

Information paper

UPR Pre-session for the 3rd cycle of the Universal Periodic Review of Slovenia

11 October 2019

The Human Rights Ombudsman of the Republic of Slovenia¹ (hereinafter the Ombudsman), a national human rights institution, prepared the following information paper for the 3rd cycle of the Universal Periodic Review of Slovenia.

Since the previous review, Slovenian authorities have taken a number of positive steps to further strengthen the protection of human rights in the country. The Ombudsman acknowledges and welcomes these positive developments and, in the hope of achieving further progress, hereby takes the opportunity to draw attention to some of the remaining issues which we recommend be addressed in the Council's deliberations on Slovenia.

We have included a brief summary of the various issues and, where applicable, refer to the respective recommendation given to Slovenia in the 2nd UPR cycle in 2014 (A/HRC/28/15).

Please feel free to contact us at info@varuh-rs.si in case of questions.

1. RATIFICATIONS OF INTERNATIONAL HUMAN RIGHTS TREATIES

(in connection with the following recommendations received in the previous UPR cycle: 115.1 (Croatia), 115.3 (Portugal, Slovakia), 115.4 (Spain, Tunisia, Portugal), 115.17, (Hungary), 115.18 (Turkey))

The Ombudsman welcomes the ratifications of the Council of Europe Convention on preventing and combating violence against women and domestic violence in 2014 and the Optional Protocol to the Rights of the Child on a Communications Procedure in 2018.

We see no justifiable reason that Slovenia has not yet ratified the Convention on the Reduction of Statelessness and the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

Recommendations:

Ratify the Convention on the Reduction of Statelessness.

Ratify the Optional Protocol to the Covenant on Economic, Social and Cultural Rights.

2. DELAYS IN SUBMITTING PERIODIC REPORTS TO HUMAN RIGHTS TREATY BODIES

Slovenia is currently late with its submission of the report to the Committee against Torture which was due on 3 June 2015, and the interim report on the implementation of the priority recommendations of the Committee on the Elimination of Racial Discrimination, which was due on 6 March 2016, and the report to the Committee on the Rights of the Child, which was due on 24 June 2019, and the report to the Committee on Elimination of Racial Discrimination, which was due on 6 July 2019.

Recommendation:

Regularly submit periodic reports according to the ratified human rights treaties in due time.

3. NATIONAL HUMAN RIGHTS INSTITUTION IN ACCORDANCE WITH THE PARIS PRINCIPLES

(in connection with the following recommendations received in the previous UPR cycle: 115.32 – 39, Ireland, Malaysia, Morocco, Tunisia, Ukraine, Chile, Egypt, Peru, Azerbaijan, Greece)

The Ombudsman of the Republic of Slovenia is a national human rights institution, currently holding B status according to the Paris Principles. In 2017, amendments to the Human Rights Ombudsman Act were adopted, expanding the mandate of the Ombudsman related to issues concerning the acquiring of A status.

In 2018, the Human Rights Ombudsman Council was established as the Ombudsman's consultative body, functioning on the basis of the principle of professional autonomy, and consisting of a president and sixteen members – seven representatives of civil society; three representatives of science; two representatives of the Government, and the Advocate of the Principle of Equality, the Information Commissioner, the National Assembly and the National Council having one member each. In 2019 a special internal organisational unit – the Human Rights Centre – was established, tasked with promoting, informing, educating, organising consultations, preparing analyses and reports regarding the individual fields of promoting and protecting human rights and fundamental freedoms, and cooperating with civil society, trade unions and state authorities, all of which will now be carried out in a more regular manner than before.

The above development is the result of the commendable inclination of the Government of the Republic of Slovenia and intensive operative endeavors of the Ministry of Justice in preparing concrete amendments to the aforementioned law, with the Ombudsman itself being consulted in the process.

The Ombudsman has already applied for accreditation of A status according to Paris Principles and hopes to receive it in 2020.

