

SLOVENIA

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1. National court system

Pursuant to the Courts Act, the Slovenian courts of first instance are the local courts and district courts. Slovenia has 44 local courts, 11 district courts.¹ There are also four other courts of first instance - three labour courts and one social court, which adjudicate in labour and social matters either at the seat of the court or in its external departments.² There are four courts of second instance: high courts,³ plus the High Labour and Social Court which deals with individual and collective labour and social disputes at the second instance.⁴

Slovenia also has the Administrative Court, which provides legal protection in administrative affairs and has the status of a high court, too.⁵ The high courts rule on the ordinary legal

¹ Slovenia/Courts Act 94/07 (16.10. 2007), Art. 98.

² Slovenia/Labour and Social Courts Act 2/04 (15.1. 2004), Art. 3.

³ Slovenia/Courts Act 94/07 (16.10. 2007), Art. 98.

⁴ Slovenia/Labour and Social Courts Act 2/04 (15.1. 2004), Art. 3.

⁵ Slovenia/Administrative Dispute Act 105/06 (12.10. 2006), Art. 9.

remedies, i.e. appeals against the judgments of the courts of first instance. Their decisions are final and can be only challenged in front of the Supreme Court by way of extraordinary legal remedies. The Supreme Court is thus a court of the last instance in all matters.⁶

Finally, the Constitution also provides for the Constitutional Court. The latter is not part of the ordinary judiciary; rather it exists as the highest body of the judicial power for the protection of constitutionality, legality, human rights, and fundamental freedoms.⁷ Upon the application of the entitled legal subjects it conducts abstract review of constitutionality and decides on constitutional complaints. A constitutional complaint may be lodged against individual acts by which state authorities, local community authorities, or bearers of public authority decided the rights, obligations, or legal entitlements of individuals or legal entities,⁸ however, only when all the ordinary and extraordinary legal remedies in the ordinary courts are exhausted.⁹ Before all extraordinary legal remedies have been exhausted, the Constitutional Court may exceptionally decide on a constitutional complaint if the alleged violation is manifestly obvious and if irreparable consequences for the complainant would result from the implementation of the individual act.¹⁰ Save in especially well founded cases, the constitutional complaint must be filed at the Court within 60 days of the day the individual act against which a constitutional complaint is admissible was served.¹¹ The aggrieved individual can appeal to the Strasbourg Court only after having exhausted the above-described legal remedy of constitutional complaint.

The right to appeal is a constitutional right. Everyone shall be guaranteed the right to appeal or to any other legal remedy against the decisions of courts and other state authorities, local community authorities and bearers of public authority by which his/her rights, duties or legal interests are determined.¹² The appeal as on ordinary legal remedy is heard by the High Court. The latter's judgment is final and can be only attacked in front of the Supreme Court by way of extraordinary legal measures. If the decision of the Supreme Court violates a particular human right of an individual, he/she can take the case before the Constitutional Court by lodging a constitutional complaint. Altogether there are thus four instances through which legal remedies can be pursued.

⁶ Slovenia/Courts Act 94/07 (16.10. 2007), Art. 106.

⁷ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 160.

⁸ Slovenia/Constitutional Court Act, 64/07 (16.7. 2007), Art. 50.

⁹ Slovenia/Constitutional Court Act, 64/07 (16.7. 2007), Art.51/1.

¹⁰ Slovenia/Constitutional Court Act, 64/07 (16.7. 2007), Art.51/2.

¹¹ Slovenia/Constitutional Court Act, 64/07 (16.7. 2007), Art. 52/1-2.

¹² Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 25.

An individual can appeal the judgment of the court of first instance on the ground of gross violation of civil proceeding; incorrect or incomplete determination of the facts of the case; incorrect application of the substantive law.¹³ The High Court can rule on the appeal in one of the following ways: it can refuse the appeal as too late, incomplete or not permitted; it can rule on the merits of the appeal and find it unfounded; or it can grant the appeal as founded and, as a consequence, quash the judgment of the court of first instance and remand the case for a new resolution. The High Court can also change the judgment of the court of first instance.¹⁴

The decision of the High Court can be challenged only by extraordinary legal remedies, which are: revision, renewal of the proceeding and the request for the protection of legality. Revision can be based on certain violations of the civil proceeding, incorrect application of the substantive law as well as transgression of the claim when that was done by the High Court.¹⁵ The revision is ruled upon by the Supreme Court which can refuse it on the procedural grounds;¹⁶ turn it down on the merits¹⁷ or grant it. In the latter case, the Supreme Court can quash the judgment and remand it for a new trial, refuse the complaint and quash all the decisions rendered in the preceding procedures,¹⁸ or it can, in case of an incorrect application of substantive law, either change the judgment or quash it, remanding it for a new trial.¹⁹ When the action was exceeded by the High Court, depending on the nature of the case at hand, the Supreme Court can either quash its judgment and require a new trial or decide upon the case itself.²⁰

The request for the protection of legality can be lodged by the state prosecution on the grounds of certain violations of the civil proceeding or due to the incorrect application of the substantive law. The decision is taken by the Supreme Court and can have any of the forms described under the judicial remedy of revision.²¹

If a judgment has already become final, but it turns out that it was based on gross violations of the civil procedure; or some new, previously unknown facts or evidence emerge that could change the outcome of the case, the parties can move for the renewal of a trial.²²

¹³ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 338.

¹⁴ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 351.

¹⁵ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 370.

¹⁶ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 377.

¹⁷ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 378.

¹⁸ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 379.

¹⁹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 380.

²⁰ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 381.

²¹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 386-391.

²² Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 394.

The parties to a settlement reached before the court, which has a character of a final judgment, can also file an action against the settlement due to certain gross procedural shortcomings or when the settlement was achieved because a party was held in mistake, deception or under duress.²³

When all the ordinary and extraordinary legal remedies are exhausted,²⁴ an aggrieved individual can lodge a constitutional complaint to the Constitutional Court. Before all extraordinary legal remedies have been exhausted, the Constitutional Court may exceptionally decide on a constitutional complaint, if the alleged violation is manifestly obvious and if irreparable consequences for the complainant would result from the implementation of the individual act.²⁵ A constitutional complaint may be lodged against individual acts by which state authorities, local community authorities, or bearers of public authority decided the rights, obligations, or legal entitlements of individuals or legal entities.²⁶ The Constitutional Court can refuse the constitutional complaint on the procedural grounds; turn it down on the merits or find it justified. In the latter case, the Constitutional Court abrogates or quashes the attacked individual act and remands the case for a new decision. However, if during the decision on the constitutional complaint, the Court determines that a statute or another act of general application might be unconstitutional, it also moves to review its constitutionality.²⁷

Judiciary is a separate and independent branch of government. Judges are independent in the performance of the judicial function and bound exclusively by the Constitution and laws.²⁸ The office of a judge is permanent.²⁹ It is not compatible with office in other state bodies, in local self-government bodies and in bodies of political parties, and with other offices and activities as provided by law.³⁰ A judge is granted a professional immunity.³¹ The judges are elected by the National Assembly on the proposal of the Judicial Council³² and can be dismissed by it exclusively in those rare cases provided by the law.³³

²³ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 392.

