



REPUBLIC OF SLOVENIA
ADVOCATE OF THE PRINCIPLE OF EQUALITY

Ensuring equal opportunities and preventing discrimination in employment and work

HANDBOOK FOR EMPLOYEES
AND JOB SEEKERS



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FOREWORD BY THE HEAD OF THE INSTITUTION, ADVOCATE OF THE PRINCIPLE OF EQUALITY

The Advocate of the Principle of Equality is a specialized state body established to ensure assistance and advisory to victims of discrimination. Where necessary, the equality body investigates discrimination either in regulations or in individual cases. Special attention is paid to education and awareness-raising activities. One of the areas where discrimination is reported most frequently is in the field of employment and work. For that reason, this handbook for employees and job seekers is also a part of our activities to promote equal treatment.

It is intended for all job seekers, job candidates and employees in the public and private sectors, as well as educational institutions and non-governmental organizations faced with issues related to discrimination in this area.

On this occasion, I would like to thank all my colleagues who participated in the preparation of this handbook for their contribution. My sincere thanks to all those who will by using this handbook contribute towards greater equality, equal opportunities and equal treatment.

Miha Lobnik

The Advocate of the Principle of Equality

1 INTRODUCTION

The right to equal treatment and protection against discrimination is one of the fundamental **human rights** enshrined in Article 14 of the Constitution and the Protection against Discrimination Act (PADA). It is also regulated by labour law, in particular the Employment Relationships Act (ZDR-1).

Discrimination is any unjustified unequal treatment of people based on their personal grounds (e.g. gender, age, nationality, disability, race or ethnic origin, language, sexual orientation).


Discrimination is prohibited in Slovenia which also applies to the area of employment and work. Hence, it is very important for all employers to recognise and understand this matter. They must avoid discriminating against job candidates and employees. Moreover, they need to actively prevent discrimination and protect them from it. At the same time, the prohibition of discrimination extends to all employees, e.g. in relation to other employees or customers. It is of particular importance, that every person knows and understands their right of equal treatment and takes appropriate action when discrimination occurs. Employees thereby recognise and exercise their rights.

Discrimination is a violation of people's rights and is prohibited by the law. At the same time, it is a source of other **negative consequences** – in personal, interpersonal, organisational, business and social spheres.

Those who discriminate against others bear criminal liability as well as liability for damages.

Additionally, discrimination is harmful from the perspective of protecting the public interest, as numerous measures by the welfare state are needed to mitigate its consequences. Ensuring equal opportunities is therefore good for all.

The Advocate of the Principle of Equality (the Advocate) is an independent state body established with the PADA to promote equal treatment and ensure protection against discrimination. Apart from the provision of advisory to victims of discrimination, the equality body is responsible for discrimination investigation, assessment of discriminativeness of regulations and preparing recommendations as well as encouraging everyone for discrimination prevention and elimination and ensuring equal opportunities. The Advocate carries out research and prepares analyses as well as raises public awareness of the issue of protection against discrimination.

 *Anyone who considers themselves to be discriminated against can submit a complaint with the Advocate at: <https://zagovornik.si/o-diskriminacija/predlog-za-obravnavo-diskriminacije/>*



With the goal of raising awareness, the Advocate prepared handbooks on issues related to the field of employment and work. The purpose of a **comprehensive handbook for employers** and its summary is to help employers' better understand the phenomenon of discrimination. These materials help prevent and manage the risks of discrimination as well as present good practices in preventing discrimination and promoting equal opportunities. The handbook for employers can also be an important source of additional information for employees. Therefore, it can also serve as a complement to the topics discussed in this handbook for employees and job seekers.




 *The Handbook for employers and its summary are available at: <https://zagovornik.si/izdelki-zagovornika/osvescanje/>*



The purpose of the **Handbook for employees and job seekers** is to raise employees' awareness of their rights to equality, equal opportunities and equal treatment in a concise and clear manner, to empower them and help them recognise discrimination as well as present them with possible ways of action.

The Handbook covers both recruitment procedures – job seekers and job candidates, as well as discrimination at work – i.e. employees and in some cases former employees. Below, all of these statuses and situations shall be referred to as "employees and job seekers", except when specifically stated otherwise.



 *Handbook for employees and job seekers: Ensuring equal opportunities and preventing discrimination in employment and work is available at: <https://zagovornik.si/izdelki-zagovornika/osvescanje/>*



2 PRINCIPLE OF EQUAL OPPORTUNITIES

In relation to the unequal treatment of people due to their personal grounds, we most commonly use the term discrimination, which highlights what is prohibited. In substance however, it is equally important to talk about equal opportunities of people, that is, about achieving the desired goal.

In accordance with international law, the Constitution, legal regulations and general social norms (e.g. fairness), everyone, including employers and employees, shall:

- **treat persons who are in a comparable (factual) situation equally** – that is, in situations where the personal ground is irrelevant and differentiation, especially less favourable treatment due to these grounds, is prohibited. Hence, for example, all employees must receive equal pay for equal work, regardless of their gender, nationality, disability.
- Ensure **differentiated treatment** of people who are in different factual situations – that is, of those who are in a different, especially disadvantaged situation compared to others due to their personal ground and need accommodations or help. Therefore, the principle of equality does not mean that treatment must always be the same, but rather that sometimes differentiated treatment tailored to the specific needs is necessary.

Accommodations, i.e. differentiated treatment, may only be appropriate in case of a specific personal ground of the job seeker or employee. For example, employers must adjust the workplace or working conditions to people with disabilities, if necessary, as their factual situation may be different compared to those without disabilities at the outset. Accommodations at the workplace can be just individual (e.g. appropriately additionally adjustable chair), but sometimes working conditions need to be adjusted more in general, e.g. in architectural terms (more on this in Chapter 6.2.: Reasonable accommodations for people with disabilities).

Therefore, in addition to protection against discrimination, the question of how to **equalise the starting opportunities** of people who are structurally (socially) disadvantaged in relation to employment and work needs to be considered. In this context, it is not just a question of unjustifiable worse treatment (discrimination, deprivation, exclusion). The question arises whether such people should also be granted any special incentives, assistance, accommodations, etc. In short, whether we should treat those who have been proven to be disadvantaged or face specific barriers in accessing employment and work more favourably than others. In doing so however, other employees will not be discriminated against.

Measures to ensure equal opportunities (more on this subject in Chapter 6: Measures to ensure equal opportunities) therefore go a step further than merely ensuring formal equality, as their goal is not only to prevent discrimination against individuals, but to equalise the starting position of disadvantaged social groups and establish comparable opportunities for them. The state is legally obliged to such conduct, and employers are obliged to such conduct in certain cases (e.g. by means of statutory measures for pregnant women and parents).

In this context, we are also talking about **an inclusive and diverse organisational environment** and measures to promote it. Ensuring equal opportunities is a chance for a more effective human resources management, moreover, it contributes to diversity in companies as a value in itself, and improves employees' working conditions as well as their satisfaction and motivation.

Employees are the primary addressees of measures to ensure equal opportunities. Therefore, it is important that they:

- are familiar with the measures available to them, which especially applies to state measures in terms of rights (e.g. in the case of employment incentives);
- know their rights and take the initiative, if necessary, e.g. regarding reasonable accommodations in case of disability (more on this subject in section 6.2.: Reasonable accommodations for people with disabilities);
- are vigilant that the measures are implemented in a non-discriminatory manner (more on this subject in Chapter 6: Measures to ensure equal opportunities).

3 NON-DISCRIMINATION

Protection against discrimination is already provided for in international law, e.g. in the Universal declaration of human rights, and at the level of the European Union in the Charter of fundamental rights of the European Union and within the European pillar of social rights.

The Protection against Discrimination Act (hereinafter: PADA)¹ ensures the protection of every individual against discrimination in an even more comprehensive manner compared to the ZDR-1. It provides protection against discrimination in all areas of social life, including employment and employment relationships. The PADA complements the ZDR-1 and provides protection for jobseekers and those working as self-employed, working students, trainees, interns, volunteers and people performing other forms of work.

¹See Article 1 of the Protection against Discrimination Act (Official Gazette of the Republic of Slovenia, No. 33/16 and 21/18 – ZNOrg. Available at: http://www.pisrs.si/Pis_web/preqledPredpisa?id=ZAKO7273

According to the **Employment Relationships Act** (hereinafter: ZDR-1)², the employer must guarantee equal treatment of job seekers and workers during the employment relationship as well as in connection with the termination of the employment contract, regardless of their personal grounds, which include in particular:

- nationality,
- race or ethnic origin,
- national and social origin,
- gender,
- skin colour,
- health status,
- disability,
- religion or belief,
- age,
- sexual orientation,
- family status,
- trade-union membership,
- property status and other personal grounds.³

Violation of the obligation of equal treatment, i.e. unjustified discrimination of employees due to personal grounds, represents discrimination.

