

The impact of the Racial Equality Directive:
a survey of trade unions and employers
in the Member States of the European Union

Slovenia

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1. Demographic background

Slovenia's 2 million strong population is 83% ethnic Slovenian, with other Balkan minorities and some Hungarians and Italians making up most of the remainder (SORS, 2008). The Hungarian and Italian minorities have the status of indigenous minorities with guaranteed seats in the National Assembly. Of the approximately 800,000 persons in employment in 2006, 110,000 workers were not Slovenian nationals. The majority of foreign workers came from Bosnia and Herzegovina (6.8% of all persons in employment), 2.14% came from Serbia and 0.9% came from the rest of the EU (SORS, 2009). In 2008 the Employment Service of Slovenia issued approximately 85,000 work permits for employment of foreigners; 68% were issued to residents of former Yugoslavian countries, and much smaller proportions to those from EU countries and the rest of the world (ESS, 2009). The share of foreign workers in the labour force ranges from 10 to 15%.

2. Industrial Relations background

Slovenia has a long tradition of well-established social dialogue. There are tripartite meetings at the Economic and Social Council; additionally there are bipartite negotiations at local, sectoral and national levels.

Slovenia is characterised by a plurality of organisations among both social partners. Total union membership in 2004 was 465,000. After a rapid decline in the 1990s, membership numbers seem to be fairly stable. According to surveys carried out in 2004, coverage has recovered to about 44% (Eurofound, 2007). In Slovenia there are six representative trade union confederations (ZDS, 2008). Trade union density is relatively high, with the main Association of Free Trade Unions of Slovenia (ZSSS) alone claiming some 300,000 members in the public and private sectors (ZDS, 2008) out of the 998,000 persons in employment in 2008 (SORS, 2008a). KSS Pergam covers private and public sector trade unions and represents approximately 80,000 members (ZDS, 2008). Solidarnost and SSS are much smaller trade unions. Solidarnost mostly represents railway workers and blue-collar workers. The Free Trade Union of Slovenia (SSS) is a part of ZSSS and includes metal workers, the paper and graphic industry, and some public sectors. All the above mentioned trade unions, except SSS, take part in the Economic and Social Council.

Due to the adoption of the new Chambers of Commerce and Industry Act law in 2006 implementing voluntary membership, sectoral agreements are no longer automatically extended to almost all employees. So, the coverage rate, which reached almost 100 % in 2004, did deteriorate subsequently (Eurofound, 2007).

All the interviewed employers' organisations, with the exception of the individual employer, are represented in the tripartite Social and Economic Council. These are the Employers' Association of Slovenia (ZDS) which represents firms that employ around two thirds of employees in the private sector, including most multinationals; the Chamber of Commerce and Industry of Slovenia (GZS), with the largest number of employer members, is regarded as the most influential business association; and the Association of Employers in Craft and Small Businesses of Slovenia (ZDOPS –

GIZ), which represents small and medium-sized companies that in total employ approximately 110,000 employees nationally. The other employer interviewed, Žito d.d., is an individual employer in the food industry.

3. Trade union and employer awareness

Even before the adoption of the Racial Equality Directive, the Slovenian Constitution stated that everyone should be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other convictions, financial status, birth, education, social status, disability or any other personal circumstances. In 2004 the Implementation of the Principle of Equal Treatment Act (IPETA) was adopted (Murgel, 2005). Beside that, the Employment Relationship Act (ERA, 2002, 2007) includes comprehensive anti-discrimination provisions. Slovenian legislation in force generally complies with the Directives. However, people are still not sufficiently informed of their rights and of their options in cases of discrimination. There is also practically no relevant case law where discrimination has been found to have occurred. Therefore, it is hard to ascertain the efficiency of anti-discrimination laws in practice. Despite the fact that anti-discrimination provisions were adopted, and programmes have been initiated to promote the equal treatment of certain groups, it is still too early to evaluate the results (Tratar, Hot, 2007).

Although the implementation of the Directive has brought significant changes in the field of prohibition of discrimination, several open issues remain regarding actual implementation; one of these is the fact that Slovenian laws do not enable an NGO to engage in civil or administrative procedures which concern discrimination, neither on behalf of a victim, nor in support of them (Murgel, 2005).