²⁴ Slovenia/Constitutional Court Act 64/07, 16.7. 2007, Art. 51/1.

²⁵ Slovenia/Constitutional Court Act 64/07, 16.7. 2007, Art. 51/2.

²⁶ Slovenia/Constitutional Court Act 64/07, 16.7. 2007, Art. 50.

²⁷ Slovenia/Constitutional Court Act 64/07, 16.7. 2007, Art. 59, 60.

²⁸ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 125.

²⁹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 129.

³⁰ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 133.

³¹ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 134.

³² Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 130.

³³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 132.

2. Restrictions regarding access to justice

The restrictions to the right to access to justice can be legal or factual. Legal restrictions are expressed through the procedural requirements, such as legal interest or standing; conditions under which it is possible to use ordinary or extraordinary legal remedies; time limits to initiate a procedure; mandatory representation by a qualified lawyer, exhaustion of a prior non-judicial dispute resolution venue, and others. Factual restrictions are usually related to the individual's overall financial capacity to seek the redress before the courts.

The most basic restriction of the right to the access to justice is a requirement of a legal interest or standing. Pursuant to the Constitution, all procedural laws (civil, criminal and administrative) permit everyone to pursue before the court only his/her rights, legal interests or advantages.³⁴ Any private or public act can be challenged before the court only if its interference with the individual's rights is direct. The Constitutional court has thus ruled in this vein that as an act instituting a parliamentary investigation does not interfere with the rights of the potential investigated parties, witnesses or anyone who could be required to take part in the investigation, the Parliamentary Inquiries Act³⁵ which does not enable the said subjects to challenge this act before the court, is not inconsistent with the right to access to justice.³⁶

However, the procedural requirements shall not be construed too strictly or in a too limited way by the courts as this would result in an unjustified restriction of the right to access to justice.³⁷

The right to access to justice can be validly conditioned by a requirement of exhausting a pre-judicial stage of rights protection. Thus, in labour disputes an aggrieved individual must

³⁴ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 22.

³⁵ Slovenia/Parliamentary Inquiries Act 63/93, 4.12. 1993.

³⁶ Slovenia/Constitutional Court U-I-244/99, 15.6. 2000.

³⁷ For example, when a statute puts a certain legal remedy at the party's disposal, he/she must be practically able to use it efficiently. This means that neither a statute, which establishes a legal remedy, nor a court, which applies the statute, may impose too demanding formal requirements preventing the review of the legal remedy on its merits.³⁷ The Constitutional court, for example, reversed the decision of the Supreme Court which refused to rule on the extraordinary legal remedy of revision since the party filing it was not represented by a lawyer as required by Article 86 of the *Zakon o pravdnem postopku* [Civil Procedure Act]. The Supreme Court did so by ignoring Article 12 of the Civil Procedure Act which requires that a party, which is not represented by a lawyer and which due to the lack of knowledge does not use his/her procedural rights, shall be advised by the court which legal steps he/she can take. In so doing, the Supreme Court disproportionately limited the party's access to the court and hence violated his/her right to judicial protection.

challenge the act of an employer terminating his/her employment relationship directly with his/her employer before bringing a legal action to the court.³⁸

Sometimes the right to bring an action to the court can be subject to a negative prescription, such as that provided for Auditing Act, which prescribes a time limit of 8 days.³⁹ The Constitutional court has ruled that subjecting the right to access to justice to the negative prescription presents a limitation of this right, can be justified under certain conditions.⁴⁰

Regarding the procedural obligation to pay court fees, the Constitutional Court ruled that Article 23 of the Constitution does not require the access to justice to be free of charge.⁴¹ However, if the amount of the court fees were so high to prevent a person from exercising their court rights, especially for those who earn less than the average income and are not entitled to a tax exemption, this would amount to an unjustified restriction of the right to access to justice. The act of determining the amount of court fees falls within the field of the legislator's discretionary assessment. The latter is exceeded when the court taxes are so high to deter the individuals from accessing the court not only in trifling cases, but even in cases which involve the protection of social or otherwise important rights.⁴² In compliance with the constitutional principle following which Slovenia is a social state and the demand for equality before the law, the Constitution requires a regulation which, for certain disputes, envisages tax exemptions on the basis of the law, as well as a regulation that allows indigent clients access to the court without any danger that this would significantly lower their means of support.⁴³

³⁸ An applicant did so in good time, yet the employer did not react and carried out the act of termination of the employment instead, despite that the latter has never become final. When the applicant brought the case to the court, the latter refused her application, arguing that as the termination of employment has never become final, but was nevertheless executed, this factually and legally amounted to a refusal of her complaint by the employer, to which she should have reacted by filing a complaint against the execution of a non-final act. However, as in a period longer than two years she had not done so, she missed the time limit prescribed by Article 83 of *Zakon o temeljnih pravicah iz delovnega razmerja* [Basic Rights Stemming from Employment Act]³⁸ and Article 105 of *Zakon o delovnih razmerjih* [Employment Relations Act], to initiate a proceeding before the court. As the reasons for which the Supreme Court ultimately refused to rule on her untimely application to the court lied exclusively on her side, the Constitutional Court did not find this as an infringement of the right to access to justice. However, in a similar case, in which the Supreme Court construed the said restriction from Article 83 of the Basic Rights Stemming from Employment Act too broadly, the Constitutional Court found a violation of the right to access to justice. It stressed, again, that the restrictions of this right must be construed narrowly.

³⁹ Slovenia/Auditing Act 11/01, 3.3. 2001.

⁴⁰ Slovenia/Constitutional Court, Up-594/02, 3.6. 2004. This, however, was not the case with the Auditing Act. The latter pursued a constitutionally legitimate goal: ensuring clarity and certainty of legal relationships, which is in the interest of the parties involved, it is in compliance with the rule of law and it furthers an overall efficient judicial protection. The condition of a negative prescription was thus found a necessary and proper measure to achieve the identified constitutionally legitimate goals, but it was disproportional. The legislature prescribed a particularly sort time-limit of 8 days, but at the same time did not require the competent court hearing the case to act swiftly.

⁴¹ Slovenia/Constitutional Court U-I-112/98, 17.6. 1998.