²See Article 6 of the Employment Relationships Act (Official Gazette of the Republic of Slovenia, No. 21/13, 78/13 – popr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – dec. of the Constitutional Court, 22/19 – ZPosS and 81/19). Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5944>

³Other personal circumstances include nationality (citizenship of another EU country, citizenship of a third country), pregnancy, parenthood, place of birth, skin colour, place of residence.

Discriminatory conduct may have the nature of actions (e.g. selecting a candidate for employment or granting of leaves) as well as omissions (e.g. failing to invite a person to a job interview or failing to respond to a request for leave).

Article 4 of the PADA Discrimination

(1) Discrimination shall mean any unjustified actual or legal unequal treatment, differentiation, exclusion, restriction or failure on grounds of personal circumstances which has the aim or effect of hindering, impairing or nullifying the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms, other rights, legal interests and benefits.

(2) Discrimination based on any personal circumstance shall be prohibited.

Discrimination is therefore unequal treatment, putting people at disadvantage compared to others in the access to rights, legal interests and benefits based on a particular personal ground, for which there is no justified reason.⁴

⁴See Articles 4, 5 and 6 of the PADA.

It is incorrect to speak of discrimination, if:

- the unequal treatment does not affect rights, legal interests or benefits;
- the reason behind such unequal treatment is not a personal ground or the situation of the considered persons is not comparable (more on this in Chapter 3.1.: Personal grounds);
- the subject matter falls within one of the exceptions to the prohibition of discrimination (more on this in Chapter 3.3.: Exemptions from discrimination).

Unequal treatment does not represent discrimination if the individual person is in a situation that does not affect a specific **right, legal interest or benefit** regulated by law. This is the case in strictly interpersonal or private relationships.

In the area of employment and work, we are generally not dealing with private relationships, but socially regulated legal relationships linked to rights, obligations, entitlements, benefits or interests, which are often provided for in legal regulations. The employer must ensure equal treatment to the candidate or employee in particular in the following spheres:

- employment;
- promotion;
- training;
- educational activities;
- retraining and relocation;
- payment;
- other payments – bonuses and rewards;
- benefits;
- absence from work (e.g. sick leave or parental leave);
- leave as a legal entitlement;

- working conditions;
- working time;
- termination of the employment contract.

The prohibition of discrimination also extends to some interpersonal relationships at workplace, e.g. the **prohibition of harassment** (more on this in Chapter 3.2.: Forms of discrimination).

In the case of discrimination, it is not important whether the perpetrator was aware of acting in a discriminatory manner, i.e. whether they acted intentionally or unintentionally.

→ **Example of discrimination:** If a company fails to employ a woman because the industry of the company is traditionally male and the entire collective is male, and it was assessed that the candidate would not feel comfortable in such an environment, this represents direct discrimination on the basis of gender, although the employer had no direct intention to discriminate against the candidate or even wanted to protect her.

3.1 Personal grounds

Everyone has **multiple personal grounds**. Personal grounds are our innate or acquired personal characteristics, traits, conditions or statuses that are, as a rule, permanently and inseparably linked to an individual (e.g. gender or disability) and/or their identity (e.g. nationality, sexual orientation) or cannot be easily changed by an individual (e.g. religion, belief, education). Hence, personal grounds don't include any characteristic, feature, position or any other circumstance that distinguishes a person from others (e.g. appearance). In consequence, for example, the form of employment relationship, work experience or work in a different workplace are not personal grounds.

→ **Examples of discrimination:** A person was not invited to a job interview solely because she is a woman (personal ground of gender), has not been promoted in the workplace because she is of a certain nationality (personal ground of nationality), has not been referred for training due to a certain disability (personal ground of disability) or receives a lower salary because she is younger or older (personal ground of age).

→ **Example in which we cannot talk about discrimination:**
If a job candidate was not selected because they did not have the needed skills and competencies, this is not discrimination, as the unequal treatment is not based on any of their personal grounds.

In order to talk about discrimination, it is necessary that a person is subject to worse or unequal treatment, precisely because of their personal grounds (and not something else). The mere fact that someone in reality has or does not have a particular personal ground is not sufficient, as the very same personal ground has to be the actual reason for unequal treatment.

In addressing discrimination, it is therefore important to identify and compare how other people in **comparable situations** are treated (people with other personal grounds or with the absence of the latter). Sometimes people in different situations are treated differently, but their situations are not comparable (e.g. specific work requirements for different jobs).

- **Example in which we cannot talk about discrimination:**
The candidate claims that they were discriminated against in employment on the grounds of their gender, but in reality, no discrimination was identified as the employer proved that the candidate failed to meet the criteria and employment conditions, e.g. the required level of education. The reason for the unequal treatment was therefore not the personal ground of gender.

3.2 Forms of discrimination

Knowledge on the different forms of discrimination is also important to understand what discrimination is:

- **Direct discrimination** is given if in same or similar situations a person is (or could be) treated less favourably compared to another person due to a particular personal ground.

Direct discrimination is a specific and direct action (including an instruction or regulation) and is usually the easiest to identify as discrimination. It is the most obvious and most commonly recognised form of discrimination.

- **Example of discrimination:** The employer avoids inviting the candidate to a job interview because on the basis of this person's name they conclude that this person is a foreigner (immigrant).⁵

- **Example of discrimination:** The employer dismisses the employee due to numerous justified absences and their need to adjust the working hours due care duties towards their son, who is a person with a disability. This case is also discrimination on the grounds of disability, although the employee themselves is not a person with disability. Equal treatment is also ensured to a person who is actually or legally related to a person with a particular personal ground (second paragraph of Article 5 of the PADA).

- **Indirect discrimination** is given when in same or similar situations a person with a personal ground is in a less favourable situation compared to other persons due to an apparently neutral regulation, criterion or practice.

⁵Wrong reasoning about personal grounds also constitutes discrimination, so it does not matter at all whether the victim in this case is a foreigner/immigrant.

This form of discrimination exists when a personal ground is not obvious and clear at first glance. The criterion for distinguishing is not directly a personal ground, but is significantly related to it (hence the attribution apparently neutral). This is often only demonstrated when considering the effects of a regulation/criterion that disproportionately affects people with a particular personal ground.

- **Example of discrimination:** The employer sets the condition of excellent knowledge of the Slovenian language, although this is not relevant in terms of the specific work and the work does not include communication with colleagues or clients. This could lead to discrimination on the grounds of language and indirectly on the grounds of nationality, citizenship or disability.

- **Case addressed by the Advocate:** The Employment Service published a vacancy notice stating body weight and height as requirements needed to fill the post. The Advocate warned the Employment Service that such conditions are unlawful from the perspective of indirect discrimination on the basis of gender. On average, women are shorter and weigh less than men. The Employment Service responded positively and stated that when publishing job advertisements in the future, attention will be paid to this issue.

The PADA sets out other forms of discrimination:

- **Instructions to discriminate** against persons, which also includes the instructions not to prevent or eliminate discrimination (Article 9 of the PADA).
- **Example:** The company Director instructs the production manager to allocate only foreigners to work on work-free days (e.g. weekends, holidays).
- **Harassment** is undesirable conduct related to any personal ground, the purpose or consequence of which is to deprive a person of dignity and/or create an intimidating, hostile, degrading, humiliating or offensive environment (Article 8 of the PADA and Article 7 of the ZDR-1).
- **Example:** Harassment is when a colleague makes offensive or humiliating remarks about people who are part of the LGBTIQ+ groups in the presence of a colleague who is a part of such a group.
- **Sexual harassment** (definition from the PADA): Sexual harassment is any form of unwanted verbal, non-verbal or physical conduct or behaviour of a sexual nature that occurs with the effect or purpose of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment. (Article 8 of the PADA and Article 7 of the ZDR-1).

If we want to address harassment as a form of discrimination, it is necessary to demonstrate the existence of a certain personal ground. In the case of sexual harassment, there is no need for such demonstration.

Sexual harassment can be in the form of verbal conduct such as sexual innuendos, suggestive remarks about appearance or body parts, obscene comments, etc. It can also be manifested in gestures or even physical conduct (e.g. inappropriate touching, hugging or kissing attempts).

→ **Example of discrimination:** Sexual harassment takes many forms. As regards verbal conduct, it can be sexual innuendos, suggestive remarks about appearance or body parts, obscene comments, etc.

- **Retaliatory measures** (victimisation): Discriminated persons and persons assisting a victim of discrimination must not be subject to adverse consequences due to their actions aimed at achieving non-discrimination. Retaliatory measures against a discriminated person or a person assisting them or witnessing discrimination are prohibited (Article 11 of the PADA and par. 7 of Article 6 of the ZDR-1).

→ **Example of discrimination:** The employer prevents promotion or intentionally imposes a disproportionately large amount of work which is beyond the employees capacity as a result of previous warnings to the management that a colleague is discriminated against.

It is important to **distinguish between harassment and mobbing at the workplace**, although in practice both forms of humiliation may be similar. Harassment is defined in the ZDR-1⁶ as any repeated or systematic, repugnant, or manifestly negative and offensive conduct or behaviour directed against individual employees in the workplace or in connection with work.

