

Legal Study on Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity

Dr Arne Marjan Mavčič
Dr Matej Avbelj
Ljubljana, Slovenia
February 2008 – March 2010

Contents

EXECUTIVE SUMMARY	3
A. IMPLEMENTATION OF EMPLOYMENT DIRECTIVE 2000/78/EC.....	7
A.1. Constitutional and statutory provisions.....	7
A.1.1. The Constitution	7
A.1.2. The Employment Relationships Act	8
A.1.3. Complementary anti-discrimination legislation	9
A.1.4. The Implementation of the Principle of Equal Treatment Act 9	
A.1.5. Special equality bodies dealing with discrimination.....	10
A.2. The role of NGOs.....	12
B. FREEDOM OF MOVEMENT	15
C. ASYLUM AND SUBSIDIARY PROTECTION.....	17
C.1. The rights of LGBT people	17
C.2. The rights of LGBT family members.....	18
D. FAMILY REUNIFICATION.....	20
E. FREEDOM OF ASSEMBLY	22
F. CRIMINAL LAW	24
G. TRANSGENDER ISSUES	27
H. MISCELLANEOUS.....	28
I. GOOD PRACTICES	33
ANNEX 1 – CASE LAW	35
ANNEX 2 – STATISTICS	39

Executive summary

Implementation of Employment Directive 2000/78/EC

The right to equal treatment both in employment relationships and beyond this sphere is guaranteed by Article 14 of the *Ustava Republike Slovenije* [Constitution of the Republic of Slovenia]. This right is further detailed in the *Zakon o delovnih razmerjih (ZDR)* [Employment Relationships Act] which explicitly prohibits direct or indirect discrimination on the basis of sexual orientation. In 2004 the *Zakon o uresničevanju načela enakega obravnavanja* [Implementation of the Principle of Equal Treatment Act] was adopted as a legislative measure implementing Directive 2000/43/EC and Directive 2000/78/EC. Its main objective is to improve protection in relation to discrimination based on sex and other grounds, such as race or ethnic origin, health, disability, language, religious or other conviction, age, sexual orientation, education and social status. The Act bans direct and indirect discrimination, harassment and victimisation and determines sanctions for violations. It also allows positive measures if they promote the achievement of its aims or are used to compensate for the less favourable position of people with particular personal circumstances. Victims of discrimination in employment relationships can turn to special equality bodies instituted by Slovenian legislation (*zagovornik načela enakosti, inšpekcijske službe, varuh človekovih pravic*, [the Equality Advocate, the inspection service and the Ombudsman]), as well as the courts. In the latter case, the legislation provides for a shifting of the burden of proof in favour of a victim of discrimination. NGOs have the right to participate in these proceedings, however, their role has been limited to awareness-raising activities within society. To the extent that official statistics on cases of discrimination on the grounds of sexual orientation are available, there have been very few cases reported and in none of them has the alleged discrimination been established.

Freedom of movement

Family members of an EU citizen, whether or not they are EU nationals, can join him/her on the basis of their derived rights for the purposes of family reunification. LGBT partners of an EU citizen are not encompassed under the legal term spouse as defined by the *Zakon o tujcih* [Aliens Act]. This is reserved for the marital relationship between heterosexual partners. The registered partnership (same-sex union) as defined by the Slovenian *Zakon o registraciji istospolne partnerske skupnosti* [Registration of Same-sex Partnership Act] is not awarded the same legal status as marriage, neither does a partner in a same-

sex union have the status of a relative. This means that LGBT partners of an EU citizen, as well as their children or other relatives, are not considered as family members or relatives in Slovenia and thus do not obtain derived rights to freedom of movement. They and their family members can enter and reside in Slovenia only on the basis of their original rights as EU citizens or nationals of other countries. In the latter case they must comply with stricter legal conditions for entry and residence.

Asylum and subsidiary protection

The protection of aliens under Slovenian law which includes the right to refugee status and the right to subsidiary protection is regulated by the new *Zakon o mednarodni zaščiti* [International Protection Act]. The Act implements a number of EU directives. Grounds for persecution which entitle an individual to refugee status, *inter alia*, include the membership of a particular social group. The Act explicitly enables LGBT people to acquire refugee status. Unofficial reports state that since 1999 there have been around 150 asylum claims approved in Slovenia, but none of them on the basis of sexual orientation.

Family reunification

Article 53 of the Slovenian Constitution provides that the state shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection. The concept of family is, however, still bound to a relationship, either marital or extra-marital, between two individuals of different sex and their children. This is apparent also from the Aliens Act which determines the alien's right to family reunification and the right to a complete family. This right is granted only to close family members which does not include LGBT partners. One LGBT partner, his children or parents thus cannot benefit from the rights of another LGBT partner. A same-sex partnership is thus not recognised as a ground which would trigger the right to family reunification.

Freedom of assembly

Freedom of assembly is guaranteed by Article 42 of the Constitution and implemented by the *Zakon o javnih zbiranjih* [Public Gatherings Act]. LGBT people have exercised their right to freedom of assembly freely. There have been no reports of official prohibition of LGBT events. Similarly, there is no record of demonstrations against tolerance of LGBT people. However, parades have sometimes been accompanied by disrespectful graffiti or slogans and there have been reports of some isolated cases of physical violence against LGBT

people in the aftermath of parades. The authorities have always reacted to such events in accordance with the law and any physical violence or interference by third parties with the rights of LGBT people has led to severe and unanimous condemnation from the highest Slovenian officials as well.

Hate speech and criminal law

Article 63 of the Constitution prohibits ‘any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance’. Hate speech is incriminated by the *Kazenski zakonik* [Penal Code], which also incriminates discrimination. This Act also penalises a violation of the right to equality, including on the basis of sexual orientation. Hate speech directed towards LGBT people is proscribed by a number of other statutes. In general the Slovenian penal system does not take into account if a common crime (such as robbery or assault) is committed with a homophobic motivation. This is not a special or independent element of the relevant crimes. However, in the case of the offence of murder only, aggravating circumstances include what could be described as homophobic intent (Article 116 in conjunction with Article 131 of the Penal Code). In the trial before the District Court in Ljubljana concerning a violent attack on a gay activist prior to the pride parade three teenage perpetrators were sentenced to jail for 18 months each.

Transgender issues

The discrimination of transgender people is encompassed by a constitutional prohibition of discrimination on the basis of ‘any other personal circumstance’. However, there are no specific laws explicitly addressing the status and position of transgender people in Slovenia.

Miscellaneous

The Registration of Same-Sex Partnership Act provides for certain listed rights which are recognised for such partners. It does not establish a form of union equivalent to marriage and remains distinct from the provisions of the *Zakon o zakonski zvezi in družinskih razmerjih* [Marriage and Family Relations Act]. The most obvious difference is certainly the lack of any provisions concerning children. Other shortcomings have been identified as well. The government has drafted a new Family Code which is currently in the parliamentary procedure. If adopted, it shall result in a complete equalization of same-sex life communities with those of heterosexual life communities regarding all important matters: property, health, family, including the adoption of children.

Good practices

In Slovenia two particular cases of good practice in the field of employment can be singled out. The first relates to employers who can use various formal and informal means for securing a safe working environment for LGBT people. Two large Slovenian public companies thus lead by example by including prohibition of discrimination on the basis of other personal circumstances (i.e. sexual orientation) in their internal company codes. The second case of good practice relates to the cooperation between NGOs, trade unions, employers and the Slovenian government, the recent result of which has been the publication of two manuals containing a comprehensive guide for trade unions of how to counter discrimination in their negotiations with employers, as well as for the employers when dealing with workers.

A. Implementation of Employment Directive 2000/78/EC

A.1. Constitutional and statutory provisions

A.1.1. The Constitution

The principle of equality is one of the basic constitutional provisions. It means the right of an individual to guaranteed equality in the establishment and implementation of law (equality in law and equality before the law). The amended text of Article 14, para. 1 of the *Ustava Republike Slovenije* [Constitution of the Republic of Slovenia] reads as follows:

‘In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other opinion, material standing, birth, education, social status, disability or any other personal circumstance.’¹

In accordance with Article 14, para. 2 of the Constitution, all persons shall be equal before the law.² The principle of equality is bound by some particular constitutional provisions explicitly referring to equality and equal rights. In this way, Article 22 of the Constitution guarantees the equal protection of rights.³

The *Ustavna komisija* [Commission for Constitutional Affairs] of the Parliament of the Republic of Slovenia conferred an official interpretation on the above-mentioned Article 14 of the Constitution: ‘The term “personal circumstances” included in Article 14 of the Constitution includes the “same-sex” orientation of an individual. The prohibition of discrimination on the basis of sexual orientation is thus contained in this Article. The Commission for Constitutional Affairs did not refer explicitly to any special personal circumstance, for they are ordinarily not explicitly enumerated in the

¹ Slovenia/*Ustava Republike Slovenije* [Constitution of the Republic of Slovenia], 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 14(1).

² Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 14(2); also Slovenia/*Ustavno sodišče* [Constitutional Court]/U-I-94/05 (26.10.2006): ‘Pursuant to Art. 14 of the Constitution in Slovenia everyone is guaranteed equal human rights and fundamental freedoms irrespective of personal circumstances, including gender which is specifically listed by the Constitution’.

³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 22, also Slovenia/Constitutional Court/Up-1055/05 (19.01.2006): ‘A party in the procedure is entitled to fundamental procedural guarantees, which include the right to a statement and the right to equal treatment of parties in the procedure’.

conventions or constitutional texts, rather their judicial and other protection is secured in this more general manner.⁴

A.1.2. The Employment Relationships Act

Discrimination on the basis of sexual orientation is explicitly prohibited in the *Zakon o delovnih razmerjih* [Employment Relationships Act].⁵ The relevant provisions of the Employment Relationships Act came into force on 01.01.2003. Article 6 of the Act determines that the employer may not discriminate between those seeking employment or employees on the basis of any personal circumstance when the employment contract is being concluded or at any time during employment. The employer is liable for damages in the event of such discrimination occurring. The employer may not treat the applicant in the recruitment process or the worker unequally during the course of the employment relationship or in relation to the termination of an employment contract on the grounds of sex, race, skin colour, age, health or disability, religious, political or other conviction, membership of a trade union, national and social origin, family status, financial situation, sexual orientation or other personal circumstances.⁶ Women and men must be afforded equal opportunities and equal treatment in access to employment, promotion, training, education, retraining, wages and other income arising from the employment relationship, absences from work, working conditions, working hours and notice of termination of the employment contract.⁷ Any direct as well as indirect discrimination due to sex, race, age, health or disability, religious or other conviction, sexual orientation or national origin is prohibited. Direct discrimination is considered to be present when a person was, is or could be treated less favourably than another person in equal or similar circumstances due to his/her specific personal circumstances. There is indirect discrimination where an apparently neutral provision, criterion or practice would put a person of a certain sex, race, age, health or disability, religious or other conviction, sexual orientation or national origin at a disadvantage, unless such provision, criterion or practice are objectively justified, appropriate and necessary. The instruction to discriminate against a person on the grounds of any personal circumstance also constitutes a form of direct or indirect discrimination.⁸ If, in the event of a dispute, the applicant or worker presents facts which justify the assumption that the prohibition of discrimination was violated due to the circumstances referred to in paragraph 3 of Article 6, it shall be for the employer to prove that different treatment is justified by the type and nature of

⁴ <http://www.ljudmila.org/sgs/modules.php?name=News&file=print&sid=283> (last accessed 31.01.2008).

⁵ Slovenia/Employment Relationships Act 42/02 and 103/07 as amended (03.05.2002)

⁶ Slovenia/Employment Relationships Act 42/02 and 103/07 as amended (03.05.2002), Art 6/1.

⁷ Slovenia/Employment Relationships Act 42/02 and 103/07 as amended (03.05.2002), Art 6/2.

⁸ Slovenia/Employment Relationships Act 42/02 and 103/07 as amended (03.05.2002), Art 6(3).

the work.⁹ Should the existence of discrimination be established, the employer is liable for damages to the applicant or worker pursuant to the general rules of civil law.¹⁰

A.1.3. Complementary anti-discrimination legislation

In order to ensure that similar provisions are included in other laws, to strengthen the public perception that discrimination on the grounds of sexual orientation is prohibited, complementary anti-discrimination legislation was adopted. The legislature believed that the *Zakon o uresničevanju načela enakega obravnavanja* [Implementation of the Principle of Equal Treatment Act] would strengthen the public perception regarding discrimination, especially with reference to the already existing constitutional guarantees of prohibition of discrimination and the prohibition of incitement to discrimination and intolerance.¹¹

A.1.4. The Implementation of the Principle of Equal Treatment Act

The Implementation of the Principle of Equal Treatment Act¹² is a piece of legislation with a general scope of application prohibiting discrimination against any person in the exercise of his/her rights and duties and in the exercise of his/her fundamental freedoms in any aspect of the social sphere, in particular in the fields of employment, employment relations, affiliation to unions and interest organisations, upbringing and education, social security and access to and provision of goods and services. It was adopted in May 2004 and it seeks to implement Directives 2000/43/EC and 2000/78/EC.

Its main objective is to improve protection against discrimination based on sex and other grounds, such as race or ethnic origin, health, disability, language, religious or other conviction, age, sexual orientation, education and social status. Sexual orientation is explicitly listed among the list of prohibited grounds of discrimination. The Act bans direct and indirect discrimination, harassment and victimisation and determines sanctions for violations. It allows the adoption of positive action measures if they contribute to the aim of promoting equality or compensate for existing inequalities.

⁹ Slovenia/Employment Relationships Act 42/02 and 103/07 as amended (03.05.2002), Art 6(7).

¹⁰ Slovenia/Employment Relationships Act 42/02 and 103/07 as amended (03.05.2002), Art 6(7).

¹¹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 63.

¹² Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007).

A.1.5. Special equality bodies dealing with discrimination

The Act also provides for the establishment of the *Svet vlade za uresničevanje načela enakega obravnavnja* [Council of the Government for the Implementation of the Principle of Equal Treatment] (the implementing regulations should be adopted by the government and at time of writing were still in a preparatory phase). The Council, *inter alia*, provides for the implementation of the provisions of the Act, monitors their implementation and initiates educational, awareness-raising, information and research activities for the promotion of equal treatment.¹³

The Act also assigns duties to the *Zagovornik načela enakosti* [Equality Advocate] in relation to the consideration of informal complaints regarding anti-discrimination rules. This is a body for investigating complaints about alleged breaches of the equal treatment principle.¹⁴ The review of an alleged violation of the prohibition of discrimination begins with the receipt of a written or oral complaint which can be anonymous, provided that it contains sufficient elements for a substantive review.¹⁵ Manifestly unfounded applications are not reviewed.¹⁶ The application must be filed as soon as possible, but no later than one year after the alleged discrimination was committed. However, in specially justified cases the application can be reviewed even after the expiry of the set time limit.¹⁷ The procedure before the Advocate is informal, confidential, free of charge¹⁸ and normally conducted in writing.¹⁹ The Advocate can issue a written request during the procedure to the alleged perpetrator asking him/her to protect the victim of discrimination from further acts of victimisation or to remove any existing consequences.²⁰ The procedure closes with a written opinion which contains the main findings about the case and their assessment in the light of the alleged discrimination. The written opinion is served to both parties in the case. The perpetrator may be issued with recommendations about the removal of the negative consequences of a violation, with a duty to report back on adopted remedial measures.²¹ In addition to this complaints procedure, an individual can also apply to the Advocate for an advisory opinion as to whether a particular act, commission or omission could violate the principle of

¹³ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 9.

¹⁴ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 11.

¹⁵ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 12(1).

¹⁶ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 12(2).

¹⁷ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 13.

¹⁸ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 14.

¹⁹ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 15.

²⁰ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 16.

