before the Court are pending, and the Advocate will continue to represent the client in the case also in 2021.

5.3 The Advocate's third party intervention before the European Court of Human Rights

In 2020, the Advocate intervened for the first time in proceedings before the European Court of Human Rights (ECtHR). The third party intervention (*amicus curiae*) was made in the cases of *Franc Toplak v. Slovenia* and *Iztok Mrak v. Slovenia* (application nos. 34591/19 and 42545/19). In the concerned cases, the Court is to determine whether Slovenia has ensured appropriate accessibility of polling stations for people with disabilities who use wheelchairs. Within the framework of the intervention, the Advocate presented possible legal remedies in the Republic of Slovenia in this area and considered their effectiveness.

In the same cases, intervention was made for the first time also by Equinet, the European Network of Equality Bodies, of which the Advocate is a member. Equinet submitted to the Court a review of the regulatory situation regarding the accessibility of polling stations for people with disabilities in European countries and a review of human right standards for persons with disabilities with regard to elections.

The interventions were made in line with Article 36 (2) of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 44 (3) of the Rules of Court.

6 DISCRIMINATION INVESTIGATION

6.1 The discrimination investigation procedure before the Advocate

Discrimination investigation is carried out in line with the **administrative procedure based on complaints received** by the equality body (the Advocate) from parties (pursuant to Article 33 of PADA) and in **proceedings instituted ex officio** (Article 34 of PADA).

First, the Advocate carefully examines each complaint lodged by the parties to establish, whether the burden of allegation has been met. This means that the following is being checked:

- whether the facts given justify the presumption that an infringement of the principle of non-discrimination occurred;
- whether the personal ground leading to an inferior treatment is stated;
- whether the treatment giving rise to the complaint is of such a nature as to interfere with rights, freedoms, benefits or legal interests;
- whether a causal link exists between the personal ground and the inferior treatment;
- whether the conduct qualifies as one of the exemptions from the prohibition of discrimination under Article 13 of the PADA.

Furthermore, the Advocate verifies whether all the essential elements of the complaint set out in Article 36 of the PADA have been provided. If the burden of allegation is not met or if the essential elements of the complaint are missing, the party will be requested to supplement the complaint pursuant to the regulations governing the general administrative procedure. Should the Advocate receive an anonymous complaint, the possibility of initiating a proceeding ex officio shall be considered as provided for in Article 34 of the PADA. Upon receipt of a complete application where the burden of allegation is met, the Advocate verifies the allegations with the alleged offender or other entities which may be requested to submit data and documentation vital for the case to establish potential existence of discrimination taking into account the principle of proportionality. State authorities, local communities, holders of public authority and legal and natural persons shall, upon request, provide the Advocate free of charge with all data, including personal data, and documentation that is vital to establish if discrimination occurred in the case under consideration.



The Advocate has no statutory mechanisms or sanctions available in case the alleged offenders or other entities fail to respond to the requests for information. Nonetheless, past experiences seem to indicate that entities requested for information are mostly willing to actively cooperate in the proceedings. Should this not be the case, the Advocate can only repeatedly call them to respond and at the end take a decision based on the facts and documentation available. The nature of the discrimination investigation procedure, where the reversed burden of proof plays a key part, encourages the persons liable to cooperate in the proceeding, as otherwise, if the complainant meets the burden of allegation, the burden of proof shifts to the persons liable, who must prove the absence of discrimination. If the persons liable fail to use the opportunity to present proof to support the fact that the complainant was not subject to discrimination, the consequences of the proceeding could be unfavourable for the persons liable.

In 2020, the Advocate conducted 129 discrimination investigation proceedings. Of these, 58 were initiated in 2020 and 71 were carried over from 2019.

In 2020, 64 discrimination investigation proceedings were resolved, and 65 are still pending in 2021.

6.2 Proceedings initiated ex officio

If the Advocate initiates a proceeding for investigating discrimination ex officio in accordance with Article 34 of the PADA, the fact-finding and collection of evidence of the occurrence of discrimination is conducted in the same manner, i.e. in accordance with Article 37 of the PADA and GAPA.

In 2020, the Advocate **conducted 13 proceedings, which were initiated ex officio** (of which eight proceedings were initiated in 2020, four in 2019 and one back in 2018). Of the 13 proceedings conducted in 2020, **six proceedings were resolved**.

In 2020, eight proceedings initiated ex officio were initiated by the Advocate on the basis of an anonymous report, question or notification by a third party (not a victim of discrimination). Three of the four proceedings initiated in 2019 were resolved in 2020, one is still pending. Plus, the last ex officio proceeding carried over from 2018 was resolved too.

In six cases where the complaint was lodged by an anonymous person or a third person, the ex officio proceeding was not initiated by the Advocate. In these cases, the substance of the anonymous complaint did not indicate any issue related to discrimination under the PADA.

The ex officio cases closed by the Advocate in 2020 related to the following topics:

An on-the-job training advertisement was not discriminatory.

The Advocate noted an allegedly discriminatory advertisement in the public announcements and initiated a proceeding ex officio. The proceeding was initiated against an association, which allegedly published a sexually discriminatory on-the-job training advertisement. After obtaining the response and clarifications from the association, it turned out that the advertisement was not sexually discriminatory, so the procedure was suspended by a decision. (Decision on the suspension of the proceeding no. **0700-47/2020/4** of 4 November 2020)

The refusal to serve guests was not based on their nationality, therefore discrimination did not take place.

The Advocate learned from the media about the alleged discrimination due to ethnic origin, when the employees of the restaurant in Velenje refused to serve the Albanian ethnic group. The Advocate initiated the discrimination procedure ex officio. After the investigation, it was established that the owner of the bar had ordered the employees not to serve particular customers. The reason for this was their inappropriate behaviour and not the ethnic origin of these individuals. The Advocate closed the proceedings by establishing that the owner of the bar had not violated the prohibition of discrimination on the grounds of ethnic origin. (Decision No. **0700-30/2020/37** 37 of 31 August 2020)



At the Shooters club, the Advocate found no racial discrimination.

The Advocate received a complaint from a third party regarding the alleged discriminatory treatment of a coloured French guest of the club. According to the instructions of the manager of the club, he was forced to leave the place as other guests were complaining about his smell. As part of the proceeding, the Advocate questioned the manager, two club employees and a security guard. Despite repeated calls by the Advocate, other witnesses to the event refused to participate in the discrimination proceeding, nor did the French student provide additional explanations concerning the treatment he was subject to. Based on the testimonies, the Advocate concluded that the conduct of the club manager did not fulfil the elements necessary to establish discrimination, so according to the decision, no discrimination was found. (Decision No. [0700-19/2019/55](#) of 12 October 2020)

The Advocate did not find any incitement to discrimination in the association's newsletter.

The Advocate was informed by another state authority about jokes published in the association's newsletter, which were allegedly discriminatory towards persons with disabilities. The Advocate introduced procedures to verifying the content of the newsletter from the viewpoint of Article 10 of the PADA, prohibiting incitement to discrimination. In the proceeding, the Advocate found that the content of the newsletter did not contain elements of an incitement for discrimination and issued a decision suspending the proceeding. (Decision on the suspension of the proceeding No. [0700-45/2019/5](#) of 17 October 2019)

The Advocate did not find any discrimination in the access of a transgender person to a medical procedure.

The Advocate received a complaint from a third party to address discrimination against transgender people with regard to access to health services. Based on the complaint, the Advocate initiated an ex officio proceeding, in which it was found that the treatment by the medical staff was not discriminatory, and a declaratory decision was issued in the matter. (Decision No. [0700-26/2019/18](#) of 9 December 2019)

The Advocate found no discrimination in denying access to accommodation in a campsite to a person of Roma origin.

The Advocate was informed by a third party that a Roma family was denied accommodation in a campsite. As part of the ex officio proceeding, the Advocate proposed the implementation of an inspection procedure to the Information Commissioner, in order to verify the legality of keeping records of guests in terms of race or ethnicity. The inspection was carried out and the Advocate was informed about the findings that the campsite did not violate the personal data protection regulations and that the records show that the guests were not rejected. As a result, the Advocate suspended the proceeding. (Decision on the suspension of the proceeding No. [0700-28/2018/21](#) of 1 September 2020).

6.3 Statistics of discrimination investigation procedures

In 2020, the Advocate conducted **129 discrimination investigation administrative proceedings, of which 64 were completed**. The Advocate can resolve cases in various ways. In the discrimination investigation proceedings conducted under Article 33 and 34 of the PADA, the Advocate may issue decisions or refer the matter to other competent authorities.

In 2020, the Advocate issued 40 substantial decisions and 12 procedural decisions, of which ten were decisions on the suspension of the proceeding and one was a decision rejecting the matter. Ten of the 40 decisions issued are not yet included in the statistics of closed cases for 2020. The reason for this is that these ten cases are still subject to monitoring of how the decision will be implemented, or an administrative dispute is still pending before the Administrative Court of the Republic of Slovenia or is expected, or any of the parties filed an action against the decision in an administrative dispute.

In nine cases concluded by the Advocate with a substantial decision, discrimination was found, in 14 cases no discrimination was found, and in 17 cases a rejection decision was adopted.

The resolution of the proceedings also depends on the responsiveness of the complainant. If the complainant fails to respond to a request for supplementation, and the original application (complaint, request, letter, etc.) does not contain sufficient information to prepare an explanation, the proceeding ends with a formal note.

In obvious cases of violations, such as e.g. openly discriminatory advertisements for working positions, the Advocate calls on the offender to remedy the violation. When the offender complies with the call of the Advocate to end the discriminatory conduct, the case is formally resolved with a formal note. Cases reclassified during the proceeding for it was more reasonable to consider them in the framework of advisory assistance were also resolved with a formal note. In cases where the clients requested discrimination investigation, the Advocate provided clarification which benefited the client in terms of additional information and support to a greater extent compared to a mere dismissal of their complaint due to the lack of the Advocate's powers in the matter.

In three cases, the Advocate found that the equality body was not competent for the case under consideration and referred it to the competent authority for resolution. In five cases, the Advocate decided not to initiate the ex officio procedure of discrimination investigation based on the reasoning from the complaint. Such cases were closed with a proposal not to initiate the proceeding.



Table: Outcomes of discrimination investigation proceedings before the Advocate for cases completed in 2020

Outcomes of proceedings before the Advocate	Number	Percentage (%)
Decision – declaratory – discrimination is found	4	6
Decision – declaratory – discrimination is not found	12	19
Decision – negative – not a matter of discrimination	14	22
Decision to suspend the proceeding	10	15
Decision on dismissal on procedural grounds	2	3
Formal note on the closure of the case	5	8
Written explanation	9	14
Failure to commence proceedings	5	8
Referral to a competent authority	3	5
TOTAL	64	100

6.4 Judicial proceedings before the Administrative Court of the Republic of Slovenia

An administrative dispute is admissible to contest the decision of the Advocate pursuant to the Administrative Dispute Act (ADA-1).

In 2020, **the Administrative Court delivered the first judgement pertaining to a decision of the Advocate** (judgement no. I U 29/2020-21 of 11 November 2020), in case no. 0700-30/2019 (regarding the Decision of 4 September 2019). The judgement of the Administrative Court fully supported the position of the Advocate that the calculation of business performance or Christmas bonuses by reference to the employee's presence at the workplace, represents indirect discrimination on the grounds of sex, parenthood and health.

On 31 December 2020, **five more procedures** were pending before the Administrative court in which the parties contested the Advocate's decision within the context of an administrative procedure. The cases concern the following topics:

- discrimination against a legal entity in access to advertising on grounds of religion or belief;
- discrimination of customers in connection with the treatment they receive from security guards in stores on the grounds of race or nationality;
- discrimination against a person living with HIV in access to dental care;
- discrimination against women in the prison system;
- treatment of a sports coach in one of the sports federations.

6.5 Practices not regarded as discrimination under the PADA

The most common situations when the Advocates receives a complaint in cases not regarded as discrimination are presented hereafter.

Under the PADA, a conduct cannot be qualified as discrimination in the following cases:

1. permitted exceptions to the prohibition of discrimination (contingent upon various personal grounds);
2. the reason for the distinction is not a personal ground thereunder, but merely a choice or decision of the individual;
3. the absence of interference with rights, legal interests or benefits;
4. various instances of conduct that do not interfere with the rights of others;
5. other wrongdoings or irregularities not defined in the PADA.

6.5.1 Exceptions to the prohibition of discrimination

Not every unequal treatment is prohibited. Situations in which unequal treatment is legally permissible are set out in Article 13 of the PADA. Article one of the latter provides a **general exception to the prohibition of discrimination: is permissible if such unequal treatment is underpinned by a legitimate objective and the measures of achieving that objective are appropriate, necessary and proportionate. This is the so-called three-step proportionality test.**

In such case, the Advocate must first establish whether a particular conduct pursues a legitimate objective. Legitimate objectives must be lawful (i.e. compliant with the values granted by the Constitution and laws) and materially and objectively substantiated, which implies that the achievement of the objectives is necessary for ensuring the well-being of the individual and the community as a whole and evidence supports this view (for example, providing social security, raising employment, providing the highest level of education, etc.). A particular measure may also pursue several legitimate objectives, however, when these are in conflict with each other, the balancing exercise is necessary to establish to which objective greater importance should be attributed. Nevertheless, the objectives are not legitimate when in conflict with values and goods protected under the Constitution and laws.

If the Advocate finds the existence of a legitimate objectives, he further observes whether the measures to achieve that objectives are appropriate, that is to say, whether those measures can, by the nature of things, lead the objective pursued. He further observes whether the measures used are necessary, in other words inevitable, that is if the objective can only be achieved by these measures and whether it could be achieved through other measures. Ultimately, the Advocate must assess whether the measures are proportionate, i.e. if the benefit pursued outweighs the harm caused by the measures. One example is the balance

between the public interest pursued by the measures of distinction and the adverse consequences of the same measures for natural persons, legal entities or groups. If the balance exercise shows that the public interests prevails and the consequences are not considered sufficiently severe for the individual or group subject to unequal treatment, the measures to achieve the objective are regarded as proportionate.

In this respect, it should be underlined that the above general exemptions from the prohibition of discrimination cannot be applied for the personal grounds of gender, race or nationality, religion or belief, disability, age or sexual orientation. Under the PADA, these personal grounds enjoy special protection, which is in line with the EU directives in the field of protection against discrimination. Accordingly, unequal treatment on the basis of these personal grounds is permissible only if the law provides for specific exceptions.

The first exception from Article 13 par. 2 of the PADA applies to employment and work and defines the concept of genuine and determining occupational requirements. Thus, in the field of employment and work, unequal treatment on the basis of gender, race or nationality, religion or belief, disability, age or sexual orientation is permissible only if the personal ground underlying the unequal treatment is necessary and vital for the performance of the work expected from the individual. In this respect, the three-step proportionality test must be observed again.

Another specific exception from Article 13 par. 3 of the PADA applies to the personal ground of age and the field of employment and work. Under this exception, unequal treatment by employers on grounds of age is permissible only if objectively and reasonably justified by a legitimate objective, including the legitimate objectives of employment, labour market and vocational training policy, moreover, the three-step proportionality test must be observed.

The third specific exception from Article 13 par. 4 applies to religious ethics in the field of employment. Under this exception, unequal treatment on grounds of religion or belief in occupational work in churches and other religious communities, or in other public or private organisations whose ethics is based on religion or belief, shall not constitute discrimination if, due to the nature of the work or the actual context, religion or belief constitutes a legitimate and justified professional requirement according to the ethics of the organisation.

The fourth specific exception from Article 13 par. 5 of the PADA exempts from the prohibition of discrimination more favourable treatment of women due to pregnancy and motherhood and also applies to employment and work. Namely, such favourable treatment is not considered discriminatory against others who are not entitled to such protection.

The fifth specific exception from Article 13 par. 6 of the PADA exempts from the prohibition of discrimination the provision of goods and services exclusively or primarily to persons of one gender, whereby the three-step proportionality test must be observed.

Paragraph 6 of Article 13 contains another important provision, namely it establishes a certain additional hierarchy of protection. It sets out that, in principle, unequal treatment on grounds of sex, nationality, race or ethnic origin is prohibited in the fields of education, access to social and health care, social benefits, goods and services (except in line the aforementioned exception for goods and services for one gender), moreover, in these cases, unequal treatment cannot be justified by the three-step proportionality test.

6.5.2 Personal choice rather than personal ground

The Advocate is often confronted with alleged personal grounds leading to discrimination which are later found to lack the legal elements of the personal ground definition. Personal ground in the legal sense means congenital or acquired personal traits, characteristics, conditions or statuses, which are, by and large, permanently and inextricably linked to a particular individual and their personality, in particular their identity, or cannot easily be altered by the individual.

In other cases, it is usually (but not necessarily) the individual's **personal choice** or **decision**. This may also be conditioned by particular objective factors, preferences, desires and life aspirations, but strictly speaking, it is not a personal ground in terms of inherence and inalienability.

6.5.3 The absence of interference with rights, legal interests or benefits

Neither is a conduct considered discrimination in cases where **no interference with human rights, fundamental freedoms, other rights, legal interests or benefits can be identified, as provided for in Article 4 of the PADA**. Accordingly, the Advocate first checks whether the protected benefit pursued by the complaint is provided for by the law and whether it can be determined in line with an applicable legal framework (even if not explicitly defined as a right).

Such a right, benefit or advantage may also be defined in a way which imposes a specific obligation on the state, local community, other legal entity, natural person or any other person liable under the PADA corresponding to the rights, legal interests or benefits. If the right, legal interest or benefit, on one hand, and the corresponding obligation, on the other hand, cannot be identified, no discrimination can be identified under the PADA.

6.5.4 Conduct that does not interfere with the rights of others

Conduct that does not interfere with the rights of others, such as e.g. **special measures and appropriate/reasonable accommodation**, cannot be considered discriminatory. These are measures necessary to equalise the starting positions and overcome shortcomings of persons or groups with a certain personal ground, as without these measures these individuals would be in a significantly worse position than persons or groups without the personal ground concerned.

In these situations, specific measures may exist that can be either encouraging or positive. The measures are intended only for particular groups that are disproportionately subject to discrimination, and are taken with the aim of eliminating the existing less favourable situation of these groups. Other individuals, outside the group, who have no access to the benefits, therefore, cannot successfully argue that discrimination occurred.

The same applies to the area of appropriate/reasonable accommodation. The institute of reasonable accommodation is governed by Article 5 of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, which states: 'In order to guarantee compliance with the principle of equal treatment in relation to persons with disabilities, reasonable accommodation shall be provided.' This means that employers shall take appropriate measures, where needed in a particular case, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer. This burden shall not be disproportionate when it is sufficiently remedied by measures existing within the framework of the disability policy of the Member State concerned. In addition to this, the obligation to ensure reasonable accommodation is set out in the United Nations Convention on the Rights of Persons with Disabilities (CRPD). In the Slovenian legal framework, the reasonable accommodation is further implemented only partially, namely only in the field of disability, with the Vocational Rehabilitation and Employment of Persons with Disabilities Act and the Equalisation of Opportunities for Persons with Disabilities Act.

With regard to other personal grounds, reasonable accommodation is not provided for in the Slovenian regulations, i.e. the persons liable under the PADA are not bound by this approach. However, appropriate accommodation may be implemented anyway, as in some areas, it is the only way to consistently exercise particular rights and freedoms. In practice, there may be a need for reasonable/appropriate accommodation with regard to the personal grounds of parenthood, religion, health, etc.

6.5.5 The difference between discrimination and other wrongdoings or irregularities

Situations when other wrongdoings, irregularities or illegalities occur, not based on the personal ground, are also not considered discriminatory. Even if the Advocate finds a possibility of a particular wrongdoing, discrimination cannot be identified unless a personal ground is given in the case. In such cases, several other remedies can be used to address the irregularities, such as regular appeals, judicial protection, contacting sectoral inspectorates and other specialised independent state authorities.

Determining personal grounds, which could be the reason for the alleged treatment, is one of the first steps in the proceeding before the Advocate intended to establish whether or not the equality body is competent. The Slovenian legislation grants the Advocate a wide range of powers, as the PADA, as well as Article 14 of the Constitution of the Republic of Slovenia, contain a wide range of protected personal grounds, and both regulations also contain an open general clause ('any other personal ground') which allows for personal grounds outside the list to be considered, too. These are identified by the Advocate using the definition of personal grounds. Sexual harassment is the only practice in which a personal ground is not necessary.



6.6 Restrictions pertaining to discrimination investigations before the Advocate

Besides the above situations when discrimination cannot be confirmed, two other situations may occur when discrimination cannot be established before the Advocate, on account of being outside the powers of the equality body. **These are matters in which cases are pending before other state authorities, and cases involving private and other relations outside the regulatory framework.**

6.6.1 Proceedings before other state authorities

The powers of the Advocate are limited by the PADA, and at the same time, the Advocate follows the principle of separation of powers and the principle of legality, according to which individual state authorities and courts are competent for different areas of legal regulation.

Compliant to the practice of the Constitutional Court of the Republic of Slovenia (eg. Decision no. U-I-92/12-13 of 10 October 2013), the Advocate cannot interfere with individual legal proceedings (administrative or other proceedings conducted in accordance with the law governing administrative and judicial proceedings) conducted by the competent authorities, nor supervise the course of the proceedings or verify the regularity of the decisions made. In these proceedings, the applicants have the possibility to verify the regularity (legality) of the proceeding and to contest the final decisions by legal remedies provided for the procedures by the law. Such interference in individual proceedings beyond the hierarchical system structure of legal remedies would be inconsistent with Article 2 of the Constitution of the Republic of Slovenia (principle of the rule of law), which encompasses the principle of multi-level decision-making.

If an individual contacts the Advocate regarding a matter in which a procedure is pending before another authority, **the Advocate cannot act as an appeal body and ascertain whether discrimination occurred in the case under consideration. In such cases, the equality body may provide independent assistance to the discriminated persons** in exercising their rights to protection against discrimination in terms of advisory and legal assistance in other administrative or judicial proceedings linked to discrimination (indent 4 of Article 21 of PADA).

6.6.2 Private and other relationships outside of legal regulation

Another limitation to decision-making regarding discrimination applies to cases, when the alleged discrimination occurs in an area outside of legal regulations. **These are primarily a private and intimate relationship** not regulated by law, such as selecting a mate, friendship, family, interpersonal or neighbourly relations and other spheres outside the reach of the law. Many prejudices are present in these situations as well, but until the prejudices collide with the law, discrimination under the PADA cannot be identified. However, if such relations overstep the limit of legal regulation and reach into an area regulated by the law, the discrimination investigation is possible, as well as other proceedings before other competent authorities (criminal, compensation, inspection proceedings, etc.)

7 STATISTICS OF ADVISORY ACTIVITIES AND DISCRIMINATION INVESTIGATION PROCEDURES

7.1 Clarification of the methodology

In 2020, the Advocate simultaneously addressed cases carried over to 2020 from previous years, as well as cases received in 2020.

In preparing the statistical review of cases closed in 2020, the same methodology was applied as for the 2019 Annual Report. Since 2018, the Advocate has been reporting on cases closed in a given calendar year regardless of the year of receipt. The code 'closed' means that a case or matter is closed as per the powers of the Advocate, however, it does not always mean that any discrimination was eliminated.

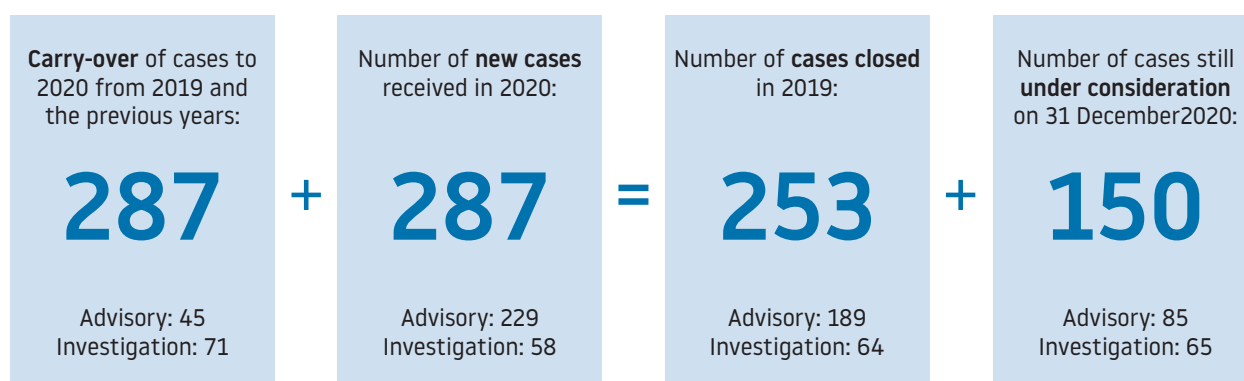
The Advocate collects the necessary data regarding all matters under consideration for the annual statistical processing. Key data concern personal grounds, the field of discrimination and the form of discrimination, data on whether the complaint was lodged anonymously or whether the applicant is known is also collected as well as whether it is a collective or individual complainant, whether the initiative was received directly from the victim or in any other indirect way. The Advocate records the dates when the complaint was received, when the case was closed and what the outcome was.

Regarding the 2020 Annual Report, the Advocate can confirm for cases in which discrimination was found whether the elements alleged by the complainants were actually found or other elements were identified. In all the other cases in which discrimination was not found, the statistics still shows the alleged personal grounds as well as fields and forms of discrimination.

7.2 Statistics of cases closed in 2020

116 cases were carried over to 2020 from the previous years, of which 79 cases were completed in 2020. In addition, the Advocate received 287 new cases for consideration in 2009, of which 174 cases were completed in 2020. This way, in 2020, the Advocate addressed a total of 403 cases. Of these, 253 cases were completed, while 150 unresolved cases were carried over to 2021. Of the unresolved cases, 37 were received in 2019 or earlier.

Graphical presentation of the statistics of cases addressed and closed in 2020



The closed cases include matters in which individuals were provided with advisory assistance in line with the fourth indent of Article 21 of the PADA, and cases of discrimination investigation under Chapter 5 of the PADA was implemented. 75 percent (189 cases) of the 253 cases closed in 2020, involved advisory assistance; in 25 percent (64 cases) of the cases, discrimination investigation was carried out.

7.3 Statistics by personal grounds

The most frequently alleged personal ground of discrimination in cases completed in 2020 was disability (14 percent). This is followed by the total number of cases with personal grounds of nationality, race and ethnic origin (11 percent).

The alleged personal ground of age occurred in 6 percent of cases, followed by gender (5.5 percent), religion or belief (5 percent), citizenship of another Member State or a third country (5 percent), place of residence (3 percent), social status (3 percent), property status (slightly over 2 percent), language (2 percent) and education (four cases which is 1.5 percent). The Advocate addressed two cases with the alleged personal ground of gender identity, which is slightly over 1 percent, two cases related to the personal ground of sexual orientation, and one case pertaining to the personal ground of gender identity. In 2020, the Advocate individually kept records of the alleged personal grounds of health status, parenthood and pregnancy, which are not explicitly listed in the law and which in the previous years, the Advocate regarded as 'other' personal grounds. Personal grounds of parenthood and pregnancy were alleged in six percent of cases, and personal grounds of health status also in six percent of cases.

The statistical review according to personal grounds shows that in 25 percent of completed cases involving advisory activities and discrimination investigation, the personal ground was not stated nor was it directly discernible from the conduct.

In the table, the sum of the numbers of cases with the alleged personal grounds does not correspond to the number of cases closed in 2020 (253). The reason for this is that one claimant may simultaneously allege discrimination on the basis of several personal grounds, or the personal ground leading to discrimination may not be given at all.

Table: Alleged personal grounds of discrimination in cases closed in 2020

	Alleged personal grounds of discrimination	Advisory, information	Discrimination investigation	Advisory and investigation together	Percentage total (%)
1.	Gender	10	Total	15	5,5
2.	Nationality	7	10	17	6
2.1	Race or ethnic origin	7	6	13	5
2.2	Language	2	4	6	2
3.	Religion or belief	7	6	13	5
4.	Disability	29	8	37	14
5.	Age	12	4	16	6
6.	Sexual orientation	2	0	2	0,8
7.	Gender identity	2	1	3	1,2
8.	Gender expression	1	0	1	0,5
9.	Social status	4	4	8	3
10.	Property status	6	1	7	2,5
11.	Education	2	2	4	1,5
12.	Citizenship	8	6	14	5
13.	Place of residence	5	4	9	3
14.	(Pregnancy), parenthood	9	7	16	6
15.	Health status	6	7	13	5
16.	Other	8	1	9	3
	no personal ground	63	6	69	25
	TOTAL	190	82	272	100

7.4 Statistics by areas of life

In 2020, most cases were completed in the field of employment and work (29 percent): 19 percent of cases concerned the field of employment and working conditions, including the termination of employment contracts and wages; 9 percent related to the area of conditions for access to employment, self-employment and profession, including the selection criteria and employment conditions, notwithstanding the type of activity or the level of professional hierarchy, including promotion; 1 case related to the field of access to all forms and all levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including internship.

22 percent of cases related to access to goods and services available to the public, including housing facilities and supply thereof. In the field of schooling and education, the Advocate completed 7 percent of cases. In the field of social protection, including social security and health care, 5 percent of cases were closed. This is followed by the area of access to social benefits with 5 percent of cases closed.

The Advocate considered 1 case of membership and inclusion in workers' or employers' organisations and organisation whose members perform a certain vocation, including benefits provided by such organisations.

31 percent of cases related to other areas not explicitly mentioned in the law, including the operation of courts, the administrative operation of state authorities, the conditions of public tenders and the area of the media.

In the table, the sum of cases pertaining to the listed areas of life does not correspond to the number of cases closed in 2020 (253). The reason for this is that one claimant may allege discrimination in several areas of life as well in areas not listed in the law or outside the Advocate's powers.

Table: Alleged areas of life considered in cases completed in 2020

Alleged area of discrimination	Advisory, information	Discrimination investigation	Advisory and investigation together Total	Percentage Total (%)
1. Access to employment, self-employment and profession, including the selection criteria and employment conditions, notwithstanding the type of activity or the level of professional hierarchy, including promotion	13	6	19	9
2. Access to all forms and all levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including internship.	1	0	1	1
3. Employment and working conditions, including termination of employment contracts and wages.	34	6	40	19
4. Membership and inclusion in workers' or employers' organisations or any organisation whose members perform a certain vocation, including benefits provided by such organisations.	1	0	1	1
5. Social protection, including social security and health	10	1	11	5
6. Social benefits	10	1	11	5
7. Education	11	5	16	7
8. Access to goods and services available to the public, including housing facilities and supply thereof.	25	22	47	22
9. Other	50	17	67	31
TOTAL	155	57	212	100

7.5 Statistics by forms of discrimination

The Protection against Discrimination Act (PADA) defines several different forms of discrimination. **The most frequently alleged form of discrimination in cases completed in 2020 was direct discrimination, namely in 73 percent of cases.** The second most common alleged form of discrimination was indirect discrimination (11 percent), followed by harassment (10 percent), incitement to discrimination (slightly over 3 percent) and victimisation (2 percent).

In 2020, the Advocate did not complete any case in respect of instructions to discriminate and sexual harassment.

In the table, the sum of the numbers of cases pertaining to particular areas of life does not correspond to the number of cases closed in 2020 (253). The reason for this is that one case may display the characteristics of several forms of discrimination, on the other hand, some cases do not fall within any category due to lack of discriminatory nature.

Table: Alleged forms of discrimination in cases completed in 2020

Alleged forms of discrimination	Advisory, information	Discrimination investigation	Advisory and investigation together	Percentage Total (%)
Direct discrimination	116	42	158	73
Indirect discrimination	15	10	25	11
Harassment	19	4	23	10,5
Sexual harassment	0	0	0	0
Instructions to discriminate	0	0	0	0
Victimisation	3	1	4	2
Incitement to discrimination or public justification for neglecting or despising	6	2	8	3,5
of which:				
Mass	48	22	70	/
Multiple	9	8	17	/



7.6 The role and contribution of the Advocate in tackling individual cases

Based on the findings that emerge in the process of discrimination investigations, the Advocate may bring about a change of practice or cessation of discriminatory conduct. In some cases, the cessation of discriminatory conduct is triggered by a recommendation or a call by the Advocate, or its decisions have consequences in the form of sanctions.

The Advocate would like to highlight the following cases as examples of successful change (e.g. cessation of discriminatory conduct, fine imposed by the inspectorate, settlement between the victim and the offender):

The Advocate assisted a person with paraplegia to reach an amicable resolution of conflict with an insurance company.

The Advocate received a complaint by a person with paraplegia whom the insurance company denied a conclusion of a life insurance policy. In the proceeding of discrimination investigation, the Advocate issued a statement prior to the decision by the insurance company stating, that discrimination on the ground of disability will be found. He called on the insurance company to consider the possibility of offering the applicant a life insurance. Consequently, the insurance company informed the Advocate that they had followed the call for an amicable settlement of the case. **(0700-40/2018)**

The Advocate achieved the withdrawal of hate-filled comments on a web portal.