⁴² Slovenia/Constitutional Court U-I-112/98, 17.6. 1998; U-I-255/99, 5.6. 2003.

⁴³ Slovenia/Constitutional Court U-I-112/98, 17.6. 1998.

3. Length of judicial proceedings

The Slovenian judicial system is overloaded and, as a result, the judicial process is frequently protracted.

The data on the actual duration of a particular case from its initiation to the finality and execution are not available. From the judicial statistics gathered and published biannually by the Ministry of Justice it is only possible to extract the duration of the proceedings before the courts of all instances according to the nature of a dispute (i.e. civil, criminal, labour etc.).

Pursuant to the statistical data in civil proceedings for 2008, the local courts managed to solve 19,5% of cases in first three months; 13,73% of cases in 3-6 months; 8,13% of cases in 6-9 months; 6,98% of cases in 9-12 months; 16,60% of cases in 1-2 years; 11,43% of cases in 2-years, whereas 23,54% of cases took longer than 3 years.⁴⁴

The district courts solved 17,85% of cases in first three months; 20,24% of cases in 3-6 months; 11,57% of cases in 6-9 months; 7,34% of cases in 9-12 months; 16,7% in 1-2 years; 10,3% of cases in 2-3 years; and 16% of cases in more than 3 years.⁴⁵

The high courts, which rule on the appeals, decided 12,96% of cases in 1 month; 22,08% of cases in 1-3 months; 26,67% of cases in 3-6 months; 24,3% of cases in 6-9 months and 9,9% of cases in 9-12 months.⁴⁶

The Supreme Court resolve more than 80% of civil cases in first three months, but corporate law cases took longer so that 42,68% of them lasted between one and two years.⁴⁷

The enforcement of final judgments before the local courts in 50% of cases took more than a year, to which one must add one to three months in those cases where the execution of a judgment was appealed to the High Court.⁴⁸

⁴⁴ http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/publikacije/BILTEN_SS_2008-12_junij_09.pdf, at 229, last visited 5.9. 2009.

⁴⁵ http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/publikacije/BILTEN_SS_2008-12_junij_09.pdf, at 225, last visited 5.9. 2009.

⁴⁶ http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/publikacije/BILTEN_SS_2008-12_junij_09.pdf, at 220, last visited 5.9. 2009.

⁴⁷ http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/publikacije/BILTEN_SS_2008-12_junij_09.pdf, at 219, last visited 5.9. 2009.

⁴⁸ http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/PDF/publikacije/BILTEN_SS_2008-12_junij_09.pdf, at 229, last visited 5.9. 2009.

It can be inferred from the data presented that if a case is pursued through all the stages of a civil procedure, including the execution of a final judgment, it will take on average at least 3 years. However, many cases have taken much longer.

4. Are procedures concluded within a reasonable time?

Repeated complaints about violations of the right to adjudication within a reasonable time frame have therefore been an annual constant. There have also been frequent violations of the statutory deadlines for drawing up court rulings in civil procedure. The Human Rights Ombudsman has been permanently calling the attention to the State's duty to provide for the enforcement of the right to trial in reasonable time. Furthermore, the majority of the complaints lodged with the European Court of Human Rights from Slovenia concern the violation the right to a trial without undue delay and complaints about the lack of an effective domestic remedy in respect of the excessive length of the proceedings.

Due to the lack of cases, there is no evidence of unreasonable delays in this area of discrimination.

5. Does provision exist for speedy resolution of particular cases?

In 2005 the new Labour and Social Courts Act⁴⁹ introduced some new procedural rules to accelerate the proceedings in labor and social disputes. Among others, the new Act promotes settlements as the most efficient alternative way for resolving cases. It is also necessary to point out the project of the so-called "accelerated civil proceedings" that introduced the principle of the concentrated hearing. This project determines more clear and efficient tasks of all parties to the proceedings. Among current endeavours for more efficient proceedings the establishment of the so called Family Department in the local courts also deserves a mentioning.⁵⁰

⁴⁹ Slovenia/Labour and Social Courts Act 2/04, 15.1. 2004.

⁵⁰ Slovenia/Marriage and Family Relations Act 69/04, 24.6. 2004.

An amendment to the Civil Procedure Act introduced the requirement of the so-called settlement hearing, which takes place after the receipt of an answer to the plaintiff's action and is directed towards reaching a settlement at a very early stage of the proceeding.⁵¹ The Civil Procedure Act also contains provisions opening up a possibility for a court settlement, which can be proposed at any time during the procedure. Moreover, anyone intending to bring an action may also try to reach a court settlement in the local court at the place of residence of the opposing party before actually starting the proceeding. The court settlement may be used to resolve all types of civil-law disputes, save for the majority of disputes in the family and marital matters. The court settlement is similarly ruled out in cases of claims that parties are not in free disposal of as they run counter to mandatory regulations or rules of morality.⁵²

Following the *Lukenda* judgment of the Strasbourg Court,⁵³ the National Assembly adopted the Act Regulating the Protection of Right to Trial without Undue Delay.⁵⁴ A party to court proceedings, a participant under the statute regulating non-contentious procedure and an injured party in the criminal proceedings have the right to have his/her rights, duties and any charges brought against him to be decided upon by the court without undue delay.⁵⁵ The Act institutes two categories of legal remedies for the protection of the right to trial without undue delay provided for in Article 23 of the Constitution.

The first category includes the so-called expedition remedies, namely the supervisory appeal and the motion for a deadline, while the second category incorporates the so-called satisfaction remedies, i.e. the payment of monetary compensation for just satisfaction, the publication of the judgement determining the violation of the right to trial without undue delay and the written statement of the violation of the right to trial without undue delay.⁵⁶

It is important to note that the provisions on just satisfaction of the Act Regulating the Protection of Right to Trial without Undue Delay do not detract from the aggrieved individual's right to compensation for the damages caused by the judiciary, including by a trial with undue delay. This Act grants a remedy to a party whose right to a trial without undue delay is violated in a still-ongoing judicial proceeding.⁵⁷ As such it is thus dedicated exclusively to a systemic

⁵¹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 305a.

⁵² Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 306.

⁵³ Council of Europe/European Court of Human Rights/Application 23032/02 *Lukenda v. Slovenia*, 6.10. 2005.

⁵⁴ Slovenia/Act Regulating the Protection of Right to Trial without Undue Delay, 49/06, 12.5. 2006.

⁵⁵ Slovenia/Act Regulating the Protection of Right to Trial without Undue Delay, 49/06, 12.5. 2006, Art. 2.

⁵⁶ Slovenia/Act Regulating the Protection of Right to Trial without Undue Delay, 49/06, 12.5. 2006, Art.3.