Main differences between harassment and mobbing:

- the reason/motive for mobbing is neutral or is not a personal ground. It is usually the result of inadequate work organisational processes, excessive workloads and personal reasons, as opposed to harassment, where the motive is intolerance and/or hostility based on prejudice;
- in terms of duration of the conduct, harassment can be a one time event, while mobbing is a more intense, repetitive or systematic treatment of a person.

Both concepts are also related to **workplace mobbing** as a concept regulated by criminal law⁷. Harassment can be a one time action. At the same time, criminal law specifically addresses other more serious forms of sexual harassment, and the contested conduct can also correspond to various offences of defamation and besmirching honour.

⁶See Article 7 of ZDR-1

⁷Article 197 of the Criminal Code.

3.3 Exceptions to discrimination


The PADA provides for some **exceptions to the prohibition of discrimination**. These are cases where unequal treatment due to personal grounds is legally permissible.⁸ However, in the field of work according to the PADA and ZDR-1, an exception is possible only in cases connected to the nature of a particular professional activity or in the context of its performance.

This means that only exceptions that represent a justified **occupational requirement** are permissible, for example, exceptions to employment conditions (e.g. education) or working conditions (e.g. work experience – indirectly age). Exceptions are not permitted in relation to other aspects of employment (e.g. invitations to interviews) and performance of work (e.g. different working hours for young people).

→ **Example of an exception to non-discrimination:** for certain jobs, it is justified to require a higher education if this requirement arises from more demanding work tasks where there is a need for specific skills, and it can be justified and demonstrated.

⁸See Article 13 of the PADA and the Advocate's Annual Report for 2020, where Article 13 is explained in detail. Available at: <http://www.zagovornik.si/letno-porocilo-2/>

→ **Example of an exception to the prohibition of discrimination:** A job advertisement stating a condition of a certain gender may be permissible if the nature of the work requires so, e.g. an advertisement seeking male candidates for modelling male fashion, an actress who will play a female role in the film, a police officer who will perform personal screening of female passengers at the airport, etc.

 *A great amount of useful information about discrimination is available on the Advocate's website www.zagovornik.si. The "case-by-case search engine" lists and explains in detail a number of examples that can also help in identifying discrimination in your case.*



4 DISCRIMINATION IN RECRUITMENT PROCEDURES

In accordance with Article 6 of the ZDR-1 and Article 2 of the PADA, job seekers and job candidates must be granted equal treatment.

→ **Example of discrimination:** The employer fails to hire the most qualified candidate for the leading position, as they believe this person is too young and that other, older employees could have problems with respecting their authority.

In employment, only **employment conditions** that are necessary in terms of the job content or the context of performing a particular (specific) work are permissible. This applies in particular to all conditions that are directly or indirectly related to personal grounds.

→ **Example of discrimination:** Younger women are often exposed to family planning questions in job interviews or are not hired by employers as a "precaution" as it is anticipated that they may become pregnant and use the right to parental leave. This is gender discrimination. Moreover, it is also intersectional discrimination⁹ based on gender and age ("young women").

⁹Cross-sectional (intersectional) discrimination can occur based on several personal grounds that act and interact simultaneously, being inseparable.

- **Example of discrimination:** The employer may not employ exclusively women, e.g. waitresses, based on a belief that guests prefer to be served by female waitresses or that this could have a positive impact on the business. This is not a sufficient link to the nature of this work nor to the circumstances in which the work is performed.

- **Example of indirect¹⁰ discrimination:** In the job vacancy notice, the employer states that the work is performed full-time, without even considering the possibility that this job be performed as a part-time job or in the form of split working hours. This can put women at a disadvantage and lead to indirect discrimination, as they are more likely to care for children or people with disabilities and are therefore better suited to part-time work.

- **Example of discrimination:** The publication of a job advertisement in the secretariat, which sets out the condition of age under 40, is discriminatory, as it is not justified by the job requirements and conditions at the workplace. The employer has the right to freely decide on employment, but must not use discriminatory conditions and criteria.

¹⁰As regards indirect discrimination, see Chapter 3.2.: Forms of discrimination.

- **Example of discrimination:** If the employer requires several years of work experience which is however not justified by specific job requirements, it may be an indirect discrimination against younger job seekers.

The selection **procedures** and the conditions for participation must also not be discriminatory. This applies not only to the final result (who is selected and gets the job, and who is not), but also to the opportunities for equal participation at all stages of the selection process. Discrimination may occur when a candidate is not invited to a job interview or is otherwise a-priori excluded from the selection procedure due to some of their personal grounds.

- **Example of discrimination:** The employer decides that candidates must take a test or submit a certificate of a higher level of knowledge of the Slovenian language, although the position does not objectively require good knowledge of the written language, or this is not sufficiently justified (e.g. by the need to communicate with clients in writing). Some foreigners or immigrants whose native language is not Slovenian have more difficulties in passing the tests or have worse results, which can lead to indirect discrimination against them as a result of this condition.

Questions not related to the content of the job or related to personal grounds of the candidates are not permissible in the selection process and at work interviews (e.g. regarding pregnancy or family planning).

In accordance with Article 29 of the ZDR-1, a candidate for employment is not obliged to answer questions that are not directly linked to the employment relationship. Refusal to answer such questions should not be a reason for not being selected or hired.

→ **Example of discrimination:** The employer may not inquire about the health status of the candidate, except when it comes to requirements that are reasonably related to the nature of the work. For example, a construction company can inquire whether a worker is suitable for work at height as regards their health condition. In other cases, it is considered that health assessment is carried out within the preventive medical examination of workers (Article 28 of the ZDR-1).

In the recruitment procedure, employers must actively seek to prevent discriminatory practices, **take appropriate measures** and adapt their procedures to ensure equal opportunities. Employment candidates should also pay attention to the procedures and draw the attention of employers to potential irregularities if necessary.

- If possible, persons responsible for recruitment (managers, HR) should not have access to **personal data** from the candidates' application (e.g. date or place of birth).
- **Job requirements** in both job systematization and job advertisement should not be discriminatory, i.e. they should not unjustifiably exclude persons due to their personal grounds (e.g. "intention to hire a woman") or promise an advantage ("desirable qualities").
- The **job description** must be objective and not suggestive and should not indirectly address only certain social groups (e.g. "mature aged people", "young graduates", "communicative", "experienced").
- Attaching a **photo** should not be required for the application for employment, as in most cases it is not justified and may provide information about the candidate's personal grounds.
- **Job requirements** must be realistic and substantially job-related and proportionate (e.g. education, work experience).
- When preparing the description of the requirements for the position, it is necessary to take into account whether the work can be performed in an **adapted manner** and record this in the advertisement (e.g. adjustment of working hours or the possibility of teleworking).
- When applying, at a personal interview or in other selection procedures, the candidate should put forward any need for **reasonable accommodation** (time, space, method of work). The employer should also ask questions aimed at the needs of candidates, e.g. in the application form.
- The employer should be **flexible** as regards the time and place of the interview, as candidates may have different commitments (related to family, religion, disability). If the selection process takes place remotely, accessibility for candidates with disabilities should be ensured.

- The employer should not **request information** that is not strictly necessary (e.g. impunity, place of birth) or in ways that may put persons in unequal positions (e.g. video recording).
- The interview should be conducted by a **committee**, that is by a diverse group of persons, which reduces the likelihood of bias.
- In job **interviews**, candidates should not be asked direct or indirect questions regarding their personal grounds, even if the purpose of such questions is not discriminatory:
 - regarding family status, parenthood, beliefs, health status;
 - past salaries with previous employers, as this can reproduce past inequalities and discrimination;
 - date of birth can only be a justified question if the work requires a certain age, otherwise the selection committee should not be aware of this information that is a part of the application;
 - if this is not a legal condition of work (e.g. in education, appointment to a position in the public sector), it is not permissible to inquire about past criminal record;

- membership in a trade union is also a personal ground, so the employer may not ask or condition work with membership or non-membership in trade unions.
- **Records of interviews**, examinations, applications, etc. must be kept in accordance with the rules of personal data protection, which facilitates procedures in the event of complaints related to discrimination. Candidates should record all information regarding the course of the procedure.
- If the employer requests an **examination** to be taken, it must be justified by requirements related to the workplace in question within selection procedure. The examination should take into account accessibility requirements (e.g. for sensory impaired) as well as allow for any reasonable accommodations (possibility of oral or written examination).
- The **examination** of knowledge and/or competencies of the candidate or the establishment of his health capacity should not be related to circumstances which are not of direct relevance for the work for which the employment contract is being concluded. (Article 28 of the ZDR-1).

5 DISCRIMINATION AT WORK

The **ZDR-1** regulates legal relationships in which one person performs work for another and which can be defined as employment relationships. As a rule, an employment relationship is established by concluding a written employment contract between the employee and the employer, however any legal relationship is considered an employment relationship in each case when elements of an employment relationship between the contracting parties from the ZDR-1 are given (e.g. when working based on a student referral or working as a sole proprietor). It applies to employment relationships between employers established or resident in the Republic of Slovenia and their employees (including foreigners), as well as to employment relationships between foreign employers and workers on the basis of an employment contract in the territory of the Republic of Slovenia.

