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

Slovenia

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Implementation of Employment Directive 2000/78/EC

The right to equal treatment both in employment relationships and beyond this sphere is guaranteed by Article 14 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*).[1] This right is further detailed in the Employment Relationships Act (*Zakon o delovnih razmerjih*) *(ZDR)* which explicitly prohibits direct or indirect discrimination on the basis of sexual orientation. In 2013, the new Employment Relationships Act was adopted. It preserved many non-discrimination provisions included in the former act, but also introduced certain notable modifications. The former act, for example, only stipulated that in cases of violation of the prohibition of discrimination, an employer shall be liable to provide compensation to a job candidate or a worker under the general rules of civil law. The 2013 act added that a non-pecuniary damage incurred to a job candidate or a worker shall also encompass mental distress suffered by the victims because of unequal treatment or discriminatory conduct by an employer or because of employer's failure to provide protection against sexual or other forms of harassment suffered by the victim. It also set out that when deciding compensation for a non-pecuniary damage, it must be taken into account that the compensation is effective and proportional to the damage suffered by a job candidate or a worker and that it discourages the employer from repeating the violation.[2] In 2004 the *Zakon o uresničevanju načela enakega obravnavanja* (Implementation of the Principle of Equal Treatment Act) was adopted as a legislative measure implementing Directive 2000/43/EC and Directive 2000/78/EC.[3] Its main objective is to improve protection in relation to discrimination based on sex and other grounds, such as race or ethnic origin, health, disability, language, religious or other conviction, age, sexual orientation, education and social status. The Act bans direct and indirect discrimination, harassment and victimisation and determines sanctions for violations. It also allows positive measures if they promote the achievement of its aims or are used to compensate for the less favourable position of people with particular personal circumstances. Victims of discrimination in employment relationships can turn to the Advocate of the Principle of Equality (*Zagovornik načela enakosti*), the national equality body under Directive 2000/43/EC, as well as other special bodies instituted by Slovenian legislation (the inspection service and the Ombudsman) (*inšpekcijske službe,varuh človekovih pravic*), , as well as the courts. In the latter case, the legislation provides for a shifting of the burden of proof in favour of a victim of discrimination. NGOs have the right to participate in certain proceedings,[4] however, their role has been limited to awareness-raising activities within society and to support to vulnerable LGBT persons. In general, it is not an easy task to trace any discernible trends related to the scope and nature of discrimination on the grounds of sexual orientation

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[1] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 14(1), available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation). All hyperlinks were accessed on 13 June 2014.

[2] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

[3] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[4] Slovenia, Advocate of the Principle of Equality (*Zagovornik načela enakosti*) (2012), *Annual report of the Advocate of the Principle of Equality for the year 2011: with supplement up to 30.3.2012* [*Letno poročilo Zagovornika načela enakosti za leto 2011: z dodatkom do vključno 30.3.2012*], Ljubljana, Ministrstvo za delo, družino, socialne zadeve in enake možnosti, Služba za enake možnosti in evropsko koordinacijo, pp. 91-93, available at: www.mddsz.gov.si/uploads/media/zagovornik_LP_2011.doc.

and gender identity in the field of employment in Slovenia. The statistical data on the complaints alleging discrimination on the aforementioned grounds are, generally, rarely collected in any systematic manner in the country. Hence the employment-related cases of discrimination on the grounds of sexual orientation and gender identity are practically non-existent.

Freedom of movement

Family members of an EU citizen, whether or not they are EU nationals, can join him/her on the basis of their derived rights for the purposes of family reunification. In 2011, the new Aliens Act (*Zakon o tujcih*) was adopted. In comparison with the former act, which only dealt with the nuclear opposite-sex family, the new act provides for a more inclusive definition of family members for the purposes of family reunification. Based on the new provisions, LGBT EU nationals shall have the right to family reunification with their registered partners and other family members defined by the law.[5] At present, opposite to the registered same-sex partners, the same-sex partners who live in the non-registered durable relationship cannot enjoy the right to freedom of movement, since the national legal order does not recognise this type of living arrangements. In April 2014, the government submitted the draft proposal of the Civil Partnership Act (*Zakon o partnerski skupnosti*) for the public discussion. This proposal recognises a long-lasting relationship between the same-sex persons who have not entered into a civil partnership (i.e. non-registered partnership).[6] If it is adopted, it shall also provide for a more favourable treatment of the non-registered partners, including their rights to family reunification. Due to the lack of the statistical data as well as the case law, the trends regarding the situation of LGBT persons related to the principle of freedom of movement could not be assessed.

Asylum and subsidiary protection

The protection of aliens under Slovenian law which includes the right to refugee status and the right to subsidiary protection is regulated by the International Protection Act (*Zakon o mednarodni zaščiti*). The Act implements a number of EU directives. Grounds for persecution which entitle an individual to refugee status or subsidiary protection, *inter alia*, include the membership of a particular social group. The Act explicitly enables LGBT people to acquire refugee status. The act in question has been modified several times after its adoption. In December 2013, an additional provision was added to the act stipulating that when determining the membership of a particular social group or identifying the characteristics of such a group, it would be necessary to take into account the aspects related to gender, including gender identity.[7] Pursuant to the 2013 December amendments, the provisions governing the family reunification rights of persons to whom the international protection has been granted (refugee status or subsidiary protection) have been removed from the act. It was planned that this subject matter would be regulated in the amended Aliens Act. The relevant modifications of the Aliens Act were adopted on 3 April 2014 and shall apply from 1 January 2015. However, until the amendments of the Aliens Act take effect, the

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[5] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).

[6] Slovenia, Draft Civil Partnership Act (*Predlog Zakona o partnerski zvezi*), 14 April 2014, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/druzina/Osnutek_ZPS_140414.doc.

[7] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 1, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

provisions governing the right of refugees and persons with subsidiary protection, as set out in the International Protection Act before its 2013 December modification, are still valid.[8] Pursuant to the last mentioned act, LGBT persons who have been granted international protection are not entitled to family reunification. When the adopted amendments to the Aliens Act take effect in January 2015, they shall provide for a more favourable definition of family members. LGBT persons who have been granted international protection would be entitled to instigate their right to family reunification with their registered partners and other family members determined in the law.[9] As noted in the preceding section, the Slovenian legislation does not recognise non-registered unions of LGBT persons, and they cannot invoke the right to family reunification, but this may change if the mentioned proposal of the Civil Partnership Act is adopted.

According to the most recent unofficial data, January 2014 saw the first Slovenian case when the national asylum authorities granted a person international protection because of persecution on the ground of sexual orientation. This unofficial source, a web portal dedicated to the LGBT issues, indicates that the decision was influenced by the November 2013 ruling of the Court of Justice of the European Union confirming that same-sex asylum applicants can constitute a particular social group who may be persecuted because of their sexual orientation.[10]

Family reunification

Article 53 of the Slovenian Constitution provides that the state shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection.[11] The concept of family is, however, still bound to a relationship, either marital or extra-marital, between two individuals of different sex and their children, as defined in the Marriage and Family Relations Act.[12] The registered same-sex partnership is recognised in the Registration of Same-sex Partnership Act (*Zakon o registraciji istospolne partnerske skupnosti*).[13] This act provides for certain rights of the same-sex partners, but does not grant them the status of relatives. This was true also with the former Aliens Act which determined the alien's right to family reunification and the right to a complete family. In spite of this, the new Aliens Act, adopted in 2011 and modified in 2014, provides for a more inclusive definition of family members for the purposes of family reunification. Pursuant to the new act, LGBT non-EU nationals can invoke the right to be

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[8] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 1, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[9] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).

[10] Slovenia, [author unknown] (2014), 'The last… (27/28)' ['Zadnje… (27/28)'], 14 March 2014, available at: www.narobe.si/stevilka-27/narobe-27-28/novice/zadnje-27-28. See also: Court of Justice of the European Union (CJEU), *Joined Cases C-199/12, C-200/12 and C-201/12, X, Y, Z v. Minister voor Immigratie en Asiel*, 7 November 2013.

[11] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 53, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).

[12] Slovenia, The Marriage and family relations act (*Zakon o zakonski zvezi in družinskih razmerjih*), 4 June 1976, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zakonodaja/law_on_marriage_and_family_relations.pdf (unofficial English translation).

[13] Slovenia, The Registration of same-sex partnership act (*Zakon o registraciji istospolne partnerske skupnosti*), 22 June 2005, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/z_registracija_ips_en.pdf (unofficial English translation).

reunited with their registered partners, as well as their other family members defined by the law (e.g. their unmarried children, or unmarried children of one of the partners), provided that they hold a permanent residence permit or a temporary residence permit valid for at least one year.[14] The same as with the EU nationals and the persons under international protection, LGBT non-EU nationals living in the non-registered arrangements cannot, at present, invoke their right to family reunification. However, if the mentioned draft proposal of the Civil Partnership Act is adopted, their situation regarding family reunification could improve.[15] In Slovenia, there is a lack of the statistical data as well as case law concerning the family reunification rights of LGBT non-EU nationals, so any particular trends in this respect could not be analysed.

Freedom of assembly

Freedom of assembly is guaranteed by Article 42 of the Constitution[16] and implemented by the *Zakon o javnih zbiranjih* [Public Gatherings Act].[17] LGBT people have exercised their right to freedom of assembly freely. There have been no reports of official prohibition of LGBT events. Similarly, there is no record of demonstrations against tolerance of LGBT people. However, parades have sometimes been accompanied by disrespectful graffiti or slogans and there have been reports of some isolated cases of physical violence against LGBT people in the aftermath of parades. The authorities have always reacted to such events in accordance with the law and any physical violence or interference by third parties with the rights of LGBT people has led to severe and unanimous condemnation from the highest Slovenian officials as well. In the period covered by this update, there have been no reports on the obstacles regarding freedom of expression and freedom of assembly of LGBT people in Slovenia, including the official prohibition of events in support to LGBT community. Generally, demonstrations against the tolerance of LGBT community have not been recorded. Pride parades, however, have been surrounded by the various types of incidents (e.g. offensive graffiti, offensive content on the internet, offensive statements by certain politicians and physical violence involving damages on LGBT-friendly places). Since 2009, in at least three cases, individuals were identified, prosecuted and penalised for the offences perpetrated in the period surrounding pride parades.[18]

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[14] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).

[15] Slovenia, Draft Civil Partnership Act (*Predlog Zakona o partnerski zvezi*), 14 April 2014, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/druzina/Osnutek_ZPS_140414.doc.

[16] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 42, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).

[17] Slovenia, The Public gatherings act (*Zakon o javnih zbiranjih*), 20 June 2002, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1455 (unofficial consolidated text).

[18] See e.g. Slovenia, District Court in Ljubljana (*Okrožno sodišče v Ljubljani*), Judgment No. III 5357/2010, 10 March 2010. See also: Slovenia, Local Court in Sevnica (*Okrajno sodišče v Sevnici*), Judgment No. I K 46756/2012, 23 November 2012.

Hate speech and criminal law

Article 63 of the Constitution prohibits 'any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance'.[19] Hate speech is incriminated by the Criminal Code (*Kazenski zakonik*), which also incriminates discrimination. This Act also penalises a violation of the right to equality, including on the basis of sexual orientation. Hate speech directed towards LGBT people is proscribed by a number of other statutes. In general the Slovenian penal system does not take into account if a common crime (such as robbery or assault) is committed with a homophobic motivation. This is not a special or independent element of the relevant crimes. However, in the case of the offence of murder only, aggravating circumstances include what could be described as homophobic intent (Article 116 in conjunction with Article 131 of the Penal Code).[20] In the trial before the District Court in Ljubljana concerning a violent attack on a gay activist prior to the pride parade three perpetrators were sentenced to jail for 18 months each in 2010.[21] Their sentences were reduced by the Higher Court in 2011.[22] The available information suggests that the case in question has been the only case in which the perpetrators of homophobic crimes received non-suspended prison sentence. Because the case was subject to the considerable public attention, it is also considered to be a landmark case. In general, the relevant bodies in Slovenia do not collect data on the criminal offences motivated by homophobia/transphobia, and it is not possible to assess the trends in this type of crimes over time. However, in the period covered by this update, several other cases of the homophobic incidents, mostly related to internet-based hate speech, were brought to the courts which found the offenders guilty.

Transgender issues

The discrimination of transgender people is encompassed by a constitutional prohibition of discrimination on the basis of 'any other personal circumstance'. However, there are no specific laws comprehensively addressing the status and position of transgender people in Slovenia. The change of name following a possible gender reassignment is not specifically regulated. It is regulated by the Personal Name Act (*Zakon o osebnem imenu*) which does not stipulate the special formalities for the change of name.[23] The gender reassignment is only mentioned in one law. The Registry of Deaths, Births and Marriages Act (*Zakon o matičnem registru*), adopted in 2003, only stipulates that gender change shall be among the data which are recorded in the registry.[24] An implementing regulation adopted on the basis of this act stipulates that registration of gender change shall be possible upon the issuance of the medical notification showing that a person has changed their gender. The legislation does not lay

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[19] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 63, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).

[20] Slovenia, The Criminal code (*Kazenski zakonik*), 20 May 2008, and subsequent modifications, Art. 297, available at: www.uradni-list.si/1/objava.jsp?urlid=201250&stevilka=2065 (official consolidated text).

[21] See e.g. Slovenia, District Court in Ljubljana (*Okrožno sodišče v Ljubljani*), Judgment No. III 5357/2010, 10 March 2010.

[22] Slovenia, Higher Court in Ljubljana (*Višje sodišče v Ljubljani*), Judgment No. II Kp 5357/2010, 15 June 2011, available at: www.sodisce.si/vislj/odlocitve/2012032113063416/.

[23] Slovenia, The Personal name act (*Zakon o osebnem imenu*), 1 February 2006, available at: www.uradni-list.si/1/objava.jsp?urlid=200620&stevilka=746 (official text).

[24] Slovenia, Registry of Deaths, Births and Marriages Act (*Zakon o matičnem registru*, ZMatR), 27 March 2003, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3354 (unofficial consolidated text).

down conditions for the issuance of such a notification.[25] According to a representative of Interdisciplinary medical council for gender change, in practice, the medical notification showing that a person has changed their gender is issued on the request of an individual during the hormonal therapy, whereas the individual lives full-time in their preferred gender (real-life experience).[26] However, a report produced by a group of NGOs on the application of the European Social Charter (revised) in Slovenia suggests that the current legislative framework governing gender change results in a legal uncertainty for transgender persons, as the legal recognition of their acquired gender may, in some cases, be conditioned by the invasive medical treatment.[27] The available statistical data show that there were three persons whose acquired gender was legally recognised in 2009, compared to five persons in 2010, one person in 2011, and one person in 2012, while six persons legally changed their gender in 2013.[28]

Miscellaneous

The Registration of Same-Sex Partnership Act provides for certain listed rights which are recognised for such partners.[29] It does not establish a form of union equivalent to marriage and remains distinct from the provisions of the *Zakon o zakonski zvezi in družinskih razmerjih* [Marriage and Family Relations Act].[30] The most obvious difference is certainly the lack of any provisions concerning children. Other shortcomings have been identified as well. The government has drafted a new Family Code which is currently in the parliamentary procedure. If adopted, it shall result in a complete equalization of same-sex life communities with those of heterosexual life communities regarding all important matters: property, health, family, including the adoption of children. The adoption of the Family Code, a piece of legislation governing the family relationships was a major legal development concerning the Slovenian LGBT community in the period covered by this update. It was adopted in 2011 and provided that the registered same-sex partners as well as the non-registered same-sex partners shall be treated on an equal footing with the opposite-sex partners in all legal matters except in regard to marriage, joint adoptions and automatic recognition of parental rights for the biological parent's registered partner.[31] However, the Family Code was rejected in a public referendum

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[25] Slovenia, The Rules on the implementation of the Births, Deaths and Marriages Registry Act (*Pravilnik o izvrševanju zakona o matičnem registru*), 13 April 2005, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV5572 (unofficial consolidated text).

[26] Slovenia, Information was provided by member of the Interdisciplinary medical council for gender change (*interdisciplinarni konzilij za spremembo spola*) upon request, 26 February 2014.

[27] Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), Transgender Europe (TGEU), ILGA-Europe (2013), *Submission by Legebitra , Transgender Europe and ILGA-Europe on the 12th report by Slovenia on the implementation of the European Social Charter (revised): Article 11 – The right to protection of health: Medical treatment as compulsory requirement for legal gender recognition*, Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), Transgender Europe (TGEU), ILGA-Europe, available at: www.amnesty.si/media/uploads/files/LEGEBITRA,TGEU%20and%20ILGA-Europe%20Social%20Charter%20Shadow%20Report%20on%20Slovenia%20-%20coerced%20medical%20treatment%20-%2018%20July%202013-1.doc.

[28] Slovenia, Information was provided by the Ministry of the Interior (*Ministrstvo za notranje zadeve*) upon request, 22 April 2014.

[29] Slovenia, The Registration of same-sex partnership act (*Zakon o registraciji istospolne partnerske skupnosti*), 22 June 2005, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/z_registracija_ips_en.pdf (unofficial English translation).

[30] Slovenia, The Marriage and family relations act (*Zakon o zakonski zvezi in družinskih razmerjih*), 4 June 1976, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zakonodaja/law_on_marriage_and_family_relations.pdf (unofficial English translation).

[31] Slovenia, The Family Code (*Družinski zakonik*), 16 June 2011, available at: http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD0QFjAC&url=http%3A%2F%2Fwww.mddsz.gov.si%2Ffileadmin%2Fmddsz.gov.si%2Fpageuploads%2Fdokumenti__pdf%2Fword%2FDZak-sprejet-16-6-

and the existing legislation, namely the Registration of Same-sex Partnership Act (*Zakon o registraciji istospolne partnerske skupnosti*), is still in place. Since it regulates a limited number of fields, LGBT persons tend to face obstacles in different life situations. For example, the same-sex partners have no access to health insurance through the partner, to the right to ask for paid sick leave to care for a sick partner,[32] or to the right to stay in the rental apartment in case of death of the partner who was a signatory of the lease agreement.[33] The period covered by this update also saw some advancement. The first single-parent adoption was successfully completed in Slovenia,[34] the right to survivor's pension was granted to the registered same-sex partners under equal conditions as to the married opposite-sex couples,[35] while the Constitutional Court established that the non-registered LGBT partners must enjoy the same level of inheritance rights as the opposite-sex couples living in extra-marital union.[36]
As noted earlier, on 14 April 2014, the government also submitted the draft proposal of the Civil Partnership Act (*Zakon o partnerski skupnosti*) for the public discussion. This piece of legislation is intended to replace the existing Registration of the Same-sex Partnership Act. Apart from the joint adoption and procedures of biomedically-assisted procreation, it shall provide that the same-sex couples, whether in civil partnership or not, are treated on equal grounds with the opposite-sex couples.[37] However, since the adoption procedure is only in its initial phase, its outcome cannot be predicted.

Good practices

In Slovenia, the four particular cases of good practice concerning LGBT community can be singled out. The first relates to employers who can use various formal and informal means for securing a safe working environment for LGBT people. Two large Slovenian public companies thus lead by example by including prohibition of discrimination on the basis of other personal circumstances (i.e. sexual orientation) in their internal company codes. The second case of good practice relates to the cooperation between NGOs, trade unions, employers and the Slovenian government, the recent result of which has been the publication of two manuals containing a comprehensive guide for trade unions of how to counter discrimination in their negotiations with employers, as well as for the employers when dealing with workers.[38] Another example of the promising practice includes Web Eye (*Spletno oko*), an internet-based contact point, where the concerned individuals may

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11.doc&ei=o79LU9qkEO7BygOqh4GQBA&usg=AFQjCNGGqK8ytJ4Pypx_MAQiUq1HjGqLlg&bvm=bv.64542518,d.bGQ&cad=rja. (Not valid, rejected in public referendum.)

[32] Slovenia, The Health care and health insurance act (*Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*), 12 February 1992, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213 (unofficial consolidated text).

[33] Slovenia, The Housing act (*Stanovanjski zakon*), 19 June 2003, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2008 (unofficial consolidated text).

[34] Slovenia, Ministry of Labour, Family and Social Affairs (*Ministrstvo za delo, družino in socialne zadeve*), Decision No. 12030-7/2011/4, 14 July 2011.

[35] Slovenia, The Pension and disability insurance act (*Zakon o pokojninskem in invalidskem zavarovanju*), 4 December 2012, and subsequent modifications, available at: http://imss.dz-rs.si/imis/533b84d5857242b9e9b6.pdf (unofficial consolidated text).

[36] Slovenia, Constitutional Court (*Ustavno sodišče*), U-I-212/10, 14 March 2013, available at: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/FC62EF78571FE59EC1257B4800408D62.

[37] Slovenia, Draft Civil Partnership Act (*Predlog Zakona o partnerski zvezi*), 14 April 2014, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/druzina/Osnutek_ZPS_140414.doc.

[38] Slovenia, Greif, T. (2006), *Measures against discrimination in employment for trade unions* [*Ukrepi proti diskriminaciji v zaposlovanju za sindikate*], Ljubljana, ŠKUC, available at: www.ljudmila.org/lesbo/EQUAL/pdf/Ukrepi_proti_diskriminaciji_SINDIKATI.pdf; Slovenia, Greif, T. (2006), *Measures against discrimination in employment for employers* [*Ukrepi proti diskriminaciji v zaposlovanju za delodajalce*], Ljubljana, ŠKUC, available at: www.ljudmila.org/lesbo/EQUAL/pdf/Ukrepi_proti_diskriminaciji_DELODAJALCI.pdf.

anonymously report, among other things, the instances of hate speech, including homophobic hate speech, as defined in the provisions of Criminal Code providing for the prohibition of public incitement to hatred, violence and intolerance. In case that the reported content includes the signs of violation of the relevant legislation, including the provisions prohibiting incitement to hatred, violence or intolerance, the police are informed.[39] An other example includes the project Activate! (*Povej naprej!*) carried out by the Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), a LGBT NGO. The main objective of this programme is recording of and intervention in cases of breaches of human rights based on sexual orientation and gender identity. It is aimed at raising awareness of and at improved identification of cases of violation of human rights of LGBT persons.[40] The programme was set up in order to provide LGBT persons with the information in cases of violence and/or discrimination and with the additional systematic support if the victims decide to take further steps to address violation they face, and as a response to the more frequent observations of instances of hate speech, harassment and violence faced by LGBT persons in Slovenia.[41]

Intersex

Discrimination on the grounds of intersex is not explicitly outlawed in Slovenia. As of yet, only one competent body, namely the Advocate of the Principle of the Equality, referred to the intersex people when observing discrimination complaints. Based on the cases observed by the Advocate, it seems that the Advocate observed the situation of intersex people based on gender identity.[42] In Slovenia today, no comprehensive non-discrimination policy document has been adopted. In general, no policy document referring to intersex persons could be identified. The Register of Deaths, Births and Marriages Act (*Zakon o matičnem registru*) defines the concept and content of the register of deaths, births and marriages. Pursuant to the law, the register shall be a computerised database in which different events (e.g. birth, marriage, adoption or death) shall be recorded. With respect to a child's birth, it shall be mandatory to record their gender in the register.[43]

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[39] See e.g. Slovenia, Safer Internet Centre, Web Eye (*Center za varnejši internet, Spletno oko*) (2013), *Annual report 2012/2013* [*Letno poročilo 2012/2013*], Ljubljana, Fakulteta za družbene vede, Center za varnejši internet, Spletno oko, available at: http://mi.ris.org/uploadi/editor/1401274445Spletno_Oko_Letno_Porocilo.pdf. See also: See also: Slovenia, Web Eye (*Spletno oko*), JK Group (2013), *Wise moderator moderates: Handbook for moderator of user content, website editors and all who are interested in the issue of hate speech on the internet* [*Modri Moderator Moderira; priročnik za moderatorje uporabniških vsebin, urednike spletnih mest in vse, ki jih zanima problematika sovražnega govora na spletu*], Ljubljana, Fakulteta za družbene vede, Center za varnejši internet, Spletno oko, available at: http://mi.ris.org/uploadi/editor/1386254339Moder_Moderator_final.pdf.

[40] Se e.g. Slovenia, Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*) (2008), *ACTIVATE! Report: Research, monitoring and recording of cases of discrimination and rights violations against LGBT people in Slovenia in the period from November 2007 to November 2008*, Ljubljana, Društvo informacijski center Legebitra, available at: www.ilga-europe.org/home/what_we_do/ilga_europe_as_a_funder/completed_projects/activate_against_discrimination_on_the_basis_of_sexual_orientation_and_gender_expression/documentation_report_in_english.

[41] Information was provided by the the Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), 10 October 2013.