The Advocate informed a moderator of a web portal on his obligation to moderate and remove comments below news articles that are not in compliance with the principle of non-discrimination. The web portal replied that they will follow the recommendation and deleted the disputed content. **(0700-44/2018)**

The Advocate assisted a person living with HIV in concluding casualty insurance.

The Advocate was approached by a person living with HIV, whom an insurance company denied access to casualty insurance due to their health status. The Advocate found discrimination based on health status. Following the Advocate's decision, the insurance company offered the conclusion of the insurance to the individual concerned. **(0700-18/2019)**

In a proceeding concerning a kindergarten, the Advocate achieved an adjustment of a child's diet due to religion.

The Advocate received a complaint lodged by a mother of a child in kindergarten. There, children were often offered meals containing pork. On ground of religion (a particular branch of the Christian religion), however, the whole family and thus the child avoid pork. As a settlement favourable to the party was reached in the case, the party withdrew the complaint and the Advocate issued a decision on the suspension of the proceeding. (0700-32/2019)

The Advocate proposed a systemic elimination of discrimination against young researchers due to pregnancy or parenthood.

The Advocate ruled that the conditions of the public call 'Researchers at the beginning of their careers' constitutes unequal treatment of female researchers, due to the personal ground of pregnancy or parenthood and also gender. This has been a second decision of the Advocate on the same subject so far. Following both decisions, the Ministry undertook to provide a way to extend the project timescale in respect of the future financing schemes taking into account the parental leave. (0700-37/2019)

The Advocate encouraged the setting up of a special area for partner and family contacts also in the women's prison in Ig.

In considering a matter related to women in the prison system, the Advocate found a case of discrimination on the ground of gender. Following the Advocate's decision, the prison management set up an area for intimate contacts for the convicts; in the same way it is arranged in the largest male prison. (0700-67/2019)

The Advocate assisted a less literate person to take a test in a tailored manner.

The Advocate was approached by an individual who wished to undergo a medical examination to extend their driving test. And because he is functionally less literate, he asked for assistance in reading the test, however, his request was denied. The Advocate asked the health service provider regarding the reasons for the refusal. The person under consideration then informed the Advocate, that he was allowed to repeat the test after the Advocate's intervention. (0700-71/2019)

The Advocate achieved the revocation of discriminatory instructions to the Administrative units regarding concluding marriages.

The Advocate received a complaint regarding the conduct of the Ministry of the Interior, one of the Administrative units and the police due to the Internal instruction no. 211-90/2008/2 (1321-03), by which the Ministry of the Interior ordered the Administrative units to be cautious when Slovenian citizens announced their marriage to citizens of some African countries. The Advocate found that the Internal instruction was discriminatory on the ground of race or ethnicity. Based on the Advocate's observation, the Ministry revoked the Internal instruction. (700-82/2019)

The Advocate brought about a change in the practice of publishing job advertisements.

The Employment Service published an advertisement for a working position, in which body weight and height were stated as a condition for employment. The Advocate addressed a notice of warning and a recommendation to the Employment Service regarding the illegality of the stated conditions. The Employment Service responded and committed to take precautionary measures when publishing advertisements. (0700-11/2020)

The Advocate informed the representatives of a company about the prohibition of discrimination in job advertisements.

The Advocate received a complaint regarding a discriminatory advertisement stating that the employer wants to hire a female candidate with children over a certain age. The Advocate sent a clarification to the employer regarding the discriminatory nature of such employment conditions and a recommendation to make sure all job advertisements are compliant with the law. The employer responded that the recommendation will be taken into account. (0702-24/2020)

The Advocate recommended to a radio station special consideration for people with mental health problems.

A client drew the Advocate's attention to a radio play posted on the radio's online social networks that inappropriately stigmatised people with mental health problems. The Advocate issued to the radio station a recommendation to remove the disputed content and to assess its suitability from the point of view of protection against discrimination. The editor responded that the posts will be removed and the recommendation will be considered in the future. (0702-42/2020)

The Advocate assisted employees to get a full Christmas bonus.

Following a decision on the discriminatory calculation of business performance, i.e. the Christmas bonus, with regard to the presence of the employee at the workplace (case no. 0700-30/2019, decision of 4 September 2019), several individuals approached the Advocate whose employers used the same method of calculating the Christmas bonuses. One of the clients informed the Advocate that by submitting the Advocate's decision, the company eliminated the discriminatory method of calculating business performance bonuses. (0702-139/2020)

8 ASSESSING THE DISCRIMINATORY CHARACTER OF REGULATIONS

8.1 Legal basis for assessing the discriminatory character of regulations

The provisions of Article 38 of the Protection against Discrimination Act (PADA) grants the Advocate the power to file requests for the review of the constitutionality and legality of regulations before the Constitutional Court of the Republic of Slovenia. If found that any law or other regulation is discriminatory, the Advocate may inform thereof the procedure proposer for the assessment of constitutionality and legality or initiate the procedure for the review of the constitutionality or legality of a regulation or general act issued for the exercise of public authority.

The Advocate implements the provision **by first assessing whether a regulation is discriminatory before deciding on the initiation of the proceeding for the assessment of constitutionality or legality**. This is an internal procedure at the Advocate, which is not conducted in the manner of discrimination investigation under the administrative procedure, as the administrative procedure is not intended for the investigation of discrimination existing at the level of regulations.

Assessments of the discriminatory character are conducted by the Advocate at their own initiative or at the initiative of a client. Only based on the prepared assessment of the discriminatory character of a regulation, the Advocate decides to submit a request for the assessment of constitutionality and legality to the Constitutional Court of the Republic of Slovenia.

In 2020, the Advocate received 33 new proposals to initiate the procedure of assessment of constitutionality and legality. **Together with nine cases carried over from the previous years, the Advocate considered 42 cases of assessment of the discriminatory character of regulations in 2020.**

In 2020, the Advocate carried out 13 assessments of the discriminatory character of regulations. In five of these cases, the regulations were found to be discriminatory; in eight of the cases, discrimination was not found. In one of the five cases where the regulations were found discriminatory, a request for the assessment of constitutionality and legality was submitted to the Constitutional court of the Republic of Slovenia, in four cases recommendations were given to the corresponding authorities to amend the regulations.

In 17 cases, initiated by individual complainants, a detailed discrimination assessment was not carried out as the preliminary analysis did not show any discrimination.

12 cases were carried over to 2021 for further consideration.

8.2 Overview of assessments of the discriminatory character of regulations

8.2.1 Assessment of the discriminatory character of regulations

Cases of assessment of discriminatory character of regulations carried out by the Advocate in 2020 in which the Advocate found discrimination pertained to the following topics:

According to the Advocate, the conditions for the conclusion of marriage and life partnership and the conditions for access to joint adoption are discriminatory.

The Advocate assessed that the Family Code and the Civil Union Act are discriminatory, as same-sex partners are not allowed to enter into marriage nor can they access joint adoption. In this case, the Advocate submitted a request for the assessment of constitutionality and legality to the Constitutional court. (050-1/2018)

According to the Advocate, the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports is discriminatory towards athletes with disabilities.

The Advocate assessed that the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports is discriminatory, as athletes with disabilities who received a medal at the World Championships in the Olympic discipline or sport are not entitled to a pension supplement, unlike non-disabled athletes. Based on the assessment, the Advocate addressed a recommendation to the competent ministry to eliminate the discrimination. (050-3/2020)

According to the Advocate, the unequal treatment of citizens and foreigners with permanent residence when deferring the payment of a loan during an epidemic is discriminatory.

The Advocate assessed that the Act Determining the Intervention Measure of Deferred Payment of Borrowers' Liabilities (ADIMDPBL)⁶ violates the principle of non-discrimination on grounds of nationality and does not comply with the Directives 2004/38/EC and 2003/109/EC. Based on the assessment, the Advocate addressed a recommendation to the competent ministry to eliminate the discrimination. The recommendation was followed. (050-5/2020)

⁶ Official Gazette of the Republic of Slovenia, no. 36/20, 49/20 – ADIMCEMCCCE and 203/20 – ADIMAMCSWE.

According to the Advocate, the prohibition for people over the age of 65 to enter shops after 10 am during the epidemic was discriminatory.

The Advocate assessed that the measure restricting shopping in stores during the coronavirus epidemic, which prohibited persons over the age of 65 to enter stores, except during the time reserved for them, constituted discrimination on the grounds of age. Based on the assessment, the Advocate made a recommendation to the Government to take into account the latter when adopting future measures. (050-8/2020)

According to the Advocate, the legal vacuum in the area of alignment of disability benefits for physical disabilities with the growth of consumer prices constitutes discrimination.

The Advocate assessed that the beneficiaries of disability benefits are discriminated against due to the lack of a systemic legal basis for the alignment of disability benefits for physical disability. Based on the assessment, the Advocate addressed a recommendation to the competent ministry to eliminate the discrimination. (050-12/2020)

8.2.2 Assessment of the non-discriminatory character of regulations

Cases of assessment of discriminatory character of regulations carried out by the Advocate in 2020 in which the Advocate did not find discrimination pertained to the following topic:

According to the Advocate, the Personal Assistance Act is not discriminatory towards deaf-blind persons in comparison to deaf persons.

The clients suffering from deafblindness are, as a blind person, entitled to the assistance and care allowance. With the enactment of the Personal Assistance Act (PAA), they also acquired the right to personal assistance in the amount of 30 hours per month, however, as a result they had to start paying half of the allowance for the assistance and care to the selected personal assistance provider. They consider that the Personal Assistance Act is discriminatory towards deafblind people in comparison to deaf people. The Advocate assessed that the regulation does not constitute a poorer treatment of deafblind people compared to deaf people. Namely, the latter are not even entitled to the assistance and care allowance and therefore do not have to pay half of the amount to the provider if they are granted the right to personal assistance. In view of the above, the Advocate assessed that the regulation is not discriminatory. (050-1/2019)

According to the Advocate, the Personal Assistance Act is not discriminatory towards deaf-blind persons in comparison to deaf persons.

The clients suffering from deafblindness are, as a blind person, entitled to the assistance and care allowance. With the enactment of the Personal Assistance Act (PAA), they also acquired the right to personal assistance in the amount of 30 hours per month, however, as a result they had to start paying half of the allowance for the assistance and care to the selected personal assistance provider. They consider that the Personal Assistance Act is discriminatory towards deafblind people in comparison to deaf people. The Advocate assessed that the regulation does not constitute a poorer treatment of deafblind people compared to deaf people. Namely, the latter are not even entitled to the assistance and care allowance and therefore do not have to pay half of the amount to the provider if they are granted the right to personal assistance. In view of the above, the Advocate assessed that the regulation is not discriminatory. (050-2/2019)

According to the Advocate, a different arrangement for disabled pensioners and persons with disabilities is not discriminatory.

The client stated that disabled pensioners are in a worse or less favourable situation compared to persons with disabilities, who are not entitled to disability pensions, but receive a disability allowance. The status of both groups is regulated by different regulations. The Pension and Disability Insurance Act (PDIA-2) and the Social Inclusion of Disabled Persons Act (SIDP) refer to persons with disabilities in situations that are substantially different. For persons addressed under the Pension and Disability Insurance Act (PDIA-2), their entitlement to pension and disability insurance rights (stemming from their employment) must be taken into account. Persons addressed under the Social Inclusion of Disabled Persons Act (SIDA) are not or cannot be entitled to these rights, as they have never worked or have worked for a short period. As the two groups are not in comparable situations, different arrangements by different acts with different sets of rights are justified. As a result, the Advocate assessed that the legal regulation is not discriminatory towards disabled pensioners. (050-3/2019)

According to the Advocate, the decision on macro-prudential restrictions on household lending by the Bank of Slovenia is not discriminatory.

As of 1 November 2019, the Bank of Slovenia issued a resolution tightening the conditions under which banks and savings banks may grant consumer and housing loans to consumers. According to the Association of Banks, the decision of the Bank of Slovenia could leave 57 percent of pensioners, 20 percent of employees who (co)support one child, and between 10 and 25 percent of other employees without the possibility of taking out a loan. The Advocate assessed the discriminatory character of the decision and concluded that, given the social status, financial situation and family status of the borrowers, the decision does not constitute discrimination as the restrictions are an appropriate, necessary and proportionate measure to ensure financial stability. (050-8/2019)

According to the Advocate, the regulations pertaining to fathers who pay child support for their children do not constitute discrimination in determining their creditworthiness by banks in Slovenia.

In Slovenia, after divorce or separation of parents, in 75% of cases child custody is granted to the mothers. This means that in most of these cases, it is the fathers who are obliged to pay child support for them. As a result, the fathers tend to be less creditworthy, while mothers are not given such a rigorous assessment of their creditworthiness by the banks. The Advocate established in the proceedings that in assessing the creditworthiness of consumers, the amount of child support is taken into account for both parents. With the implementation of the Decision on restrictions on household lending, adopted by the Bank of Slovenia, a mechanism was established that prevents indirect discrimination against fathers in assessing their creditworthiness. (050-10/2019)

As unemployment is not a personal ground under the PADA, the Advocate did not assess possible systemic discrimination against the self-employed during sick leave of up to 30 days.

Employees and the self-employed receive compensation for sick leave from the compulsory health insurance from the 31st day of illness or injury. During the first 30 days of sick leave, the compensation is borne by the employers. The client alleged discriminatory treatment of the self-employed in comparison to the employed. The self-employed run a business and employ themselves, therefore, they have to make sure, that they have enough resources available to sustain themselves during the first 30 days of illness and incapacity of performing their work. In the assessment of potential systemic discrimination of the self-employed due to such an arrangement of sick pay, the Advocate found that self-employment is not a personal ground under the PADA, so the potential discrimination of this arrangement cannot be considered. The Advocate's findings, however, do not mean that the current regulation of health care in Slovenia is fully appropriate. Namely, the NIPH data show that the self-employed and other comparable categories of employees benefit from sick leave of up to 30 days to a much lesser extent compared to employees in an employment relationship. (050-11/2020)

According to the Advocate, the Residence Registration Act is not discriminatory against foreign workers who are employed in Slovenia and work in the position of drivers in international transport.

The client claimed that the Residence Registration Act is discriminatory while not considering the special position of foreigners who are employed by a Slovenian employer and work as drivers in international transport. Most of them are domiciled at addresses in third countries. Many administrative units reject their registration of temporary residence at addresses in Slovenia, as they actually do not reside in Slovenia at all. However, without residence in Slovenia, they cannot benefit from certain rights in Slovenia.



The Advocate analysed and assessed their legal position and found that there was no legal vacuum in the regulation and that the conditionality of the rights upon residence in Slovenia does not constitute any systemic/legal discrimination as it is objectively justified and urgently necessary, and derives from the essential nature of the (exercise/use of the) rights. Nevertheless, the equality body assessed that, in practice, there is inadequate enforcement of certain regulations and issued recommendations to the Ministry of Health and the Ministry of the Interior (050-15/2020)

According to the Advocate, the manner of regulating crisis allowances for large families by the government is not discriminatory.

Based on a question from the press, the Advocate assessed the discriminatory character of the intervention measure related to the supplementary allowance for large families. All families with three or more children were entitled to the allowance regardless of their property status. For families with one or two children, their property status was taken into account when considering the supplementary child allowance. Discrimination on the basis of family status at the intersection with property status was alleged. In the proceedings, the Advocate found that the large family allowance and the child allowance were not comparable. According to the Parental Protection and Family Benefits Act, the large family allowance is universal. It is granted to families with three or more children, where the state bears part of the cost of childcare, regardless of the social status. However, child allowance is not universal. It is granted to socially disadvantaged children, including those in families with three or more children. The Intervention Measure Act followed this arrangement, except in the part when it granted the entitlement to the supplementary child allowance only to families which did not also receive the allowance for large families. The Advocate assessed that the regulation is not discriminatory, as it takes into account the different situation of large families compared to other families. (050-22/2020)

8.2.3 Rejected requests for the assessment of the discriminatory character of regulations

In 2020, the cases (precisely 17) in which the Advocate did not conduct an assessment of discriminatory character, as the preliminary analysis showed no discrimination, were the following:

- The client approached the Advocate with a request for the assessment of the discriminatory character of the Citizenship of the Republic of Slovenia Act (CRSA), which does not allow unaccompanied minors who show exceptional achievements for the Republic of Slovenia to acquire the Slovenian citizenship by extraordinary naturalisation, unlike adults who have this opportunity. In the proceedings, the Advocate found that the extraordinary naturalisation pursues the state interest, which according to the legislator could be fulfilled only by adults with full legal capacity. The Advocate assessed that the age of majority is an appropriate and suitable condition in view of the goal pursued.

The equality body also pointed out that the Citizenship of the Republic of Slovenia Act already provided for a possibility of acquiring citizenship for unaccompanied minors after five years of residence in the Republic of Slovenia based on the status of international protection, without having to prove their benefits to the state for scientific, economic, cultural, national or similar reasons under Article 13 of the Citizenship of the Republic of Slovenia Act. As a result, the Advocate did not find discriminatory character of the contested regulation. (050-5/2019)

- The client contacted the Advocate for reasons relating to the proposal of the Deputies Act amendment, discussed in the National Assembly of the Republic of Slovenia in 2019, which, among other things, regulated the right to reimbursement of transport costs to and from work in such a way that, under the new arrangement, the deputies would be granted mileage as reimbursement of travel expenses. The clients alleged discrimination against civil servants compared to deputies, as the employer reimburses transport costs to civil servants in the amount corresponding to the cheapest public transport. In the case of the allegedly discriminatory provision from the amendment to the Deputies Act, the Advocate observed that, at the end, it was not enacted by the National Assembly. Therefore, the discrimination assessment was not carried out. (050-6/2019 and 050-7/2019)
- The client argued that the Architecture and Civil Engineering Act was discriminatory, as it enables the competent chamber to classify persons in particular position who at their own choice work part-time as managers as inactive authorised engineers. The Advocate found that part-time work is the choice of the individual and does not represent a personal ground. As a result, the equality body decided not to carry out a more detailed assessment of discrimination. (050-1/2020)
- Article 32 of the Kindergartens Act stipulates that parents who are not subject to income tax in the Republic of Slovenia pay the full price of the program for their child, which includes asylum seekers who are not yet subject to income tax. The client contacted the Advocate for an opinion on whether the provision was discriminatory against asylum seekers or their children. According to the Advocate, the regulation is not exclusionary towards the children of asylum seekers due to their status, but only excludes individuals who have not yet worked and thus have not yet become subject to personal income tax. The latter, however, have the opportunity to file a request for a subsidy with the local community, which can be approved by the municipality at its discretion. In view of the above, the Advocate did not choose to conduct a more detailed assessment of discrimination. (050-2/2020)
- The Advocate was approached by self-employed individuals who worked part-time during the coronavirus epidemic and were insured for the remaining working hours under the regulations governing the parental, health or disability care. They alleged discrimination on the grounds of parenthood, medical condition or disability. During the monitoring of the adoption of measures, the Advocate found that in the further measures, all categories of individuals were included, so the equality body did not carry out a more detailed assessments of discrimination. (050-6/2020, 050-7/2020, 050-8/2020, 050-9/2020, 050-20/2020, 050-21/2020)

- Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic granted the tourist vouchers to citizens and foreigners with permanent residence, however, foreigners with temporary residence were not entitled to them. The clients, foreigners with temporary residence in Slovenia, alleged discrimination on the grounds of legal status in comparison with citizens of Slovenia or foreigners with a permanent residence. Considering that the regulations grant to foreigners in the Republic of Slovenia benefits comparable to the benefits of Slovenian citizens on the basis of a permanent residence, while foreigners with temporary residence in Slovenia are granted only rights and benefits arising from family care, and allowances arising from work, the Advocate considered that the distinction is justified in the case of tourist vouchers. As a result, the equality body did not choose to carry out a more detailed assessment of discrimination. (050-13/2020 and 050-14/2020)
- The client lodged a complaint with the Advocate regarding the incapacity of people with disabilities, the sick and the elderly to take advantage of the tourist vouchers granted to them. The complainant alleged discrimination on the grounds of age, disability and health and posed the question of why these persons cannot use the vouchers for other services. The benefit was introduced by the Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic. The Advocate found that the vouchers were intended to support Slovenian tourism industry, which was left without income due to the pandemic, and to direct domestic guests to tourist facilities in Slovenia. According to the Advocate, the goal pursued by the vouchers was legitimate, and the requirement that the vouchers be used for tourism was appropriate and necessary. Hence, no suspicion of discrimination arises from the regulation. Consequently, the Advocate did not carry out a more detailed assessment of discrimination. (050-17/2020)
- The Advocate addressed the complaint of a client regarding the ordinance on restrictions on the crossing of borders with neighbouring countries (Ordinance of imposing and implementing measures to prevent the spread of epidemic COVID-19 at the border crossing points at the external border and inspection posts within national borders of the Republic of Slovenia). Until 28 September 2020, this ordinance stipulated particular exceptions to mandatory quarantine when crossing the border. The exceptions also included owners or tenants of real estate, vessels, or campsite plots. The client alleged discrimination on the ground of property status, as those who do not have property or contractual rights in a neighbouring country are in a disadvantaged position when crossing the border. The Advocate assessed that the exceptions to the mandatory quarantine also include a number of other life situations which take into account a special situation of the persons concerned and their need to cross the border. The equality body also assessed that a property or contractual right in another country does not say anything about a person's property status. Hence, no personal ground was given in the case. The Advocate assessed that the regulation was not discriminatory. (050-19/2020)

- The client argued that the second and third paragraphs of Article 34 of the Health Care and Health Insurance Act (ZZVZZ) and the third paragraph of Article 137 of the Rules on Compulsory Health Insurance are discriminatory. The provisions stipulate that when an employee's employment contract expires during their absence from work due to illness or injury by reason of temporary incapacity for work, they are entitled to a salary compensation for additional 30 days after the termination of the employment relationship. However, if the cause of the temporary incapacity for work is an occupational disease or injury at work, the employee is entitled to a salary compensation for the entire period of the incapacity for work that is until they are able to work again. The Advocate found that the unequal treatment stemmed from the lack of comparability of the two positions and, therefore, a more detailed assessment of discrimination was not carried out. (050-23/2020)
- According to the client, the Ordinance on the compensation for the use of building land issued by the municipality of their residence is discriminatory. The ordinance stipulates that if the owners have a building of small value and small size on a building plot, they must pay disproportionately high fees for the building land, but if they have a residential house on the plot, the fees are much lower. The Advocate was not able to identify any personal ground in the case that would lead to unequal treatment. The ordinance of the municipality distinguishes between the calculation of compensation for the use of built-up building land and the use of building land not build on. The size of the land affects the calculation, too. In the first case, (only) the area of the built-up building land is taken into account (i.e. according to the actual area occupied by the building on the plot). In the second case, the total area of the building land (not build on) is taken into consideration. The method of calculating the compensation is a result of in the municipality's strategy to make building land more built-up over time. As a result, the equality body decided not to carry out a more detailed assessment of discrimination. (050-25/2020)

8.2.4 Assessment the discriminatory character of regulations still under consideration

The cases still under consideration on 31 December 2020 pertain to the following topics:

Does the fact that access to biomedically-assisted procreation is only available to women with a male partner constitute discrimination against single women and women in same-sex partnerships?

The second paragraph of Article 5 of the Infertility treatment and procedures of biomedically-assisted procreation act stipulates that biomedically-assisted procreation is available to men and women living in mutual marriage or cohabitation who, according to the position of modern medicine, cannot expect pregnancy through sexual intercourse, and they cannot be helped by other infertility treatment procedures. (050-1/2017)



Does the suspension of the obligation to pay contributions to the occupational retirement scheme constitute discrimination on grounds of disability, age or parenthood and, indirectly, also gender?

The Pension and Disability Insurance Act (PDIA-2) stipulates in paragraph 11 of Article 200 that the obligation to pay contributions to the occupational retirement scheme is suspended for the period when the insured member is entitled to the compensation for professional rehabilitation pursuant to the regulations on pension and disability insurance; or salary compensation under the parental care regulations; or when the insured person fulfils the conditions for acquiring the right to an occupational pension. [\(050-2/2018\)](#)

Are the conditions for the professional heads of driving schools under the Drivers Act discriminatory on the ground of education and the form of their employment contract?

Pursuant to the third paragraph of Article 30 of the Drivers Act (ZVoz-1), a driving school must have a professional head who has a valid license for a professional driving school manager and works as a self-employed person or based on a fixed-term or indefinite full-time employment contract only in one driving school. As a result, the professional head of the school cannot be a retiree. The fourth paragraph of Article 32 of the Drivers Act stipulates the conditions for the acquisition of the license for a professional manager of a driving school. The clients puts forward the condition of education as disputable. [\(050-3/2018\)](#)

Is the exemption from court fees discriminatory against foreigners on the grounds of nationality?

Pursuant to the Legal Aid Act, the beneficiaries of free legal aid and thus also the exemption from court fees are foreigners with a permanent or temporary residence in the Republic of Slovenia and stateless persons legally residing in the Republic of Slovenia. Other foreigners are entitled to this right only under the condition of reciprocity and under the conditions or in cases provided for by international treaties binding on the Republic of Slovenia. [\(050-9/2019\)](#)

Do the different age limits for returning pupils to schools after the containment of the coronavirus epidemic constitute discrimination against children on the basis of their age?

After the end of the first wave of the epidemic outbreak, the pupils in the first triad of primary school returned to school, while the other pupils continued the distance learning. The client argues that these pupils were in a disadvantageous position as far as education in school is concerned. [\(050-10/2020\)](#)

Does the condition, that only persons younger than 65 years of age are entitled to personal assistance constitute discrimination on the ground of age?

The Personal Assistance Act stipulates that a user aged between 18 and 65 is entitled to personal assistance. (050-16/2020)

Does the ineligibility for the assistance and care allowance of a minor with a disability other than blindness constitute discrimination on the grounds of disability and age?

The assistance and care allowance is mutually exclusive with the childcare allowance from the Parental Protection and Family Benefits Act, except for children up to 18 years of age who are blind. (050-18/2020)

Does the condition of an adequate command of the Slovene language for the inclusion of third-country citizens in the unemployment register constitute discrimination on the grounds of citizenship and indirectly nationality?

The first paragraph of Article 8a of the Labour Market Regulation Act stipulates that an unemployed person who is a third-country citizen must have an adequate command of the Slovene language, which is proved by a valid certificate of successful completion of the Slovene language exam at the entry level (level of difficulty A1) no later than 12 months after registration in the register of unemployed persons. Pursuant to the first paragraph of Article 129 (indent 11), the Employment Service shall cease to keep a person in the register of unemployed persons if they fail to pass the Slovene language exam at the entry level. (050-24/2020)

Are the strict conditions for crossing the border during the epidemic for foreign workers and drivers in international transport without registered residence discriminatory?

Following the amendment of the Ordinance of imposing and implementing measures to prevent the spread of epidemic COVID-19 at the border crossing points at the external border and inspection posts within national borders of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 163/20), a person who crosses the border for family reasons to maintain contact with close family members outside the EU Member States or the Schengen area and returns within 72 hours and does not have residence in the Republic of Slovenia, can, following the amendment of the ordinance, no longer be exempt from the home quarantine or negative coronavirus test submission obligation. (050-27/2020)

Does the different procedure for obtaining the assistance and care allowance for persons with movement disability compared to blind persons constitute discrimination on the ground of disability?

Article 99 of the Pension and Disability Insurance Act sets out the conditions for obtaining the allowance for people with movement disability; and Article 100 lays down the conditions for obtaining the allowance for blind people. (050-28/2020)

Does the inaccessibility of the disability status under the Social Inclusion of Disabled Persons Act for persons with mental health problems constitute discrimination on the ground of health status or type of disability?

The Social Inclusion of Disabled Persons Act considers persons with intellectual disabilities, autistic people, the deafblind, persons with moderate to severe brain injury or impairment and the most severely handicapped to be eligible, but not persons unable to work due to mental illness acquired by 18 years of age. [\(050-29/2020\)](#)

Does determining the childbirth allowance during the coronavirus epidemic based on the time of birth constitute discrimination?

The proposal of the Set of measures to mitigate the effects of the epidemic no.7, that is the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (Official Gazette of the Republic of Slovenia, No. 203/20, hereinafter: ADIMAMCSWE) provides for an 'extraordinary allowance at childbirth' in the first paragraph of Article 100 stating that the person entitled to the allowance in the amount of EUR 500 is one of the parents with permanent residence in the Republic of Slovenia, for a child born from the date of the enactment until one year after the end of the epidemic, which means that if this Act is adopted, all children born from 1 January 2020 until the date the law enters into force will be excluded. [\(50-31/2020\)](#)

9 PROTECTION AGAINST DISCRIMINATION AT THE STRUCTURAL LEVEL

9.1 Legal basis for protection against discrimination at the structural level

Under the PADA, the Advocate also exercises its tasks and powers of protection against discrimination at the structural level, i.e. at the level of the social groups' position and social relations in connection with the arrangement and regulation of social subsystems.

In this regard, the Advocate issues an Annual Report and special reports, which are intended to shed light on individual, thematically focused issues related to discrimination or its individual aspects.

As state authorities, local communities, self-governing national communities and holders of public powers are responsible for ensuring equal treatment of persons with different personal grounds under the PADA, the Advocate also performs analyses of these measures within the power and responsibility of monitoring the overall situation in terms of protection against discrimination in the country.

The provisions of the PADA, which represent the basis for the Advocate's activities as per protection against discrimination at the structural level, are highlighted below.

Pursuant to **Article 21 of the PADA**, the Advocate has the following powers and responsibilities that fall within the framework of protection against discrimination at the structural level, namely:

- conducting independent research on the situation of people with certain personal grounds, particularly gender, nationality, racial or ethnic origin, religion or belief, disability, age, sexual orientation and other issues regarding discrimination against people with certain personal grounds;
- publishing independent reports and making recommendations to state authorities, local communities, holders of public authorisations, employers, business entities and other bodies regarding the established situation of people with certain personal grounds, i.e. relating to preventing or eliminating discrimination and adopting special and other measures to eliminate discrimination; raising the awareness of the general public on discrimination and the measures to prevent it;
- monitoring the general situation in the Republic of Slovenia in the field of protection against discrimination and the situation of people with certain personal grounds;
- Proposing the adoption of special measures to improve the situation of people who are in a less favourable position due to certain personal grounds
- ensuring the exchange of available information on discrimination with authorities of the European Union;
- conducting other tasks determined by this Act.



In accordance with the **first indent of Article 22 of the PADA**: 'In regular annual or special reports, the Advocate shall report to the National Assembly of the Republic of Slovenia about their work and findings on the existence of discrimination involving individual groups of people with certain personal grounds.

Pursuant to **Article 15 of the PADA**: 'When forming solutions and proposals to attain the objective of this Act, the Government of the Republic of Slovenia (hereinafter the Government) and other state authorities shall cooperate with social partners and associations, institutions or private bodies (hereinafter: non-governmental organisations), which work in the field of equal treatment, protection of human rights and fundamental freedoms, protection of vulnerable groups against discrimination, and legal or social assistance for people subject to discrimination.' Therefore, the Advocate, as a state authority, pays special attention to the dialogue with civil society organisations.

Pursuant to **Article 16 of the PADA**, the Advocate has, alongside the competent inspection services, the power and responsibility to '... collect anonymised data on the number of discrimination cases discussed according to individual personal grounds, forms of discrimination and individual areas from Article 2 of this Act. The inspection services shall submit these data to the Advocate once a year.' The purpose of such data collection is also 'monitoring, planning and managing the non-discriminatory policy,' as follows from the second indent of the same article of the PADA.

Monitoring the overall situation, as follows from **Articles 16 and 21 of the PADA**, is not the Advocate's inherent objective, but a method of work. It includes a series of activities performed by the Advocate with the objective of collecting, acquiring information and knowledge, with the purpose to achieve the deepest possible understanding of discrimination at the structural level, including its various manifestations, causes and origins as well as social processes that generate discrimination. At the same time, monitoring also includes the collection of information on society's responses to discrimination, on the regulations and practices of social subsystems regarding protection against discrimination and on changes in the value system in society.

10 DATA ON DISCRIMINATION INVESTIGATIONS – OTHER STATE AUTHORITIES

10.1 Legal basis and method of data collection

Pursuant to the third chapter of the Protection against Discrimination Act (PADA), the Advocate of the Principle of Equality (the Advocate) monitors the state of discrimination in Slovenia in several ways, including the use of research methods (own and international), conducting analyses of the situation (in the country and international comparison), monitoring the practices of other state authorities and conducting analyses of the Advocate's activities.

