

– Draft –

**RELIGION AND DISCRIMINATION LAW IN THE REPUBLIC OF SLOVENIA**  
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*Religion and Discrimination Law in the European Union*

**I. Historical, Cultural and Social Background**

(1) How historically has your national law dealt with religious discrimination?

A systematic discrimination because of religion and belief was distinctive of the communist period of the Republic of Slovenia as a part of ex-Socialistic Federal Republic of Yugoslavia (1945-1991). One of the most important features of a new independent and democratic Slovenian state was the introduction of a new legal order that *inter alia* strive to enforce the constitutional principle of equality. However, severe cultural and social consequences of long lasting discriminatory practice (eg. persecution of priests and believers, various forms of discrimination at work, education) and ideological persuasion (eg. obligatory promotion of atheistic and materialistic world view in public schools) did not start to disappear easily. Some major violations (individual or mass killings, unlawful imprisonment, confiscation and nationalization of property etc.) were regulated by special bills in the area of redress of injustices.

(a) Legal situation prior to entry into the European Community and prior to ratification/incorporation of the ECHR

The Republic of Slovenia became a member of the Council of Europe on the 13<sup>th</sup> of May 1993 and has ratified the European Convention for the protection of Human Rights and Fundamental Freedoms (hereinafter: the ECHR) on the 28<sup>th</sup> of June 1994 with no reservations.<sup>1</sup> Slovenia also acceded to all the Protocols to the ECHR. Since 1<sup>st</sup> May 2004 Slovenia is a member state of the European Union. Implementation of the Principle of Equal Treatment Act (hereinafter: the ETA)<sup>2</sup> entered into force six days after joining the EU and was supplemented in 2007. With the ETA the following EC/EU Directives were transposed into national law: Directive 76/207/EEC, Directive 86/378/EEC, Directive

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<sup>1</sup> The ECHR was signed by the Republic of Slovenia on the 14th of May 1993.

<sup>2</sup> Available at: [http://zakonodaja.gov.si/rpsi/r08/predpis\\_ZAKO3908.html](http://zakonodaja.gov.si/rpsi/r08/predpis_ZAKO3908.html)

2000/43/EC, Directive 2000/78/EC, Directive 2002/73/EC, Directive 2004/113/EC and Directive 2006/54/EC.

- (b) What was the rationale for this approach? Was it 'equality' or 'religious freedom' or both or some other foundation

The main reason for the introduction of the ETA was a need for harmonization of Slovene Laws with the *Acquis communautaire* that relates to the equality issues. New legal regulation in the area of religious freedom was introduced as late as in 2007 with the enactment of the Religious Freedom Act (hereinafter: the RFA).

- (c) What political debate took place on this? What was the role of religion and/or religions in debate?

The role of religion was a central point of a highly politicized debate about the draft RFA. Churches and religious communities were actively involved in the general debate about the RFA. Just the opposite is true for their involvement in discussions related to the issues of equality and the draft ETA. The latter debate was marked by participation of other NGOs. It is obvious that a kind of a double-track public debate on both subjects took place in Slovenia. The debate on equality issues was more focused on gender equality and it has resulted in the adoption of the Equal Opportunities for Woman and Men Act (Zakon o enakih možnostih žensk in moških) in year 2002.

- (2) What effect, if any, have UN instruments on religious discrimination and Article 14 ECHR had on you national law both before and after their ratification and/or incorporation? What if any political debate accompanied these developments? What was the contribution of religions to this debate?

After gaining independence Slovenia as a member state of the United Nations succeeded the UN instruments on religious discrimination. Slovenia has until today ratified the following instruments: the Universal Declaration of Human Rights - UDHR, the International Covenant on Civil and Political Rights with Facultative Protocols, the International Covenant on Economic, Social and Cultural Rights with Optional Protocol, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of all Forms of Discrimination against Women with Optional Protocol, the Convention on the Rights of the Child, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of Persons with Disabilities, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms etc. In general churches and religious communities in Slovenia were very supportive in respect of transposition of International Human Rights standards into Slovene legal order.

The Article 14 ECHR was of major importance for judicial review in a number of cases at the Constitutional Court (see case-law below II.5).

- (3) What was your government's view on the EU Directives 2000/43/EC and 2000/78/EC when they were in draft form? What national debate (including debate in your national legislature) was there prior to implementation of the Directives in your law? What role did religions play in this debate?