In 2007 the Slovenian Labour Inspectorate (2008) recorded six violations regarding discrimination. Two more violations were associated with the lack of protection from sexual harassment. As the inspectors pointed out: *'The occurrence of harassment or ill-treatment of workers at work places is difficult to prove, especially in cases when victims do not want to expose themselves.'* Even though complaints are rare, they do occur, but are mostly filed anonymously. Usually, the victims do not want to cooperate or expose themselves in the later stages of the inspectorate procedures, mostly due to their fear of retaliation measures, even though these are prohibited by law. According to a publication of the Human Rights Ombudsman (2008), the number of cases treated in the area of discrimination increased slightly in 2007. The number of cases handled in 2007 was 57 (49 in 2006), but only 3 were connected to equal opportunities in employment. Many complaints over alleged discriminatory treatment were related to labour law and social areas. As the Ombudsman stated:

It is worrying that only a small number of cases involving victims of violations of the prohibition of discrimination protecting their interests, with appropriate procedures, were publicly known.

As the Migrant Integration Policy Index (2007) reports: *'Slovenia is one of only four countries (within the EU) where a minority (48.1%) believes ethnic diversity enriches*

the natural culture. As many as 55.4% think ethnic discrimination is fairly widespread in society, with the same figure thinking that foreigners face unequal opportunities in the labour market. More than 60% of Slovenes support equal social rights for legally-established immigrants from outside the EU. 40% support their right to family reunion, whilst slightly more believe that naturalisation should be made easier for them. This Index also points out that *'the fields of application regarding discrimination in Slovenia, as in nine other countries, meet best practice'*. Enforcement mechanisms and equality policies could be improved and the best practice on definitions and concepts would be achieved if the law explicitly prohibited discrimination on the basis of assumed characteristics.

3.1 Trade unions awareness

Both employers and unions were consulted when the Directive was transposed into national legislation in two stages in 2004 and 2007. The Association of Free Trade Unions representative reported that *'the government accepted all the remarks made'*.

Beside the Directive, trade union organisations in Slovenia are quite aware of the current laws covering racial and ethnic discrimination.

When asked about the efficiency of the new legislation, the respondent from KSS Pergam said: *'The new laws have helped not only regarding racial and ethnic discrimination but also regarding any kind of discrimination.'* In his opinion, *'The legislation helped preventively; there are no judicial decisions yet so we cannot know how it will help curatively.'* The respondent from Solidarnost stressed: *'The legislation helps by raising the awareness. If people are not informed, they are unaware of their rights and of violations, if these occur.'*

Regarding the issue of Roma, the Free Trade Union (SSS) representative pointed out:

The new laws increased public discussion regarding discrimination, but they did not solve the problem of discrimination against Roma communities. Slovenia has the Office for National Minorities, at which all these rights are settled in detail, but the question remains whether positive discrimination, for example for the Roma, had any effect. The legislation is being supplemented, at the same time it is badly arranged – we have more than 12 laws to deal with the issue; so these rights are very much dispersed.

The Association of Free Trade Unions (ZSSS), however, was the only union to have created a special post within its social and legal department, which also deals with anti-discrimination. It focused on migrant workers, and had carried out a campaign around migrant workers' rights, working conditions, working time and low wages. The Association of Free Trade Unions respondent (ZSSS) gave several examples of the exploitation these workers (including Roma) faced:

The worker hasn't been given a written employment contract; the wages weren't paid; the social contributions weren't paid (the worker found out about it only after he got sick); if they refused to work under impossible working conditions, the employers threatened to take their work permit; disciplinary procedures have been invoked on the grounds that the worker didn't speak fluent Slovene.

The KSS Pergam union representative stressed that his experiences regarding racial/ethnic discrimination at workplace were quite limited. He stressed that:

Regarding ethnic identity, some problems could be seen from time to time, mainly in the working teams. Violations on the employers' side, openly discriminating against third country persons have not yet been encountered. On the basis of the Employment Relationships Act, we have also proceeded against employers with the contents of the provisions of these acts, which prevent discrimination. We usually peacefully resolve the issue and the acts of discrimination ended.

Solidarnost had individual cases of discrimination against disabled people which are in the complaints process. It seems that, in these cases, judicial action will be needed. She said: *'We have still open cases and I am not able to comment on the achievement of concrete solutions.'* The Free Trade Union (SSS) respondent also reported that they do not currently have any cases where a member would claim to have been discriminated against.

3.2 Employers' awareness

The employers' organisations were also consulted when the national legislation was passed. As the respondent from the Association of Employers in Craft and Small businesses (ZDOPS-GIZ) said:

We were included in the proceedings of amending and supplementing the Employment Relationships Act, as well as in the Vocational Rehabilitation and Employment of Disabled Persons Act. In both cases all the proposed texts followed the Directive and good practices, in which the equal conditions of different groups were accepted without major changes.