The issue that remains problematic is the financial independence of the National Human Rights Institution. The Human Rights Ombudsman Act stipulates that the funds for the Ombudsman's work are allocated, at the Ombudsman's proposal, by the National Assembly of the Republic of Slovenia from the national budget. However, the independence and autonomy of the Ombudsman, which originate from the Constitution of the Republic of Slovenia and the Human Rights Ombudsman Act and are required by the Paris Principles, are not consistently considered in the rules and regulations governing public finance. The proposed financial plan of the Ombudsman is reviewed by the Ministry of Finance, which can propose changes. If the Government fails to reach an agreement with the Ombudsman, then the National Assembly receives the draft budget for adoption, which includes the financial plan proposed by the Government, while the draft financial plan proposed by the Ombudsman is included only in the explanation of the budget. The law should instead consider the constitutional position of independent constitutional bodies and include the draft financial plan proposed by these bodies in the draft budget (with the Government having the possibility to alert the National Assembly to potential significant deviations from the set budgetary framework).

Furthermore, the Ministry of Finance usually set a specific date in the year after which direct budget users, including the Ombudsman, must obtain prior consent from the Ministry of Finance for all procurement of goods and services, even though the commitments are in accordance with the adopted budget. Such a provision undermines the autonomous position and independence of the Ombudsman, brings continuous uncertainty into its operations and hinders normal activity as previously foreseen in accordance with the adopted budget. The Government, as the head of the executive branch of power, should not control the Ombudsman's use of budget funds, as this represents an impermissible encroachment on the Ombudsman's constitutionally guaranteed independence and autonomy.²

Recommendation:

Ensure independence and autonomy of the Human Rights Ombudsman by amending public finance legislation so that its funding and the financial control over it will be independent of the Government.

4. IMPLEMENTATION OF THE RIGHT TO DRINKING WATER

(in connection with the following recommendations received in the previous UPR cycle: 115.72 (North Macedonia), 115.75 (Venezuela), 115.82 (Brazil), 115.83 (Chile), 115.86 (Cuba), 115.89 (Mexico), 115.90 (Thailand), 115.91 (Austria), 115.135 (Algeria), 115.139 (Israel), 115.140 (Portugal), 115.154 (Netherlands), 115.155 (New Zealand) and 115.158 (Spain))

At the end of 2016, the National Assembly amended the Constitution of the Republic of Slovenia by introducing a new constitutional right – the right to drinking water. This was a welcome step, however, the legislative and implementing regulations still have not been harmonised with the new constitutional provision.

According to the Constitutional Act amending the Constitution, the Government was to adapt the required regulations to safeguard the right to drinking water by 25 May 2018, but this still remain unimplemented.

Recommendation:

Promptly adopt the regulations necessary to protect the right to drinking water determined in the Constitution of the Republic of Slovenia, particularly through appropriate amendments to the Environmental Protection Act, the Services of General Economic Interest Act and the Local Self-Government Act.

5. LACK OF DISAGGREGATED DATA

Combating discrimination requires valid, accurate and representative data on the position of persons or groups of persons with a specific personal ground (protected ground) in different fields of social life. Equality data is used to determine the current state and trends of de facto (in)equality, and is of utmost importance for the planning, implementation and review of non-discrimination policies, particularly regarding positive measures. A recent EU study³ has shown that equality data collection in Slovenia is critically weak, far below the efforts of most EU member states to expand, improve and use available equality data. Apart from complaints data, which is far from representative of the de facto situation, hardly any disaggregated data is collected, even through proxies or partial proxies for certain protected grounds. The most common argument against disaggregated data collection is personal data protection.

Data disaggregated by protected grounds has also been recommended to Slovenia by several international monitoring mechanisms, including the Committee against Torture, Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination and, recently, the UN Rapporteur on Minority Issues and the Committee on the Rights of Persons with Disabilities.⁴

Recommendations:

Amend national legislation on personal data protection and sector-specific legislation so as to include a specific exception on collecting data disaggregated by protected personal grounds for the purposes of promoting equal treatment and equal opportunities while adhering to existing national and international standards on personal data protection.

Systematically collect data disaggregated by protected personal grounds in all fields of social life so as to allow for an accurate determination of the current state and trends of (in)equality in society.