⁵⁷ Slovenia/Act Regulating the Protection of Right to Trial without Undue Delay, 49/06, 12.5. 2006, Art. 25/1 is an exception: In case a violation of the right to a trial without undue delay has ceased already and the party had

implementation of the right to access to justice, contained in Article 23 of the Constitution. It does not have any effect on Article 26 of the Constitution which lays down the right to compensation for damage caused by the unlawful acts of a person or body when performing a function or engaged in an activity on behalf of a state or local authority or as a holder of public office.⁵⁸

As stressed by the High court in Ljubljana, the Act Regulating the Protection of Right to Trial without Undue Delay was adopted because judicial delays in the majority of cases were not caused by illegal action by the courts or judges. They rather resulted from a range of systemic problems, such as overburdened judges, insufficient judicial staff, inefficient organization of work, etc. However, if an undue delay of judicial proceeding resulted from an illegal act of an actual judge, the aggrieved individual always had and continues to have the right to compensation pursuant to Article 26 of the Constitution.⁵⁹

6. Is it possible to waive the right of access to a judicial body?

As a general rule, it is possible to waive the right to judicial protection in civil cases on a contractual basis. However, in labour disputes this possibility is more limited and while it also exists, it is ultimately subject to close judicial scrutiny.⁶⁰ In administrative law cases and other cases involving vertical relationship between an individual and a state it is up to the individual to pursue his/her right to judicial protection.

7. Access to non-judicial procedures

Instead of the courts, individuals can refer their disputes to non-judicial bodies, in order to reach a friendly settlement in the process of mediation or to find a solution by an arbiter or arbitration

maid a claim for just satisfaction in the international court before the date of application of this Act, the State Attorneys' Office shall offer the party a settlement on the amount of just satisfaction within four months of the date of receipt of the case referred by the international court for the settlement procedure. The party shall submit a settlement proposal to the State Attorneys' Office within two months of the date of receipt of the proposal of the State Attorneys' Office. The State Attorneys' Office shall decide on the proposal as soon as possible and not later than in four months.

⁵⁸ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 26.

⁵⁹ Slovenia/High Court of Ljubljana I Cpg 493/2007, 3.7. 2007.

⁶⁰ Slovenia/High Labour and Social Court Pdp 259/95, 22.11. 1996.

tribunal. Non-judicial procedures are not obligatory and are complementary to the judicial protection.

Cases of discrimination can be brought to the following bodies: the Advocate of Principle of Equality (the Advocate) through the Slovenian equality body and the Ombudsman. Both of these institutions, however, have only persuasive authority and lack formal investigative power.

The Implementation of the Principle of Equal Treatment Act has established a *Svet vlade Republike Slovenije za uresničevanje načela enakega obravnavanja* (Government Council for the Implementation of the Principle of Equal Treatment).⁶¹ The Act has also created the *Urad za enake možnosti* (Office for Equal Opportunities; the Office), which coordinates the activities of individual ministries and governmental services related to the implementation of the Act, and it performs technical and administrative duties for the Council.⁶² The role of equality body *stricto sensu*, i.e. of a body which is specifically charged with ensuring the implementation of principle of equality, is exercised by the *Zagovornik načela enakosti* (Advocate of the principle of equality) (the Advocate).⁶³ The post of the Advocate of the principle of equality was created in 2005. It replaced and took over the competences of the pre-existing Advocate for Equal Opportunities for Women and Men⁶⁴

The Advocate is foremost competent to review the cases of alleged violations of the ban on discrimination in accordance with the Principle of Equal Treatment Act.⁶⁵ To this end, the Advocate provides general information and explanations regarding discrimination. When hearing a case he/she shall point out the discovered irregularities and recommend, how they should be eliminated. The Advocate also offers help to the discriminated persons in other procedures for exercising rights related to the protection against discrimination.⁶⁶ If the number of cases, their complexity or particularities with regard to a specific personal circumstance should so require, a special Advocate may function for a specific personal circumstance.⁶⁷

The review of an alleged violation of prohibition of discrimination begins with a receipt of a written or oral complaint, which can be also anonymous provided it contains sufficient elements

⁶¹ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 9.

⁶² Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 10.

⁶³ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 11.

⁶⁴ http://www.uem.gov.si/en/areas_of_work/advocacy/, last visited March 2, 2009.

⁶⁵ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 11/1.

⁶⁶ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 11/2.

⁶⁷ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 11/3.

for a substantive review.⁶⁸ The manifestly unfounded applications are not reviewed.⁶⁹ The application must be filed as soon as possible, but no later than in a year time after the alleged discrimination had been committed. However, in specially justified cases the application can be reviewed even after the expiration of the set time limit.⁷⁰ The procedure before the Advocate is informal, confidential, free of charge⁷¹ and normally conducted in writing.⁷² The Advocate can already during the procedure issue a written request to the alleged perpetrator asking him to protect the victim of discrimination from further acts of victimization or to remove its already existing consequences.⁷³ In general, the consideration of cases is conducted in writing, whereby the Advocate has the right to request the persons involved to provide him/her with appropriate explanations and additional information within a specified time-limit. The participants in the procedure are required to reply to the Advocate in the specified time or inform him/her about the reasons for failing to do so.⁷⁴ The Advocate has the right to invite all persons involved to an interview if he/she considers that this would contribute to the clarification of the case.⁷⁵

The procedure closes with a written opinion, which contains the main findings about the case and their assessment in light of the alleged discrimination. The written opinion is served to both parties of the case. The perpetrator might be issued recommendations about the removal of negative consequences of a violation with a duty to report back on adopted remedial measures.⁷⁶ Beside this complaint procedure, an individual can also turn to the Advocate for an advisory opinion as to whether a particular act, commission or omission, could violate principle of equality on the basis of personal circumstances.⁷⁷

However, the fact remains that the Advocate does not have any concrete investigating powers on his/her own. The Advocate has emphasized that the absence of concrete investigative powers prevents her from effectively establishing the factual grounds in the cases of an alleged discrimination. The Advocate must therefore, more or less, rely on the factual submissions as presented by the parties.⁷⁸ Moreover, there is no legal basis in the Slovenian legal system for the Advocate to become active on his/her own initiative. In the same vein, the Advocate can not

⁶⁸ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 12/1.

⁶⁹ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 12/2.

⁷⁰ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 13.

⁷¹ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 14.

⁷² Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 15.

⁷³ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 16.

⁷⁴ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 15/1.

⁷⁵ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 15/2.

⁷⁶ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 17/1, 2.

⁷⁷ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 18.

⁷⁸ Poročilo zagovornika načela enakosti za leto 2007, at 3, available at: http://www.uem.gov.si/en/areas_of_work/advocacy/, last visited March 3, 2009.

represent the alleged victims of discrimination in the court proceedings. This prevents him/her to exercise his/her role in a proactive way to any noteworthy degree.