For persons performing work on the basis of other contracts (for example, as volunteer trainees, on the basis of a student referral), the ZDR-1 stipulates that certain provisions of the ZDR-1 apply to these persons, however these are some precisely defined protection provisions (e.g. regarding the work of minors), otherwise such forms of work are not subject to labour legislation.

Unlike ZDR-1, the **PADA** applies to all aspects of social life, including the exercise of rights and obligations and in any other legal relationships in the economic sphere. This applies especially as regards access to employment, self-employment and occupation, including selection criteria and employment conditions, regardless of the type of activity and at all levels of the professional hierarchy; in access to training, including internship; employment and working conditions, including promotion, termination of employment contract, salaries, etc.

Hence, the PADA applies to **all forms of work**, including work on the basis of other contracts (self-employed, interns, based on a contract on occasional and temporary work of pensioners, student referral or a contract for work). These persons have, inter alia, the following rights at work:

- receive equal pay for equal or comparable work (work of equal value);
- enjoy equal working conditions and equal opportunities for promotion;
- in the event of dismissal, to be treated equally and not be dismissed based on their personal grounds;
- regarding the possibility of balancing professional and private life;
- that they are safe from workplace harassment and victimisation.

5.1 Equal pay

Employees must receive **equal pay** for equal work and work of equal value, regardless of their personal grounds.

In the area of gender equality, the right to equal pay is clearly stated in the fundamental treaties of the EU¹¹ and in Article 133 of the ZDR-1.

The right to equal pay refers to work performed by employees at a workplace that is comparable in terms of content and complexity. It also extends to work that is not exactly the same while the assessment of the value of work includes qualitative criteria, e.g. the necessary knowledge, skills, difficulty of the work, working conditions.

→ **Example of discrimination:** Men and women do comparable work in a store, women work most of the time at the cash register and men are in the warehouse and have to lift heavier items from time to time. It is discriminatory for women to receive lower pay.

The actual **nature of the work** is important, not the type of work, job title or job description in the systematization or employment contract, which can only conceal such inequalities. Therefore, seemingly very different workplaces can be assessed as identical or comparable.

¹¹Article 157 of the Treaty on the Functioning of the European Union and Article 23 of the Charter of Fundamental Rights of the European Union.

- **Example of discrimination:** Men and women can perform comparable work in the organization, even if women are mostly employed as cleaners and men mostly work as security guards. It is discriminatory for women to be granted lower pay in this case when work is comparable taking into account the context of gender.

Differences in salaries for comparable work represent discrimination only if being the result of the employee's personal grounds and not arising from the nature of the work.

- **Example in which we cannot talk about discrimination:** If, for example, a woman is paid less in relation to a male colleague because, for example, she is employed in another job and performs less demanding work or work of a lower value, we cannot talk about discrimination, as the condition of comparability is not fulfilled in this case.

The right to equal pay includes various forms of remuneration of employees: basic salary, contributions, allowances (e.g. for work performance), allowances and reimbursements of costs, daily allowances, holiday allowances, "Christmas bonuses", jubilee and other awards.

- **Example of discrimination:** Due to parental leave (personal ground of parenthood), an employee in the public sector received a lower assessment in that year, which prevented her from promotion and thus also affected the amount of her salary.

- **Example of discrimination:** Although they perform the same work, only employees who are Slovenian citizens receive a work phone or car.

Unequal pay is often the result of other discriminatory practices. Thus, it can be inextricably linked to the issue of discriminatory tasking and remuneration of individual work tasks, assessment of work results or decisions on promotion. It is also often manifested at the structural level, e.g. as a pay gap between men and women or as an unequal representation of women in leadership positions.

- **Example of discrimination:** Employees unjustifiably receive lower pay for equal work because they are younger or foreigners. Regardless of whether the payment is legally regulated and agreed (e.g. specified in the employment contract) and the person has consented to the amount of the salary, such conduct remains discriminatory.

- **Example of discrimination:** The employer paid the employed father a lower Christmas bonus compared to other employees because presence at the workplace was taken into account as a criterion. The employed father was partly absent due to paternity leave as well as sick leave and was therefore granted a lower Christmas bonus. Such conduct represents discrimination on grounds of parenthood and health status.

5.2 Working conditions and promotion

Employees have the right to equal treatment in training, education, retraining, salaries and other benefits from the employment relationship, absence from work, working conditions, working hours, etc.

Discrimination, that is the violation of these rights, can occur as an individual action, e.g. in connection with the granting of leaves or other benefits (company vehicles, computers) or as part of a wider pattern of behaviour (e.g. the assignment of tasks that are degrading and inadequate to work abilities). Workplace conditions (exposure to noise, dust, inadequate safety at work) can also be problematic and the violations can also be of a systemic nature (employer rules).

- **Example of discrimination:** The employer assigns foreign workers (e.g. those with a work permit) or workers of another nationality (who are Slovenian citizens) more difficult work than others, exposes them to greater danger, provides them with poorer work equipment, etc.
- **Example of discrimination:** The employer assumes that an employee is not suitable for promotion to the leading position because she is pregnant, or based on the assumption that due to her age she might become pregnant. If this is a reason for the denied promotion, it is discrimination on the grounds of gender and pregnancy/parenthood.

5.3 Termination of employment

Among unjustified reasons for regular termination of employment contract, the following are expressly stipulated by the 90th article of ZDR-1:

- temporary absence from work as a result of incapacity to work due to illness, injury or care of family members;
- trade-union membership;
- race, nationality or ethnic origin, skin colour, gender, age, disability, marital status, family responsibilities, pregnancy, religious and political beliefs, national or social origin, etc.

→ **Example of discrimination:** When terminating employment contracts, the oldest employees are selected as redundant workers, in order to reduce labour costs and absenteeism in the company. These are not compelling reasons and constitute age discrimination.

Discrimination can also occur in the event of unjustified non-extension of a fixed-term employment relationship, as well as following the termination of the employment relationship, in the payment of unused leave, failure to issue a certificate of work experience, etc.

It is important for the employer to explain why the employment relationship has been unilaterally terminated.

→ **Example of a court review:** In the determination of redundant workers, the defendant took into account the assessment of work performance in the period of three years before the dismissal taking into account the time of the plaintiff's absence as a result of taking parental leave. This put her in a less favourable position compared to workers who did not take this type of leave. This is indirect discrimination. Termination of the employment contract was unlawful.¹²

5.4 Work-life balance

The law regulates a number of work-life balance mechanisms. The exercise of these rights may result in discrimination based on any personal ground.

The needs of employees' private life may be different and arise not only from family life, but may be related to caring for others (care and upbringing), to the practising of religion (religious holidays leaves) or political beliefs (leave to participate as a candidate in elections), efforts for education (leave for training) or active sports participation. Failure by the employer to offer measures to effectively reconcile work and private life may lead to discrimination.

¹²HLSC Judgment Pdp 411/2015. Available at: [http://www.sodnapraksa.si/?q=diskriminacija&database\[VDSS\]=VDSS&submit=išči&rowsPerPage=20&page=8&id=2015081111388647](http://www.sodnapraksa.si/?q=diskriminacija&database[VDSS]=VDSS&submit=išči&rowsPerPage=20&page=8&id=2015081111388647)

Explicitly stated personal grounds according to the ZDR-1 include family status, which pursuant to the PADA reasonably counts as "other personal grounds".

An important and at the same time the most extensive set of measures for balancing professional and family life is provided by the state, inter alia, through the Parental Protection and Family Benefits Act,¹³ which determines the rights of workers on the basis of parental protection insurance (e.g. parental leave, compensation, right to part-time work, breastfeeding break).

Successful balancing of work and private life can be ensured, inter alia, through measures of adapting working hours and teleworking.

→ An example of good practice is the possibility of flexible working hours – earlier arrival of employees at work (e.g. to take children to kindergarten), or later arrival at work (due to traffic congestion), as this allows them easier access to certain services or care of family members.

¹³Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6688>

Measures to ensure work-life balance must also be implemented in a non-discriminatory manner (more on this in Chapter 6: Measures to ensure equal opportunities).

- **Example of discrimination:** An employee needs to occasionally take care of a child due to an injury and would need an adjustment of working hours in the form of short occasional absences. The employer allows others to be absent due to childcare, but only mothers are envisaged as beneficiaries in the rules. If the adjustment in this case is declined, it could represent discrimination based on gender.

5.5 Harassment

Harassment and sexual harassment in the workplace are prohibited by law and are considered a special form of discrimination (more on this in Chapter 3.2.: Forms of discrimination).

- **Example of harassment:** The employer causes discomfort to the candidate when making a joke about their religion during a job interview.