In the period when the Directives 2000/43/EC and 2000/78/EC were under discussion the Republic of Slovenia was not a member state of the EC. At that time religions did not play a noticeable role in the debates concerning the draft ETA. Only in year 2000 the Office for Religious Communities started to organize public conferences with churches and religious communities that tackled various important topics, such as: Council of Europe and protection of human rights (27<sup>th</sup> Conference in 2002), European Union and protection of human rights (27<sup>th</sup> Conference in 2003), Hate speech and social responsibility (48<sup>th</sup> Conference in 2008).

## **II. The Duty not to Discriminate: The Prohibition against Discrimination**

- (1) What discrimination authority (eg an Equality Commission) is charged in your state with oversight of religious discrimination? How is it appointed? What is its membership? What are its functions? What roles if any do religions have in its work?

According to the art. 11 of the ETA the Advocate of the Principle of Equality has a general authority to deal with discrimination cases. However, the Government's Office for religious communities also has a certain – but not well defined – role in oversight of religious discrimination. Inside the Government there operate a Council for the Implementation of the Principle of Equal Treatment as its expert and consultative body for implementation of the principle of equal treatment and the Office for Equal Opportunities, which do not have even relatively independent position (eg. as an agency), but are fully incorporated into the body of the Government in narrow sense.

According to the Paris Principles the Advocate of the Principle of Equality, which was enacted subsequently (2007) in order to comply with the EU equality Directives, cannot be considered as national human right institution, since it is not independent of the Government. The Advocate has the power to examine petitions or complaints concerning alleged cases of discrimination (para. 2 Art. 11 of the ETA), but can only issue non-binding opinions on whether a person is being discriminated against in a certain situation (subject to unequal treatment because of personal circumstances). The opinion of the Advocate contains a recommendation to the offender on ways to eliminate the violation, its causes and consequences. The Advocate is accessible to the general public since proceedings before the Advocate are cost-free and confidential.

Albeit the ETA stipulates that the Advocate operates independent of the Office for Equal Opportunities (Art. 11.b of the ETA), the Advocate: 1. has a position of a public servant that is appointed by the Government and can easily be removed by the Government, 2. is fully subordinated to the Director of the Office for Equal Opportunities, 3. has to conduct operations without its own personnel, 4. does not have its own budget, 5. has very limited powers of investigation, 6. *de iure* and *de facto* is not in position to function

in a regular and effective manner. The Advocate did not yet establish a *modus cooperandi* with churches and religious communities as relevant NGOs.

The Constitution provides for two other institutions that comply with the standards for national human rights institution: 1. the Human Rights Ombudsman and 2. the Constitutional Court. Both institutions have a special task to protect human rights. An individual may file a petition to the HR Ombudsman or can file a constitutional complaint at the Constitutional Court and *inter alia* invoke a violation of non-discrimination principle in regard to religion or belief.

- (2) What are the key instruments or sources of law on religious discrimination in your country? What are the key elements of this law? Are the prohibitions civil or criminal? How is religion defined? Are non-religious beliefs protected?

The basic constitutional principle of equality is enshrined in the article 14 of the Constitution of the Republic of Slovenia (hereinafter: the Constitution). The provision of the Art. 14 (Para. 1) explicitly determines 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, disability or any other personal circumstance.” The Constitution also provides for special guarantees for freedom of conscience and belief in the Art. 41 (hereinafter: the right to religious freedom). According to the Art. 41 in relation to the Art. 14 of the Constitution non-religious beliefs enjoy the same level of legal protection as it is provided for religious beliefs. Principle of equality is also relevant in relations between various religious communities (para. 2. Article 7). Article 63 (para. 1) declares that any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional. The RFA in the Article 3 enshrines a special provision on prohibition of discrimination, incitement of religious hatred and intolerance which states as follows: »(1) Any incitement to religious discrimination, incitement of religious hatred and intolerance shall be prohibited. (2) Any direct or indirect discrimination on the basis of religious belief, expression or exercise of such belief shall be prohibited. ...«.