The Advocate receives a fairly limited number of cases of alleged discrimination on the ground of race or ethnic origin. It examined 4 cases in 2006,⁷⁹ whereas in 2007 there were only 2.⁸⁰ In one case a complainant argued that the authorities were delaying administrative procedures relating to the acquisition of an immovable property which prevented him to purchase a house, in his eyes due to his relatives' foreign ethnic origin. The Advocate, after having requested more evidence to substantiate the allegation, determined that the latter was unjustified.⁸¹ In two other cases the complaints were made about the harassment in the work place also due to the complainants' ethnic origin, but they similarly turned out as unfounded.⁸²

The institution of *Varuh človekovih pravic* (Ombudsman) is another venue for countering racial and ethnic discrimination. Ombudsman is an institution for the out of court and informal protection of human rights and basic freedoms.

According to the Constitution, the Ombudsman's mandate is defined broadly as encompassing the protection of all human rights and basic freedoms,⁸³ including the right of non-discrimination on the basis of race or ethnic origin, in matters involving all state and local authorities.⁸⁴

Proceedings before the Ombudsman are confidential and free of charge for the parties.⁸⁵ 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 own initiative.⁸⁶ He/she is empowered to submit proposals, opinions, critiques or recommendations to state bodies, local government bodies and statutory authorities, who are obliged to discuss and answer within the

⁷⁹ Poročilo zagovornika načela enakosti za leto 2006, at 4, available at: http://www.uem.gov.si/en/areas_of_work/advocacy/, last visited March 3, 2009.

⁸⁰ Poročilo zagovornika načela enakosti za leto 2007, at 6, available at: http://www.uem.gov.si/en/areas_of_work/advocacy/, last visited March 3, 2009.

⁸¹ Poročilo zagovornika načela enakosti za leto 2007, at 14, available at: http://www.uem.gov.si/en/areas_of_work/advocacy/, last visited March 3, 2009.

⁸² Poročilo zagovornika načela enakosti za leto 2007, at 3, available at: http://www.uem.gov.si/en/areas_of_work/advocacy/, last visited March 3, 2009.

⁸³ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), sections II and III. Space precludes enumeration of all the human rights contained therein. However, while the Ombudsman is concerned with the protection of all human rights, those in section III (socio-economic freedoms) are not justiciable.

⁸⁴ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991) Art. 159/1.

⁸⁵ Slovenia/Ombudsman Act 71/93 (30.12.1993), Arts. 9/3.

⁸⁶ Slovenia/Ombudsman Act 71/93 (30.12.1993), Arts. 9/1.

term determined by the Ombudsman.⁸⁷ They are also obliged to submit, on the request of the Ombudsman, all data and information within their power (regardless of the degree of confidentiality) and enable the execution of inquiries.⁸⁸ Besides, the Ombudsman may also lodge, with the consent of the person whose human rights or fundamental freedoms he/she is protecting in the individual case, a constitutional complaint for the violation of human rights.⁸⁹

Alternative dispute resolution in front of the bodies other than judicial, which is complementary to other legal remedies, is still not widely used in Slovenia but it is growing in importance. The alternative dispute resolution is conducted mainly in a confidential way on the basis of the agreement between the parties to it, who also set the general rules of the procedure. However, as a great majority of rules that further the right to adequate redress are of a mandatory character, they must be equally observed in the non-judicial proceedings. A settlement or an arbitration award can be thus challenged before the court on the basis of Article 478 of the Civil Procedure Act, among other things, for running against the Slovenian public order.⁹⁰ The decisions reached in the non-judicial procedure, such as arbitration, have the effect of finality between the parties, unless stipulated that appeal is still allowed. The party can ask the court to officially mark the arbitrary award as final and enforceable.⁹¹ This shows that the courts, on the one hand, act as facilitators of alternative dispute resolution, whereas on the other hand they also review the non-judicial proceedings for the compliance with mandatory rules.

The Civil Procedure Act permits the parties to conclude a contract and submit the cases regarding their rights that are at their free disposal to the arbitration. The arbitration board is composed of one or more arbiters, appointed by the parties, who entrust it to deliver, on the basis of an agreement or contract, a decision on the merits of the case that is recognised by law as equivalent to a final decision by an ordinary court.⁹²

The Mediation in Civil and Commercial Matters Act⁹³ formally institutionalized a process of mediation. As one of the means of alternative dispute resolution it has been practiced at the district court of Ljubljana since 2001.⁹⁴ Mediation is defined as a voluntary, informal process in

⁸⁷ Slovenia/Human Rights Ombudsman Act 71/93 (14.01.1994) Art. 7.

⁸⁸ Slovenia/Human Rights Ombudsman Act 71/93 (14.01.1994) Art. 6.

⁸⁹ Slovenia/Constitutional Court Act 64/07 (16.7.2007) Arts. 50, 52.

⁹⁰ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 478.

⁹¹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 475.

⁹² Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 459-497,

⁹³ Slovenia/Mediation in Civil and Commercial Matters Act 56/08 (21.6.2008).

⁹⁴ Slovenia/District Court of Ljubljana, 2008 Annual Report about the Judicial Proceedings Related to a Mediation, available at: www.sodisce.si/mma_bin.php?static_id=20090128102610, last 2.9. 2009. There were 900 cases of mediation at the District Court of Ljubljana in 2008.

which the parties seek the assistance of a third person (mediator) for a peaceful resolution of a dispute stemming from a contractual or other legal relationship.⁹⁵ The mediators are usually drawn from the environment close to the NGOs or from the NGOs themselves. They take part in the mediation associations which provide training and continuous education necessary for a development of mediation skills.⁹⁶ This shall also work as a guarantee of the best protection of the parties' interests. Further legal guarantees are included in the referred Mediation Act whose article 8 explicitly instructs the mediator to act independently, impartially by treating both parties equally and having regard of all the circumstances of the case.⁹⁷ In 2008 there were 900 cases of mediation at the District Court of Ljubljana.⁹⁸ However, due to the very nature of the process it is impossible to tell the number of cases dealing with discrimination on the basis of race or ethnicity. Mediation is a confidential process. All data deriving from mediation and indeed all data related to it are classified unless the parties have agreed differently, if the law requires their disclosure or if the latter is necessary for a fulfilment or mandatory execution of the mediation agreement.⁹⁹

The National Assembly adopted Alternative Dispute Resolution Act, whose purpose is to enhance the use of means of alternative dispute resolution in corporate, labour, family and other civil law related cases. It introduces a possibility of compulsory use of mediation in some civil proceedings.