6. DISREGARD FOR THE DECISIONS OF THE CONSTITUTIONAL COURT

In the Ombudsman's view, one of the unacceptably persistent issues is the disregard for the decisions of the Constitutional Court of the Republic of Slovenia. As of today, there are nine unimplemented decisions. To give one example, it has been almost four years since, in a procedure for the review of constitutionality which was instigated at the Ombudsman's request, the Constitutional Court annulled certain provisions of the Mental Health Act and decided that the annulment should become effective in one year's time. The legislator was therefore given sufficient time to deal with the complex matter at hand, namely to adequately harmonise with the Constitution the procedure for admitting people who have been deprived of their legal capacity to secure departments of social care institutions. It is not acceptable that even such important decisions of the Constitutional Court, involving the deprivation of liberty of one of the most vulnerable groups of people, are not implemented in a timely fashion.

The Ombudsman cannot but agree with the Constitutional Court of the Republic of Slovenia that the competent authority's failure to remedy the established unconstitutionality or illegality within the specified time limit entails a serious violation of the constitutional principles of a state governed by the rule of law and the principle of the separation of powers.⁵

Recommendation:

The competent authorities have to remedy the unconstitutionality established with the decisions of the Constitutional Court of the Republic of Slovenia.

7. DEPRIVATION OF VOTING RIGHTS

For the last three years, the Ombudsman has reported that persons who were institutionalised in the 10-day period prior to voting were not able to vote as they would need to express their intention to vote by post at least 10 days prior to voting. In this way, particular categories of people were de facto and without legal grounds deprived of their voting right, whereby the electoral law failed to enable them to effectively exercise their right. These are persons whose personal liberty was deprived in the 10-day period prior to voting (e.g. remand prisoners, persons under special surveillance, persons in secure wards) and persons who were admitted for hospital treatment for medical reasons during this period.

Although the Government already adopted a proposal for the required amendments of the applicable legislation in 2011 (with the required solution under which the election commission would visit the voter) and later in 2016, the legislative procedure has so far been unsuccessful. It has therefore now been almost a decade since the first attempts were made to rectify this problem.

Recommendation:

Amend the electoral law so that people who have been unforeseeably deprived of their liberty less than ten days prior to election day, or who have been admitted for treatment to a hospital or care in a social care institution, can have the effective exercise of their voting rights enabled.

8. INADEQUATE WORK OF THE INSPECTION SERVICES

The Ombudsman receives a considerable number of complaints relating to the work of the inspection services (such as the Labour Inspectorate and the Inspectorate for the Environment and Spatial Planning), their staff shortages, poor responsiveness to notifiers, the transparency of their work and priorities and delayed enforcement of complainants' rights. In the Ombudsman's opinion, the inspections that inspectors carry out are often insufficient and late and it all too often seems that the inspection services are neither effective nor fast enough.

Recommendation:

The Government of the Republic of Slovenia must ensure the effective work of inspection services.

9. CONDITIONS IN PRISONS

Certain prisons remain overcrowded and there is a severe shortage of prison officers.

The conditions for the accommodation and treatment of vulnerable prisoners are in most cases inadequate. The rooms or units are not suitable for prisoners with special needs.

The organisation of activities and the provision of work for all prisoners capable of working and who wish to work remain weak points. During a visit to Slovenia in 2017, the Committee against Torture recommended that Slovenian authorities should continue to attempt to ensure a satisfactory activity programme for all prisoners, i.e. remand prisoners and convicted persons. The objective should be for all prisoners and remand prisoners to spend a significant portion of the day (that is eight or more hours) outside of their rooms, participating in useful activities: work, which is possibly professionally useful, education, sports, recreation or socialisation.⁶

Recommendations:

Take measures to reduce overcrowding in prisons and ensure adequate living conditions for all prisoners.

Ensure adequate conditions for the accommodation and treatment of vulnerable prisoners by hiring suitable care staff and establishing adapted rooms or section(s) in one or more prisons in order to make them suitable for the residence of prisoners who, because of their age, illness or disability, need additional assistance to satisfy their basic needs.

Ensure an activity programme for all prisoners as recommended by the Committee against Torture in 2017.

10. PERSONS WITH RESTRICTED MOVEMENT IN SOCIAL CARE INSTITUTIONS

The secure departments of social care institutions (especially special social care institutions) are overcrowded and people with mental disorders who are placed in these departments are facing difficulties and violations of their right to personal dignity.