[42] Slovenia, Advocate of the Principle of Equality (*Zagovornik načela enakosti*), Opinion No. 0921-22/2010-7, available at: www.zagovornik.gov.si/uploads/media/mnenje_ponosen__na_spol.doc; Slovenia, Advocate of the Principle of Equality (*Zagovornik načela enakosti*), Opinion No. 0921-41/2011-UEM/10, available at: www.zagovornik.gov.si/uploads/media/mnenje_ponosn_a__na__s_pol_2011.docx.

[43] Slovenia, The Register of deaths, births and marriages act (*Zakon o matičnem registru*), 27 March 2003, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3354 (unofficial consolidated text).

1 Implementation of Employment Directive 2000/78/EC

1.1 Constitutional and statutory provisions

1.1.1 The Constitution

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

> *In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other opinion, material standing, birth, education, social status, disability or any other personal circumstance.*[44]

In accordance with Article 14, para. 2 of the Constitution, all persons shall be equal before the law.[45] The principle of equality is bound by some particular constitutional provisions explicitly referring to equality and equal rights. In this way, Article 22 of the Constitution guarantees the equal protection of rights.[46]

The Commission for Constitutional Affairs (*Ustavna komisija*) of the Parliament of the Republic of Slovenia conferred an official interpretation on the above-mentioned Article 14 of the Constitution: 'The term "personal circumstances" included in Article 14 of the Constitution includes the "same- sex" orientation of an individual. The prohibition of discrimination on the basis of sexual orientation is thus contained in this Article.' The Commission for Constitutional Affairs did not refer explicitly to any special personal circumstance, for they are ordinarily not explicitly enumerated in the conventions or constitutional texts, rather their judicial and other protection is secured in this more general manner.[47] According to the mentioned source, the Commission explicitly used the term 'same-sex orientation'.

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[44] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 14(1), available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).

[45] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 14(2), available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation). See also: Slovenia, Constitutional Court (*Ustavno sodišče*), U-I-94/05, 26 October 2006: *'A party in the procedure is entitled to fundamental procedural guarantees, which include the right to a statement and the right to equal treatment of parties in the procedure'*.

[46] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 22, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation). See also: Slovenia, Constitutional Court (*Ustavno sodišče*), Up-1055/05, 19 January 2006: *'A party in the procedure is entitled to fundamental procedural guarantees, which include the right to a statement and the right to equal treatment of parties in the procedure'*.

[47] Slovenia, DIH – Association for the integration of homosexuality, Association of friends of Legebitra, Škuc LL, Škuc Magnus, Škuc Pink Club (*DIH - Društvo za integracijo homoseksualnosti, Društvo prijateljev Legebitre, Škuc LL, Škuc Magnus in Škuc Roza Klub*) (2004), 'For the country of equal opportunities: Invitation to the Members of Parliament and to the heads of parliamentary groups to provide support to the law on same-sex partnership' ['Za državo enakih možnosti: Poziv poslankam in poslancem ter vodjem poslanskih skupin k podpori zakona o istospolni partnerski zvezi'], Public release, 25 May 2004, available at: www.ljudmila.org/sgs/modules.php?name=News&file=print&sid=283.

1.1.2 The Employment Relationships Act

The Employment Equality Directive was firstly implemented in Slovenia by adoption of the 2002 Employment Relationships Act (*Zakon o delovnih razmerjih*) which provided for explicit prohibition of discrimination on the basis of sexual orientation.[48] In 2013, this act was replaced with the new Employment Relationships Act (*Zakon o delovnih razmerjih*).[49] In general, the field of employment remains the most comprehensively covered field of life in terms of the provisions guaranteeing equal treatment. The new act preserved a variety of solutions already existing in the former act, but also introduced certain new provisions or provided that certain existing provisions were stipulated in a more comprehensive manner. The new act, among other things, provides for prohibition of direct and indirect discrimination against job seekers, during employment and regarding the termination of employment contracts on a number of grounds (nationality, race or ethnic origin, national or social background, gender, skin colour, state of health, disability, faith or beliefs, age, sexual orientation, family status, trade union membership, financial standing or other personal circumstances).[50] Employers are obliged to provide for equal treatment regarding the access to employment, promotion, training, education, re-qualification, salaries and other benefits from the employment relationship, absence from work, working conditions, working hours and the cancellation of employment contracts.[51] The law further stipulates that the instruction for discrimination shall be regarded as cases of direct or indirect discrimination,[52] and provides for the prohibition of victimisation at workplace.[53] Article 7 of the act prohibits sexual or other forms of harassment at workplace.[54] In cases when a job candidate or worker present facts indicating that the principle of non-discrimination has not been respected, the burden to prove that the principle of non-discrimination has not been violated shall rest with an employer.[55] The former act governing the employment relationships only stipulated that in cases of violation of the prohibition of discrimination an employer shall be liable to provide compensation to a job candidate or a worker under the general rules of civil law. The newly introduced law provides for the more elaborated provisions. It also rules that a non-pecuniary damage incurred to a job candidate or a worker shall also encompass mental distress suffered by the victims because of unequal treatment or discriminatory conduct by an employer or because of employer's failure to provide protection against sexual or other forms of harassment suffered by the victim. The law further specifies that when deciding on the compensation for a non-pecuniary damage, it must be taken into account that the

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[48] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 24 April 2002, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1420 (unofficial consolidated text).

[49] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

[50] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, Art. 6(1) and 6(3), available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

[51] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, Art. 6(2), available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

[52] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, Art. 6(3), available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

[53] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, Art. 6(7), available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

[54] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, Art. 7, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

[55] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, Art. 6(6), available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).

compensation is effective and proportional to the damage suffered by a job candidate or a worker and it discourages the employer from repeating the violation.[56]

1.1.3 Complementary anti-discrimination legislation

In order to ensure that similar provisions are included in other laws, to strengthen the public perception that discrimination on the grounds of sexual orientation is prohibited, complementary anti-discrimination legislation was adopted. The legislature believed that the Implementation of the Principle of Equal Treatment Act (*Zakon o uresničevanju načela enakega obravnavanja*) would strengthen the public perception regarding discrimination, especially with reference to the already existing constitutional guarantees of prohibition of discrimination and the prohibition of incitement to discrimination and intolerance.[57]

The Implementation of the Principle of Equal Treatment Act is a piece of legislation with a general scope of application prohibiting discrimination against any person in the exercise of his/her rights and duties and in the exercise of his/her fundamental freedoms in any aspect of the social sphere, in particular in the fields of employment, employment relations, affiliation to unions and interest organisations, upbringing and education, social protection, including social security and healthcare, as well as the access to and provision of goods and services, including housing.[58] It was adopted in May 2004 and it seeks to implement Directives 2000/43/EC and 2000/78/EC.
Its main objective is to improve protection against discrimination based on sex and other grounds, such as race or ethnic origin, health, disability, language, religious or other conviction, age, sexual orientation, education and social status. Sexual orientation is explicitly listed among the list of prohibited grounds of discrimination. The Act bans direct and indirect discrimination, harassment and victimisation and determines sanctions for violations. It allows the adoption of positive action measures if they contribute to the aim of promoting equality or compensate for existing inequalities.

The Act also provides for the establishment of the Council of the Government for the Implementation of the Principle of Equal Treatment (*Svet vlade za uresničevanje načela enakega obravnavnja*). Pursuant to the Implementation of the Principle of Equal Treatment Act, the Council is the expert and consultative body of the government for the implementation of the principle of equal treatment. The body is not independent, and cannot be considered as an equality body. The act in question only vaguely defines the task of the Council. It only stipulates that the Council shall monitor and assess the situation of individual social groups and, to this end, shall cooperate with the competent state bodies and other institutions operating in the field of equal treatment of persons and prevention of discrimination based on personal circumstances. [59] In 2004, the government set up the

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[56] Slovenia, The Employment relationships act (*Zakon o delovnih razmerjih*), 5 March 2013, Art. 8, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/zakonodaja/zdr1_en.doc (unofficial English translation).
[57] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 63, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).
[58] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).
[59] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 9, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

Council with a decree.[60] In 2005, it appointed the Council's members. This Council was operational until 2008, when the mandate of its members expired. In 2009, the government re-established the body with a new decree.[61]

Pursuant to the 2009 decree, the Council monitors the implementation of the provisions of the Implementation of the Principle of Equal Treatment Act, monitors and assesses the situation of individual social groups with a view to the principle of equal treatment, submits proposals for the adoption of regulations and measures necessary for the implementation of the principle of equal treatment, submits initiatives promoting education, awareness raising and research in the field of equal treatment and acts as consultative body within the framework of the PROGRESS programme in respect to the field of non-discrimination and diversity.[62] The mandate of the members of the 2009 Council expired in 2013. At the time of submission of this update, the body is not operational.

In general, the available data suggests that the Council tended to be an ineffective body. For example, an analysis of the institutional arrangements in Slovenia in the field of non-discrimination showed that the Council did not monitor the situation of the specific social groups in practice.[63] In their last report, covering the work of the body in 2011 and the first quarter of 2012, the Advocate of the Principle of Equality noted that the council did not produce any independent studies and reports and could not be regarded as an independent body, since its majority is composed of the government officials. According to the Advocate, the Council only serves as a vehicle for the government cooperation with the selected parts of the interested public, and its function tends to be the familiarisation with the government projects.[64]

The Act also assigns duties to the Advocate of the Principle of Equality (*Zagovornik načela enakosti*) in relation to the consideration of informal complaints regarding anti-discrimination rules. The Advocate is the national equality body under Racial Equality Directive, but also functions as a horizontal body observing the claims of discrimination on other protected grounds, including sexual orientation. The body reviews claims of the alleged discrimination both in public and private sector and in various walks of life, as covered by the act in question (please see above).[65] The review of an alleged violation of the prohibition of discrimination

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[60] Slovenia, The Decree on the establishment, composition, organisation and tasks of the Council of the Government of the Republic of Slovenia for the Implementation of the Principle of Equal Treatment (*Sklep o ustanovitvi, sestavi, organizaciji in nalogah Sveta Vlade Republike Slovenije za uresničevanje načela enakega obravnavanja*), 26 August 2004, and subsequent modifications.

[61] Slovenia, The Decree on the establishment, composition, organisation and tasks of the Council of the Government of the Republic of Slovenia for the Implementation of the Principle of Equal Treatment (*Sklep o ustanovitvi, sestavi, organizaciji in nalogah Sveta Vlade Republike Slovenije za uresničevanje načela enakega obravnavanja*), 17 September 2009, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/SUNEO1SklepVlade.doc.

[62] Slovenia, The Decree on the establishment, composition, organisation and tasks of the Council of the Government of the Republic of Slovenia for the Implementation of the Principle of Equal Treatment (*Sklep o ustanovitvi, sestavi, organizaciji in nalogah Sveta Vlade Republike Slovenije za uresničevanje načela enakega obravnavanja*), 17 September 2009, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/SUNEO1SklepVlade.doc.

[63] Slovenia, Office for Equal Opportunities (*Urad za enake možnosti*) (2011), *Analysis of institutional arrangements for the promotion of equality and protection against discrimination in the Republic of Slovenia* [*Analiza institucionalne ureditve spodbujanja enakosti in varstva pred diskriminacijo v Republiki Sloveniji*], Ljubljana, Urad za enake možnosti, available at: www.cnvos.si/UserFiles/File/Zagovornistvo/Postopek%20izbora/aktualni_postopki/ZUNEO/Spodbujanje%20enakosti%20in%20varstvo%20pred%20diskriminacijo%20-%20analiza%20ureditve.pdf.

[64] Slovenia, Advocate of the Principle of Equality (*Zagovornik načela enakosti*) (2012), *Annual report of the Advocate of the Principle of Equality for the year 2011: with supplement up to 30.3.2012* [*Letno poročilo Zagovornika načela enakosti za leto 2011: z dodatkom do vključno 30.3.2012*], Ljubljana, Ministrstvo za delo, družino, socialne zadeve in enake možnosti, Služba za enake možnosti in evropsko koordinacijo, pp. 91-93, available at: www.mddsz.gov.si/uploads/media/zagovornik_LP_2011.doc.

[65] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 11, available at:

begins with the receipt of a written or oral complaint which can be anonymous, provided that it contains sufficient elements for a substantive review.[66] Manifestly unfounded applications are not reviewed.[67] The application must be filed as soon as possible, but no later than one year after the alleged discrimination was committed. However, in specially justified cases the application can be reviewed even after the expiry of the set time limit.[68] The procedure before the Advocate is informal, confidential, free of charge,[69] and normally conducted in writing.[70] The Advocate can issue a written request during the procedure to the alleged perpetrator asking him/her to protect the victim of discrimination from further acts of victimisation or to remove any existing consequences.[71] The procedure closes with a legally non-binding written opinion which contains the main findings about the case and their assessment in the light of the alleged discrimination. The written opinion is served to both parties in the case. The perpetrator may be issued with recommendations about the removal of the negative consequences of a violation, with a duty to report back on adopted remedial measures.[72] In addition to this complaints procedure, an individual can also apply to the Advocate for an advisory opinion as to whether a particular act, commission or omission could violate the principle of equality on the basis of personal circumstances.[73] The Equality Advocate issues yearly reports about its activity.[74]

In cases where the perpetrator does not cease his/her discriminatory behaviour or does not remove the resulting negative consequences of the discrimination or does not comply with the Advocate's recommendations, the Advocate can submit the case to the inspection service

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www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[66] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 12(1), available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[67] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 12(2), available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[68] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 13, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[69] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 14, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[70] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 15, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[71] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 16, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[72] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 17(1), (2), available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[73] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 18, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[74] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 19, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

(*inšpekcijska služba*).[75] The inspection service must review the Advocate's opinion and, if it determines that the grounds of discrimination are indeed established, it will initiate a misdemeanour procedure. During this procedure the inspection service can adopt provisional measures to protect the victim.[76]

The institution of the Ombudsman is another avenue for countering discrimination on the basis of sexual orientation in the fields of employment as well as elsewhere. The Ombudsman is an institution for the out-of-court and informal protection of human rights and basic freedoms. According to the Constitution, its function is to protect human rights and basic freedoms in matters involving state bodies, local government bodies and statutory authorities. He/she is elected on the proposal of the President of the Republic by the National Assembly with a two-thirds majority of all Deputies.[77]

Proceedings before the Ombudsman are confidential and free of charge for the parties.[78] Anyone who thinks that their human rights or basic freedoms have been violated by an act or action of a government body, local government body or statutory authority, may propose the initiation of such proceedings. The Ombudsman may also start proceedings on his/her own initiative.[79] The Ombudsman is empowered to submit proposals, opinions, critiques or recommendations to state bodies, local government bodies and statutory authorities, which these are obliged to discuss and respond to within the term determined by the Ombudsman.[80] They are also obliged to submit, at the request of the Ombudsman, all data and information which they possess (regardless of the degree of confidentiality) and cooperate in the inquiry.[81] The Ombudsman may submit initiatives for amendments of statutes and other legal acts to the National Assembly and the government and gives his/her opinion to all other bodies from the viewpoint of the protection of human rights and basic freedoms on the issue dealt with.[82] However, the Ombudsman may not treat issues dealt with in judicial or other legal proceedings except in the case of an unjust delay of the proceedings or obvious abuse of authority.[83]

Finally, there is the judicial route. The aggrieved individual can bring a case of alleged discrimination on the basis of sexual orientation before the courts. Slovenian legislation

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[75] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 20, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[76] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 21, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[77] Slovenia, The Human Rights Ombudsman act (*Zakon o varuhu človekovih pravic*), 20 December 1993, and subsequent modifications, Art. 2 and 12, available at: www.varuh-rs.si/index.php?id=91&L=6 (unofficial English translation).

[78] Slovenia, The Human Rights Ombudsman act (*Zakon o* varuhu *človekovih pravic*), 20 December 1993, and subsequent modifications, Art. 9(3), available at: www.varuh-rs.si/index.php?id=91&L=6 (unofficial English translation).

[79] Slovenia, The Human Rights Ombudsman act (*Zakon o varuhu človekovih pravic*), 20 December 1993, and subsequent modifications, Art. 9(1), available at: www.varuh-rs.si/index.php?id=91&L=6 (unofficial English translation).

[80] Slovenia, The Human Rights Ombudsman act (*Zakon o varuhu človekovih pravic*), 20 December 1993, and subsequent modifications, Art. 7, available at: www.varuh-rs.si/index.php?id=91&L=6 (unofficial English translation).

[81] Slovenia, The Human Rights Ombudsman act (*Zakon o varuhu človekovih pravic*), 20 December 1993, and subsequent modifications, Art. 6, available at: www.varuh-rs.si/index.php?id=91&L=6 (unofficial English translation).

[82] Slovenia, The Human Rights Ombudsman act (*Zakon o varuhu človekovih pravic*), 20 December 1993, and subsequent modifications, Art. 25, available at: www.varuh-rs.si/index.php?id=91&L=6 (unofficial English translation).

[83] Slovenia, The Human Rights Ombudsman act (*Zakon o varuhu človekovih pravic*), 20 December 1993, and subsequent modifications, Art. 24, available at: www.varuh-rs.si/index.php?id=91&L=6 (unofficial English translation).

facilitates the task of the victim by allowing for a shift in the burden of proof. This issue is regulated in Article 22 of the Implementation of the Principle of Equal Treatment Act, which reads as follows:

> (1*) In cases of a violation of the prohibition of discrimination, determined in Article 3 of this act, the discriminated persons can request for a review of the violation in judicial and administrative proceedings, under the conditions and in the manner determined by law, and have the right to compensation according to the general rules of civil law. (2) When, in cases described in the previous paragraph, the discriminated person states facts which substantiate a presumption that the prohibition of discrimination was violated, the defendant must prove that s/he did not violate the principle of equal treatment or the prohibition of discrimination in the case at issue.*[84]

1.2 The role of NGOs

The Implementation of the Principle of Equal Treatment Act provides that NGOs can, in accordance with the law, participate in judicial and administrative procedures initiated by individuals alleging to have been subject to unlawful discrimination.[85] Given the lack of cases before the courts, this legal opportunity so far has not been used very frequently, if all. It is , however, worthwhile noting that the mentioned provision is very general, and the involvement of NGOs in the relevant procedures depends thus of the procedural laws governing the specific fields of law. The relevant acts currently in place include the General Administrative Procedure Act (*Zakon o splošnem upravnem postopku*),[86] the Administrative Dispute Act (*Zakon o upravnem sporu*),[87] the Civil Procedure Act (*Zakon o pravdnem postopku*),[88] as well as the Criminal Procedure Act (*Zakon o kazenskem postopku*),[89] In accordance with these acts, the direct involvement of the representatives of NGOs either on behalf or in support of discriminated persons is limited to the administrative procedures before the administrative bodies, to small claims proceedings before Local Courts (*Okrajna sodišča*) and to criminal proceedings on the condition that they possess legal capacity. In all other proceedings before the District Courts (*Okrožna sodišča*), the Higher Courts (*Višja sodišča*), including the Administrative Court (*Upravno sodišče*), which has the status of a higher court, and the Supreme Court (*Vrhovno sodišče*), persons affected shall be represented by a law firm, which is the only legal person with the legal standing, or by an individual

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[84] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 22, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[85] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 23, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).

[86] Slovenia, The General administrative procedure act (*Zakon o splošnem upravnem postopku*), 16 September 1999, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603 (unofficial consolidated text).

[87] Slovenia, The Administrative dispute act (*Zakon o upravnem sporu*), 28 September 2006, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4732 (unofficial consolidated text).

[88] Slovenia, The Civil procedure act (*Zakon o pravdnem postopku*), 25 March 1999, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212 (unofficial consolidated text).

[89] Slovenia, The Criminal procedure act (*Zakon o kazenskem postopku*), 29 september 1994, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362 (unofficial consolidated text).

attorney or a person who has passed the State Bar Exam. As a consequence, an NGO may only indirectly engage in other relevant proceedings. Even in the case an NGO employs an attorney or a person who has passed the State Bar Exam, this particular person may represent the persons facing discrimination only as a natural person. Therefore, NGOs have no client-lawyer relationship with the victims, and cannot appear at courts as legal persons acting on behalf or in support of the discriminated persons. In addition, an NGO may appear in the administrative and civil procedures as the so-called side intervenient (*stranski intervenient*). A side intervenient is a legal or a natural person who can join one of the parties in dispute, provided that they prove their legal interest (i.e. the legal interest or benefit of the intervenient would be affected if the party to whom the intervenient wanted to join lost the case). It must be pointed out, however, that certain general interest (e.g. that the discriminated persons win the case) does not represent a sufficient basis for an NGO to engage in the relevant proceeding. Even if the particular NGO is active in the fight against discrimination, it may take part in the proceedings only when its particular legal interest is affected.[90] The Advocate of the Principle of Equality, for example, stresses that the current system does not provide for the legal standing of the NGOs in the procedures before the district and higher courts as well as the supreme court, as well as in the procedures before the administrative court, that is - in the more demanding procedures where the support of and the representation by NGOs could be crucial for the victims.[91] In the period covered by this update, the Advocate's opinion has not resulted in any legislative changes, and, generally, has not generated comprehensive public discussions of this issue.
The NGOs have rather concentrated their activities outside the courtrooms.

In 2001, ŠKUC-LL, an NGO promoting non-discrimination regarding sexual orientation, conducted a nationwide study on discrimination on the grounds of sexual orientation in Slovenia.[92] The survey addressed the issues of violence and harassment and discrimination in employment, health care services, housing and military service. The survey was conducted between January and March 2001. During this period, 172 people completed the questionnaire. Respondents were primarily those individuals who regularly frequent openly lesbian and gay meeting places in Ljubljana or who are indirectly connected with lesbian, gay and bisexual organisations (e.g. through personal contacts or correspondence). The questionnaires were distributed in the lesbian bar Monokel, the gay bar Tiffany and the Metelkova Cultural Centre in Ljubljana. The questionnaire was also distributed to members of ŠKUC-LL as well as the youth group Legebitra, and was made available on the website www.ljudmila.org/siqrd.
A survey of this type of course does not purport to produce results that are statistically valid for the entire population group targeted, as would be the case with a random sample. Nonetheless, the survey results provide valuable information and permit certain broad conclusions to be drawn about the nature and extent of sexual orientation discrimination in Slovenia. The findings of this survey lead to the conclusion that there is a high level of discrimination against gay, lesbian and bisexual people in the country. For example, half of

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[90] See e.g. Slovenia, Kogovšek, N., Matevžič, G. (2006), *Legal opinion on the possibility of participation of NGOs in judicial or administrative procedures in support of victims of discrimination* [*Pravno mnenje o možnosti sodelovanja NVO v sodnih ali upravnih postopkih v podporo žrtvam diskriminacije*], Ljubljana, Mirovni inštitut, available at: www.antidiscrimination.etc-graz.at/cms/fileadmin/user_upload/Projekte/laufend/ADTJ/Slovenia/Knji_nica/__268_lanki/prevod_pravnega_mnenja.doc.

[91] Slovenia, Advocate of the Principle of Equality (*Zagovornik načela enakosti*) (2012), *Annual report of the Advocate of the Principle of Equality for the year 2011: with supplement up to 30.3.2012* [*Letno poročilo Zagovornika načela enakosti za leto 2011: z dodatkom do vključno 30.3.2012*], Ljubljana, Ministrstvo za delo, družino, socialne zadeve in enake možnosti, Služba za enake možnosti in evropsko koordinacijo, pp. 91-93, available at: www.mddsz.gov.si/uploads/media/zagovornik_LP_2011.doc.

[92] Slovenia, ŠKUC (2001), *Sexual Orientation Discrimination in Slovenia*, Ljubljana, ŠKUC, available at: www.ljudmila.org/siqrd/homofobija/sods.html.

the respondents had experienced some form of violence or harassment because of his/her sexual orientation and one in five had suffered harassment in the workplace. The survey findings also raise serious concerns about discriminatory behaviour in the police force, in health services and in the military, as well as the difficulties faced by openly lesbian and gay people in finding housing. However, it is highly probable that these findings actually seriously understate the scale of the problem, due to the above-mentioned fact that many lesbian, gay and bisexual individuals seek to avoid discrimination by concealing their sexual orientation. The potential magnitude of this factor is revealed when one compares the number of incidents of harassment in the workplace with the number of respondents who stated that they are open with their co-workers and superiors as regards their sexual orientation. It is thus impossible for the survey to measure precisely the extent of sexual orientation discrimination in Slovenia.
However, attention should be drawn to two important factors. Surveys seeking to quantify the extent of discrimination directed towards lesbian, gay and bisexual people face a specific problem: unlike many other minorities who experience discrimination, most lesbian, gay and bisexual people can conceal the aspect of their identity that is the target of discrimination, namely their sexual orientation. Accordingly, any survey investigating sexual orientation discrimination is likely to understate the real extent of discrimination. Secondly, as noted above, the survey respondents consisted mainly of people who openly participate in Ljubljana's lesbian and gay scene, as well as individuals connected with lesbian, gay and bisexual organisations in Slovenia. It is likely that this sample does not provide a comprehensive picture of the lesbian, gay and bisexual population in Slovenia, since it includes a relatively high proportion of individuals who are politically aware and open about their sexual orientation.