The procedures before non-judicial bodies have to comply with similar, if though sometimes less stringent procedural requirements regarding the adversarial nature of the proceeding, equality of arms, reliability of evidence, legal representation, legal aid and impartiality, as judicial bodies. Arbitrator in an arbitration procedure must thus excuse him/herself or can be excluded on the same grounds that apply to the judge.¹⁰⁰ The decisions in arbitration proceedings must be reasoned unless the parties have agreed otherwise.¹⁰¹ The validity of the arbitration decision can be challenged before the court. Violation of the principles of equality of arms and adversarial nature of the procedure, for example, by way of preventing a party to meaningfully take part in the

⁹⁵ Slovenia/Mediation in Civil and Commercial Matters Act 56/08 (21.6.2008), Art. 2/1a.

⁹⁶ One example is the Mediation Centre, which was established in 2001, available at: <http://www.mediacija.si/?l=1>, last visited March 1, 2009.

⁹⁷ Slovenia/Mediation in Civil and Commercial Matters Act 56/08 (21.6.2008), Art. 8/3.

⁹⁸ District Court of Ljubljana, 2008 Annual Report about the Judicial Proceedings Related to a Mediation, available at: www.sodisce.si/mma_bin.php?static_id=20090128102610, last visited March 2, 2009.

⁹⁹ Slovenia/Mediation in Civil and Commercial Matters Act 56/08 (21.6.2008), Art. 11.

¹⁰⁰ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 468.

¹⁰¹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 473.

procedure, presents a ground for an invalidity of the arbitration.¹⁰² In the same way is ensured the reliability of evidence in the non-judicial proceeding. If it is determined by way of a final judgment that an arbitration award is based on the criminal act of a witness, expert witness, arbiter, party or his/her representative, or if an arbitration award relies on a counterfeited document, the arbitration shall be invalidated.¹⁰³

8. Legal aid

The Constitutional court stressed that it would be incompatible with the constitutional guarantee of efficient access to justice if the latter was dependent on his/her economic situation.¹⁰⁴ This is a principle, which underlies all other statutory provisions regulating this matter. The Civil Procedure Act in its Chapter on Procedure Costs thus contains provisions which assure access to justice to the poor.¹⁰⁵

In principle, each party shall advance the payment for costs incurred by procedural acts performed or caused to be performed by them.¹⁰⁶ The court shall exempt from the payment of the costs of proceedings a party who is not able, with respect to his/her financial circumstances, to cover these costs without detriment to the maintenance of themselves and their family.¹⁰⁷ The exemption from payment of the costs of proceedings shall include the exemption from the payment of court fees and advancements for costs of witnesses, expert examinations, inspections and court announcements.¹⁰⁸ A party may only be exempt from the payment of the court fees if otherwise the funds available for the maintenance of the party and their family would be reduced to a considerable extent.¹⁰⁹ Notwithstanding these provisions, the court may also postpone ordering the party to pay the fee until the decision is passed, or allow the payment by installments.¹¹⁰ In deciding on the exemption from the payment of the costs of proceedings the court shall make a careful assessment of all relevant circumstances and shall in particular take

¹⁰² Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 477/4.

¹⁰³ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 477/10.

¹⁰⁴ Slovenia/Constitutional Court Up-376/02, 8.7. 2004.

¹⁰⁵ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 151-173.

¹⁰⁶ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 152.

¹⁰⁷ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 168/1.

¹⁰⁸ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 168/2.

¹⁰⁹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 168/3.

¹¹⁰ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 168/4.

into account the amount in dispute, the number of persons maintained by the party, and the financial condition of the party and members of their family.¹¹¹

The provisions of the Civil Procedure Act concerning the exemption from the payment of procedural costs also apply in non-litigious procedures, in procedures before administrative courts as well as in procedures before labor and social courts. In addition, Labour and Social Courts Act¹¹² contains some special provisions concerning the representation of a party during a procedure by a trade union representative as well as some provisions on court taxes payment.¹¹³

Free Legal Aid Act¹¹⁴ provides a legal basis for free legal aid. Legal aid encompasses the exercise of the right to judicial protection, based on the principle of equality and taking into account the social position of persons that are not able to exercise this right without causing harm to their ability to maintain themselves and their families.¹¹⁵

In essence, the Free Legal Aid Act determines legal aid as the right of the eligible person to the total or partial provision of funds necessary to cover the costs of legal assistance and the right to an exemption from paying the costs of the judicial proceeding.¹¹⁶ Legal aid can be approved as regular,¹¹⁷ extraordinary,¹¹⁸ exceptional,¹¹⁹ special¹²⁰ or emergency legal aid.¹²¹ It can be approved for legal advice, legal representation and other legal services laid down in this Act, for all forms of judicial protection before all courts of general jurisdiction and specialised courts based in the Republic of Slovenia, before the Constitutional Court of the Republic of Slovenia, and before all authorities, institutions or persons in the Republic of Slovenia authorised for out-of-court settlement, as well as in the form of an exemption from paying the costs of the judicial proceeding.¹²² Legal aid can also be approved for proceedings before international courts or arbitration panels.¹²³

¹¹¹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 168/5.

¹¹² Slovenia/Labour and Social Courts Act 2/04, 15.1. 2004.

¹¹³ Slovenia/Labour and Social Courts Act 2/04, 15.1. 2004, Art. 61.

¹¹⁴ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004.

¹¹⁵ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 1/1.

¹¹⁶ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 1/3.

¹¹⁷ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 11.

¹¹⁸ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 12.

¹¹⁹ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 22.

¹²⁰ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 22.

¹²¹ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 36.

¹²² Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 7/1.

¹²³ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 7/2.

Legal aid is provided by the persons authorized to do so following the Legal Aid Act¹²⁴ and is financed by the state budget. Therefore the respective terms and criteria for granting legal aid are determined pursuant to the principles of the rule of law, social state and equality before the law. The financial position of the applicant shall be determined by taking into account the applicant's income and receipts; the income and receipts of the applicant's family; the property owned by the applicant and the applicant's family, unless otherwise determined by the Legal Aid Act.¹²⁵ Legal aid shall be granted to persons that, given their financial position and the financial position of their families, are not able to meet the costs of the judicial proceeding without causing harm to their social position and the social position of their families.¹²⁶ It shall be deemed that the social position of the applicant and his or her family is put at risk by the costs of the judicial proceeding if the monthly income of the applicant (personal income) or average monthly income per family member (personal family income) does not exceed the amount of the minimum wage laid down in the act governing the minimum wage (hereinafter referred to as: minimum income).¹²⁷

In Slovenia, NGOs are also involved in providing assistance in discrimination cases. Article 23 of the Principle of Equal Treatment Act authorizes the NGOs to participate in accordance with the law in judicial and administrative procedures initiated by individuals alleging to have been subject to unlawful discrimination.¹²⁸ However, NGOs can only take part in the proceedings, if they employ attorneys or other qualified lawyers with a bar exam, if the latter are authorized by the alleged victims of discrimination to defend them in the respective proceeding. It should be noted that this kind of indirect involvement of the NGOs in Slovenia is very marginal or indeed inexistent, since no Slovenian NGO employs attorneys and very few of them have a fully legally qualified staff with a bar exam.¹²⁹

If the representative role of NGOs in the proceedings is thus rather limited, they can participate in other manners. First of all, they can get involved as interveners, if they demonstrate their legal interest in the successful outcome of the case for the alleged victim.¹³⁰ The intervention of the NGOs must be granted by the court and it depends on how strictly or leniently the latter would construe the requirement of legal interest. Some have speculated that according to the present

¹²⁴ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 5.