- **Example of sexual harassment:** A hostel employee is often subjected to obscene comments from customers because she is a woman. When she complained to her employer about this and asked for help, no response or intervention came. Therefore, the employer may be co-responsible for gender-based harassment.

5.6 Victimisation

Discriminated persons and persons assisting the victim of discrimination must not be subject to retaliatory measures due to actions aimed at achieving non-discrimination. Therefore, retaliatory measures (victimisation) against the complainant or the person assisting or witnessing discrimination is prohibited.

- **Example of retaliatory measures:** The employer prevents promotion or intentionally imposes a disproportionately large amount of work which is beyond the employees' capacity as a result of previous warnings to the management that a colleague is discriminated against.

6 OTHER MEASURES TO ENSURE EQUAL OPPORTUNITIES

While preventing discrimination, the state makes efforts towards ensuring equal opportunities for vulnerable social groups in various ways:

- by taking specific measures (e.g. incentives and assistance, active employment policies) or by
- statutory provisions (e.g. ZDR-1 or ZZRZ¹⁴), which are binding on other entities, especially employers.

→ **Example of a measure:** *The Resolution on the National Programme for Equal Opportunities for Women and Men* is a strategic document of the government that sets out the objectives and measures and key policy-makers for the implementation of gender equality, including in the field of employment and work.

¹⁴Vocational Rehabilitation and Employment of Persons with Disabilities Act Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3841>

6.1 Employers' actions

Apart from the state, employers can also take **measures** for vulnerable groups. These specific measures of employers, like state measures, have different names and are implemented in different ways.

Of course, the adoption of special measures may also be proposed to the employer by employees and trade unions. In this, employers and employees can cooperate with other organisations that are qualified to identify the needs of certain groups of people, such as disability organisations or organisations that award certificates in the field of inclusion, diversity, work-life balance, etc.

Employers' measures to ensure equal opportunity (similar to the state measures) include:

- preventive measures (e.g. adopted rules on the prevention of harassment, raising general awareness among all employees, monitoring of the situation) and
- special measures.

Employers must pay attention to **prevention**, i.e. the prevention of discrimination. They can be done through a special act, the so-called equality policy, which includes the principles, rules, commitments, processes and activities of the employer in the field of protection against discrimination. It is important that this policy is known and understood by all employees and responsible persons in the company. The employer (as an organisation) may be co-responsible for all discriminatory actions of its employees, including those who are not in an employment relationship or only perform tasks according to the instructions of the employer. It is not important whether the employer (or the superior) knew about the discriminatory behaviour or not. If they knew, they were obliged to take action, unless the victim of such conduct explicitly objected.

In some cases, **specific measures** by employers in the private sector are mandatory under specific laws; e.g. quotas for employment of people with disabilities, special employment security for vulnerable groups and operation in Italian or Hungarian language with clients in the area where such national communities live.

However, measures that are not a legal obligation may be imposed by employers independently and on their own initiative.

- **Example of a desirable measure:** The employer offers foreign employees a possibility to learn the Slovenian language (and Slovenian employees to learn the language of their colleagues) and organises social events for mutual acquaintances of employees, also with the aim of shifting cultural differences.

- **Example of a desirable measure:** The employer offers additional education to older employees, includes them in mentorships and offers additional adjustments to working conditions.

Measures to ensure equal opportunities must be **implemented in a non-discriminatory manner** – justified (appropriate), reasonable (necessary) and correctly proportionated (proportionate).¹⁵ Otherwise, they could even lead to new discrimination instead of its elimination – for example, granting advantages to those who are already in a better position, or granting excessive benefits. They must be lawful and fair.

¹⁵This is the so-called principle of proportionality or the proportionality test applied by the Advocate, as well as by courts and international law. It is used to assess whether an interference with rights may be excessive. It applies to interventions that cause and those that eliminate inequalities.

- **Example of discrimination in the implementation of a measure:** The employer allows flexible working hours or work at home to mothers, but not to fathers, as it is considered that adjustments to facilitate the balancing of work and private life is less important or unnecessary for them.

- **Example of discrimination:** An employee who is religious asks for a break during work dedicated to prayer. If the employer allows additional breaks to employees, e.g. smokers, the denial of the request could constitute discrimination based on the personal ground of religion. Even if the employer equally prohibited all employees from taking additional breaks during work, the adjustment of working hours based on religious beliefs and the break could e.g. be compensated with an earlier arrival or a later departure from work.

6.2 Reasonable accommodation for people with disabilities

The institute of **reasonable accommodation** (including appropriate accommodation) is a special way of preventing discrimination and ensuring equal opportunities for people with disabilities. Reasonable accommodation is also needed for people with temporary disabilities (health status).

Reasonable accommodation is an obligation deriving from the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to which Member States of the European Union are parties. It has been in force in Slovenia since 2008.

All employers, including entities governed by private law, are legally obliged to provide reasonable accommodation. If they unjustifiably fail to provide it, they are liable for discrimination on the basis of disability.

The institute of reasonable accommodation differs (in particular) from other measures to ensure equal opportunities in the following way:

- in an individual approach, which refers to the individual's specific needs in specific circumstances and not to a more favourable treatment of the entire group of persons with disabilities;
- in the unambiguous and direct legal obligation of employers to offer reasonable accommodation. Ensuring reasonable accommodation is therefore not a matter of the employers' free choice as is the case of special measures.

The right to reasonable accommodation may apply to all employment and work-related activities and processes, from the job application process to dismissal. It may include special working conditions (e.g. technical aids) and additional benefits (e.g. flexible working hours) provided by the employer to employees with disabilities.

→ **Example of reasonable accommodation:** After employment, the employer relocates the workplace of the disabled person to the ground floor of the office building, thus ensuring full architectural accessibility.

Any job candidate or employee with disabilities who considers that they need a workplace adjustment may request reasonable adjustment measures from the employer.

Forms of reasonable accommodation may include:

- technical solutions (e.g. technical aids, ramps and other spatial adaptations such as switching offices, appropriate work chairs, equipment);
- working arrangements (exchange of work tasks between workers, adjustment of arrival and departure from work);
- training measures (additional clarifications, additional training, mentoring);
- awareness-raising measures (e.g. advice on how to communicate with a deaf colleague).

Reasonable accommodations generally do not require significant additional financial resources.

→ **Example of reasonable accommodation:** The employer has a recruitment policy stipulating that candidates are noted before job interviews to notify the staff if they have any special needs or require any accommodation. They are regularly encouraged to communicate their adaptation needs even when already performing the work.

- **Example of reasonable accommodation:** In the job advertisement, the employer states the condition of a fixed working time from 8 am until 4 pm, but after the employment of a person with a disability finds that such working hours cause problems for that person due to the use of public transport in rush hours, so this employee is allowed flexible working time (arrivals and departures sooner or later).

Employers are obliged to provide reasonable accommodations unless this would mean a disproportionate (unreasonable) burden for them. In this, the capabilities and resources of employers are taken into account (larger entities can do more than smaller ones), as well as external resources available to employers from public funds (possibilities of relief, obtaining technical aids, compensation).

- **Example of discrimination:** An organisation where work is carried out in a multi-story building without an elevator must not state in the employment advertisement that the work is not suitable for people with reduced mobility if the work could be performed on the ground floor. In the case of larger organisations, the obligation of installing an elevator is also not excluded, as such an intervention, depending on the amount of cost, is not unreasonable or disproportionate.

- **Example of court ruling:** If there is a possibility that the employer allows the employee with disability to continue to perform work in the same workplace with a particular restriction, the employer is obliged to offer the employee a new employment contract for the same workplace with the restrictions.¹⁶

6.3 Accessibility

Similar to reasonable accommodations, the state and employers ensure accessibility to people with disabilities.

Accessibility is a broad term that means not only access to buildings or work premises, but also access to information or communications, access to products and services, accessibility of public transport, etc. In addition to accessibility for people with reduced mobility (e.g. elevators, ramps), accessibility must also be ensured for the sensory impaired (e.g. tags, braille, hearing loops) and people with psychosocial disabilities (e.g. easy read). This enables people with disabilities to participate in various areas of social life, including work processes.

¹⁶Available at:

[http://www.sodnapraksa.si/?q=diskriminacija&database\[VDSS\]=VDSS&submit=išči&rowsPerPage=20&page=7&id=2012032113056467](http://www.sodnapraksa.si/?q=diskriminacija&database[VDSS]=VDSS&submit=išči&rowsPerPage=20&page=7&id=2012032113056467)

Unlike reasonable accommodations, all obliged entities must ensure accessibility in advance. Hence, for example, according to construction legislation and legislation in the field of protection of the rights of people with disabilities, all facilities in public use must be accessible to people with disabilities. In this case, access to such areas is also needed by people with temporary disabilities (health condition), the elderly, parents with strollers, etc.

7 ADDRESSING DISCRIMINATION

This text helps to raise awareness among employees on the identification of discrimination and to present them with possible ways of legal action in cases of discrimination. In facing discrimination, however, legal options are not always sufficient.