²¹ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 17(1), (2).

equality on the basis of personal circumstances.²² The Equality Advocate issues yearly reports about its activity.²³

In cases where the perpetrator does not cease his/her discriminatory behaviour or does not remove the resulting negative consequences of the discrimination or does not comply with the Advocate's recommendations, the Advocate can submit the case to the *inšpekcijska služba* [inspection service].²⁴ The inspection service must review the Advocate's opinion and, if it determines that the grounds of discrimination are indeed established, it will initiate a misdemeanour procedure. During this procedure the inspection service can adopt provisional measures to protect the victim.²⁵

The institution of the Ombudsman is another avenue for countering discrimination on the basis of sexual orientation in the fields of employment as well as elsewhere. The Ombudsman is an institution for the out-of-court and informal protection of human rights and basic freedoms. According to the Constitution, its function is to protect human rights and basic freedoms in matters involving state bodies, local government bodies and statutory authorities. He/she is elected on the proposal of the President of the Republic by the National Assembly with a two-thirds majority of all Deputies.²⁶

Proceedings before the Ombudsman are confidential and free of charge for the parties.²⁷ Anyone who thinks that their human rights or basic freedoms have been violated by an act or action of a government body, local government body or statutory authority, may propose the initiation of such proceedings. The Ombudsman may also start proceedings on his/her own initiative.²⁸ The Ombudsman is empowered to submit proposals, opinions, critiques or recommendations to state bodies, local government bodies and statutory authorities, which these are obliged to discuss and respond to within the term determined by the Ombudsman.²⁹ They are also obliged to submit, at the request of the Ombudsman, all data and information which they possess (regardless of the degree of confidentiality) and cooperate in the inquiry.³⁰ The Ombudsman may submit initiatives for amendments of statutes and other legal acts to the National Assembly and the government and gives his/her opinion to all other bodies from the viewpoint of the protection of human rights and basic freedoms on the issue dealt with.³¹ However, the Ombudsman may not treat issues dealt

²² Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 18.

²³ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 19.

²⁴ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 20.

²⁵ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 21.

²⁶ Slovenia/Ombudsman Act 71/93 (30.12.1993), Art. 2 and 12.

²⁷ Slovenia/Ombudsman Act 71/93 (30.12.1993), Art. 9(3).

²⁸ Slovenia/Ombudsman Act 71/93 (30.12.1993), Art. 9(1).

²⁹ Slovenia/Ombudsman Act 71/93 (30.12.1993), Art. 7.

³⁰ Slovenia/Ombudsman Act 71/93 (30.12.1993), Art. 6.

³¹ Slovenia/Ombudsman Act 71/93 (30.12.1993), Art. 25.

with in judicial or other legal proceedings except in the case of an unjust delay of the proceedings or obvious abuse of authority.³²

Finally, there is the judicial route. The aggrieved individual can bring a case of alleged discrimination on the basis of sexual orientation before the courts. Slovenian legislation facilitates the task of the victim by allowing for a shift in the burden of proof. This issue is regulated in Article 22 of the Implementation of the Principle of Equal Treatment Act, which reads as follows:

‘(1) In cases of a violation of the prohibition of discrimination, determined in Article 3 of this act, the discriminated persons can request for a review of the violation in judicial and administrative proceedings, under the conditions and in the manner determined by law, and have the right to compensation according to the general rules of civil law. (2) When, in cases described in the previous paragraph, the discriminated person states facts which substantiate a presumption that the prohibition of discrimination was violated, the defendant must prove that s/he did not violate the principle of equal treatment or the prohibition of discrimination in the case at issue.’³³

A.2. The role of NGOs

The Implementation of the Principle of Equal Treatment Act provides that NGOs can, in accordance with the law, participate in judicial and administrative procedures initiated by individuals alleging to have been subject to unlawful discrimination.³⁴ Given the lack of cases before the courts, this legal opportunity so far has not been used very frequently, if all. The NGOs have rather concentrated their activities outside the courtrooms.

In 2001, ŠKUC-LL, an NGO promoting non-discrimination regarding sexual orientation, conducted a nationwide study on discrimination on the grounds of sexual orientation in Slovenia.³⁵ The survey addressed the issues of violence and harassment and discrimination in employment, health care services, housing and military service. The survey was conducted between January and March 2001. During this period, 172 people completed the questionnaire. Respondents were primarily those individuals who regularly frequent openly lesbian and gay meeting places in Ljubljana or who are indirectly connected with lesbian, gay and bisexual organisations (e.g. through personal contacts or correspondence). The questionnaires were distributed in the lesbian bar Monokel, the gay bar Tiffany and the Metelkova Cultural Centre in Ljubljana. The questionnaire was

³² Slovenia/Ombudsman Act 71/93 (30.12.1993), Art. 24.

³³ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 22.

³⁴ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.09.2007), Art. 23.

³⁵ ŠKUC (2001) *Sexual Orientation Discrimination in Slovenia*, available at <http://www.ljudmila.org/siqrd/sods.html> (last accessed 31.01.2008).

also distributed to members of ŠKUC-LL as well as the youth group Legebitra, and was made available on the website www.ljudmila.org/siqrd.

A survey of this type of course does not purport to produce results that are statistically valid for the entire population group targeted, as would be the case with a random sample. Nonetheless, the survey results provide valuable information and permit certain broad conclusions to be drawn about the nature and extent of sexual orientation discrimination in Slovenia. The findings of this survey lead to the conclusion that there is a high level of discrimination against gay, lesbian and bisexual people in the country. For example, half of the respondents had experienced some form of violence or harassment because of his/her sexual orientation and one in five had suffered harassment in the workplace. The survey findings also raise serious concerns about discriminatory behaviour in the police force, in health services and in the military, as well as the difficulties faced by openly lesbian and gay people in finding housing. However, it is highly probable that these findings actually seriously understate the scale of the problem, due to the above-mentioned fact that many lesbian, gay and bisexual individuals seek to avoid discrimination by concealing their sexual orientation. The potential magnitude of this factor is revealed when one compares the number of incidents of harassment in the workplace with the number of respondents who stated that they are open with their co-workers and superiors as regards their sexual orientation. It is thus impossible for the survey to measure precisely the extent of sexual orientation discrimination in Slovenia.

However, attention should be drawn to two important factors. Surveys seeking to quantify the extent of discrimination directed towards lesbian, gay and bisexual people face a specific problem: unlike many other minorities who experience discrimination, most lesbian, gay and bisexual people can conceal the aspect of their identity that is the target of discrimination, namely their sexual orientation. Accordingly, any survey investigating sexual orientation discrimination is likely to understate the real extent of discrimination. Secondly, as noted above, the survey respondents consisted mainly of people who openly participate in Ljubljana's lesbian and gay scene, as well as individuals connected with lesbian, gay and bisexual organisations in Slovenia. It is likely that this sample does not provide a comprehensive picture of the lesbian, gay and bisexual population in Slovenia, since it includes a relatively high proportion of individuals who are politically aware and open about their sexual orientation.

Another survey was conducted in 2003 by *Mirovni inštitut* [Peace Institute]. It demonstrated that 49 per cent of LGBT people interviewed conceal their sexual orientation or refrain from revealing it at work. Four per cent of those

interviewed, moreover, fear that exhibiting their sexual orientation could lead to the termination of their job.³⁶

Save for the statistical data included in annex 2, no other statistical information is available, which is only logical in the light of the lack of relevant case-law on discrimination on the basis of sexual discrimination.³⁷

³⁶ T. Greif (2006) *Ukrepi proti diskriminaciji v zaposlovanju za sindikate*, ŠKUC, Ljubljana 2006, available at: http://www.zsss.si/images/stories/PDF/Ukrepi_proti_diskriminaciji_SINDIKATI.pdf (last accessed, 31.01.2008).