Provisions related to non-discrimination are also enshrined in the Employment Relationships Act (Article 6; *Zakon o delovnih razmerjih*) and the Criminal Code-1 (*Kazenski zakonik-1*). The Criminal Code-1 incriminated the Violation of Equal Status (Article 141): “(1) *Whoever, due to differences in respect of nationality, race, colour of skin, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, material condition, birth status, education, social position or any other circumstance, deprives or restrains another person of any human right or liberty recognised by the international community or provided by the Constitution or the statute, or grants another person a special privilege or advantage on the basis of such difference, 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 the first or the second paragraph of the present article being committed by an official through the abuse of office or of official authority, such an official shall be sentenced to imprisonment for not more than three*

years.”; and a crime of Stirring up Hatred, Strife or Intolerance based on Violation of the Principle of Equality

(Article 300): *“(1) Whoever provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas on the supremacy of one race over another or provides aid in any manner for racist activity or denies, diminishes the significance of, approves of or advocates genocide, shall be punished by imprisonment of up to two years. (2) If the offence under the preceding paragraph has been committed by coercion, maltreatment, endangering of security, desecration of national, ethnic or religious symbols, damaging of the movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be punished by imprisonment of up to five years. (3) Material and objects bearing messages from the first paragraph of this Article, and all devices intended for their manufacture, multiplication and distribution, shall be confiscated or their use disabled in an appropriate manner.”*

Milder offences that represent discrimination are by the ETA sanctioned as administrative offences (Art. 24).

- (3) What are the fields in which the prohibition is operative (eg employment, the provision of goods and services, education, housing, and public authorities)?

The Advocate and the Office for Equal Opportunities are monitoring the areas of employment, goods and services, education, housing, and public authorities with respect to discrimination cases, but it is noticeable that they not have a particular agenda set up for religious discrimination. The competence between the Advocate, the Office for Equal Opportunities and the Office for Religious Communities are unclear and overlapping. The competences of various Inspections in respect of discrimination cases are not well defined either. Article 6 of the Employment Relationships Act regulates prohibition of discrimination at working place. HR Ombudsman has only the authority to monitor public authorities.

According to the ETA discriminatory acts shall be prohibited in every area of social life, and in particular in relation to: 1. conditions for access to employment, to self-employment and to occupation, including selection criteria and recruitment conditions, whatever the branch of activity and at all levels of the professional hierarchy, including promotion; 2. access to all types and to all levels of career orientation, vocational and professional education and training, advanced vocational training and retraining, including practical work experience; 3. employment and working conditions, including dismissals and pay; 4. membership of and involvement in an organization of workers or employers, or any organization whose members carry on a particular profession, including the benefits provided for by such organizations; 5. social protection, including social security and healthcare; 6. social advantages; 7. education; and 8. access to and supply of goods and services which are available to the public, including housing.<sup>3</sup>

- (4) What does the prohibition cover (eg direct or indirect discrimination, incitement to discriminate, victimization, harassment)? What defenses or other justifications are available? What remedies are available and how have these been used in practice?

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<sup>3</sup> Kogovšek, N. Country Report 2009 Slovenia, p. 16.

The ETA explicitly determined that the prohibition of religious discrimination cover direct discrimination (Art. 4 Para. 2), indirect discrimination (Art. 4 Para. 3), incitement to discriminate (Art. 4 Para. 4), victimization and harassment (Art. 5). The ETA provides for special measures (positive action, supportive measures) to cope with cases of discrimination (Art. 6).

- (5) What case-law has developed on these matters? Giving examples, are the decisions of the discrimination authority binding or otherwise important?

At the time the Advocats' case-law on religious discrimination is very modest and its recommendations are (still) not binding. However, there is a noticeable case-law on religious discrimination of the Constitutional Court.<sup>4</sup>

The Court have had frequent request for the review of constitutionality of the Denationalization Act. As a rule the issues of denationalization are closely related to the respect for equality (Art. 14 of the ECHR) and to the protection of property of persons and institutions, as determined by the Art. 1 of the Protocol No. 1.

**The *Denationalization of Church property* case No. U-I-107/96 (December 1996)<sup>5</sup>**

After the Denationalization Act was already in force for two years the Legislator introduced the Act on Partial Suspension of the Return of Property, which enforced a temporary suspension of property for three years in all those cases where the return of more than 200 hectares of farmland and forests was required by an individual claimant. As a petitioner the Roman Catholic Diocese of Maribor *inter alia* argued that the challenged statute was discriminatory and thus inconsistent with the Article 14 of the ECHR. The Court established that there were no justified grounds to temporarily suspend the implementation of the Denationalization Act.

**The case *Mihael Jarc et al.* No. U-I-68/98 (November 2001)**

In the case *Mihael Jarc et al.* No. U-I-68/98 (November 2001) the Court reviewed the question of whether the provisions of the Education Act, which provide for prohibition of denominational activities in public schools, interfere with the positive aspect of the freedom of religion<sup>6</sup>, the principle of equality<sup>7</sup>, the right of parents<sup>8</sup> and the right to free education<sup>9</sup>. The Court first

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<sup>4</sup> See IVANC, Blaž. The case law of the Slovenian constitutional court in the area of freedom of religion and beliefs. In: ČEPAR, Drago (ur.), IVANC, Blaž (ur.). *Legal aspects of religious freedom : international conference, 15-18 September 2008 : conférence internationale, du 15 au 18 septembre 2008*. Ljubljana: Office of the Government of the Republic of Slovenia for Religious Communities: = Bureau du Gouvernement de la République de Slovénie des communautés religieuses, 2008, p. 249-259.