Article 16 of the PADA explicitly requires the Advocate and the competent inspection services to collect **anonymised data on the number of considered discrimination cases classified according to individual personal grounds, forms of discrimination and individual subject areas**. The inspection services are required to annually introduce the data to the Advocate. The data is collected and used for the purposes of monitoring, planning and managing the non-discriminatory policy and for scientific and research purposes.

Within the tasks and powers under the PADA, the Advocate monitors the overall situation in the Republic of Slovenia with regards to the protection against discrimination and position of persons with particular personal grounds (sixth indent of Article 21 of PADA). In this light, the Advocate submitted a request to the competent authorities **for information on reported cases of discrimination in 2020**, accordingly classified by individual personal grounds, forms of discrimination and individual areas of life. Besides the inspection services, the Advocate submitted the request also to the Police, the Office of the State Prosecutor-General and all courts.

The Prosecution office and the Police were requested to provide information on cases of criminal offences with the constituent elements from Article 297 of the Criminal Code (CC), i.e. public incitement to hatred, violence or intolerance, and Article 131 of the Criminal Code (CC-1), i.e. violation of right to equality in connection to any personal ground (gender, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, property status, education or other), which could as such be discriminatory under the PADA: The Advocate also requested information from the Police regarding minor offences under Article 20 of the Protection of Public Order Act (ZJRM-1).⁷

Additionally, the Advocate requested anonymised information from courts regarding final judgements pertaining to Article 14 of the Constitution of the Republic of Slovenia, the PADA, the Implementation of the Principle of Equal Treatment Act, Article 6, 6a, 27 and 133 of the Employment Relationships Act, Article 6 of the Equalisation of Opportunities for Persons with Disabilities Act and Article 3 of the Freedom of Religion Act.⁸

⁷ Official Gazette of the Republic of Slovenia, no. 70/06

⁸ Official Gazette of the Republic of Slovenia, no. 14/07, 46/10 - dec. Constitutional Court, 40/12 – Fiscal Balance Act and 100/13

In 2020, the Advocate addressed a request to the competent authorities for data on number of discrimination cases considered according to individual personal grounds, areas of life and forms of discrimination, with the purpose of monitoring the overall situation.

These authorities concerned were as follows:

- inspection services,
- the Police,
- the Office of the State Prosecutor-General,
- all courts.

10.2 Cases of discrimination considered – Inspection services

Pursuant to Article 16 of the PADA, the Advocate requested information from 25 inspection authorities. Of the 25 inspection services approached, 18 responded. Of the 18 responses received, 14 inspection services did not investigate any cases of discrimination in 2020 (one more than the year before) according to personal grounds, forms of discrimination and individual areas of life.

The inspection services that did not consider any cases of discrimination in 2020 were:

- Agency for Communication Networks and Services of the Republic of Slovenia;
- Financial Administration of the Republic of Slovenia;
- Information Commissioner;
- Public Sector Inspectorate of the Republic of Slovenia;
- Inspectorate of the Republic of Slovenia for Agriculture, Forestry, Hunting and Fisheries;
- Culture and Media Inspectorate of the Republic of Slovenia;
- Inspectorate of the Republic of Slovenia for the Environment and Spatial Planning;
- Inspectorate of the Republic of Slovenia for Protection against Natural and Other Disasters,
- Civil Aviation Agency of the Republic of Slovenia;
- Information Security Administration of the Republic of Slovenia – Information Society Inspectorate;
- Slovenian Nuclear Safety Administration – Radiation and Nuclear Safety Inspection Service;
- Slovenian Radiation Protection Administration – Radiation Protection Inspection Service;
- Metrology Institute of the Republic of Slovenia – Metrology Supervision Division;
- Budget Supervision Office of the Republic of Slovenia – Budgetary Inspection Division.

Four inspection services reported cases of discrimination:

- Labour Inspectorate of the Republic of Slovenia;
- Defence Inspectorate of the Republic of Slovenia;
- Inspectorate of the Republic of Slovenia for Education and Sport;
- Market Inspectorate of the Republic of Slovenia.

The following did not respond to the Advocate's request:

- Inspectorate of the Republic of Slovenia of Infrastructure;
- Internal Affairs Inspectorate of the Republic of Slovenia;
- Agency for Medicinal Products and Medical Devices of the Republic of Slovenia;
- Slovenian Maritime Administration – Maritime Inspection Division;
- Administration for Food Safety, Veterinary Sector and Plant Protection;
- Chemicals Office of the Republic of Slovenia – Chemicals Inspection;
- Health Inspectorate of the Republic of Slovenia.

A more detailed overview of the discrimination cases reported by the respective inspection services follows.

10.2.1 Labour Inspectorate of the Republic of Slovenia

The Labour Inspectorate of the Republic of Slovenia does not keep records or databases by cases under consideration, but by the established violations of the provisions of labour law, which applies also to violations of the prohibition of discrimination. The main reasons for such approach to record keeping are as follows:

- One complaint usually lists more than one alleged infringement of the law, frequently many different and varied infringements.
- The indications in the complaints are usually insufficiently detailed, therefore, the existence of discrimination or particular personal ground leading to discrimination of an individual or group cannot be established only based on the complaint.
- The description of the violations stated in the complaint does not necessarily correspond to the definition of infringements in the material regulations or to the findings of the inspector following the inspection.

Moreover, the Labour Inspectorate does not keep any records or statistics with regard to personal grounds that led to discrimination.

The findings for 2020 show that labour inspectors noted violations of the prohibition of discrimination under Article 6 of the Employment Relationships Act (ERA-1) in 12 cases. Compared to previous years when the number of violations of the prohibition of discrimination was around 20, the number of such cases decreased. The reason is linked to the coronavirus epidemic and the increased workload of inspectors in epidemic-related areas. In addition, the operation of many industries was temporarily suspended and the presence of workers in the employers' premises has decreased as well, due to increased volume of telework. All this is reflected in the contents of the reported infringements and requests for professional assistance.

Five out of the total 12 violations concerned employment seekers and seven violations were committed against employees. All violations were found among employers in the private sector, mostly in limited liability companies (d.o.o.), two cases occurred with private entrepreneurs.

In the five cases of discrimination against employment seeker, the employer sought candidates with the following personal grounds:

- in two cases, the employer was looking for female 'waitresses';
- in one case, it was stated in the vacancy notice that the position was only available to men aged between 19 and 35 (carpentry);
- in one identified case, the employer stated that they need 'persons with tiny skilful fingers';
- in one case (with considerable media coverage), the employer published a vacancy notice for a 'dental assistant', while the conditions read as follows '...a candidate with children over the age of three is preferred who has no intention to take maternity leave in the next 2 or 3 years', which indicated the personal grounds of gender, pregnancy, parenthood and family status.

In the above cases, either an infringement of Article 6 of the Employment Relationships Act (infringement of the prohibition of discrimination) or an infringement of Article 27 of the Employment Relationships Act (equal treatment regardless of gender in vacancy notices) was identified and recorded.

In all cases of violating the prohibition of discrimination against employment seekers, the employers withdrew the disputed vacancy notice upon presentation of the violation by the inspector at the latest, in one case even before (under public pressure). For this reason too, the inspectors, as a rule, issued warnings based on Article 53 of the Minor Offences Act (ZP-1)⁹ or a decision establishing minor offence with a caution based on Article 21 of the Minor Offences Act.

The remaining seven cases of violations concerned situations when employers put workers in an unequal position during the employment relationship. For example:

- were paying wages to different workers at different times;
- violated the prohibition of discrimination by paying different workers the payment for annual leave at different times;
- workers employed by the same employer received different amounts of the payment for annual leave, without this being justified by their term of employment with the employer.

In these cases, the workers were treated unequally, however, for the most part it was not possible to link the discriminatory treatment with a particular personal ground.

In one case, e.g. workers with a better paid job in production (mechanics) received their wages several days earlier than other workers in production (seamstresses), and the employer submitted the withholding tax form exclusively for them earlier than for the other workers, and served on them their payrolls ahead of the others. In the subject case, it is of key importance that it was a male worker, while the seamstresses were females with a lower-paid job who, in addition, received their wages later.

A case from 2019 also falls under the violations of the prohibition of discrimination recorded in 2020, which concerns an employer who adjusted the payment for annual leave with regard to the number of days of the worker's presence or absence from work. The mentioned case of indirect discrimination of employees was presented in the Annual Report for 2019. However, in 2020, the infringement proceeding resulted in a decision establishing minor offence and a caution to the employer.

Another similar case of violation of the prohibition of discrimination from 2020 is when the employer in agreement with the unions paid lower business performance bonuses to workers who were absent from work due to health reasons or parental leave in 2019 compared to those who were not absent for the mentioned reasons. In this case, indirect discrimination of employees based on the personal grounds of parenthood, pregnancy, health status, disability, motherhood, gender, etc., was found.

⁹ Official Gazette of the Republic of Slovenia, no. 29/11 – official consolidated text, as amended and supplemented



In the cases of established violations of the prohibition of discrimination, the inspectors took the following measures:

- issued a warning based on Article 33 of the Inspection Act (in two cases);
- issued a warning on the basis of Article 53 of the Minor Offences Act (ZP-1, in six cases of the established violations);
- issued a decision establishing minor offence with a caution based on Article 21 of the Minor Offences Act (ZP-1, in three cases);
- in one case, the inspector initiated a minor offence proceeding at the end of 2020, which, however, was not completed by the date of this Report.

When recording violations of the prohibition of discrimination, the inspectors relied on a special act of the labour law, namely the Employment Relationships Act (ERA-1), hence, the Labour Inspectorate did not identify any violations of the PADA in 2020.

Also, the inspectors did not find any violation of Article 133 of the Employment Relationship Act (ERA-1), which provides for equal pay for male and female workers.

10.2.2 Defence Inspectorate of the Republic of Slovenia

In 2020, the Defence Inspectorate addressed four cases of reported discrimination. The complaints concerned the alleged violations of the Defence Act¹⁰ and Service in the Slovenian Armed Forces Act (ZSSloV)¹¹ and regulations and acts issued on the basis thereof. From a substantial point of view, the following cases were considered:

- An employee of the Slovenian Army demanded the elimination of violations of the workers' rights. The report was forwarded by the Inspectorate to the General Staff. The latter found no violation of regulations. As a result, the Inspectorate did not initiate inspection arrangements in the subject area.
- The Inspectorate considered a complaint regarding an alleged abuse of the Service in the Slovenian Armed Forces Act and due to unequal treatment. Within its competences, the Inspectorate carried out inspection arrangements at the General Staff. Within the context of the inspection proceeding, it was found that the concerned person did not act contrary to the regulations by determining the criteria for the payroll bonuses for increased workload recording, calculating and paying pursuant to Article 59 of the Service in the Slovenian Armed Forces Act.

¹⁰ Official Gazette of the Republic of Slovenia, no. 103/04 – official consolidated text and 95/15

¹¹ Official Gazette of the Republic of Slovenia, no. 68/07 and 58/08 – Act Amending the Public Sector Salary System Act

- A complaint regarding suspicion of illegal acquisition of property and violations of the fundamental rights of workers is still under consideration with the Inspectorate. The complaint was lodged by the Trade Union of the Military, Defence and Protection, regarding ‘discriminatory actions of the command structure, unequal treatment of soldiers, illegal acquisition of property relating to the planned compensation of overtime hours after the reference period and the issuance of illegal orders and forced use of annual leave for the members of the Slovenian Army’. The complaint is still pending.
- The Inspectorate considered the complaint in light of non-compliance with regulations and unequal treatment of employees. The complaint was referred to the Public Sector Inspectorate as the Defence Inspectorate is not competent in matters relating to Article 39 of the Collective Agreement for Public Sector and Article 71 of the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ADIMCEMCE).

10.2.3 Inspectorate of the Republic of Slovenia for Education and Sport

Complaints of alleged discrimination received by the Inspectorate for Education and Sport in 2020 related to the assessment of knowledge, educational measures, cooperation with parents, work with children with special needs, work organisation – formation of departments and distance learning. The Inspectorate notes that the complaints often reflect the individuals’ own perceptions of the events and do not necessarily fulfil the conditions that give rise to discrimination under the Protection against Discrimination Act.

In exercising its powers in the field of unequal treatment, the Inspectorate for Education and Sports relies on Article 2a of the Act on the Organisation and Financing of Education Act. This Article stipulates that kindergartens, schools and other institutions for the education of children and adolescents with special needs shall ensure a safe and stimulating learning environment where corporal punishment of children and any other form of violence against and among children as well as unequal treatment are prohibited, that would be based on gender, sexual orientation, social and cultural background, religion, racial, ethnicity and nationality or peculiarities of physical and mental development.

The complaints received by the Inspectorate pertain to direct discrimination based on the following personal grounds:

- gender (allegation of discriminatory treatment of a student and his parents by the school);
- disability (inappropriate teacher communication);
- other personal grounds (personal characteristics pointed out by the teacher, exposure of a student whose parents did not give appropriate consents for consideration, recruitment procedures).



According to the forms of discrimination, the Inspectorate addressed the following reports:

- two cases of harassment;
- eight cases of justification of neglect or contempt for a person or group based on particular personal grounds.

As regards the distance learning, the Inspectorate noted cases where individual schools tried to order measures, which could lead to discrimination or stigmatisation of children (request for more than one camera, eye masks, etc.). In this respect, on 25 November 2020, the Inspectorate, as part of its consultation service, forwarded to all institutions a circular letter no. 069-22/2020/10, reminding all the concerned stakeholders that such measures are unacceptable and may constitute a violation of the provisions of the PADA and, possibly, a criminal conduct.

Inspections and additional enquiries in this regard did not establish any violations as to the field of discrimination. The initiatives were addressed in light of the applicable school regulations and associated rights and obligations of students as well as cooperation with parents.

10.2.4 Market Inspectorate of the Republic of Slovenia

The Market Inspectorate supervises access to goods and services available to the public. Supervision is carried out solely based on received complaints. In 2020, the following cases were addressed:

- Use of sauna on one day of the week only for women (gender): On Wednesdays, the sauna was open only for women. However, the price of a monthly or annual entry ticket was the same for women and men. During the inspection, an administrative warning was issued where the person concerned was ordered to eliminate the deficiencies, which was promptly taken into account.
- Food-service establishment (refusal to serve a guest of a certain nationality): During the inspection, it was found that guests, including the guest who submitted the complaint, caused various problems in the food-service establishment, behaved in an insulting manner towards the staff, especially women, threatened, shouted, due to which the Police was called several times. Therefore, the guests were denied service based on their behaviour (and not because of their nationality). No violations were found under the provisions of the PADA.
- Food-service establishment (refusal to serve a particular guest): During the inspection, it was found that the guest was not served due to his behaviour. No violations were found under the provisions of the PADA.

- **Swimming pool (disabled):** After the first wave of the epidemic, a part of the swimming pool was opened. However, the part of the swimming pool intended for the disabled remained closed without regard to the fact that they had season tickets. During the inspection, it was found that the opening of this part of the swimming pool was associated with extremely high costs. However, the provider offered the season ticket holders several options (adequate extension of the season tickets or the possibility of using the other part, together with the option of the ticket extension, or a proportionate refund of the purchase price). After examining the case, no violations of the PADA were found whatsoever.
- **Closure of a bank account (third country nationals).** The Inspectorate received a complaint from a business entity, whose bank account was to be closed by a bank (although they had no debts and were a regular payer), as the owners were citizens of a third country, Ukraine. The Inspectorate contacted the Bank of Slovenia for clarification, and also obtained a clarification from the Advocate of the Principle of Equality. The proceeding is still pending.
- **Early withdrawal of an advertisement from public transport (instructions to discriminate):** Based on the proposal of the Advocate of the Principle of Equality, who found discrimination in the administrative procedure, the Inspectorate conducted minor offence proceeding against a legal entity for giving instructions to discriminate. Due to the violation of Article 9 of the PADA, a decision establishing an offence was issued imposing a fine on the offender.

In the last quarter of 2020, the equality body submitted four more proposals to the Market Inspectorate for the initiation of a minor offence proceeding, which, however, have not yet been initiated due to other priorities of the Inspectorate's work during the epidemic.

10.2.5 Analysis of data on cases of discrimination submitted by the inspectorates

In 2020, discrimination was found by four inspectorates, which is one more compared to 2017 and 2018 and one less than in 2019. According to the data received, the most reported cases of discrimination fall within the area of employment and work, followed by the areas of access to goods and services, and education. This is followed by the cases within the field of defence pertaining to the issues of employment and working conditions in the Slovenian Army.

In 2020, the Labour Inspectorate addressed four cases less than in 2019, which is a result of an increased number of supervisions in areas related to the coronavirus epidemic. In 2019, the Inspectorate of the Republic of Slovenia for Education and Sports did not refer the complaints received to the Advocate (in 2017 and 2018 14 cases were referred), but resolved them under Article 2a of the Organisation and Financing of Education Act. In the area of education, the number of complaints increased, in the field of defence and access to goods and services, the number of complaints remained similar to 2019.



In the cases examined, the inspectorates found discrimination based on the following personal grounds: gender, pregnancy, motherhood, parenthood, age, disability, marital status, nationality, religion or belief, citizenship and other. .

*Table: Overview of the data made available by the inspection services regarding the addressed cases of discrimination – comparison between 2017, 2018, 2019 and 2020**

Inspection service	Com-plaints received 2017	Cases found 2017	Com-plaints received 2018	Cases found 2018	Com-plaints received 2019	Cases found 2019	Com-plaints received 2020	Cases found 2020
1. Market Inspectorate	7	4	3	2	6	0	6	2
2. Labour Inspectorate	/	11	/	17	/	16	/	12
3. Defence Inspectorate	5	0	/	/	5	1	4	0
4. Inspectorate for Education and Sport	9	/	16	2	6	/	10	0
5. Health Inspectorate	0	0	0	0	1	0	/	/
6. Public Sector Inspectorate	0	0	6	/	0	0	/	/

* When the inspectorates responded by stating no complaints were received, the number 0 was given. If no information is available or the inspectorate has not responded, the field is marked with a slash (/).

10.3 Cases of discrimination considered – the Police

Pursuant to Article 21 of the PADA, in order to monitor, record and assess the situation in the field of protection against discrimination in the Republic of Slovenia, the Advocate also monitors cases of violations addressed by the Police. From the fields within the competence of the Police, the three following areas are relevant for monitoring in light of Advocate's field of activity:

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

According to Article 20 of the Protection of Public Order Act (PPOA), the incitement to intolerance with the intention of inciting national, racial, sexual, ethnic, religious, political or sexual-orientation based intolerance is prohibited. It is an aggravated form of the minor offences from Article 6, 7, 12, 13 and 15 of the PPOA-1 (violent and reckless behaviour, indecent behaviour, damaging an official sign, mark or decision, writing on buildings and destroying national symbols). The provision of Article 20 of PPOA-1 therefore provides for a discriminatory motive in the commission of certain other violations against public peace and order.

Among the criminal offences investigated by the Police, the Advocate collects data on the cases with the constituent elements from:

- Article 131 of the Criminal Code (CC-1), i.e. violation of right to equality in relation to any personal ground (nationality, race, skin colour, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, financial situation, birth, genetic heritage, education, social position or any other ground).
- Article 297 of the Criminal Code (CC-1), i.e. public incitement to hatred, violence or intolerance in connection to any personal ground (gender, nationality, race or ethnic origin, language, religion or belief, disability, age, sexual orientation, gender identity and gender expression, social status, property status, education or other), which could as such be discriminatory under the PADA.

In general, it turned out that the Police, as well as the inspectorates, had difficulties in generating a structured data review in a form, provided for by the PADA (i.e. classified according to personal grounds, areas of life and forms of discrimination) due to different systems of recording and keeping track of the discrimination cases. Namely, the Police keeps track of individual cases in another way, based on the gender, age and citizenship of the suspected offenders. In light of the close monitoring of discrimination cases at the national level pursuant to the requirements of the PADA, there is now **a need for a coherent approach to recording cases of discrimination at issue.**



10.3.1 Minor offences under the Protection of Public Order Act – Incitement to Intolerance

In 2020, the Police imposed measures in 56 cases of minor offences under Article 20 of the Protection of Public Order Act (PPOA-1), which is an increase of three compared to 2019. Most violations of Article 20 of the Protection of Public Order Act were committed in connection with Article 6 thereof (violent and reckless behaviour), which means in practice that most violations occurred during fights or arguments. The number of violations relating to Article 12 of the PPOA-1 (damaging an official sign, mark or decision) increased, on the other hand, the number of cases violating Article 13 (writing on buildings) decreased, the number of violations under Article 15 of the PPOA-1 (destroying national symbols) remained unchanged.

Table: Overview of measures under Article 20 of the PPOA-1 – violations found

Article PPOA-1	Number of violations				
	2016	2017	2018	2019	2020
6 – violent and reckless behaviour	29	32	31	39	38
7 – indecent behaviour	11	8	4	7	11
12 – damaging an official sign, mark or decision	1	7	10	1	3
13 – writing on buildings	1	/	/	3	1
15 – destroying national symbols	/	1	1	3	3
TOTAL	42	48	46	53	56

10.3.2 Criminal offences under Article 131 of the Criminal Code – Violation of right to equality

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

In 2020, the Police considered five cases of criminal offences under Article 131 of the Criminal Code (CC-1). The proceedings are currently pending.

Table: Criminal offences under Article 131 of the CC-1 – Violation of right to equality

Year	2016	2017	2018	2019	2020
Number of suspects	5	5	5	9	5
Number of victims	11	13	10	14	6



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

Pursuant to Article 297 of the CC-1, whoever publicly provokes or stirs up hatred, strife or intolerance, based on nationality, race, religion or ethnicity, gender, skin colour, origin, financial situation, education, social status, political or other belief, disability, sexual orientation or any other personal circumstance, in a way to disturb public order and peace or carried out in a manner which is threatening, abusive or insulting shall be punished by imprisonment of up to two years (paragraph 1). The same sentence shall be imposed on a person who publicly disseminates ideas on the supremacy of one race over another, or provides aid in any manner for racist activity or denies, diminishes the significance of, approves, disregards, makes fun of, or advocates genocide, holocaust, crimes against humanity, war crime, aggression, or other criminal offences against humanity as provided for in the legal order of the Republic of Slovenia (paragraph 2). If the offence under preceding paragraphs has been committed by publication in mass media or on websites, the editor or the person acting as the editor shall be sentenced to the punishment, by imposing the punishment referred to in paragraphs 1 or 2 of this Article, except if it was a live broadcast and he was not able to prevent the actions referred to in the preceding paragraphs or if it was a website publication where the users could not be prevented from posting contents in real time without prior supervision (paragraph 3). If the offence under paragraphs 1 or 2 of this Article has been committed by coercion, maltreatment, endangering of security, desecration of national, ethnic or religious symbols, damaging the movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be punished by imprisonment of up to three years (paragraph 4). If the acts under paragraphs 1 or 2 of this Article have been committed by an official by abusing their official position or rights, he shall be punished by imprisonment of up to five years (paragraph 5).

Table: Overview of criminal offences under Article 297 of CC-1 under consideration

Year	Number of cases considered				
	2016	2017	2018	2019	2020
Charges	18	13	13	16	50
Reports	31	13	19	23	44
Total	49	26	32	39	94

10.4 Cases of discrimination considered – the Prosecution

Pursuant to Article 21 of the PADA, in order to monitor, record and assess the situation in the field of protection against discrimination in the Republic of Slovenia, the Advocate requested information from the Supreme State Prosecutor's Office of the Republic of Slovenia (SSPO). The data on the prosecution of the criminal offences under Article 297 of CC-1 - public incitement to hatred, violence or intolerance and under Article 131 of CC-1 – violation of the right to equality was submitted by the former.

Until 2019, the SSPO reported that merely a record of the data on the committed criminal offence is kept, not including the motive that led the offender to commit the criminal offence, except when the motive constitutes an aggravating circumstance and a legal element of the criminal offence, e.g. offence for material gain or revenge. Thus, the SSPO was not able to provide data disaggregated by grounds, forms and areas of discrimination. However, data was provided with the number of received criminal complaints, adopted conclusions and judgements issued for criminal offences in connection to Article 297 of the CC-1 and Article 131 of the CC-1.

For 2020, the SSPO reports that, based on the third paragraph of Article 127 of State Prosecutor's Order, the State Prosecutor General issued an executive order no. VDT-Tu-10-3/8/2020 of 6 July 2020. Herewith, he provided for a special marking of the state prosecutor's files, which deal with criminal offences committed with a motive of hostility. As for the marking, the following definition shall be applied: 'A hate crime is an act committed out of hatred against another person based on their nationality, race, religion or ethnicity, gender, skin colour, origin, social status, disability or sexual orientation.' This reference applies to marking all criminal offences, not only those under Articles 131 and 297 of the CC-1.

The SSPO informed the Advocate that, for cases with the said reference, it is possible to obtain information in the electronic database on the number of criminal offences with reference to the motive of hostility. However, these cases cannot be further disaggregated according to the underlying personal grounds. The SSPO developed the practice of marking the files only in 2021 and this approach is now being introduced into the regular practice of the state prosecutors. Additionally, the Advocate was forwarded the information that in 2020, 10 files of the state prosecution were marked in this way, while the system is only being applied as of the date of the aforementioned executive order.

Table: Prosecution of criminal offences under Article 297 of the CC-1 – Public incitement to hatred, violence or intolerance

Event	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Criminal complaints received	21	8	21	63	83	34	13	20	37	13	32	26	38
Decision rejecting the criminal complaints	22	5	6	29	37	36	13	30	19	19	15	24	32
Charges or proposals to impose educational measures or a sentence filed	1	3	5	5	26	15	1	2	1	2	6	2	7
Convictions	/	/	4	4	3	9	4	2	/	1	/	/	3
Judgements on penalty orders	/	/	1	3	13	/	2	/	1	/	1	2	3
Acquittals	2	/	/	1	/	/	/	/	1	/	1	/	1
Rejection judgements	/	/	3	/	/	2	/	/	/	/	/	3	/

The statistics show an increase in the number criminal charges from 2008 to 2012, when the number of criminal complaints received was the highest, which is followed by decline from 2013 onward. In 2013, the Supreme State Prosecutor’s Office adopted a legal position of 27 February 2013, according to which ‘hate speech’ cannot in any case be punishable if the conduct did not cause threat or disturbance to public order. In any case, an objective possibility as well as a probability must be given (whereby an abstract threat is not sufficient) that a breach of public order could occur. The legal position was taken into account by the state authorities and other stakeholders who generally file criminal charges (e.g. the Police) as a relevant direction, which has significantly reduced the number of criminal charges. As a consequence, in the period from 2014 to 2019, the number of closed criminal proceedings as well as the number of convictions and penalty orders decreased drastically.

In 2019, the Supreme Court delivered Judgement no. I Ips 65803/2012 relating to Article 297 of the CC-1 in which the Court ruled in contrary to the legal opinion of the SSPO, namely, that the criminal offence of public incitement to hatred, violence or intolerance does not necessarily have to lead to a specific threat to public order and peace. This judgement sets a precedent for case law in the field of public incitement to hatred, violence or intolerance, which could lead to a growing number of criminal charges and a greater number of closed criminal proceedings, convictions and penalty orders in this area in the years to come.

In 2020, there has been a noticeable increase in the number of filed criminal charges, however, at the moment, it is not clear to which extent this trend is the result of the aforementioned Supreme Court judgement no. I Ips 65803/2012.

10.5 Cases of discrimination considered – the Courts

Pursuant to Article 21 of the PADA, in order to monitor, record and assess the situation in the field of protection against discrimination in the Republic of Slovenia, the Advocate collected data on case law in the area of non-discrimination. First, the equality body reviewed the database (search engine) of the Supreme Court of the Republic of Slovenia – www.sodnapraksa.si. Through the search engine, 19 judgements from the field of discrimination were identified which were delivered in 2020. Of the 19 judgements identified, 11 showed a particular personal ground. In the other judgements, the plaintiffs alleged discrimination failing to identify a personal ground, and moreover, also disregarded the other elements of the burden of allegation.

In addition to accessing the case law search engine, the Advocate also established direct contact with all 66 courts to obtain the most comprehensive information possible.

The Advocate received 46 responses from the courts, wherein 16 courts indicated that in cases covered by their competence in 2020, discrimination occurred. The Supreme Court considered one case. The Administrative Court stated that six actions were filed in the field of discrimination (all brought against the decisions of the Advocate of the Principle of Equality). The Ljubljana Higher Court addressed two cases and the Celje Higher Court dealt with one case. The Higher Labour and Social Court heard 11 cases on the topic of discrimination. The Ljubljana Labour and Social Court received 13 cases for consideration. The Koper Labour Court addressed 11 cases and the Maribor Labour Court dealt with 5 cases. One case was heard by the Ljutomer, Koper, Celje, Novo mesto, Črnomelj and Kranj district courts.

The remaining responses of the courts state that no discrimination cases were considered or data cannot be provided as databases are not kept according to criteria such as Articles of particular Acts, which are of interest to the Advocate, nor are they arranged according to personal grounds or forms of discrimination. Data on the discrimination cases would have to be obtained manually, which is not possible due to the current restrictions. Some courts questioned judges and asked them to identify files that could fall within the area of discrimination. Even the courts that were able to provide information on the discrimination cases do not keep records in a way to easily obtain information regarding judgements in the field of discrimination and whether an appeal was lodged. Moreover, the issue of discrimination may arise in connection to other issues dealt with in a particular case. For example, when discrimination is the basis for deciding on indemnification, actions for unlawful termination of an employment contract, disciplinary proceedings, monetary claims and the like. However, judgements in the field of discrimination are often interlinked with allegations of ill-treatment.

Table: Judgements of courts in the field of discrimination delivered in 2020

Court	Case No.	Outcome	Personal ground	Area of life	Form of alleged discrimination	Indemnification/note
Higher Labour and Social Court	Pdp 611/2019	The plaintiff's appeal is dismissed and the contested judgement of the Court of First Instance is confirmed	Disability	Employment and work	Discrimination	The reversed burden of proof that the prohibition of discrimination was not violated is on the employer, however, the burden of allegation is on the employee.
Higher Labour and Social Court	Pdp 585/2019	The defendant's appeal granted and the remaining claims dismissed	Age and gender	Employment and work	Discrimination	The mere fact that the plaintiff (a woman) was not selected to the position and that the opposite candidate was ten years younger and male is not sufficient to conclude that the plaintiff was not selected precisely because of these two characteristics and therefore cannot be a basis for indemnification.
Higher Labour and Social Court	Pdp 709/2019	The plaintiff's appeal is dismissed and the contested judgement of the Court of First Instance is confirmed	/	Employment and work	Discrimination, harassment	The Court of Appeal agrees that in case of termination of employment due to a misuse of travel expenses, which is an active conduct (breach of employment obligations) by the employee, the other circumstances relating to the relationship with the employer are not relevant (nor the discrimination raised by the plaintiff in the complaint or harassment at the workplace).



Court	Case No.	Outcome	Personal ground	Area of life	Form of alleged discrimination	Indemnification/note
Administrative Court	II U 310/2017-14	Appeal upheld and case referred back to the Court of first instance	registered office of the tenderer	Concessions	/	Article 12 of the Public-Private Partnership Act stipulates that the public partner shall ensure that no distinction is made between candidates at any element or stage of the procedure of establishing and operating a public-private partnership. Distinctive tendering criteria are only permissible under the condition of justified reasons in the public interest.
Administrative Court	II U 275/2017-25	Appeal upheld and case referred back to the Court of first instance	Registered office of the tenderer	Concessions	/	The criterion according to which an individual tenderer receives a lower number of points compared to tenderers with registered office in the municipality violates the requirement for equal treatment of candidates in the concession award procedure.
Higher Labour and Social Court	Pdp 641/2019	The defendant's appeal granted and the judgement altered	/	Employment and work	Discrimination	The Court of first instance should take into account the personal grounds from Article 6 of Employment Relationships Act (ERA-1). According to this statutory provision, the employer must ensure equal treatment of a job seeker candidate for employment, regardless of their personal grounds. The plaintiff, however, did not state any of the statutory personal grounds.

Court	Case No.	Outcome	Personal ground	Area of life	Form of alleged discrimination	Indemnification/note
Higher Labour and Social Court	Pdp 78/2020	The plaintiff's appeal is dismissed and the contested judgement of the Court of First Instance is confirmed	Other personal grounds	Employment and work	Discrimination	Article 6 of ERA-1 regulates the prohibition of discrimination. The personal ground stated by the plaintiff was an attitude of the director of the defendant towards his father, in other words, resentment. This was correctly classified by the Court of first instance among 'other' personal grounds in respect of which the employer must ensure equal treatment to the candidate.
Higher Labour and Social Court	Pdp 17/2020	The defendant's appeal is dismissed and the contested part of the judgement of the Court of First Instance is confirmed	Parent-hood	Employment and work	Discrimination	Pursuant to Article 14 of the Constitution of the Republic of Slovenia and Article 6 of the ERA-1, the Court of First Instance found that the defendant approved the application of two employees who had applied for a special leave. The conclusion of the Court of first instance that the defendant is obliged to treat all employees equally is correct.