¹²⁵ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 12/1.

¹²⁶ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 13/1.

¹²⁷ Slovenia/Free Legal Aid Act 96/04, 30.8. 2004, Art. 13/2.

¹²⁸ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 23.

¹²⁹ <http://www.antidiscrimination.etc->

[graz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lanki/prevod_pravnega_mne_nja.doc](http://www.antidiscrimination.etc-graz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lanki/prevod_pravnega_mne_nja.doc), last visited February 26, 2009.

¹³⁰ Slovenia/Civil Procedure Act 26/99 (14.7. 1999), Art 199.

jurisprudence, which requires a concrete and not merely general legal interest in the positive outcome of the case, the NGOs' role as interveners will remain rather circumscribed.¹³¹ Secondly, the NGOs could try to influence the judicial and other proceedings by way of *amicus curiae*. However, this institute is not very common, if at all, in Slovenia, and its efficiency would again depend on the permission by the court.¹³² Finally, the very last, but also the most passive option for the NGOs' help to the alleged victims of discrimination is their mere presence during the trials that must be as a rule open to the public.¹³³

One instance of an institutionalised legal assistance involving NGOs, however not limited exclusively to the discrimination cases, is a free legal aid. This is pursuant to the Free Legal Aid Act. There are two NGOs, Pravno-informacijski center nevladnih organizacij (Legal-information centre of NGOs)¹³⁴ and Zavod PIP "Pravo Informacije Pomoč" (Institute PIP "Law Information Assistance"), which have obtained the certificate of the Ministry of Justice to provide the free legal aid. These NGOs are relatively well known and hence easily accessible by the victims of alleged discrimination.

The procedural role of trade unions in the concrete cases before the courts is regulated by the *Zakon o delovnih in socialnih sodiščih* (Labour and Social Courts Act).¹³⁵ Its Article 35 provides that in cases of discrimination in the fields of work, employment, access to social services, an employee or an insured person can be represented by a trade union representative with a law degree.¹³⁶

9. Forms of satisfaction available to a vindicated party

Article 26 of the Constitution lays down a general right to compensation. Everyone shall have the right to compensation for damage caused by the unlawful acts of a person or body when

¹³¹ http://www.antidiscrimination.etc-graz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lanki/prevod_pravnega_mne_nja.doc, last visited February 26, 2009

¹³² http://www.antidiscrimination.etc-graz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lanki/prevod_pravnega_mne_nja.doc, last visited February 26, 2009.

¹³³ http://www.antidiscrimination.etc-graz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/_268_lanki/prevod_pravnega_mne_nja.doc, last visited February 26, 2009.

¹³⁴ http://www.pic.si/index.php?option=com_content&task=view&id=65&Itemid=86, last visited 26. 2. 2009.

¹³⁵ Slovenia/Labour and Social Courts Act 2/04 (15.1. 2004).

¹³⁶ Slovenia/Labour and Social Courts Act 2/04 (15.1. 2004), Art. 35.

performing a function or engaged in an activity on behalf of a state or local authority or as a holder of public office. Any person suffering damage has the right to demand, in accordance with the law, compensation also directly from the person or body that has caused damage.¹³⁷

If his/her right to trial in reasonable time was presumably violated, the aggrieved person can base his/her claim for compensation directly on Article 26 of the Constitution when the proceeding is finally terminated. Following the adoption of the Act Regulating the Protection of Right to Trial without Undue Delay, the aggrieved individual must use the remedies available under this Act already during the trial in order to be able to claim the compensation once this trial has been concluded. The claim for compensation must be lodged with the ordinary court in the civil proceedings according to the general rules of compensation established by the Code of Obligation.¹³⁸

This provides that anyone who inflicts damage on another is obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former.¹³⁹ It follows from the jurisprudence of the Slovenian courts that the state is objectively responsible (strict responsibility) for the damages caused by the unduly protracted judicial proceedings, so that the plaintiff does not need to demonstrate the court's actual culpability (intent or negligence).¹⁴⁰

The recognized damage comprises the diminution of property (ordinary damage), prevention of the appreciation of property (lost profits), the infliction of physical or mental distress or fear on another person, and encroachment upon the reputation of a legal person.¹⁴¹

The liable person shall be obliged to re-establish the situation prior to the occurrence of damage (*restitutio in integrum*). If through the re-establishment of the previous situation the damage is not entirely rectified, the liable person is obliged to pay monetary compensation for the remainder of the damage. If the re-establishment of the previous situation is impossible or if the court is of the opinion that it is not necessary for the liable person to do such, the court shall order the liable person to pay appropriate monetary compensation to the injured party. The court shall award monetary compensation to the injured party if the latter so demands, unless the circumstances of

¹³⁷ Slovenia/Constitution 33/91, 42/97, 66/00, 24/03, 69/04, 68/06 as amended (26.12.1991), Art. 26.

¹³⁸ Slovenia/Code of Obligation 83/01, 25.10. 2001; also to that result Slovenia/High Court of Ljubljana Cp 4696/2007, 12.3. 2008; II Cp 4236/2008, 18.3 2009, II Cp 861/2009, 27.5. 2009; Supreme Court III Ips 41/2006, 18.9. 2007.

¹³⁹ Slovenia/Code of Obligation 83/01, 25.10. 2001, 131/1-3.

¹⁴⁰ Slovenia/High Court of Ljubljana II Cp 1174/2001, 12.2. 2003, also Constitutional Court U-I-65/05, 29.9. 2005, concurring opinion of justice Krisper Kramberger.