<sup>5</sup> Already in 1993 the Court had to clarify the legal status of religious communities, their institutions and orders, and it had decided that their status has to be evaluated and interpreted according to the state regulations. The Court then explained that religious organizations are to be treated as domestic legal entities at the time of nationalization of their property, as well as during the entire period until the adoption of the Denationalization Act, and are as such defined also by positive law (the Legal Status Act). See the *Denationalization of Church property* case No. U-25/92 (March 1993).

<sup>6</sup> Para. 1 Art. 41. of the Constitution.

<sup>7</sup> Art. 14 of the Constitution.

declared that the general prohibition of denominational activities in public schools<sup>10</sup> is not inconsistent with the Constitution and with the right of parents determined in the Art. 2 of the Protocol to the ECHR. The only inconsistency with the Constitution is the prohibition of denominational activities in licensed kindergartens and schools in regard to the denominational activities which take place outside the scope of the execution of a valid public program financed from State funds.<sup>11</sup> The Court instructed the National Assembly to remedy the established inconsistency in a time limit of one year and the Legislator consequently changed the provision of the Art. 72 of the Education Act by allowing the licensed kindergartens and schools to carry out denominational activities which take place outside the scope of the execution of a public service.

#### **The Referendum on the location of a mosque case No. U-I-111/04 (July 2004)**

In the particular case the issue of equal treatment was dealt in the framework of religious freedom guarantee. The Mayor of the Capital City of Ljubljana submitted a request to review the constitutionality of the Resolution on the Calling of a Subsequent Referendum on the Implementation of the Ordinance on the Amendments to the Ordinance on the Adoption of Land Use Planning Conditions for the V2 Trnovo – Tržaška cesta Planning Unit (for the VR-2/6 Ob Cesti dveh cesarjev area of regulation) and the Resolution on the Amendment to this Resolution (hereinafter: the Resolution on the Calling of a Referendum).<sup>12</sup> At that time the location was held to be a future location of a first mosque (a Muslim religious, cultural and educational centre) in Slovenia. The Court decided that the Resolution on the Calling of a Subsequent Referendum and the Resolution on the Amendment to this Resolution (Official Gazette RS, No. 41/04) are annulled *ab initio*.

Holding that the Art. 41. Para. 1 of the Constitution ensures the free profession of religion in private and public life the Court stressed: « ... that freedom of religion ensures the individual that they may freely profess their religion by themselves or together with others, publicly or privately, through lessons, by the fulfilment of religious duties, through worship and the performance of religious rites, which is designated as the so-called positive aspect of freedom of religion. Thereby the Constitution not only protects the individual but also the profession of religion in community.»<sup>13</sup>

#### **The Conscientious Objection case No. U-I-48/94 (May 1995)**

One should also mention the *Conscientious Objection* case because of its general importance for the judicial interpretation of the freedom of religion. New democratic Constitution (1991) introduced the right to conscientious objection in the Art. 46: »Conscientious objection shall be permissible in cases provided by law where this does not limit the rights and freedoms of others«.

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<sup>8</sup> Para. 3 Art. 41. of the Constitution and Art. 2 of Protocol No. 1 to Convention for the Protection of Human Rights and Fundamental Freedoms.

<sup>9</sup> Art. 57 of the Constitution.

<sup>10</sup> Para. 4 Art. 72 of the Education Act.

<sup>11</sup> Para. 3 Art. 72 of the Education Act.

<sup>12</sup> Item 2 of the Resolution calling a referendum determines: »The question posed at the referendum reads as follows: Do you agree that the Ordinance on the Amendments to the Ordinance on the Adoption of Land Use Planning Conditions for the V2 Trnovo – Tržaška cesta Planning Unit (for the VR-2/6 Ob Cesti dveh cesarjev area of regulation) be implemented?«

<sup>13</sup> Here the Court followed its interpretation from the case *Mihael Jarc et al.* No. U-I-68/98 (November 2001).

In this particular case the Court decided that the provision of the Art. 42 of the Act on Liability to Military Service is contrary to the Constitution in as far as it does not allow the exercise of conscientious objection also subsequent to conscription, throughout the period of the obligation to take part in the defence of the State. Consequently, the National Assembly had to change the provision of Art. 42 of the Act on Liability to Military Service.