Court	Case No.	Outcome	Personal ground	Area of life	Form of alleged discrimination	Indemnification/note
Higher Labour and Social Court (Department for Individual and Collective Labour Disputes)	Pdp 29/2020	The plaintiff's appeal is dismissed and the contested judgement of the Court of First Instance is confirmed	/	Employment and work	Discrimination, harassment	The Court of First Instance dismissed the claim for compensation due to workplace harassment. Following a detailed analysis of each of the plaintiff's allegations and an assessment of the set of individual actions, the Court correctly established that these events together did not constitute a continuous conduct of the defendant, which would correspond to the definition of harassment at the workplace, as it was not strictu sensu a repeated and systematic negative and offensive conduct directed at the plaintiff at work or in connection with work. Although the plaintiff alleged that the defendant treated them unduly unequally (discrimination), no personal grounds are stated leading to the illicit unequal treatment.
Higher Labour and Social Court	Psp 27/2020	The plaintiff's appeal is dismissed and the judgement of the Court of First Instance is confirmed	/	Health Insurance	/	Since this type of medical procedure, which the plaintiff underwent in the Republic of Croatia, requires a valid referral also in the Republic of Slovenia, the requirement of the defendant stating that the plaintiff should have had a valid referral at the time of the intervention is inadmissible. Hence, the described arrangement of health insurance in Slovenia does not represent an obstacle to the free movement of patients and the alleged discrimination in the treatment of patients was not given.

Court	Case No.	Outcome	Personal ground	Area of life	Form of alleged discrimination	Indemnification/note
Higher Labour and Social Court (Department for Individual and Collective Labour Disputes)	Pdp 53/2020	The plaintiff's appeal is dismissed and the contested judgement of the Court of First Instance is confirmed	Health status	Employment and work	Discrimination, harassment	In the appeal, the plaintiff unjustifiably insists on harassment. Harassment is a process (conduct, behaving, or acting) that is assessed holistically, not just by individual allegations. The Court of First Instance assessed each individual complaint and based on a comprehensive assessment ruled, that harassment did not occur. The plaintiff also sought compensation for discrimination on the grounds of health. The Court of First Instance did not follow the plaintiff in this part either.
Higher Labour and Social Court	Pdp 103/2020	The plaintiff's appeal is dismissed and the contested part of the judgement of the Court of First Instance is confirmed	Disability	Employment and work	Discrimination	The Court of First Instance duly substantiated why the defendant's conduct is not considered discriminatory.
Higher Labour and Social Court	Pdp 246/2020	The plaintiff's appeal is dismissed and the contested part of the judgement of the Court of First Instance is confirmed	Health status and ethnicity	Employment and work	Direct or indirect discrimination	The defendant did not discriminate against the plaintiff due to prolonged sick leave, but terminated their employment contract for a reason set out in the law, namely, based on indent 4 of the first paragraph of Article 110 of the ERA-1 (for five working days of being absent from work does not inform the employer about the reasons for his absence, although he could do so).



Court	Case No.	Outcome	Personal ground	Area of life	Form of alleged discrimination	Indemnification/note
Higher Labour and Social Court	Pdp 92/2020	The plaintiff's appeal is dismissed and the contested part of the judgement of the Court of First Instance is confirmed	Not alleged	Employment and work	Discrimination	The statement of appeal that the Court of first instance failed to establish the justification of all the reasons for the extraordinary termination of the plaintiff's employment contract, specifically failing to establish whether the non-recognition of a higher title constituted a violation of equal treatment (infringement of the principle of non-discrimination), is incorrect. The employee's efforts to enforce or protect the rules provided by regulations and the employment contract cannot be considered a personal ground under Article 6 of the ERA-1.
Higher Labour and Social Court	Pdp 362/2020	The appeals are dismissed and the contested part of the judgement of the Court of First Instance is confirmed	Other personal ground	Employment and work	Discrimination, harassment, mobbing, victimisation	Since the subject-matter of the dispute is the defendant's liability for damages caused to the plaintiff as a result of mobbing, it is essential for the decision on compensation to be based on all the cumulative elements of a civil tort under Article 131 of the Obligations Code. The Court of first instance awarded the plaintiff damages in the amount of EUR 3,000.00 in respect of mobbing, and rejected the remaining part of the claim (up to EUR 62,000.00).
Administrative Court	I U 29 / 2020-21	The action is dismissed.	Health status, pregnancy, parenthood	Personal rights – constitutional law	Indirect discrimination	In the disputed provisions of the business performance bonus, the defendant found indirect discrimination on grounds of gender, parenthood and health status.

Court	Case No.	Outcome	Personal ground	Area of life	Form of alleged discrimination	Indemnification/note
Higher Labour and Social Court	Pdp 336/2020	The appeals are dismissed and the contested part of the judgement of the Court of First Instance is confirmed	/	Employment and work	/	The defendant's allegation in the appeal that discrimination occurred is irrelevant and unsubstantiated.
Supreme Court	VIII Ips 74/2019	The revision is grantedm the judgement of the Court of second instance is set aside and the case is referred back to that Court for a retrial.	Disability	Employment and work	Indirect discrimination	If an employer adopts measures enabling disabled people to achieve comparable results in comparison to other workers, taking into account their remaining working capacity, then using the same criteria for identifying redundant workers for both, disabled and non-disabled workers, does not automatically constitute indirect discrimination.
Higher Labour and Social Court	Pdp 387/2020	The plaintiffs's appeal is dismissed and the contested judgement of the Court of First Instance is confirmed	Ethnicity	Employment and work	Discrimination	The plaintiff claimed in the proceedings, inter alia, that the defendant discriminated against him on the grounds of his citizenship. Article 6 of the ERA regulates the prohibition of discrimination and stipulates that the employer may not treat employees unequally on the grounds of nationality, race or ethical origin, nationality or social status. The plaintiff is a citizen of Bulgaria, and the Court, after taking evidence by hearing the director A.A., established that the plaintiff was not subject to unequal treatment.



11 RECOMMENDATIONS BY THE ADVOCATE

11.1 Legal basis and purpose of the recommendations

The core mandate of the Advocate of the Principle of Equality (the Advocate) is to prevent and eliminate discrimination. One of the methods used is encouraging legal entities under public or private law, and particularly policy makers and decision-makers, to create systemic conditions to prevent unequal treatment or, should discrimination occur, to eliminate it quickly. The elimination of a discriminatory provision of a regulation or the implementation of a special measure can have a much broader social effect, as it affects a larger number of individuals or social groups at the same time. And the symbolic value of the positive changes of such a systematic elimination or prevention of discrimination is not negligible either. Recommendations are the Advocate's tool for changes at the level of discriminatory practices or rules of major subsystems (e.g. laws, bylaws, various regulations).

Article 2 of the Protection against Discrimination Act (ZVarD) binds state authorities 'to ensure protection against discrimination or equal treatment of all persons in all fields of decision making, legal transactions and other operations or conduct.' According to the PADA, state authorities, local communities, self-governing national communities and holders of public authorisations shall, in their respective fields, 'provide conditions for the equal treatment of all people, irrespective of any personal ground, by raising awareness and monitoring the situation in this field and with measures of a normative and political nature' (Article 14).

The efficiency of individual stakeholders in ensuring equal treatment varies and depends on several factors. The second indent of Article 21 of the PADA states that the Advocate shall include '...making recommendations to state authorities, local communities and other bodies in relation to preventing or eliminating discrimination and adopting special and other measures to eliminate discrimination'.

Given these substantive differences, the three basic types of the Advocate's recommendations are as follows:

- recommendations regarding proposed laws and regulations (prevention of discrimination);
- recommendations directed at existing laws and regulations (elimination of discrimination);
- recommendations to promote equal treatment (prevention of discrimination).

The Advocate's recommendation is issued as a result of one or more preliminary activities:

- completed procedure of discrimination investigation before the Advocate;
- analyses and research conducted by the Advocate or other providers;
- monitoring the overall situation in the area of protection against discrimination;
- cooperation with various stakeholders;
- international cooperation and other.

The recommendations also include recommendations on special measures to ensure equality and equal opportunities to be implemented. In line with their purpose, they are classified under the category of recommendations for the promotion of equal treatment by the Advocate.

Special measures are an important instrument for ensuring equal opportunities for all people. Formal equality (equal rights) does not always mean de facto equal opportunities (equal treatment) for all people. Some groups of people are in a worse position than others due to particular personal grounds, despite the fact that all people are equal before the law and have equal rights (equality) guaranteed by law.

Particular groups of people in a less favourable position therefore need additional incentives (e.g. additional rights, more benefits) in order to be de facto in the same position compared to others, i.e. to have equal opportunities to participate and enforcement of rights in different areas of social life.

The colour scale used to indicate the case numbers refers to a particular area of social life, where the individual case occurred. The following colours indicate the relevant areas:

Work and employment

- Access to employment, self-employment and profession (including selection criteria and employment conditions, notwithstanding the type of activity or the level of occupational hierarchy, including promotion);
- access to all forms and all levels of career orientation and counselling, vocational and professional education and training, further vocational training and retraining, including internship;
- employment and working conditions, including termination of employment contracts and wages;

Membership in workers' or employers' organisations

- membership and inclusion in workers' or employers' organisations or any organisation whose members perform a certain vocation, including benefits provided by such organisations;

Social rights

- social protection, including social security;
- social benefits;

Health care

- health care;

Education

- education and schooling;

Goods and services market

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

Other

11.2 Recommendations by the Advocate

In 2020, the Advocate issued **48 recommendations** in the framework of different procedures, tackling discrimination. Of these, 25 recommendations were directed at laws and regulations (in force or proposals) and 23 recommendations were intended to promote equal treatment.

In 2020, the Advocate issued:

- **19 recommendations regarding draft laws** (prevention of discrimination);
- **six recommendations directed at existing laws and regulations** (elimination of discrimination);
- **23 recommendations aimed at the promotion of equal treatment** (prevention of discrimination).

With regard to the addressee:

- 28 recommendations were addressed to Ministries;
- six recommendations were addressed to the National Assembly;
- four recommendations were addressed to the Government of the Republic of Slovenia;
- one recommendation was addressed to the Secretariat-General of the Government;
- one recommendation was addressed to a local community;
- one recommendation was addressed to all associations of municipalities;
- two recommendations were addressed to public agencies and institutes;
- four recommendations were addressed to economic operators (of which two were additionally addressed to three interest groups);
- one recommendation was addressed to NGOs.

With regard to the content or personal grounds in question, the Advocate's recommendations referred to:¹²

- the personal ground of **disability** in 17 cases;
- the personal ground of **health status** in 14 cases;
- the personal ground of **property status** in 11 cases;
- the personal ground of **age** in 8 cases;
- the personal ground of **citizenship** in 7 cases;
- the personal grounds of **nationality** or **ethnic origin** in 6 cases;
- the personal ground of **social status** in 6 cases;
- the personal ground of **parenthood** in 5 cases;
- one recommendation concerned each of the following personal grounds: **gender, sexual orientation, language** and **education**;
- and in 7 cases protection against discrimination **in general** was tackled.

¹² The sum by personal grounds is not equal to the total number of recommendations, as some recommendations related simultaneously to several personal grounds. Moreover, some recommendations also referred to the general field of protection against discrimination and not only to particular personal grounds.

An overview of the recommendations issued in 2020 is given below, for more details see the Advocate's website.¹³

11.2.1 Recommendations aimed at draft laws and other regulations

Table: Overview of recommendations aimed at proposed laws and regulations from the viewpoint of discrimination prevention according to the chronological order

	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status ¹⁴	Chapter number ¹⁵
1	Recommendations regarding the Bill on Amendments to the Act on Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (Set of measures to mitigate the effects of the epidemic no. 2)	0701-5/2020/6	23 April 2020	the National Assembly	Partly taken into account	Part Two, 1.6.4
2	Recommendations aimed at the proposal of the Act on the Protection of Personal Data in the Area of Treatment of Criminal Offences	0701-6/2020/3	19 June 2020	Ministry of Justice	Partly taken into account	Part Two, 1.12.4
3	Recommendations and comments regarding the new proposal of the Act Amending the Mass Media Act	0701-1/2019/7	27 July 2020	Ministry of Culture	The legislative process is still ongoing	Part Two, 1.2.4
4	Recommendations aimed at the proposed amendment to the Audiovisual Media Services Act	0709-48/2020	28 July 2020	Ministry of Culture	The legislative process is still ongoing	Part Two, 1.6.4

¹³ Recommendations issued in 2020 are available at www.zagovornik.si/priporocila-2020

¹⁴ Status of the recommendation by the finalisation of the Annual Report for 2020.

¹⁵ The chapter number indicates in which chapter in Part Two of the Annual Report for 2020 a more detailed description of the recommendation can be found.

	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status	Chapter number
5	Recommendation aimed at the draft Act Amending the Housing Act	0709-62/2020/1	18 August 2020	Ministry of the Environment and Spatial Planning	The legislative process is still ongoing	Part Two, 1.10.4
6	Recommendation aimed at the draft proposal for the Act Amending the Radiotelevizija Slovenija Act	0701-10/2020/1	2 September 2020	Ministry of Culture	The legislative process is still ongoing	Part Two, 1.6.4
7	Recommendation aimed at the draft proposal for the Act Amending the State Prosecution Service Act	0701-11/2020/1	4 September 2020	Ministry of Justice	The legislative process is still ongoing	Part Two, 1.6.4
8	Recommendation aimed at the proposal for the new Communicable Diseases Act	0070-1/2020/1	30 September 2020	Ministry of Health	The legislative process is still ongoing	Part Two, 1.8.4
9	Recommendation aimed at the draft proposal for the Long-Term Care Act	0701-14/2020/2	5 October 2020	Ministry of Health	The legislative process is still ongoing	Part Two, 1.10.4
10	Recommendation aimed at the proposal for the Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 (Set of measures to mitigate the effects of the epidemic no. 5)	0701-15/2020/1	8 October 2020	the National Assembly	Partly taken into account	Part Two, 1.10.4
11	Recommendation aimed at the proposal for the Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic (Set of measures to mitigate the effects of the epidemic no. 6)	050-5/2020/15	19 November 2020	the National Assembly	Taken into account	Part Two, 1.12.4



	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status	Chapter number
12	Recommendation aimed at the proposal for the Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education, Second reading	001-6/2020/5	30 November 2020	Ministry of Education, Science and Sport	Partly taken into account	Part Two, 1.6.4
13	Recommendation aimed at the proposal for the new Mental Health Act	0070-4/2020/1	30 November 2020	Ministry of Health		Part Two, 1.6.4
14	Recommendation aimed at the proposal for the Motor Vehicles Tax Act	0070-3/2020/1	4 December 2020	the National Assembly	The legislative process is still ongoing	Part Two, 1.6.4
15	Recommendation aimed at the draft Act Amending the Local Elections Act	0070-5/2020/1	17 December 2020	Ministry of Public Administration	Not taken into account	Part Two, 1.6.4
16	Recommendation aimed at the draft Act Amending the Referendum and Popular Initiative Act	0070-7/2020/1	22 December 2020	Ministry of Public Administration	The legislative process is still ongoing	Part Two, 1.6.4
17	Recommendation aimed at the draft Protection of Public Order Act	0070-6/2020/1	22 December 2020	Ministry of the Interior	The legislative process is still ongoing	Part Two, 1.12.4
18	Recommendation aimed at the proposal for the Act Determining Intervention Measures to Assist in Mitigating the Consequences of the Second Wave of COVID-19 Epidemic (Set of measures to mitigate the effects of the epidemic no.7)	0070-8/2020/1	23 December 2020	the National Assembly	Partly taken into account	Part Two, 1.9.4

11.2.2 Recommendations directed at existing laws and regulations

Table: Overview of recommendations directed at existing laws and regulations according to the chronological order

	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status ¹⁶	Chapter number ¹⁷
1	Recommendation regarding the amendment of the Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia – a proposal to extend the time when pensioners, the disabled and pregnant women can go in stores	0701-2/2020/1	2 April 2020	Ministry of Economic Development and Technology	Partly taken into account	Part Two, 1.7.4
2	Recommendation regarding the opening of self-service laundries within the Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia	0700-22/2020/4	9 April 2020	Ministry of Economic Development and Technology	Not taken into account	Part Two, 1.10.4
3	Recommendation directed at the Act Determining the Intervention Measure of Deferred Payment of Borrowers' Liabilities	050-5/2020/11	31 August 2020	Ministry of Finance	Taken into account	Part Two, 1.12.4
4	Recommendation regarding the discriminatory character of the Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia	050-8/2020/39	7 September 2020	the Government	Taken into account	Part Two, 1.7.4

¹⁶ Status of the recommendation by the finalisation of the Annual Report for 2020.

¹⁷ The chapter number indicates in which chapter in Part Two of the Annual Report for 2020 a more detailed description of the recommendation can be found.



	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status	Chapter number
5	Recommendation directed at the Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers in the Republic of Slovenia – opening of self-service laundries	0702-136/2020/4	19 November 2020	Ministry of Economic Development and Technology	Not taken into account	Part Two, 1.9.4
6	Recommendation directed at the Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports	050-3/2020/24	27 November 2020	Ministry of Education, Science and Sport	So far not taken into account	Part Two, 1.6.4

11.2.3 Recommendations for the promotion of equal treatment

Table: Overview of recommendations intended for the promotion of equal treatment in chronological order

	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status ¹⁸	Chapter number ¹⁹
1	Recommendation for consultation with external stakeholders regarding the approach of the Republic of Slovenia vis-à-vis the recommendations received within the third round of the Universal Periodic Review	511-27/2019	9 January 2020	Ministry of Foreign Affairs	Partly taken into account	Part Two, 1.12.4
2	Recommendation regarding the approach of the Republic of Slovenia vis-à-vis particular recommendations received within the third round of the Universal Periodic Review	511-27/2019	21 January 2020	the Government	Partly taken into account	Part Two, 1.12.4

¹⁸ Status of the recommendation by the finalisation of the Annual Report for 2020.

¹⁹ The chapter number indicates in which chapter in Part Two of the Annual Report for 2020 a more detailed description of the recommendation can be found.

	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status	Chapter number
3	Recommendation on the adoption of legislative proposals	079-3/2020/1	5 February 2020	the Government	Partly taken into account	Part Two, 1.12.4
4	Recommendation regarding the adoption of additional measures to protect the homeless during the COVID-19 epidemic	0709-38/2020/1	6 April 2020	Associations of municipalities	Partly taken into account	Part Two, 1.9.4
5	Recommendation regarding the ensuring of conditions for distance learning for all school-age children	0701-4/2020/1	10 April 2020	Ministry of Education, Science and Sport	Partly taken into account	Part Two, 1.10.4
6	Recommendations regarding further measures to mitigate the effects of the COVID-19 epidemic with a view to preventing and eliminating discrimination	0701-5/2020/1	10 April 2020	the Government	Partly taken into account	Part Two, 1.10.4
7	Recommendation regarding further measures to mitigate the effects of the COVID-19 epidemic in the housing-related area	0701-5/2020/4	21 April 2020	Ministry of the Environment and Spatial Planning	Not taken into account	Part Two, 1.7.4
8	Recommendation on compliance with the provisions of the Press Codes	0709-59/2020	4 August 2020	Slovenske novice, Association of Journalists and Publicists, Slovenian Association of Journalists	Partly taken into account	Part Two, 1.2.4
9	Recommendation on the ensuring of inclusive education in the event of reoccurring school closures	0709-60/2020/1	5 August 2020	Ministry of Education, Science and Sport	Partly taken into account	Part Two, 1.3.4
10	Recommendation regarding the treatment of foreigners, drivers in international transport	050-15/2020/59	9 November 2020	Ministry of Health	So far not taken into account	Part Two, 1.12.4



	Recommendations (address)	File number	Date of issue	Addressee	Recommendation status	Chapter number
11	Recommendation regarding the treatment of foreigners, drivers in international transport	050-15/2020/60	9 November 2020	Ministry of the Interior	So far not taken into account	Part Two, 1.12.4
12	Recommendation on accessibility of taxi transport for migrants	0700-78/2019/20	26 October 2020	Metro 1, storitve in trgovina d.o.o.	So far not taken into account	Part Two, 1.2.4
13	Recommendation regarding effective protection against discrimination in the area of taxi transport as a publicly available service of the Municipality of Ljubljana	0700-78/2019/22	11 November 2020	the Municipality of Ljubljana	So far not taken into account	Part Two, 1.2.4
14	Recommendation regarding the accessibility of insurance services for people living with HIV (insurance companies)	0709-5/2020/52	22 January 2021	Insurance companies	Ongoing	Part Two, 1.12.4
15	Recommendation regarding the accessibility of insurance services for people living with HIV (Slovenian Insurance Association)	0709-5/2020/51	22 January 2021	Slovenian Insurance Association	Ongoing	Part Two, 1.12.4
16	Recommendation regarding the accessibility of insurance services for people living with HIV (NGOs)	0709-5/2020/50	22 January 2021	NGOs	Ongoing	Part Two, 1.12.4
17	Recommendation regarding the accessibility of insurance services for people living with HIV (Ministry of Health)	0709-5/2020/49	22 January 2021	Ministry of Health	Ongoing	Part Two, 1.12.4
18	Recommendation regarding the accessibility of insurance services for people living with HIV (Ministry of Finance)	0709-5/2020/48	22 January 2021	Ministry of Finance	Ongoing	Part Two, 1.12.4
19	Recommendation regarding the accessibility of insurance services for people living with HIV (Insurance Supervision Agency)	0709-5/2020/47	22 January 2021	Insurance Supervision Agency	Ongoing	Part Two, 1.12.4

	Recommendations (address)	File number	Date of issue	Addressee	Recom- mendation status	Chapter number
20	Recommendation on the ensuring of equal treatment of intersex people (Ministry of Health)	0709-49/2020/5	21 January 2021	Ministry of Health	So far not taken into account	Part Two, 1.12.4
21	Recommendation on ensuring equal treatment of intersex people (MESS)	0709-49/2020/6	21 January 2021	Ministry of Education, Science and Sport	So far not taken into account	Part Two, 1.12.4
22	Recommendation on the ensuring of equal treatment of intersex people (MI)	0709-49/2020/7	21 January 2021	Ministry of the Interior	So far not taken into account	Part Two, 1.12.4
23	Recommendation on ensuring equal treatment of intersex people (health care institutions)	0709- 49/2020/10	21 January 2021	Health care institutions	So far not taken into account	Part Two, 1.12.4



12 MEASURES FOR THE PROMOTION OF EQUAL TREATMENT AND ELIMINATION OF DISCRIMINATION

12.1 Legal basis and purpose of special measures

The Constitution of the Republic of Slovenia guarantees everyone in Article 14 '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 ground'. The second paragraph of the same Article states that 'all are equal before the law. This provision guarantees equality before the law for all.

Nevertheless, formal equality does not always mean *de facto* equal opportunities for all people. Some groups of people are in a worse position than others due to particular personal grounds, despite the fact that all people are equal before the law and have equal rights (equality) guaranteed by law. Particular groups of people in a less favourable position therefore need additional incentives (e.g. additional rights, more benefits) in order to be *de facto* in the same position compared to others, i.e. to have equal opportunities to participate and enforcement of rights in different areas of social life.

In the terminology of the Protection against Discrimination Act (PADA), **special measures** represent special instruments to ensure equal opportunities for those in a less favourable position due to a particular personal ground.

In line with the PADA, the Advocate of the Principle of Equality (the Advocate) has the power to propose the adoption of special measures aimed at the elimination of discrimination (seventh indent of Article 21) to all stakeholders in the public and private sector who are bound by the obligation of non-discrimination (Article 2). Pursuant to the second indent of Article 21 of the PADA, the Advocate is responsible for publishing independent reports and making recommendations to all stakeholders obliged to prevent and eliminate discrimination, as well as adopt special and other measures for the elimination of discrimination.

Article 17 of the PADA ('special measures to ensure equality') states that **special measures are temporary** and have the objective to ensure the realisation of the '**...right to equal treatment, equal opportunity or *de facto* equality and participation in the fields of social lives of people**'. The second paragraph of this Article stipulates that the special measures may be incentive or positive. **Incentive special measures** provide special benefits or introduce special incentives for persons in less favourable positions, while **positive measures**, gives advantage to people with certain personal grounds when they meet the prescribed criteria and conditions to an equal extent, and which may be applied particularly in the case of evident disproportion regarding the possibilities of accessing the enforcement of rights, or accessing goods, services or benefits. Article 7 of the Equal Opportunities for Women and Men Act also sets out special measures, however, only in relation to the personal ground of gender.²⁰ In addition to the incentive and positive measures regarding the personal ground of gender, the Equal Opportunities for Women and Men Act includes among the special measures also '**programming measures in the form of awareness raising activities and action plans to promote and establish equal opportunities and gender equality**'.

²⁰ Official Gazette of the Republic of Slovenia, no. 59/02, 61/07 – IPETA-A, 33/16 – PADA and 59/19



Article 18 of the PADA explicitly instructs and imposes on state authorities, local communities, holders of public authorisations, employers, educational institutions, economic and other entities the obligation to introduce special measures. In line with the second paragraph of Article 18 of the PADA, the following conditions must be fulfilled for the adoption of special measures:

- the measures must pursue **the objective of eliminating a less favourable position** of a person with a particular personal ground;
- **the measures** must be based on **appropriate analyses** (to prove the less favourable position) and
- they must represent **necessary and appropriate means** of eliminating such a position of a person with a particular personal ground.

In the recommendations, the Advocate constantly encounters cases of special measures to ensure equality, equal treatment and equal opportunities. Many of them are questionable, as they are not justified or substantiated. Moreover, they are often lacking relevant bases and analyses. On the other hand, the unequal position of other social groups requires particular special measures that the state has not (yet) implemented. Another problem is a lack of data on equality, equal treatment and equal opportunities, i.e. data disaggregated by personal grounds. Such data represent an inevitable basis to substantiate the unfavourable position of persons with a particular personal ground and to confirm the need to take special measures.

The special measures require a profound analysis of the situation, which identifies the less favourable position of persons due to a particular personal ground and, at the same time, sets out proposals for the resolving of the problematic situation. Nonetheless, political willingness is necessary to remedy the situation, as the special measures are implemented by state authorities, local communities, self-governing national communities and holders of public authorisations in their respective fields of competence.

12.2 Implementation of special measures by Ministries and Government services

In 2020, in the context of monitoring the situation in the field of protection against discrimination in the country, the Advocate conducted an enquiry between the Ministries, institutions under the Ministries and selected Government services regarding the measures for the protection against discrimination and promotion of equality, equal treatment and equal opportunities.

Article 14 of the PADA stipulates that state authorities, local communities, self-governing national communities and holders of public authorisations are the competent authorities in the field of protection against discrimination, which shall provide conditions for the equal treatment of all people, irrespective of any personal grounds, by raising awareness and monitoring the situation in this field and with measures of a normative and policy nature. In this process, a special obligation is imposed on Ministries and Government departments to prepare proposals for the relevant measures within their field of competence. The first paragraph of Article 18 of the PADA lists state authorities as the first of entities that may, in line with the conditions from the PADA, implement special measures to ensure equality, equal treatment and equal opportunities.

Since its establishment, the Advocate has been developing a method of systematic monitoring of the activities of Ministries and Government services in the field of implementing measures of protection against discrimination and promoting equal treatment, including special measures. In 2017, 2018 and 2019, enquiries were carried out by the Advocate regarding all measures. Summaries of the responses received and the relevant findings were published by the Advocate in the respective Annual Reports.²¹

In 2020, the Advocate adjusted the enquiry on the measures implemented to the current public health situation and the COVID-19 epidemic, which significantly marked the work of state authorities in that year. The Advocate divided the enquiry intended to the addressees into two parts, namely:

- measures taken in response to the coronavirus epidemic, and
- other substantively relevant measures.

Within each part, the Advocate enquired about:

- information on policy and regulatory measures intended for **persons or groups with a certain personal ground** and the general public,
- and (separately) about **special measures** within the meaning of Articles 17 and 18 of the PADA.

²¹ Available at www.zagovornik.si/letno-porocilo-2



Replies were provided to the Advocate by almost all the Ministries, institutions under the Ministries and Government services between the end of December 2020 and the end of January 2021. Some addressees replied that in 2020, no measures were taken as regards the issue under consideration in the enquiry.

The responses received show that part of the addressees still lacks proper understanding of their tasks as per protection against discrimination under the PADA, including the significance of special measures. Hence, after carefully examining the answers received, the Advocate himself identified the measures relevant to the enquiry. The Advocate also identified which of these measures, by their nature, constitute special measures in accordance with the PADA.

The Advocate gives a list of special measures to eliminate discrimination and promote equal treatment, which were reported to the equality body by the addressees for 2020.²²

Ministry of Labour, Family, Social Affairs and Equal Opportunities (MLFSAEO)

Within the framework of the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ADIMCEMCCE) and the Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic (ADIMMCSWE), special exceptions have been granted in the field of social security benefits in aid of materially disadvantaged persons. The **MLFSAEO** also reported on the granting of a one-off solidarity allowance to recipients of cash social assistance and compensatory supplement and recipients of pensions in the amount of EUR 700 and less, pursuant to the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ADIMCEMCCE). As part of the active employment policy, **MLFSAEO** highlighted the on-the-job training program for persons with international protection; support to Roma in the field of socialisation and arrangement of Roma settlements within the public works scheme; as well a basic literacy program for Roma through non-formal training and education.

Ministry of Economic Development and Technology (MEDT)

The **MEDT** reported on the preparation of a Government Ordinance on the provisional prohibition on the offering and sale of goods and services to consumers, which reserved particular times of the day in some key stores exclusively for certain vulnerable groups (elderly, disabled, pregnant women), thus reducing the possibility of infection with the coronavirus.²³ Through the public agency SPIRIT Slovenia, the **MEDT** provided resources to promote greater involvement of women in entrepreneurial activities. This measure is also covered by the Resolution on the National Programme for Equal Opportunities for Women and Men 2015–2020.

²² The full responses provided by the Ministries, institutions under the Ministries and Government services are available in the Advocate's archives.

²³ The Advocate assessed that this measure was partly discriminatory, namely, in the part restricting shopping for people over the age of 65 to only certain hours of the day.

Ministry of Education, Science and Sport (MESS)

In the framework of the intervention legislation (ADIMMCSWE), the Ministry provided free hot meals to pupils and students from socially disadvantaged families during the distant learning. Pupils and students who were placed in a foster family were also entitled to the free hot meals. The **MESS** also adopted the Rules on the organisation, operation and financing of state-funded short programme preschool groups, which allows preschool children from vulnerable groups to join a shorter kindergarten program, which is free for the parents. The full responses provided by the Ministries, institutions under the Ministries and Government services are available in the Advocate's archives. The Advocate assessed that this measure was partly discriminatory, namely, in the part restricting shopping for people over the age of 65 to only certain hours of the day. As part of the public tender, kindergartens were invited to organise the mentioned short programme. The Rules on the call for enrolment and enrolment in higher education regulate the special treatment of candidates with a special status, which the applicants for enrolment in the first instance acquire in the application-admission procedure.

Ministry of Agriculture, Forestry and Food (MAFF)

Within the first package of anti-corona regulations (Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy, ADIMCEMCCE), a solidarity allowance was set for farm members over the age of 65. In the call for tenders for the third measure of the Decree on measures for agricultural structures policy and rural development policy – Support of the operation of non-profit associations in the field of agriculture, forestry and rural areas for 2020 – special support was envisaged by the **MAFF** to rural associations working to improve the working and living conditions of peasant and rural women. Under the Rural Development Programme 2014–2020, which is part of the EU's common agricultural policy, the MAFF implemented the sub-measure M06.1 Support to kick-start the operations of young farmers. These are non-repayable grants intended for young farmers aged between 18 and 40 inclusive, who have the relevant professional knowledge and skills and are setting up an agricultural holding for the first time.

Ministry of the Interior (MI)

The Police, as a constituent body of the **MI** carried out an awareness raising campaign in connection to the COVID-19 on various forms of violence during the epidemic. In cooperation with the Social Work Centres (SWC) and non-governmental organisations, it was found that violence did not decrease, but increased. In spite of this, the number of reports and requests for help decreased. At the time of measures to prevent the spread of the virus, women and children who are the victims of domestic violence and online abuse find themselves in a very difficult position.

Ministry of the Environment and Spatial Planning (MESP)

The Ministry reported on a number of projects envisaged for the years 2020–2025, which are being implemented in cooperation with the Housing Fund of the Republic of Slovenia (HFRS). This framework includes the SSRS's own construction projects, the purchase of apartments on the market following each Public Call for the purchase of flats and land for residential construction, etc. The **MESP** stressed that a share of the apartments will be intended exclusively for young people aged between 18 and 29, as young people and young families are one of the priority groups in the allocation of non-profit apartments in accordance with the Housing Act.