¹⁴¹ Slovenia/Code of Obligation 83/01, 25.10. 2001, 132.

the case in question justify the re-establishment of the previous situation.¹⁴² The legal basis for the compensation for the non-material damages incurred by the violation of the right to a trial without undue delay can be found in Article 179 of the Code of Obligations.¹⁴³ This provides that a just monetary compensation independent of the reimbursement of material damage shall pertain to the injured party for physical distress suffered, for mental distress suffered owing to a reduction in life activities, disfigurement, the defamation of good name or reputation, the truncation of freedom or a personal right, or the death of a close associate, and for fear, if the circumstances of the case, particularly the level and duration of distress and fear, so justify, even if there was no material damage. The amount of compensation for immaterial damage shall depend on the importance of the good affected and the purpose of the compensation, and may not support tendencies that are not compatible with the nature and purpose thereof.¹⁴⁴ The rules of compensation in the Slovenian system do not allow for a punitive effect.

The aggrieved person is thus awarded compensation for the pecuniary and non-pecuniary damages incurred with the violation of his/her right to trial without undue delay, provided that the conditions for the liability for damages are fulfilled. In determining the amount of damages the Constitutional Court insisted that the criteria established by the European Court for Human Rights must be taken into account.¹⁴⁵ In its decision II Cp 3460/2008, the High Court of Ljubljana ruled that a compensation for a non-material damage (emotional distress) caused by an unlawful delay in the judicial proceedings lasting for 4 years and 8 months is 500€. The court justified this amount by arguing that while the delay was unlawful (it could not be justified and it ran against Article 23 of the Constitution), given the general delays in other judicial proceedings in Slovenia and the fact that the internal discomfort did not cause a strong emotional distress, a higher compensation was not warranted.¹⁴⁶ In another case, in which a judicial proceeding was conducted on eight levels so that a delay lasted for 20 years and 1 month, the High Court ordered 4000€ as compensation.¹⁴⁷ In the case, in which the judgment was issued 15 months after the prescribed statutory deadline and the first stage of its execution commenced only three years later, the High Court of Ljubljana ordered 3.300€ as a way of compensation.¹⁴⁸

¹⁴² Slovenia/Code of Obligation 83/01, 25.10. 2001, 164/1-4.

¹⁴³ Slovenia/High Court of Ljubljana, VSL II Cp 5167/2007.

¹⁴⁴ Slovenia/Code of Obligation 83/01, 25.10. 2001, 179/2.

¹⁴⁵ Slovenia/Constitutional Court U-I-65/05, 22.9. 2005.

¹⁴⁶ Slovenia/High Court of Ljubljana II Cp 3460/2008, 22.10. 2008.

¹⁴⁷ Slovenia/High Court of Ljubljana II Cp 2505/2008, 21.2. 2009.

¹⁴⁸ Slovenia/High Court of Ljubljana II Cp 1174/2001, 12.2.2003.

10. Adequacy of compensation

In the discrimination cases examined there was no compensation awarded.

Relevant to levels of compensation in other areas of the law and the standard of living it seems that the compensation is reasonable.

The compensation can not have punitive effects. Its purpose is to establish the conditions prior to the violation.

11. Rules relating to the payment of legal costs

The costs of proceedings include the expenses incurred during or due to the litigation.¹⁴⁹ The costs of proceedings also consist of the lawyer's fees and fees collected by other persons under statute.¹⁵⁰ Each party shall advance the payment for costs incurred by procedural acts performed or caused to be performed by them.¹⁵¹ The party moving for the production of a piece of evidence shall pay in advance, upon a court order, the amount necessary to cover the costs which are envisaged to be incurred in the production of such evidence. If both parties move for the production of the same piece of evidence, the court shall order them to advance the necessary payment in equal amounts.¹⁵² With respect to the success of production of evidence, the court shall decide on whether the costs arising be paid by one of the parties, or by both of them, or by the court from its funds.¹⁵³

The party losing the litigation shall refund the costs incurred by the winning party and their representative.¹⁵⁴ If one party wins the litigation only partially, the court may decide, with respect to the outcome of litigation, that each party cover their own costs of proceedings, or may, considering the circumstances of the case, order one party to refund the other party and their representative an appropriate amount of the costs.¹⁵⁵ The court may decide that one party refund the total costs incurred by the opposing party and their representative if the latter failed to succeed

¹⁴⁹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 151/1.

¹⁵⁰ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 151/2.

¹⁵¹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 152.

¹⁵² Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 153/1-2.

¹⁵³ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 154/3.

¹⁵⁴ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 154/1.

¹⁵⁵ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 154/2.

only in respect of a relatively small part of their claim and when no extra expenses were due to that particular part of the claim.¹⁵⁶

In deciding which costs are to be refunded to a party, the court shall take into account only the expenses which were indispensable for the litigation. Such costs shall be determined following a careful examination of circumstances of relevance.¹⁵⁷ If a tariff provides for consideration of the lawyer's fees or other expenses, such fees and expenses shall be refunded according to the tariff.¹⁵⁸ Irrespective of the outcome of litigation, the party shall refund the opposing party the costs arising due to default of, or the accident occurring to, the former.¹⁵⁹ The court may decide that a statutory representative or attorney of the party shall refund the opposing party the expenses which have been incurred by his default.¹⁶⁰

12. Rules on burden of proof

The shift of burden of proof in the cases of alleged discrimination is a general principle implemented in the Implementation of the Principle of Equal Treatment Act. Its Article 22 stipulates that in cases where the discriminated person in the proceedings establishes facts, which justify the likelihood that the ban on discrimination has been violated, the alleged offender must prove that he or she did not violate the principle of equal treatment or the ban on discrimination in the case at hand.¹⁶¹ A very similar provision is included in Article 6 of the Employment Relationship Act. This provides that when in case of a dispute the applicant or worker presents facts, which justify the assumption that the prohibition of discrimination was violated, it shall be for the employer to prove that different treatment is justified by the type and nature of work.¹⁶²

However, it must be stressed that the principle of reversed burden of proof was not a real novelty for the Slovenian legal system. According to the Slovenian Code of Obligations in case of torts the liability of a person causing damage (i.e. also when stemming from the discriminatory acts, for example) is presupposed and he/she must compensate the aggrieved person unless he/she is

¹⁵⁶ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 154/3.

¹⁵⁷ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 155/1.

¹⁵⁸ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 155/2.

¹⁵⁹ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 156/1.

¹⁶⁰ Slovenia/Civil Procedure Act 73/07, 13.8. 2007, Art. 156/2.

¹⁶¹ Slovenia/Implementation of the Principle of Equal Treatment Act 93/07 (27.9.2007), Art. 22/2

¹⁶² Slovenia/Employment Relationship Act 42/02 and 103/07 as amended (3.5.2002), Art. 6/6.

able to exculpate him/herself.¹⁶³ The principle of reversed burden of proof has therefore been part of the established Slovenian jurisprudence for more than three decades now.

¹⁶³ Slovenia/Code of Obligations 97/07 consolidated version (1.1.2002), Art. 131.