On the whole the employer respondents saw less value in the new laws. One food producing company considered that the legislation had helped improve protection against discrimination, but most were less positive. The private sector employers' association (ZDS) representative referred critically to the reversal of the burden of proof. While they now had codes of conduct that had been widely adopted by their members, ZDS considered that: *'We are small employers and as such we do not have such diversity that requires specific arrangements for nationality or race.'*

Another view was that prior to the laws there had not been an issue, as was stated by the Chamber of Commerce and Industry (GZS) respondent: *'The problem of racial and ethnic discrimination has not been detected in Slovenia'*. Another was that they brought no new rights and had not achieved much: *'The laws as such did not have much influence on anti-discrimination.'* A respondent from small and medium-sized craft firms (ZDOPS-GIZ) felt that:

The fear of foreigners or inappropriate attitudes towards different religious and ethnical groups cannot be changed with a single document or overnight. The changes happen only through the lasting process of awareness-raising.

4. Comments on the Equality Body

In Slovenia, the Office for Equal opportunities is a government body, working in the field of discrimination. After the adoption of the Implementation of the Principle of Equal Treatment Act (IPETA), its duties have been expanded from the promotion of equal treatment of women and men to co-ordination of policy formulation and drafting regulations for the prevention and suppression of discrimination. Additionally two special bodies for the implementation of the principle of equal treatment were established by IPETA: the Council of the Government for the Implementation of the Principle of Equal Treatment and the Advocate of the Principle of Equality. The Advocate, established within the Government's office for Equal Opportunities, has the power to offer assistance to the victims of discrimination, carrying out surveys and publishing reports. Information campaigns on discrimination are mainly run by the Office for Equal Opportunities, which also organises conferences, seminars, round tables, runs projects and undertakes research. The Council of the Government for the Implementation of the Principle of Equal Treatment is composed of ministries and governmental services, non-governmental organisations and expert institutions in the field of equal treatment. The Council monitors the implementation of the IPETA, assesses the position of specific groups within society with respect to the principle of equality, submits recommendations and proposals for the adoption of measures for the implementation of the principle of equal treatment, and submits proposals for the promotion of education, awareness raising and research in this field.

The Human Rights Ombudsman is another specialised body, receiving the informal complaints in relation to violations of human rights and fundamental freedoms by an act or deed of State or local authorities and bearers of public office (Tratar, Hot, 2007). The Human Rights Ombudsman also engages in information campaigns and seminars. Besides that, the Slovenian Peace Institute has organised seminars to train NGOs in the field of discrimination and has published the brochure on discrimination.

The unions generally were aware of the government information campaigns. They also cooperated with the national equality body and NGOs when needed.

The same applies to the employers' organisations, but two respondents criticised the Equality bodies as inadequate. The Association of Employers' (ZDS) representative stressed that:

The Council of the Government for the implementation of the Principle of Equal Treatment does not include representatives from the employers' or trade union's side, who are the ones that could fundamentally help to improve the situation, just as the Directive points out... The only government campaign, worth mentioning, was the one carried out two to three years ago. Otherwise these campaigns appear aimless and flabby; we could talk about some small, individual campaigns.

The representative from the Association of Employers in Craft and Small Businesses (ZDOPS-GIZ) was also critical: *'All of these campaigns are periodic, instead of being a permanent process in the life of a worker and employer.'*

The employers also added that they cooperated with the national Equality body when this is required. But, as the representative from the Association of Employers in Craft and Small Businesses (ZDOPS-GIZ) pointed out: *'a greater need to cooperate has not been stressed, since the problem is not large and urgent'*.

5. Trade union and employer policies and measures

5.1 Trade Union policies and measures

Special policies regarding racial, ethnic or cultural discrimination within their organisations were not mentioned by the Slovenian trade unions. ZSSS, however, was the only union to have created a special post within its social and legal department, which also deals with anti-discrimination. It also focused on migrant workers, and had carried out a campaign around migrant workers' rights, working conditions, working time and low wages.

It was stressed by all the Slovenian trade unions that they are in general against any kind of discrimination *'and that the members are being taken care of in any case when they need help'*. So changes regarding the support offered to their members were not implemented after the equality directives came into force in 2004. It was also pointed out by the respondents of the Association of Free trade unions (ZSSS) and KSS Pergam that the Directive had not changed their positions: *'These are more fundamentals which belong to general human rights and are also incorporated into international conventions that forbid such actions'*. The representative from the Association of Free Trade Unions (ZSSS) also stressed:

*In our trade union we do not make distinctions based on race, sex or age,
We fight equally for all, because we are aware of the actuality of this issue.*

When asked how they help their members, the representative of the Association of Free Trade Unions (ZSSS) said: *'We help our members with legal advice and attorney representations at courts.'* KSS Pergam does not have any particular protocols regarding the handling of discrimination cases. Instead, they give all their attention to it within the framework of legal help offered to their members. As Pergam's representative pointed out: *'We take actions within the framework of legal procedures. That is representation against employers as well as in legal disputes if needed.'* He also stressed that at the company level, KSS Pergam took part in defining agreements covering the prevention of harassment at the work place.