³⁷ The lack of case-law has been established following a detailed research in the Slovenian case-law databases, both those officially procured by the courts (available at www.sodnapraksa.si) as those, which are even more comprehensive, that are privately run (such as: www.ius-software.si)

B. Freedom of movement

The entry and status of aliens in Slovenia in general and of EU citizens in particular is regulated by the *Zakon o tujcih* [Aliens Act].³⁸ An EU citizen, irrespective of his/her sexual orientation, can move and reside in Slovenia on the basis of his/her original right stemming from EU law as implemented in the Aliens Act. An EU national who enters Slovenia with a valid personal ID or passport can reside there for three months without having to declare his/her residency. If his/her duration of stay exceeds three months, either for the purpose of employment, self-employment, provision of services, study or other vocational training or for other reasons, he/she must register it with the competent authorities.³⁹

Family members of an EU citizen, whether EU nationals or not, can join him/her, on the basis of their derived rights for the purposes of family reunification. Pursuant to the Aliens Act, family members of an EU citizen include: his/her spouse, unmarried children below the age of 21, unmarried children of a spouse below the age of 21, unmarried children older than 21 and parents of an EU citizen if the latter must support them pursuant to the laws of the country of his citizenship and parents of an EU citizen younger than 21. Exceptionally, exercising its discretion, the competent authority may count another relative as a relative for the purposes of this Article if special circumstances speak in favour of family reunification in Slovenia.⁴⁰

LGBT partners of an EU citizen are not encompassed under the legal term spouse as defined by the Aliens Act. This is reserved for the marital relationship between heterosexual partners. The registered partnership (same-sex union) as defined by the Slovenian *Zakon o registraciji istospolne partnerske skupnosti* [Registration of Same-sex Partnership Act]⁴¹ is not awarded the same legal status as marriage, neither does a partner in a same-sex union have the status of a relative. Registration of a same-sex union, namely, gives rise solely to the following exhaustively enumerated rights and duties: the right, and a reciprocal duty, to support each other; property rights arising in the union; the right to housing protection; inheritance rights after the death of a partner and the right to access information about the health conditions of a partner and to visit him/her in medical institutions.⁴² This means that the LGBT partner of an EU citizen, as well as their children or other relatives, are not considered as family members or relatives in Slovenia and do not obtain derived rights to freedom of movement. They and their family members can enter and reside in Slovenia only on the basis of their original rights as EU citizens or nationals of other

³⁸ Slovenia/Aliens Act 107/06 (17.10.2006), Art. 36.

³⁹ Slovenia/Aliens Act 107/06 (17.10.2006), Art. 93c.

⁴⁰ Slovenia/Aliens Act 107/06 (17.10.2006), Art. 93k.

⁴¹ Slovenia/Same-sex Partnership Act 65/06 (08.07.2005).

⁴² Slovenia/Same-sex Partnership Act 65/06 (08.07.2005), Art. 8.

countries. In the latter case they must comply with stricter legal conditions for entry and residence.⁴³

Pursuant to contact established with the *Statistični urad Republike Slovenije* [Statistical Office of the Republic of Slovenia] and with the *Sektor za osebna stanja, javne listine in prijava prebivališča* [Division for Civil Status, Public Documents and Residence Registration] at the Ministry of the Interior, the requested statistical data are not available.⁴⁴

There is no relevant case-law in this field.⁴⁵

⁴³ Slovenia/Aliens Act 107/06 (17.10.2006), Art. 6-46.

⁴⁴ The last enquiry was made on 25.02.2008.

⁴⁵ The lack of case-law has been established following a detailed research in the Slovenian case-law databases, both those officially procured by the courts (available at www.sodnapraksa.si) as those, which are even more comprehensive, that are privately run (such as: www.ius-software.si).

C. Asylum and subsidiary protection

C.1. The rights of LGBT people

The international protection of aliens which encompasses the right to refugee status and to subsidiary protection is regulated by the new *Zakon o mednarodni zaščiti* [International Protection Act].⁴⁶ The Act implements a number of EU directives.⁴⁷

Refugee status can be granted to any third country national who, due to a reasonable fear of persecution based on race, religion, nationality, membership of a particular social group or because of a particular political opinion, leaves the state whose citizen he/she is and cannot or because of the defined fear does not want to enjoy the protection of this state, or to a stateless person who leaves the state where he/she resided, but due to events and due to a reasonable fear cannot return or refuses to return to this state.⁴⁸ Subsidiary protection can be granted to a third country national or to a stateless person who does not satisfy the conditions for refugee status, if there is a justified reason that he/she would, in the event of returning to the state of his citizenship or residence, in the case of a stateless person, face a reasonable risk of suffering serious harm as defined in Article 28 of this Act.⁴⁹

Grounds for persecution which entitle an individual to refugee status, *inter alia*, include membership of a particular social group.⁵⁰ The Act explicitly stipulates that, concerning circumstances in the country of origin, a particular social group may include a group whose members are defined by their sexual orientation. Sexual orientation should not be understood as something referring to acts which are punishable under the national law of the Republic of Slovenia.⁵¹

Referring to unofficial reports, around 150 refugees have been granted asylum in Slovenia since 1999, but none of them on the basis of sexual orientation.⁵² However, recently, an application was lodged with the Administrative Court in Ljubljana by a homosexual couple from Kosovo on the grounds of alleged homophobia. A couple, male, 25 and 30 years old, had applied for asylum because of discrimination due to their sexual orientation. The Ministry of the Interior rejected the application for asylum and the case is now pending before

⁴⁶ Slovenia/International Protection Act 111/07 (29.11.2007), Art.1.

⁴⁷ Council Directive/2003/9/EC (27.01.2003), Council Directive/2003/86/EC (22.09.2003), Council Directive/2004/83/EC (29.04.2004), Council Directive/2005/85/EC (01.12.2005).

⁴⁸ Slovenia/International Protection Act 111/07 (29.11.2007), Art. 2.

⁴⁹ Slovenia/International Protection Act 111/07 (29.11.2007), Art. 3.

⁵⁰ Slovenia/International Protection Act 111/07 (29.11.2007), Art. 27(1).

⁵¹ Slovenia/International Protection Act 111/07 (29.11.2007), Art. 27(5) and (6).

⁵² <http://www.narobe.si/stevilka-2/tema.html> (last accessed 31.08.2008).

the said Administrative Court.⁵³ However, it appears from the case-law report of the Administrative Court that the case has been removed from its docket.

Pursuant to contact established with the *Statistični urad Republike Slovenije* [Statistical Office of the Republic of Slovenia] and with the *Sektor za osebna stanja, javne listine in prijava prebivališča* [Division for Civil Status, Public Documents and Residence Registration] at the Ministry of the Interior, the requested statistical data are not available.⁵⁴

There is no relevant case-law in this field.⁵⁵

C.2. The rights of LGBT family members

Pursuant to the International Protection Act, a competent authority must follow the principle of family reunification when processing the applications under this Act.⁵⁶ The applicant for asylum or subsidiary protection, or the person to whom asylum or subsidiary protection has been granted, can request to be reunited with his/her family members. These are defined in Article 3 of this Act as follows.

'Family members are third country nationals or stateless people who are members of the family that already existed in their state. They are: (1) the spouse of an applicant or of a person who has already acquired the right to international protection, or (2) extra-marital partners in long-term relationships as defined by regulations on the right to residence of aliens in Slovenia; (3) under-aged children of a couple mentioned in the previous paragraph if they are unmarried and dependent, irrespective of whether they were born in or outside of wedlock or were adopted pursuant to the Slovenian regulations of marriage and family relations; (4) parents of an unaccompanied minor',⁵⁷

The institutions of family, marriage and extra-marital union are reserved in Slovenia for a relationship between two people of the opposite sex, the union between a man and a woman, and their children.⁵⁸ Same-sex partners therefore do not qualify under the paragraph cited above and cannot avail themselves of their partner's right to 'family' reunification under the existing Slovenian

⁵³ B. Koritnik (2007), 'Dogodki-izjave', in: *Pravna praksa*, No. 9/07, p. 37.

⁵⁴ The last enquiry was made on 25.02.2008.

⁵⁵ The lack of case-law has been established following a detailed research in the Slovenian case-law databases, both those officially procured by the courts (available at www.sodnapraksa.si) as those, which are even more comprehensive, that are privately run (such as: www.ius-software.si).

⁵⁶ Slovenia/International Protection Act 111/07 (29.11.2007), Art. 7(1).

⁵⁷ Slovenia/International Protection Act 111/07 (29.11.2007), Art. 3.

⁵⁸ Slovenia/Marriage and Family Relations Act 69/04 (26.04.2004), Art. 3, 12.

legislation. A homosexual partner does not count as a spouse nor as an extra-marital partner. However, if one of the partners has children from a prior heterosexual relationship he/she could be reunited with them, not on the basis of the present homosexual relationship, but because these would be considered as his/her children. On the other hand, a situation where a homosexual couple from another country had lawfully adopted a child with whom they then wanted to reunite in Slovenia would pose more difficulties. While the Slovenian *Zakon o mednarodnem zasebnem pravu in postopku* [Private International Law and Procedure Act] recognises the effects of adoption of a child by a foreign couple in Slovenia in accordance with the law of the country of the couple's and adoptee's citizenship or residence,⁵⁹ subject to compliance with Slovenian public order,⁶⁰ for the purposes of the International Protection Act the adoption must, however, fulfil the conditions of the Slovenian Marriage and Family Relations Act. The latter excludes adoption by same sex-couples,⁶¹ which could, in effect, rule out family reunification in these circumstances.