Ministry of Justice (MoJ)

As part of the measures related to the COVID-19 epidemic, the Ministry reported on the implementation of an incentive measure for mothers serving a prison sentence in the form of free exit during the epidemic for the purpose of contact with children. With the adoption of the Amending Criminal Procedure Act, drafted in 2020 by the **MoJ**, the procedural guarantees in criminal proceedings for juveniles have been amended so that they can understand and follow such proceedings and exercise their right to a fair trial.

Ministry of Health (MH)

As regards the measures related to the management of the COVID-19 epidemic, the **MH** issued a letter intended to healthcare providers stipulating that individual transport of sensitive groups of patients (oncology patients) should be provided, regardless of the rules of the Health Insurance Institute of Slovenia. The **MH** reported on the adoption of regulations providing for an exception in respect of the presence of an accompanying person in the medical treatment of patients who have the right to interpretation to the Slovenian language. The Ordinance on temporary measures to reduce the risk of infection and spread of COVID-19 was also pointed out, which stipulates that the use of protective masks may be temporarily suspended in direct communication with the deaf, deaf-mute and hard of hearing persons, taking into account the protection of all involved, provided that certain other protective measures are taken.

13 THE ADVOCATE'S RESEARCH ACTIVITIES

13.1 The importance of research for the Advocate's work

In accordance with the first indent of Article 21 of the PADA, the Advocate's powers and tasks also include conducting independent research on the situation of people with certain personal grounds and other issues related to discrimination. The results of any type of analytical or research work related to discrimination is the **data on equality, equal treatment and equal opportunities** (*together as equality data*).

The Advocate carries out various research activities and related monitoring of the overall situation in the field of protection against discrimination in the country (sixth indent of Article 21 of PADA) at two levels of complexity:

- At the level of **research**, the goal is to gain a more complex insight into a certain social problem by means of scientific tools (e.g. social attitudes towards social groups with a certain personal ground).
- At the **analytical** level, the main objective is to conduct analyses and identify the key features of a particular, less extensive discrimination related issue.

Equality data includes any information that can be applied in describing and analysing the state of affairs in the society. Information can be quantitative or qualitative and shows the prevalence of inequality, unequal treatment and unequal opportunities, and the effects or causes of the latter. Sources of data can be population censuses, administrative registers, household and individual surveys, studies, public opinion surveys revealing the values and attitudes of the population, data on discrimination cases addressed, situational testing of discrimination, monitoring of diversity by employers and service providers, as well as qualitative research strategies such as case studies, in-depth and expert interviews, etc.²⁴ Quality and reliable equality data are essential for effective protection against discrimination and the promotion of equal treatment, as well as to identify trends in these areas.

The lack of research and data on the existence of discrimination and the current state regarding inequality, unequal treatment and unequal opportunities makes it impossible to understand the causes, extent and characteristics of discrimination. As a result, the formulating and implementation of measures and policies for the protection of discrimination is also hampered. Only by obtaining quality data and independent research findings, which ensure an impartial and realistic picture of the situation relating to discrimination, can measures and legislative solutions be designed that ensure equal treatment of all.

²⁴ The definition of equality data is taken from the European Commission's publication (2016) European Handbook on Equality Data, p. 15. Available at: https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=43205

Slovenia was also reminded of the significance of systematic and comprehensive access to equality data by several **international control mechanisms**.²⁵ The latter pointed out the lack of credible, disaggregated data on individual groups of people with a particular personal ground and, in this context, also the lack of relevant research.

In 2020, some key strategic documents were adopted at the European Union level, emphasising the significance of the collection of such data, which is also essential to measure the progress and assess the efficiency of measures adopted at national and European level.

The following is a list of these documents:

- The EU LGBTIQ Equality Strategy 2020–2025²⁶
- EU Anti-racism Action Plan 2020–2025²⁷ and
- EU Roma strategic framework on equality, inclusion and participation 2020–2030.²⁸

At meetings with Ministers and high representatives of state authorities, the Head of the equality body drew attention to the challenge of incomplete data collection on equality, equal treatment and equal opportunities, as Slovenia is currently lagging behind other EU member states.²⁹

Quality and reliable equality data is particularly needed for:³⁰

- **identifying and finding indirect discrimination;** indirect discrimination within the meaning of the second paragraph of Article 6 of the PADA is taken to occur when a person or group with a certain personal ground was, is or could be in a less favourable position compared to other persons due to an apparently neutral provision, criterion or practice; this arrangement is in line with the EU law, which explicitly states that the national legislation may define, that the existence of indirect discrimination is also established on the basis of statistics;³¹

²⁵ Report of the Special Rapporteur on Minority Issues (2019), available in Slovenian translation in the Regular Annual Report of the Advocate of the Principle of Equality for 2018 and on www.zagovornik.si.

²⁶ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52020DC0698>

²⁷ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A0565%3AFIN>

²⁸ Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0620&from=EN>

²⁹ The European Commission study from 2017 described the collection of equality data in Slovenia as ‘critically weak’, and the efforts of the Slovenian authorities to disseminate, improve and use the existing data are far below the average of the European Union Member States. Read more: European Commission (2017) Analysis and comparative review of equality data collection practices in the European Union: Equality data indicators: Methodological approach, p. 49. Available at: https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793

³⁰ A more detailed analysis setting out ground for the need for equality data in: European Commission (2016) European Handbook on Equality Data, p. 19–22. Available at: https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=43205.

³¹ E.g.: Recital no. 15 of the Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Available at: EUR-Lex - 32000L0043 - EN - EUR-Lex (europa.eu)

- **monitoring and supervising the exercise of human rights and fundamental freedoms;** the sixth indent of Article 21 of the PADA mandates the Advocate to monitor the overall situation in the Republic of Slovenia in the field of protection against discrimination and the situation of people with certain personal grounds; consistent implementation of this task is practically impossible for the Advocate without adequate information on equality, equal treatment and equal opportunities, and can only be based on a partial and unrepresentative picture of the situation, where particular groups of persons with a certain personal ground stand out (e.g. gender identity, religion, ethnicity, sexual orientation), the status of which is practically unexplored; moreover, even at the level of state authorities, the lack of this data makes it impossible to monitor the implementation of Slovenia's international obligations under numerous human rights conventions within various international mechanisms under the auspices of the United Nations and the Council of Europe;
- **formulating and implementing anti-discrimination public policies and promoting equality, equal treatment and equal opportunities;** In line with Article 14 of the PADA, state authorities, local communities, self-governing national communities and holders of public authorisations shall, in their respective fields, provide conditions for the equal treatment of all people, irrespective of any personal grounds, by raising awareness and monitoring the situation in this field and with measures of a normative and policy nature;
- **adopting and implementing special measures to ensure equality, equal treatment and equal opportunities;** pursuant to Articles 17 and 18 of the PADA, public and private sector actors may take special measures to ensure more favourable treatment of persons or groups in a less favourable position regarding access to particular rights; in line with regulatory provisions, such measures must be based on analyses, their implementation must be regularly monitored, and when the pursued goal is reached, the implementation of such measures must cease; the lack of quality equality data prevents the Advocate from recommending the adoption of appropriate special (and other) measures to key stakeholders, as provided by the PADA.



13.2 Review of the Advocate's research activity

In 2020, the Advocate carried out **three research studies**:

- public opinion survey entitled Perceptions and experience with discrimination in Slovenia in 2020;
- research study Accessibility of insurance for people living with HIV;
- research study Situation in care homes for the elderly during the first wave of the COVID-19 epidemic.

With the aim of collecting and using equality data, the Advocate performed the following activities in 2020:

- co-financed the implementation of research activities within two targeted research projects for co-financing in the period 2019–2021 (in cooperation with the Slovenian Research Agency);
- conceptualised and carried out all procedures for upgrading and partial re-implementation of the public opinion survey on experiencing discrimination and financed the implementation of the survey;
- attended a working meeting of the Equinet Working Group Research and Equality Data;
- attended two working meetings of the Subgroup on Equality Data within the High Level Group on Non-Discrimination, Equality and Diversity.

13.3 Public opinion survey on perceptions and experience with discrimination in Slovenia 2020

13.3.1 About the public opinion survey

In 2020, the Advocate conducted a public opinion survey 'Perceptions and experience with discrimination in Slovenia in 2020' (public opinion survey) aimed at monitoring trends in the area of discrimination among the general public. It is an upgrade of the research 'Perception of discrimination in Slovenia – public opinion survey', which was conducted by the Advocate in 2017. By partial re-implementation of the survey, the Advocate sought to obtain comparative data so that possible changes in public opinion could be monitored over a three-year period.

The purpose of the public opinion survey was to gain insight into people's attitudes and experience regarding discrimination, and additionally assess the visibility of the Advocate of the Principle of Equality. On that account, the equality body prepared a special questionnaire with an external contractor, the survey was conducted entirely by the research institute Inštitut za raziskovanje trga in medijev Mediana, d. o. o. The research method was a combination of computer-assisted telephone survey and computer-assisted online survey. The survey was conducted between 30 October and 9 November 2020.

13.3.2 Description of the sample of respondents

The sampling frame was the population of the Republic of Slovenia, namely, the general population aged between 18 and 75 years. The survey is representative with regard to gender, age, region and education; it was performed on a sample of 1,007 persons.

More than half (53 percent) of the respondents identified themselves as religious, of which 91 percent identified themselves as members of the Catholic Church. Less than half (45 percent) of respondents identified themselves as non-religious. The vast majority of respondents identified themselves as Slovenes by nationality (94 percent). Six percent of respondents identified themselves as members of other nations or nationalities, such as Serbs, Croats and others.

13.3.3 Tolerance and views on discrimination

Respondents expressed their agreement or disagreement with individual statements on discrimination within the sets of questions. Respondents assessed their degree of agreement using the five-point Likert scale, where 5 means strongly agree, 4 agree, 3 neither agree nor disagree, 2 disagree, and 1 completely disagree.

The key findings regarding agreement with the statements on discrimination and comparison with the results of the 2017 public opinion survey are the following:

- In general, the level of tolerance among the population of Slovenia is relatively high. A higher level of tolerance is predominantly demonstrated by young people (aged 15 to 24) and the elderly (aged 65 to 75), women, urban dwellers and non-religious people.
- Compared to 2017, less people in Slovenia believe in the same ability of the older generation in comparison with the younger generation.
- The highest expressed level of tolerance relates to the equal role of the genders and the attitude towards people with different levels of education.
- Very high tolerance is shown towards a colleague who is a foreigner and speaks Slovenian well, and in supporting the marriage of a child with a person of another nationality or skin colour.
- A high level of undetermined positions is present in the attitude towards the Roma, while among those who stated their view, an equal share of negative and positive attitudes was detected.
- Compared to 2017, a higher level of tolerance towards same-sex people and the Roma was established.
- The proportion of those who would be uncomfortable working with a person with a mental disorder or a person living with HIV decreased.

13.3.4 Perception of discrimination

The findings of the public opinion survey show that the people in Slovenia to a large extent understand discrimination as unequal treatment due to skin colour (30 percent). More than a quarter of the statements was related to unequal treatment on the grounds of gender (26 percent) and more than a fifth of the statements concerned religion (21 percent) or unequal treatment in general (21 percent).

For as many as two thirds of the population, discrimination represents an important problem in the country.

Five percent of the Slovenian population considers discrimination to be the biggest problem in the country. 24 percent of the population believes that discrimination is one of the more widespread problems in the country, 37 percent of the people believe that discrimination represents such a problem. This means that 66 percent of the population of Slovenia consider discrimination to be an important social problem.

Only 30 percent of respondents believe that discrimination is a minor problem compared to other problems in the country, while three percent of the participants believe that it is not a problem at all.

Who are, according to the people, those who cause discrimination?

The position of the respondents, who had the opportunity to choose from three different answers, is that discrimination is in most cases practised by individuals (50 percent), private employers (34 percent) and politicians (34 percent). These are followed by the media (18 percent), governments (17 percent) and religious organisations (17 percent).

What personal grounds, according to the people, give rise to the most serious manifestation of discrimination?

Personal grounds that respondents consider to be the most common reason for discrimination are nationality, race, or ethnicity (45 percent), followed by sexual orientation (39 percent) and political belief (25 percent).

Which social sphere is the most exposed to the spread discrimination?

According to 70 percent of the population of Slovenia, discrimination is the most widespread in the field of work and employment, followed by the judicial and social security system with 38 percent of respondents and Police procedures with 36 percent.

Who are, according to the Slovenian population, the target groups at highest risk of discrimination?

The population of Slovenia believes that the most common targets of discrimination are homosexuals (24 percent) and Roma (24 percent), followed by the poor (21 percent), foreigners (20 percent) and women (19 percent).

How do people deal with discrimination?

Almost two thirds of the population (62 percent) of Slovenia would probably or definitely report discrimination against other people if they witnessed or found out about it.

Most respondents identified the Ombudsman (78 percent), various inspection services (44 percent) and the equality body (37 percent) as organisations and authorities that individuals can turn to if subject to discrimination.

How do people generally assess progress in the field of discrimination?

Only less than a fifth (19 percent) of the population of Slovenia believes that the situation regarding discrimination and inequality has improved in recent years. As many as 40 percent of the people are critical of the way in which protection against discrimination is being pursued and believe that the fight against inequality is not adequately (or not at all) taken care of.

13.3.5 Experience with discrimination

How many members of the populations were the target of discrimination in the past 12 months?

22 percent of respondents said they suffered discrimination in the past 12 months. Of these, 11 percent responded that they were subject to discrimination multiple times.

Which personal grounds most often led to discrimination against the respondents?

Over half of the respondents answered that they were subject to discrimination in the field of work and employment (52 percent), almost a fifth of them experienced discrimination in the field of health care (17 percent) and retail or service activities (15 percent).



Personal grounds which, according to the respondents, most often led to discrimination were age (22 percent), education (20 percent) and political belief (16 percent), disability (14 percent), gender (12 percent), and social status (11 percent).

13 percent of the population of Slovenia states that their relatives were discriminated against, and 9 percent stated that this happened more than once. Most often, in over half of the cases (54 percent), discrimination occurred at work or in connection with employment, almost 20 percent of discrimination took place in the field of health care.

Did the victims of discrimination take action and why not?

Four-fifths (80 percent) of those subject to discrimination in the past 12 months (22 percent) did not initiate any proceedings to protect their rights, as they believe nothing would have changed (48 percent) and things could even get worse (26 percent) or consider the process too complicated, time-consuming and expensive (18 percent). Only one fifth of those (20 percent) subject to discrimination, took action to protect their rights.

How many people were subject to harassment in the past 12 months and where?

14 percent of the population of Slovenia experienced harassment in the last 12 months, six percent more than once. Almost 40 percent of those who were the victims of harassment (at least five percent of all respondents) experienced harassment at work or in connection with employment.

How widespread is sexual harassment in Slovenia and where most of the cases take place?

In the past year, four percent of the population of Slovenia experienced sexual harassment, one percent more than once. Most often, in almost half of the cases (46 percent), sexual harassment occurred in the area of work and employment.

13.3.6 Visibility and awareness of the Advocate's functions

For the Advocate, the information that 42 percent of the respondents were not familiar with the functions of the Advocate is relevant.

Almost half (47 percent) of the users of the Advocate's services were satisfied, of which eight percent were very satisfied.

More than 40 percent of the population of Slovenia would like to receive more information on discrimination or inequality. Just under a quarter of the respondents think that they are generally adequately informed on this topic.

13.4 Research study Accessibility of insurance for people living with HIV

In 2019, the Advocate received a complaint to address discrimination in which the complainant stated that an insurance company unjustifiably rejected his attempt to obtain insurance, due to a personal ground of living with HIV. In the subject matter, the Advocate recognised the health status of the complainant as a personal ground. In the proceedings, the Advocate found that such conduct of the insurance company constituted discrimination under the PADA.³²

The Advocate checked whether this was an isolated case or whether people living with HIV, as a group, have similar problems in taking out insurance. As a result, in 2020, the equality body decided to examine the issue of the availability of insurance for people living with HIV at the systems level. The fact that people living with HIV are still often subject to stigmatisation and as a result wish not to be publicly exposed also contributed to the decision to address this issue.

The research includes an overview of the concepts of insurance and discrimination, presents key characteristics of the situation of people living with HIV, and summarises the addressed matter by the Advocate. Examples of the arrangement in other countries are presented as well as experience of equality bodies from other countries. In addition, the responses of Slovenian insurance and reinsurance companies to the Advocate's enquiries regarding insurance conditions and the treatment of people living with HIV are summarised. The concluding part of the research study contains findings on the treatment of people living with HIV when taking out insurance in Slovenia.

The Advocate found that for people living with HIV:

- serious disease insurance (and similar health insurance) is generally unavailable, and life insurance is generally available under special terms;
- insurance against accident is generally available.

In this context, insurance companies do not deviate from comparable practices in other countries. They do not differ in other characteristics either, e.g. in the relatively rigid insurance system; dependance on reinsurance companies; no experience and commercial interest in adapting products to people living with HIV.

Based on the research and findings of similar analyses from abroad,³³ the Advocate issued recommendations to various bodies.

The full survey is available on the Advocate's website.³⁴

³² Anonimiziran primer je objavljen na spletni strani www.zagovornik.si pod »Zaključena ugotavljanja diskriminacije«

³³ E.g. National AIDS Trust. 2017. HIV and Finance: Exploring access to financial services for people living with HIV in the UK. Available at: https://www.nat.org.uk/sites/default/files/publications/hiv_and_finance2017.pdf

³⁴ Available at: http://www.zagovornik.si/wp-content/uploads/2020/12/Raziskava-Zagovornika_Dostopnostzavarovanj-za-ljudi-ki-%C5%BEivijo-s-hivom-1.pdf

13.5 Research study Situation in care homes for the elderly during the first wave of the COVID-19 epidemic

When the coronavirus epidemic started in March 2020, the Advocate devoted great attention to monitoring how the epidemic and the protection measures affected the treatment, rights and equal opportunities of vulnerable groups. With the spread of the infections in care homes for the elderly and the high proportion of deaths (in comparison to the general population), the Advocate sought to obtain as much information as possible about the situation in care homes for the elderly from those who live there, their relatives and the staff. The equality body also invited representatives of NGOs working in the field of protection of the rights of the elderly to participate.

The aim of the research was to give a chance to speak to those severely affected by the measures to prevent the spread of coronavirus who find themselves in need. The Advocate followed the principle of ‘nothing about the elderly, without the elderly’.

The enquiry was conducted in two parts. The Advocate first prepared an online survey, which was completed fully or in part by 87 residents of the care homes for the elderly, 597 family members or relatives, 72 directors of the care homes for the elderly, 427 other employees of care homes for the elderly, and 84 NGOs associates. Following this, in-depth interviews with selected experts in the field of institutional care for the elderly and with some residents were conducted.

The survey and the interviews show that the measures to protect residents from coronavirus implemented between 6 March and 30 April 2020 had serious impact on their health and well-being, and affected their rights and benefits. In some homes, residents were forced to stay in their rooms for a very long time, which negatively affected their physical and mental condition. They suffered from social distancing and restrictions on socialising. In spite of being safe, they reportedly felt like being held in a prison. Some died without saying goodbye to their families.

Communication via telephone and other technical means eased their distress. But not everyone was able to take advantage of these opportunities, as some were unable or unwilling to use the devices or did not have access to them.

Directors and staff of the care homes for the elderly and representatives of NGOs stated that specialist medical examinations, physiotherapy, and occupational therapies were less accessible during the epidemic. They also expressed the view that the measures to combat the spread of coronavirus severely prejudiced human and constitutional rights of the home residents, such as the right to free movement, family life, equal medical treatment, health, inviolability of the home and the right to effective legal protection. They also drew attention to the lack of human resources in the care homes for the elderly, which was a problem even before the epidemic. Residents of the homes commended the hard work, dedication and warmheartedness of the staff.

Many consequences of the problems faced by the residents of homes during the first wave of the epidemic are the result of thirty years of inadequate approach to institutional and non-institutional care for the elderly and a reflection of a poor regulation of the area of long-term care.

This way the care homes for the elderly did not have enough capacities to adequately accommodate the residents in different zones to prevent the spread of the virus. Another problem was the shortage of staff. Consequently, the restrictive and protective measures lasted for a disproportionately long time.

The care homes for the elderly were unable to provide adequate treatment for residents with the coronavirus disease as these are not health facilities. They had to reduce the volume or completely stop the implementation of therapies and other services, which significantly affected the health and well-being of the residents. From this perspective, the medical condition of residents with dementia, immobility or other disabilities or illnesses deteriorated the most.

There was also no adequate access to information, communication technologies and support staff in the resident homes to enable the residents to have more contact with the outside world. Residents were not adequately informed about the possibility of complaints regarding care.

As part of the research, the Advocate also reviewed good practices from other countries and analysed findings on the impact of restrictive measures on the position of the elderly in other countries. Shortly after the pandemic was declared, international governmental organisations and NGOs pointed out that the elderly had the same rights as everyone else, including the right to the same level of health care, the right to make decisions regarding their treatment and other matters.

Based on the findings of the research, the Advocate emphasised that in the case of new measures intended to prevent the spread of more dangerous versions of coronavirus, the measures should be introduced for the shortest possible period of time and in a manner which would affect the rights and the position of home residents as little as possible. Exceptions or reasonable accommodation must also be envisaged for people with disabilities, dementia, those in mental distress and the dying in order to guarantee them the same or comparable level of enjoyment of rights compared to other.



The overriding principle in seeking solutions for issues in the area of elderly care must be respect for the dignity and fundamental human rights of the elderly. Residents of homes or representatives of the elderly from civil society organisations should also be included in the discussion on finding solutions. This must be possible even in emergency situations.

It is important that the competent authorities adopt protocols on treatment in critical situations and inform the residents of the homes, their families and relatives, the management and employees of the care homes for the elderly and non-governmental organisations working in the field of elderly care about such protocols. According to the Advocate's research, during the first wave of the epidemic, all stakeholders were poorly informed on who was entitled to hospital treatment and who was not.

13.6 Targeted research projects

At the beginning of 2019, the Slovenian Research Agency invited the Advocate to participate in the implementation of the Targeted research programme 'CRP 2019'.³⁵ The Advocate participates in the tendering procedure and co-financing two two-year targeted research projects which can, according to the Advocate, significantly contribute to better understanding of causes, scope and characteristics of discrimination in Slovenia.

At the end of March 2020, the Advocate informed both research providers about the changed circumstances due to the government measures to prevent the spread of the coronavirus epidemic.

Due to the cuts in resources, the Advocate was forced to redirect the funds intended for the co-financing of projects in 2020 and use them for tackling the impacts of the epidemic in Slovenia. The Advocate asked the research provider to temporarily, until the provision of contractual funds, adjust the implementation of the research activities. At the beginning of October 2020, the Advocate was allocated the previously withdrawn funds and hence the conditions for co-financing projects in 2020 were re-established in accordance with the contractual obligations. Due to the mentioned situation, the realisation of particular activities within the research projects in 2020 was less extensive than originally planned.

The research provider for the project *Structural Discrimination as an Obstacle to Achieving the Goal of a Decent Life for All* is the University of Ljubljana Faculty of Social Work, the research provider for the research project *Reducing and Eliminating Discrimination Based on Ethnic Origin, Race or Religion* is the Peace Institute.

A detailed description of the implemented research activities of both targeted research projects in 2020 follows.

13.6.1 Structural Discrimination as an Obstacle to Achieving the Goal of a Decent Life for All

In 2020, the following research activities were carried out:³⁶

- An analysis of available statistical data and data from advocacy institutions on the situation in relation to discrimination against individuals, with special emphasis on the effects of the COVID-19 epidemic. The most vulnerable groups are:
 - precarious and self-employed workers whose socio-economic situation was subject to worrying deterioration, also due to politically motivated punitive measures taken by the authorities against individuals;

³⁵ Available at: <https://www.arrs.si/sl/progproj/crp/razpisi/19/razp-crp-19.asp>

³⁶ More information about the research project is available on the Advocate's website: <http://www.zagovornik.si/raziskave-o-diskriminaciji/>



- elderly people living in poverty, of whom the most at risk are women over 65;
 - adults and children with disabilities who suffer due to lack of understanding and poor regulation of their situation;
 - women and children, victims of violence, as patriarchal normalisation of violence is observed;
 - groups facing hate speech, racism, anti-Semitism, homophobia and misogyny;
 - besides, an increase in the number of people with mental health problems occurred with a significant deterioration of their condition during the pandemic, (e.g. increasing suicide among adolescents).
- A review of the relevant national, European and international regulatory framework was conducted in terms of equal treatment of key vulnerable groups: children, people with disabilities, precarious workers, people with mental health problems, migrants and the elderly.
 - Reports on structural discrimination drafted by international supervisory bodies in the field of human rights protection, and reports of European institutions for the protection and safeguarding of human rights were analysed.
 - In addition to that, cases before the European Court of Human Rights against Slovenia were analysed in light of the prohibition of discrimination.

13.6.2 Reducing and Eliminating Discrimination Based on Ethnic Origin, Race or Religion

In 2020, the following research activities were conducted:³⁷

- An analysis of the state of discrimination against persons was prepared with the assistance of a review of findings from available national sources. The areas of life where discrimination against individuals with the personal grounds of ethnicity, race, nationality and/or religion is most likely are the following:
 - a) access to housing – especially rental housing,
 - b) the area of employment or discrimination in the field of search for employment, and
 - c) access to health care or the full range of health services.
- In line with the existing research, the most vulnerable to discrimination are the Roma, the ‘erased’, asylum seekers and refugees (i.e. persons granted international protection), covered Muslim women and immigrants from the so-called third countries (reports bring out members of minorities from the former Yugoslavia and Africans or persons of darker complexion).
- The methodological working guide contains the methodology for data collection and the design of a field research, which include focus groups, situational testing and online survey.
- Preparations have begun for an online survey intended to obtain field data, which would form a basis for the qualitative and quantitative analysis of the results.
- Preparations for the organisation of an expert consultation have been set in motion.

³⁷ More information about the research project is available on the Advocate's website: <http://www.zagovornik.si/raziskave-o-diskriminaciji/>

13.7 Advocate's enquiries

One of the Advocate's tools for monitoring the overall situation regarding discrimination in the country are written enquiries, as stated in the sixth indent of Article 21 of the PADA and from Articles 17 and 18 of the PADA. In 2020, the Advocate dispatched **written enquiries to as much as 437 addresses of state authorities, other institutions and civil society organisations**. The enquiries were prepared in the context of discrimination investigation procedures and with the aim of monitoring the state of discrimination in the country and addressing individual systemic issues.

Moreover, the written enquiries serve as a tool for obtaining information and clarifications from various stakeholders, either from those who have or could cause discrimination, or those who can significantly affect the position of a certain social group. It may also be stakeholders who are well acquainted with the situation or are in possession of other specific information relevant for the Advocate's monitoring of the situation, identifying unequal treatment of particular social groups based on one or more personal grounds and preparing recommendations, including special measures.

The Advocate conducted several comprehensive enquiries pertaining to:

- insurance conditions and the treatment of people living with HIV;
- ensuring an inclusive educational process with regard to the gradual re-opening of schools;
- the situation of discrimination in the case of civil society organisations in their field of work;
- past disability organisation initiatives regarding the accessibility of elections for people with disabilities;
- the situation of persons with intellectual disabilities in social welfare institutions;
- inclusion of the Roma population at the local level in South-Eastern Slovenia and coexistence of the Roma with the rest of the population in the region;
- data on the coronavirus infections in care homes for the elderly.

14 THE ADVOCATE'S COOPERATION WITH STATE AUTHORITIES

14.1 The role and meaning of cooperation

The activities presented in this chapter pursue several objectives stemming from the powers and tasks laid down in the Protection against Discrimination Act (PADA).

These activities are principally related to:

- presenting the Annual Report on the work carried out by the Advocate of the Principle of Equality (Advocate), submitted annually to the National Assembly, the National Council, the President of the Republic, the Government, MEPs and other stakeholders in the state administration or public sector in line with Article 22 of the PADA;
- monitoring the overall situation in the Republic of Slovenia in the field of protection against discrimination (Article 21 of PADA) and
- raising public awareness about discrimination (Article 21 of PADA).

The most common forms of such cooperation were meetings with representatives of the State at the highest level and meetings of a working nature with line ministers, state secretaries and representatives of other state authorities. At the meetings, the Head of the Advocate presented the work of the equality body by means of the Annual Report for the previous year with reference to common topics that fall within the scope of work of the institution and are a matter of the Advocate's powers.

In 2020, due to the COVID-19 epidemics, meetings were held to a limited extent in line with the recommendations of the National Institute of Public Health (NIPH) or using internet video applications.

14.1.1 President of the Republic of Slovenia

On 16 September 2020, the Head of the Advocate Miha Lobnik **presented the Annual Report for 2019 to the President of the Republic of Slovenia Borut Pahor.**

The Advocate also brought the President up-to-date on the challenges in the field of protection against discrimination and stressed that during the epidemic, particular attention was paid to monitoring the current situation and making recommendations regarding the government measures to prevent the spread of COVID-19. During the epidemic and later on, the Advocate received many requests for help and advice. 'People subject to discrimination expect the State to help them,' he noted.

The Advocate presented to the President plans for specific areas of work and informed him on the improved working conditions, which in the past years represented an obstacle to a more successful implementation of statutory tasks. They both agreed that recovery from the epidemic and increased social inequality would represent a major challenge for maintaining protection against discrimination in the country.



Photo: Nebojša Tejić, STA

At the presentation of the Annual Report for 2019, the President of the Republic of Slovenia Borut Pahor noted great progress in terms of the work and visibility of the equality body.

14.1.2 National Assembly of the Republic of Slovenia

On 22 September 2020, the Head of the Advocate Miha Lobnik presented the Annual Report on the Advocate's work in 2019 to the **President of the National Assembly Igor Zorčič**, who assessed that the importance of Advocate's role in society is increasing and stressed the need to respond to discrimination at all times.

'The growing number of reports of discrimination confirms that the country needs such an institution, as during the COVID-19 epidemic the need for advisory assistance greatly increased, moreover, and we also had to address specific cases and challenges related to this specific period,' the Advocate emphasised at the meeting. He also called attention to the recommendations on acts under consideration or in force, submitted to the National Assembly to acquaint the Deputies with the Defender's arguments, which they can use in the legislative procedure.



Photo: Matija Sušnik, DZ

The Advocate is playing an increasing role in society, said the President of the National Assembly Igor Zorčič after a meeting with the Head of the Advocate, Miha Lobnik.

Miha Lobnik also presented the work of the Advocate to **deputy groups**, and on **1 October 2020**, the **Annual Report for 2019** was presented to the **Committee on Labour, Family, Social Affairs and Disability**.

At the parent committee, Miha Lobnik pointed out that in 2019 the number of discrimination complaints doubled compared to 2018. He added that in cases closed by the Advocate in 2019, the complainants most often alleged discrimination on the grounds of gender, nationality, race and disability. Most frequently, discrimination was alleged in the field of employment and occupation, access to services, goods and housing, or access to education.



‘In the process of establishing discrimination, we often find that the discrimination was not intentional nor planned, and the offenders against the prohibition of discrimination later make sure it does not happen again. However, there are also cases when the offenders knowingly insist on their conduct which the Advocate found to be discriminatory,’ said the Advocate. He also mentioned cases in which discrimination was not found. ‘Not every injustice can be called discrimination. Discrimination is merely unequal treatment on the basis of a particular personal ground, and discriminatory treatment must therefore be established in an appropriate procedure.’

The Deputies addressed several questions to the Advocate and concluded that the Report was well structured and commended the Advocate’s work done so far.

They also took note of the Advocate’s special report on the situation of intersex persons in medical procedures.

14.1.3 National Council of the Republic of Slovenia

On 20 May 2020, the Head of the Advocate Miha Lobnik presented the Annual Report for 2019 to the **members of the National Council** at the Commission for Social Welfare, Labour, Health and the Disabled, and then in a plenary session of the National Council on 1 July 2020. The members of the National Council commended the work of the Advocate and assessed that the Report and its presentation evidence significant progress in the work of this state authority.

The Head of the Advocate Miha Lobnik explained to the members of the National Council, that the number of discrimination complaints increased due to the increased visibility of the equality body. He mentioned to the members of the National Council judgements of Courts, which are presented in the Annual Report for 2019 and show the relatively widespread discrimination of pregnant women and parents as regards the field of employment and work. As a consequence of this, the Advocate issued a special brochure with information on discrimination against pregnant women and parents and about the possible actions of the victims of such unequal treatment.