Another survey was conducted in 2003 by Peace Institute (*Mirovni inštitut*). It demonstrated that 49 % of LGBT people interviewed conceal their sexual orientation or refrain from revealing it at work. Some 4 % of those interviewed, moreover, fear that exhibiting their sexual orientation could lead to the termination of their job.[93]

Eurobarometer has also been measuring the perceptions of discrimination on grounds protected by the EU legislation for several years now. The last survey, made public in November 2012, included 1,005 respondents in Slovenia. The survey results showed that the Slovenian respondents perceived the instances of discrimination as less widespread, compared to the EU average. The only exception was the discrimination on the grounds of sexual orientation. This type of discrimination was perceived as the most common in Slovenia, as 48% of the respondents stated that it is very or fairly widespread. It was followed by discrimination on the ground of gender identity (42%), discrimination against persons aged 55 years and over (41%), discrimination on the ground of disability (39%), discrimination on the ground of ethnic origin (35%), discrimination on the grounds of religion or belief (26%), gender-based discrimination (24%) and discrimination against persons under 30 years of age (14%). However, when asked about the factors that are likely to put a job candidate at a disadvantage,
The candidate's age, namely that they are over 55 years old, was perceived by the Slovenian respondents as the most likely factor to result in a candidate's disadvantage (66%). It was followed, among others, by the candidate's disability (54%), the candidate's look (e.g. manner of dress or presentation) (42%), the candidate's physical appearance (e.g. size, weight, face) (37%), the candidate's skin colour or ethnic origin (32%), the candidate's expression of their religious belief (e.g. wearing a visible religious symbol (30%) and the candidate's gender

[93] Slovenia, Greif, T. (2006), *Measures against discrimination in employment for trade unions* [*Ukrepi proti diskriminaciji v zaposlovanju za sindikate*], Ljubljana, ŠKUC, available at: www.ljudmila.org/lesbo/EQUAL/pdf/Ukrepi_proti_diskriminaciji_SINDIKATI.pdf.

(29%). With regard to sexual orientation, 25% of respondents established that this factor puts a job candidate at a disadvantage, while 22% of respondents were of the opinion that gender identity of a job candidate is likely to put them at a disadvantage.[94]
In general, it is difficult to trace any discernible trends with respect to the scope and nature of discrimination on grounds of sexual orientation and gender identity in the field of employment in Slovenia. The statistical data on the complaints of discrimination on the aforementioned grounds are , generally, rarely collected in any systematic manner in the country. To this end, the employment-related cases of discrimination on grounds of sexual orientation and gender identity are practically non-existent. For example, the Advocate of the Principle of Equality is one of the rare bodies to record a certain number of complaints claiming discrimination on the basis of sexual orientation as well as gender identity in the period covered by this update. In 2011, the Advocate received four such complaints, the same number of complaints as in 2009 and 2010, respectively. In 2012, there were 11 such complaints, while two complaints alleging discrimination on the grounds of sexual orientation/ gender identity were lodged with the Advocate in 2013.[95] These data, however, are not disaggregated by the fields of life in which alleged discrimination occurred, and it is not possible to establish if any of the cases in question were related to the area of employment. Currently, there are also no data available on the Advocate's findings in regard to the mentioned cases.[96]

The Labour Inspectorate of the Republic of Slovenia (*Inšpektorat Republike Slovenije za delo*) oversees the implementation of the relevant legislation, including the non-discrimination provisions governing the field of employment. This body only keep records on the identified violations of labour legislation, while the figures on complaints received by the body in question are not available. However, in the period from 2010 until 31 October 2013 the inspectorate recorded no violation of non-discrimination provisions based on sexual orientation.[97]
Similarly, regarding the employment in the field of education, the Inspectorate of the Republic of Slovenia for Education and Sport (*Inšpektorat Republike Slovenije za šolstvo in šport*) recorded no claims of discrimination on the ground of sexual orientation between 2010 and 20 November 2013.[98]

The Slovenian Labour Courts (*Delovna sodišča*), for instance, hear cases of discrimination, but do not keep the records according to protected grounds.[99] In addition, no case involving discrimination based on the sexual orientation could be identified in the Slovenian case-law database available at www.sodnapraksa.si.
The Human Rights Ombudsman also observes the cases of discrimination on various grounds. The body, however, until recently, has not kept records of the cases of discrimination on the ground of sexual orientation. The Ombudsman plans to start collecting this type of data in 2013. The data should be published for the first time in the Ombudsman's

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[94] European Commission (2012), *Discrimination in the EU in 2012: Report*, Special Eurobarometer 393, Brussels, November 2012, available at: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf. See also: http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_fact_si_en.pdf.
[95] Slovenia, Information was provided by the Advocate of the Principle of Equality (*Zagovornik načela enakosti*) upon request, 27 February 2014.
[96] Slovenia, Information was provided by the Advocate of the Principle of Equality (*Zagovornik načela enakosti*) upon request, 27 February 2014.
[97] Slovenia, Information was provided by the Labour Inspectorate of the Republic of Slovenia (*Inšpektorat Republike Slovenije za delo*) upon request, 28 August 2012 and 14 November 2013.
[98] Slovenia, Information was provided by the Inspectorate of the Republic of Slovenia for Education and Sport (*Inšpektorat Republike Slovenije za šolstvo in šport*) upon request, 10 January 2013 and 22 November 2013.
[99] Slovenia, Information was provided by e.g. Labour Court in Koper (*Delovno sodišče v Kopru*), 26 November 2013, Labour and Social Court in Ljubljana (*Delovno in socialno sodišče v Ljubljani*), 14 November 2013, and Higher Labour and Social Court (*Višje delovno in socialno sodišče*), 18 November 2013, upon request.

2014 annual report covering the developments in 2013.[100] The Ombudsman's reports are usually available in June.

In the light of the existing scarcity of data in Slovenia, not surprisingly, there were no reports on the possible involvement of NGOs in support of the victims in employment-related cases.

[100] Slovenia, Human Rights Ombudsman (Varuh človekovih pravic) (2013), *Annual report of the Human Rights Ombudsman of the Republic of Slovenia for the year 2012* [*Letno poročilo Varuha človekovih pravic republike Slovenije za leto 2012*], Ljubljana, Varuh človekovih pravic, available at: www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Letno_porocilo_Varuha_2012.pdf.

2 Freedom of movement

The entry and status of aliens in Slovenia in general and of EU citizens in particular is regulated by the Aliens Act (*Zakon o tujcih*). The new Aliens Act (*Zakon o tujcih*) was adopted in June 2011 and has been applied from 28 October 2011.[101] An EU citizen, irrespective of his/her sexual orientation, can move and reside in Slovenia on the basis of his/her original right stemming from EU law as implemented in the Aliens Act. An EU national who enters Slovenia with a valid personal ID or passport can reside there for three months without having to declare his/her residency. If his/her duration of stay exceeds three months, either for the purpose of employment or other work, self-employment, provision of services, study or other form of education, family reunification or for other reasons, he/she must register it with the competent authorities.[102]

Family members of an EU citizen, whether EU nationals or not, can join him/her, on the basis of their derived rights for the purposes of family reunification. In comparison with the former act,[103] which only covered the nuclear opposite-sex family, the new act provides for a more inclusive definition of family members for the purposes of family reunification. Pursuant to the new Aliens Act, family members of an EU national shall be: the spouse or the registered partner; children below 21 years of age; children of the spouse, a registered partner or a partner with whom the EU national has lived in a long-lasting life community who are under the age of 21; children above the age of 21 and the ancestors whom the EU national is obliged to maintain or actually maintains in accordance with the legislation of the state of which they are citizens; children above the age of 21 and the ancestors of the spouse, registered partner or partner with whom the EU national has lived in a long-lasting life community, whom the spouse, a registered partner or a partner with whom the EU national has lived in a long-lasting life community is obliged to maintain or actually maintains in accordance with the regulations of the state of which they are citizens; the ancestors of the EU national until they reach the age of 21; any other person who resided with the EU national as a member of a household in another EU Member State or whom the EU national is obliged to maintain or actually maintains in accordance with the legislation of the state of which they are citizens, the person for whom the EU national personally takes care of due to their medical condition, and the partner with whom the EU national has lived in a long-lasting life community.[104]
In Slovenia, the registered union between same-sex partners is recognised in the Registration of Same-sex Partnership Act (*Zakon o registraciji istospolne partnerske skupnosti*).[105] As a result of the adoption of the new Aliens Act, which also defines registered partners as the beneficiaries of the right to family reunification, registered LGBT partners of Slovenian

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[101] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[102] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, Art. 119(1) and (3), and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[103] Slovenia, The Aliens act (*Zakon o tujcih*), 8 July 1999, and subsequent modifications, available at: www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=7F1B0515B1A64AE9C125761E004A1BAB&db=urad_prec_bes&mandat=VI&tip=doc (unofficial consolidated text).
[104] Slovenia, The Aliens act (Zakon o tujcih), 15 June 2011, and subsequent modifications, Art. 127, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[105] Slovenia, The Registration of same-sex partnership act (*Zakon o registraciji istospolne partnerske skupnosti*), 22 June 2005, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/z_registracija_ips_en.pdf (unofficial English translation).

citizens and EU nationals, whether EU nationals or not, as well as their other family members listed above (deleted), can invoke their family reunification rights.
The Slovenian legal order, however, does not include a definition of a long-term extramarital/ non-registered relationship between same-sex partners. The Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih*) only recognises such a relationship between opposite genders.[106] As a consequence, a long-lasting life community specified in the Aliens Act for the purposes of family reunification shall only encompass the opposite-sex relationships. This means that the non-registered LGBT partner of an EU citizen, as well as their children or other relatives, are not considered as family members or relatives in Slovenia and do not obtain derived rights to freedom of movement. They and their family members can enter and reside in Slovenia only on the basis of their original rights as EU citizens or nationals of other countries. In the latter case they must comply with stricter legal conditions for entry and residence.[107]

In June 2011, the National Assembly adopted the Family Code (*Družinski zakonik*), a law to replace the mentioned Marriage and Family Relations Act. The Family Code legally recognised the same-sex durable relationships and, except for the right to marriage, to joint adoption, and for the right to automatic recognition of parental rights for the biological parent's registered partner, provided for equal rights of both the registered and non-registered same-sex relationships, compared to the opposite-sex relationships. This law, however, has been rejected in a public referendum in 2012, and the relevant provisions of the Marriage and Family Relations Act are still in force. (Please see Chapter 8 for more details on the referendum and its consequences.) In effect, this means that a definition of the non-registered durable relationship between same-sex couples has not yet found its place in the Slovenian legal order. As a result, opposite to registered same-sex partners, non-registered same-sex partners of a Slovenian or an EU national cannot benefit from the right to freedom of movement.

On 14 April 2014, the government submitted the draft proposal of the Civil Partnership Act (*Zakon o partnerski skupnosti*) for public discussion.[108] This piece of legislation is intended to replace the existing Registration of the Same-sex Partnership Act. Apart from the joint adoption and the procedures of biomedically-assisted procreation, this draft law envisages the same legal effects of civil partnership between same-sex persons and a durable union between same-sex persons who have not entered into a civil partnership, as afforded respectively to married couples and opposite-sex persons living in a durable extra-marital partnership. If adopted, it shall be the first valid law to include the definition of a long-lasting relationship between same-sex persons who have not entered into a civil partnership (i.e. non-registered partnership). As such, it shall also provide that the definition of a long-lasting life community, as specified in the Aliens Act for the purposes of family reunification, applies to same-sex persons who have not entered into a formal civil partnership. Non-registered LGBT partner of a Slovenian citizen or an EU national, whether EU national or not, as well as their children or other relatives, shall be thus considered as family members or relatives in Slovenia and shall enjoy the rights guaranteed under the principle of freedom of movement.

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[106] Slovenia, The Marriage and family relations act (*Zakon o zakonski zvezi in družinskih razmerjih*), 4 June 1976, and subsequent modifications, Art. 12, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zakonodaja/law_on_marriage_and_family_relations.pdf (unofficial English translation).
[107] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[108] Slovenia, Draft Civil Partnership Act (*Predlog Zakona o partnerski zvezi*), 14 April 2014, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/druzina/Osnutek_ZPS_140414.doc.

However, since the adoption procedure is only in its initial phase, it is currently not possible to account for the possible future developments concerning the adoption of this law.
Pursuant to contact established with the Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*) and with the Division for Civil Status, Public Documents and Residence Registration (*Sektor za osebna stanja, javne listine in prijava prebivališča*) at the Ministry of the Interior, the requested statistical data are not available.[109]
The relevant statistical data are not publicly available. The NFP addressed a written request to the Ministry of the Interior (on 13 February 2014, on 24 February 2014 and on 10 April 2014) inquiring if the body has started collecting the requested data since the submission of the original report. By the time of submission of the revised version of this update, the NFP has not received any reply by the body in question.

There is no relevant case-law in this field.[110]

In the period covered by this update, no relevant cases concerning freedom of movement could be identified in the Slovenian case-law database available at www.sodnapraksa.si.
Because of a lack of the statistical data as well as case law, trends regarding the situation of LGBT persons in respect to the principle of freedom of movement could not be analysed.

[109] The last enquiry was made on 25.02.2008.
[110] The lack of case-law has been established following a detailed research in the Slovenian case- law databases, both those officially procured by the courts (available at www.sodnapraksa.si) as those, which are even more comprehensive, that are privately run (such as: www.ius-software.si).

3 Asylum and subsidiary protection

3.1 The rights of LGBT people

The international protection of aliens which encompasses the right to refugee status and to subsidiary protection is regulated by the new International Protection Act (*Zakon o mednarodni zaščiti*).[111] The Act implements a number of EU directives.[112]

Refugee status can be granted to any third country national who, due to a reasonable fear of persecution based on race, religion, nationality, membership of a particular social group or because of a particular political opinion, leaves the state whose citizen he/she is and cannot or because of the defined fear does not want to enjoy the protection of this state, or to a stateless person who leaves the state where he/she had habitual residence, but due to a reasonable fear cannot return or refuses to return to this state.[113] Subsidiary protection can be granted to a third country national or to a stateless person who does not satisfy the conditions for refugee status, if there is a justified reason that he/she would, in the event of returning to the state of his citizenship or the last habitual residence, in the case of a stateless person, face a reasonable risk of suffering serious harm as defined in Article 28 of this Act.[114] Grounds for persecution which entitle an individual to refugee status, *inter alia*, include membership of a particular social group.[115] The Act explicitly stipulates that, concerning circumstances in the country of origin, a particular social group may include a group whose members are defined by their sexual orientation. Sexual orientation should not be understood as something referring to acts which are punishable under the national law of the Republic of Slovenia.[116] The act in question has been modified several times after its adoption. It was lastly amended in December 2013, and an additional provision was added to Article 27, paragraph 6. It reads as follows: 'When determining the membership of a particular social group or identifying characteristics of such a group, it is necessary to take into account the aspects related to gender, including gender identity.'[117] The amendments entered into force in January 2014.

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[111] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 1, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[112] Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, OJ 2003 L 031 (*Receptions Conditions Directive*); Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ 2003 L 251 (*Family Reunification Directive*); Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 2004 L 304 (*Qualification Directive*); Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ 2005 L 326 (*Asylum Procedures Directive*).

[113] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 2(2), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[114] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 2(3), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[115] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 27(1), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[116] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 27 (6), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[117] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 27(6), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

Referring to unofficial reports, around 150 refugees have been granted asylum in Slovenia since 1999, but none of them on the basis of sexual orientation.[118] However, recently, an application was lodged with the Administrative Court in Ljubljana by a homosexual couple from Kosovo on the grounds of alleged homophobia. A couple, male, 25 and 30 years old, had applied for asylum because of discrimination due to their sexual orientation. The Ministry of the Interior rejected the application for asylum and the case is now pending before the said Administrative Court.[119] However, it appears from the case-law report of the Administrative Court that the case has been removed from its docket. According to the unofficial data, the court returned the case to the asylum authorities which again rejected the couple's application in late 2011.[120] The unofficial sources indicate that the applicants appealed this decision. According to these sources, the court granted the appeal, and the case is again, at the time of submission of this update, before the asylum authorities.[121]
Pursuant to contact established with the Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*) and with the (*Sektor za osebna stanja, javne listine in prijava prebivališča*) at the Ministry of the Interior, the requested statistical data are not available.[122]

The relevant statistical data are not publicly available. The NFP addressed a request to the Ministry of the Interior (on 13 February 2014, on 24 February 2014 and on 10 April 2014) inquiring if the body has started collecting the requested data since the submission of the original report. By the time of submission of this update, the NFP has not received any reply by the body in question.
There is no relevant case-law in this field.[123]
In the period covered by this update, no relevant case could be identified in the Slovenian case-law database available at www.sodnapraksa.si.

According to the most recent unofficial data, January 2014 saw the first Slovenian case when the national asylum authorities granted a person international protection because of persecution on the ground of sexual orientation. This unofficial source, namely a web portal covering LGBT issues, reported that the decision was influenced by the November 2013 ruling of the Court of Justice of the European Union confirming that same-sex asylum applicants can constitute a particular social group who may be persecuted because of their sexual orientation.[124]

3.2 The rights of LGBT family members

In December 2013, the International Protection Act was amended.[125] The provisions governing the family reunification rights of the persons to whom the international protection has been

[118] Slovenia, Kuhar, R. (2007), 'Asylum: When the state pays the lawyer that acts against it' ['Azil: Ko država plačuje odvetnika, ki nastopa proti njej'], 26 July 2007, available at: www.narobe.si/stevilka-2/tema.html.
[119] Slovenia, Koritnik, B. (2007), 'Events-statements' ['Dogodki-izjave'], *Pravna praksa*, Vol. 26, No. 9, p. 37.
[120] Slovenia, [author unknown] (2012), 'Rejected asylum to Kadri and Demir' ['Kadriju in Demirju zavrnjen azil'], available at: www.narobe.si/myblog/kadriju-in-demirju-zavrnjen-azil.
[121] Slovenia, Information was provided by the ŠKUC LL, an NGO, upon request, 18 April 2014.
[122] The last enquiry was made on 25.02.2008.
[123] The lack of case-law has been established following a detailed research in the Slovenian case- law databases, both those officially procured by the courts (available at www.sodnapraksa.si) as those, which are even more comprehensive, that are privately run (such as: www.ius-software.si).
[124] Slovenia, [author unknown] (2014), 'The last… (27/28)' ['Zadnje… (27/28)'], 14 March 2014, available at: www.narobe.si/stevilka-27/narobe-27-28/novice/zadnje-27-28. See also: Court of Justice of the European Union (CJEU), *Joined Cases C-199/12, C-200/12 and C-201/12, X, Y, Z v. Minister voor Immigratie en Asiel*, 7 November 2013.
[125] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

granted (refugee status or subsidiary protection) have been removed from the act in question. It was planned that this subject matter would be regulated in the amended Aliens Act. In January 2014, the government forwarded the relevant draft amendments of the Aliens Act to the National Assembly for adoption. The relevant modifications of the Aliens Act were adopted on 3 April 2014, and shall be applicable from 1 January 2015.[126] However, until the amendments of the Aliens Act take effect, the provisions governing the right of refugees and persons with subsidiary protection, as set out in the International Protection Act before its last modification, are still valid.[127]

Pursuant to the International Protection Act, a competent authority must follow the principle of family reunification when processing the applications under this Act.[128] The applicant for asylum or subsidiary protection, or the person to whom asylum or subsidiary protection has been granted, can request to be reunited with his/her family members.[129] These are defined in Article 16b of this Act as follows.

> *Family members are third country nationals or stateless people who are members of the family that already existed in the country of origin. They are: (1) the spouse of an applicant or of a person who has already acquired the right to international protection, as stipulated in the regulation governing the residence of aliens in the Republic of Slovenia, or extra-marital partner in stable relationship, as determined by the provisions governing marriage and family relations; (2) minor children of the couple referred to in the preceding paragraph, if they are unmarried and dependant, irrespective of whether they were born in marital or extra-marital union or were adopted, as provided in the regulations on marriage and family relations; (3) unmarried children of a person to whom international protection has been granted, if such a person has custody of them or maintains them; (4) unmarried children of the spouse or extramarital partner of a person to whom international protection has been granted, if such a person has custody of them or maintains them; (5) adult unmarried children of a person who has been granted international protection, if because of physical or mental disability they are not able to provide for themselves, for their benefits and rights; (6) adult unmarried children of the spouse or extramarital partner of a person who has been granted international protection, if because of physical or mental disability they are not able to provide for themselves, for their benefits and rights; (7) parents of an unaccompanied minor.* [130]

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[126] Slovenia, The Act amending the Aliens Act (*Zakon o spremembah in dopolnitvah Zakona o tujcih*), 3 April 2014, available at: www.uradni-list.si/1/objava.jsp?urlurid=20141070.

[127] Slovenia, The Act amending the International protection act (*Zakon o spremembah in dopolnitvah Zakona o mednarodni zaščiti*), 18 December 2013, Art. 39, available at: www.uradni-list.si/1/objava.jsp?urlid=2013111&stevilka=4129 (official text).

[128] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 17(1), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[129] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 17(2), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

[130] Slovenia, The International protection act (*Zakon o mednarodni zaščiti*), 21 November 2007, and subsequent modifications, Art. 16b, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4911 (unofficial consolidated text).

The institutions of family, marriage and extra-marital union are reserved in Slovenia for a relationship between two people of the opposite sex, the union between a man and a woman, and their children.[131] Same-sex partners therefore do not qualify under the paragraph cited above and cannot avail themselves of their partner's right to 'family' reunification under the existing Slovenian legislation. A homosexual partner does not count as a spouse nor as an extra- marital partner. However, if one of the partners has children from a prior heterosexual relationship he/she could be reunited with them, not on the basis of the present homosexual relationship, but because these would be considered as his/her children. On the other hand, a situation where a homosexual couple from another country had lawfully adopted a child with whom they then wanted to reunite in Slovenia would pose more difficulties. While the Slovenian Private International Law and Procedure Act (*Zakon o mednarodnem zasebnem pravu in postopku*) recognises the effects of adoption of a child by a foreign couple in Slovenia in accordance with the law of the country of the couple's and adoptee's citizenship or residence,[132] subject to compliance with Slovenian public order,[133] for the purposes of the International Protection Act the adoption must, however, fulfil the conditions of the Slovenian Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih*). The latter excludes adoption by same sex-couples,[134] which could, in effect, rule out family reunification in these circumstances.

However, when the adopted amendments to the Aliens Act enter into force in January 2015, they shall provide for a more favourable definition of family members. Pursuant to the adopted amendments, family members of a person who has been granted international protection shall include, under the condition that the family has already existed before a person who has been granted international protection entered Slovenia: a spouse, a registered partner or a partner with whom the person who has been granted international protection resides in a long-term partnership; unmarried minor children of the person who has been granted international protection; unmarried minor children of the spouse, a registered partner or a partner with whom the person who has been granted international protection has resided in a long-term partnership; adult unmarried children or the parents of the person who has been granted international protection, a spouse, a registered partner or a partner with whom the person who has been granted international protection resides in a long-term partnership, who the person who has been granted international protection is obliged to maintain in accordance with the regulations of their own state; parents of an unaccompanied minor who has been granted international protection.[135]

Based on the current legislation, including the Registration of Same-sex Partnership Act mentioned in the chapter on freedom of movement, from January 2015, LGBT persons who have been granted international protection shall have the right to be reunited with their

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[131] Slovenia, The Marriage and family relations act (*Zakon o zakonski zvezi in družinskih razmerjih*), 4 June 1976, and subsequent modifications, Art. 3 and 12, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zakonodaja/law_on_marriage_and_family_relations.pdf (unofficial English translation).

[132] Slovenia, The Private international law and procedure act (*Zakon o mednarodnem zasebnem pravu in postopku*), 30 June 1999, Art. 46 and 47, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1258 (unofficial consolidated text).

[133] Slovenia, The Private international law and procedure act (*Zakon o mednarodnem zasebnem pravu in postopku*), 30 June 1999, Art. 5, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1258 (unofficial consolidated text).

[134] Slovenia, The Marriage and family relations act (*Zakon o zakonski zvezi in družinskih razmerjih*), 4 June 1976, and subsequent modifications, Art. 134-145, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zakonodaja/law_on_marriage_and_family_relations.pdf (unofficial English translation).

[135] Slovenia, The Act amending the Aliens Act (*Zakon o spremembah in dopolnitvah Zakona o tujcih*), 3 April 2014, available at: www.uradni-list.si/1/objava.jsp?urlurid=20141070.

registered partners and their other family members listed above. LGBT persons who live in non-registered unions, even if these relationships are stable and durable, shall be excluded from this benefit, since Slovenian legal order does not recognise same-sex non-registered/co-habiting unions.