Pursuant to contact established with the Statistical Office of the Republic of Slovenia and with the Division for Civil Status, Public Documents and Residence Registration at the Ministry of the Interior, the requested statistical data are not available.⁶²

⁵⁹ Slovenia/Private International Law and Procedure Act 56/99 (13.07.1999), Art. 46, 47.

⁶⁰ Slovenia/Private International Law and Procedure Act 56/99 (13.07.1999), Art. 5.

⁶¹ Slovenia/Marriage and Family Relations Act 69/04 (26.04.2004), Art. 134-145.

⁶² The last enquiry was made on 25.02.2008.

D. Family reunification

Family enjoys constitutional protection in Slovenia. Article 53 of the Slovenian Constitution provides that the state shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection.⁶³ The concept of family is, however, still bound to a relationship, either marital or extra-marital, between two individuals of different sexes and their children. This is apparent also from the Aliens Act which determines the alien's right to family reunification and the right to a complete family.

The central provision is Article 36 of the Aliens Act on the right to family reunification and the right to a complete family. Aliens who reside in Slovenia and are in possession of a permit for permanent residence and aliens who have resided in Slovenia for the last year and are in possession of a permit for temporary residence of a minimum duration of one year have, in accordance with this Act, the right to reunification of their family, the preservation and renewed completion of their family with their closer family members who are aliens. Irrespective of the duration of an alien's residence in Slovenia and the validity of his/her residence permit, closer family members can be united with an alien who resides in Slovenia and is in possession of a residence permit for research work conducted in Slovenia, as well as an alien in possession of a temporary residence permit if the latter is in the interest of Republic of Slovenia, which is to be decided by a competent organ following the opinion of the competent ministry.⁶⁴

In accordance with the Act, closer family members shall include: a spouse, under-aged and unmarried children of an alien and of his/her spouse, the parents of an alien who is under age, the children of an alien or of his spouse who are of age, but unmarried, and the parents of both of them if an alien or his/her spouse has a legal duty in the state of whose citizen he or she is to sustain them.⁶⁵ The competent organ can, exceptionally, using its discretion, also count as a closer family member another relative of an alien if special circumstances justify the reunification of the family in Slovenia. In case of polygamous marriage the residence permit can be issued or extended only to one spouse.⁶⁶

The legal identification of a spouse is reserved for the marital relationship between heterosexual partners. To repeat what has been already stated above, the registered partnership (same-sex union) as defined by the Slovenian Same-

⁶³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 53.

⁶⁴ Slovenia/Aliens Act 107/06 (17. 10. 2006), Art. 36/1.

⁶⁵ Slovenia/Aliens Act 107/06 (17. 10. 2006), Art. 36/3.

⁶⁶ Slovenia/Aliens Act 107/06 (17. 10. 2006), Art. 36/4.

sex Partnership Act⁶⁷ is not awarded the same legal status as marriage, neither does a partner in a same-sex union have the status of a relative. It is thus apparent that the Slovenian Aliens Act grants special rights of family reunification in the context of freedom of movement and the right to residence only to close family members, to which LGBT partners do not belong. An LGBT partner, his/her children or parents thus cannot benefit from the right of another LGBT partner. This means that only each individual separately can be reunited with his/her children or parents. A same-sex partnership is consequently not recognised as a ground which would trigger the right to family reunification.⁶⁸

Pursuant to contact established with the Statistical Office of the Republic of Slovenia and with the Division for Civil Status, Public Documents and Residence Registration at the Ministry of the Interior, the requested statistical data are not available.⁶⁹

There is no relevant case-law in this field.⁷⁰

⁶⁷ Slovenia/Same-sex Partnership Act 65/06 (08.07.2005).

⁶⁸ For the opposite view see Neža Kogovšek, *Pravni položaj istospolnih parov v Sloveniji*, *Pravna praksa*, No. 28, 2009, at 12.

⁶⁹ The last enquiry was made on 25.02.2008.

⁷⁰ The lack of case-law has been established following a detailed research in the Slovenian case-law databases, both those officially procured by the courts (available at www.sodnapraksa.si) as those, which are even more comprehensive, that are privately run (such as: www.ius-software.si).

E. Freedom of assembly

Article 42 of the Slovenian Constitution provides for the right to freedom of assembly and association. It stipulates that the right of peaceful assembly and public meeting shall be guaranteed. Everyone has the right to freedom of association with others. These rights may be restricted, however, where required for national security or public safety and for protection against the spread of infectious diseases.

The *Zakon o javnih zbiranjih* Public Gatherings Act⁷¹ regulates the precise exercise of this right. Smaller public gatherings must be notified at least three days prior to their occurrence, whereas larger public events must be registered at least five days in advance.⁷² Provided that the organiser satisfies all the security, public policy and other order-related conditions, the gathering will be approved⁷³ and will be entitled to police protection.⁷⁴ The Act proscribes any violent or non-violent interference with lawfully organised public gatherings or events.⁷⁵ Moreover, Article 6 of the Act⁷⁶ prescribes that it is, *inter alia*, forbidden to organize public gatherings in order to commit criminal acts, to encourage criminal activity or with the purpose of causing violence. In connection with the constitutional prohibition and Penal code's incrimination of inflaming intolerance exclusively homophobic demonstrations shall be thus prohibited in Slovenia.

LGBT people have exercised their right to freedom of assembly freely. There have been no reports of official prohibition of LGBT events. Similarly, there is no record of demonstrations against tolerance of LGBT people. However, parades have sometimes been accompanied by disrespectful graffiti or slogans and there have been reports of some isolated cases of physical violence against LGBT people in the aftermath of parades.⁷⁷

Hence, on 30.06.2006, multiple assailants attacked activists from Lingsium, an advocacy group for homosexuals, who had set up a stand and were distributing leaflets in Maribor saying, 'Action for tolerance: gays and lesbians wish you a good day'. Members of the Maribor City Council published a statement condemning the attack.⁷⁸ In the same year, on 1 July, the sixth annual gay pride parade in Ljubljana took place without incident with the support of local government officials. However, on the evening of 1 July, multiple assailants

⁷¹ Slovenia/Public Gatherings Act 113/05 (30.11.2005)

⁷² Slovenia/Public Gatherings Act 113/05 (30.11.2005), Art. 11.

⁷³ Slovenia/Public Gatherings Act 113/05 (30.11.2005), Art. 11.

⁷⁴ Slovenia/Public Gatherings Act 113/05 (30.11.2005), Art. 26.

⁷⁵ Slovenia/Public Gatherings Act 113/05 (30.11.2005), Art. 23.

⁷⁶ Slovenia/Public Gatherings Act 113/05 (30.11.2005), Art. 6.

⁷⁷ <http://www.ljubljanaipride.org/nasilje.htm> (last accessed 31.01.2008).

⁷⁸ <http://www.state.gov/g/drl/rls/hrrpt/2006/78839.htm> (last accessed 31.01.2008).

attacked two individuals in the vicinity of Ljubljana railway station and were reported to have shouted anti-gay comments. The police carried out an investigation immediately. A year before, in 2005, multiple assailants attacked and beat three patrons of a Ljubljana club for homosexuals. Police arrested several suspects but later released them because the victims did not want to press charges. On 02.07.2005, after the fifth gay pride parade, two people were attacked and severely beaten near Ljubljana railway station, while two others were attacked and beaten in Ljubljana city centre. In all three incidents, the attackers taunted and harassed their victims for being gay. Police arrested several suspects but later released them because the victims did not want to press charges.⁷⁹

In the week of 20-27 June the LGBT NGOs supported by the governmental bodies and under the honourable sponsorship of the Mayor of Ljubljana and the Minister for Foreign Affairs organized a very successful week of events aimed at raising awareness about same-sex partnership and problems concerning the discrimination on the grounds of sexual orientation.⁸⁰ However, the parade was preceded by a violent attack on one of the organizers by a group of unidentified individuals. The attack was immediately put under police investigation and was unanimously and very strongly condemned across the political sphere and by all key public officials.⁸¹

It is thus apparent that the authorities have always reacted in accordance with the law, but with little ultimate success of bringing the perpetrators to justice.⁸² However, any physical violence or interference by third parties with the rights of LGBT people has won severe and unanimous condemnation from the highest Slovenian officials.⁸³

⁷⁹ <http://www.state.gov/g/drl/rls/hrrpt/2005/61675.htm> (last accessed 31.01.2008).