Discrimination must also be tackled on a personal and consciousness level. This is especially due to its negative impact on our well-being. Discrimination must also be addressed in interpersonal relationships, especially those with the violator. Often, such communication is necessary so that the violator can begin to see the error and correct their behaviour.

Discrimination is never the fault of the victims, it is the fault of the person who committed it. Nevertheless, victims of discrimination often wonder whether they share the blame for what happened or are persuaded of this by others. Sometimes people are also unwilling to admit that they have been discriminated against.


The consequences of discrimination should not be underestimated, as it affects peoples' emotions, self-esteem, mood, and, in severe cases, mental and general health. Therefore, it is incorrect to remain silent about discrimination, deny it or try to suppress it. The excuse that it happens to others too is irrelevant. It is also wrong to conclude that taking action will not help, that "nothing can be changed" or that retaliatory measures may follow (as regards retaliatory measures as an independent form of discrimination, see Chapter 3.2.: Forms of discrimination).

Discrimination happens to many. Sometimes victims are not even aware of this, and the same applies to the violators. Discrimination often happens unintentionally, due to socio-cultural circumstances (stereotypes, prejudices), ignorance and indifference. Such behaviour may also be perceived as natural, as an established practice. Therefore, every step towards eliminating discrimination can help improve the situation and help others who are also facing discrimination.

It is already a helpful step when people **speak out** about discrimination. We can first talk to our loved ones, those we trust, colleagues, trade union confidants, superiors, etc. Opening a debate about whether or not a practice constitutes discrimination should never be taboo.

Also, because discrimination is a complex social phenomenon, as well as a legal concept, it is correct to inform people in case of suspicion of discrimination and seek advice and support:

- Responsible **employers** offer the possibility of confidential consultation, legal assistance, etc.
- **Trade unions** offer support to their members in case of violations.
- Some **NGOs** offer counselling too.
- Employees can consult the labour inspectorate free of charge (also anonymously), even when they have not yet reported the violation (more on this in Chapter 8.3.: Inspectorates).
- **The Advocate**, who specialises in discrimination investigation and assisting victims of discrimination, also offers advisory (more on this in Chapter 9: Procedure before the Advocate of the Principle of Equality).

 *Anyone who considers that they have been discriminated against may write to the Advocate or call the Advocate's free number 080 81 80. In a confidential conversation with the advisers of the Advocate, people can get additional information, advice, legal assistance and identify the most appropriate response free of charge.*



Many victims of discrimination do not actually want to use legal paths, escalate disputes, seek compensation, punish offenders, etc. They want solely that violators take note of the error, acknowledge it, correct it, and make sure it doesn't happen again. Violators also generally do not want conflicts and legal disputes (more on this also in Chapter 8.7.: Alternative dispute resolution).

 *A great amount of useful information about discrimination is available on the Advocate's website www.zagovornik.si.*



8 LEGAL PROTECTION AGAINST DISCRIMINATION

It makes sense for those who feel they have been discriminated against to speak up, gain information, get advice and seek legal assistance. They also have several options in terms of seeking legal protection:

- in proceedings before employers,
- inspectorates,
- in proceedings before the labour court,
- administrative court,
- in criminal proceedings,
- in civil law proceedings before courts of general jurisdiction,
- before the Advocate of the Principle of Equality,
- before the Ombudsman,
- in alternative dispute resolution procedures.

8.1 General rules on protection against discrimination

When it comes to discrimination, the **intention of the discriminator** is irrelevant. If an organization treats employees unequally and is not aware of this due to lack of knowledge of regulations or failure to collect and analyse data, this does not diminish its liability for discrimination.


Employers are economically and legally a stronger party to the employment relationship, and above all, they generally have evidence that is not available to employees. Therefore, in case of suspected violation of the prohibition of discrimination, the legislation prescribes certain specifics that additionally protect victims of discrimination. In procedures relating to protection against discrimination, the **rule of reversed burden of proof applies**.¹⁷

The rule of **reversed (or shared) burden of proof** means that the employee must explain in the complaint which personal ground is allegedly the reason for discrimination and in what ways and state as many facts as possible or submit evidence for their claims. If the stated facts sufficiently support the suspicion that discrimination has occurred, then the employer is the one who must prove these statements wrong.¹⁸ If the employer fails to do so, they shall be liable for the violation.

Therefore, the employer's silence as regards the claimed discrimination, unresponsiveness or unwillingness to participate in the procedure, provide information or submit evidence may represent elements justifying the suspicion of discrimination.

¹⁷See Article 40 of the PADA.

¹⁸See judgment HLSC Decision Pdp 927/2017. Available at: [http://www.sodnapraksa.si/?q=diskriminacija&database\[VDSS\]=VDSS&submit=išči&rowsPerPage=20&page=3&id=2015081111417699](http://www.sodnapraksa.si/?q=diskriminacija&database[VDSS]=VDSS&submit=išči&rowsPerPage=20&page=3&id=2015081111417699). Compare with the HLSC judgment in Pdp 876/2016

 *More information on legal paths is available in the Handbook for employers: Ensuring equal opportunities and preventing discrimination in employment and work, which is available in full on: <https://zagovornik.si/izdelki-zagovornika/osvescanje/>*



In principle, individual legal paths are also not mutually exclusive (e.g. internal legal paths with employers and complaints with the Inspectorate or the Advocate). However, the Advocate cannot conduct proceedings if a legal case before a court is already pending in the same case.

8.2 Procedures before employers

Various kinds of **internal procedures** can be initiated with the employer in cases of suspicion of discrimination. They depend in principle on the action of the victim, but the employer is also co-responsible for taking action against discrimination (for example, if they learn of harassment among employees or other violations).

Employers also have to face discrimination and need to gain awareness. Only then do they realize their misconduct of which they were previously completely unaware. It makes sense to address the problems informally and amicably first (e.g. in conversation, through confidants, trade unions), but if such course of actions is not successful or possible, other legal paths are available.

In accordance with Article 200 of the ZDR-1, every employee has the right to address a request to the employer to cease the violation. The employer must immediately decide on the matter, as they are obliged to remedy the alleged violation within eight days. If the employer fails to remedy the violation within this period, the employee may file a request for judicial protection within the next 30 days (more on this in Chapter 8.4.: Courts). As a rule, the use of this internal path to remedy an infringement is a necessary precondition for seeking judicial protection in a labour dispute. This arrangement is the most general and applies to all employers.

Some private employers have **complaint procedures** for resolving disputes between employees and the employer provided for in internal rules (e.g. commercial companies), but according to the findings of the Labour inspectorate of the Republic of Slovenia, they are not always efficient in practice.

In the **public sector** where the protection of public employees employed in state and local administration authorities is being pursued, special solutions from the Public Employees Act apply.¹⁹ If a **public employee** believes that their employer is violating any of their rights, they may request from a superior that the violation be remedied within 15 days. The deadline for responding is therefore longer than the period available to private employers. This claim must be decided by means of a decision issued by the superior. Such a decision shall, as a rule, be subject to an appeal to the Board of Appeal within eight days.

Of these cases, it is necessary to distinguish cases when the individual rights and obligations of a civil servant are subject to an **administrative decision** in an administrative procedure (for example, a decision not to participate in a public recruitment procedure). In this case, an appeal in administrative proceedings is allowed, and an administrative dispute is available against final decisions (more on this in Chapter 8.4.: Courts – Procedures before the Administrative Court).

In the case of certain forms of discrimination – sexual or other **harassment**, special internal channels for action with public employers are prescribed by the Decree on measures to protect the dignity of employees of state administration.²⁰

The use of such internal routes is, as a rule, a necessary **condition** for the exercise of judicial protection in a labour dispute.

¹⁹Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3177>

²⁰Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=SKLE7890>

Discrimination against employees is a serious violation of the rights arising from the employment relationship, and for this reason, the employee may unilaterally **terminate the employment relationship**. This arrangement is the same for employees in the private and public sectors. The employer has three days to remedy the alleged violations, otherwise the employee may give an extraordinary termination of the employment contract within 30 days from the establishment of the reason for the extraordinary termination or within six months from the occurrence of the reason, or initiate appropriate judicial protection.

Pursuant to Article 111 of the ZDR-1, in the event of such termination, the employee has the right to the following:

- severance pay;
- compensation for lost payment during the notice period and
- unemployment benefit.

Additionally, these rights do not preclude the exercise of any other claims of employees as a result of the violation of non-discrimination, e.g. **compensation** (more on this in Chapter 8.4.: Civil law proceedings before courts of general jurisdiction).

8.3 Inspection services

In the case of suspected discrimination, the discriminated person or other reporting person may contact one of the competent inspectorates. Performing ex officio controls that can also be initiated without a reporting person, e.g. on the basis of information from the media or in the event of extraordinary controls in companies.

Several different inspectorates operate in Slovenia. In the field of employment relations, the **Labour Inspectorate is competent**. It is not only a supervisory authority, but may also act as a mediator, with the consent of the employee and the employer, to help reach an amicable solution or settlement.