Solidarnost offers similar support to their members. Like SSS, however, they did not have any current cases. As the respondent from Solidarnost stressed:

The new anti-discrimination laws at different levels of the union were achieved only through raising the awareness of individual trade union representatives.

5.2 Employer policies and measures

As elaborated during the interviews, special policies regarding racial, ethnic or cultural discrimination are not present on the employers' side; although 'codes of conduct' and 'internal measures against harassment/bullying and for equal opportunities' had been implemented. This could be the result of the fact that in employers' opinion, discrimination based on race is not such a big issue in Slovenia. As the Chamber of Commerce and Industry of Slovenia (GZS) representative said: '*In Slovenia we had only one judgement in 1992, connected to discrimination in the employment field.*' Similarly it was stressed by the representative of the Association of Employers of Slovenia (ZDS): '*As advisory body to our members we have not registered any kind of discrimination on the grounds of race or nationality.*' He also asserted:

It is a fact that Slovenian companies are market oriented. If somebody brings benefits to the company, he or she will be employed, no matter to which race or nationality he/she belongs. And if companies need someone that could not be found in the Slovenian labour market, they will find him in foreign labour markets. Only small companies could pose exceptions to this rule.

The representative from the Association of Employers in Craft and Small Businesses (ZDOPS-GIZ) stressed problems with the accommodation of some foreign workers:

This is not an obligation of the employer as such, but we call the attention of our members to the fact that they should help in finding appropriate accommodation for their foreign workers. Also a model internal code that concerns the prevention of harassment in the workplace was prepared, and it had to be adopted by our members.

The representative from the individual employer, Žito d.d., said: '*We do not have any formal policies in order to deal with discrimination.*' Beside that, '*We employ everyone who wants to work.*'

When asked whether companies had taken any action to ensure racial equality or to implement diversity policies, the representative of the Association of Employers in Craft and Small Business (ZDOPS-GIZ) stressed: '*Our members have to follow the norms which apply to human rights.*' The Association of Employers of Slovenia (ZDS) respondent added:

Our members – the individual employers - are, due to their fear of being accused of violations, implementing the rules of conduct to avoid the violation of discrimination rules and to act immediately if these are perceived.

It was also stressed that '*due to the fact that in Slovenia discrimination is mostly based on sex, age and parenthood, they were adjusted accordingly.*'

Slovenian Employers organisations also pointed out that the Directive did not impact on the level of employment or on the involvement of ethnic minorities in their organisations.

6. Views on how better to tackle discrimination

The unions considered the effectiveness of the law could be improved by providing more information to workers, through educational programmes, better supervision and more dedicated funding. More effective supervision of the national legislation was needed as well, along with campaigns focused on specific, more vulnerable groups of workers who are subject to unequal treatment in the Slovenian labour market.

The KSS Pergam's respondent said that *'from the point of view of the legislation, much has been done, even though more could be achieved with changes in "basic mentality" and also through the "process of education"'*. The Free Trade Union (SSS) representative supplemented this argument and stressed:

More should be incorporated into educational programmes and teachers should be educated as well. Nowadays as part of civic and patriotic education, these contents can be seen, but this issue is not stressed enough, due to the fact that intolerance increases with the internet.

The respondent from Solidarnost said that *'above all things, informing the workers is important'*. The respondent from the Association of Free Trade Unions (ZSSS) said:

More funds should be dedicated to civil society for information sharing, because now the trade unions have only their own funds to bring attention to the fact that discrimination occurs, and educate and help the employees, migrant workers, persons with disability and women.

The employers endorsed the need for awareness building and education. The Chamber of Commerce and Industry (GZS) interviewee emphasised: *'Education in primary schools and education on tolerance towards those who are different would help minimise the issue of discrimination.'* A representative of small and medium-sized craft firms (ZDOPS-GIZ) added that *'besides the process of increasing awareness in schools, awareness-building through media and concrete examples is needed.'*

The Association of Employers (ZDS) interviewee considered that:

The general level of awareness, which arises from concrete examples, is more important regarding this issue. Partial campaigns stimulated discussion in academia but they did not touch ordinary people.

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