⁸⁰ <http://www.ljubljana pride.org/english.htm>, last visited 26.09. 2009.

⁸¹ <http://www.mnz.gov.si/nc/si/splosno/cns/novica/article/12027/6371/>, last visited 26.09. 2009.

⁸² Kl. F. (2007) 'V Mariboru akcija strpnosti do istospolno usmerjenih' in: *Delo* (29.06.2007), available at http://www.delo.si/index.php?sv_path=41,35,222944 (last accessed 31.01.2008).

⁸³ J. Zupančič (2006) 'Oblast obsodila homofobno nasilje', in *Delo* (04.07.2006), available at http://www.delo.si/index.php?sv_path=41,35,146607&src=rp (last accessed 31.01.2008).

F. Criminal law

Homophobic hate speech in Slovenia is covered and prohibited both by the Constitution as well as by a variety of legislative acts.

Article 63 of the Constitution prohibits ‘any incitement to national, racial, religious or other discrimination and the inflaming of national, racial, religious or other hatred and intolerance’.⁸⁴

Article 297 of the new *Kazenski zakonik* [Penal Code] of the Republic of Slovenia determines as follows:⁸⁵

(1) Whoever publicly provokes or stirs up ethnic, racial, religious or other hatred, strife or intolerance, or provokes any other inequality on the basis of physical or mental deficiencies or sexual orientation, shall be punished by imprisonment of up to two years.

(3) If the offence under preceding paragraph has been committed by publication in mass media, the editor or the person acting as the editor shall be sentenced to the punishment, by imposing the punishment referred to in paragraphs 1 or 2 of this Article, except if it was a live broadcast and he was not able to prevent the actions referred to in the preceding paragraphs.

(4) 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.

(5) If the acts under paragraphs 1 [...] 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.

(6) Material and objects bearing messages from paragraph 1 of this Article, and all devices intended for their manufacture, multiplication and distribution, shall be confiscated, or their use disabled in an appropriate manner.

Moreover, Article 131 of the Penal Code also explicitly incriminates violation of right to equality⁸⁶

⁸⁴ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 63.

⁸⁵ Slovenia/Penal Code 55/06 (28.05.2008), Art. 297.

⁸⁶ Slovenia/Penal Code 55/06 (28.05.2008), Art. 131.

(1) 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.

(2) 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.

(3) 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.

The *Zakon o medijih* [Media Act] determines in Article 8 that, ‘*the dissemination of programming that encourages ethnic, racial, religious, sexual or any other inequality, or violence and war, or incites ethnic, racial, religious, sexual or any other hatred and intolerance shall be prohibited*’. Article 47 of the same Act prohibits advertising which would, ‘*incite racial, sexual or ethnic discrimination, religious or political intolerance*’. Penalties of the amount of at least 2,500.000 SIT [approx. €10,000] may be imposed if either of these two provisions is violated.⁸⁷

The *Zakon o varovanju osebnih podatkov* [Personal Data Protection Act] defines data concerning racial, national or ethnic background, political, religious or philosophical affiliation and sexual life as ‘sensitive personal data’.⁸⁸

According to the *Zakon o društvih* [Societies Act], a society shall cease to exist by law in the event that it incites ethnic, racial, religious or other inequality or inflames ethnic, racial, religious or other hatred and intolerance.⁸⁹

The Aliens Act imposes in Article 82(3) an obligation that, ‘*within their overall operations, national and other authorities, organisations and associations must ensure protection against any type of discrimination against aliens based on racial, religious, national, ethnic or any other type of differentiation*’.⁹⁰ In the *Resolucija o imigracijski politiki Republike Slovenije* [Resolution on the Immigration Policy of the Republic of Slovenia] it is explicitly stated in the preamble to the chapter, ‘Foundations of the Immigration Policy’, that at the

⁸⁷ Slovenia/Media Act 110/06 (26.10.2006), Art. 8.

⁸⁸ Slovenia/Personal Data Protection Act 94/07 (29.09.2007)

⁸⁹ Slovenia/Societies Act 61/06 (13.06.2006).

⁹⁰ Slovenia/Aliens Act 107/06 (17.10.2006), Art. 82(3).

creation of the Policy it was considered that the state must respect fundamental human rights and avoid any ethnic, racial, religious or sexual discrimination.⁹¹ The Resolution on the Immigration Policy of the Republic of Slovenia acknowledges among the principles of Slovenian migration policy the Conclusions of the Tampere European Council.⁹²

The Implementation of the Principle of Equal Treatment Act⁹³ is a piece of legislation with a general scope of application prohibiting discrimination against any person in the exercise of his/her rights and duties and in the exercise of his/her fundamental freedoms in any aspect of the social sphere, in particular in the fields of employment, employment relations, affiliation with unions and interest organisations, upbringing and education, social security and access to and provision of goods and services. It was adopted in May 2004 and seeks to implement Directives 2000/43/EC and 2000/78/EC.

In general the Slovenian penal system does not take into account if a common crime (such as robbery or assault) is committed with a homophobic motivation. This is not a special or independent element of the relevant crimes. However, in the case of the offence of murder only, aggravating circumstances include what could be described as homophobic intent (Article 116 in conjunction with Article 131 of the Penal Code)⁹⁴.

Pursuant to contact established with the Statistical Office of the Republic of Slovenia and with the Division for Civil Status, Public Documents and Residence Registration at the Ministry of the Interior, the requested statistical data are not available.⁹⁵

In the trial before the District Court in Ljubljana concerning a violent attack on a gay activist prior to the pride parade three teenage perpetrators were sentenced to jail for 18 months each.

⁹¹ Slovenia/Resolution on the Immigration Policy of the Republic of Slovenia 40(99) (28.05.1999).

⁹² Slovenia/Resolution on the Immigration Policy of the Republic of Slovenia 106(02).

⁹³ Slovenia/Implementation of the Principle of Equal Treatment Act 93(07) (27.09.2007).

⁹⁴ Slovenia/Article 131 of the Penal Code (Violation of Right to Equality): “(1)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”.

⁹⁵ The last enquiry was made on 25.02.2008.

G. Transgender issues

Article 14, para. 1 of the Slovenian Constitution (equality before the law) provides that: ‘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 or any other personal circumstance. All are equal before the law’.

Rather than on the basis of gender or sex, the Constitution prohibits discrimination of transgender people as discrimination on the basis of ‘any other personal circumstance’.⁹⁶ However, there are no specific laws explicitly addressing the status and position of transgender people in Slovenia.

Neither is the change of name following a possible gender reassignment specifically regulated. The change of name is regulated by the *Zakon o osebnem imenu* [Personal Name Act].⁹⁷ The right to choose one’s name freely is a citizen’s right which can be limited only if necessary for the protection of public security, morality and freedoms of others.⁹⁸ A name can be changed on the basis of changed family status or upon the request of an individual who is of age or, in the case of a minor, who is represented by an authorised proxy.⁹⁹ Since the situation of transgender individuals is not specifically regulated under the Personal Name Act, such an individual can change his/her name by filing a request with the competent organ. Pursuant to the Personal Name Act the only grounds for denying a request are related to criminal law. The organ can refuse the request if an applicant has been prosecuted or convicted for a criminal offence which is prosecuted ex officio and the legal effects of the conviction have yet not expired.¹⁰⁰

Pursuant to contact established with the Statistical Office of the Republic of Slovenia and with the Division for Civil Status, Public Documents and Residence Registration at the Ministry of the Interior, the requested statistical data are not available.¹⁰¹

There is no relevant case-law in this field.¹⁰²

⁹⁶ Official Interpretation by the Commission for Constitutional Affairs of the Parliament of the Republic of Slovenia referred to in paragraph 11 above.

⁹⁷ Slovenia/Personal Name Act 20/06 (24.02.2006).

⁹⁸ Slovenia/Personal Name Act 20/06 (24.02.2006), Art. 2.

⁹⁹ Slovenia/Personal Name Act 20/06 (24.02.2006), Art. 11.

¹⁰⁰ Slovenia/Personal Name Act 20/06 (24.02.2006), Art. 19.