### III. The Right to Distinguish or Differentiate: Exceptions to the General Prohibition

- (1) On what grounds does the law permit different treatment (eg religion, gender or sexual orientation)?

The ETA was supplemented in 2007 in order to provide for exceptions. According to the Article 2.a Para. 2 (Indent 1) difference in treatment in the area of employment on the grounds of gender, ethnicity, race or ethnic origin, religion or belief, disability, age or sexual orientation is prohibited except in case when, *inter alia*, by reason of the nature of the particular occupational activities concerned or of the context in which they are carried out, such a characteristic constitutes a genuine and determining occupational requirement, provided that the objective is legitimate and the requirement is appropriate and necessary, does not constitute discrimination. According to the Article 2.a Para. 2 (Indent 2) difference in treatment in the area of employment on the grounds of religion or belief of the individual, in the case of occupational activities within churches and other public or private organizations the ethos of which is based on religion or belief, shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos.<sup>14</sup> Likewise, the RFA in the para. 3. Art. 3 determines that: *»A difference in treatment on the basis of religious belief in employment and work of religious and other employees (hereinafter referred to as the Employee) of churches and other religious communities shall not constitute discrimination, if due to the nature of a professional activity in churches and other religious communities or due to the context in which it is carried out, the religious belief constitutes a major legitimate and justifiable professional requirement in respect of the ethics of churches and other religious communities.«*

- (2) Who may discriminate (eg religious organizations, individuals)?

As mentioned above, the National law provides an exception to the general prohibition for employers with an ethos based on religion or belief. The International Agreement between the Republic of Slovenia and the Holy See on Legal Issues determines that the Catholic Church has the authority to nominate and employ people in accordance with the provisions of canon law (Article 5).<sup>15</sup> Slovene law provides for a general recognition of the churches capacity to be an employer and it is intended for all employees of the church (including teachers and priests).<sup>16</sup>

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<sup>14</sup> Kogovšek, N. Country Report 2009 Slovenia, p. 54.

<sup>15</sup> See Ivanc, B. Concordatos entre la República de Eslovenia y la Santa Sede : de un modelo negativo a otro positivo de separación entre el Estado y la Iglesia. *Rev. gen. derecho canón. derecho ecles. estado*, 2009, no. 21, 36 str. [http://www.iustel.com/v2/revistas/detalle\\_revista.asp?id\\_noticia=408365&d=1](http://www.iustel.com/v2/revistas/detalle_revista.asp?id_noticia=408365&d=1).

<sup>16</sup> *Ibidem*, p. 55.



- (3) What conditions must be satisfied (eg to avoid violation of religious doctrine, alienating followers)?

See the answer to question no. III. 1.

- (4) What case-law has developed in the area of exceptions?

No specific provisions or case-law exists at the moment.

#### **IV. Concluding remarks**

It is noticeable that the Advocate does not meet the *Paris principles* criteria for independent HR institution. Thus, a new legislative solution has to be put in place by the Legislature. There are two possibilities: either to establish a new and fully independent institution not attached to the Government, or to establish a special Ombudsman (this is already foreseen by the Constitution) that would operate within the HR Ombudsman Office and would have an additional power to oversee also a private sector in regard to violations based on discrimination. The quality of protection against religious discrimination depends on these necessary changes.

#### ***Literature***

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- Analiza institucionalne ureditve spodbujanja enakosti in varstva pred diskriminacijo v Republiki Sloveniji [Analysis of the Institutional Settlement for Stimulation of Equality and Protection against Discrimination in the Republic of Slovenia] (Available at: [Http://www.vlada.si/fileadmin/dokumenti/si/sklepi/seja\\_vlade.../130sv22.doc](Http://www.vlada.si/fileadmin/dokumenti/si/sklepi/seja_vlade.../130sv22.doc))

**Judicial decisions:**

**Decisions of the Constitutional Court:**

- The *Conscientious Objection* case No. U-I-48/94 (May 1995)
- The *Denationalization of Church property* case No. U-I-107/96 (December 1996)
- The *Request for an assessment of the constitutionality of the contents of a demand to call for a referendum on the Law on the Changes and Additions to the Law on Denationalisation* case No. U-I-121/97 (May 1997)
- The case *Mihael Jarc et al.* No. U-I-68/98 (November 2001)
- The *Referendum on the location of a mosque* case No. U-I-111/04 (July 2004)