Social care institutions, the Association of Social Institutions, the courts (including the Constitutional Court of the Republic of Slovenia), and the Ombudsman (who prepared a special report with recommendations on this matter in 2017) have been highlighting the problem of overcrowding in secure departments for years, however, the situation has not improved and has even deteriorated.

In 2017 the Ombudsman prepared a special report on this subject matter. The report was discussed at the National Assembly of the Republic of Slovenia, which recommended that the Government promptly prepare legislative amendments and adopt measures which will ensure more appropriate involuntary placement and treatment of people with mental health problems in social care institutions. Until a new regulation in this area is adopted or enforced, the National Assembly recommended that the Government ensures appropriate facilities in social care institutions and sufficient staff who are able to provide appropriate social care services.

Despite the Ombudsman's special report and recommendations, social care institutions are still voicing problems associated with the admittance of people on the basis of court decisions. In 2018, on the basis of visits to special care institutions, the Ombudsman established that the situation regarding overcrowding has not significantly improved since 2017, overcrowding in certain cases was even worse.

Recommendation:

Urgently take all necessary measures to ensure the suitable involuntary admission and treatment of persons with mental disorders in social care institutions, including suitable additional facilities and staff to provide adequate social care services to these persons.

11. DETENTION OF MIGRANT CHILDREN

According to national legislation (Foreigners Act), unaccompanied minors and families with children should be primarily accommodated in adequate institutions for the accommodation of children. However, in practice families with children and some unaccompanied minors are detained in the Postojna Centre for Foreigners, which is a closed facility.

The Ombudsman acknowledges the efforts made by the Government in recent years to provide alternative solutions for the accommodation of unaccompanied minors in the Postojna dormitory, but a systemic form of accommodation and treatment of unaccompanied minors as a separate unit for their comprehensive treatment has not been established yet. Also, no alternative accommodation has been found for families with children.

According to the information provided by the Ministry of Interior, 245 unaccompanied and 66 accompanied minors were detained at the Postojna Centre for Foreigners in 2018 and 190 unaccompanied and four accompanied minors from 1 January to 28 August 2019.

Recommendations:

Ensure that unaccompanied/separated minors are accommodated in an open (or semi-open) establishment specialised for minors.

Ensure that adequate alternative accommodation facilities are ensured for minors with their parents, and their placement in a detention centre should only occur as a last resort.

12. ACCESS TO ASYLUM AND FORCIBLE RETURNS

In 2018, the media and non-governmental organisations reported about many asylum-seekers claiming to be forcibly returned to Croatia even though they expressed their intention of claiming asylum to police officers. These allegations were also supported by statistics received by the Ombudsman. For example, in May 2018, police officers at the Črnomelj police station dealt with 379 persons who irregularly entered Slovenia, of which 371 expressed their intention to submit an application for international protection, which amounts to 97.88%. In June, out of a total of 412 foreign nationals treated, only 13 (i.e. 3.15 %) were recorded as expressing their intention to submit an application for international protection. The Ombudsman's findings established during visits to police stations showed the seriousness of the allegations that there may have been irregularities in some police procedures, including the implementation of collective expulsions prohibited under Article 4 of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Ombudsman is also concerned about the fact that foreign nationals who are caught entering Slovenia irregularly and do not apply or cannot apply for asylum are returned to Croatia as part of so-called "informal returns" under the bilateral Readmission Agreement between Slovenia and Croatia, without any procedural safeguards against *refoulement*.

Recommendations:

Ensure that all asylum seekers have access to the asylum procedure in accordance with national and international law.

Refrain from returning foreign nationals to other countries without providing procedural safeguards against returns that could put people at risk of human rights violations in the country to which they may be directly or indirectly returned.

Consistently document all the circumstances of the police procedures with foreign nationals (including their statements) in order to enable later insight into the correctness and legality of the decisions taken.

Provide the systematic informing of asylum seekers and migrants about their rights and relevant procedures in a language they understand.