The discussion in the National Council also touched the topic of special measures, sometimes called positive discrimination. The members of the National Council pointed out that positive discrimination should not become an excuse for violating other regulations and the law by vulnerable groups for whom these measures were intended. The Advocate agreed that, pursuant to the PADA, all special measures must be based on detailed analyses that first establish a certain inequality, unequal treatment or unequal opportunities, while having a clear objective and a predetermined way of monitoring the effects and ensuring that the implementation of the measures will cease when the defined objective is achieved. Hence, the special measures are intended to improve the situation of a particular vulnerable group and should not become an excuse for any non-compliance with applicable laws, regulations and social norms. In Slovenia, there must be a shift in various areas from the general ‘compensating’ of the difficult situation of socially vulnerable groups to a transparent methodology and regulatory procedures for planning and implementing special measures.

Miha Lobnik explained that the equality body has competence in the public and private sector, and in addition to identifying discriminatory practices, the equality body also assesses the discriminatory character of regulations. In 2019, the equality body initiated the procedure of assessing 15 regulations, completed three and found discrimination in one. Unequal treatment was found and eliminated through an amendment of the act. The Advocate also highlighted the recommendations given, as their number in 2019 doubled compared to 2018.



The Head of the Advocate, Miha Lobnik, also presented the cases considered in the past year to the members of the National Council. In the discussion, they agreed that positive discrimination against persons entitled, does not relieve them of their duty to respect the regulations and rules in society at large.

14.1.4 Government of the Republic of Slovenia

In the framework of meetings with the Government representatives, the Head of the Advocate Miha Lobnik met with:

- Minister of Labour, Family, Social Affairs and Equal Opportunities, Janez Ciglar Kralj;
- Minister of Education, Science and Sport, Dr. Simona Kustec;
- Minister of Public Administration, Boštjan Koritnik;
- Minister of Agriculture, Forestry and Food, Dr. Jože Podgoršek;
- Minister of the Interior, Aleš Hojs;
- Minister of Justice, Mag. Lilijana Kozlovič and
- State Secretary at the Ministry of the Environment and Spatial Planning, Robert Rožac.



15 THE ADVOCATE'S COOPERATION WITH CIVIL SOCIETY

15.1 Challenges of discrimination from the perspective of civil society organisations

NGOs, social partners and other civil society organisations represent one form of civic participation in the governance of public affairs. Many of them implement projects and programmes in the public interest in key areas of equality and protection against discrimination. Civil society organisations perceive problems and needs in society at the individual and systemic level and act as an important link between individuals and the public structures. They also make an important contribution to effective awareness raising and tackling issues of equal treatment, protection of human rights and fundamental freedoms through advocacy and direct assistance to discriminated persons. For the Advocate, civil society organisations are important strategic partners in monitoring the situation of protection against discrimination in the country (Article 21 of PADA) as well as in formulating solutions and proposals for the implementation of measures.

In line with Article 15 of the PADA, the Advocate cooperates with non-governmental organisations, social partners and other civil society organisations working in the field of equal treatment, protection of human rights and fundamental freedoms, protection of vulnerable people against discrimination and legal, social and other assistance to discriminated persons to formulate solutions and proposals to achieve the purpose of this Act.

Due to the poor epidemiological situation associated with the COVID-19 disease, normal cooperation with civil society organisations was limited in 2020.

In early July 2020, the Advocate addressed a written enquiry to **314 civil society organisations**, which were identified as important players in the field of protection against discrimination and the promotion of equal opportunities. This type of communication with civil society organisations was selected due to the poor epidemiological situation associated with the COVID-19 epidemic in 2020. In this way, the dialogue and cooperation with civil society organisations in Slovenia could continue.

The purpose of the enquiry was to obtain information on the situation of persons with a certain personal ground and on discrimination as perceived by civil society organisations in their individual fields of work. These organisations are in direct contact with individuals or groups in the field who are subject to poorer treatment in the exercise of their rights or are in a less favourable position due to certain personal grounds.

The enquiry consisted of two substantive parts. The first focused on assessing the overall situation in respect of discrimination, while the second focused exclusively on the period of the first wave of the coronavirus epidemic in the spring months of 2020.

72 organisations responded to the enquiry. Of these, seven stated that they did not detect any discrimination during their work. The remaining 65 organisations indicated in their responses the identified discriminatory practices that are, according to their opinion, faced by the users their services.

The largest number (ten or more) reported on discrimination based on the following personal grounds: disability, health status, age (children), and gender. These are followed by: nationality, race or ethnic origin, pregnancy or parenthood, age (elderly), financial status, religion or belief and age (young people), which were mentioned by five to ten organisations.

The smallest number of organisations (less than five) pointed to discrimination based on the personal grounds of education, sexual orientation, gender identity, place of residence, or student status. None of the organisations that responded to the Advocate's enquiry mentioned in their responses discrimination on the basis of language or sexual expression.

Furthermore, civil society organisations observed that the distress of the people, especially the most vulnerable groups, deepened in the first wave of the epidemic. The uneven effects of the coronavirus epidemic, its immediate consequences and the measures taken to contain it have proven to be very intense, which additionally worsened the situation of people from vulnerable groups.

Within the framework of other forms of cooperation, the Advocate carried out **three meetings** at the initiative of the representatives with the topic of personal grounds of gender and disability and one in-depth interview.

In 2020, **the Advocate wrote letters to support ten projects**, with which civil society organisations competed in public tenders for national and European funding.

A more detailed look at the Advocate's cooperation with civil society is presented in Chapter [1 Personal Grounds of Discrimination](#) of Part Two of the Annual Report for 2020.

16 EDUCATION, AWARENESS RAISING AND COMMUNICATION

16.1 The role and meaning of education and communication

In 2020, the Advocate of the Principle of Equality (Advocate) carried out numerous activities aimed at raising the awareness, educating and informing the general public as well as selected targeted public. In respect of their aims and content, these activities comply with the **the fifth indent of Article 21 of the Protection against Discrimination Act (PADA)**, which includes raising the awareness of the general public on discrimination and measures to prevent it among the tasks and powers of the Advocate.

In his work, the Advocate notes that the violators of non-discrimination are sometimes not aware of the discriminatory character of their actions. Once the discriminatory practice is brought to their attention, they quickly eliminate the problematic conduct.

Understanding and awareness of what discrimination is and what are the effects of such behaviour, proves time and again to be a key tool for its elimination. And that is precisely why, educating, awareness raising and informing the general and selected public are among the statutory tasks of the Advocate.

In 2020, as far as the epidemiological situation allowed, the Advocate conducted educational workshops on discrimination and participated in events organised by other stakeholders in the field of protection against discrimination.

The task of raising awareness about protection against discrimination and measures for its prevention were implemented by informing through the media, updates on the Advocate's website and social media posts.

16.2 Education

In the context of respecting human rights, education in this field is of key importance. This is also relevant in the field of protection against discrimination. To this end, the Advocate engages in educating and raising the awareness of the general public on discrimination and the measures to prevent it. In this way, the influence and impact of education would be greatest, and with it also the progress of equality.

Due to financial constraints, limitations in terms of personnel and the coronavirus epidemic in 2020, the Advocate focused mainly on educating the public concerned, i.e. those who have the potential of further, indirect dissemination of this knowledge and information through their own channels to members of particular organisations and the general public. These efforts are aimed at professionals, civil servants, social partners and public sector organisations, teachers, civil society and NGOs.

In terms of direct educating, the Advocate attended **nine events**:

- panel discussions on intolerance at the Police Academy;
- working meeting with representatives of the Social Chamber of Slovenia;
- expert consultation on the occasion of World Refugee Day;
- EURES meetings;
- workshops on protection against discrimination in the Multipurpose Roma Center Drom in Kerinov Grm near Krško;
- meeting at the Association of Free Trade Unions of Slovenia, where the Advocate presented their work;
- workshops on protection against discrimination;
- lectures at the Faculty of Law, where the Advocate spoke on systemic protection against discrimination in Slovenia;
- professional webinar Sustainable Development and Law.

A more detailed descriptions of the Advocate's educational activities is presented in Chapter [1 Personal Grounds of Discrimination](#) of Part Two of the Annual Report for 2020.

16.3 Awareness raising by the Advocate through attending events

Through the participation in various events related to the promotion of equal treatment and equal opportunities, the Advocate raises awareness and informs participants about the importance of protection against discrimination and the promotion of equality.

In 2020, the Advocate engaged in public awareness raising through attending the following **eleven events**:

- the central annual meeting of the Slovenian association for persons with intellectual disabilities Sožitje;
- the event within the project Enabling multimodal mobility of people with reduced mobility;
- the panel discussion 'Language of people with deafblindness';
- the conference of the Slovenian association for persons with intellectual disabilities Sožitje: Challenges of the pandemic for persons with intellectual disabilities and their families;
- the opening of the exhibition of works of art 'Feelings of the Deafblind',
- the panel discussion at the book release on the sex lives of people with disabilities;
- the panel discussion 'Human Rights and the Elderly';
- the closing conference of the 4ALL project;
- an event of the Slovenian Association of the Deaf 14 11 on audism;
- the discussion on the first LGBTIQ + strategy of the European Commission;
- an expert conference of the Risa Institute on easy reading.

A more detailed descriptions of the Advocate's awareness raising activities is presented in Chapter [1 Personal Grounds of Discrimination](#) of Part Two of the Annual Report for 2020.

16.4 Awareness raising of the Advocate with own materials

The Advocate is actively pursuing to prepare a compilation of various measures and activities to improve own communication accessibility. In this regard, the Advocate will continue to pursue the two key objectives; it is primarily a matter of removing (possible) obstacles, especially those in communication between the Advocate and potential applicants. A more far-reaching goal of these activities is to approximate the function and activities of the Advocate in the area of prevention and elimination of discrimination and promotion of equality to different target groups, including persons with disabilities, which is in line with the European Commission Recommendations on Standards for Equality Bodies of June 2018 and General Policy Recommendation of the European Commission against Racism and Intolerance on equality bodies to combat racism and intolerance at national level of February 2018.

The purpose of the Advocate is to provide information on key content in a friendly and understandable way, i.e. accessible to the widest possible circle of people. The essential prerequisite for successful prevention and elimination of discrimination is clear understanding of the concept of discrimination and equality, availability of legal remedies in case of discrimination violation and other contents of the PADA.

With the aim of greater transparency and accessibility of information, the Advocate redesigned the structure of the official website and supplemented the contents.

In addition, the Advocate sent the Annual Report for 2019 to 500 addressees. Hence, the report was made available to Ministries and other state authorities, Slovenian embassies abroad, Slovenian MEPs, parliamentary groups in the National Assembly, social work centres, the Employment Service, administrative units, courts, libraries, patients' rights advocates, other health care institutions and bodies, universities and university libraries, economic organisations, chambers, trade unions and NGOs.

The Annual Report for 2019 was accompanied by two brochures with basic information on the Advocate and on discrimination against pregnant women and parents in employment and at workplace. This way, the Advocate distributed another 6,000 brochures with basic information and 2,000 brochures on the rights of pregnant women and parents.

More than that, the Summary of the Annual Report for 2019 was also translated into English, Hungarian and Italian. The English translation of the Summary was sent to the European Network of Equality Bodies – Equinet, Slovenian embassies abroad, Slovenian MEPs, the European Commission, the European Parliament and the Council of Europe. A total of 72 English copies of the Summary of the Annual Report was distributed to the recipients.

The bilingual Slovene/English version of the Summary of the Annual Report for 2017 was sent to NGOs, Slovene embassies abroad and other state authorities. Bilingual Slovene/English version of the complaint against discrimination form was also sent to the addressees. In total, the Advocate sent out 67 bilingual Slovene/English versions of the Summary of the Annual Report and 1,000 bilingual Slovene/English versions of the complaint against discrimination form.

In 2020, the Advocate also provided part of the basic information on the equality body in the Italian and Hungarian language, the official languages in areas home to Italian and Hungarian national communities. The bilingual Summary (Slovenian/Italian, Slovenian/Hungarian) of the Annual Report for 2019 was sent to the Italian and Hungarian national communities' deputies, the Ambassadors of Italy and Hungary in Slovenia, as well as to autonomous communities, minority organisations, municipalities and state authorities in the bilingual area. In total, 70 copies of the bilingual Summary of the Annual Report were sent to each community.

The Advocate also prepared bilingual Slovene/Italian and Slovene/Hungarian Complain against discrimination form and informed the concerned minority organisations, national minority deputies in parliament, as well as members of both minorities through the media. In total, the Advocate distributed 625 bilingual Slovene/Italian forms and 560 bilingual Slovene/Hungarian forms.

In 2019, the Advocate also prepared a special report on the situation of intersex people in medical procedures, which draws attention to the right of intersex people to equal treatment and raises awareness of the importance of formulating and adopting regulations and measures to prevent any discriminatory treatment. The Advocate submitted the special report to the Government, the President of the Republic, the National Assembly and the National Council, Ministries and other state authorities, patients' rights representatives, health care institutions, NGOs working with intersex people, faculty libraries and journalists focused on the health sector. In total, the special report was sent to 62 addressees.



The Advocate equips state authorities, NGOs, journalists and other relevant stakeholders with information materials.



16.5 Informing

The Advocate informs the public about all activities performed on the official website and through social media Facebook and Twitter and media appearances.

In 2020, the Head of the Advocate, Miha Lobnik, was interviewed four times by the press and once by the national radio, and appeared in 18 television, radio and online broadcasts.

The Advocate received 90 journalistic questions relating to current social issues, alleged cases of discrimination, and matters addressed by the equality body.

Furthermore, 36 press releases were prepared and seven electronic newsletters and e-newsletters were made available. In them, the Advocate presented the cases of alleged discrimination under consideration, assessments of the discriminatory character of regulations, recommendations, conducted research, special reports and other current issues within the scope of work of the equality body.

On the website www.zagovornik.si, 80 news and updates on the work of the Advocate were published. On the official website, the Advocate publishes up-to-date news on closed cases of advisory assistance to clients, anonymised examples of discrimination investigation procedures and assessments of the discriminatory character of regulations, recommendations, research and other conclusions.

17 THE ADVOCATE'S INTERNATIONAL COOPERATION

17.1 Legal basis and meaning of international cooperation

International cooperation of the Advocate of the Principle of Equality (Advocate) is partly stipulated by the Protection against Discrimination Act (PADA), which in the ninth indent of Article 21 assigns the Advocate the task of ensuring the exchange of available information on discrimination with bodies of the European Union (EU).

Yet, the Advocate's activities at the international level are significantly more extensive and include:

- cooperation within various multilateral organisations,
- exchanging information on best anti-discrimination practices,
- international training on current challenges of protection against discrimination,
- collaborative planning of responses to these challenges;
- cooperation with international mechanisms for monitoring the implementation of the international obligations of the Republic of Slovenia in the field of protection against discrimination and protection of human rights.

The Advocate's international activities also include bilateral projects, e.g. meetings with diplomatic representations of other countries in the Republic of Slovenia and equality bodies from other countries. The importance of the international operation of equality bodies and the responsibility of EU Member States to enable such cooperation is also stressed in the European Commission's (EC) Recommendation on standards for equality bodies.³⁸

International cooperation significantly contributes to the visibility of the institution in the wider European area and to the development of the Slovenian equality body, both in the field of anti-discrimination law and policy making for protection against discrimination and promotion of equality.

Due to the coronavirus disease pandemic, the form of the Advocate's international cooperation in 2020 has changed significantly compared to previous years, as international live meetings have been impossible since mid-March 2020. However, this does not mean that international cooperation was less intense, as the Advocate's international partner organisations have quickly adapted to the new situation and moved international operation online.

In 2020, the Advocate attended **50 live international professional consultations, conferences and other events** via the internet. This included 22 Equinet meetings, 22 other professional events and meetings, and 6 bilateral events and meetings. The Advocate also conducted **42 mutual exchanges of information** with international institutions aimed at monitoring the state of discrimination and the functioning of equality bodies.

³⁸ Commission Recommendation (EU) 2018/951 of 22 June 2018 on standards for equality bodies, point 1.3 (3).

17.2 European Network of Equality Bodies – Equinet

The Advocate's key strategic international forum is the international non-governmental organisation **European Network of Equality Bodies – Equinet**, which brings together 47 national equality bodies from 37 European countries, as some countries have several such bodies covering the field of protection against discrimination based on particular personal grounds. The key purpose of the network is to ensure a continuous exchange of information between Equinet members with a focus on peer learning based on good practices and challenges that equality bodies face in fulfilling their tasks.

The highest authority of Equinet is the **General Assembly**, responsible for taking decisions on multi-annual strategic orientations and the annual work plan of the network, the admission of new members and the election of members to the Executive Board of Equinet. On 16 October 2020, the Head of the Advocate, Miha Lobnik, participated via the internet in the **annual meeting of the Equinet General Assembly** (AGM) composed of representatives of all participating institutions.

The main managerial body of the organisation is the **Equinet Executive Board**, in which the Head of the Advocate Miha Lobnik was also elected at the annual session of the General Assembly of Equinet in 2019 for the term of office 2019–2021. The Executive Board is responsible for supervising the development, preparation and implementation of the organisation's work plans. At the same time, it is responsible for preparing the multi-annual strategic action plans of Equinet, which are proposed to the General Assembly for adoption; and overseeing the work of the Equinet Secretariat. In the past year, the Head of the Advocate actively participated in five meetings of the Equinet Executive Board.

17.2.1 Annual meeting of the Equinet General Assembly

On 16 October 2020, the Head of the Advocate, Miha Lobnik, participated via the internet in the annual meeting of the Equinet General Assembly of Equinet (AGM) composed of representatives of all participating institutions.

At the General Assembly, the Advocate participated in the adoption of substantive and technical reports, work plans and budgetary documents. Among other things, the General Assembly unanimously approved the Equinet Work Plan for 2020, which also includes the following priorities, which the Advocate underlines as particularly important:³⁹

- implementation of European standards for equality bodies;
- integration of equal treatment into all policies (equality mainstreaming);
- special measures;

³⁹ The full Equinet Annual Work Plan for 2021 is available at <https://equineteurope.org/wp-content/uploads/2020/10/Work-Plan-2021.pdf>

- elimination of institutional racism;
- the use of disaggregated data in addressing individual cases of discrimination;
- access to health services;
- welfare assistants.

The conceptual part of the event dedicated to discussion was thematically focused on the effects of the COVID-19 epidemic and the development of efforts for greater equality in Europe, especially in view of the development of the new European Commission's perspectives and challenges in individual countries. The speakers explicitly highlighted the situation of the particularly vulnerable persons in times of crisis and the aggravation and deepening of the pre-existing structural inequalities.

17.2.2 Equinet working groups

Equinet working groups are regular meetings of expert staff from equality bodies across Europe operating as a forum to exchange views of their functions in line with their national mandates. The working groups address issues related to the development of protection against discrimination, identified gaps and specific needs for further work; and exchange information on examples of good practice.

17.2.2.1 Policy Formation working group

The Policy Formation working group (WG) aims to support Equinet's dialogue with the EU institutions, which includes the preparation of Equinet's special reports (perspectives) on specific topics in the field of anti-discrimination and the promotion of equality and diversity, based on the experience and contributions by the national equality bodies. In 2020, a representative of the Advocate acted as a moderator of the working group upon a proposal of the Equinet Secretariat.

On 8 May and 27 October 2020, a representative of the Advocate attended and moderated two online meetings of the **Equinet working group for policy formation**.

The May meeting of the working group was dedicated to the work on the Equinet's special report on the work of equality bodies in the field of discrimination against the Roma,⁴⁰ which represented Equinet's contribution to the European Commission's new strategic framework for Roma inclusion. The participants also discussed Equinet's specific recommendation on the COVID-19 post-pandemic recovery drawn up by the working group.⁴¹

40 The report is available in English at https://equineteurope.org/wp-content/uploads/2020/07/Roma_Traveler-Inclusion_Equality-Bodies.pdf

41 The Advocate translated the recommendation into Slovene and forwarded it to all key decision-makers in the country. Available at http://www.zagovornik.si/wp-content/uploads/2020/07/Equinet-priporoc%CC%8Cilo-Covid-19_SI.pdf.



The October meeting of the working group was devoted to preparing Equinet's special report on challenges perceived by equality bodies in the context of the coronavirus pandemic and the emerging economic and social crisis. Vulnerable groups were in the centre of attention, namely, the elderly, migrants and people in institutional care. The issue of inclusive distance learning was also highlighted as well as the increase of domestic violence and digitalisation of services. In addition, the participants discussed the topics to be addressed by the working group in 2021, i.e. systemic racism, discrimination and inequality in health care.

17.2.2.2 Equality Law working group

The Equality Law working group (*WG*) represents a permanent platform of legal experts working within national equality bodies, designed for the purpose of exchanging experience and knowledge in order to improve legal certainty in the field of protection against discrimination.

On 13 May and 16 November 2020, a representative of the Advocate participated at the meetings of the **Equinet equality law working group**.

At the March meeting, members of the working group presented the situation by individual countries and the latest developments in the EU, especially in connection with the COVID-19 pandemic. The central part of the meeting was dedicated to the reflection on the work of the group in 2020. The participants in the meeting found the topic of reasonable accommodation under the Convention on the Rights of Persons with Disabilities, to be the most appropriate for consideration.

At the November meeting, the participants were informed about the developments of the EC's engagement in the field of instruments for ensuring equal treatment, including the action plan against racism. The group focused on reviewing the work done and programming future work. In 2020, following an in-depth mapping in respect of the intervention as a third party at the European Court of Human Rights (ECtHR), the working group selected the case *Toplak and Mrak v. Slovenia* relating to the subject of accessibility of polling stations for people with disabilities. In the subject case, Equinet prepared a comparative third-party intervention by reviewing relevant information from a number of Council of Europe member states and international sources supporting the obligation of access polling stations. As for the matter of this case, the Advocate prepared and filed its first so-called third party intervention before the ECtHR to support the case *Toplak and Mrak v. Slovenia* on the topic of accessibility of polling stations for persons with disabilities. The participants discussed the experience of drafting the intervention, the need to simplify the procedure and to continue monitoring the ECtHR cases. In 2020, Equinet members contributed to the substance of the publication on reasonable accommodation in the area of disability, and the working group prepared a comparative report with chapters on the differences between reasonable accommodation and accessibility, the scope of reasonable accommodation and the question of who is bound to provide reasonable accommodation. The working group decided that the main topic for 2021 will be the special/positive measures. In this area, Equinet has already published a publication entitled 'Positive measures – experience of equality bodies' in 2014.⁴² However, the recent developments call for a new, updated publication.

42 Available at: https://equineteurope.org/wp-content/uploads/2019/07/positive_action_measures_final_with_cover.pdf

17.2.2.3 Gender Equality working group

The Gender Equality working group (WG) is a permanent platform of national equality bodies' representatives, intended to address gender equality issues, identify and analyse relevant good practices and current challenges at both the national and the European level.

On 21 October 2020, as part of the membership in **Equinet Gender Equality working group**, a representative of the Advocate actively participated in the discussion at the meeting of the working group.

The meeting was devoted to making a quick overview of the developments during the COVID-19 epidemic and planning future work of the group, within the substantive context, the focus was on the key topic of the working group for 2020, i.e. poverty of women, or how to break its vicious circle. This will also be the topic of the Equinet publication issued in 2021. Another important challenge relates to the issues of intersectional discrimination.

17.2.2.4 Communication Strategies working group

The Communication Strategies working group (WG) is a permanent platform of Equinet bringing together representatives of equality bodies responsible for public relations. The purpose of the working group is to explore ways in which equality bodies can promote their work vis-à-vis different audiences, develop strategic approaches to sharing the values of equality and non-discrimination, and strengthen the capacity of equality bodies in these areas.

On 18 March and 5 November 2020, a representative of the Advocate attended regular meetings of the **Equinet working groups for communication strategies** via the internet.

The March meeting was focused on the COVID-19 pandemic. Participants spoke about the impact of the pandemic on the work of equality bodies and presented individual cases of discrimination. At the meeting, the representative of the Advocate presented the cases of alleged discrimination under consideration. The participants then discussed the conference entitled 'Equality 2020', which marked the 20th anniversary of the adoption of the so-called racial directive, which also provided for the establishment of national equality bodies.

At the November meeting, the participants addressed the current events in relation to the coronavirus crisis, cases of discrimination and the work programme for 2021. And last but not least, the process of compiling a special handbook for young people was presented. The handbook, which is in advanced stage of preparation, will assist equality bodies in reaching out to young people. A representative of the British equality body presented a special report entitled 'How coronavirus has affected equality and human rights'. The report pointed out that the negative impact of corona crisis had been more severe for young people, more than that, problems were also perceived in the area of access to health services and treatment of the elderly in institutional care.



17.2.2.5 Research and Data Collection working group

The Research and Data Collection working group (WG) represents forum in which representatives of equality bodies from all over Europe meet twice a year. The main purposes are the exchange of information on good practices in the field of equality data collection and the design, implementation and dissemination of research.

On 15 December 2020, a representative of the Advocate attended an online meeting of the **working group for research and data collection**. Participants exchanged information on the activities of individual members of the working group and were given insight in the related activities of the FRA.

The objective of the meeting was to determine specific ways to produce the outcomes of the working group's work in 2021. The group is expected to be active in two areas in 2021, namely in preparing a report on data related to the discrimination process within the equality bodies and to produce a common report on the activities of equality bodies in response to the coronavirus epidemic.

17.2.2.6 Freedom of Movement Cluster

The Equinet Freedom of Movement Cluster was formed in autumn 2018 based on the fact that more than half of the EU Member States designated new national equality bodies under Article 4 of Directive 2014/54/EU on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement, which sets out that Member States must designate one or more bodies for the promotion of equal treatment and support of Union workers and their family members.⁴³

In 2020, no meetings took place in the framework of this group.

17.2.3 Seminars and other activities within Equinet

In 2020, the Advocate also attended **eight other events** within the framework of Equinet.

- On 8 June and 19 November 2020, a representative of the Advocate participated in an online meeting of the Equinet project group on standards for equality bodies.
- On 29 June 2020, the Head of the Advocate Miha Lobnik attended the web conference 'Equality 2020', organised by the European Network of Equality Bodies (Equinet), the European Commission and the Croatian Presidency of the Council of the EU on the occasion of the 20th anniversary of the adoption of the so-called racial directive 2000/43/EC.

⁴³ The Advocate took over the function of the body under Article 4 of the said Directive based on the second and third paragraphs of Article 2 of the Order on measures facilitating the exercise of rights conferred on EU workers and their family members (Official Gazette of the RS, No. 52/16).

- On 8 July 2020, a representative of the equality body attended an international video conference entitled 'Fighting discrimination on grounds of religion and ethnicity: Vulnerabilities of muslim communities and the effects of COVID-19'. The event took place during the Croatian Presidency of the Council of the EU in cooperation with Equinet.
- On 14 October 2020, a representative of the Advocate attended a panel discussion entitled 'The future of European anti-discrimination legislation', organised by Equinet and the Group of the Greens in the European Parliament.
- On 22 October 2020, a representative of the Advocate attended an online panel discussion entitled 'Women and poverty: Breaking the vicious circle' organised by Equinet in cooperation with the Spanish Institute for women and equal opportunities. The purpose of the panel discussion was to establish cooperation between equality bodies in seeking solutions to stop the vicious circle of poverty among women.
- On 1 December 2020, a representative of the Advocate attended a webinar on the involvement of equality bodies in the Universal Periodic Review (UPR) process, organised by the European Network of Equality Bodies (Equinet) in cooperation with the Office of the United Nations High Commissioner for Human Rights.
- Between 15 and 17 December 2020, a representative of the Advocate attended a three-day webinar 'Building bridges between equality bodies and trans and intersex activists'. Representatives of equality bodies and activists in the field of trans and intersex rights presented the problems faced by intersex and transgender people and their views on the possibilities of improving cooperation between equality bodies, NGOs and activists in this field.



17.3 European Commission

The European Commission (EC), as the guardian of the EU legal order, is responsible for the drafting of legislative proposals and policies of the EU and correct and full implementation of the acquis. Within the European Commission, the area of fight against discrimination falls within the competence of the **Directorate-General for Justice and Consumers**. Under the new EC mandate for 2019–2024, an independent commissioner portfolio was established to address equal treatment and protection against discrimination, led by **European Commissioner for Equality** Helena Dalli and the EC Special Task Force on Equality.

The current EC has placed the issue of equal treatment at the centre of its activities. In her State of the Union address of 16 September 2020, the President of the European Commission, Ursula von der Leyen, announced that determined efforts will be made to build a ‘Union of Equality’.⁴⁴ In 2020, the EC adopted a number of strategic documents (which also provide for a strengthened role of equality bodies), and outlined further activities of the EC and Member States to improve the exercise of the right to equal treatment and protection against discrimination:⁴⁵

- Union of equality: Gender Equality Strategy 2020–2025; the key objectives of the document is the elimination of gender-based violence, the elimination of gender stereotypes, the elimination of gender differences in the labour market, equal gender participation in different sectors of the economy; addressing the pay and pension gap, eliminating gender imbalance in management positions.
- Union of equality: EU Anti-racism Action Plan 2020-2025; The key objectives of the document include better implementation of relevant EU law, better sectoral cooperation with racial and ethnic minorities, Member States, the European Parliament and civil society, fair policing, development of national action plans and increased diversity of staff in the EU institutions.
- Union of Equality: EU Roma Strategic Framework for equality, inclusion and participation 2020–2030; The key objectives of the document are, inter alia, the development of support systems for victims of discrimination, improvement of financial literacy, promotion of employment in public institutions and improvement of access to health services and family planning. Based on the strategic framework, Member States are to establish national programmes of measures and report on their implementation back to the EC.
- Union of Equality: LGBTIQ Equality Strategy 2020–2025; The first-ever EU document of its kind to set out four pillars of targeted objectives – fight against discrimination, ensuring safety, building inclusive societies and promoting equal treatment of LGBTIQ people around the world.

⁴⁴ The State of the Union address by the President of the EC is available at https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655.

⁴⁵ For a summary of the EC’s achievements in 2020 in the subject area, see the statement by Equality Commissioner Helena Dalli, available at https://ec.europa.eu/commission/commissioners/2019-2024/dalli/announcements/union-equality-first-year-actions-and-achievements_en

In addition to the aforementioned strategic documents, the EC also established a special Equality Project Group, with a mandate to ensure the horizontal integration of the aspect of equal treatment in all EU policies and key incentives. The EC also wants to address the issue of equal treatment in response to the crisis caused by the COVID-19 epidemic, including through various financial instruments and educational activities.

17.3.1 High Level Group on Non-Discrimination, Equality and Diversity

High Level Group on Non-Discrimination, Equality and Diversity (HLG) has the status of an informal permanent expert group set up by the EC and its Directorates-General to gain external knowledge and experience that could assist the European Commission in formulating policies and legislative proposals in various fields. The Advocate has been a **member of the HLG Subgroup on Equality Data**.

In line with its mandate, the HLG⁴⁶ is primarily intended for cooperation between representatives of national governments and policy-making bodies; the representatives of equality bodies participate in as secondary members. Representatives of the Government of the Republic of Slovenia or the competent departments do not attend the HLG meetings regularly. This is primarily due to the absence of a central coordination point for protection against discrimination at the government level and the absence of a comprehensive national strategy for protection against discrimination, which is something that the Advocate has noted in several special recommendation in the past.⁴⁷

The Advocate attended two meetings within the framework of HLG.

On 29 September 2020, a representative of the Advocate attended an online meeting organised by the EC and the **Subgroup on Equality Data within the HLG**. Participants were briefed on the newly adopted EU Anti-racism Action Plan 2020–2025. Additionally, country-specific reports on the collection of equality data with regard to racial and ethnic origin were presented and equality data in connection with the COVID-19 epidemic, which affected minorities and vulnerable groups.

⁴⁶ The HLG mandate is available at <http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetailDoc&id=18850&no=1>

⁴⁷ See the Advocate's recommendation from 2019, available at <http://www.zagovornik.si/wp-content/uploads/2020/09/Priporo%C4%8Dilo-Zagovornika-na%C4%8Dela-enakosti-da-Vlada-Republike-Slovenije-%C5%A1e-naprej-zagotavlja-sodelovanje-svojega-predstavnika-v-Delovni-skupini-na-visoki-ravnini-za-nediskriminacijo-enakost-in-raznolikost.pdf>.



On 27 November 2020, the Head of the Advocate, Miha Lobnik, attended the **13th HLG meeting** organised via the internet by the EC. Participants were briefed on the newly adopted strategic documents at EU level, namely the LGBTIQ Equality Strategy 2020–2025, EU Anti-racism Action Plan 2020–2025 and EU Roma strategic framework on equality, inclusion and participation 2020–2030. The Head of the Advocate endorsed the Commission's intention to form a new working subgroup in the field of ensuring equality of LGBTIQ persons within the HLG. He stressed that Slovenia supported the EU Anti-racism Action Plan 2020–2025, however, the lack of appropriate legal bases represents and obstacle to collecting equality data with regard to ethnic origin and race. All three strategy papers emphasise the importance of collecting equality data, which is key to measuring progress and assessing the efficiency of measures at the national and European level.