¹⁰¹ The last enquiry was made on 25.02.2008.

¹⁰² The lack of case-law has been established following a detailed research in the Slovenian case-law databases, both those officially procured by the courts (available at www.sodnapraksa.si) as those, which are even more comprehensive, that are privately run (such as: www.ius-software.si).

H. Miscellaneous

On 22.06.2005, the National Assembly of the Republic of Slovenia adopted the amended Registration of Same-Sex Partnership Act.¹⁰³ Of the 47 deputies present in the 90-seat chamber, 44 deputies from the ruling coalition voted for the government-proposed bill, which allows same-sex couples to register their relationship (to recall, same-sex couples are not allowed to marry officially).

The Act sets down the conditions and the procedure for the registration of same-sex unions as well as the legal consequences resulting from it, the termination of such a union and the relations between the partners after the termination of the union. Article 2 defines the notion of registered same-sex union. According to this provision, the registered same-sex union is a legally established union of two women or two men who register their union before the competent authority in a manner determined by the Act. The main legal consequences are determined in Articles 8 to 24. The principal provisions relate to:

- a. the rights and obligations of the partners, the property of each individual partner and the joint property and earnings of the couple, the provisions on management of the property, responsibility for the assumed obligations, the division of the property, the amount of shares in joint property and the conclusion of contracts between the partners;
- b. the right of one partner to be supported by the other partner, the right to housing protection, certain rights of the partner in case of illness of the other (e.g. the right to acquire information on the health condition of the partner who is ill and the right to visit in medical institutions);
- c. two clauses on inheritance limited to joint property acquired through work accomplished throughout the duration of the union; the inheritance of property belonging to one partner, i.e. of the property which has not been acquired jointly in the union, is regulated by general rules on inheritance which omit another partner from participating in inheritance on this property with other heirs.¹⁰⁴
- d. the procedure for termination of the union and certain legal consequences resulting from it.

However the Registration of the Same-Sex Partnership Act does not deal with the relations between the partners and the children of either of them.

¹⁰³ Slovenia/Same-sex Partnership Act 65/06 (08.07.2005).

¹⁰⁴ V. Žnidaršič (2007), 'Dedovanje istospolnih partnerjev pri nas' in *Pravna praksa* No. 27/07, p. 15.

The government planned to draw up changes to other laws within the next six months. Legislation dealing with criminal proceedings, lawsuits and other proceedings will be amended in order to include the rights resulting from the registration of same-sex unions. By and large, however, these legislative amendments have not been adopted yet.

NGOs were involved in the drafting of the bill and were able to make certain proposals. Among the rights they proposed, the right to inheritance of common property was included in the Act, but most of the other proposed rights were firmly rejected by the government. After the adoption of the Act, most NGOs complained that their proposals had not been taken into account. *Društvo za integracijo homoseksualnosti, Mirovni inštitut, Lingsium, Skupina za istospolno usmerjene mlade* [The Society for the Integration of Homosexuality, the Peace Institute and Lingsium, the Group for Same-Sex Oriented Youth], considers that the adoption of the Act is a positive step, since it partially regulates this previously unregulated field. However, after a change of government, the *Ministrstvo za delo, družino in socialne zadeve* [Ministry of Labour, Family and Social Affairs] has decided not to enter into dialogue with the NGOs and they have only been invited to submit their comments and proposals on one occasion. According to these organisations, the main weak point of the Act is that it does not provide for the status of 'relative' for the same-sex partner. The partner will thus not be able to exercise the rights (e.g. health and pension insurance, social security, procedural rights) that are granted to 'relatives'.

Since certain rights are consciously excluded from the Act, some NGOs deem the Act discriminatory and have filed a petition for a review of constitutionality before the Constitutional Court. The NGOs, ŠKUC-LL and ŠKUC-Magnus, moreover consider that the Act is introducing differentiated treatment in comparison with heterosexual couples and is thus inconsistent with both the principle of equality of all citizens and the principle of equal opportunities. They also condemned the level of discussion in the National Assembly during the proceedings for the adoption of the Act.

The District Court in Ljubljana in its judgment of 10.11. 2008 recognized the consequences of adoption of a child by a same-sex couple effectuated in the United States. The Court ruled that the judgment of the US court allowing the adoption did not run against the requirements of the Slovenian public order.¹⁰⁵ The decision was confirmed by the Supreme Court on January 28, 2010.¹⁰⁶

In its decision U-I-425/06, the Constitutional Court ruled that Article 22 of the Registration of the Same Sex Civil Partnership Act is unconstitutional and has to be amended by the Parliament in the next 6 months. The petitioners argued

¹⁰⁵ Slovenia/District Court of Ljubljana, IR 2006, available at: <http://www.narobe.si/images/stories/File/Celotna%20sodba.pdf>.

¹⁰⁶ Slovenia/Supreme Court of Ljubljana, Decision II Ips 462/2009, available at http://open.si/wp-content/uploads/1084_001.pdf.

that the said provision violates the constitutional principle of equality between the partners of the same-sex partnership and the married couples or those who live out of wedlock by arbitrarily discriminating between the right to inherit a special and common property of the same-sex partners, by not regulating the right to inherit a special property and by failing to determine the necessary inheritance share of a survived same-sex partner.

The Constitutional Court agreed with them by stressing that the position of partners in the registered same-sex partnership regarding the right to inherit after the deceased partner is in its essential factual and legal features comparable with the position of a married couple. The distinctions regarding the inheritance between the two groups are therefore not based on a certain material, objective circumstance rather on a sexual-orientation. As the latter is not supported by a constitutionally valid justification it runs against Article 14 of the Constitution.¹⁰⁷

The Registration of Same-Sex Partnership Act provides for certain listed rights which are recognised for such partners. It does not equal marriage and remains distinct from the provisions of the Marriage and Family Relations Act. The most obvious difference is certainly the lack of any provisions concerning children. Joint adoption of children by a registered partnership is not possible.

However, following the just mentioned decision of the Constitutional Court, the Ministry of Justice and the Ministry of Labour, Family and Social Affairs have presented a draft version of the new Družinski zakonik [Family Code], which shall equalize the present same-sex partnership with the marriage or extra-marital partnerships in all family matters. Following this draft law, same-sex partners shall be also granted a right to adoption.¹⁰⁸

The bill also introduces a new definition of family and marriage. Family shall be defined as a life community of child and one or both parents, or a community of child and another adult if he/she takes care of the child and has other duties towards him/her pursuant to the law.¹⁰⁹ Marriage shall be defined as a life

¹⁰⁷ Slovenia/Constitutional Court U-I-425/06, 2.7. 2009, available at: <http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/2D889887E4205F81C1257604003479FC>, last visited 12.2. 2010.

¹⁰⁸ http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/slike/drugo/2009/september/Foto/DZak_kratek_povzetek.pdf, last visited 28.9. 2009.

¹⁰⁹ Slovenia/Draft Family Code, Art. 2, available at: http://www.mdds.gov.si/fileadmin/mdds.gov.si/pageuploads/dokumenti_pdf/DZak_22.12.2009.pdf, last visited 12.2. 2010.

community of two persons whose conclusion, legal consequences and dissolution is regulated by the Family Code.¹¹⁰

The bill is currently still pending in the National Assembly, but it has already stirred a lot of controversies in the society. The public discussion has been extensive, vibrant, sometimes emotional.¹¹¹ However, it has not enflamed homophobia, but it was at times marked by a lack of tolerance: both on the side of the opponents as well as the proponents of the bill. A journalist of a Catholic weekly newspaper *Družina* (Family) has been thus found in violation of the journalist code of conduct for misrepresenting the data concerning same-sex relationships and families.¹¹² On the other hand, the Ministry of Labour, Family and Social Affairs simply dismissed the objections of the opponents of the bill for their alleged lack of sufficient expertise.¹¹³

Its proponents, the government supported by some NGOs¹¹⁴ as well as by the Ombudsman,¹¹⁵ have defended it as a step forward, as keeping up with the reality and as a move which brings Slovenian legislation in line with the constitutional requirements.¹¹⁶ The opponents have, however, protested against the new definition of family and marriage.¹¹⁷ In particular they have strongly objected to the extension of the right of adoption to the same-sex partners.¹¹⁸

Public surveys conducted by the media show that more than 2/3 of those surveyed oppose the adoption of the new Family Code.¹¹⁹ By the end of 2009 the opponents have collected already more than 25.000 signatures against the bill. It is very likely that shall the Family Code be adopted in the Parliament in its present form, it will be put on the referendum.