13. ACCESSIBILITY OF HEALTH SERVICES

Another critical issue is long waiting lists for health services. According to information from the National Institute for Public Health, on 1 August 2019, 74% of people waiting for their first examinations or other therapeutic and diagnostic procedures with an urgency level of “very fast” waited longer than the admissible waiting period of 14 days. Furthermore, 49% of those with an urgency level of “fast” waited for their first examination longer than the admissible waiting period of three months and 34% of all those with an urgency level of “regular” waited longer than the admissible waiting period of six months.

Recommendation:

Ensure adequate access to health services by reducing long waiting times where needed.

14. INADEQUATE ACCESS TO CARE FOR THE ELDERLY AND THOSE WITH PHYSICAL OR MENTAL DISABILITIES WHO ARE IN NEED OF ASSISTANCE

In September 2019, the Court of Audit of the Republic of Slovenia presented findings of its audit carried out to establish whether in the period of 1 January 2007 to 30 June 2018 the Government was successful in ensuring the accessibility of social care services, and to answer the question whether the Republic of Slovenia satisfactorily cares for those who, due to age, mental or physical disability, need the assistance of others.

The Court of Audit was of the opinion that the Government’s concern for providing assistance to all those in need during the audit period was not satisfactory. It stated that the Government has been unsuccessful in ensuring the accessibility of social care services to all those in need, ensuring equal treatment of the beneficiaries and adequately designing a new long-term care system.

During its visits to care institutions for the elderly and other social welfare institutions, the Ombudsman also found the current situation critical and called for the prompt adoption of effective systemic solutions in the field of social care.

In 2018, the Committee on the Rights of Persons with Disabilities expressed its concern about the large number of persons with disabilities still residing in institutions because of the lack of an explicit policy, national and municipal capacity and measures for the deinstitutionalisation of persons with disabilities, and the insufficient provision of independent living services in the community. The Committee recommended Slovenian authorities adopt and implement a strategy and action plan within a specific time frame aimed at deinstitutionalisation, provide sufficient funding for developing community-based independent living schemes, and allocate sufficient resources to ensure that services in the community are available, accessible, affordable, acceptable and accommodating of persons with disabilities, so that such persons may exercise their right to live independently and be included in their communities, in both urban and rural areas.

Recommendation:

Ensure adequate, accessible, affordable and acceptable services for the elderly people and people with disabilities in need of assistance, so that such persons may exercise their right to live independently and be included in their communities, in both urban and rural areas.

Deinstitutionalise the provision of care services in line with recommendations of the Committee on the Rights of Persons with Disabilities.

15. PHYSICAL ACCESS TO COURTHOUSES FOR PEOPLE WITH DISABILITIES

In 2018, the Ombudsman established that the premises of 15 out of the 66 courthouses in Slovenia are not at all physically accessible for people in wheelchairs or with similar disabilities. In at least 10 courts this issue is addressed by carrying the person up or down the stairs, which is problematic from the aspect of ensuring the person's dignity as well as from the aspect of potentially incurring injuries. In one court district (the Gorenjska region), none of the buildings are accessible for people in wheelchairs. Furthermore, only 10 out of the 66 courthouses in Slovenia provide toilets for people with disabilities.⁷

Recommendation:

Make physical accessibility of courthouses sufficient as soon as possible.

16. LACK OF ACCESS TO WATER AND SANITATION IN ROMA SETTLEMENTS

(in connection with the following recommendations received in the previous UPR cycle: 115.72 (North Macedonia), 115.75 (Venezuela), 115.82 (Brazil), 115.83 (Chile), 115.86 (Cuba), 115.89 (Mexico), 115.90 (Thailand), 115.91 (Austria), 115.135 (Algeria), 115.139 (Israel), 115.140 (Portugal), 115.154 (Netherlands), 115.155 (New Zealand) and 115.158 (Spain))

The vast majority of Roma in southeast Slovenia live in segregated Roma settlements frequently lacking basic living conditions, including access to drinking water, sanitation and electricity.