17.3.2 Other events organised by the European Commission

In 2020, the Advocate attended **five different events** co-organised by the European Commission, which took place in Slovenia or abroad.

On 11 February 2020, a representative of the Advocate attended **a conference on quality and accessible long-term care** organised by the European Commission Representation in Slovenia and the Chamber of Commerce and Industry (GZS) in Ljubljana. Representatives of social partners presented their views on long-term care. Long-term care has been identified by the EU members as one of the key rights within the European Pillar of Social Rights. Nevertheless, Slovenia has not yet adopted a law on this subject.

On 7 September 2020, a representative of the Advocate attended an online event entitled **'The Action Plan on the European Pillar of Social Rights: Consultation of the European Commissioner for Jobs and Social Rights Nicolas Schmit with Slovenian stakeholders'**.

On 11 December 2020, a representative of the Advocate attended a webinar entitled **EUvDiscrimination Webinar: Reasonable accommodations for persons with disabilities: guide for promising practices**, organised by the EC.

On 16 October 2020, the Head of the Advocate, Miha Lobnik, met with the **Head of the European Commission Representation** in the Republic of Slovenia Dr. Zoran Stančič, with whom he spoke about the achievements of the national equality body. During the conversation, the Head of the Advocate emphasised that the institution now carries out almost all activities provided for by the PADA in line with the EU law. However, some shortcomings exist,

primarily due to staff shortages, which was also highlighted in the EC Rule of Law Report. By successfully addressing this challenge, the Advocate could reduce the duration of proceedings, devote greater effort to strategic litigation, and upgrade the system department. In his response, Dr. Stančič expressed congratulations for the work performed and the outstanding progress of the Advocate. He pointed out that achieving a higher level of equality and pursuing zero tolerance of discrimination is high on the agenda of the current EC.



The Head of the European Commission Representation Slovenia, Zoran Stančič, congratulated the Head of the Advocate, Miha Lobnik, and acknowledged the progress in Slovenia and the contribution by the Advocate towards ensuring protection against discrimination.

On 12 December 2020, two representatives of the Advocate attended an online **annual legal seminar on the protection against discrimination and on gender equality**, organised by the European Equality Law Network (EELN), operating under the auspices of the EC.



17.4 European Union Agency for Fundamental Rights

The European Union established the Agency for Fundamental Rights (FRA) in 2007 to provide independent assistance and expertise in the field of fundamental rights to the EU institutions and Member States. The FRA also conducts several EU-wide research studies in individual thematic areas, which represent an important contribution to the understanding and addressing of negative social phenomena, such as e.g. discrimination or hate speech. The FRA publishes legal manuals on the European Union law and case law. The Agency organises annual conferences on fundamental rights, attended by hundreds of experts and other stakeholders.

The Fundamental Rights Platform (FRP) is used to build dialogue with civil society. Within the FRP, around four hundred civil society organisations from across the EU participate, meeting once a year and including various actors from different fields of activity.

The Advocate attended **four events** co-organised by the FRA.

- On 25 and 26 February 2020, a representative of the Advocate attended a training for representatives of European national equality bodies on **application of the EU Charter of Fundamental Rights (the Charter) in national jurisdictions** organised by the EU Agency for Fundamental Rights (FRA) and the European Network of Equality Bodies (Equinet).
- On 10 November 2020, a representative of the Advocate attended an online workshop on **'stepping up efforts to better combat unlawful profiling'** organised by the FRA and Equinet. The event focused on advocacy and raising awareness of the problem of ethnic or other profiling by the police in identification of individuals.
- On 7 December 2020, the Head of the Advocate, Miha Lobnik, attended an online event entitled **'Strengthening the EU Charter: Human rights in the EU in the next decade'**, organised by FRA and Euractiva.
- On 14 December 2020, a representative of the Advocate attended the event **'Doing AI the European way: Protecting fundamental rights in an era of artificial intelligence'**, organised by the FRA and the German Presidency of the Council of the EU. The event was aimed at general coverage of the topic and the presentation of a special report of the FRA in this area.

17.5 Council of Europe

Within the Council of Europe (CoE), four bodies are particularly important as regards the protection against discrimination:

- **Council of Europe Commissioner for Human Rights** is a political body responsible for ensuring the respecting and promoting human rights, fostering human rights education and awareness raising, and ensuring respect for the human rights instruments provided for by the Council of Europe. The Commissioner's role is mainly preventive and complements the roles of the European Court of Human Rights and other convention bodies.
- **European Commission against Racism and Intolerance (ECRI)** operates in the field of human rights. It is made up of independent professionals and monitors issues relating to racism, xenophobia, anti-Semitism, intolerance and discrimination based on race, nationality or ethnic origin, skin colour, citizenship, religion or language. The Commission against Racism and Intolerance considers the equality bodies to have an important role to play in preventing discrimination at the national level. In its general recommendations, the Commission encourages the establishment of such bodies and support of the existing bodies.
- **Advisory Committee on the Framework Convention for the Protection of National Minorities** monitors the implementation and enforcement of the Framework Convention for the Protection of National Minorities of the Council of Europe. As a party to the Framework Convention, Slovenia is obliged to report to the Committee every five years on the situation within the country borders related to the protection of minorities.
- **European Committee of Social Rights** monitors and supervises the implementation of the European Social Charter, which explicitly guarantees access to the rights contained therein without discrimination due to any personal grounds. Based on the national recommendations and the collective redress procedure, the Committee makes conclusions and adopts decisions which, in so far as they relate to the binding provisions of the European Social Charter, are legally binding on the State parties. On 29 June 2020, the Committee published its decision in the case of University Women of Europe v. Slovenia, in which a violation of several provisions of the European Social Charter was found on the side of Slovenia regarding the right to equal pay and equal opportunities at the workplace without distinction based on gender.⁴⁸

The European Court of Human Rights (ECtHR) plays a particularly important role in the CoE system, both in the field of protection against discrimination and, more broadly, also the protection of human rights. It was established in 1959 and its task is to ensure that the member states of the Council of Europe respect the rights and freedoms set out in the European Convention on Human Rights (ECHR).

⁴⁸ Decision of the European Committee of Social Rights in the case University Women of Europe v. Slovenia is available at [https://hudoc.esc.coe.int/fre/#{%22sort%22:\[%22ESCPublicationDate%20Descending%22\],%22ESCDIdentifier%22:\[%22cc-137-2016-dmerits-en%22\]}](https://hudoc.esc.coe.int/fre/#{%22sort%22:[%22ESCPublicationDate%20Descending%22],%22ESCDIdentifier%22:[%22cc-137-2016-dmerits-en%22]})



The Court's decisions are based on applications submitted either by individuals or (in rare cases) by the State parties. The ECtHR case law is of great importance for the work of the Advocate as, among other things, it sets binding standards of legal protection against discrimination.

Within the framework of the Council of Europe, the Advocate carried out **four activities**.

On 27 July 2020, **the first third party intervention (amicus curiae) was made by the Advocate in the proceedings before the ECtHR.**

The Advocate intervened in two lawsuits against Slovenia, in which the ECtHR considers the allegation of ineffective protection against discrimination due to the inaccessibility of polling stations for the physically challenged. The Advocate assessed that the importance of these issues goes beyond the mere question of whether Slovenia is violating the European Convention on Human Rights (ECHR). The cases raise much broader questions regarding the standards of protection against discrimination under the ECHR. Therefore, the Advocate, at its own initiative, intervened in the two cases before the ECtHR as a third party, the so-called amicus curiae. In the intervention, the Advocate remained impartial and did not express a view on which party to the dispute before the ECtHR was right. With its expertise, the Advocate aimed at improving the understanding of the overall context: the development of legal remedies for protection against discrimination as regards the protection of the right to vote and the Slovenian practice. Moreover, particular questions of principle were raised by the Advocate, such as whether the ECHR ensures protection against discrimination to the same extent as the International Convention on the Rights of Persons with Disabilities.

On 9 July 2020, a representative of the Advocate participated in an online discussion '**Sustainable economic and social recovery based on an equality and human rights approach: what should be the role of national human rights institutions and equality bodies?**'. The event took place in the framework of cooperation on the common platform on social and economic rights of the Council of Europe, FRA, ENNHRI and Equinet.

On 28 and 29 September 2020, the Advocate attended an ECRI webinar for equality bodies entitled '**Joining forces to Communicate the Equality and Diversity Message**' on effective communication of the principles and values of equality and respect for diversity. The Advocate took note of the practices used in raising awareness of discrimination by related European bodies and other institutions in the field of protection against discrimination. The seminar also addressed the long-term effects of the COVID-19 pandemic on equality, racism and intolerance.

In the framework of the evaluation visit on 30 September 2020, the Advocate hosted the **Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)** in conjunction with the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in Slovenia.

17.6 United Nations

Respect for and protection of human rights, based on the principles of non-discrimination and human dignity, represent one of the main priorities of the United Nations (UN). Hence, in addition to maintaining international peace and security, promoting friendly relations between nations, advocating international cooperation and functioning as a platform of global coverage, human rights are one of the key areas for the development of the UN and its structures.

Office of the United Nations High Commissioner for Human Rights (OHCHR) represents the world's commitment to the universal ideals of human dignity. It is a part of the UN Secretariat and operates mainly in Geneva. The priorities of the OHCHR are primarily the consolidation of international mechanisms for the protection of human rights, the promotion of equality and anti-discrimination, efforts directed at supporting the rule of law, integration of human rights into development issues and the economy, and coordination of human rights education. In carrying out its work, the Advocate also relies to a certain extent on the recommendations and guidelines of the OHCHR, and also cooperates with their regional office.

In 2020, the Advocate did not attend any events organised by UN institutions and bodies.

17.7 International exchange of information on discrimination

In the ninth indent of Article 21 of the PADA, the Advocate is assigned the task of ensuring the exchange of available information on discrimination with EU bodies. In practice, the Advocate's exchange of views and information is much broader and includes a wide range of international actors, with whom the Advocate communicates in the context of their enquiries and research. A special form of exchange of views takes place within the Equinet Equality Law Working Group, which is intended for the exchange of views and information on issues faced by the members during their work. In addition, the Advocate actively participates in the exchange of views and information with other international governmental and non-governmental organisations.

In 2020, within the **Equinet Equality Law Working Group**, the Advocate received **12 requests for information** on the Slovenian regulation of particular areas, **besides, the Advocate submitted three requests for information to the working group** related to the regulation of particular matters in other countries.

Furthermore, the Advocate addressed **27 other international requests for exchange of information** or questionnaires and enquiries from various international organisations. **In 2020, the Advocate carried out altogether 42 mutual information exchanges in the field of discrimination.**

17.7.1 Within the Equinet Equality Law Working Group

In the framework of the Equinet Equality Law Working Group, the Advocate received **12 requests for information in 2020** submitted by equality bodies from other EU Member States and non-governmental organisations from various EU Member States regarding the Slovenian regulation of particular legal issues in some specific areas.

Of these, all matters were closed. **Of the 12 closed cases, short responses were prepared in 11 cases.** One question remained unanswered due to staff constraints. The prepared answers related to the following topics:

- The first answer concerned the regulation of wearing scarves and other headgear in court proceedings.
- The second answer referred to the conditions for judicial protection against discrimination, namely whether a victim of racial discrimination in access to goods and services must first inform the infringer of the allegation of discrimination and wait for a response before bringing an action.

- The third answer related specifically to the question of whether EU Member States criminalise the denial of the Armenian genocide and under which legal provision.
- The fourth answer concerned the work of people with neuropsychiatric diagnoses in the military, the type of work they can perform, and ways to check their ability to work.
- The fifth answer was related the legal admissibility of events accessible only to persons belonging to a minority group.
- The sixth answer concerned the treatment of third-country nationals applying for a residence permit under a work permit and the question of whether such a matter can be addressed in the context of discrimination.
- The seventh answer referred to the differentiation of amounts for the transfer of football players to another club based on gender.
- The eighth answer concerned the conditions for obtaining a driving license for applicants for international protection.
- The ninth answer referred to the existence of so-called blacklists of landlords and tenants in terms of their creditworthiness and reliability of rent payments.
- The tenth answer concerned the question of the admissibility of refusing to provide services to a person of the opposite sex on grounds of religion or belief.
- The eleventh answer was related to the regulation of the transitional period in the process of appointing a new Head of equality bodies in EU Member States.

In the framework of the Equinet Equality Law Working Group, **the Advocate also prepared three enquiries** which were answered by equality bodies from other European countries and were helpful with regard to the Advocate's work. These inquiries concerned the following topics:

- regulating the conditions for the access of people living with HIV to various types of insurance and cases, if any, addressing the refusal to grant insurance due to HIV infection;
- addressing with complaints of foreigners regarding the opening/closing of their bank accounts, i.e. how equality bodies obtain information from banks and how customers are aware of the possibility of opening a basic payment account;
- the possible implementation of a shopping time restriction measure for the elderly in grocery stores during the coronavirus pandemic, i.e. whether such persons had to prove their age with an identity document and whether equality bodies received any complaints related to such issues.



17.7.2 Other international exchange of information

As regards other international inquiries and questionnaires, the Advocate **contributed to as many as 26 exchanges of information**. These were either shorter inquiries or more specific and comprehensive questionnaires covering several areas or issues related to discrimination. The following is an overview of information exchanges, shown by the organisations requesting the information.

Equinet

- For the purposes of the 'Equinet response to Covid-19 database',⁴⁹ the Advocate forwarded information regarding the activities of the equality body (advisory assistance, discrimination investigation, systemic work, awareness raising) related to issues of discrimination and equal treatment in the context of the current pandemic three times in total.
- Further, the Advocate prepared a detailed overview of the research carried out so far and (special) reports drawn up in relation to the relevant fields of work for the Working Group on Research and Data Collection.
- At the request of Equinet, the Advocate prepared a detailed analysis of the approach of the Constitutional Court of the Republic of Slovenia to the application of the EU Charter of Fundamental Rights, namely in connection to reviewing the constitutionality of the Foreigners Act.⁵⁰ This decision is important with a view of the application of the Charter in the Slovenian Constitutional Court practice, albeit this decision does not involve the issue of protection against discrimination.
- For the purposes of drawing up the Equinet special report on the work of equality bodies in the field of discrimination against the Roma,⁵¹ the Advocate prepared extensive answers to the Equinet questionnaire. The special report was also intended to inform the EC in shaping the new EU strategic framework for equal treatment, inclusion and participation of the Roma.
- In the context of drafting a special publication on the role of equality bodies in preventing and addressing discrimination in the context of artificial intelligence,⁵² the Advocate sent detailed information to Equinet on the regulation of automated decision-making and automated data processing in the Slovenian data protection legislation.

⁴⁹ A database showing the responses of European equality bodies to the Covid-19 pandemic is available at <https://equineteurope.org/covid-19-response/#data>.

⁵⁰ Decision of the Constitutional Court of the Republic of Slovenia U-I-59/17-27 of 18 September 2019, available at <https://www.us-rs.si/wp-content/uploads/2020/02/ui-59-17-.odlocba.pdf>.

⁵¹ The Report is available in English at https://equineteurope.org/wp-content/uploads/2020/07/Roma_Traveller-Inclusion_Equality-Bodies.pdf.

⁵² The English version of the Report is available at https://equineteurope.org/wp-content/uploads/2020/06/ai_report_digital.pdf.

- Equinet requested information from its members on national practices for the purposes of preparing a binding initiative on gender pay inequality by the EC. The Advocate provided information on cases of unequal pay in recent years and on possible ways of disclosing this information, which are very difficult to access, especially in the private sector, but also in the public sector.
- The Advocate prepared a contribution to Equinet’s draft ‘Recommendations for a fair and equal Europe: Rebuilding our Societies after Covid-19’.⁵³ The final version of the Recommendation, which also includes the amendments proposed by the Advocate, was sent to all key decision-makers in Slovenia.
- For the purpose of Equinet’s research and preparation of the publication, the Advocate provided information on the implementation of the institute of reasonable accommodation in Slovenia and specifically with the Advocate.
- In addition to this, the Advocate provided answers to research questions posed by Equinet and the University of Graz (Austria) in connection to strategic litigation, explaining the selecting of cases for such litigation and whether any rules or strategies are applied to it.

European Commission

- The Advocate prepared three contributions to the first Annual Report of the EC on the rule of law in the EU for Slovenia, namely a contribution to the national report (at the request of the Ministry of Foreign Affairs), a contribution in connection to a special EC online questionnaire, and a special reasoned contribution. All contributions were related to the EC’s questions on the participation of external participants in the public consultation regarding legislative proposals and the challenges of ensuring the independence of the Advocate’s work.
- Within the framework of consultations with the National Human Rights Institutions (NHRI) and equality bodies, the Advocate completed an EC questionnaire intended to support the development of strategies on the implementation of the EU Charter of Fundamental Rights.

EU Agency for Fundamental Rights (FRA)

- Within the scope of consultations between the FRA and national equality bodies, the Advocate provided answers to a questionnaire on reporting hate crimes. Here, the Advocate presented the Slovenian legal regulation of this subject matter as well as some key challenges and explained own responsibilities as per handling the of reports of these crimes and assistance to victims. The Advocate does not have the power to address (any) criminal offences, the equality body deals with hate crimes in particular from the perspective of systemic legal regulation, keeping records and monitoring.

⁵³ Available at http://www.zagovornik.si/wp-content/uploads/2020/07/Equinet-priporoc%CC%8Cilo-Covid-19_Sl.pdf.



- In 2020, the Advocate prepared three contributions for the Slovenian national contractor of the FRANET research network. The contributions summarised the Advocate's current activities and specifically pointed out the selected thematic issues related to discrimination against the elderly and on activities in the context of the COVID-19 epidemic.
- Furthermore, the Advocate submitted answers to the questionnaire on the mid-term review of the implementation of the FRA Strategic Plan for the period 2018–2022. In the answers, the Advocate identified as important the work of the FRA in the field of data collection in various areas of discrimination in all EU Member States, as it enables monitoring of the situation throughout the EU, especially with regard to the lack of disaggregated data at the national level, which applies also to Slovenia.
- The Advocate also completed two questionnaires introduced by the FRA and Equinet on the implementation of the EU Charter of Fundamental Rights at the national level and on discrimination against Muslims, intended for the planning of trainings to enhance the capacity of national equality bodies. In the answers, the Advocate outlined the basic challenges and outstanding issues within the two topics, faced by the equality body during its work.
- As part of the FRA's consultations with external stakeholders, the Advocate prepared a contribution on the FRA's work plan for 2020. Among other things, the Advocate suggested that some FRA thematic field research should also cover Slovenia (e.g. research on the exercise of Roma rights and research on the situation of immigrant descendants).
- The Advocate prepared answers to the FRA and Equinet questionnaire on the status and functioning of national equality bodies with information on its activities and key challenges. The results of the analysis of the answers submitted by various equality bodies will, inter alia, assist the EC in formulating new measures to strengthen the role and position of these bodies.

Other organisations and entities

- The Advocate responded to an inquiry by the Association of Counselling Centres for Victims of Right-wing, Racist and Anti-Semitic Violence in Germany (VBRG) in relation to mapping organisations dealing with hate crimes in Slovenia.
- The Advocate replied to a questionnaire designed by the Council of Europe's Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) on the performed activities in relation to the COVID-19 pandemic in the areas of advisory assistance to clients, discrimination investigation, assessments of the discriminatory character of regulations, recommendations given and awareness raising activities performed.
- In 2020, the Advocate made a third party intervention before the ECtHR for the first time, namely in the cases of *Mrak v. Slovenia* and *Toplak v. Slovenia*, dealing with the accessibility of polling stations for people with reduced mobility.

17.8 Network of Equality Bodies in South-Eastern Europe

On 16 November 2016, eight equality bodies from Albania, Bosnia and Herzegovina, Montenegro, Croatia, Northern Macedonia and Serbia signed the **Statement on the Cooperation of Equality Bodies in South-Eastern Europe**, which emphasises respect for human rights and the prohibition of discrimination as fundamental values and the starting point for social and economic development of each country. In the statement, the participating institutions undertook to cooperate in compliance with the principles of mutual respect, coordination, partnership, equality, joint planning, harmonisation of their activities and ongoing mutual dialogue.

The established network represents a unique community of related institutions which can improve the performance of individual participating partners through cooperation and best practice exchange, and more broadly, also strengthen the protection against discrimination throughout the region.

The Head of the Advocate Miha Lobnik has previously participated in the network's annual meetings as a guest and active speaker. However, in 2020, the network did not organise the annual meeting.

17.9 Other international events

In 2020, representatives of the Advocate attended and actively participated in **eight other international events**, which took place outside the scope of the aforementioned organisations.

On 10 and 11 February 2020, a representative of the Advocate attended a seminar in Trier, Germany, entitled 'Applying EU Anti-Discrimination Law. Seminar for legal practitioners' organised by the ERA Academy of European Law. Representatives of the Academy presented the EU anti-discrimination legislation to the participants in connection to the cases under consideration. The seminar was aimed at presenting the EU anti-discrimination legislation – the legal framework in conjunction with the EU Charter, the European Convention and the United Nations Treaties on Human Rights.

On 14 and 15 May 2020, a representative of the Advocate attended an online working meeting organised by five European partners of the SiforREF project entitled 'Integrating Refugees Through Social Innovation'. Participants presented the current situation of refugees and migrants in their countries in the light of new measures to control the coronavirus epidemic.

On 9 September 2020, a representative of the Advocate attended a presentation of an example of good practice in the employment of foreigners in Slovenia within the international project SiforREF, 'Integrating Refugees Through Social Innovation' organised by the Cultural Association Gmajna. An example of the employment of foreigners in a fast-food restaurant in Ljubljana was presented.

On 14 October 2020, a representative of the Advocate participated in an online conference entitled 'Mutual learning online regional conference on good practices and lessons learned regarding countering hate speech online', organised by the Croatian NGO Centre for Peace Studies. The participants discussed the European Commission's initiatives to address hate speech, such as the 'Code of Conduct'; regulatory activities to regulate online hate speech; prosecutorial practice of prosecuting hate speech; various activities of the authorities in the field of hate speech; and the cooperation of NGOs with the police in this area.

On 14 and 15 October 2020, a representative of the Advocate attended the annual conference on anti-Semitism organised by the International Network Against Cyber Hate (INACH). The purpose of the conference was to address the still existing or re-emerging global phenomenon of anti-Semitism.

On 9 and 10 November 2020, a representative of the Advocate attended a web conference entitled Supplementary Human Dimension Meeting – Freedom of Religion or Belief: The Role of Digital Technologies and Civil Society Actors in Advancing This Human Right for All. The conference was organised by the Organisation for Security and Cooperation in Europe.

On 20 November 2020, the Advocate’s representative participated in an online study tour to Vienna on the subject of integration of refugees through employment within the SiforREF project, ‘Integrating Refugees through Social Innovation’ organised by Caritas Vienna and the University of Vienna.

On 4 December 2020, a representative of the Advocate attended a webinar entitled ‘Efforts to reduce discrimination on the grounds of pregnancy and parenthood in the labor market’ within the Parents@Work project, organised by the Belgian equality body and the Institute for the Equality of Women and Men. The purpose of the webinar was to encourage a debate between representatives of European labor inspectorates and equality bodies on various investigative methods and techniques for addressing discrimination on grounds of pregnancy, maternity and paternity in employment and on the labor market, based on the employees’ right to work-life balance.

17.10 Bilateral cooperation of the Advocate

In the context of bilateral activities of the Advocate in 2020, **six meetings are highlighted.**



Working meetings and meetings with representatives of foreign organisations in the area of protection against discrimination are a great opportunity to exchange good practices. At the beginning of March 2020, the Head of the Advocate, Miha Lobnik, spoke with the President of the Dutch equality body, Adriana van Dooijenweer, the main topic of their conversation was ensuring the rights of people with disabilities and accessibility of elections for them.

On 4 March 2020, a representative of the Advocate was invited by the Embassy of the United States of America to attend a round table on the occasion of the World Zero Discrimination Day. In the discussion held, the representative of the Advocate presented the development and functioning of the Advocate as a national equality body and its current activities. Among other things, he identified the discrimination investigation proceedings as the most effective way of the Advocate's operation, thus inviting the interlocutors and those attending the event to report any alleged discrimination encountered by their clients or acquaintance.

On 5 March 2020, a representative of the Advocate met with the new cultural attaché at the French Institute in Ljubljana Charles Nonn. The meeting was intended to discuss the possibilities of cooperation between the Advocate and the French Institute.

On 6 March 2020, the Head of the Advocate hosted Adriana van Dooijenweer, President of the Dutch Institute for Human Rights at the headquarters of the equality body, who also has the mandate of the Dutch national equality body. In their conversation, the Head of the Advocate presented the development of the national equality body and some of the challenges faced during its operation. Among other things, the interlocutors addressed the topic of discrimination against persons with disabilities and touched on the subject of accessibility of electoral procedures for persons with intellectual disabilities and the activities carried out in this regard by the Dutch equality body.

On 20 March 2020, a representative of the Advocate attended an online meeting with the Head of the Political Department of the Embassy of the United States of America. In the conversation, the representative of the US Embassy thanked the institution of the Advocate for an excellent dialog. Within the discussion on the challenges of protection against discrimination in Slovenia, the Advocate's representative highlighted the Advocate's recommendations for establishing a coordination point for discrimination at the Governmental level and the related lack of understanding and attention to the protection against discrimination as a horizontal topic.

On 13 May 2020, the Head of the Advocate met with the Deputy Ambassador of the Kingdom of the Netherlands Derk Jan Nauto. At the meeting, both interlocutors confirmed good cooperation and discussed the challenges of protection against discrimination during the COVID-19 pandemic.

On 23 June 2020, the Head of the Advocate, Miha Lobnik, met with the Deputy Ambassador of the United States Susan K. Falatko and presented to her the Advocate's Annual Report for 2019. The interlocutors emphasised effective cooperation and called for further effort to enhance respect for human rights and protection against discrimination.



The Head of the Advocate, Miha Lobnik, and US Deputy Ambassador Susan K. Falatko called for continued cooperation in strengthening human rights and protection against discrimination.



18 PROTECTION AGAINST DISCRIMINATION IN THE FIELD OF ARTIFICIAL INTELLIGENCE

The use of artificial intelligence (AI) is becoming a major challenge in terms of protection against discrimination, both at the national and European level. Namely, artificial intelligence is created by humans who can consciously or unconsciously embed prejudices and stereotypes into it, either by using biased data or by creating discriminatory algorithms. Discrimination against the most vulnerable groups of persons with certain personal grounds may occur, which is prohibited by law.

In the European Union, the field of artificial intelligence is already subject to regulation. Much attention is paid to detecting and preventing the discrimination potentially caused by the use of such new technologies.

In the Appendix, we present three short summaries of European documents and the Advocate's contribution in the field of artificial intelligence regulation.

- European Parliament, Resolution on a framework of ethical aspects of artificial intelligence, robotics and related technologies;
- European Commission, White Paper on Artificial Intelligence;
- Equinet Special Report: Regulating for an Equal AI: A New Role for Equality Bodies;
- Advocate's recommendations regarding the proposal for the National program for promoting development and use of artificial intelligence in Republic of Slovenia by 2025.

18.1 The European Parliament Resolution with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies

In the European Parliament, several committees are focusing on issues related to artificial intelligence. In their work, the committees also consider issues related to protection against discrimination. In September 2019, a new Special Committee on Artificial Intelligence in the Digital Age (AIDA) was established with the aim of analysing the impact of artificial intelligence on the EU economy, focusing on fostering innovation and ensuring security and human rights protection.

The EP is one of the most active institutions in the European Union (and in Europe at large) committed to establishing an ethical regulatory framework for artificial intelligence. In early 2020, the European Parliament adopted a Resolution focusing on consumer protection in the context of the increased use of artificial intelligence and automated decision-making in the provision of goods and services.⁵⁴ Among other things, the Resolution calls for the establishment of rules at EU level to ensure safety and responsibility for products related to the use of artificial intelligence. It also calls for measures to ensure the use of impartial algorithms and verification systems. It highlights the urgent need to assure that the final decisions of algorithmic decision-making be controlled by humans. In the Resolution, the EP stresses the need to ensure that artificial intelligence is not used to discriminate against consumers on the basis of their nationality, residence or temporary location.

On 20 October 2020, on a proposal of the Committee on Civil Liberties, the EP adopted the regulatory Resolution with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies. The resolution is particularly important in the context of the Advocate's area of operation, as it devotes great attention to the issues of impartiality and non-discrimination in the use of artificial intelligence. In this regard, the Resolution emphasises all key areas of artificial intelligence where protection against discrimination must be ensured. Moreover, it calls on the European Commission for further research on the possible discriminatory effects of such modern technologies. It also draws attention to the role of independent national supervisory authorities, which should be designated by Member States to ensure that the use artificial intelligence complies with all legal obligations and ethical principles.

⁵⁴ European Parliament resolution of 12 February 2020 on automated decision-making processes: ensuring consumer protection and free movement of goods and services (2019/2915(RSP))

The resolution is of particular importance as it contains a proposal for a Regulation that will serve as a starting point for the European Commission to prepare regulatory measures aimed at regulating the ethical framework of artificial intelligence. Under the upcoming Regulation, regulative measures should also address the issues of impartiality and non-discrimination, liability for breaches of these principles and independent supervision.

Link to European Parliament Resolution with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies:
https://www.europarl.europa.eu/doceo/document/TA-9-2020-0275_EN.html

18.2 European Commission White Paper on Artificial Intelligence

The use of artificial intelligence already has profound impact on life in modern society and this impact is expected to increase in the future. Technologies based on the use of artificial intelligence are used for communication, work and decision-making in almost every area of social life and affect the situation and rights of each individual. This can also represent a problem in the field of protection against discrimination. Artificial intelligence is created by humans who can consciously or unconsciously embed their prejudices and stereotypes into it, either by using biased data or by creating discriminatory algorithms. This can have a negative impact on the rights of the most vulnerable people with certain personal ground. A special high-level expert working group set up by the European Commission (EC) published the ‘Ethics Guidelines for Trustworthy Artificial Intelligence’ in April 2019.⁵⁵ In them, the Commission highlighted respect for the principles of non-discrimination, diversity and fairness as one of the fundamental principles which should be at the centre of the regulation of artificial intelligence.

Ethical aspects of the use and development of artificial intelligence are not (yet) explicitly regulated at the level of the European Union. Moreover, even at the level of Member states, such regulation is extremely rare or completely absent. In September 2020, President von der Leyen emphasised in her annual State of the Union address that the EC aims to establish rules on artificial intelligence which put humans at the center, while algorithms should not be incomprehensible black boxes, and that there should be clear rules.⁵⁶

In the first step, the EC issued a White Paper on Artificial Intelligence of 19 February 2020, which opens up the key topics which mark the EC’s efforts to regulate the field of artificial intelligence. Alongside the protection of personal data, the White Paper explicitly and extensively addresses the significance of protection against discrimination, given the risks of violating human rights in the field of the development and use of artificial intelligence. The White Paper exposes ways in which the use of artificial intelligence technologies could lead to unjustified unequal treatment of individuals, especially members of the most vulnerable groups. The White Paper assumes that future regulation of artificial intelligence will have to establish an ‘ecosystem of trust’ to give people renewed trust in the use of such technologies by placing their rights at the heart of regulatory activities, thus providing certainty to artificial intelligence developers and users.

The White Paper provides a starting point for all future legal arrangements in the field of artificial intelligence, including the prevention, detection and tackling discrimination likely to be caused by the use of such new technologies.

Link to the European Commission White Paper on Artificial Intelligence:

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020DC0065&from=EN>

⁵⁵ Available at: https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60419

⁵⁶ Ursula von der Leyen (2020) State of the Union Address, available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

18.3 Equinet Special Report: Regulating for an Equal AI – A New Role for Equality Bodies

In June 2020, the European Network of Equality Bodies (Equinet) published a report entitled ‘Regulating for an Equal AI: A New Role for Equality Bodies’, in the drafting of which the Advocate actively cooperated. Through an analysis of the use of artificial intelligence, machine learning and automated decision-making, the report shows that issues related to the right to equal treatment should be at the centre of the regulation of artificial intelligence, focusing on its human and ethical implications. The report points out that equality bodies should play a key role in ensuring the beneficial, equitable and non-discriminatory use of artificial intelligence, and that the state authorities should provide them with conditions conducive to doing so.

The report shows how some of the equality bodies are currently addressing the challenges posed by artificial intelligence systems in the field within their tasks. Hence, the report is primarily intended as a tool for strengthening the capacity of equality bodies. According to the research carried out by Equinet within its membership, which also forms an integral part of the report, most European equality bodies are still in the monitoring and planning phase of work in this subject area. Key elements accountable for this include the lack of specialised knowledge and limited capacity of equality bodies, both in terms of staff and finances.