If the inspector finds violations in the performance of inspection tasks, the Inspection Act²¹ imposes on them the right and duty to:

- order measures to eliminate irregularities and deficiencies and set a deadline for their implementation;
- initiate minor offence proceedings in which one of the sanctions is imposed, including fines;
- report a criminal offence or file a criminal complaint for a criminal offence prosecuted ex officio;
- propose to the competent authority the adoption of measures, etc.

²¹Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3209>

Article 217 of ZDR-1

A fine of EUR 3,000 to 20,000 shall be imposed on the employer – legal entity, sole trader or individual engaged in a self-employed activity, if he places the job seeker or worker in an unequal position (Article 6 of the ZDR-1); violates the prohibition of sexual and other harassment and bullying at the workplace (Article 7 of the ZDR-1), etc.

Inspectors are obliged to deal with all, including anonymous reports, complaints, communications and other applications on matters within their competence. Anyone, not just a victim of discrimination, can report a violation of non-discrimination to the inspection.

 *Reporting violations to the Labour Inspectorate: <https://e-uprava.gov.si/podrocja/drzava-druzba/inspekcijski-postopki/prijava-inspekcijski-delo.html>*



8.4 Courts

The judicial system in the Republic of Slovenia consists of **courts of general jurisdiction** (local, district, higher) and **specialized courts** (for labour, social and administrative disputes), which decide on rights and obligations and charges on the basis of applicable regulations.

In case of suspicion of discrimination, employees are guaranteed judicial protection before the:

- labour courts;
- administrative court,
- court of general jurisdiction in criminal proceedings;
- court of general jurisdiction in civil law proceedings.



General information for participants in court proceedings is available on the portal "At the Court": <https://nasodiscu.si/>



The task of the **Constitutional Court** is primarily to review constitutionality, but citizens can also turn to it when their human rights and fundamental freedoms have been violated and they have failed to enforce this before the courts. One of the tasks of the Advocate is to assess the discriminativeness of regulations. If a regulation is assessed to be discriminatory, the Advocate may, on the basis of the PADA, lodge an appeal for the assessment of constitutionality and legality of regulations and general legal acts (more on this in Chapter 9: Procedure with the Advocate of the Principle of Equality).

If employees, as victims of discrimination, wish for legal advice, assistance or representation in a specific procedure, it is good that they are assisted by persons with legal knowledge: a lawyer, free legal assistance, legal aid from the professional services of the trade union, whose members they are, etc.

They may authorize **an attorney** or, in certain cases, another person to represent them. They can search for the representative before the initiation of the proceedings, but they can also search during the proceedings before court. In more demanding procedures with extraordinary legal remedies, the client must have a representative in court who is an attorney.

 *The list of attorneys is kept by the Slovenian Bar Association: <https://www.odv-zb.si/odvetniska-zbornica/imenik/imenik-odvetnikov/>*



If the material situation of victims of discrimination does not allow the payment of court costs and attorney's fees, they may be entitled to **free legal aid**. This means that the state temporarily offsets the court proceedings costs from the budget. Persons are entitled to free legal aid if their monthly income does not exceed a certain amount of the minimum income, the family's property does not exceed a certain amount and other conditions are fulfilled.

 *More information on legal aid is available on the portal "At the Court": <https://nasodiscu.si/bpp>*



Proceedings before the Labour Court

Before filing a lawsuit, the employee must perform all the steps prescribed, especially use **internal complaint paths** with the employer. These steps may vary depending on whether the employment is with a private employer or with a public sector employer (more on this in Chapter 8.2.: Procedures before employers).

Exceptions to this rule also apply. The employee may request **direct judicial protection** (without prior written request to remedy the violation) before the competent labour court in the following cases:

- establishing the illegality of dismissal or other means of termination of the employment contract;
- decisions on the disciplinary liability of the employee;
- enforcement of pecuniary claims from the employment relationship and
- failure to select a candidate who believes that the statutory prohibition of discrimination has been violated in their selection for employment.

As a rule, an action in a labour dispute relates to the elimination of a breach or to the payment of compensation. In accordance with Article 8 of the ZDR-1, the employer is liable to the employee for damages in accordance with the general rules of civil law (more on this in Chapter 8.4.: Courts – Civil law proceedings before courts of general jurisdiction).

If the court finds in the issued judgment that the termination of the employment contract was unlawful, the employer might be requested to return the employee to the workplace and:

- recognise their period of employment for the time since the unlawful dismissal;
- pay the salary with default interest and
- register them in social security insurance.

An unselected candidate in recruitment procedures is granted only limited judicial protection – they can only claim compensation for discrimination, but cannot request the selection, annulment or repetition of the selection procedure. However, other civil law claims under the PADA are also possible (more on this in Chapter 8.4.: Civil law proceedings before courts of general jurisdiction).

Proceedings before the Administrative Court

Proceedings before the administrative court are available against acts of employers in the public sector issued in **administrative matters**. An unselected candidate in recruitment procedures may challenge the outcome of the recruitment procedure if:

- the selected candidate fails to fulfil the competition conditions,
- meets the competition conditions, but was not given the opportunity to participate in the selection procedure,
- the selected candidate did not achieve the best result,
- there have been significant violations of the public tender procedure or the selection procedure.

If they disagree with the decision on non-selection, they must, under the Public Employees Act²², appeal against the received decision within eight days after service.

The competent board of appeal shall decide whether the appeal was founded or not. If the candidate disagrees with the decision of the board, they may initiate an **administrative dispute before the administrative court**. A candidate who did not participate in individual phases of the selection procedure and did not justify their absence, even though they were properly invited, does not have the right to appeal. The appeal suspends the conclusion of the employment contract.

If the administrative court finds the action to be well-founded, an individual may:

- be awarded compensation in the amount of at least one and no more than three minimum monthly gross salaries for the position for which they applied, and
- annul the selection procedure if the selected candidate does not meet the competition conditions, and
- a repetition of the selection procedure may be imposed.

If the compensation could exceed the stated limited amount of compensation, taking into account the deadlines for an individual action, a claim in a labour dispute and/or under the PADA is also available (more on this in Chapter 8.4.: Courts – Civil law proceedings before courts of general jurisdiction).

²²Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3177>

Criminal proceedings

The rights of workers are also protected under criminal law before courts of general jurisdiction.

The purpose of criminal proceedings is to impose an appropriate sanction on the perpetrator for **a criminal offense** they committed, if they are criminally responsible for it, and if this is proven.

The injured party (e.g. employee) files criminal charges with the police or the public prosecutor's office.

Criminal Code (KZ-1)²³ includes a special chapter "Criminal offenses against employment and social security". The KZ-1 does not explicitly regulate violations of non-discrimination in employment and work, and discrimination may be contained in other criminal offenses.

²³Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5050>

Article 196 of KZ-1

(1) Whoever acts contrary to the regulations governing the conclusion and termination of employment contracts, salary and other remuneration from employment, working time, breaks and rest, annual leave or absence from work, the protection of women, young people and disabled persons, the protection of employees due to pregnancy and parenthood, the protection of older employees, the prohibition of overtime or night work, or the payment of prescribed contributions, thus depriving one or several employees or job seekers of their rights or restricting their rights, shall be sentenced to imprisonment for up to one year and imposed a fine.

The handling of violations of non-discrimination under criminal law is reserved for the most serious forms of intentional violations, which are punishable by a fine or imprisonment. In criminal law, the reversed burden of proof is explicitly excluded (due to the constitutional right to the presumption of innocence), so discrimination must be proven beyond doubt.

Civil law proceedings before courts of general jurisdiction

Litigation procedure is the most typical civil procedure. In civil proceedings, the court regulates the relations between private parties (but not the relations between the state and individuals). The plaintiff (e.g. employee) makes a claim (e.g. payment of compensation), and the defendant (e.g. employer) opposes this claim. Based on the evidentiary procedure, the court decides on the submitted claim.

The Obligations code (OZ)²⁴ regulates general issues of civil law offenses and claims, e.g. recognition of damages and general limitation periods, as well as possible claims for the protection of personal rights. Compensation may always be sought for a violation of non-discrimination.

General protection against discrimination is also provided by the PADA, which also provides for special claims in Article 39.

²⁴Available at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1263>

Article 39 of the PADA (legal protection)

(1) A person who believes that he/she has been or is being discriminated against may request an action seeking an end to discrimination, the payment of compensation due to discrimination or the publication of the ruling in the media.

(2) For being subjected to discrimination, the discriminated person shall be entitled to financial compensation paid by the person responsible for discrimination. The financial compensation shall be recognised in the amount of EUR 500 to 5,000.

(3) The duration of discrimination, exposure to severe forms of discrimination and other circumstances of the case shall be considered when determining the amount of compensation.

(4) The request to publish the ruling in the media shall be granted if, in view of the circumstances of the case, the court assesses that such publication is required to eliminate the consequences of discrimination or to prevent discrimination in other similar cases. The ruling shall be published anonymously.

(5) The provisions of the Act governing civil procedure shall apply to adjudication in the action referred to in this Article.


8.5 The Advocate of the Principle of Equality

The Advocate's fundamental task is to prevent and eliminate discrimination. Among its competencies, the discriminatory investigation procedure stands out which the Advocate conducts at the proposal of the victim or another person, as well as on its own initiative. **Anonymous reports** are also admissible.

The Advocate carries out an administrative procedure to decide whether an individual action, omission or treatment of those affected represents discrimination.

The discrimination investigation procedure is **free of charge**.

The Advocate also offers advisory, assesses the discriminativeness of regulations, and performs various tasks of preventing discrimination at the societal level (e.g. through reports, recommendations, analyses, and awareness-raising activities).

 *More information on the possibilities of reporting discrimination to the Advocate can be found in Chapter 9: Procedure before the Advocate of the Principle of Equality.*

8.6 The Human Rights Ombudsman

The Human Rights Ombudsman is an independent and autonomous body for the protection of human rights and fundamental freedoms in relation to state authorities and local communities or holders of public authority. The Ombudsman is therefore not competent to exercise control over potential violators who are private persons or legal entities governed by private law and who do not hold public authority.

The procedure before the Ombudsman is an auxiliary path, not a substitute for other legal remedies. In such a procedure, the Ombudsman either accepts a complaint or rejects it. If a complaint is accepted, a legally non-binding opinion on the violation is issued at the end of the procedure, and at the same time, measures may be proposed to the violators in terms of remedying the infringement. The process is free of charge and informal for all involved parties.

Difference between the Advocate and the Ombudsman

The Advocate ensures protection against discrimination, while the Ombudsman protects all human rights and fundamental freedoms. Therefore, the area under the Advocate's control is partly narrower – only in regard to discrimination. On the other hand, the area under the Advocates control is wider as regards the potential violators, as the Advocate is competent for violations in the private sector too, not only in the public sector. The Ombudsman's decisions on violations have no direct legal consequences, but only informal impact (in relation to reputation and respect). While the Advocate's decisions on discrimination found are also legally binding. The proceedings before the Ombudsman are informal and confidential, while the Advocate is conducting an administrative procedure leading to a decision.

8.7 Alternative dispute resolution

Most often, various synonyms are used for alternative dispute resolution, such as peaceful dispute resolution, out-of-court dispute resolution, etc. The purpose of alternative dispute resolution is to try to reach an amicable agreement between the parties without additional judicial proceedings, for which the assistance and intervention of a third, neutral person is crucial.

Pursuant to the second paragraph of Article 201 of the ZDR-1, the employee and the employer may, after completing the internal procedure (complaint seeking to bring infringements to an end), agree within 30 days to resolve the dispute through mediation.

Mediation is a procedure that begins based on an agreement between both parties and is conducted by a third, neutral person – a mediator. The mediator is an expert working to achieve a peaceful, impartial, and lawful resolution of the dispute in the mediation process. The task of the selected mediator is to help achieve a peaceful resolution of the dispute, not to decide on the matter. If the parties reach an agreement during the proceedings, an agreement on the settlement of the dispute may be concluded.²⁵

Advantages of mediation:


- the procedure is informal,
- the procedure and data are confidential,
- the procedure is faster and economically more advantageous,
- the agreement is lawful.

²⁵In 2022, 45 percent of mediations were successfully completed.

9 PROCEDURE BEFORE THE ADVOCATE OF THE PRINCIPLE OF EQUALITY

The fundamental task of the Advocate of the Principle of Equality under Article 21 of the Pada is the **prevention** and **elimination** of discrimination.

The Advocate may also provide advisory and assist alleged victims of discrimination in protection proceedings anonymously.


 *Anyone who considers that they have been discriminated against may write to the Advocate or call the Advocate's free number 080 81 80.*

In a confidential conversation with the advisers of the Advocate, people can get additional information, advice, legal assistance and identify the most appropriate response free of charge.



The Advocate carries out an administrative procedure where it is decided whether a specific action represents discrimination.

Proceedings before the Advocate may be initiated at the request of a discriminated person against violators in the public or private sector, under certain conditions, legal entities are also granted protection.²⁶ It is therefore triggered by a person who believes they have been subject to discrimination.

 *Anyone who considers themselves to be subject to less unequal treatment can submit a complaint with the Advocate at: <https://zagovornik.si/o-diskriminaciji/predlog-za-obravnavo-diskriminacije/>*



Alternatively, in accordance with Article 34 of the PADA, the Advocate may initiate and conduct ex officio proceedings based on anonymous complaints, complaints by third parties, or other notifications on the violation.

The discrimination investigation procedure is **free of charge**. The victim and the violator have the right to participate in the proceedings.

²⁶Advocate of the Principle of Equality: Tasks and competences:
<http://www.zagovornik.si/pristojnosti-in-naloge/>

The Advocate first examines the complaint to consider and check whether all the essential elements are included (name, contact details, handwritten signature of the complainant, indication of the violator, indication of circumstances, witnesses, and evidence proving that discrimination has occurred). It is necessary to determine whether the burden of proof regarding the suspicion of discrimination is fulfilled (more on this in Chapter 8 of this Summary: Legal protection against discrimination).

When a complete complaint is received, in accordance with the principle of equal protection of rights, the Advocate checks the allegations with the alleged violator or other entities. They may be required to provide information and documents which, in accordance with the principle of proportionality, are indispensable for handling the particular case and for establishing the existence of discrimination.

The Advocate cannot conduct discrimination investigation if proceedings before other state authorities are already pending. In such cases, free legal advice may be offered as well as independent assistance to the allegedly discriminated persons who have already initiated administrative or judicial proceedings.

The discrimination investigation procedure before the Advocate is concluded with a legally binding declaratory administrative **decision** on the existence or non-existence of discrimination. There is no appeal against the Advocate's decision, but an administrative dispute is allowed, which is decided by the Administrative Court in Ljubljana.

→ **Case addressed by the Advocate:** A notice of a discriminatory advertisement stating that the employer was looking for a candidate with children over a certain age was received by the Advocate. The Advocate sent a clarification to the employer regarding the discriminatory character of such employment conditions and a recommendation to make sure all job advertisements are compliant with the law. The employer responded that the recommendation will be taken into account.

If the violator fails to implement the decision within the set deadline, the Advocate prepares a proposal to initiate minor offence proceedings and submits it to the competent inspection for further consideration.

If a legal entity, sole proprietor or individual engaged in a self-employed activity discriminates against an individual, **a fine of between EUR 3,000 and EUR 30,000** shall be imposed. The responsible person²⁷ is punishable with a fine between EUR 250 and 2,500. An individual who commits a minor offence is punishable with a fine between EUR 250 and 1,200. In case of severe forms of discrimination, higher fines are envisaged. Special fines for various violations are also prescribed by the ZDR-1.²⁸


The Advocate makes **recommendations** to employers on a more adequate protection against discrimination. If a problem of structural nature is detected, for example, if the causes of the violations are unclear or controversial regulations, the Advocate may also issue a recommendation to other decision makers. If the Advocate assesses that a law or other legal regulation is discriminatory, a review of constitutionality before the Constitutional Court may be requested.

²⁷A responsible person in a state authority or local community, a responsible person of a legal entity, or a responsible person of an individual sole trader or an individual engaged in a self-employed activity in which a minor offence was committed. See Article 45 of the PADA.

²⁸Pursuant to Article 43 of the PADA, the Advocate prepares a proposal to initiate a misdemeanour proceeding by the law governing misdemeanours and refers it to the competent inspection for further consideration. The competent inspection is obliged to consider the case and inform the Advocate of its decision.

 *All products of the Advocate are available on the website:
<https://zagovornik.si/izdelki-zagovornika/>*



 *Handbook for employees and job seekers: Ensuring equal opportunities and preventing discrimination in employment and work is available in its entirety at:
<https://zagovornik.si/izdelki-zagovornika/osvescanje/>*



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Legal advice

Free phone number: 080 81 80
Every working day from 10 am to 12 am
on Wednesdays also from 3 pm to 6 pm

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Ensuring equal opportunities and preventing discrimination in employment and work – Handbook for employees and jobseekers

Issued by

The Advocate of the Principle of Equality

On behalf of the Advocate

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The purpose of the Handbook for Employees and Job Seekers – Ensuring Equal Opportunities and Preventing Discrimination in Employment and Work is to raise awareness concisely and clearly among job seekers, job candidates, and employees in all forms of employment relationships, about their rights to equality, equal opportunities, and equal treatment, empower them, help them identify discrimination and present them possible ways of action.

The Advocate of the Principle of Equality is an independent state authority established to ensure the protection against discrimination, promotion of equality, equal treatment, and equal opportunities. It was established in 2016 on the basis of a newly adopted Protection Against Discrimination Act with which Slovenia transposed and implemented the five European Equality Directives. The institution is a member of the European Network of Equality Bodies – Equinet.