Regarding the latter, it is worthwhile noting that the government submitted the draft proposal of the Civil Partnership Act (*Zakon o partnerski skupnosti*) for the public discussion on 14 April 2014.[136] (Please see the above chapter on freedom of movement for more details.) If adopted, (to be deleted: it shall be the first valid piece of legislation to include the definition of a long-lasting relationship between same-sex persons who have not entered into a civil partnership (i.e. non-registered partnership). As such, it shall also provide that the definition of long-lasting life community, as specified in the Aliens Act for the purposes of family reunification, applies to same-sex persons who have not entered into formal civil partnership.) LGBT persons under international protection shall have the right to be reunited with their partners with whom they have lived in the non-registered long-lasting union, as well as their children or other relatives. However, since the adoption procedure is only in its initial phase, it is not possible, at this stage, to predict the possible future developments concerning the adoption of this law.
(To be deleted?Pursuant to contact established with the Statistical Office of the Republic of Slovenia and with the Division for Civil Status, Public Documents and Residence Registration at the Ministry of the Interior, the requested statistical data are not available.[137])
In the period covered by this update, no relevant case could be identified in the Slovenian case-law database available at www.sodnapraksa.si. This is probably logical since the legal provisions providing for the right of LGBT persons with international protection to family reunification have not yet been in effect.

[136] Slovenia, Draft Civil Partnership Act (*Predlog Zakona o partnerski zvezi*), 14 April 2014, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/druzina/Osnutek_ZPS_140414.doc.
[137] The last enquiry was made on 25.02.2008.

4 Family reunification

Family enjoys constitutional protection in Slovenia. Article 53 of the Slovenian Constitution provides that the state shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection.[138] The concept of family is, however, still bound to a relationship, either marital or extra-marital, between two individuals of different sexes and their children, as defined in the Marriage and Family Relations Act .[139] The registered same-sex partnership is recognised in the Registration of Same-sex Partnership Act (*Zakon o registraciji istospolne partnerske skupnosti*).[140] This act provides for certain rights of the same-sex partners, but does not grant them the status of relatives. This was apparent also from the former Aliens Act which determined the alien's right to family reunification and the right to a complete family.[141] In spite of this, the new Aliens Act, adopted in 2011, provides for a more inclusive definition of family members for the purposes of family reunification.[142]

The central provision of the new Aliens Act is Article 47 which specifies that a non-EU national who resides in the Republic of Slovenia on the basis of a permanent residence permit or temporary residence permit valid for at least one year, with the exception of a non-EU national who holds a temporary residence permit for the seasonal work purposes, shall be granted, under the conditions of and in accordance with this act, the right to the reunification, preservation and reintegration of the family with family members who are non-EU nationals.[143]
For the purposes of family reunification under the Aliens Act, family members of a non-EU national shall be: a spouse, a registered partner or a partner with whom the non-EU national resides in a long-term partnership; unmarried children of the non-EU national; unmarried children of the spouse, a registered partner or a partner with whom the alien has resided in a long-term partnership; parents of the minor non-EU national with whom they have resided in a family community before their arrival to the Republic of Slovenia; adult unmarried children and parents of the non-EU national, a spouse, a registered partner or a partner with whom the non-EU national resides in a long-term partnership who these persons are obliged to maintain in accordance with the regulations of his/her own state.[144] The competent authority may,

[138] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 53, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).
[139] Slovenia, The Marriage and family relations act (*Zakon o zakonski zvezi in družinskih razmerjih*), 4 June 1976, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zakonodaja/law_on_marriage_and_family_relations.pdf (unofficial English translation).
[140] Slovenia, The Registration of same-sex partnership act (*Zakon o registraciji istospolne partnerske skupnosti*), 22 June 2005, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/z_registracija_ips_en.pdf (unofficial English translation).
[141] Slovenia, The Aliens act (*Zakon o tujcih*), 8 July 1999, and subsequent modifications.
[142] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[143] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, Art. 47(1) available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[144] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, Art. 47(3) available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).

exceptionally, at its own discretion, observe as a family member another relative of a non EU-national if the special circumstances justify the family reunification in Slovenia.[145]
As a consequence of the adoption of the new Aliens Act, LGBT non-EU nationals can invoke the right to be reunited with their registered partners, as well as their other family members listed above (e.g. their unmarried children, or unmarried children of one of the partners).

The Slovenian legal order, however, does not include a definition of a long-term extramarital/ non-registered relationship between same-sex partners. The Marriage and Family Relations Act (*Zakon o zakonski zvezi in družinskih razmerjih*) only recognises such a relationship between opposite genders.[146] As a result, a long-lasting life community specified in the Aliens Act for the purposes of family reunification shall only encompass the opposite-sex relationships.
This means that the non-registered LGBT non-EU nationals, as well as their children or other relatives, are not considered as family members or relatives in Slovenia and cannot benefit from the right to family reunification. They and their family members can enter and reside in Slovenia only on the basis of their original individual rights as the nationals of non-EU states. In this case they must comply with the stricter legal conditions for entry and residence.[147]

In June 2011, the National Assembly adopted the Family Code (*Družinski zakonik*), a law to replace the mentioned Marriage and Family Relations Act. The Family Code legally recognised the same-sex durable relationships and, except for the right to marriage, to joint adoption, and the right to automatic recognition of parental rights for the biological parent's registered partner, provided for equal rights of both the registered and non-registered same-sex relationships, compared to the opposite-sex relationships. This law, however, has been rejected in the public referendum in 2012, and the relevant provisions of the Marriage and Family Relations Act are still in force. (Please see Chapter 8 for more details on the referendum and its consequences.) In effect, this means that a definition of the non-registered durable relationship between same-sex couples has not yet found its place in the Slovenian legal order. As a result, opposite to the persons who live in registered same-sex partnerships, a non-EU national in the non-registered same-sex partnership cannot benefit from the right to family reunification. (With respect to the situation of LGBT persons who live in the non-registered same-sex unions, including the non-EU nationals, please see also the above chapter on the freedom of movement with the information on the recent legislative proposal by the government and its possible implications in the context of family reunification.)

Pursuant to contact established with the Statistical Office of the Republic of Slovenia and with the Division for Civil Status, Public Documents and Residence Registration at the Ministry of the Interior, the requested statistical data are not available.[148]
The relevant statistical data are not publicly available. The NFP addressed a request to the Ministry of the Interior (on 13 February 2014, on 24 February 2014 and on 10 April 2014) inquiring if the body has started collecting the requested data since the submission of the original

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[145] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, Art. 47(4) available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[146] Slovenia, The Marriage and family relations act (*Zakon o zakonski zvezi in družinskih razmerjih*), 4 June 1976, and subsequent modifications, Art. 12, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/zakonodaja/law_on_marriage_and_family_relations.pdf (unofficial English translation).
[147] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, and subsequent modifications, available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf (unofficial English translation of the original version; does not include amendments).
[148] The last enquiry was made on 25.02.2008.

report. By the time of submission of this update, the NFP has not received any reply by the body in question.
There is no relevant case-law in this field.[149]
In the period covered by this update, no relevant case could be identified in the Slovenian case-law database available at www.sodnapraksa.si.
Because of a lack of the statistical data as well as the case law, the trends regarding the situation of LGBT non-EU nationals concerning their right to family reunification could not be analysed.

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

5 Freedom of assembly

Article 42 of the Slovenian Constitution provides for the right to freedom of assembly and association. It stipulates that the right of peaceful assembly and public meeting shall be guaranteed. Everyone has the right to freedom of association with others. These rights may be restricted, however, where required for national security or public safety and for protection against the spread of infectious diseases.[150]

The Public Gatherings Act (*Zakon o javnih zbiranjih*) regulates the precise exercise of this right.[151] Smaller public gatherings must be notified at least three days prior to their occurrence, whereas larger public events must be registered at least five days in advance.[152] Provided that the organiser satisfies all the security, public policy and other order-related conditions, the gathering will be approved,[153] and will be entitled to police protection.[154] The Act proscribes any violent or non-violent interference with lawfully organised public gatherings or events.[155] Moreover, Article 6 of the Act prescribes that it is, *inter alia*, forbidden to organize public gatherings in order to commit criminal acts, to encourage criminal activity or with the purpose of causing violence.[156] In connection with the constitutional prohibition and Penal code's incrimination of inflaming intolerance exclusively homophobic demonstrations shall be thus prohibited in Slovenia.

LGBT people have exercised their right to freedom of assembly freely. There have been no reports of official prohibition of LGBT events. Similarly, there is no record of demonstrations against tolerance of LGBT people. However, parades have sometimes been accompanied by disrespectful graffiti or slogans and there have been reports of some isolated cases of physical violence against LGBT people in the aftermath of parades.[157]
Hence, on 30 June 2006, multiple assailants attacked activists from Lingsium, an advocacy group for homosexuals, who had set up a stand and were distributing leaflets in Maribor saying, 'Action for tolerance: gays and lesbians wish you a good day'. Members of the Maribor City Council published a statement condemning the attack.[158] In the same year, on 1 July, the sixth annual gay pride parade in Ljubljana took place without incident with the support of local government officials. However, on the evening of 1 July, multiple assailants attacked two individuals in the vicinity of Ljubljana railway station and were reported to have shouted anti-gay comments. The police carried out an investigation immediately. A year before, in 2005, multiple assailants attacked and beat three patrons of a Ljubljana club for homosexuals. Police arrested several suspects but later released

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[150] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 42, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).
[151] Slovenia, The Public gatherings act (*Zakon o javnih zbiranjih*), 20 June 2002, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1455 (unofficial consolidated text).
[152] Slovenia, The Public gatherings act (*Zakon o javnih zbiranjih*), 20 June 2002, and subsequent modifications, Art. 11, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1455 (unofficial consolidated text).
[153] Slovenia, The Public gatherings act (*Zakon o javnih zbiranjih*), 20 June 2002, and subsequent modifications, Art. 16, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1455 (unofficial consolidated text).
[154] Slovenia, The Public gatherings act (*Zakon o javnih zbiranjih*), 20 June 2002, and subsequent modifications, Art. 28, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1455 (unofficial consolidated text).
[155] Slovenia, The Public gatherings act (*Zakon o javnih zbiranjih*), 20 June 2002, and subsequent modifications, Art. 23, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1455 (unofficial consolidated text).
[156] Slovenia, The Public gatherings act (*Zakon o javnih zbiranjih*), 20 June 2002, and subsequent modifications, Art. 6, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1455 (unofficial consolidated text).
[157] http://www.ljubljanapride.org/nasilje.htm (last accessed 31.01.2008). (Defunct link.)
[158] U.S. Department of State, Bureau of Democracy, Human Rights and Labor (2007), *2006 Country Reports on Human Rights Practices: Slovenia*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at: www.state.gov/g/drl/rls/hrrpt/2006/78839.htm.

them because the victims did not want to press charges. On 2 July 2005, after the fifth gay pride parade, two people were attacked and severely beaten near Ljubljana railway station, while two others were attacked and beaten in Ljubljana city centre. In all three incidents, the attackers taunted and harassed their victims for being gay. Police arrested several suspects but later released them because the victims did not want to press charges.[159]

In the week of 20-27 June 2009 the LGBT NGOs supported by the governmental bodies and under the honourable sponsorship of the Mayor of Ljubljana and the Minister for Foreign Affairs organized a very successful week of events aimed at raising awareness about same-sex partnership and problems concerning the discrimination on the grounds of sexual orientation.[160] However, the parade was preceded by a violent attack on one of the organizers by a group of unidentified individuals. The attack was immediately put under police investigation and was unanimously and very strongly condemned across the political sphere and by all key public officials.[161]
It is thus apparent that the authorities have always reacted in accordance with the law, but with little ultimate success of bringing the perpetrators to justice.[162] However, any physical violence or interference by third parties with the rights of LGBT people has won severe and unanimous condemnation from the highest Slovenian officials.[163]

The aforementioned 2009 incident involved a visible member of LGBT community who was physically attacked by a group of seven-eight masked persons in front of Cafe Open, an LGBT people-friendly bar in the centre of Ljubljana, where an evening of gay and lesbian literature took place in the framework of the Pride Parade Week. The perpetrators dressed in black hoods, caps, and masks came from a side street and started hitting the victim who was in front of the bar. Then the perpetrators lit a fan torch and kept bringing flames to his head while shouting homophobic slogans such as "faggots" and "damned faggots". Three of the perpetrators were identified and taken to the court. The district court judge decided in March 2010 that the perpetrators violated one of the most fundamental human rights, namely the right to sexual orientation and sentenced them to 18 months each.[164] (Please see also Chapter 6 for more information on handling of this case by the second-instance court.)
Also in March 2010, following the court's decision, a protest against the severity of the punishment was organised by the alleged friends and schoolmates of the perpetrators and was

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[159] U.S. Department of State, Bureau of Democracy, Human Rights and Labor (2006), *2005 Country Reports on Human Rights Practices: Slovenia*, U.S. Department of State, Bureau of Democracy, Human Rights and Labor, available at: www.state.gov/j/drl/rls/hrrpt/2005/61675.htm.
[160] http://www.ljubljanapride.org/english.htm, last visited 26.09. 2009. (Defunct link.)
[161] http://www.mnz.gov.si/nc/si/splosno/cns/novica/article/12027/6371/, last visited 26.09. 2009. (Defunct link. It is possible that the information is now available at: www.mnz.gov.si/si/novinarsko_sredisce/novica/browse/206/article/12208/6371/9a110c542c2874d3b65f752efcb99f25/.)
[162] Slovenia, Kl. F. (2007), 'Action of tolerance aimed at same-sex persons in Maribor' ['V Mariboru akcija strpnosti do istospolno usmerjenih'], *Delo*, 29 September 2007, available at http://www.delo.si/index.php?sv_path=41,35,222944 (last accessed 31.01.2008). (Defunct link. The information is now available at: www.delo.si/novice/slovenija/v-mariboru-akcija-strpnosti-do-istospolno-usmerjenih.html. The author of the article is not specified.)
[163] Slovenia,, Zupančič, J. (2006) 'Authorities condemn homophobic violence' ['Oblast obsodila homofobno nasilje'], *Delo*, 4 July 2006, available at http://www.delo.si/index.php?sv_path=41,35,146607&src=rp (last accessed 31.01.2008). (Defunct link. The information is now available at: www.delo.si/clanek/27626. The author of the article is not mentioned.)
[164] Slovenia, District Court in Ljubljana (*Okrožno sodišče v Ljubljani*), Judgment No. III 5357/2010, 10 March 2010.

held in front of the court's premises. According to the unofficial sources, the protest involved individuals with far-right ideas.[165]
In the subsequent years, there have been no reports on the obstacles regarding freedom of expression and freedom of assembly of LGBT people in Slovenia, including on the official prohibition of LGBT events. Generally, demonstrations against the tolerance of LGBT community have not been recorded. Pride parades, however, have been surrounded by the various types of incidents.
For example, according to the unofficial sources, an individual in a group of the far-right supporters threatened with the stick the representatives of *Lingsium*, an LGBT NGO, who, on the streets of Maribor, promoted LGBT rights, tolerance and diversity in the course of the annual "Tolerance Action" initiative.[166]

In June 2010, in the week preceding the tenth pride parade in Ljubljana, the unknown perpetrators threw twice Molotov cocktails on the aforementioned Café Open, and also daubed graffiti onto the bar wall, saying 'Death to gays' and 'A bump is still just a bump'. At the same time, the judge who sentenced the perpetrators of the 2009 attack on the LGBT activist, saw their house wall painted with the same graffiti stating 'A bump is still just a bump', a slogan aimed at downplaying the incident and injuries suffered by the victim, as well as to question the fairness of the judge's decision. The then country's president condemned the incidents.[167]
Also in June 2010, an individual set up a Facebook group entitled 'Against the Pride Parade in Slovenia' and published in the roles of the administrator and the commentator the following content, among other things: 'Please do not publish the comments inviting to violence in this group. You can, however, use violence at the gathering against the pride parade;)'; 'A sick man is getting treatment, not that he is proud of his illness!!! He doesn't go around shouting and parading, so that everyone knows that he is sick!!!'. The offender was brought to the court and received a three-month suspended sentence.[168]

The State prosecutor brought to the court an individual who, under an article concerning the pride parade published on a news portal, posted the following comment in July 2010: 'As I wrote last time. These are pure scum – as are people who support them. Hičo (Hitler, colloq.) would have cleaned it up – and it's a pity that he didn't. At least he should have been allowed to complete the work.' The court established that the existing evidence provides sufficient ground for the punishment of the defendant and sentenced them with one month of suspended imprisonment.[169]

In July 2010, following the pride parade in Ljubljana, a then MP addressed an offensive motion to the government stating that their parliamentary group was concerned that there were specifically oriented groups which did not have the opportunity to show their pride. He thus suggested that the government and the Ministry of the Interior should organise a parade involving the shepherds and goatherds, as it is known that they develop loving relationships with these animals when they find themselves in remote places, far from the permanent settlements. According to this MP, their parliamentary group was convinced that these people

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[165] See e.g. Slovenia, M.M., U.Z., STA (2010), [no title], 20 March 2010, available at: www.24ur.com/novice/slovenija/dobili-so-nenormalno-visoko-kazen.html; See also: Slovenia, [author unknown] (2010), 'Neo-Nazis behind protest' ['V ozadju protesta neonacisti'], 20 March 2010, available at: www.narobe.si/myblog/v-ozadju-protesta-neonacisti.
[166] Slovenia, Mekina, B. (2009), 'Who is next' ['Kdo je naslednji?'], *Mladina*, 2 July 2009, available at: www.mladina.si/47555/kdo-je-naslednji/.
[167] Slovenia, V.L., T.Š, STA (2010), [no title], 27 June 2010, available at: www.24ur.com/novice/slovenija/poskus-zastrasevanja-in-mascevanja.html.
[168] Slovenia, Local Court in Koper (*Okrajno sodišče v Kopru*), Judgment No. I K 25230/2011, 28 May 2012.
[169] Slovenia, Local Court in Sevnica (*Okrajno sodišče v Sevnici*), Judgment No. I K 46756/2012, 23 November 2012.

also had the right to show their love for their chosen ones, suggesting that, similarly to the gay pride parade, foreign representatives should attend the described parade, especially those from the countries where sheep and goat husbandry is more developed than in Slovenia.[170]
A website, one of the most visible voices of the Slovenian LGBT community, reported that in May 2011, during Pride Parade Week, the aforementioned well-known Ljubljana LGBT-friendly bar was again damaged with the concrete base for parasol.[171]
In the same period, at a football game, the fans displayed a poster with the inscription 'For the family. Stop to gay parade.' They also displayed the rainbow pride flag with the sign "stop" on the flag, and later burned it.[172]
The same website reported that the June 2012 Pride Parade Week passed in a peaceful manner. However, it again reported on the offensive graffiti inscriptions on the same LGBT-friendly bar in Ljubljana and the surrounding dwellings, such as 'For family!', 'Against the parade of shame' and 'Kill a fag'.[173]

In 2013, reports on the similar incidents could not be identified.

In general, mass demonstrations against members of LGBT community, including against the manifestations organised by LGBT persons, are not common in Slovenia. Their manifestations, however, were surrounded by the instances of intolerance on the part of the individuals and groups. The statistical data on the incidents of homophobia are not collected by the public authorities. In this sense, it is not possible to comprehensively assess the trends in this type of incidents and how these incidents are prosecuted. The available data indicate that intolerance was expressed as the discriminatory utterances, verbal threats on the internet, offensive graffiti, offensive displays by the football fans, violence against the property and physical violence. Since 2009, in at least three cases, individuals were identified, prosecuted and penalised for the offences perpetrated in the period surrounding pride parades.

[170]Slovenia, Head of Parliamentary Group of Slovenian National Party (Vodja Poslanske skupine Slovenske nacionalne stranke) (2010), *Written parliamentary initiative* [*Pisna poslanska pobuda*], 8 July 2010, available at: www.sns.si/PortalGenerator/document.aspx?ID=960&Action=2&UserID=0&SessionID=871419&NavigationID=562.
[171] Slovenia, [author unknown] (2011), 'Football fans lack command of Slovene language' ['Nogometni navijači brez znanja slovenščine'], 30 May 2011, available at: www.narobe.si/myblog/nogometni-navijaci-brez-znanja-slovenscine.
[172] Slovenia, [author unknown] (2011), 'The police lodged criminal complaints against homophobic football fans' ['Policija ovadila homofobne nogometne navijače'], 5 September 2011, available at: www.narobe.si/myblog/policija-ovadila-homofobne-nogometne-navijace.
[173] Slovenia, [author unknown] (2012), 'Peace at the parade and graffiti on walls' ['Mir na paradi in graffiti na stenah'], 3 June 2012, available at: www.narobe.si/myblog/mir-na-paradi-in-grafiti-na-stenah.

6 Criminal law

Homophobic hate speech in Slovenia is covered and prohibited both by the Constitution as well as by a variety of legislative acts.
Article 63 of the Constitution prohibits 'any incitement to national, racial, religious or other discrimination and the inflaming of national, racial, religious or other hatred and intolerance'.[174]
Article 297 of the new Criminal Code (*Kazenski zakonik*) of the Republic of Slovenia, adopted in 2008, prohibits hate speech, namely public incitement to hatred, violence and intolerance and provides for the qualified penalties if the offence in question includes certain types of conduct (e.g. maltreatment, endangering of security). It was amended in 2011 and currently determines as follows:[175]

> *(1) Whoever publicly provokes or stirs up hatred, violence or intolerance based on national, ethnic, racial or religious affiliation, sex, skin colour, origin, financial condition, education, social status, political or other belief, disability, sexual orientation or any other personal circumstance, and the conduct is carried out in a manner likely to endanger or disturb public order and peace, or with the use of threats, abuses or insults, shall be punished by imprisonment of up to two years..(3) If the offence under preceding paragraph has been committed by publication in mass media or on web pages, the editor or the person acting as the editor shall be sentenced to the punishment, by imposing the punishment referred to in paragraphs 1 or 2 of this Article, except if it was a live broadcast and he was not able to prevent it or if it was the publication on the web pages which allows the users the publication of contents in real time and without prior surveillance.*
>
> *(4) If the offence under paragraphs 1 or 2 of this Article has been committed by coercion, maltreatment, endangering of security, desecration of national, ethnic or religious symbols, damaging the movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be punished by imprisonment of up to three years.*
>
> *(5) If the acts under paragraphs 1 and 2 of (added for clarity, provision has not been amended) this Article have been committed by an official by abusing their official position or rights, he shall be punished by imprisonment of up to five years.*
>
> *(6) Material and objects bearing messages from paragraph 1and 2 of this Article, and all devices intended for their manufacture, multiplication and distribution, shall be confiscated, or their use disabled in an appropriate manner.*

[174] Slovenia, The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), 23 December 1991, and subsequent modifications, Art. 63, available at: www.us-rs.si/media/constitution.-.en.14.11.2013.pdf (unofficial English translation).
[175] Slovenia, The Criminal code (*Kazenski zakonik*), 20 May 2008, and subsequent modifications, Art. 297, available at: www.uradni-list.si/1/objava.jsp?urlid=201250&stevilka=2065 (official consolidated text).

Moreover, Article 131 of the Penal Code, which has not been subject to the amendments, also explicitly incriminates violation of right to equality:[176]

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

The Media Act (*Zakon o medijih*) determines in Article 8 that, 'the dissemination of programming that encourages ethnic, racial, religious, sexual or any other inequality, or violence and war, or incites ethnic, racial, religious, sexual or any other hatred and intolerance shall be prohibited'. Article 47 of the same Act prohibits advertising which would, 'incite racial, sexual or ethnic discrimination, religious or political intolerance'. Penalties of the amount of at least 2,500.000 SIT [approx. €10,000] may be imposed if Article 47 is violated, while the act in question does not envisage any sanctions if Article 8 is violated.[177]

The Audiovisual Media Services Act (*Zakon o avdiovizuelnih medijskih storitvah*), adopted in 2011, includes very similar provisions. Article 9, paragraph 1 of this act stipulates that 'encouraging national, racial, religious, sexual or other inequality, or violence and war, or inciting racial, sexual, religious or other hatred and intolerance shall be prohibited'. Article 20 of the act in question further stipulates that the audiovisual commercial communications shall not 'include or encourage any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation'. If Article 20 of the act is violated, a fine in the amount of at least €6,000 may be imposed on a provider of the audiovisual services. The law, however, does not specify/include the sanctions if Article 9, paragraph 1 of this act is violated.[178] Thus, under these two laws, only those who discriminate against a specific group of population in the context of the media advertising may be punished with a fine for minor offences. Discriminatory content in any other media context cannot be punished under these two laws.

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[176] Slovenia, The Criminal code (*Kazenski zakonik*), 20 May 2008, and subsequent modifications, Art. 131, available at: www.uradni-list.si/1/objava.jsp?urlid=201250&stevilka=2065 (official consolidated text).
[177] Slovenia, The Media act (*Zakon o medijih*), 25 April 2001, and subsequent modifications, Art. 8 and 47 and 129, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1608 (unofficial consolidated text).
[178] Slovenia, The Audiovisual media services act (*Zakon o avdiovizuelnih medijskih storitvah*), 19 October 2011, Art. 9(1) and 20 and 43(1), available at: www.uradni-list.si/1/objava.jsp?urlid=201187&stevilka=3715 (official text).

The Personal Data Protection Act (*Zakon o varovanju osebnih podatkov*) defines data concerning racial, national or ethnic background, political, religious or philosophical affiliation and sexual life as 'sensitive personal data'.[179]
According to the Societies Act (*Zakon o društvih*), a society shall cease to exist by law in the event that it incites ethnic, racial, religious or other inequality or inflames ethnic, racial, religious or other hatred and intolerance.[180]

The new Aliens Act, adopted in 2011, imposes in Article 105(2) an obligation that, 'within their operations, national and other authorities, organisations and associations shall ensure protection against any type of discrimination against aliens based on racial, religious, national, ethnic or any other type of differentiation'.[181] In the 1999 Resolution on the Immigration Policy of the Republic of Slovenia (Resolucija o imigracijski politiki Republike Slovenije) it is explicitly stated in the preamble to the chapter, 'Foundations of the Immigration Policy', that at the creation of the Policy it was considered that the state must respect fundamental human rights and avoid any ethnic, racial, religious or sexual discrimination.[182] The 2002 Resolution on the Migration Policy of the Republic of Slovenia acknowledges among the principles of Slovenian migration policy the Conclusions of the Tampere European Council.[183]

The Implementation of the Principle of Equal Treatment Act is a piece of legislation with a general scope of application prohibiting discrimination against any person in the exercise of his/her rights and duties and in the exercise of his/her fundamental freedoms in any aspect of the social sphere, in particular in the fields of employment, employment relations, affiliation with unions and interest organisations, upbringing and education, social security and access to and provision of goods and services.[184] It was adopted in May 2004 and seeks to implement Directives 2000/43/EC and 2000/78/EC.
In general the Slovenian penal system does not take into account if a common crime (such as robbery or assault) is committed with a homophobic motivation. This is not a special or independent element of the relevant crimes. However, in the case of the offence of murder only, aggravating circumstances include what could be described as homophobic intent (Article 116 in conjunction with Article 131 of the Penal Code).[185]

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[179] Slovenia, The Personal Data Protection Act (*Zakon o varstvu osebnih podatkov*), 15 July 2004, and subsequent modifications, available at: www.ip-rs.si/fileadmin/user_upload/doc/ZVOP-1_in_ZVOP-1a__English_/Personal_Data_Protection_Act_of_Slovenia_status_2013_final_eng.doc (unofficial English translation).
[180] Slovenia, The Societies act (*Zakon o društvih*), 30 May 2006, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4242 (unofficial consolidated text).
[181] Slovenia, The Aliens act (*Zakon o tujcih*), 15 June 2011, Art. 105(2), available at: www.infotujci.si/gfx/slike/dokumenti/Zakon_o_tujcih_Ztuj-2_ENGLISH_edited_jan_2012.pdf.
[182] Slovenia, The Resolution on the immigration policy of the Republic of Slovenia (*Resolucija o imigracijski politiki Republike Slovenije*), 14 May 1999, available at: www.uradni-list.si/1/objava.jsp?urlid=199940&stevilka=1991 (official text).
[183] Slovenia, The Resolution on the migration policy of the Republic of Slovenia (*Resolucija o migracijski politiki Republike Slovenije*), 28 November 2002, available at: www.uradni-list.si/1/objava.jsp?urlid=2002106&stevilka=5265 (official text).
[184] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).
[185] Slovenia, The Criminal code (*Kazenski zakonik*), 20 May 2008, and subsequent modifications, Article 131 (Violation of Right to Equality): '(1)Whoever due to differences in respect of nationality, race, skin colour, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, financial situation, birth, genetic heritage, education, social position or any other circumstance deprives or restrains another person of any human right or liberty recognised by the international community or laid down by the Constitution or the statute, or grants another person a special privilege or advantage on the basis of such discrimination shall be punished by a fine or sentenced to imprisonment for not

Collection of the data on the bias-motivated crimes tends to be relatively limited in scope in Slovenia. The police are the only body able to produce some data on the basic offences motivated by bias, but they only collect data on the offences motivated by racial, ethnic or religious intolerance and offences motivated by sex/gender discrimination. [186]
Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*) is the most comprehensive source of the data on the criminal offences handled by the state prosecution service and the courts. The data are kept according to articles of the Criminal code and are collected via statistical questionnaires answered by the Local and the District courts and the electronic database transmitted to the statistical agency by the State prosecutor's office. Observation units are the perpetrators of criminal offences. If one perpetrator commits several criminal offences, the attribute of the perpetrator is only the main criminal offence.[187] The data collected by the Statistical Office, however, does not include information on the perpetrators' motives.

In the trial before the District Court in Ljubljana (*Okrožno sodišče v Ljubljani*) concerning a violent attack on a gay activist prior to the pride parade three perpetrators (18, 21 and 22 years of age at the time of the offence, respectively) were sentenced to jail for 18 months each.[188] In 2011, the Higher Court in Ljubljana confirmed the judgment of the first instance court, but reduced the sentence to seven months in prison for the two defendants and five months for the third one on the grounds of additional mitigating circumstances, including the absence of prior criminal records, a lack of evidence in the case of one defendant, the defendants' regret and the apologies to the victim, as well as the termination of their involvement with a football fan club (well-known for their support of homophobic attitudes).[189] The available information suggests that the case in question has, until now, been the only case in which the perpetrators of homophobic crimes received the non-suspended prison sentence. Because the case was subject to the considerable public attention, it is also considered to be a landmark case.
In general, the relevant bodies in Slovenia do not collect the data on the criminal offences motivated by homophobia/transphobia, and it is not possible to assess the trends in this type of crimes over time.

Apart from the aforementioned case, several other cases of homophobic incidents observed by the Slovenian courts could also be identified in the monitoring period. In three cases, the violation included the internet-based hate speech against LGBT persons, while in one case, the perpetrator inflicted an injury on the victim because they were a member of LGBT community. In all these identified cases, the perpetrators were sentenced with the suspended imprisonment. (Please consult Annex 1 for more information on these cases).

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more than one year.', available at: www.uradni-list.si/1/objava.jsp?urlid=201250&stevilka=2065 (official consolidated text).
[186] Information was provided by the General Police Directorate (*Generalna policijska uprava*) upon request.
[187] See e.g. Slovenia, Statistical Office of the Republic of Slovenia (*Statistični urad Republike Slovenije*) (2012), 'Adults and juveniles against whom criminal proceedings through a senate have been legally concluded, Slovenia: Methodological explanations', Public release, 23 August 2012, available at: www.stat.si/doc/metod_pojasnila/13-046-ME.htm.
[188] Slovenia, District Court in Ljubljana (*Okrožno sodišče v Ljubljani*), Judgment No. III 5357/2010, 10 March 2010.
[189] Slovenia, Higher Court in Ljubljana (*Višje sodišče v Ljubljani*), Judgment No. II Kp 5357/2010, 15 June 2011, available at: www.sodisce.si/vislj/odlocitve/2012032113063416/.

7 Transgender issues

Article 14, para. 1 of the Slovenian Constitution (equality before the law) provides that: 'In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance. All are equal before the law'.

Rather than on the basis of gender or sex, the Constitution prohibits discrimination of transgender people as discrimination on the basis of 'any other personal circumstance'.[190]
Similarly, the Implementation of the Principle of Equal Treatment Act, the umbrella act providing for prohibition of discrimination in Slovenia does not explicitly prohibit gender identity discrimination. It includes an open clause. In addition to the explicitly mentioned protected grounds (e.g. gender, racial or ethnic origin, religion, age, disability, sexual orientation), it prohibits discrimination based on 'other personal circumstance'.[191]
However, there are no specific laws comprehensively addressing the status and position of transgender people in Slovenia.

The change of name following a possible gender reassignment is not specifically regulated. The change of name is regulated by the Personal Name Act (*Zakon o osebnem imenu*).[192] The right to choose one's name freely is a citizen's right which can be limited only if necessary for the protection of public security, morality and freedoms of others.[193] A name can be changed on the basis of changed family status or upon the request of an individual who is of age or, in the case of a minor, who is represented by an authorised proxy.[194] Since the situation of transgender individuals is not specifically regulated under the Personal Name Act, such an individual can change his/her name by filing a request with the competent organ. Pursuant to the Personal Name Act the only grounds for denying a request are related to criminal law. The organ can refuse the request if an applicant has been prosecuted or convicted for a criminal offence which is prosecuted ex officio and the legal effects of the conviction have yet not expired.[195] This law only applies to the citizens of the Republic of Slovenia.[196]
The gender reassignment is only mentioned in one law. The Registry of Deaths, Births and Marriages Act (*Zakon o matičnem registru*,) only stipulates that gender change shall be

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[190] Official Interpretation by the Commission for Constitutional Affairs of the Parliament of the Republic of Slovenia referred to in footnote 4 above. See: Slovenia, DIH – Association for the integration of homosexuality, Association of friends of Legebitra, Škuc LL, Škuc Magnus, Škuc Pink Club (*DIH - Društvo za integracijo homoseksualnosti, Društvo prijateljev Legebitre, Škuc LL, Škuc Magnus in Škuc Roza Klub*) (2004), 'For the country of equal opportunities: Invitation to the Members of Parliament and to the heads of parliamentary groups to provide support to the law on same-sex partnership' ['Za državo enakih možnosti: Poziv poslankam in poslancem ter vodjem poslanskih skupin k podpori zakona o istospolni partnerski zvezi'], Public release, 25 May 2004, available at: www.ljudmila.org/sgs/modules.php?name=News&file=print&sid=283.
[191] Slovenia, The Implementation of the principle of equal treatment act (*Zakon o uresničevanju načela enakega obravnavanja*), 22 April 2004, and subsequent modifications, Art. 2, available at: www.arhiv.uem.gov.si/fileadmin/uem.gov.si/pageuploads/ZUNEO-UPB1_ang_KONCNA.doc (unofficial English translation).
[192] Slovenia, The Personal name act (*Zakon o osebnem imenu*), 1 February 2006, available at: www.uradni-list.si/1/objava.jsp?urlid=200620&stevilka=746 (official text).
[193] Slovenia, The Personal name act (*Zakon o osebnem imenu*), 1 February 2006, Art. 2, available at: www.uradni-list.si/1/objava.jsp?urlid=200620&stevilka=746 (official text).
[194] Slovenia, The Personal name act (*Zakon o osebnem imenu*), 1 February 2006, Art. 11, available at: www.uradni-list.si/1/objava.jsp?urlid=200620&stevilka=746 (official text).
[195] Slovenia, The Personal name act (*Zakon o osebnem imenu*), 1 February 2006, Art. 19, available at: www.uradni-list.si/1/objava.jsp?urlid=200620&stevilka=746 (official text).
[196] Slovenia, The Personal name act (*Zakon o osebnem imenu*), 1 February 2006, Art. 1, available at: www.uradni-list.si/1/objava.jsp?urlid=200620&stevilka=746 (official text).

among the data which are entered in the registry.[197] This provision was included in the original version of the act in question adopted in March 2003.[198] Pursuant to the Rules on the implementation of the Births, Deaths and Marriages Registry Act (*Pravilnik o izvrševanju zakona o matičnem registru*), an implementing regulation adopted on the basis of the aforementioned act, gender change is entered in the registry upon a decision by the competent authority. The deciding body is the Civil Registry (i.e. Registry of Deaths, Births and Marriages) Department within Administrative Units. According to these rules, the body in question shall issue the decision on the basis of a medical notification showing that a person has changed their gender. Before these data are entered in the registry, the civil registry officer shall request the determination of a new personal registration number referring to the new gender. The extract from the birth registry is then issued with the data on the new gender without reference to the gender change, namely to the past gender identity.[199] The aforementioned provisions were included in the initial version of this implementing regulation adopted in 2005.[200] It is important to note that the implementing act in question does not specify the conditions for the issuance of medical notification on gender reassignment, that is – at which stage of the procedure it could be issued (e.g. whether an individual's intention to live in the opposite gender is satisfying, or the individual should be, for example, subject to hormonal treatment, real-life test or surgery).

In general, gender reassignment is regarded as a health-related issue. In practice, this procedure is observed by a commission, colloquially referred to as the Commission for gender change (*Komisija za spremembo spola*). It is composed of a psychiatrist, a gynaecologist, an urologist, an endocrinologist and a plastic surgeon. The commission does not have an official name, but the current members of the commission adopted an unofficial name, Interdisciplinary medical council for gender change (*interdisciplinarni konzilij za spremembo spola*).[201] In 1997, a document entitled Gender change procedure (*Postopek za spremembo spola*) was adopted by the then medical team to govern its work.[202] According to this document, a person concerned is firstly obliged to visit a psychiatrist for at least one year. If the psychiatrist establishes the diagnosis of transsexualism and there is no doubt in the person's motivation to change their gender, the medical team gathers to review the current procedure and to prepare, in consultations with the person concerned, a plan concerning the further procedures. All planned procedures are explained to the individual, including the possible complications and consequences. From this point on, the individual identifies with the gender in which they wish to live. The next procedure is a hormonal therapy which lasts around one year. Upon the termination of this procedure, the psychiatrist observes the individual's mental condition and their motivation to continue with the relevant procedures. The individual is then sent to a surgeon, who gathers a surgical team to discuss the timetable and the technical details of surgical interventions. During hospitalisation, the psychiatrist is always available and provides for emergency measures, if needed. Upon the termination of

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[197] Slovenia, Registry of Deaths, Births and Marriages Act (*Zakon o matičnem registru*, ZMatR), 27 March 2003, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3354 (unofficial consolidated text).

[198] Slovenia, Registry of Deaths, Births and Marriages Act (*Zakon o matičnem registru*, ZMatR), 27 March 2003, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3354 (unofficial consolidated text).

[199] Slovenia, The Rules on the implementation of the Births, Deaths and Marriages Registry Act (*Pravilnik o izvrševanju zakona o matičnem registru*), 13 April 2005, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV5572 (unofficial consolidated text).

[200] Slovenia, The Rules on the implementation of the Births, Deaths and Marriages Registry Act (*Pravilnik o izvrševanju zakona o matičnem registru*), 13 April 2005, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=PRAV5572 (unofficial consolidated text).

[201] Slovenia, Information was provided by member of the Interdisciplinary medical council for gender change (*interdisciplinarni konzilij za spremembo spola*) upon request, 26 February 2014.

[202] Slovenia, Information was provided by member of the Interdisciplinary medical council for gender change (*interdisciplinarni konzilij za spremembo spola*) upon request, 26 February 2014.

surgical interventions, the psychiatrist monitors the person's recovery and mental condition, and, based on their assessment, provides for further measures.[203] The current medical council prepares an updated document which should be adapted to Standards of Care (Version 7), a document produced by the World Professional Association for Transgender Health.[204]
In practice, the medical notification showing that a person has changed their gender, which is the condition for recording gender change in the official registry, is issued on the request of an individual during the hormonal therapy, whereas the individual lives full-time in their preferred gender (real-life experience).[205]

In 2013, a Slovenian NGO working in support of LGBT community and two international umbrella organisations supporting this group of population submitted a joint report on the implementation of the European Social Charter (revised), that is – the implementation of the relevant provisions on the right to protection of health. In respect to the situation in Slovenia concerning medical treatment as a compulsory requirement for legal gender recognition, the reporting organisations established that the existing legislation provides no detailed criteria to be used by the competent healthcare providers in determining whether a person has changed their sex. According to the report, "[a]necdotal evidence from transgender persons seeking legal gender recognition indicates that that the criteria vary, depending on the individual civil registry officer. Thus, some are reported to accept a certified statement from a psychiatrist, on the basis of which they initiate legal gender recognition without requiring a hormonal and surgical treatment. Others require a certified statement from a surgeon who has performed the gender reassignment surgery. In summary, the law is applied arbitrarily, with a requirement to undergo seriously invasive medical treatment, possibly including sterilisation, being imposed in some cases."[206] In its general introduction to 2013 conclusions, the European Committee of Social Rights asked the State Parties, including Slovenia, to produce in their next reports the information on whether the national legislative framework requires that transgender persons undergo a sterilisation or any other invasive medical treatment which might affect their health or physical integrity.[207]

The available statistical data show that there were three persons whose acquired gender was legally recognised in 2009, compared to five persons in 2010, one person in 2011, and one person in 2012, while six persons legally changed their gender in 2013.[208] With the exception of the person who changed their gender in 2011, all individuals in question have also changed their names. The relevant authorities, however, only assume that these name changes were result of

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[203] Slovenia, Information was provided by member of the Interdisciplinary medical council for gender change (*interdisciplinarni konzilij za spremembo spola*) upon request, 26 February 2014.
[204] Slovenia, Information was provided by member of the Interdisciplinary medical council for gender change (*interdisciplinarni konzilij za spremembo spola*) upon request, 26 February 2014.
[205] Slovenia, Information was provided by member of the Interdisciplinary medical council for gender change (*interdisciplinarni konzilij za spremembo spola*) upon request, 26 February 2014.
[206] Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), Transgender Europe (TGEU), ILGA-Europe (2013), *Submission by Legebitra , Transgender Europe and ILGA-Europe on the 12th report by Slovenia on the implementation of the European Social Charter (revised): Article 11 – The right to protection of health: Medical treatment as compulsory requirement for legal gender recognition*, Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), Transgender Europe (TGEU), ILGA-Europe, available at: www.amnesty.si/media/uploads/files/LEGEBITRA,TGEU%20and%20ILGA-Europe%20Social%20Charter%20Shadow%20Report%20on%20Slovenia%20-%20coerced%20medical%20treatment%20-%2018%20July%202013-1.doc.
[207] Council of Europe, European Committee of Social Rights (2014), European Social Charter: European Committee of Social Rights: Conclusions (2013): General Introduction, January 2014, available at: www.coe.int/t/dghl/monitoring/socialcharter/conclusions/state/GeneralIntro2013_en.pdf.
[208] Slovenia, Information was provided by the Ministry of the Interior (*Ministrstvo za notranje zadeve*) upon request, 22 April 2014.

the gender change, since it is not mandatory for a person to state the reasons for name change when they express their wish to do so.[209]

An overview of the database of case law by Slovenian courts which is available at www.sodnapraksa.si and www.pisrs.si/Pis.web/ showed that no relevant cases concerning the transgender individuals were handled by the courts in Slovenia in the period covered by this update.

In 2010, the Advocate of the Principle of Equality, the national equality body, established that a campaign concerning sexual education carried out by the then Ministry of Education and Sport (*Ministrstvo za izobraževanje in šport*) represented direct discrimination on the grounds of gender identity. The ministry in question repeated the campaign in 2011 and the Advocate produced an additional opinion with similar conclusions. Please find more on this in Annex 1.
In general, transgender issues are virtually absent from the public domain. The existing legislation tends to address the situation of transgender persons in a very general manner. Rare data that are available suggest that such a legal framework does not provide for the legal certainty of transgender persons, including in terms of the clear requirements and the procedure for gender change. The existing legislation was subject to the amendments in the past, but no changes with respect to the provisions governing the gender change were adopted or even discussed. Also today, no plans for the possible legal changes could be detected.

[209] Slovenia, Information was provided by the Ministry of the Interior (*Ministrstvo za notranje zadeve*) upon request, 22 April 2014.

8 Miscellaneous

On 22 June 2005, the National Assembly of the Republic of Slovenia adopted the amended Registration of Same-Sex Partnership Act.[210] Of the 47 deputies present in the 90-seat chamber, 44 deputies from the ruling coalition voted for the government-proposed bill, which allows same-sex couples to register their relationship (to recall, same-sex couples are not allowed to marry officially).
The Act sets down the conditions and the procedure for the registration of same- sex unions as well as the legal consequences resulting from it, the termination of such a union and the relations between the partners after the termination of the union. Article 2 defines the notion of registered same-sex union. According to this provision, the registered same-sex union is a legally established union of two women or two men who register their union before the competent authority in a manner determined by the Act. The main legal consequences are determined in Articles 8 to 24. The principal provisions relate to:

1. the rights and obligations of the partners, the property of each individual partner and the joint property and earnings of the couple, the provisions on management of the property, responsibility for the assumed obligations, the division of the property, the amount of shares in joint property and the conclusion of contracts between the partners;
2. the right of one partner to be supported by the other partner, the right to housing protection, certain rights of the partner in case of illness of the other (e.g. the right to acquire information on the health condition of the partner who is ill and the right to visit in medical institutions);
3. two clauses on inheritance limited to joint property acquired through work accomplished throughout the duration of the union; the inheritance of property belonging to one partner, i.e. of the property which has not been acquired jointly in the union, is regulated by general rules on inheritance which omit another partner from participating in inheritance on this property with other heirs.[211]
4. the procedure for termination of the union and certain legal consequences resulting from it.

However the Registration of the Same-Sex Partnership Act does not deal with the relations between the partners and the children of either of them.
The government planned to draw up changes to other laws within the next six months. Legislation dealing with criminal proceedings, lawsuits and other proceedings will be amended in order to include the rights resulting from the registration of same-sex unions. By and large, however, these legislative amendments have not been adopted yet. At present, many legal gaps still persist. Please see below for more details on this issue, as well as for the information on the attempts to address the existing gaps.

NGOs were involved in the drafting of the bill and were able make certain proposals. (Please note that this information was included in the original report and the current NFP cannot elaborate in respect to original authors' references.) Among the rights they proposed, the right to inheritance of common property was included in the Act, but most of the other proposed rights were firmly rejected by the government. After the adoption of the Act,

[210] Slovenia, The Registration of same-sex partnership act (*Zakon o registraciji istospolne partnerske skupnosti*), 22 June 2005, and subsequent modifications, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/z_registracija_ips_en.pdf (unofficial English translation).
[211] Slovenia, Žnidaršič, V. (2007), 'Inheritance by same-sex partners in Slovenia' ['Dedovanje istospolnih partnerjev pri nas'], *Pravna praksa*, Vol. 26, No. 27, p. 15.

most NGOs complained that their proposals had not been taken into account. The Society for the Integration of Homosexuality (*Društvo za integracijo homoseksulanosti*), the Peace Institute (*Mirovni inštitut*) and Lingsium, the Group for Same-Sex Oriented Youth (*Lingsium, Skupina za istospolno usmerjene mlade*) consider that the adoption of the Act is a positive step, since it partially regulates this previously unregulated field. However, after a change of government, the Ministry of Labour, Family and Social Affairs (*Ministrstvo za delo, družino in socialne zadeve*) has decided not to enter into dialogue with the NGOs and they have only been invited to submit their comments and proposals on one occasion. According to these organisations, the main weak point of the Act is that it does not provide for the status of 'relative' for the same-sex partner. The partner will thus not be able to exercise the rights (e.g. health and pension insurance, social security, procedural rights) that are granted to 'relatives'.
Since certain rights are consciously excluded from the Act, some NGOs deem the Act discriminatory and have filed a petition for a review of constitutionality before the Constitutional Court. The NGOs, ŠKUC-LL and ŠKUC-Magnus, moreover consider that the Act is introducing differentiated treatment in comparison with heterosexual couples and is thus inconsistent with both the principle of equality of all citizens and the principle of equal opportunities. They also condemned the level of discussion in the National Assembly during the proceedings for the adoption of the Act.

The District Court in Ljubljana in its judgment of 10 November 2008 recognized the consequences of adoption of a child by a same-sex couple effectuated in the United States. The Court ruled that the judgment of the US court allowing the adoption did not run against the requirements of the Slovenian public order.[212] The decision was confirmed by the Supreme Court on January 28, 2010.[213]
In its decision U-I-425/06, the Constitutional Court ruled that Article 22 of the Registration of the Same Sex Civil Partnership Act is unconstitutional and has to be amended by the Parliament in the next 6 months. The petitioners argued that the said provision violates the constitutional principle of equality between the partners of the same-sex partnership and the married couples or those who live out of wedlock by arbitrarily discriminating between the right to inherit a special and common property of the same-sex partners, by not regulating the right to inherit a special property and by failing to determine the necessary inheritance share of a survived same-sex partner.

The Constitutional Court agreed with them by stressing that the position of partners in the registered same-sex partnership regarding the right to inherit after the deceased partner is in its essential factual and legal features comparable with the position of a married couple. The distinctions regarding the inheritance between the two groups are therefore not based on a certain material, objective circumstance rather on a sexual-orientation. As the latter is not supported by a constitutionally valid justification it runs against Article 14 of the Constitution.[214]

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

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[212] Slovenia, District Court in Ljubljana (*Okrožno sodišče v Ljubljani*), IR 2006, 10 November 2008, available at: www.narobe.si/images/stories/File/Celotna%20sodba.pdf.
[213] Slovenia, Supreme Court of the Republic of Slovenia (*Vrhovno sodišče Republike Slovenije*), Decision II Ips 462/2009, 28 January 2010, available at: www.sodisce.si/mma_bin.php?static_id=20110413133235.
[214] Slovenia, Constitutional Court (*Ustavno sodišče*), U-I-425/06, 2 July 2009, available at: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/4512052E36A02E33C1257C080035ADF6.

However, following the just mentioned decision of the Constitutional Court, the Ministry of Justice and the Ministry of Labour, Family and Social Affairs have presented a draft version of the new Family Code (*Družinski zakonik*), which shall equalize the present same-sex partnership with the marriage or extra- marital partnerships in all family matters. Following this draft law, same-sex partners shall be also granted a right to adoption.[215]
The bill also introduces a new definition of family and marriage. Family shall be defined as a life community of child and one or both parents, or a community of child and another adult if he/she takes care of the child and has other duties towards him/her pursuant to the law.[216] Marriage shall be defined as a life community of two persons whose conclusion, legal consequences and dissolution is regulated by the Family Code.[217]
The bill is currently still pending in the National Assembly, but it has already stirred a lot of controversies in the society. The public discussion has been extensive, vibrant, sometimes emotional.[218] However, it has not enflamed homophobia, but it was at times marked by a lack of tolerance: both on the side of the opponents as well as the proponents of the bill. A journalist of a Catholic weekly newspaper Družina (Family) has been thus found in violation of the journalist code of conduct for misrepresenting the data concerning same-sex relationships and families.[219] On the other hand, the Ministry of Labour, Family and Social Affairs simply dismissed the objections of the opponents of the bill for their alleged lack of sufficient expertise.[220]

Its proponents, the government supported by some NGOs,[221] as well as by the Ombudsman,[222] have defended it as a step forward, as keeping up with the reality and as a move which brings Slovenian legislation in line with the constitutional requirements.[223]
The opponents have, however, protested against the new definition of family and marriage.[224] In particular they have strongly objected to the extension of the right of adoption to the same-sex partners.[225]
Public surveys conducted by the media show that more than two thirds of those surveyed oppose the adoption of the new Family Code.[226] By the end of 2009 the opponents have collected already more than 25,000 signatures against the bill. It is very likely that shall

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[215]http://www.mp.gov.si/fileadmin/mp.gov.si/pageuploads/2005/slike/drugo/2009/sept ember/Foto/DZak_kratek_povzetek.pdf, last visited 28.9. 2009. (Defunct link.)
[216] Slovenia, Draft Family code (*Predlog Družinskega zakonika*), September 2009, Art. 2, available at: original link defunct, draft law available at: http://kronika.visoko.si/wp-content/uploads/2009/10/predlog_dru%C5%BEinskega_zakonika.pdf.
[217] Slovenia, Draft Family code (*Predlog Družinskega zakonika*), September 2009, Art. 3, available at: original link defunct, draft law available at: http://kronika.visoko.si/wp-content/uploads/2009/10/predlog_dru%C5%BEinskega_zakonika.pdf.
[218] For an overview of different opinions see the public presentation of opinions on the Family Code available at: http://www.dz-rs.si/index.php?id=96&cs=4&st=m&committee=10&vt=8&unid=PMT|D4C5240909857A7B C125764E00310827&showdoc=1, last visited 12.2. 2010. (Defunct link.)
[219] Slovenia, Journalistic Court of Honour (*Novinarsko častno razsodišče*), Roman Kuhar v. journalist Barbara Kastelec, Družina weekly, 27 January 2010, available at: http://www.razsodisce.org/razsodisce/arhiv20ec.html?nid=214 .
[220] Slovenia, MMC RTV SLO (2009), 'Family Code represents substantial modernisation' [Družinski zakonik pomeni bistveno modernizacijo'], 9 December 2009, available at: www.rtvslo.si/slovenija/druzinski-zakonik-pomeni-bistveno-modernizacijo/218832.
[221] Among others: Amnesty International, www.amnesty.si/sl/node/2105, (defunct link), last visited 12.2.2010, Civil initiative for all Families, available at: www.petitiononline.com/druzine/petition.html.
[222] www.narobe.si/narobe-12/intervju-zdenka-cebasek-travnik.
[223] Original link defunct.
[224] Civil initiative for Family and Children Rights, available at: www.24kul.si/?mod=1, (original link defunct), last visited 12.2. 2010.
[225] www.24kul.si/?id=7&fmod=0, (original link defunct), last visited 12.2. 2010.
[226] Slovenia, T. K., STA (2009), 'Shall we decide on the Family Code on a referendum' [Bomo o družinskem zakoniku odločali na referendumu', *Delo*, 30 October 2009, available at: www.delo.si/clanek/91491.

the Family Code be adopted in the Parliament in its present form, it will be put on the referendum.
Indeed, in the period covered by this update, the adoption of the new Family Code was perhaps one of the most heatedly debated issues in the country. The adoption of the Family Code, a law governing family relationships was a major legal development concerning the Slovenian LGBT community in 2011. It stipulated that the registered same-sex as well as the non-registered same-sex partners shall be treated on an equal footing with the opposite-sex partners in all legal matters except the marriage, joint adoptions and automatic recognition of parental rights for the biological parent's registered partner. Pursuant to this law, the same-sex partners had the right to the second parent adoption – that is, a partner may only adopt a child of the other partner.[227] These provisions were a step back from the aforementioned version of the law which envisaged the equal right for the same-sex partners compared to the opposite-sex partners.[228]

The legislative process and the adoption of this legislation were met by the fierce opposition from some corners of the society. The most vocal opposition to the law organised themselves in the Civil initiative for the family and the rights of the child (*Civilna iniciativa za družino in pravice otrok*). They argued, among other things that the relationship between a man and a woman is the only one that enables the survival, and that it is the most natural form of relationships and the only one ensuring the children a healthy development. They further stated that with granting equality between the same-sex partnership and the marriage, the latter is devalued and robbed of its most important aspects – that is, the conception and birth. They also stipulated that the homosexuality is not yet thoroughly researched and that the adoption of children by homosexuals would represent a social experiment. According to them, the research shows that this would also result in higher health and social risks for children as there is more violence and divorces among the same-sex partners. They further stated that equalising rights of homosexuals with heterosexuals is an irresponsible decision when the country faces low fertility rates. Furthermore, they voiced that the right of homosexuals to be treated equally regarding the marriage has no basis in the binding international instruments on human rights. (This information was available at www.24kul.si/?id=635&fmod=0, but the link is now defunct. The website www.24kul.si has been redesigned since, but still includes the various features which are not supportive to the LGBT community.)

Upon the adoption of the law, the groups opposing to the new Family Code collected signatures from 40,000 voters demanding a public referendum on the law. To prevent the referendum, the National Assembly lodged with the Constitutional Court a request for the assessment of the referendum initiative. It asked the court to decide whether the rejection of the law in the referendum might result in the unconstitutional consequences. In December 2011, the court allowed the referendum. It argued that since the Family Code would start to be used only one year from its entry into force, there would be no immediate changes in the first year after the referendum irrespective of the referendum results.[229]

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[227] Slovenia, The Family Code (*Družinski zakonik*), 16 June 2011, available at: www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=3&ved=0CD0QFjAC&url=http%3A%2F%2Fwww.mddsz.gov.si%2Ffileadmin%2Fmddsz.gov.si%2Fpageuploads%2Fdokumenti__pdf%2Fword%2FDZak-sprejet-16-6-11.doc&ei=o79LU9qkEO7BygOqh4GQBA&usg=AFQjCNGGqK8ytJ4Pypx_MAQiUq1HjGqLlg&bvm=bv.64542518,d.bGQ&cad=rja. (Not valid, rejected in public referendum.)

[228] Slovenia, Draft Family code (*Predlog Družinskega zakonika*), September 2009, available at: original link defunct, draft law available at: http://kronika.visoko.si/wp-content/uploads/2009/10/predlog_dru%C5%BEinskega_zakonika.pdf.

[229] Slovenia, Constitutional Court (*Ustavno sodišče*), U-II-3/11, 8 December 2011.

In spite of the support for the law not only by the LGBT community, but also by the then government parties as well as various professional organisations (e.g. psychologist, psychotherapist, social pedagogues), 54.64% of the voters rejected the law in the referendum held in March 2012, with the turnout of 30.1% of all voters.
Because of the referendum vote, the existing legislation, namely the Registration of Same-sex Partnership Act (*Zakon o registraciji istospolne partnerske skupnosti*), is still in place. Since it regulates a limited number of fields, LGBT persons tend to face the obstacles in different life situations. For example, the same-sex partners have no access to health insurance through a partner, to the right to ask for paid sick leave to care for a sick partner,[230] or to the right to stay in the rental apartment in case of death of the partner who was a signatory of the lease agreement.[231] In spite of the relevant case law of the European Court of Human Rights, the relevant provisions, specified in the Housing Act (*Stanovanjski zakon*), have not been subject to the modifications and only apply to the opposite-sex partnerships.[232] LGBT partners are, for instance, not entitled to the monetary compensation which the court may award in case of death or serious disability of one of the partners, but this right is only reserved for the opposite-sex partners.[233] LGBT partners who live in a non-registered union tend to face even more obstacles, since they cannot enjoy the rights granted to the registered partners under the Registration of Same-sex Partnership Act (e.g. right to subsistence and maintenance, the inheritance rights or the right to obtain information about the health condition of the sick partner and to visit them in healthcare institutions).[234] In terms of the procedural law, for instance, unlike the opposite-sex persons, same-sex persons are not excused from witnessing when this can affect their partners involved in the civil procedures,[235] or the criminal[236] or the administrative proceedings.[237]

The period covered by this update also saw some steps forward. For example, the year 2011 saw the first second-parent adoption completed in Slovenia. The same-sex partner of a mother, who gave birth to a child incepted with donor insemination, lodged an application for the second-parent adoption at the local Social work centre (*Center za socialno delo*). The application was filed on the basis of the 1976 Marriage and Family Relations Act which in Article 135 states that no one can be adopted by more than one person except in the case when they are adopted by two spouses. The social services office refused the application stating that the law did not provide for the right of a same-sex partner of the parent to adopt the partner's biological child. The same-sex partner filed an appeal with the Ministry of Labour, Family and Social Affairs. The ministry ruled in favour of the applicant and approved the application for the second-parent adoption. It stated that there were no limitations in the

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[230] Slovenia, The Health care and health insurance act (*Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju*), 12 February 1992, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO213 (unofficial consolidated text).
[231] Slovenia, The Housing act (*Stanovanjski zakon*), 19 June 2003, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2008 (unofficial consolidated text).
[232] Slovenia, The Housing act (*Stanovanjski zakon*), 19 June 2003, and subsequent modifications, Art. 109 in conj. with Art. 11, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO2008 (unofficial consolidated text).
[233] Slovenia, The Code of obligations (*Obligacijski zakonik*), 3 October 2001, and subsequent modifications, available at: www.uradni-list.si/1/objava.jsp?urlid=200797&stevilka=4826 (official consolidated text).
[234] Slovenia, The Registration of same-sex partnership act (*Zakon o registraciji istospolne partnerske skupnosti*), 22 June 2005, and subsequent modifications, Art. 8, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/z_registracija_ips_en.pdf (unofficial English translation).
[235] Slovenia, The Civil procedure act (*Zakon o pravdnem postopku*), 25 March 1999, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212 (unofficial consolidated text).
[236] Slovenia, The Criminal procedure act (*Zakon o kazenskem postopku*), 29 september 1994, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO362 (unofficial consolidated text).
[237] Slovenia, The General administrative procedure act (*Zakon o splošnem upravnem postopku*), 16 September 1999, and subsequent modifications, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603 (unofficial consolidated text).

law concerning sex or marital status of a person adopting a child, if all the other conditions were met, i.e. that the adoption is in the best interest of the child and that the mother agrees with the adoption. It further stated that refusing the application would violate the prohibition of discrimination on the ground of sexual orientation, contained in the Article 14 of the Constitution.[238]
In December 2012, the National Assembly adopted the new Pension and Disability Insurance Act (*Zakon o pokojninskem in invalidskem zavarovanju*). The act recognised the right to survivor's pension to the registered same-sex partners on equal grounds with the married opposite-sex couples. It entered into force on 1 January 2013.[239] However, LGBT partners who have not registered their relationship are not entitled to this benefit.

In 2013, the Constitutional Court declared the Inheritance Act (*Zakon o dedovanju*) unconstitutional because it does not regulate the inheritance rights of the non-registered same-sex partners. The court held that the omission of the legislator to provide for statutory inheritance (i.e. inheritance not based on a will) for the co-habiting partners constitutes discrimination on the ground of sexual orientation. Such discrimination is not based on any objective goals but on sexual orientation for which the legislator does not have a reason that would be justified under the Constitution. The Court established that the situation of the partners in a stable co-habiting same-sex relationship is from the perspective of the human right to the statutory inheritance comparable to the position of the co-habiting opposite-sex partners whose right to statutory inheritance is recognised and regulated in the Inheritance Act. The court thus ordered the legislator to rectify the established inconsistency within six months from the publication of the decision in the Official Gazette of the Republic of Slovenia. Until the established inconsistency is remedied, the Inheritance Act has to apply, under equal terms, to the co-habiting same-sex partners and to the co-habiting opposite-sex partners.[240] As of yet, no relevant amendments to the challenged act have been adopted.

This situation might be subject to the change. On 14 April 2014, the government submitted the draft proposal of the Civil Partnership Act (*Zakon o partnerski skupnosti*) for the public discussion. This law is meant to replace the existing Registration of the Same-sex Partnership Act. Apart from the joint adoption and the procedures of biomedically-assisted procreation, this draft law envisages the same legal effects of the civil partnership between the same-sex persons and a durable union between the same-sex persons who have not entered into a civil partnership, as afforded respectively to the married couples and the opposite-sex persons living in durable extra-marital partnership. If adopted, it shall be the first valid law to include the definition of a long-lasting relationship between the same-sex persons who have not entered into a civil partnership (i.e. non-registered partnership). As such, it shall also provide that the same-sex couples, whether they have entered into a civil partnership or not, are treated on an equal footing with the opposite-sex couples, including in the matters concerning inheritance.[241] The act in question shall thus follow the ruling by the Constitutional Court. However, since the adoption procedure is only in its initial phase, it is not yet possible to foresee the possible future developments concerning the adoption of this piece of legislation .

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[238] Slovenia, Ministry of Labour, Family and Social Affairs (*Ministrstvo za delo, družino in socialne zadeve*), Decision No. 12030-7/2011/4, 14 July 2011.
[239] Slovenia, The Pension and disability insurance act (*Zakon o pokojninskem in invalidskem zavarovanju*), 4 December 2012, and subsequent modifications, available at: http://imss.dz-rs.si/imis/533b84d5857242b9e9b6.pdf (unofficial consolidated text).
[240] Slovenia, Constitutional Court (*Ustavno sodišče*), U-I-212/10, 14 March 2013, available at: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/FC62EF78571FE59EC1257B4800408D62.
[241] Slovenia, Draft Civil Partnership Act (*Predlog Zakona o partnerski zvezi*), 14 April 2014, available at: www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/word/druzina/Osnutek_ZPS_140414.doc.

In Slovenia there are no laws comparable to those adopted in Lithuania. Similarly, there have been no reports on the use of the so-called phallometry. Regarding the two mentioned issues, there have been no developments in the period covered by this update.

With respect to general situation of the LGBT community in Slovenia, the surveys carried out by the non-governmental organisations may be informative. An example of NGO activities includes the project Activate! (*Povej naprej!*) carried out by the Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), a LGBT NGO. The main objective of this programme is recording of and intervention in cases of the breaches of human rights based on sexual orientation and gender identity. Within the framework of the project, the NGO produced a report on homophobia-related incidents which is still among the prominent sources of information on this type of incidents. The report covers the period from November 2007 to November 2008. It was based on a survey questionnaire, the two focus group discussions and the semi-structured interviews with the members of LGBT population who were victims of discrimination/violence in the period from 2007 to 2008. The survey sample included 149 respondents, of whom 52 % defined themselves as male, 47 % as female and a percentage of respondents who did not define themselves either as male or female. Some 43 % of the respondents were gays, 30 % were lesbians, and almost 22 % were bisexuals. One respondent was a transgender person, while the rest of the sample did not choose any of the options suggested in the survey questionnaire. For the purpose of the survey, the respondents were presented with the notion of discrimination, defined as 'unequal treatment of individuals in comparison with someone else' due to their personal circumstances, including their sexual orientation. According to this definition, a considerable majority, namely 96 persons or 67.6 % of the respondents, claimed that they were discriminated against. Of the latter, 44.8 % were gays, 31.3 % were lesbians, 17.7 % were bisexuals, 1 % was transgendered persons, while the rest did not define themselves. Of the 96 respondents who claimed that they were discriminated against, 71 % were called by insulting names, 31.9 % were threatened with physical violence, 11.7 % were pushed, hit, kicked or beaten and 5.3 % were harassed by the police (without the use of physical force). The report also indicated that the majority of the incidents went unreported. Of those who experienced discrimination, 92 % did not report the discrimination or violence to the police for various reasons. In general, the survey showed that verbal violence represents the most common type of violence faced by LGBT population. This was also confirmed in the two focus group discussions involving five gays and lesbians, respectively. The focus groups also suggested that the majority of homophobic incidents take place in public space.[242] (Please see also Chapter 9 on the promising practices for some additional information on this initiative).

In 2011, the results of a research project dealing with the situation of LGBT teacher in the Slovenian educational settings, from kindergartens to universities, were made public. The research was conducted by the aforementioned NGO Association Informational Centre Legebitra on the basis of an online survey with 123 respondents of whom 37% were lesbians, 37 % gays and 26% bisexuals. Almost 80% of the respondents said that they were out to all or to some people in their surroundings, but about a half of the respondents were not out at their workplaces. LGBT persons working at the university reported the highest level of disclosure (65%), while the lowest share of teachers who were out was reported in secondary schools. An overall majority, namely more than 90% of those who are disclosed have never experienced physical violence at workplace. Furthermore, 82 % of bisexuals reported that

[242] Slovenia, Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*) (2008), *ACTIVATE! Report: Research, monitoring and recording of cases of discrimination and rights violations against LGBT people in Slovenia in the period from November 2007 to November 2008*, Ljubljana, Društvo informacijski center Legebitra, available at: www.ilga-europe.org/home/what_we_do/ilga_europe_as_a_funder/completed_projects/activate_against_discrimination_on_the_basis_of_sexual_orientation_and_gender_expression/documentation_report_in_english.

they have not experienced psychological violence, but 43 % of gays and 35% of lesbians at least once experienced psychological violence. Secondary schools tend to be the least friendly environment, as 64% of secondary school teachers reported that they faced verbal and psychological violence because of their sexual orientation. More than 60 % of the respondents stated that their school does not offer relevant and accurate information or other support regarding same-sex orientation. The majority of more than 60% of respondents assessed their working environment to be tolerant, namely their colleagues have nothing against homosexuality, but do not want to talk about it, while almost 20% described their workplace as abusive and disapproving.[243]

Between April and December 2011, the aforementioned NGO conducted a research among the school staff in Slovenian secondary schools. The research exercise was based on an online survey which captured 309 school staff across Slovenia (89 % of them were teachers), while additional 14 participants took part in the focus group discussions. The research findings showed, among other things, that 70% of the respondents are aware of the existence of their school policies addressing violence and discrimination between and against students. The respondents were, however, less aware of the representation of sexual orientation in these policies, compared to other protected grounds. Some 73.1 % of the respondents believe that there is not enough fact-based and objective discussion about homosexuality in secondary schools. In addition, 60 % of respondents rarely or sometimes discuss homosexuality in class, 6.8 % discuss it often, while 12 % believe that the discussion does not belong within the subject that they teach. More than 60 % of participants believe that the discussion about homosexuality should be an integral part of school curriculum, at least at certain subjects. At the time of the research, 35 % of respondents reported that they witnessed verbal homophobic violence (e.g. jokes, name calling, comments, insults and prejudice), and physical and other forms of homophobic violence were perceived as less common. According to the the survey, 33 % of the respondents attended a seminar on how to tackle violence and discrimination in schools, but only 12 % of the respondents received information on how to tackle homophobia in schools at these seminars. Some 42 % of the respondents further opined that they do not possess the appropriate knowledge and skills to challenge verbal homophobic violence, while 60 % of the participants do not feel competent to tackle physical homophobic violence.[244]

[243] Slovenia, Magić, J., Janjevak, A. (2011), *'Excuse me, Miss, are you a lesbian?' A research report on the situation of LGBT educational workers in the school system in Slovenia*, Ljubljana, Društvo informacijski center Legebitra, available at: www.ilga-europe.org/content/download/19661/126413/file/Excuse%20me,%20Miss,%20are%20you%20a%20lesbian.pdf.
[244] Slovenia, Magić, J. (2012), *Homophobia in our School? A report on teacher's experiences with homophobia in Slovene secondary schools*, Ljubljana, Društvo informacijski center Legebitra, available at: www.ilga-europe.org/content/download/23933/153050/file/Homophobia%20in%20our%20school_ENG_final.pdf.

9 Good practices

In Slovenia four particular cases of good practice concerning LGBT community can be singled out.
The first relates to employers who can use various formal and informal means for securing a safe working environment for LGBT people. Two large Slovenian public companies thus lead by example by including prohibition of discrimination on the basis of other personal circumstances (i.e. sexual orientation) in their internal company codes.
Example 1: Code of professional ethics and entrepreneurial culture, Telekom Slovenije d.d.:

> *Our workers and work: Telekom Slovenije strives for a sound, safe and productive working environment without overt or covert discrimination on the basis of gender, race, colour, age, health, disability, religious, political or any other belief, membership of the trade union, ethnic or social origin, family status, financial status, sexual orientation or any other personal circumstances. Telekom Slovenije prohibits on its premises any conduct which contributes to an unproductive, discouraging or insulting environment. If anyone feels they are subject to such inappropriate treatment, he or she should turn to his supervisor and to the director of personnel.*[245]

Example 2: Professional criteria and ethical principles of journalism in Slovenian Radio and Television Programmes:

> *Attitude to sexual minorities: same-sex relationships are still subject to strong biases and are not infrequently prone to unscrupulous and insulting over-simplifications. While inappropriate attitude to this conduct can aggravate the situation further, approaching the issue differently can contribute to a positive change. It is necessary to avoid over-simplifications, stereotypes and personal judgments. Same-sex relationships should be portrayed objectively and impartially even in comparison with heterosexual relationships.*[246]

The second case of good practice relates to the cooperation between NGOs, trade unions, employers and the Slovenian government.
ŠKUC, an NGO promoting non-discrimination regarding sexual orientation, with the support of European Structural Funds and the Slovenian Ministry of Labour, Family and Social Affairs, published two manuals on 'Measures against employment discrimination' for use by trade unions and employers.[247]
The manuals are a comprehensive guide for trade unions in their negotiations with employers, as well as for employers when dealing with workers. They provide information on the most common types of discrimination against employees on the grounds of their sexual orientation and single out possible measures that may be undertaken by trade union

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[245] http://www.mirovni-institut.si/razlicnost/delodajalci.html (last accessed 31.01.2008). (Defunct link.)
[246] http://www.mirovni-institut.si/razlicnost/delodajalci.html (last accessed 31.01.2008). (Defunct link.)
[247] Slovenia, Greif, T. (2006), *Measures against discrimination in employment for trade unions* [*Ukrepi proti diskriminaciji v zaposlovanju za sindikate*], Ljubljana, ŠKUC, available at: www.ljudmila.org/lesbo/EQUAL/pdf/Ukrepi_proti_diskriminaciji_SINDIKATI.pdf; Slovenia, Greif, T. (2006), *Measures against discrimination in employment for employers* [*Ukrepi proti diskriminaciji v zaposlovanju za delodajalce*], Ljubljana, ŠKUC, available at: www.ljudmila.org/lesbo/EQUAL/pdf/Ukrepi_proti_diskriminaciji_DELODAJALCI.pdf.

representatives and employers to counter them. The manual is full of comparative examples of good practices and concrete proposals for limiting the widespread, yet concealed, cases of homophobia in the workplace in Slovenia.
Both types of good practice are innovative and serve as a good example worth following.

Another example of promising practice include Web Eye (*Spletno oko*), an internet-based contact point, where the concerned individuals may anonymously report, among other things, the instances of hate speech, including the homophobic hate speech, as defined in the provisions of Criminal Code providing for the prohibition of public incitement to hatred, violence and intolerance. Spletno oko has been established in 2006 and became fully operational in March 2007. The project is coordinated by the Faculty of Social Sciences at the University of Ljubljana (*Univerza v Ljubljani, Fakulteta za družbene vede*). The project partners collect the data and publish the reports on the recorded cases. In the case that the reported content includes signs of violation of relevant legislation, including the provisions prohibiting incitement to hatred, violence or intolerance, the police are alarmed.[248] In 2010, a Code of conduct relating to the regulation of hate speech on web portals was prepared and was, in the process, joined by the major media outlets in Slovenia. A manual dealing with the issue of hate speech aimed at the moderators and the editors of web portals was also produced. The project is implemented within the framework of the INHOPE network. The project council includes representatives of the various stakeholders, including the representatives of the police and the Republic of Slovenia Office of the State Prosecutor General, as well as the representatives of NGOs and civil sector.[249] The last available data covering the year 2012 showed that Spletno oko lodged 69 criminal complaints concerning the hate speech on the internet with the police, of which eight were related to the instances of hate speech based on sexual orientation.[250] In at least one of the cases in question, the perpetrator was found guilty in court. (Please see Judgment No. I K 46756/2012 in Annex 1, Chapter 6, Criminal law, Case 5.[251])

An additional example includes the project Activate! (*Povej naprej!*) carried out by the Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), a LGBT NGO. The main objective of this programme is recording of and intervention in cases of the breaches of human rights based on sexual orientation and gender identity. It is aimed at raising awareness of and at improved identification of the cases of violation of human rights of LGBT persons. The programme was set up in order to provide the LGBT persons with the information in cases of violence and/or discrimination and with the additional systematic support when the victims decide to take further steps to address violation they face, and as a response to the more frequent observations of instances of hate speech, harassment and violence faced by the LGBT persons in Slovenia. Within the framework of this programme, the organisation provides information to individuals facing violence and/or

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[248] See e.g. Slovenia, Safer Internet Centre, Web Eye (*Center za varnejši internet, Spletno oko*) (2013), *Annual report 2012/2013* [*Letno poročilo 2012/2013*], Ljubljana, Fakulteta za družbene vede, Center za varnejši internet, Spletno oko, available at: http://mi.ris.org/uploadi/editor/1401274445Spletno_Oko_Letno_Porocilo.pdf.
[249] See also: Slovenia, Web Eye (*Spletno oko*), JK Group (2013), *Wise moderator moderates: Handbook for moderator of user content, website editors and all who are interested in the issue of hate speech on the internet* [*Modri Moderator Moderira; priročnik za moderatorje uporabniških vsebin, urednike spletnih mest in vse, ki jih zanima problematika sovražnega govora na spletu*], Ljubljana, Fakulteta za družbene vede, Center za varnejši internet, Spletno oko, available at: http://mi.ris.org/uploadi/editor/1386254339Moder_Moderator_final.pdf.
[250] Slovenia, Safer Internet Centre (*Center za varnejši internet*) (2013), *Safe internet programme in Slovenia: Public annual report: March 2012 – February 2013* [*Program Varnejši internet v Sloveniji: Javno letno poročilo: Marec 2012 – Februar 2013*], Ljubljana, Center za varnejši internet, p. 78, available at: http://mi.ris.org/uploadi/editor/1362748721D1_4_1_public_annual_report_slovenian_version.pdf. See also: http://safe.si/spletno-oko/domov.
[251] Slovenia, Local Court in Sevnica (*Okrajno sodišče v Sevnici*), Judgment No. I K 46756/2012, 23 November 2012.

discrimination, the additional support and escort to the police and institution. The project was initiated in 2008 when a report on the homophobia-related incidents in Slovenia was produced. The report covers the period from November 2007 to November 2008. It was based on a survey questionnaire, two focus group discussions and semi-structured interviews with members of the LGBT population who were the victims of discrimination/violence in the period from 2007 to 2008.[252] In the recent years, the programme has become an integral part of the organisation's activities. There are plans in place to further develop the programme. Currently, a research project is carried out focusing on experiences of violence among the LGBT persons as well as on the attitudes among the police towards the LGBT issues. The project should serve as a basis for further development and refinement of the programme activities. This programme is also closely linked to the programme of counselling and self-help for LGBT persons providing for the additional psycho-social support to the LGBT persons.[253]

[252] Slovenia, Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*) (2008), *ACTIVATE! Report: Research, monitoring and recording of cases of discrimination and rights violations against LGBT people in Slovenia in the period from November 2007 to November 2008*, Ljubljana, Društvo informacijski center Legebitra, available at: www.ilga-europe.org/home/what_we_do/ilga_europe_as_a_funder/completed_projects/activate_against_discrimination_on_the_basis_of_sexual_orientation_and_gender_expression/documentation_report_in_english. See also: www.drustvo-legebitra.si/index.php/kaj-delamo/svetovanje-in-samopomo/povej-naprej (link defunct on 23 April 2014, website under construction).

[253] Information was provided by the the Association Informational Centre Legebitra (*Društvo informacijski center Legebitra*), 10 October 2013. (Should be deleted: still defunct. See also: www.drustvo-legebitra.si/index.php/kaj-delamo/svetovanje-in-samopomo/povej-naprej (link defunct on 23 April 2014, website under construction).

10 Intersex

Discrimination on the grounds of intersex is not explicitly outlawed in Slovenia. The Implementation of the Principle of Equal Treatment, the general act in the field of non-discrimination in Slovenia providing for the transposition of the two major EU non-discrimination directives, ensures in Article 2 that:

> *Equal treatment shall be ensured irrespective of sex, nationality, racial or ethnic origin, religious or other belief, disability, age, sexual orientation or other personal circumstance…*

Apart from the specific protected grounds, the act in question also stipulates an open clause. It is thus unclear which protected ground can be invoked in cases concerning the intersex people, or if it will be covered under the label 'other personal circumstance'. As of now, only one competent body, namely the Advocate of the Principle of the Equality, referred to the intersex people when observing the discrimination complaints. The Advocate examined a complaint lodged by an NGO concerning the campaign of the then Ministry of Education and Sport. The aim of the campaign was, according to the ministry, to encourage young people to think about safe sex, which they would confirm by signing a declaration stating that they are proud of their sex. The Advocate found that the campaign basically calls upon the students to publicly take a position about both their sex and their sex life. Even though the campaign's main aim was, according to the ministry, raising awareness on the importance of safe sex, it has not been accompanied by any educational activities on this content. Therefore its effect with regard to increasing safe sex was highly questionable. The Advocate found from the complementary materials that the campaign was based on the assumption that humanity consists of the two sexes which jointly maintain civilisation, which requires the students to be 'proud' of the classic heterosexual orientation. The Advocate found that the campaign constitutes direct discrimination based on gender identity, as well as indirect discrimination on the ground of sexual orientation, as it fails to observe and disregards the students with past, current and/or future experience of homosexual, bisexual, intersex or transgender orientation and/or change of their gender identity. The Advocate issues non-binding opinions in which the body may call on the violator to rectify the established irregularities. In their opinion, the Advocate called on the ministry to stop the campaign in its current form and to ensure, upon the consultations with the experts and the public, that school curriculum and similar future campaigns include the objective information on different sexual orientations and gender identities, including intersex people.[254] In spite of the Advocate's opinion, the ministry repeated the campaign in 2011. Consequently, the Advocate issued another opinion in 2011 again finding discrimination for the same reasons.[255] Based on this, it seems that the Advocate observed the situation of intersex people on the ground of gender identity.

In Slovenia, no general non-discrimination policy document has yet been adopted. In general, no policy document referring to intersex persons could be identified.

The Register of Deaths, Births and Marriages Act (*Zakon o matičnem registru*) defines the concept and content of the register of deaths, births and marriages. Pursuant to the law, the register shall be a computerised database in which different events (e.g. birth, marriage, adoption or death) shall be recorded. With respect to a child's birth, it shall be mandatory to

[254] Slovenia, Advocate of the Principle of Equality (*Zagovornik načela enakosti*), Opinion No. 0921-22/2010-7, available at: www.zagovornik.gov.si/uploads/media/mnenje_ponosen__na_spol.doc.
[255] Slovenia, Advocate of the Principle of Equality (*Zagovornik načela enakosti*), Opinion No. 0921-41/2011-UEM/10, available at: www.zagovornik.gov.si/uploads/media/mnenje_ponosn_a__na__s_pol_2011.docx.

record their gender in the register.[256] The law only stipulates that a child's birth must be notified in 15 days following the child's birth.[257] With regard to the gender, the law only stipulates that the child's gender shall be recorded in the register. However, the gender is recorded either as male or female.

In general, the situation of intersex people is a highly under-researched topic in Slovenia. According to some data, medical interventions on intersex people, particularly children, are performed in Slovenia, since intersex situation is considered an emergency healthcare issue.[258]
The specific legal provisions referring to intersex people do not exist in Slovenia. The medical practice is governed by the general provisions governing the field of healthcare services (e.g. the Health Services Act (*Zakon o zdravstveni dejavnosti*), the Medical Practitioners Services Act (*Zakon o zdravniški službi*)).
The availability of the protocols guiding the treatment of intersex people in Slovenia could not be confirmed. The NFP addressed a written request for the data to the competent member of medical council which deals with intersex children (on 18 February and on 10 April). However, at the time of submission of this revised update, the NFP has not received the reply.
The fully informed consent of a party is explicitly set out by the law. The Patient Rights Act (*Zakon o pacientovih pravicah*) lays down the right of a patient, in order to be able to exercise their right to independently decide on their treatment and the right to participate in the treatment, to be informed about their health status, the likely development and consequences of disease or injury; objectives, type, method of execution, likelihood of success and the expected benefits and outcome of the proposed medical procedure or proposed treatment; the possible risks, side effects, adverse consequences and other inconveniences of the proposed medical procedure or proposed treatment, including the consequences of omitted procedure or treatment; any other treatment options; procedures and treatments that are not available in Slovenia, or are not covered under the compulsory health insurance scheme.[259]

Every patient has the right to freely decide on their treatment, that is – to accept or to refuse the medical assistance under the conditions laid down by the law. If a patient is capable of taking the decision about themselves, it shall not be permitted to carry out any medical procedure on them without their prior consent based on the received information mentioned above, except in cases specified in the law. The consent can be given verbally, by an act or conduct from which it can be understand with certainty that the consent was provided, or in writing when required by the law. Surgery and other medical interventions associated with the increased risk or strain shall require a written consent by the patient in consent form.[260]

This law regards a child below 15 years of age as not capable to give a consent, and any medical intervention on such children shall be subject to the parental consent, unless, upon the assessment of the child's maturity, the specific circumstances and upon the consultation with the parents, it may be concluded that the child is able to make their own decisions. On

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[256] Slovenia, The Register of deaths, births and marriages act (*Zakon o matičnem registru*), 27 March 2003, and subsequent modifications, Art. 4(1), available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3354 (unofficial consolidated text).
[257] Slovenia, The Register of deaths, births and marriages act (*Zakon o matičnem registru*), 27 March 2003, and subsequent modifications, Art. 8, available at: www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3354 (unofficial consolidated text).
[258] Slovenia, Zadnik, T. (2006), *Intersexuality as a challenge to sex dichotomy: example of Indian Hijras* [*Interseksualnost kot izziv spolni dihotomiji: primer indijskih hidžer*] (BA dissertation, Univerza v Ljubljani, Fakulteta za družbene vede).
[259] Slovenia, The Patient Rights Act (*Zakon o pacientovih pravicah*), 29 January 2008, Art. 20, available at: www.uradni-list.si/1/objava.jsp?urlid=200815&stevilka=455 (official text).
[260] Slovenia, The Patient Rights Act (*Zakon o pacientovih pravicah*), 29 January 2008, Art. 26, available at: www.uradni-list.si/1/objava.jsp?urlid=200815&stevilka=455 (official text).

the other hand, a child above 15 years of age is, generally, seen as competent to provide their informed consent. However, upon the assessment of the child's maturity, the specific circumstances and upon the consultation with the parents, a child may be deemed as lacking capacity to adopt their own decision. Then, in spite of the fact that the child is older than 15 years of age, the parental consent is required.[261]

[261] Slovenia, The Patient Rights Act (*Zakon o pacientovih pravicah*), 29 January 2008, Art. 35, available at: www.uradni-list.si/1/objava.jsp?urlid=200815&stevilka=455 (official text).

Annex 1 – Case law

Chapter 9, Case law relevant to the impact of good practices on homophobia and/or discrimination on the ground of sexual orientation, case 1

Case title	U-I-425/06, available at: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o /4512052E36A02E33C1257C080035ADF6
Decision date	2 July 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	Ustavno sodišče republike Slovenije (Constitutional Court of Republic of Slovenia)
Key facts of the case (max. 500 chars)	The petitioners argued that the said provision violates the constitutional principle of equality between the partners of the same-sex partnership and the married couples or those who live out of wedlock by arbitrarily discriminating between the right to inherit a special and common property of the same-sex partners, by not regulating the right to inherit a special property and by failing to determine the necessary inheritance share of a survived same-sex partner.
Main reasoning/argumentation (max. 500 chars)	The Constitutional Court agreed with the petitioners by stressing that the position of partners in the registered same-sex partnership regarding the right to inherit after the deceased partner is in its essential factual and legal features comparable with the position of a married couple. The distinctions regarding the inheritance between the two groups are therefore not based on a certain material, objective circumstance rather on a sexual-orientation. As the latter is not supported by a constitutionally valid justification it runs against Article 14 of the Constitution.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Registered same-sex union, Marriage, comparability for the purpose of property rights, right to inheritance.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Constitutional Court ruled that Article 22 of the Registration of the Same Sex Civil Partnership Act is unconstitutional and has to be amended by the Parliament in the next 6 months. As of yet, the challenged act has not been amended. In its decision, however, the Constitutional Court provided that until the established inconsistency is remedied, the same rules apply for inheritance between partners in the registered same-sex partnerships and for inheritance between spouses

	in accordance with the Inheritance Act (*Zakon o dedovanju*). On 14 April 2014, the government submitted the draft proposal of the Civil Partnership Act (*Zakon o partnerski skupnosti*) for the public discussion. This piece of legislation is intended to replace the existing Registration of the Same-sex Partnership Act. Apart from the joint adoption and the procedures of biomedically-assisted procreation, this draft law envisages the same legal effects of the civil partnership between the same-sex persons and of a durable union between same-sex persons who have not entered into a civil partnership, as afforded respectively to the married couples and the opposite-sex persons living in a durable extra-marital partnership. If adopted, it shall be the first valid piece of legislation to include the definition of a long-lasting relationship between the same-sex persons who have not entered into a civil partnership (i.e. the non-registered partnership). In this sense, it shall also provide that the same-sex couples, whether they entered into a civil partnership or not, are treated on an equal footing with the opposite-sex couples, including in the matters concerning inheritance. The act in question shall thus follow the ruling by the Constitutional Court. However, since the adoption procedure is only in its initial phase, it is not possible to predict the possible future developments concerning its adoption.

Case title	Decision II Ips 462/2009, available at: www.sodisce.si/mma_bin.php?static_id=20110413133235
Decision date	28 January 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Vrhovno sodišče Republike Slovenije (Supreme Court of Republic of Slovenia)
Key facts of the case (max. 500 chars)	A registered same-sex couple adopted a child in the United States and sought the confirmation and execution of the adoption in Slovenia.
Main reasoning/argumentation (max. 500 chars)	The Supreme Court recognized the adoption arguing that it does not run contrary to the Slovenian public order, even though adoptions by same-sex couples are not permitted in Slovenia.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Adoption by a same-sex couple, scope of the public order of Republic of Slovenia.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	Foreign adoption recognized in Slovenia.

Chapter 6, Hate crimes, case 1

Case title	Criminal Case on Violent Attack on Gay Activist (not reported) Judgment No. III 5357/2010
Decision date	10 March 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	[Okrožno sodišče v Ljubljani] District Court of Ljubljana
Key facts of the case (max. 500 chars)	A group of seven-eight male individuals attacked a well known gay activist in front of a gay friendly bar prior to the pride parade. They were yelling insulting homophobic slogans and caused minor injuries to the victim. (A gay man was physically attacked by a group of seven-eight masked persons in front of Cafe Open, an LGBT people-friendly bar in the centre of Ljubljana, where an evening of gay and lesbian literature took place in the framework of the Gay Pride Parade Week. The perpetrators dressed in black hoods, caps, and masks came from a side street and started hitting the victim who was in front of the bar. Then the perpetrators lit a fan torch and kept bringing flames to their head while shouting homophobic slogans such as "faggots" and

	"damned faggots". Three of the perpetrators were identified and taken to the court.)
Main reasoning/argumentation (max. 500 chars)	The district court judge decided that the perpetrators violated one of the most fundamental human rights: the right to sexual orientation and sentenced them to 18 months each.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Hate crime, homophobic speech, sentence 18 months in prison
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	18 months in prison. The severity of the sentence was subject to public criticism as the perpetrators were relatively young and have had no prior criminal record. Also, they have publicly apologized to the victim. (In March 2010, following the court's decision, a protest against the severity of the punishment was organised by the alleged friends and schoolmates of the perpetrators and was held in front of the court's premises. According to the unofficial sources, the protest involved the individuals with far-right ideas).[262] In 2011, the Higher Court in Ljubljana confirmed the judgment of the first instance court, but reduced the sentence to seven months in prison for two defendants and five months for the third one on the grounds of additional mitigating circumstances, including the absence of prior criminal records, a lack of evidence in the case of one defendant, the defendants' regret and apologies to the victim, as well as the termination of their involvement with a football fan club (well-known for their support of homophobic attitudes). (Slovenia, Higher Court in Ljubljana (*Višje sodišče v Ljubljani*), Judgment No. II Kp 5357/2010, 15 June 2011.) The available information suggests that the case in question has, as of yet, been the only case in which perpetrators of homophobic crimes received non-suspended prison sentence. Because the case was subject to considerable public attention, it is also considered to be a landmark case.

Chapter 6, Criminal law, Case 2

Case title	Decision No. II Kp 432/2009

[262] See e.g. www.24ur.com/novice/slovenija/dobili-so-nenormalno-visoko-kazen.html; www.narobe.si/myblog/v-ozadju-protesta-neonacisti.

Decision date	5 May 2009
Reference details (type and title of court/body; in original language and English [official translation, if available])	Višje sodišče v Ljubljani (Higher Court in Ljubljana)
Key facts of the case (max. 500 chars)	A security guard removed the two female persons from a bar because they were kissing each other. The case was brought before the Local Court in Ljubljana (*Okrajno sodišče v Ljubljani*) under Article 141, Paragraph 1, of the then Criminal Code. The latter stipulates as follows: 'Whoever, due to differences in respect of national affiliation, race, colour of skin, religion, ethnic origin, gender, language, political or other beliefs, sexual orientation, financial 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 of not more than one year.' (Please note that this provision has been included in the current Criminal Code without any change in the wording.) The first instance court decided that action undertaken by the security guard, as described in the indictment, was not a criminal offence and rejected the indictment. The public prosecutor appealed this decision.
Main reasoning/argumentation (max. 500 chars)	The Higher Court noted that an action constitutes a criminal offence under Article 141 of the Penal Code only when such an action violates the principle of equality in relation to the rights and freedoms which are recognized by the international community or are provided by the Constitution or the law. According to the Court, when one is deprived of their right, or their rights are limited, or when one is granted special rights or advantage, such a procedure puts certain citizens in an unequal position compared to the others. In respect to the case in question, the Higher Court held that the action, as described in the indictment, exhibits signs of criminal offence under Article 141 of the Penal Code. In the Court's opinion, the injured parties were deprived of the right of assembly and association, a right guaranteed by the Constitution. In addition to this, the Court noted that the defendant put the injured parties in an unequal position due to their sexual orientation. As a security guard in the bar, they possessed the right to intervene in cases of

	violation of public order and peace, and were, consequently, in the position to deprive the injured parties of their rights of assembly and association. According to the Court, the defendant's act was described to an extent that allows its legal assessment, namely whether it constitutes a criminal offence or not.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The criminal offence definition under Article 141 of the former Criminal Code prohibiting the violation of the principle of equality; scope of its application. (Please note that this provision has been included in the current Criminal Code without any change in the wording.)
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Higher Court returned the case to the first instance court for the new proceedings. In the repeated procedure, the first instance court established that the charges have not been proven. According to the court, the security guard only removed the female persons from a room with a billiard table because they were lying on the table kissing each other. This was done to prevent the possible damages on the table and not because of the sexual orientation of the alleged injured parties. The court further established that the female persons were not entirely removed from the bar, but only from the billiard room. (Slovenia, Local Court in Ljubljana (*Okrajno sodišče v Ljubljani*), Judgment No. IV K 140/2009, 21 October 2009.) Upon appeal by the public prosecutor, the Higher Court issued the final decision confirming the ruling handed down by the first instance court. (Slovenia, Higher Court in Ljubljana (*Višje sodišče v Ljubljani*), Judgment No. II Kp 2363/2010, 18 May 2010.)

Chapter 6, Criminal law, Case 3

Case title	Judgment No. I K 68041/2010-3
Decision date	5 May 2011
Reference details (type and title of court/body; in original language and English [official translation, if available])	Okrajno sodišče v Mariboru (Local Court in Maribor)
Key facts of the case (max. 500 chars)	An individual was brought to court for posting the following comment on Facebook: 'those biphasic (bisexuals, colloq.) should be burnt on fire. Hitler would clean it up quickly.'
Main reasoning/argumentation (max. 500 chars)	The court established that the existing evidence provides the sufficient ground for the punishment of the defendant under Article 297, paragraph 1

	of the Criminal Code prohibiting incitement to hatred, violence and intolerance. According to the court, the defendant's conduct involved maltreatment and threat to public security. The court issued a punitive order imposing the sanction upon proposal by the public prosecutor. Such order may be issued in cases falling under the jurisdiction of the local courts whereas suspended sentence, six-month imprisonment or a fine are proposed as sanctions by the public prosecutor.
Key issues (concepts, interpretations) clarified by the case **(max. 500 chars)**	Application of Article 297, Paragraph 1 of the Criminal Code prohibiting incitement to hatred, violence and intolerance.
Results (sanctions) and key consequences or implications of the case **(max. 500 chars)**	The offender received two-month suspended sentence.

Chapter 6, Criminal law, Case 4

Case title	Judgment No. I K 25230/2011
Decision date	28 May 2012
Reference details (type and title of court/body; in original language and English **[official translation, if available])**	Okrajno sodišče v Kopru (Local Court in Koper)
Key facts of the case **(max. 500 chars)**	In June 1010, the defendant set up a Facebook group entitled 'Against the Pride Parade in Slovenia' and published in the roles of administrator and commentator the following content, among other things: 'Please do not publish comments inviting to violence in this group. You can, however, use violence at the gathering against the pride parade;)' 'A sick man is getting treatment, not that he is proud of his illness!!! He doesn't go around shouting and parading, so that everyone knows that he is sick!!!' 'So explain to your children what is normal: FAMILY, LOVE, what is natural and what is not natural, how the nature functions, what the real happiness is, what the real faith is and what the real love is, and what the life is! Ban on the shame parade in Slovenia, let's clean Slovenia from the evil promoted by the gay activists. They have the Netherlands, Belgium, Israel and USA, so there they can spread…'

Main reasoning/argumentation (max. 500 chars)	After receiving sentence, the accused did not express intention to appeal the Court's decision. In such cases, the judges are not obliged to produce reasoning in writing. The judgment, however, established that the offence was committed via the social network with a large number of users. It further noted that the defendant committed the offence in a manner likely to endanger or disturb the public order and peace, as the published content was related to an event taking place at the time of the commission of the offence.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Application of Article 297, Paragraph 1 of the Criminal Code prohibiting incitement to hatred, violence and intolerance.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The offender received three-month suspended sentence.

Chapter 6, Criminal law, Case 5

Case title	Judgment No. I K 46756/2012
Decision date	23 November 2012
Reference details (type and title of court/body; in original language and English [official translation, if available])	Okrajno sodišče v Sevnici (Local Court in Sevnica)
Key facts of the case (max. 500 chars)	The State prosecutor brought to court an individual who, under an article concerning pride parade published on a news portal, posted the following comment: 'As I wrote last time. These are pure scum – as are the people who support them. Hičo (Hitler, colloq.) would have cleaned it up – and it's a pity that he didn't. At least he should have been allowed to complete the work.' The case in question was reported by Spletno oko (Web Eye), an internet-based platform established by several organisations allowing the concerned individuals to anonymously report the instances of hate speech.
Main reasoning/argumentation (max. 500 chars)	The court established that the existing evidence provides the sufficient ground for the punishment of the defendant under Article 297, paragraph 1 of the Criminal Code prohibiting incitement to hatred, violence and intolerance. According to the court, the defendant's conduct involved maltreatment and threat to the public security.

	The court issued a punitive order imposing the sanction upon proposal by the public prosecutor. Such order may be issued in cases falling under the jurisdiction of the local courts whereas the suspended sentence, six-month imprisonment or a fine are proposed as sanctions by the public prosecutor.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Application of Article 297, Paragraph 1 of the Criminal Code prohibiting incitement to hatred, violence and intolerance.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The offender received one-month suspended sentence.

Chapter 6, Criminal law, Case 6

Case title	Judgement No. III K 63405/2011
Decision date	6 February 2013
Reference details (type and title of court/body; in original language and English [official translation, if available])	Okrajno sodišče v Ljubljani (Local Court in Ljubljana)
Key facts of the case (max. 500 chars)	A group of persons was in a bar in Ljubljana. When an individual established that they are gay, the perpetrator approached them, punched them in the face and inflicted injury on the victim.
Main reasoning/argumentation (max. 500 chars)	After receiving the sentence, the accused did not express intention to appeal the court's decision. In such cases, the judges are not obliged to produce reasoning in writing.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	Criminal legislation in Slovenia does not provide for a definition of the bias-motivated aggravated criminal offences. There is only a general clause on sentencing which applies to all criminal offences. It stipulates that the courts shall, when deciding on the penalties, consider all of the relevant circumstances, which have an influence on the decision making (the mitigating and the aggravating circumstances), including, among other things, the offenders' motives. The courts are obliged to impose sentences within limits determined by the law for a specific criminal offence. In this case, the perpetrator was sentenced to six months of imprisonment, whereas the maximum sentence for crimes under Paragraph 4 of Article 297 is 3 years of imprisonment. The provision in question provides for the qualified penalties if the offence

	of the public incitement to hatred, violence and intolerance includes certain types of conduct (e.g. maltreatment, endangering of security)
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The perpetrator was sentenced with six-month suspended imprisonment.

Chapter 7, Transgender issues, Case 1

Case title	Opinion no. 0921-22/2010-7, available at: www.zagovornik.gov.si/uploads/media/mnenje_ponosen__na_spol.doc.
Decision date	6 September 2010
Reference details (type and title of court/body; in original language and English [official translation, if available])	Zagovornik načela enakosti (Advocate of the Principle of Equality)
Key facts of the case (max. 500 chars)	The Advocate examined a 2010 complaint lodged by an NGO concerning the campaign of the then Ministry of Education and Sport entitled 'Ponosen na svoj (s)pol' ('Proud of my sex/pole', whereas 'spol' means sex and 'pol' means 'pole' – the title uses a game of words which insinuates that one's sex is at the same time another person's opposite sex, and that two persons create two different poles and complement each other). The aim of the campaign was, according to the ministry, to encourage young people to think about the safe sex, which they would confirm by signing a declaration stating that they are proud of their sex.
Main reasoning/argumentation (max. 500 chars)	The Advocate found that the campaign basically calls upon the students to publicly take a position about both their sex and their sex life. Even though the campaign's main aim was, according to the ministry, raising awareness on the importance of the safe sex, it has not been accompanied by any educational activities on this content. Therefore its effect with regard to increasing the safe sex was highly questionable. The Advocate found from the complementary materials that the campaign was based on the assumption that humanity consists of the two sexes which jointly maintain civilisation, and this requires from the students to be "proud" of classic heterosexual orientation.
Key issues (concepts, interpretations) clarified by the case	The Advocate found that the campaign constitutes direct discrimination based on gender identity, as well as indirect discrimination on the

(max. 500 chars)	ground of sexual orientation, as it disregards the students with past, current and/or future experience of the homosexual, bisexual, intersex or transgender orientation and/or change of their gender identity.
Results (sanctions) and key consequences or implications of the case **(max. 500 chars)**	The Advocate issues non-binding opinions in which the body may call on the violator to rectify the established irregularities. In their opinion, the Advocate called on the ministry to stop the campaign in its current form and to ensure, upon consultations with the experts and the public, that the school curriculum and the similar future campaigns include the objective information on different sexual orientations and gender identities. In spite of the Advocate's first opinion issued in 2010, the ministry repeated the campaign in 2011. Consequently, the Advocate issued yet another opinion in 2011, which was related to the 2011 campaign, again finding discrimination for the same reasons (opinion no. 0921-41/2011-UEM/10, available at: www.zagovornik.gov.si/uploads/media/mnenje_ponosn_a__na__s_pol_2011.docx. In the subsequent years, no similar campaigns were carried out.

Chapter 8, Miscellaneous, Case 1

Case title	U-I-212/10, available at: http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/FC62EF78571FE59EC1257B4800408D62
Decision date	14 March 2013
Reference details (type and title of court/body; in original language and English **[official translation, if available])**	Ustavno sodišče Republike Slovenije (Constitutional Court of the Republic of Slovenia)
Key facts of the case **(max. 500 chars)**	The District Court in Koper had to decide in the civil litigation proceedings on the right of inheritance of an individual in the non-registered same-sex partnership. The court in question established that the relevant legislation, namely the Registration of a same-sex civil partnership act and the Inheritance act, does not include rules regulating the inheritance rights of the non-registered same-sex partners. In the court's opinion, this legal gap constitutes discrimination against such partners in comparison to the partners in the long-term opposite-sex partnerships, and is contrary to the Constitution.

	Hence the District Court in Koper stayed the proceedings and lodged a request for the assessment of constitutionality of the aforementioned legislation with the Constitutional Court.
Main reasoning/argumentation (max. 500 chars)	The court held that the omission of the legislator to provide for the statutory inheritance (i.e. inheritance not based on a will) for the co-habiting partners constitutes discrimination on the ground of sexual orientation. Such discrimination is not based on any objective goals but on the sexual orientation for which the legislator does not have any reason that would be justified under the Constitution.
Key issues (concepts, interpretations) clarified by the case (max. 500 chars)	The Court established that the situation of partners in a stable co-habiting relationship is from the perspective of the human right to statutory inheritance comparable to the position of the co-habiting opposite-sex partners whose right to the statutory inheritance is recognised and regulated in the Inheritance act.
Results (sanctions) and key consequences or implications of the case (max. 500 chars)	The Constitutional Court declared the Inheritance act unconstitutional and ordered the legislator to rectify the established inconsistency within six months from the publication of the decision in the Official Gazette of the Republic of Slovenia. Until the established inconsistency is remedied, the Inheritance act has to apply, on equal terms, to the co-habiting same-sex partners and to the co-habiting opposite-sex partners.

Annex 2 – Statistics

All those tables where no official statistical data are available are omitted.
(Written requests for the provision of migration-related data and the data concerning the international protection (i.e. asylum) were submitted to the Ministry of the Interior on 13 February 2014, on 24 February 2014 and 10 April 2014, but, by the time of submitting of the revised version of this update, the NFP received no relevant data.
Please also note that the data concerning the hate crimes motivated by sexual orientation/ gender identity are not collected in Slovenia. At present, only some the data capturing criminal offences based on race, ethnic affiliation, religion and gender are collected, respectively.)

Chapter 1, Implementation of Employment Directive 2000/78/EC in relation to sexual orientation

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Total complaints of discrimination on the ground of sexual orientation processed by the Equality Advocate	/	/	/	/	/	3	1	3	4	4* (*Please note that the statistical data covering the period from 2009 to 2013 are not broken down by the fields of life in which the	4	4	11	2

										alleged discrimination occurred, and, as a result, it is not known if any of these cases are related to the field of employment). (Information was provided by the Advocate of the Principle of equality upon request, 27 February 2014.)				
Total finding of Discrimination confirmed by the Equality Advocate	/	/	/	/	/	0	0	0	2	Data currently not available.* (*All the data	Complete data currently not available, at least one	Complete data currently not available, at least one	Data currently not available.	Data currently not available.

										covering the period from 2009 to 2013 were provided by the Advocate of the Principle of Equality upon request, 27 February 2014.)	case included direct discrimination on the ground of gender identity and indirect discrimination on the ground of sexual orientation, but was not related to employment.	case included direct discrimination on the ground of gender identity and indirect discrimination on the ground of sexual orientation, but was not related to employment.		
National Number of sanctions/compensation payments issued (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

National range of sanctions/compensation payments (by courts, tribunals, equality bodies etc.): if possible disaggregated according to social areas of discrimination (employment, education, housing, goods and services etc.)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Chapter 5, LGBT people, enjoyment of freedom of assembly

	00	01	02	03	04	05	06	07	08	09	10	11	12	13
Number of demonstrations in favour of tolerance of LGBT people, gay pride parades, etc	0	1	1	1	2	2	2	2	2	2	2	2	2	2
Number of demonstrations	0	0	0	0	0	0	0	0	0	0	0	0	0	0

against tolerance of LGBT people.														

Chapter 7, Transgender issues

	2009	2010	2011	2012	2013
Number of name changes effected due to change of gender	3	5	1	1	6
Number of persons who changed their gender/sex in your country under the applicable legislation*	3	5	0	1	6

* The relevant authorities only assume that these name changes were effects of the gender change, since it is not mandatory for a person to state the reasons for the name change when they express their wish to do so. (Information was provided by the Ministry of the Interior (*Ministrstvo za notranje zadeve*) upon request, 22 April 2014.

Table 1: Requirements for rectification of the recorded sex or name on official documents (New information added, but no new developments.)

	Intention to live in the opposite gender	Real life test	Gender dysphoria diagnosis	Hormonal treatment/ physical adaptation	Court order	Medical opinion	Genital surgery leading to sterilisation	Forced/ automatic divorce	Unchangeable	Notes
AT	✓	✓	✓	✓		✓	✗ court decision	✗ court decision		Legal changes expected to confirm court decisions
BE	✓			✓		✓	✓			Rectification of recorded sex
BE	✓			✓		✓				Change of name
BG				?	✓	✓	?	✓	✓ (birth certificate)	Only changes of identity documents are possible (gap in legislation)
CY						✓	✓	?		
CZ	✓	✓	✓	✓		✓	✓	✓		These requirements are not laid down by law, but are use by medical committees established under the Law on Health Care
DE	✓		✓		✓	✓				Small solution: only name change
DE	✓		✓	✓	✓	✓	✓	✗ court decision and law		Big solution: rectification of recorded sex
DK	✓	✓				✓	✓	?		Rectification of recorded sex
DK			✓			✓				Change of name
EE	✓	✓				✓	✓	?		
EL					✓	✓	✓	?		
ES			✓	✓		✓				
FI	✓	✓	✓			✓	✓	✓		Name change possible upon simple notification, also before legal recognition of gender reassignment
FR			✓	✓	✓	✓	✓	✓		Requirements set by case law, legal and medical procedures uneven throughout the country
HU						✓		✓		No explicit rules in place. Requirements descend from praxis, but unclear what is necessary in order to obtain a medical opinion. After 1 January 2011 a marriage

										can be transformed into a registered partnership
IE									✓ (name change possible by Deed Poll and under Passports Act 2008)	Further changes expected following court case *Lydia Foy* (2007)
IT			✓	✓	✓	✓	✓	✓		
LT									✓ (personal code)	Legal vacuum due to lack of implementing legislation, courts decide on an ad hoc basis.
LU										No provisions in force, praxis varies.
LV						✓	✓ Change of name is possible after gender reassignment			Medical opinion is based on an intention to live in the opposite gender and on a diagnosis of gender dysphoria. For rectification of the recorded sex, currently the Ministry of Health decides case-by-case (parameters not specified). Amendments to the law were proposed but not adopted.
MT	✓	✓	✓	✓	✓	✓	✓	(only unmarried, divorce not possible)		Requirements unclear, decided by Courts on an ad hoc basis
NL	✓	✓	✓	✓	✓	✓	✓			According to Article 28a of the civil code, the requirement of physical adaptation does not apply if it would not be possible or sensible from a medical or psychological point of view. Changes are underway, forced sterilisation might be removed.
PL				✓	✓	✓	✓	✓		No legislation in place, requirements set by court practice
PT	✓		✓	✓	✓	✓	✓			Case-by-case decisions by courts, new act expected
RO				✓	✓	✓	✓			
SE	✓	✓			?	✓	✓	✓		Decision issued by forensic board
SI						✓				No formalities for change of name. The legislation only states that gender change is entered in the registry

										upon a decision by the competent authority issued on the basis of a medical notification showing that a person has changed their gender. The legislation does not lay down conditions for the issuance of such a notification. In practice, the situation is not clear. According to different sources, different requirements may apply, (just real life test, but also surgical intervention may be required). (Please note that these provisions were in place at the time of submission of the original report in 2008.)
SK							✓	?		Change of name granted simply upon application accompanied by a confirmation by the medical facility.
UK										Change of name requires no formalities
UK	✓	✓	✓			✓		✓		Rectification of the recorded sex

Notes: This is not a table about the requirements for accessing gender reassignment treatment. This means, in particular, that gender dysphoria diagnosis might be in practice required by medical specialists as a pre-condition for a positive opinion. This situation is not captured by this table, which illustrates the conditions for legal recognition of gender reassignment.

✓= applies; ?=doubt; ×=removed; change since 2008

Table 2: Discrimination on grounds of sexual orientation in legislation: material scope and enforcement bodies (No new developments.)

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[263]	All areas of RED*		
AT		✓		✓	Two of nine provinces have not extended protection to all areas covered by RED: Vorarlberg and Lower Austria. Vorarlberg extended protection to goods and services in 2008.
BE			✓	✓	
BG			✓	✓	
CY	✓			✓	
CZ			✓		New anti-discrimination legislation adopted
DE			✓	✓	
DK	✓			✓	New equality body set up
EE	✓			✓	New anti-discrimination legislation adopted
EL	✓			✓	
ES			✓		
FI		✓			
FR	✓			✓	
HU			✓	✓	

[263] Employment discrimination is prohibited in all EU Member States as a result of Directive 2000/78/EC. Directive 2000/43/EC (Racial Equality Directive) covers, in addition to employment and occupation, also social protection (including social security and healthcare), social advantages, education and access to and supply of goods and services which are available to the public, including housing.

Country Codes	Material scope			Equality body	Comments
	Employment only	Some areas of RED[263]	All areas of RED*		
IE		✓		✓	
IT	✓				
LT		✓		✓	
LU		✓		✓	
LV		✓		✓	
MT	✓				
NL		✓		✓	
PL	✓				
PT	✓				
RO			✓	✓	
SE			✓	✓	
SI			✓	✓	
SK			✓	✓	
UK			✓	✓	The Equality Act 2010 replicates the sexual orientation protection offered in the Equality Act (Sexual Orientation) Regulations 2007 and the Employment Equality (Sexual Orientation) Regulations 2003 and expands protection in a number of ways. The new Equality Act is expected to enter into force October 2010.
TOTAL	**9**	**7**	**11**	**20**	

Note: ✓ = Applies; **?** = doubt; **x** = removed; **change since 2008**

Table 3: Discrimination on grounds of gender reassignment or identity in national legislation

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
AT	✓			Legal interpretation and explanatory memorandum
BE	✓			Explicit provision in legislation or *travaux préparatoires*
BG			✓	
CY			✓	
CZ	✓			The new Antidiscrimination Act makes reference to 'gender identification'.
DE			✓	Constitutional amendment proposal by opposition ('sexual identity')
DK	✓			Decisions by the Gender Equality Board
EE			✓	The Gender Equality and Equal Treatment Commissioner has dealt with one application and took the view that the Gender Equality Act could apply to 'other issues related to gender'.
EL			✓	
ES			✓	The Constitutional Court held that gender identity is to be read in among the prohibited grounds of discrimination in Article 14 of the Constitution. Together with the adoption of several regional laws, a trend can be noted towards the protection of gender identity.
FI	✓			Committee for law reform proposes to explicitly cover transgender discrimination in equality legislation.
FR	✓			Case law and decisions by the equality body
HU		✓		
IE	✓			The Employment Equality Act 1998-2004 is interpreted in accordance with the case law of the Court of Justice of the EU.
IT			✓	
LT			✓	
LU			✓	
LV			✓	
MT			✓	
NL	✓			Case law and opinions of the Equal Treatment Commission

Country Codes	Form of "sex" discrimination	Autonomous ground	Dubious/unclear	Comments
PL			✓	
PT			✓	
RO			✓	
SE	✓	✓		Discrimination on grounds of gender reassignment is still considered 'sex' discrimination. The new ground 'transgender identity or expression' now covers other forms of gender variance, regardless of gender reassignment.
SI			✓	The Act Implementing the Principle of Equal Treatment contains an open clause of grounds of discrimination.
SK	✓		✓	The Act on Anti-discrimination recognises discrimination on the base of sexual orientation, where discrimination due to "sex" also includes discrimination due to sexual and gender identification. There is no special provision protecting gender reasingment.
UK		✓		The Equality Act 2010 replicates the 'gender reassignment' protection offered in the Sex Discrimination Act since 1999, but removes the requirement to be under "medical supervision" and expands protection in several ways. The new Equality Act is expected to enter into force in October 2010.
TOTAL	**10**	**3**	**15**	

Note: ✓ = applicable; positive development since 2008

Table 4: Criminal law provisions on 'incitement to hatred' and 'aggravating circumstances' covering explicitly sexual orientation (No new developments.)

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
AT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
BE	✓	✓	
BG			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
CY			General provisions could extend to LGBT people.

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
CZ			New Criminal Code in 2009 contains no explicit recognition of homophobic hate crimes. LGBT could fall under the category 'group of people', but as the law entered into force in January 2010 there is no case law yet. The explanatory report of the law also does not define the term.
DE			Hate speech legislation does not explicitly extend to homophobic motive, but extensive interpretation has been confirmed by courts.
DK	✓	✓	
EE	✓		
EL		✓	Article 23 of Law 3719/2008 provides for an aggravating circumstance in cases of hate crime based on sexual orientation.
ES	✓	✓	
FI		✓	According to the pertinent preparatory works, LGBT people could fall under the category 'comparable group'. A working group has proposed that the provision on incitement be amended to explicitly cover sexual minorities (2010).
FR	✓	✓	
HU			LGBT people could fall under the category 'groups of society'. Penal Code was amended to include hate motivated crimes against 'certain groups of society'. Case law has shown this includes the LGBT community.
IE	✓		Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
IT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
LT	✓	✓	Homophobic motivation was included in the list of aggravating circumstances in June 2009.
LU			General provisions could extend to LGBT people.
LV			Homophobic motivation might be taken into consideration at the sentencing stage, but this is left to the discretion of the courts.
MT			Existing provisions of the criminal law against incitement to hatred explicitly restrict the protection to groups other than LGBT people.
NL	✓	✓	The 2009 Public Prosecution Service's Bos/Polaris Guidelines for Sentencing recommend a 50% higher sentence for crimes committed with discriminatory aspects.
PL			General provisions could extend to LGBT people

Country Codes	Criminal offence to incite to hatred, violence or discrimination on grounds of sexual orientation	Aggravating circumstance	Comments
PT	✓	✓	
RO	✓	✓	Art. 317 of the Criminal Code sanctions only hate speech as 'incitement to discrimination', but includes sexual orientation. Article369 on incitement to hatred does not mention sexual orientation explicitly, but covers incitement against a 'category of persons', without further specification. The new Criminal Code will enter into force on 1 October 2011.
SE	✓	✓	
SI	✓		Article 297 of the new Penal Code concerning provoking or stirring up hatred, strife or violence, or provoking other inequality explicitly includes sexual orientation. Homophobic intent is only considered an aggravating circumstance in the case of murder.
SK			LGBT people could fall under the category 'group of people'
UK (N-Ireland)	✓	✓	
UK (England & Wales.)	✓	✓	The Criminal Justice and Immigration Act 2008, extending provisions on incitement to racial or religious hatred to cover the ground of sexual orientation, came into force on 23.03.2010. It applies to Scotland as well.
UK (Scotland)	✓	✓	In June 2009, the Offences (Aggravation by Prejudice) (Scotland) Act was passed, entry into force on 24 March 2010, also indicating homo- and transphobic motive as an aggravating circumstance.

Note: ✓= applicable; positive development since 2008

Table 5 - Definition of 'family member' for the purposes of free movement, asylum and family reunification

Country Codes	Free movement[264]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
AT		✓		✓		✓	Article 59 of the Registered Partnership Act (BGBl. I, No. 135/2009) modifies Article 9 of the Settlement and Residence Act, which now stipulates that the definition of 'family member' includes a registered partner. Article 57 of the Registered Partnership Act modifies Article 2/1 of the Asylum Act [Asylgesetz], which now stipulates that the definition of 'family member' includes a registered partner, provided that the registered partnership had already existed in the country of origin. Same-sex spouses are likely to be treated as registered partners.
BE	✓	✓	✓	✓	✓	✓	
BG							Article 7 of the new Family Code (01.10.2009) confirms that marriage is a mutual agreement between a man and a woman.
CY							
CZ		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DE		✓		✓		✓	Same-sex spouses are likely to be treated as registered partners. Rights concerning family reunification and asylum are restricted to registered partnerships.
DK	✓	✓	✓	✓	✓	✓	
EE							The new Family Law Act (entry into force 01.07.2010) defines marriage as a different-sex institution only and considers marriage between persons of the same sex invalid. Family reunification possible when the partner can prove that he/she is economically or socially dependent.
EL							
ES	✓	✓	✓	✓	✓	✓	Organic Law 2/2009 of 11 December (Spain/Ley Orgánica 2/2009 (11.12.2009)) has modified Organic Law 4/2000 in order to grant couples who have an affective relationship similar to marriage the right to family reunification. Implementing regulations to this law have not been adopted, thus the meaning of the requirement that the 'affective relationship' be 'duly attested' remains to be clarified. Article 40 of the Law 12/2009 of 30 October on the right to asylum and subsidiary protection [del derecho de asilo y de la protección subsidiaria] replaces Law 5/1984 of 26.03.1984 and, by transposing the EU acquis, confirms the notion that a family member includes the de facto partner having an affective relationship similar to marriage.
FI	✓	✓	✓	✓	✓	✓	

[264] In the vast majority of the Member States, no clear guidelines are available concerning the means by which the existence either of a common household or of a 'durable relationship' may be proven for the purposes of Art. 3 (2) of the Free Movement Directive.

Country Codes	Free movement[264]		Family Reunification		Asylum		Comments
	spouse	partner	spouse	partner	spouse	partner	
FR	?	?	?	?	?	?	As a result of the entry into force on 14.05.2009 of a new Article 515-7-1 of the French Civil Code, inserted by law 2009-526 of 12.05.2009, foreign registered partnerships are recognised in France; the repercussions of this change for the purposes of free movement of EU citizens are still unclear. Family reunification of third country nationals depends upon the authorities' discretion, which may require additional conditions. No information available on refugees.
HU		✓		✓		?	Entry and residence rights for free movement are also granted for the unmarried *de facto* partner, subject to conditions.
IE		✓		✓		✓	Adoption of Civil Partnership Act in 2010. Immigration, Residence and Protection Bill not yet enacted, but the government intends to treat registered partners in the same way as spouses.
IT							
LT							
LU		✓		✓		✓	The new law on free movement and immigration (29.08.2008) recognises as a family member a spouse or registered partner provided the conditions set forth in article 4 of the partnership law (09.07.2004) are fulfilled. Rights concerning family reunification and asylum are restricted to registered partnerships. Same-sex spouses are likely to be treated as registered partners.
LV		✓					Article 3.4 of the Cabinet of Ministers Regulation No. 586 on Entry and Residence includes in its definition of family member a person who is a dependant of a Union citizen or his or her spouse and who has shared a household with a Union citizen in their previous country of domicile.
MT							
NL	✓	✓	✓	✓	✓	✓	
PL							
PT	✓	✓	✓		✓		Allows same-sex couples to enter into a marriage since June 2010.
RO		?					The new Civil Code (2009) includes a prohibition of same-sex partnership and marriage, including denial of recognition of partnerships and marriages concluded in other countries.
SE	✓	✓	✓	✓	✓	✓	Allows same-sex couples to enter into a marriage since May 2009.
SI	✓	✓	✓	✓	✓	✓	Provides a legal scheme for registered partnership in domestic law. The new Aliens Act (*Zakon o tujcih*), adopted in 2011, grants the right to LGBT EU and non-EU nationals to be reunited with their registered partners and specified family members (e.g. children, children of one of the registered partner). This act was further modified in 2014 to include the right of LGBT persons under international protection to be reunited with their registered partners and certain family members. The 2014 amendments shall take effect in January 2015. Same-sex spouses are likely to be treated as registered partners. Non-registered LGBT partners, even if they have lived in durable relationship, do not enjoy this right, since the Slovenian legal order only recognizes opposite-sex co-habitation/ durable union. The latter may change if a draft act proposed by the government in April 2014 is adopted.
SK							Family reunification possible when the partner can prove economic or social dependence.
UK	✓	✓	✓	✓	✓	✓	
TOTAL	**8**	**15**	**8**	**13**	**8**	**12**	

Note: ✓= applicable; ? = doubtful/unclear; positive changes since 2008; other developments since 2008.