¹¹⁰ Slovenia/Draft Family Code, Art. 3, available at: http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/DZak_22.12.2009.pdf, last visited 12.2. 2010.

¹¹¹ For an overview of different opinions see the public presentation of opinions on the Family Code available at: <http://www.dz-rs.si/index.php?id=96&cs=4&st=m&committee=10&vt=8&unid=PMTID4C5240909857A7BC125764E00310827&showdoc=1>, last visited 12.2. 2010.

¹¹² http://www.razsodisce.org/razsodisce/razsodba_2.php?id=214, last visited 12.2. 2010.

¹¹³ <http://www.rtvsllo.si/slovenija/druzinski-zakonik-pomeni-bistveno-modernizacijo/218832>, last visited 12.2. 2010.

¹¹⁴ Among others: Amnesty International, <http://www.amnesty.si/sl/node/2105>, last visited 12.2. 2010, Civil initiative for all Families, available at:

<http://www.petitiononline.com/druzine/petition.html>, last visited 12.2. 2010.

¹¹⁵ <http://www.narobe.si/narobe-12/intervju-zdenka-cebasek-travnik>, last visited 12.2. 2010.

¹¹⁶ http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti_pdf/DZak_22.12.2009.pdf, last visited 12.2. 2010.

¹¹⁷ Civil initiative for Family and Children Rights, available at: <http://www.24kul.si/?mod=1>, last visited 12.2. 2010.

¹¹⁸ <http://www.24kul.si/?id=7&fmod=0>, last visited 12.2. 2010.

¹¹⁹ <http://www.delo.si/clanek/91491>, last visited 12.2. 2010.

In Slovenia there are no laws comparable to those adopted in Lithuania. Similarly, there have been no reports on the use of the so-called phallometry.

I. Good practices

In Slovenia two particular cases of good practice in the field of employment can be singled out.

The first relates to employers who can use various formal and informal means for securing a safe working environment for LGBT people. Two large Slovenian public companies thus lead by example by including prohibition of discrimination on the basis of other personal circumstances (i.e. sexual orientation) in their internal company codes.

Example 1: Code of professional ethics and entrepreneurial culture, Telekom Slovenije d.d.: *'Our workers and work: Telekom Slovenije strives for a sound, safe and productive working environment without overt or covert discrimination on the basis of gender, race, colour, age, health, disability, religious, political or any other belief, membership of the trade union, ethnic or social origin, family status, financial status, sexual orientation or any other personal circumstances. Telekom Slovenije prohibits on its premises any conduct which contributes to an unproductive, discouraging or insulting environment. If anyone feels they are subject to such inappropriate treatment, he or she should turn to his supervisor and to the director of personnel.'*¹²⁰

Example 2: Professional criteria and ethical principles of journalism in Slovenian Radio and Television Programmes: *'Attitude to sexual minorities: same-sex relationships are still subject to strong biases and are not infrequently prone to unscrupulous and insulting over-simplifications. While inappropriate attitude to this conduct can aggravate the situation further, approaching the issue differently can contribute to a positive change. It is necessary to avoid over-simplifications, stereotypes and personal judgments. Same-sex relationships should be portrayed objectively and impartially even in comparison with heterosexual relationships'*.¹²¹

The second case of good practice relates to the cooperation between NGOs, trade unions, employers and the Slovenian government.

ŠKUC, an NGO promoting non-discrimination regarding sexual orientation, with the support of European Structural Funds and the Slovenian Ministry of Labour, Family and Social Affairs, published two manuals on 'Measures against employment discrimination' for use by trade unions and employers.¹²²

¹²⁰ <http://www.mirovni-institut.si/razlicnost/delodajalci.html> (last accessed 31.01.2008).

¹²¹ <http://www.mirovni-institut.si/razlicnost/delodajalci.html> (last accessed 31.01.2008).

¹²² T. Greif (2006) *Ukrepi proti diskriminaciji v zaposlovanju za sindikate*, ŠKUC, Ljubljana 2006, available at: http://www.zsss.si/images/stories/PDF/Ukrepi_proti_diskriminaciji_SINDIKATI.pdf (last accessed, 31.01.2008) and T. Greif (2006), *Ukrepi proti diskriminaciji v zaposlovanju za*

The manuals are a comprehensive guide for trade unions in their negotiations with employers, as well as for employers when dealing with workers. They provide information on the most common types of discrimination against employees on the grounds of their sexual orientation and single out possible measures that may be undertaken by trade union representatives and employers to counter them. The manual is full of comparative examples of good practices and concrete proposals for limiting the widespread, yet concealed, cases of homophobia in the workplace in Slovenia.

Both types of good practice are innovative and serve as a good example worth following.

Annex 1 – Case law

Chapter I, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1

Case title	U-I-425/06
Decision date	2.7. 2009.
Reference details (type and title of court/body; in original language and English [official translation, if available])	Constitutional Court of Republic of Slovenia
Key facts of the case (max. 500 chars)	The petitioners argued that the said provision violates the constitutional principle of equality between the partners of the same-sex partnership and the married couples or those who live out of wedlock by arbitrarily discriminating between the right to inherit a special and common property of the same-sex partners, by not regulating the right to inherit a special property and by failing to determine the necessary inheritance share of a survived same-sex partner.
Main reasoning/argumentation (max. 500 chars)	The Constitutional Court agreed with the petitioners by stressing that the position of partners in the registered same-sex partnership regarding the right to inherit after the deceased partner is in its essential factual and legal features comparable with the position of a married couple. The distinctions regarding the inheritance between the two groups are therefore not based on a certain material, objective circumstance rather on a sexual-orientation. As the latter is not supported by a constitutionally valid justification it runs against Article 14 of the Constitution.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Registered same-sex union, Marriage, comparability for the purpose of property rights, right to inheritance.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Constitutional Court ruled that Article 22 of the Registration of the Same Sex Civil Partnership Act is unconstitutional and has to be amended by the Parliament in the next 6 months.

Case title	Decision II Ips 462/2009
Decision date	28.1. 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Supreme Court of Republic of Slovenia
Key facts of the case (max. 500 chars)	A registered same-sex couple adopted a child in the United States and sought the confirmation and execution of the adoption in Slovenia.
Main reasoning/argumentation (max. 500 chars)	The Supreme Court recognized the adoption arguing that it does not run contrary to the Slovenian public order, even though adoptions by same-sex couples are not permitted in Slovenia.

Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Adoption by a same-sex couple, scope of the public order of Republic of Slovenia.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Foreign adoption recognized in Slovenia.

Chapter F, Hate crimes, case 1

Case title	Criminal Case on Violent Attack on Gay Activist (not reported)
Decision date	10.3. 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	[Okrožno sodišče v Ljubljani] District Court of Ljubljana
Key facts of the case (max. 500 chars)	Three young male individuals attacked a well known gay activist in front of a gay friendly bar prior to the pride parade. They were yelling insulting homophobic slogans and caused minor injuries to the victim. The judgment is not final yet and is pending on the appeal.
Main reasoning/argumentation (max. 500 chars)	The district court judge decided that the perpetrators violated one of the most fundamental human rights: the right to sexual orientation and sentenced them to 18 months each.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Hate crime, homophobic speech, sentence 18 months in prison

Results (sanctions) and key consequences or implications of the case (max. 500 chars)	18 months in prison. The severity of the sentence was subject to public criticism as the perpetrators were relatively young and have had no prior criminal record. Also, they have publicly apologized to the victim.
---	---

Annex 2 – Statistics

All those tables where no official statistical data are available are omitted.

Chapter A, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total complaints of discrimination on the ground of sexual orientation processed by the Equality Advocate	/	/	/	/	/	3	1	3	4
Total finding of Discrimination confirmed by the Equality Advocate	/	/	/	/	/	0	0	0	2
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Chapter E, LGBT people, enjoyment of freedom of assembly

	00	01	02	03	04	05	06	07	08	09
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	0	1	1	1	2	2	2	2	2	2
Number of demonstrations against tolerance of LGBT people.	0	0	0	0	0	0	0	0	0	0