In view of the above, the authors also included in the report a set of 30 recommendations for further work of various stakeholders in this field. The first set of recommendations is addressed to equality bodies. The second set is intended for state authorities and personal data protection authorities. The third set of recommendations is addressed to Equinet, the European Union and the Council of Europe.

The report, including the above recommendations, will serve as a starting point for planning the Advocate’s future activities in the field of artificial intelligence.

Link to Equinet Special Report: Regulating for an Equal AI: A New Role for Equality Bodies:
https://equineteurope.org/wp-content/uploads/2020/06/ai_report_digital.pdf

Regulating for an Equal AI: A New Role for Equality Bodies⁵⁷

Conclusions and recommendations

A) Recommendations to equality bodies

- A1 Equinet’s Members should designate a team to keep their organisation up-to-date with developments in the AI field. This team should have the primary responsibility to understand the breadth of use of AI systems within each state, their impact on equality, and the ways in which discrimination can occur.
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- A2 To support this team, or as a part of it, Equinet’s Members should consider employing data scientists and other experts to help navigate the complexities of the new technologies.
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- A3 Equinet’s Members should launch public inquiries (or undertake “desktop” reviews of publicly available information) so as to start a process of understanding the ways in which AI is being deployed in their respective territories that potentially impact on the principle of equality and non-discrimination. Regulators and/or academics might be called upon to assist with this exercise. However, as emphasised in Recommendation B1 below, national governments have the primary responsibility for ensuring that there is sufficient transparency in relation to the public uses of AI systems so as to ensure the effective monitoring of AI and the protection of society from the discriminatory impact of AI systems.
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- A4 Equinet’s Members should undertake a legal “gap analysis” to understand how AI systems can be regulated to avoid discrimination and to support equality within their local legal systems, and to identify whether there is a need for local legislative or administrative reform or further Europe-wide legislation.
-
- A5 Equinet’s Members should consider the possible need for specific human rights protocols, or new legal forums such as specialist AI courts, to address the equality and non-discrimination issues within their states from AI.
-
- A6 As part of the process outlined in Recommendations A3, A4 and A5, Equinet’s Members should review their specific mandates to ensure that they have adequate and meaningful powers to address the new challenges posed by AI and its challenge to the principle of non-discrimination.
-

57 Robin Allen QC in *Dee Masters* (2020) *Regulating for an Equal AI: A New Role for Equality Bodies*. Meeting the new challenges to equality and non-discrimination from increased digitisation and the use of Artificial Intelligence. Brussels: EQUINET. Glej str. 21-26

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- A7 Related to Recommendation A6, Equinet’s Members should also identify the financial and logistical resources that they need to undertake the work identified in this Report.
-
- A8 Equinet’s Members should use the “gap analysis” referred to in Recommendation No A4 as a “spring-board” from which to advance the case for action by their state, for instance, to:
- extend the scope of their state’s equality, non-discrimination and human rights legislation to cover all protected characteristics and all goods, facilities and services (see Recommendations A4 and A5),
 - change their mandates to ensure that they are adequate for the tasks they have specifically identified (see Recommendation A6), and
 - increase their financial and logistical resources to meet the locally identified challenges (see Recommendation A7).
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- A9 Equinet’s Members should play a leading role in developing and disseminating European and national ethical principles and strategies to guide the implementation of existing laws to address the new challenges posed by AI.
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- A10 Equinet’s Members should provide key information within their states about AI systems and their impact on equality and non-discrimination to individuals, workers, NGOs, businesses, trade unions and even government; they should publish explanatory guides explaining how existing legal provisions can be used to tackle discriminatory algorithms and how AI can be used to the advantage of their communities without causing discrimination.
-
- A11 Equinet’s Members should consider undertaking test case and strategic litigation to challenge discriminatory AI systems, both as a means of supporting individuals and so as to make clear that the regulatory enforcement of the principle of equality and non-discrimination will actually happen.
-
- A12 Equinet’s Members should initiate and carry out a co-ordinated approach in collaboration with all other relevant regulators because discriminatory AI systems affect many areas, such as finance, data protection, health and safety and product safety, that are within the jurisdiction of other regulators.
-
- A13 Equinet’s Members should develop educational and training programmes for organisations, and the public at large, on the human rights and equality impact of AI systems.
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- A14 Equinet’s Members should adopt the checklist set out in Chapter 6 of this Report as a means to ensure that the discriminatory effects of AI systems are identified.
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- A15 Equinet’s Members should engage with academics and similar expert groups to contribute to the development and dissemination of AI related knowledge by the EU and the CoE.
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- A16 Equinet’s members should engage with the faculties of national universities and other academic institutions to ensure that the training of coders includes the understanding of equality.
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- A17 Likewise Equinet’s members should also engage with standardisation initiatives to ensure that European concepts of equality are fully understood and incorporated.
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B) Recommendations to states and similar national authorities

- B1 National authorities should guarantee greater transparency in the use of AI systems through a comprehensive and systematic mapping of the different ways in which these systems are deployed in their respective territories. The results of such mapping should be made publicly available and should constitute a first step toward ensuring enhanced transparency in the use of AI system. They should develop detailed proposals for the introduction of a legal requirement for transparency through, for example, the creation of a registry for the public uses of AI. This greater transparency should complement and work in parallel with the GDPR which also regulates the use of algorithms but is only a meaningful legal instrument in support of equality where appropriate levels of transparency exist. They should ensure that international trade rules concerning the digital economy do not inhibit transparency.
-
- B2 National authorities in member states of the European Union and the Council of Europe should undertake a legal “gap analysis” to understand how AI system can be regulated to protect from and prevent breaches of human rights, with due regard to the principle of equality and non-discrimination, and to identify whether there is a need for local legislative or administrative reform or further Europe-wide legislation. They should engage equality bodies in the exercise and should enable them through adequate resources to conduct their own independent legal “gap analysis” focused on the effect of AI systems on equality and non-discrimination. The recommendation sits alongside Recommendation A8.
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- B3 Further to Recommendation A6, national authorities should support Equinet’s Members to review their specific mandates and ensure that they have adequate and meaningful powers to address the new challenges posed by AI.
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- B4 Further to Recommendation A7, national authorities must ensure that Equinet’s Members are adequately and securely resourced to undertake the work identified in this Report. It is up to Equinet’s Members to identify the financial and logistical resources that they need for his work.
-
- B5 National authorities should develop and facilitate inter-institutional structures for collaboration and coordination of equality bodies with all other relevant regulators because discriminatory AI systems affect many areas, such as finance, data protection and product safety, that are within the jurisdiction of multiple regulators. This recommendation sits alongside Recommendation A12.
-
- B6 National authorities should ensure that the curriculum for the training of computer scientists, engineers and other professions, concerned with the development of AI systems, includes modules directed to the implications of human rights and equality standards in the development and use of AI systems.
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C) Recommendations to Equinet, the European Union and the Council of Europe

- C1 Equinet, the EU and the CoE should work together to encourage and facilitate Equinet’s Members to be fully aware of the way in which the equality and data protection laws of the European Union and the Council of Europe can operate to control discriminatory and unethical AI systems.
-
- C2 The EU and the CoE should ensure that Equinet and its members are regularly involved in relevant expert groups and legal and policy forums dedicated to the development and dissemination of AI related knowledge in Europe. This recommendation sits alongside Recommendation C1.
-
- C3 Equinet should consider co-ordinating efforts by its Members to undertake specific Europe-wide thematic reviews of the ways in which AI systems are being utilised, for example, one Member could focus on recruitment algorithms, whilst a different organisation might focus on a distinct sector like the financial services industry.
-
- C4 The EU and CoE should work with the national authorities in their respective member states to ensure that the independent oversight over the discriminatory effects of AI systems that equality bodies provide is adequately and securely resourced and that equality bodies are equipped with sufficiently broad powers to address the new challenges posed by AI. This recommendation sits alongside Recommendations A6 and A7.
-
- C5 When the EU and CoE consider the possible need for specific human rights protocols or Europe-wide legislation to address the problematic human rights implications of AI systems, they should actively engage and consult equality bodies in these processes. This recommendation sits alongside Recommendation A8.
-
- C6 The EU and the CoE should encourage and actively support their respective member states to develop educational and training programmes for organisations, and the public at large, on the human rights and equality impact of AI systems, which draw on the expertise of equality bodies.
-
- C7 The EU (and states outside the EU) must ensure that international trade rules concerning the digital economy do not in anyway inhibit the protection of the principle of equality and the elimination of discrimination by making it difficult or impossible to have adequate transparency.
-



18.4 The Advocate's contribution to the draft National program for promoting the development and use of artificial intelligence

The increasing use of artificial intelligence systems, which can contribute to improving the quality of people's life, at the same time poses already demonstrated risks to human rights. In this regard, one of the key aspects is the potential violation of the prohibition of discrimination.

Pursuant to Article 21 of the Protection against Discrimination Act, the Advocate responded to the draft National program for promoting the development and use of artificial intelligence in Republic of Slovenia by 2025 and gave the following recommendations:

- 1. within the strategic objective '6.2 Education and strengthening of human resources':**
 - that the drafter considers additional measures to ensure more equitable access to education for vulnerable groups and people with special needs;
 - and provides further clarifications to explain how AI will affect gender equality;
- 2. within the strategic goal '6.6. Enhancing Security using AI' to also mention the potential of AI to detect and prevent the spread of online hostile and intolerant content, while respecting other fundamental rights;**
- 3. in the statement of reasons for the strategic objectives '6.7 Increasing public trust in AI' and/or '6.8 Ensuring an appropriate legal and ethical framework' to specifically highlight the risk of discrimination in the development and use of AI;**
- 4. in the framework of the strategic objective '6.4 Deployment of reference AI solutions in the economy and society' and the accompanying measure '4.8 Establishing a supportive environment for research, innovation and introduction of AI intended for educating and awareness raising in companies and public organisations', special attention is paid to protection against discrimination.**

REASONING PROVIDED BY THE ADVOCATE'S EXPERT STAFF TO RECOMMENDATION NO. 382-3/2021/1

No. 1

The Advocate recommends to the National Programme for AI (NPAI) drafter that within the strategic objective '6.2 Education and strengthening of human resources':

- additional measures to ensure a more equitable access to education for vulnerable groups and people with special needs be considered;
- and further clarifications to explain how AI will affect gender equality be provided.

The Advocate welcomes the fact that the NPAI explicitly highlights some specific areas where the use of AI-based solutions could significantly improve the less favourable situation of vulnerable groups. The less favourable situation often occurs as a result of particular personal grounds (e.g. disability, age, social status, financial status, gender), and the responsibility of state authorities is to create conditions for equal treatment of all persons through various measures in specific areas of work, regardless of personal grounds.⁵⁸

Under the strategic objective '6.2 Education and strengthening of human resources', the NPAI emphasises that support to lifelong learning on AI for vulnerable groups and people with disabilities will also contribute to reducing their social and digital exclusion. In addition, the document states that the use of AI in education will provide a more equitable access to education for vulnerable groups and people with special needs, as AI will enable the adaptation of educational resources and methods to the particular needs of the individual.⁵⁹

These advantages of AI are extremely important also in the context of achieving the so-called Sustainable Development Goals under the UN 2030 Agenda for Sustainable Development. These goals explicitly focus on both the issue of inclusive and equitable quality education for all (SDG 4) and the issue of reducing inequalities within and among countries (SDG 10). Some studies have shown, for instance, how AI contributed to making the education sector more inclusive and accessible to people with different types of disabilities. In this perspective, the use of AI had a positive impact on students with special needs as well as on educational institutions in terms of creating inclusive pedagogical approaches.⁶¹

While the NPAI rightly mentions the above-mentioned advantages of introducing AI into education, the reaping of such benefits is not clearly evident from the measures envisaged under the strategic goal in question. The Advocate therefore recommends that the NPAI drafters consider additional measures focusing explicitly on utilising the potential of AI to improve the access to quality education for vulnerable groups and to reduce the possibility of social and digital exclusion.

⁵⁸ Article 14 of the Protection against Discrimination Act

⁵⁹ NPAI, p. 29–30.

⁶⁰ <https://sdgs.un.org/goals>

⁶¹ See, e.g. Shalini Garg in Shipra Sharma (2020) Impact of Artificial Intelligence in Special Need Education to Promote Inclusive Pedagogy. *International Journal of Information and Education Technology*, 10(7), p. 523–527.



In addition to the aforementioned, the NPAI draft also highlights the potential impact of AI on ensuring gender equality. In addition, this topic is also addressed within the UNESCO Special Report, which focuses on the findings of the structured global dialogue on the role of AI in achieving equal opportunities for women and men.⁶²

However, it is not clear from the NPAI draft how AI would help to ensure gender equality in the context of education, which is, however, also an independent sustainable development goal (SDG 5). The Advocate therefore recommends that, in the context of this strategic goal, the drafters also provide an explanation of the mentioned AI impact.

No. 2

The Advocate recommends to the NPAI drafters that, within the strategic goal '6.6. Enhancing Security using AI', the potential of AI to detect and prevent the spread of online hostile and intolerant content be mentioned, while respecting other fundamental rights.

The use of the AI systems in the area of security brings many benefits in ensuring more effective prevention, detection and response to various criminal actions jeopardising the safety of individuals and the community. At the same time, the use of AI in this area rightly raises a number of issues related to human rights risks, in particular in the light of non-discrimination.

This is, e.g. partially recognised in the new Slovenian legislation. The recently adopted Act on the Protection of Personal Data in the Area of Treatment of Criminal Offences (APPDATCO), e.g. prohibits the creation of profiles within the framework of automated or other processing of special categories of personal data, which would lead to discrimination against the data subjects (Article 4). In response to the recommendation by the Advocate,⁶³ Article 49 of the APPDATCO stipulates that the impact assessment of the processing of personal data with regard to the risks for the preservation of human rights (especially owing to the use of new technologies) must be carried out principally to ensure non-discrimination. In this regard, the Advocate welcomes the fact that under the strategic goal '6.6 Strengthening security through the use of AI',⁶⁴ the implementation of pilot projects for the legal and ethically compliant use and introduction of AI methods in the detection and investigation of crimes is envisaged as a special measure (measure 6.3).

Within the framework of the strategic goal, the NPAI presents several ways of using AI in the security domain, e.g. automatic face recognition (which is otherwise proven to pose a risk in terms of non-discrimination), predictive models for assessing the risks of crimes, purpose-oriented analysis of multimedia content and purpose-oriented analysis of publicly available sources.

⁶² UNESCO (2020) Artificial Intelligence And Gender Equality - Key Findings Of UNESCO's Global Dialogue, dostopno na: https://en.unesco.org/system/files/artificial_intelligence_and_gender_equality.pdf.

⁶³ The recommendation is available at http://www.zagovornik.si/wp-content/uploads/2020/06/Priporocila_Zagovornika_ZVOPPOKD_P.pdf.

⁶⁴ NPAI, p. 42

But in particular in the context of these two ways of using AI in the security domain, the Advocate raises the issue of detecting hostile, intolerant and discriminatory online content, which is, however, not mentioned within the NPAI at this point. Such content, which falls within the so-called hate speech, may also constitute an incitement to discrimination, which, according to Article 10 of the PADA, constitutes a prohibited form of discrimination. The problem of online hate speech, which has great potential to lead to actual violence (hate crimes), as well as various forms of actual discrimination, represents a serious social issue without any effective solution currently in sight, neither in legal nor in operational terms. Many organisations therefore highlight, in this context, the potential of AI to identify such online content. Within a special report, the Centre for Regulation in Europe (CERRE) presents the untapped potential of AI to detect online hate speech, highlighting the need to respect the full range of human rights (e.g. rights to privacy or freedom of expression), that could be placed in jeopardy in case of using either too broad or too narrow AI models of hate speech detection.⁶⁵ Furthermore, a special report by the EU Agency for Fundamental Rights (FRA) mentions an AI-based tool used by an unnamed public agency to combat hate crimes.⁶⁶ The tool analyses patterns of online hate speech and reveals which social groups are most at risk. Although the tool focuses on identifying potential victims rather than perpetrators, the FRA points out that law enforcement authorities also use it to send requests for information on users against whom they wish to initiate criminal investigations to online services (social networks).

In view of the above, the Advocate recommends, that in the context of this chapter, the drafters of the NPAI include the use of AI to detect, prevent or address online hostile, intolerant and discriminatory content among the ways of using AI to ensure security, while stressing the importance of respecting other fundamental rights in such use of AI.

65 CERRE (2019) Artificial Intelligence And Online Hate Speech, Issue Paper, dostopno na: file:///C:/Users/samon/Downloads/CERRE_Hate-Speech-and-AI_IssuePaper.pdf

66 FRA (2020) Getting The Future Right Artificial Intelligence And Fundamental Rights, str. 36, dostopno na: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-artificial-intelligence_en.pdf

Nos. 3 and 4 (Substantively related recommendations)

The Advocate recommends that the NPAI drafters:

- in the statement of reasons for the strategic objectives ‘6.7 Increasing public trust in AI’ and/or ‘6.8 Ensuring an appropriate legal and ethical framework’ specifically highlight the risk of discrimination in the development and use of AI;
- in the framework of the strategic objective ‘6.4 Deployment of reference AI solutions in the economy and society’ and the accompanying measure ‘4.8 Establishing a supportive environment for research, innovation and introduction of AI intended for educating and awareness raising in companies and public organisations’, special attention is paid to protection against discrimination.

The use of AI already has profound impact on life in modern society and this impact is expected to increase in the future. At the web conference ‘Ethics and Human Rights in the Development and Use of Artificial Intelligence’⁶⁷ organised on 9 February 2021 by the MPA with partners, Minister Boštjan Koritnik stressed that AI has a key potential of becoming a tool for responding to the COVID-19 crisis. Technologies based on the use of AI are used for communication, work and decision-making in almost every area of social life and affect the situation and rights of each individual. A recent comprehensive report by the EU Agency for Fundamental Rights (FRA) points out that in the light of risks to human rights and fundamental freedoms in the context of AI, the field of protection against discrimination represents a key topic.⁶⁸

Namely, AI is created by humans who can consciously or unconsciously embed their prejudices and stereotypes into it, either by using biased, incomplete and unrepresentative data or by creating discriminatory algorithms. The UNESCO Special Report emphasises that ‘Algorithmic failures are ultimately human failures that reflect the priorities, values, and limitations of those who hold the power to shape technology’.⁶⁹ In this way, AI can have a negative impact on the rights of the most vulnerable people with certain personal ground. In April 2019, a special high-level expert working group set up by the European Commission (EC) published the ‘Ethics Guidelines for Trustworthy Artificial Intelligence’,⁷⁰ which highlighted the need to respect the principles of non-discrimination, diversity and fairness as one of the fundamental principle which should be at the centre of the regulation of AI. These principles are also mentioned several times in the NPAI, however, not directly in connection with the issue of ensuring effective protection against discrimination.

Ethical aspects of the use and development of artificial intelligence are not (yet) explicitly regulated neither at the level of the European Union nor at the international level, moreover, even at the national level, such regulation is extremely rare or completely absent. Prior to her term in office, the candidate for the EC president Ursula von der Leyen pointed out in the Political Guidelines for the next European Commission 2019-2024 that the EC, in cooperation

67 Video available at <https://www.youtube.com/watch?v=SUbnLOvdMU0>

68 FRA (2020) Getting The Future Right Artificial Intelligence And Fundamental Rights, p. 68.

69 UNESCO (2020) Artificial Intelligence And Gender Equality - Key Findings Of UNESCO's Global Dialogue, p. 6.

70 https://ec.europa.eu/newsroom/dae/document.cfm?doc_id=60438

with various stakeholders, will develop common standards for the use of modern digital technologies, and also explicitly announced that the EC will propose legislation for a coordinated European approach to the human and ethical dimension of the impact of AI.⁷¹

In September 2020, President von der Leyen emphasised in her annual State of the Union address that the EC aims to establish rules on artificial intelligence which put humans at the center, while algorithms should not be incomprehensible black boxes, and that there should be clear rules applicable to cases of potential failures.⁷²

In the first step, the EC issued a White Paper on Artificial Intelligence of 19 February 2020 (hereinafter referred to as White Paper),⁷³ which opens up the key topics and issues which mark the EC's efforts to regulate the field of artificial intelligence. Alongside the protection of personal data, the White Paper explicitly and extensively addresses the significance of protection against discrimination, given the risks of violating human rights in the field of the development and use of artificial intelligence. It exposes ways in which the use of artificial intelligence technologies could lead to unjustified unequal treatment of individuals, especially members of the most vulnerable groups. The White Paper assumes that future regulation of artificial intelligence will have to establish an 'ecosystem of trust' to give people renewed trust in the use of such technologies by placing their rights at the heart of regulatory activities, thus providing certainty to artificial intelligence developers and users.

The European Parliament (EP) is one of the more active European institutions in the field of ethical, legal and equitable use of AI, which is to be trustworthy and people-oriented. Hence, on 20 October 2020, the European Parliament adopted a Resolution on a framework of ethical aspects of artificial intelligence, robotics and related technologies with recommendations to the European Commission,⁷⁴ which is accompanied by a specific legislative proposal. The Resolution gives special attention to the protection against discrimination in the context of AI technologies, as well as to the related element of the above-mentioned ethical guidelines, which are directly or indirectly linked to the challenge of ensuring non-discriminatory AI. Thereupon, the Resolution emphasises, inter alia, that AI systems should use only high-quality and impartial data and 'explainable and impartial algorithms' and that appropriate control mechanisms should be implemented to ensure protection against discrimination and elimination of discrimination, both in the phase of development and use.

From the Advocate's perspective, the issue of ethical, legal and equitable use of AI focuses on the compliance of the development and use of AI with anti-discrimination legislation, which falls within the broader framework of human rights law. At the aforementioned web conference,⁷⁵ several Slovenian experts in the field of AI stressed that there is no legal vacuum in the area of AI regulation, however, there are legal gaps in certain segments arising from incomplete and fragmented regulations which fail to provide a legal framework for effective protection of human rights.

71 Ursula von der Leyen (2019) A union that strives for more – My agenda for Europe, p. 13, available at: https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf

72 Ursula von der Leyen (2020) State of the Union Address, available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_1655

73 https://ec.europa.eu/info/sites/info/files/commission-white-paper-artificial-intelligence-feb2020_sl.pdf

74 https://www.europarl.europa.eu/doceo/document/TA-9-2020-0275_SL.html

75 Video available at <https://www.youtube.com/watch?v=SUbnLOvdMU0>



Several speakers also pointed out that, consequently, non-binding ethical principles can not satisfactorily resolve the challenges faced and that legal regulation is necessary. Efforts to create a binding international legal instrument that would establish minimum standards for addressing human rights risks in the context of AI are undertaken also within the Council of Europe Ad hoc Committee on Artificial Intelligence (CAHAI), chaired by a representative of Slovenia.

Similar findings arise from a special report of the European Network of Equality Bodies – Equinet,⁷⁶ of which the Advocate is an active member. Anti-discrimination law is in place and applicable both at the EU and national levels, however, it is necessary to ensure full respect of such arrangements also in the context of AI development and use. However, by further regulating the field of AI, it is necessary to ensure that the existing law can be effectively applied and enforced in relation to AI technologies as well.⁷⁷

The Equinet report was designed in a context where, as per the protection against discrimination, AI is researched only to a very limited extent and addressed in detail only by a few equality bodies. At the same time, such equality bodies (as well as other independent authorities and courts) may encounter cases of alleged discrimination in the actual use of AI-based systems. In the context of ensuring effective protection against discrimination, the area of AI must therefore be so regulated (also legally) as to enable effective protection.

The Equinet Report shows that the risks of breaches of the prohibition of discrimination in the context of the (increasingly widespread) use of AI systems are not only potential but also proven to exist and very real. The Report presents in detail some issues related to the specific use of AI systems, which are controversial in light of the principle of non-discrimination and are linked to various areas of social life in different European countries.⁷⁸ The Report also presents judicial and quasi-judicial cases (which are extremely rare so far) from the United Kingdom, the Netherlands and Finland, where discrimination in connection with the AI systems has been detected (inter alia, because of insufficient transparency in the functioning of these systems).⁷⁹

Sector-specific recommendations to various stakeholders, including Member States and public authorities, also represent an integral part of the Equinet Report. The Advocate hereby puts forward the following recommendations to Member States:

- public authorities should ensure greater transparency in AI use by comprehensive and systematic mapping of different applications of the relevant systems in each country; the results of such mapping should be available to the public and represent the first step towards ensuring increased transparency in AI use; public authorities should develop detailed proposals for establishing legal transparency requirements, e.g. by establishing public AI use registers; such increased transparency should complement and at the same time operate in parallel with the GDPR

76 Equinet/ Robin Allen QC in *Dee Masters* (2020) *Regulating for an Equal AI: Meeting the new challenges to equality and non-discrimination from increased digitalization and the use of Artificial Intelligence*, available at: https://equineteurope.org/wp-content/uploads/2020/06/ai_report_digital.pdf

77 *Ibid.*, p. 13.

78 *Ibid.*, p. 33–37, 40–53 and 81–95.

79 *Ibid.*, p. 106–109.

requirements, which also regulate the use of algorithms, but is legally relevant in the context of equal treatment only if a sufficient degree of transparency of AI systems is ensured; public authorities should also ensure that international trade rules regarding the digital economy do not reduce transparency;

- public authorities of EU Member States and the Council of Europe should analyse legal ‘gaps’ to understand how AI systems can be regulated to protect human rights, respecting the principles of equality and non-discrimination, and to identify the needs for local regulatory and administrative reforms and a new regulatory framework at the EU level; in doing so, public authorities should turn to equality bodies and, by allocating appropriate funds, enable them to analyse the relevant legal ‘gaps’, focusing on the impact of AI systems on equal treatment and non-discrimination;
- public authorities should ensure that the curriculum for computer scientists, engineers and other profiles related to the development of AI systems includes modules focused on the aspect of human right standards and equal treatment in the context of AI developing and using.

Bearing in mind the above, the Advocate welcomes the fact that the draft NPAI identifies in several places particular risks associated with protection against discrimination in the context of AI. Thus, in the context of assessing advantages, disadvantages, opportunities and threats,⁸⁰ the risks posed by ‘inaccessible and inconsistent data, poor quality, biased or insufficient data’ and ‘non-adjusted legislative framework in individual segments of AI implementation’ are highlighted, as well as abuses of AI that affect the trust of society in AI which are identified as threats together with undesirable decisions emerging from the use of AI tools based on poor, unrepresentative and biased data and unclear responsibility and legal regulations in individual areas of AI implementation. It is also encouraging that the draft NPAI addresses in some chapters, e.g. ‘6.8 Ensuring an appropriate legal and ethical framework’ some topics related to protection against discrimination in the context of IM, both in the explanatory memorandum and in the measures.

However, the Advocate needs to stress that, in the given context, the approach of the draft NPAI to issues related to ensuring protection against discrimination is fragmented and that the issue of discrimination which represents a significant threat to human rights in the context of AI is not clearly pinpointed and explained.⁸¹ In the light of the above arguments, the Advocate therefore recommends that, in the chapters ‘6.7 Increasing public confidence in AI’ and/or ‘6.8 Ensuring an appropriate legal and ethical framework’, the NPAI drafter specifically presents the risk of discrimination inherent in the development and use of AI and the connection of such risk with other aspects of AI presented in the document.

80 NPAI, p. 24–25

81 For comparison – risks in the field of personal data protection, also an extremely important field human rights in the context of IM, is explicitly emphasised and explained in chapter “6.5 Establishing infrastructure for the development and use of AI”, NPAI, p. 39.

Additionally, the Advocate recommends that, as per the strategic goal ‘6.4 Deployment of reference AI solutions in the economy and society’ and within the accompanying measure ‘4.8 Establishing a supportive environment for research, innovation and introduction of AI intended for educating and awareness raising in companies and public organisations’, the drafter places a special emphasis on protection against discrimination and promotion of equal treatment. The Advocate proposes that this be done either by amending the wording of the existing measure or by adding a new, supplementary measure. Educating entities operating in any segment of the AI cycle (from development to use) on the risks posed by AI to discrimination is of central importance.

The aforementioned research study by the FRA, based on in-depth interviews with a number of public and private sector representatives involved in the development, deployment and use of AI systems, showed that, in general, they are aware of the prohibition of discrimination in the AI context but lack clearer understanding of the diversity and extent of the potential discrimination caused by AI, as well as the actual scope of the obligations arising from anti-discrimination law and directly applicable in the context of AI.⁸²

82 FRA (2020) Getting The Future Right Artificial Intelligence And Fundamental Rights, p. 70-72

19 ACRONYMS AND ABBREVIATIONS

ACEA	Architecture and Civil Engineering Act
ADA-1	Administrative Dispute Act
ADIMCEMCCE	Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy
ADIMDPBL	Act Determining the Intervention Measure of Deferred Payment of Borrowers' Liabilities
ADIMMCSWE	Act Determining the Intervention Measures to Mitigate the Consequences of the Second Wave of COVID-19 Epidemic
Administrative Court	Administrative Court of the Republic of Slovenia
ADTMMRS	Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19
Advocate	The Advocate of the Principle of Equality
AI	Artificial intelligence
APMJAOPMCSID	Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-CoV-2 (COVID-19)
ARSPWOAS	Act Regulating the Supplement to Pensions for Work and Outstanding Achievements in Sports
ARUSSL	Act Regulating the Use of Slovene Sign Language
CC-1	Criminal Code
CDADI	Council of Europe's Steering Committee on Anti-Discrimination, Diversity and Inclusion
Charter	Charter of Fundamental Rights of the European Union
CoE	Council of Europe
Constitutional Court	Constitutional Court of the Republic of Slovenia
COVID-19	Coronavirus disease
CRPD	United Nations Convention on the Rights of Persons with Disabilities
CRPD	Convention on the Rights of Persons with Disabilities
CRSA	Citizenship of the Republic of Slovenia Act
CUA	Civil Union Act
CWRA	Council for Women in Rural Areas

EC	European Commission
ECHR	European Convention on Human Rights
ECRI	European Commission against Racism and Intolerance
ECtHR	European Court of Human Rights
EEA	European Economic Area
EIGE	European Institute for Gender Equality
ENNHRI	European Network of National Human Rights Institutions
EP	European Parliament
Equinet	European Network of Equality Bodies
ESF	European Social Fund
ESS	Employment Service of Slovenia
EU	European Union
FARS	Financial Administration of the Republic of Slovenia
FC	Family Code
FRA	European Union Agency for Fundamental Rights
FRP	Fundamental Rights Platform
GAPA	General Administrative Procedure Act
GONM	Government Office for National Minorities
GOSIM	Government Office for the Support and Integration of Migrants
HA-1E	Draft Act Amending the Housing Act
HFRS	Housing Fund of the Republic of Slovenia
HLG	High Level Group on Non-Discrimination, Equality and Diversity
ICHR	Interdepartmental Commission on Human Rights
INACH	International Network Against Cyber Hate
IPETA	Implementation of the Principle of Equal Treatment Act
IPTA	Insurance Premium Tax Act
LGBTI+	Lesbian, gay, bisexual, transgender, intersex, queer and other diverse identities
MAFF	Ministry of Agriculture, Forestry and Food
MC	Ministry of Culture



MD	Ministry of Defence
MEDT	Ministry of Economic Development and Technology
MESP	Ministry of the Environment and Spatial Planning
MESS	Ministry of Education, Science and Sport
MF	Ministry of Finance
MFA	Ministry of Foreign Affairs
MH	Ministry of Health
MI	Ministry of the Interior
MIRS	Market Inspectorate of the Republic of Slovenia
MLFSAEO	Ministry of Labour, Family, Social Affairs and Equal Opportunities
MMA	Mass Media Act
MoI	Ministry of Infrastructure
MoJ	Ministry of Justice
MPA	Ministry of Public Administration
National Assembly	National Assembly of the Republic of Slovenia
NCDPOS	National Council of Disabled People's Organisations of Slovenia
NGOs	Non-governmental organisations
NHRI	National Human Rights Institution
NIPH	National Institute of Public Health
NPMR	National Program of Measures for the Roma
OHCHR	Office of the United Nations High Commissioner for Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PAA	Personal Assistance Act
PADA	Protection against Discrimination Act
PDIA-2	Pension and Disability Insurance Act
PDPA	Personal Data Protection Act
PSSIEMPSA	Payment Services, Services for Issuing Electronic Money and Payment Systems Act
RCRSA-1	Roma Community in the Republic of Slovenia Act
RS	Republic of Slovenia

SIDA	Social Inclusion of Disabled Persons Act
SIFOROMA	National Platform for the Roma
SPIRIT Slovenia	Public Agency for Entrepreneurship, Internationalization, Foreign Investments and Technology
SPSA-1	State Prosecution Service Act
SWC	Social Work Centres
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UPR	Universal Periodic Review

Annual Report of the Advocate of the Principle of Equality for 2020 – Systemic Overview

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