In the previous UPR cycle, several countries addressed the issues of access to drinking water in Roma settlements. However, regarding this issue, the Ombudsman noted a setback instead of the urgently required progress. In 2016 the Government installed plastic water tanks in two Roma settlements, which the Ombudsman warned could only act as a temporary measure and that such measure is completely unsuitable in times of particularly high and low temperatures. Providing drinking water through a water tank is a step backwards with regard to the Government statement from 2011 that the observance of the right to drinking water arising from Slovenian and international legislation requires the provision of access through a public water supply system.

The Ombudsman has also repeatedly highlighted the importance of the supply of electricity. Electricity is one of the essential utilities, sometimes indispensable for preventing the endangerment of the life and health of people, and it also has special importance in providing the basic conditions for schooling and acquiring an education.

Recommendation:

Adopt measures to ensure access to drinking water, sanitation and electricity to Roma communities.

18. HEAVILY POLLUTED AREAS

For almost a decade the Ombudsman has called for the needed rehabilitation of some of the industrially polluted areas and is concerned about the too slow rehabilitation of individual heavily polluted areas such as the Mežica Valley, the Celje Basin, Zasavje, and other areas, which require the prompt and continuous rehabilitation of both the soil and the air.

Recommendations:

Resolve the problem of the pollution of the Celje Basin, the Mežica Valley and other polluted areas in a coordinated, systematic and efficient manner, ensuring the protection of the constitutional right to a healthy environment and consequently the right to health.

Establish a legal basis for the state monitoring of the condition of the soil, determining areas with high or low burdens, and the basis for classifying degraded areas, which will contribute to the accelerated implementation of rehabilitation measures.

¹ The Ombudsman is a national human rights institution, currently holding B status as per classification used by GANHRI. The Ombudsman is a state body, however, it principally wields no authoritative decision-making powers, its influence, therefore, is mostly informal. It may address proposals, opinions, criticisms or recommendations regarding the protection of human rights to the authorities, which are then obliged to consider them and respond within the set deadline. Anyone who believes that their human rights or fundamental freedoms have been violated by an act or action of state authority, local community authority or a holder of public authority may instigate a complaint procedure with the Ombudsman. The Ombudsman is also free to address any issues relevant to the protection of human rights and fundamental freedoms and can act as a friend of the court (*amicus curiae*). It has also been functioning for more than 10 years as the National Preventive Mechanism as per the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Ombudsman has also been managing child advocacy since 2007, providing expert help to children to express their opinion in all proceedings and cases they are part of, and to submit the child's opinion to the competent authorities and institutions which decide on the child's rights and benefits. The Ombudsman can initiate before the Constitutional Court a procedure for the review of the constitutionality or legality of regulations, as well as file constitutional complaints concerning violations of human rights or fundamental freedoms in individual cases before state or local authorities or holders of public powers. In 2017, amendments to the Human Rights Ombudsman Act were adopted, expanding the mandate of the Ombudsman related to issues concerning the acquiring of A status according to the Paris Principles. In January 2019, the Human Rights Centre was set up as a special organisational unit tasked with promoting human rights, preparing analyses, reports and organising consultations regarding the realisation, promotion and protection of human rights, and cooperating with civil society, trade unions and other state authorities.

² For more information please see the English abbreviated version of the Ombudsman's Annual Report for the year 2017, pp 70–71, http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf.

³ European Commission, Analysis and comparative review of equality data collection practices in the European Union, Equality data indicators: Methodological approach, Overview per EU Member State, Technical annex, p. 49, https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793.

⁴ CAT/C/SVN/CO/3 of June 2011, CRC/C/SVN/CO/3-4, of July 2013, E/C.12/SVN/CO/2 of December 2014, CERD/C/SVN/CO/8-11 of January 2016, CRPD/C/SVN/CO/1 of April 2018 and A/HRC/40/64/Add.1 of January 2019.

⁵ See e.g. pp 16–18 of the English version of An Overview of the Work of the Constitutional Court of the Republic of Slovenia for 2017, available also at https://www.us-rs.si/media/rsus_letnoporocilo_2017_eng_web.pdf.

⁶ CPT/Inf (2017) 27 Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 28 March to 4 April 2017, <https://rm.coe.int/pdf/168074adf9>.

⁷ For more information please see the English abbreviated version of the Ombudsman's Annual Report for the year 2018, pp 64–66, http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf.