



## Input to the European Commission against Racism and Intolerance for its sixth-cycle monitoring work on Slovenia

May 2024

The Human Rights Ombudsman of the Republic of Slovenia hereafter (“the Ombudsman”), also an A-Status National Human Rights Institution (NHRI), submits the following information to the European Commission against Racism and Intolerance (ECRI), in response to its request to receive relevant background information and observations in the context of its sixth-cycle monitoring work on Slovenia in preparation of the visit of Slovenia from 21 to 25 October 2024.

The Ombudsman is a constitutional body mandated to protect and promote human rights in Slovenia, with status A awarded according to Principles relating to the Status of National Institutions (Paris Principles). Its mandate includes investigating complaints, monitoring, researching, addressing opinions and recommendations to authorities, human rights education and awareness-raising. With the establishment of its internal organisational unit Center for Human Rights in 2019, the Ombudsman increased its capacity to report to international and regional human rights mechanisms.

The information provided in this report focuses on the topics where the Ombudsman is able to provide input based on its observations when dealing with received individual complaints and on its research of specific issues. It should thus not be taken necessarily as an exhaustive list of systemic problems related to the Convention. The Ombudsman also takes into consideration the topics, which ECRI is covering in this monitoring round, including the list of questions, which has been also sent to the authorities of Slovenia. This input should thus not be taken necessarily as an exhaustive list of systemic problems related to the issues, which are under ECRI’s review.

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## I. Effective equality and access to rights

### a. Equality bodies

The Ombudsman is a multi-mandate institution and holds the classical ombudsman mandate, the NHRI mandate, the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment mandate and partly also the Ombudsman for Children mandate. There is also the internal organizational unit on Child Advocacy operating within Ombudsman. However, the Ombudsman does not hold a mandate of the Equality body in Slovenia. The 2016 Protection against Discrimination Act established the Advocate of the Principle of Equality as a separate independent state institution.<sup>1</sup> The Ombudsman, however, as one of its 24 thematic fields of work also monitors and addresses “Equality before the law and the prohibition of discrimination” issues. In 2023 the Ombudsman received 97 issues in the field of equality before the law and the prohibition of discrimination, out of which there were 84 individual complaints. The ombudsman found at least one violation of human rights and fundamental freedoms or other irregularities, such as violations of the principle of equality before the law and of the principle of good governance, in 12 cases. In the field of National and Ethnic Communities the Ombudsman received in 2023 additional 64 cases and found 11 violations, while regarding foreigners the Ombudsman received 250 cases, out of which it found violations in 40 cases.

According to the assessment of the Advocate of the Principle of Equality, there is no major substantial disagreements in recommendations to the authorities, given by Ombudsman and Equality Body.<sup>2</sup>

### b. Inclusive education

The Ombudsman notes that while there exists inclusive education in Slovenia for Roma children, national minorities and foreigners and no separate class exist in this regard, inclusive education is poorly, if at all, implemented for children with disabilities (in line with Article 24 of the Convention on the Rights of Persons with Disabilities). However, the Ombudsman notices that there exist no systematic approach to human rights education in primary as well as secondary school curricula. For these reasons the Ombudsman started with the research in October 2022 – more than 130 schools responded to a detailed questioner on violence in school, accessibility, the right to privacy as well as human rights education. In its Annual Report for 2022, the Ombudsman made the **recommendation No. 2 (2022) that the Ministry of Education should comply with Phase One of the World Programme for Human Rights Education on the greater inclusion of human rights education as well as tolerance education in the reform of the school-curricula for kindergartens and primary schools, including a review of new and current textbooks, and to include experts on human rights, after consulting the Ombudsman, in the expert committee that would draft the reform.**

In September 2023 the Ombudsman together with 11 non-governmental organizations, active in the field of children rights, issued the **Joined Statement on the announced renewal of the national education program for the next decade.**<sup>3</sup> The signatories noted that the Slovenian

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<sup>1</sup> See: <https://zagovornik.si/en/> .

<sup>2</sup> See: <https://zagovornik.si/wp-content/uploads/2023/11/Pregled-Letnega-porocila-Varuha-clovekovih-pravic-za-letu-2022-.pdf> .

<sup>3</sup> See: <https://www.varuh-rs.si/en/news/news/human-rights-ombudsman-and-eleven-other-organisations-present-ten-proposals-for-an-overhaul-of-the-s/> and <https://www.varuh->

system of primary and secondary education is too much geared towards productivity and the constant strengthening of cognitive abilities, while there is a lack of time and space for the content that is associated with the so-called soft skills (awareness and prevention of peer and other violence in the school environment and outside it (especially the connection with online violence, as the results of studies/research show that violence in the physical and online space are connected), non-violence, preventive programs, human rights, non-discrimination, media literacy, relationships, communication, sex education, integrity, dealing with domestic finances, etc.) – these contents should be systematically introduced into the school curriculum in all grades of primary and secondary school, taking into account the age and maturity of the children, but ( ideally) not at the expense of extending the number of hours in school, maybe in cooperation with external stakeholders (e.g. independent state institutions and non-governmental organizations). In the Joint Statement the signatories recommend, *inter alia*:

- That a mandatory multidisciplinary subject be introduced in all basic school classes and in all classes of secondary education, which would train children on "life skills" within the curriculum of primary and secondary schools and would contain different content in different classes depending on the age and maturity of the children – these contents would be i.e. soft contents, such as awareness, prevention and prevention of violence in and outside the school environment (especially the connection with cyberbullying, as the results of studies/researches show that violence in the physical and cyberspace are connected), prevention of mental health problems and strengthening healthy lifestyle and relationships (strengthening of positive self-image and self-esteem, strategies for dealing with negative emotions - frustration, anxiety, anger; assertive and non-violent communication, co-responsibility - not just rights), human rights and fundamental freedoms, non-discrimination, stereotypes, sex education, social competences, media literacy, relationships (healthy and unhealthy relationships, partner violence, communication, safe use of the Internet and information and communication technologies (ICT) and media literacy, functional literacy, management of personal finances (financial literacy), integrity, ecological issues, sustainable development, first aid, basics of etiquette, rhetoric, etc.). For this purpose, they call for either the expansion of the subject Ethics and civic education with the aforementioned contents and in such a way that it is included in the timetable of all nine classes of primary school and in all classes of secondary education, so that it is adapted to the age of the children (gradual upgrading), or the introduction of a new subject, which would train the children in a multidisciplinary way about various competences for life. The main goal of such a renewed (expanded) subject or a new subject would be to acquire competences for life, which would require adapting the teaching methods (work in groups, discussion, visits to experts or institutions, project assignment, etc.) and knowledge, which should result in a descriptive assessment (in case of their reintroduction);
- When renovating curricula from kindergarten to primary and secondary schools, the authorities should also take into account the recommendations of the First Phase of the World Program on Education for Human Rights regarding the promotion of education on human rights and tolerance, including the review of new and existing textbooks, and that the commission of experts, which will introduce the reform, after consultation with the Ombudsman, also include experts in the field of human rights (Recommendation of the Ombudsman No. 2 (2022)).

The discussion on the reform of the school system is on-going. While an expert groups on the reform was established in December 2022 have been established by the Government.

However several experts leaved the group in 2023.<sup>4</sup> These is also no in depth discussion in introducing human rights and tolerance education more specifically and age-adjusted to schools and possibly also to kindergartens. The Ombudsman, civil society organizations, teachers and head-masters organizations as well as parents organizations are so far not meaningfully included into discussion on the school reform for next decade and there is no indication that specific and additional horizontal attention would given to human rights and tolerance education.

## II. Hate speech and hate-motivated violence

### c. Hate speech

The Ombudsman joins the assessment of ECRI in its Conclusions on the implementation of the recommendations in respect of Slovenia subject to interim follow-up, adopted on 7 December 2021 and published on 3 March 2022, that the effective prosecution of the hate speech remains the issue in Slovenia. The Ombudsman notes that there is in general very little interest in changing existing legal framework or practices in combating hate speech, especially via media and Internet<sup>5</sup> in Slovenia. The Ombudsman's recommendations on preventing hate speech mainly remain unimplemented for several years. The Ombudsman believes regulating this field through the additionally recommended legislative and/or practice amendments is paramount, however very little progress has been made in this regard

The Ombudsman reiterate its criticism that the needed amendments to the Mass Media regarding the prevention of hate speech has still not been adopted. For more than five years the Ombudsman repeats its **recommendation No. 14 (2018)<sup>6</sup> with which the Ombudsman has proposed that the Ministry of Culture do everything possible within its power to determine the following in relation to the realisation of the provision on the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act):**

- 1. the manner of protecting public interest (inspection and minor offence supervision);**
- 2. measures to eliminate irregularities (e.g. immediate removal of unauthorised content), and**
- 3. sanctions for the media that allow the publication of hate speech.**

The Ombudsman through its own initiative provided comments to a draft of a new Mass Media Act (ZMed-1), which was submitted to the public debate on 12 December 2023. It repeated that all three aspects of the mentioned recommendation should be properly addressed in a new law and that the Ombudsman should in accordance with Article 159, the Human Rights Ombudsman Act and international standards (Venice Principles (2019), Paris Principles (1993)) not be given any orders by the authorities on its action, including in relation to the assessment of the hate speech. The Ministry of Culture received approx. 80 comments of relevant stakeholders during the public debate. **The new draft proposal of ZMed-1 published and submitted to inter-ministerial consultations by the Ministry of Culture on 14 May 2024, adequately takes into account the observations made by the Ombudsman on hate**

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<sup>4</sup> See for example: <https://www.delo.si/novice/slovenija/prenova-solstva-s-prvo-strokovno-oviro/> or <https://vecer.com/slovenija/solstvo-odstopil-del-delovne-skupine-za-pripravo-nacionalnega-programa-vzgoje-in-izobrazevanja-10333911> (in Slovene only).

<sup>5</sup> See also: Additional information on legal, institutional and policy challenges to address online hate speech in the Input of the Human Rights Ombudsman of the Republic of Slovenia to the European Commission against Racism and Intolerance for its interim follow-up on the recommendations to Slovenia on equality data and prosecution of hate speech of June 2021, pp. 7-8.

<sup>6</sup> Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, p. 107.

**speech in the media.** However, so far there is still no legislation in place, which would more effectively prevent hate speech in the media.

The further assessment of the issues related to the prosecution of the hate speech in Slovenia is based on the **analysis** conducted by the Centre for Human Rights of the Ombudsman, which offers insight into and **contribute to understanding the practice as regards the prosecution of criminal offences of public incitement to hatred, violence or intolerance under Article 297 of the Criminal Code (KZ-1) carried out by the Slovenian State Prosecutor's Offices in the period 2008–2018.** The analysis of the prosecution of hate speech in Slovenia under Article 297 of the Criminal Code (KZ-1) is based on 145 prosecutorial files.<sup>7</sup> Based on its analyses the Ombudsman also made the following Recommendations in its Annual report to the Parliament for 2021,<sup>8</sup> which all have been due to non-implementation repeated also in its Reports for 2022 and 2023:

**Recommendation No. 2 (2021). The Ombudsman recommends that the Supreme State Prosecutor's Office formally harmonises its legal position on the prosecution of the criminal offence of public incitement to hatred, violence or intolerance under Article 297 of the KZ-1 with the judgment of the Supreme Court of the Republic of Slovenia from 2019, and in this regard also takes into account the findings of the European Commission against Racism and Intolerance (ECRI) of March 2022.**

The Ombudsman did not receive a concrete response to this recommendation, and the recommendation remains unimplemented. The recommendation remains current, so the Ombudsman has repeated it in its Annual report to the Parliament for 2022 and 2023. So far the Ombudsman has no information on the implementation of the mentioned recommendation, therefore it is not surprising that the statistical data on the prosecution under Article 297 of the KZ-1 has not significantly changed, despite several information or initiatives that the Ombudsman receives regarding alleged hate speech. However, the absence of any concrete position of the Supreme State Prosecutor's Office to promote the 4<sup>th</sup> July 2019 judgment of the Supreme Court, could be explained through its position upon the adoption of the judgment, which was that the meaning of the legal text is unambiguous at the linguistic level, as it does not allow for any other interpretation other than that the additional conditions are set alternatively and not cumulatively. Furthermore, the Supreme Court stated that it is evident from the legal text of the first paragraph of Article 297 of KZ-1 that only a potential and not a concrete possibility of endangering or disturbing public order and peace must be given.

**Recommendation No. 3 (2021). The Ombudsman recommends that the Ministry of Justice, the Ministry of the Interior and the Ministry of Culture prepare appropriate legal bases as soon as possible that will enable effective prevention of hate speech on the Internet and social networks.**

The response of the Government from September 2023 were that the recommendation was partly implemented. The Ministry of Justice was of the view that the implementation of

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<sup>7</sup> The analysis of the prosecution of hate speech in Slovenia under Article 297 of the Criminal Code (KZ-1) is based on 145 prosecutorial files. See also the Summary of Analyses in which the conclusions are presented in 15 reasoned key points, pp. 9-10. Available at: [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/Razne\\_publicacije/Sovrazni\\_govor\\_knjizica2.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/Razne_publicacije/Sovrazni_govor_knjizica2.pdf)

and Input of the Human Rights Ombudsman of the Republic of Slovenia to the European Commission against Racism and Intolerance for its interim follow-up on the recommendations to Slovenia on equality data and prosecution of hate speech of June 2021, pp. 1-5.

<sup>8</sup> Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2021 (published in June 2022).

Regulation (EU) 2022/2065 of the European Parliament and Council of October 19, 2022 on the single market for digital services in the amendment of Directive 2000/31/EC (Regulation of the Digital Services Act - DSA), which updates the rules of internet use and addresses, among other things, systemic social risks of spreading illegal content online and insufficient protection of fundamental freedoms (departmental competence of the Ministry of Digital Transformation, which sent the bill to public discussion). Ministry of Justice was also of the view that criminal law reactions to hate speech are ultima ratio - i.e. reactions against the worst forms of violations - and that other measures are also necessary within the framework of a systemic approach to addressing the problem. The Police, however, pointed out the difficulty of dealing with any problem in its legal regulations, especially in the context of dealing with such delinquent acts as criminal acts or as misdemeanours. The delict - the criminal act of "Public incitement of hatred, violence or intolerance" is defined in Article 297 of the Criminal Code-1. It is of the view that given the fact that the spread of the worst forms of hate speech on the Internet and in other forms is already defined as a criminal act, which is already consistently detected and prosecuted, the possible amendment of Act on the Protection of Public Order (ZJRM-1) in terms of expanding the concept of "public place" to the world wide web, Police is of the view that hate speech cannot in principle be divided into socially less dangerous (misdemeanour) or more dangerous (criminal act), but hate speech must always be present when all the signs of a criminal act (!) are met and treated as a criminal act. Ministry for Culture, however, responded that it is going to prepare proposals for legal solutions in this context and propose measures relating to the effective prevention of hate speech in the media. It is evident that there is no co-ordinated or harmonised approach of the authorities to provide additional legal basis, which would enable effective prevention of hate speech on the Internet and social networks.

The Ombudsman considers the recommendation to be unrealized, as the responses of the responsible ministries mainly explain why the existing regulation is appropriate, sufficient and proportionate. However the Ombudsman does not agree with such assessment, based on the noticed increase in hostile communication online.

**Recommendation No. 4 (2021). The Ombudsman recommends that the Ministry of Justice amends legislation so that it will enable subsidiary prosecution of a criminal offence under Article 297 of the KZ-1 in a way that prosecution is possible not only on behalf of the specific injured party against who the criminal offence as per Article 297 was committed, but also for a wider circle of injured parties (either for each representative of the affected group or authorised organisations).<sup>9</sup>**

The recommendation is based on Ombudsman's 2019 analysis, which shows that legislative amendments are likely to be necessary if the possibility of subsidiary prosecution in the event of the criminal offence under Article 297 of the KZ-1 is to be guaranteed not only to the injured party against whom the offence was directed, but also to indirectly affected persons (either to all persons in the affected community or to authorised organisations). In addition it needs to be recalled that also ECRI concluded in its Conclusions of 7 December 2021 that alleged victims of hate speech are not yet provided with an effective legal remedy when a prosecutor considers that a complaint is not founded or criminal proceedings are not justified.<sup>10</sup>

In the Ombudsman's analyses it was also emphasized that hate speech and other criminal acts committed out of hatred are "identity" offenses or "message" offences. This also follows from the European Commission's Guidelines for the practical use of the Council's Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia through criminal-legal means that. These crimes not only violate the individual

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<sup>10</sup> ECRI Interim report on Slovenia, December 2021, p. 5.

rights of the victim, but also the principle of equality and represent an expression of discrimination, prejudice, hatred against the victim, as well as against those who share his characteristics or characteristics attributed to him, or against the group or community to which the victim belongs to or is considered to belong to.

However the Government and the Ministry of Justice rejected the recommendation due to disagreement in September 2022. The response by the Ministry of Justice of September 2022 was that The Criminal Procedure Act (ZKP) in Article 60, without exception, in relation to all criminal acts from KZ-1 provides the right of subsidiary prosecution only to the injured party. Until the amendment to the ZKP-N, the injured party could initiate or continue prosecution within a short period of eight days from the state prosecutor's notification that there is no basis for ex officio prosecution. With the amendment of the ZKP-N, the deadline for the injured party was extended to 30 days, which to a certain extent facilitates the consideration and decision of the injured party regarding taking over prosecution and therefore strengthens the rights of the injured party. The Ministry was of the view that with the amendment proposed by the Ombudsman, only in relation to one criminal act, a wider circle of persons could be determined who, in addition to the injured party, could initiate or continue prosecution in the cases referred to in Article 60 of the Criminal Code. Several questions are according to the Ministry also open in relation to "authorized organizations", since any determination of what or which organizations are involved could mean (also) inadequate exclusion in a specific case. In light of the above, it is a proposal that only in relation to one criminal act means a departure from the system regulation, which may lead to unequal treatment with regard to the possibility of subsidiary prosecution of perpetrators of other, possibly comparable, criminal acts. The MoJ also took the view that the definition of the injured party in the ZKP is quite broad (this was already the case before the amendment to the ZKP-N, which implemented the so-called directive on victims), and additional peculiarities of the regulation could indirectly increase the possibility of procedural complications and consequently reduced the effectiveness of law enforcement.

The Ombudsman repeats the recommendation in its Annual Report to the Parliament for 2022 (and is repeating in also in a current report for 2023) and at the same time explained that it expects the Ministry of Justice, the Government and the Strategic Council for the Prevention of Hate Speech to find an effective solution that will enable the essence of the recommendation, which is that the subsidiary prosecution of the criminal offense under Article 297 KZ-1 is also possible for a wider range of injured persons, while taking into account the social aspect and specifics of the criminal act, i.e. hate speech, arising from the realization that the consequences of such criminal acts extend beyond just the specific victim, as the commission of a criminal act with such a motive can cause a feeling of threat and tension in the entire community. So far the Ombudsman received no formal response to this explanation.

**Recommendation (ongoing-task) No. 2 (2021). The Ombudsman recommends that, when discussing the criminal offence under Article 297 of the KZ-1, the police, prosecutors and courts also conduct an assessment of the impact of the criminal offence on the injured person or the community as arises from the Guidance Note of the European Commission on the Practical Application of Council Framework Decision 2008/913/JHA on Combating Certain Forms and Expressions of Racism and Xenophobia by Means of Criminal Law.**

The materials examined in the 2021 Ombudsman's Analyses did not indicate that prosecutors collect information or make judgments about the impact of the act on the victim or the community when dealing with complaints. In this regard, it should be pointed out that the European Commission's Guidelines for the practical use of Council Framework Decision 2008/913/PNZ on combating certain forms and expressions of racism and xenophobia by

criminal legal means (in connection with which there was also a change in the text 297 of Article KZ-1 in 2012) state that in order to ensure the effective handling of criminal offenses and appropriate responses in the field of criminal justice, it is very important that the police, prosecutors and courts fully understand the profile, attitude towards the act and motivation of the perpetrator of racist and xenophobic hate speech and hate crimes. At the same time, it is equally important for the criminal justice authorities to be able to fully understand the profile and situation of the victim and his attitude towards the act. A heavy reliance on an assessment of the offender's profile and motives, which is not balanced with a victim-centred approach, can have a negative impact on the impartiality and effectiveness of responses. A victim's confession can be crucial to better understanding the impact of the crime on them and the group or community concerned, and understanding the context in which the crime was committed.

So far the Ombudsman received no formal reaction on the implementation of such proposal by relevant authorities and Ombudsman has no information on the possible changes of practice in this regard.

In 2023 the Government also established the Strategic Council for the Prevention of Hate Speech, which consisted of Government/Ministry representatives and civil society representatives.<sup>11</sup> However, the Ombudsman as an A-Status NHRI, which as explained above closely follows the legislation and practice of combating hate speech in Slovenia was not invited to appoint its representative to the Council. Upon its intervention it presented its views and recommendations at one session of the Council.

#### **b. Hate motivated violence**

On 27 January 2023 the National Assembly adopted an amendment to the Criminal Code (KZ-1J, Official Gazette of the Republic of Slovenia, No. 16/23), which introduces the so-called "hate crime" into the criminal legislation as a mandatory aggravating circumstance that must be taken into account when sentencing. With the new Article 49(3) of the Criminal Code (KZ-1), the circumstance of the commission of a criminal offense is foreseen, when the inclination for the commission of this offense was any personal circumstance of the injured person or the victim (a criminal act committed because of the victim's nationality, race, religion or ethnicity, his gender, skin, colour, origin, wealth, education, social position, political or other beliefs, disability, sexual orientation or any other personal circumstances). This means that the consequences of such crimes extend beyond "only" the specific victim, as the commission of a crime with such a motive can cause a feeling of threat and tension in the entire community. **The Ombudsman welcomed the mentioned development and considers its Recommendation No. 5 (2021) that the Ministry of Justice shall analyse the appropriateness of the existing criminal law regulation of a hate crime, also from the viewpoint of relevant case law of the European Court of Human Rights and amends the legislation if necessary, as implemented.**

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<sup>11</sup> More information on the composition and the work of the Council is available at: <https://www.gov.si/zbirke/delovna-telesa/strateski-svet-za-preprecevanje-sovraznega-govora/> (in Slovene only).

### III. Integration and inclusion

#### a. Migrants

Slovenian legislation (International Protection Act<sup>12</sup> and Foreigners Act) contains a number of provisions regulating the special protection of asylum seekers and other migrants who are unaccompanied children. The Ombudsman, however, notes with concern that their rights, including the principle of the best interests of the child, are often not respected in practice. Here in two main issues that the Ombudsman follows closely are going to be further elaborated: first **the rights of unaccompanied children** and second **lengthy procedures for acquisition of residence permits in front of administrative units**

**First**, despite the long-standing advocacy of the Ombudsman and other human rights advocates, a system of **adequate accommodation of unaccompanied children** has not yet been established in Slovenia. During the procedures under the International Protection Act, unaccompanied children are accommodated either in the asylum reception centre in Logatec or in the premises of the student dormitory in Postojna. However, in the opinion of the Ombudsman, neither of them meets the requirements for the special care that needs to be provided to unaccompanied children, including protection against exploitation and trafficking. Even more concerning is the fact that during procedures under the Foreigners Act unaccompanied children are commonly detained in the Centre for Foreigners in Postojna. During 2021, altogether 387 children were detained in this closed facility, namely 238 unaccompanied and 149 accompanied children.

The Ombudsman further notes that the authorities do not carry out **age assessment procedures** from Article 82 of the Foreigners Act and Article 17 of the International Protection Act, which can be problematic from the viewpoint of children's rights. The concern is that this may in practice lead to situations where the authorities assess an individual's age informally, bypassing the prescribed procedures. Another danger is that, without adequate assessment, adults may be accommodated together with children, putting the latter at risk.

In 2020, the Ombudsman recommended that the Police and the Association of Centres for Social Work prepare a revised version of the **Protocol on mutual cooperation in the treatment of unaccompanied children**, which was adopted in 2012. This is a document that outlines the procedure for the treatment of unaccompanied children upon arrest by the police for illegally crossing the border. To date, the document has not been revised. The Ombudsman advocates that the obligations, responsibilities and cooperation between the various stakeholders be defined even more clearly in the new text. Among other improvements, it should be defined when an individual who appears in a procedure with the police is considered to be an unaccompanied child, as they usually do not possess personal documents and it is sometimes not clear whether the person accompanying them is their rightful legal guardian. Since 2018, the Ombudsman has detected **numerous violations of the rights of unaccompanied children in police procedures at the border**, as also documented in reports of many international institutions and organizations (see e.g. The Black Book of Pushbacks, Border Violence Monitoring Network, December 2020).<sup>13</sup> Violations included lack of individual treatment, disregard of the rules on special treatment of children, violation of their right to asylum, violation of the prohibition of collective expulsion and the principle of non-refoulement, and improper implementation of detention.

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<sup>12</sup> Official Gazette of the Republic of Slovenia No. 22/16 with further amendments.

<sup>13</sup> Available at:

<https://left.eu/issues/publications/black-book-of-pushbacks-volumes-i-ii/>.

The Ombudsman also notes shortcomings in ensuring the **right of child refugees to be reunited with their families**. Firstly, the fact that international protection procedures are very lengthy (taking several months, even years) contributes to delayed family reunification. Secondly, in the case of children who were granted subsidiary protection and file a legal remedy because they believe that they are entitled to a (more favourable) refugee status, it is considered by the authorities that they cannot be reunited with their family until a final decision on the status has been made. This can also discourage the use of a legal remedy that could secure them a more favourable status.

**Second**, this issue of **lengthy procedures for acquisition of residence permits in front of administrative units** negatively affects foreigners already living in or attempting to immigrate to Slovenia, including migrants trying to obtain residence permits on the grounds of work and those trying to obtain residence permits for their family members on the grounds of family ties. In 2022, the Ombudsman received 39 complaints related to lengthy procedures for foreigners in front of administrative units, 29 of which related to procedures in front of the Administrative Unit of Ljubljana, seven in front of the Administrative Unit of Maribor and one each in front of the Administrative Unit of Ptuj, Administrative Unit of Koper and the Administrative Unit of Velenje. Upon reviewing the complaints, the Ombudsman found most of them to be justified. Similar statistics repeated in 2023, when the majority of all 250 cases in the field of foreigners concerned the lengthy procedures.

In many cases, the administrative unit asked the client to supplement an incomplete application only several months after its receipt. This is despite the fact that pursuant to Article 67 of the General Administrative Procedure Act,<sup>14</sup> the administrative unit has to react in this way within five working days of the receipt of the application. Furthermore, in accordance with Article 222 of the General Administrative Procedure Act, the administrative unit has to decide on the foreigner's application within two months from the receipt of the application (or its supplementation). This deadline was also commonly exceeded in the examined cases, with procedures oftentimes taking over a year to complete and in some cases even considerably longer.

In response to the Ombudsman's communications in the examined cases, the administrative units most often referred to **systemic reasons for the delays**: a large number of applications and insufficient human resources (number of employees and their work experience). Considering that this problem persists for many years, the Ombudsman routinely communicates to the administrative units that such systemic reasons may justify delays in the short run, however they can no longer be referred to after a reasonable period required for an organizational and/or staffing adaptation of the authority has passed.

The Ombudsman managed to obtain some clarifications from the Ministry of Public Administration in relation to the issue. The Ministry explained that the problem exists especially in those administrative units that operate in regional, urban, economic and university centres and that In 2021, the Ministry together with some other relevant ministries and the Government, started to increase the number of staff of administrative units, however they are faced with problems in acquiring suitable personnel. Despite the Ministry's explanation, the Ombudsman is after more than two years of explanations concerned, that current measures may not be enough to make a substantial improvement regarding the described issue.

## b. Roma

The Ombudsman has been repeating same recommendations regarding improving the human rights of members of the Roma community for years. Its recommendations focused, *inter alia*,

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<sup>14</sup> Official Gazette of the Republic of Slovenia No. 80/99 with further amendments.

on the access to water, sanitation, electricity; legal and communal regulation of settlements; adoption of detailed municipal sectoral programs; a collection of data on inclusion and performance in schools and employment.<sup>15</sup> While the implementation of Ombudsman's recommendations regarding Roma is extremely slow, the authorities (the Government and municipalities) have so far also not sufficiently implemented any "specific measures to ensure equality" (i.e. positive actions), as set out in Article 17 of the Protection Against Discrimination Act,<sup>16</sup> with the aim to improve the situation of the Roma community. On 23 December 2021 a **National program of measures of the Government of the Republic of Slovenia for Roma for the period 2021-2030 was adopted.**<sup>17</sup> It is too soon to access the results, however the implementation of the program is so far again extremely slow.

**Living conditions.** 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. No specific measures on the regulation of living conditions of Roma have been implemented so far. The Ombudsman has repeatedly pointed out that the determination of all relevant circumstances in the so-called Roma affairs remains a difficult and thankless task. In 2023 the Ombudsman received 44 cases, out of which there were 24 initiatives in which it found violations in 8 cases (the 23/22 index was 191,67 %).

The Ombudsman has repeatedly called for ensuring **access to safe drinking water to all inhabitants of Roma settlements** and highlighted **the importance of the supply of electricity**. Access to drinking water is a human right that derives from the national legal order (Articles 34 and 70a of the Constitution) and also from the international legal order (e.g. United Nations General Assembly resolution A/64/292), within the framework of which everyone must have, regardless of the legal status of the land on which he lives, adequate access to drinking water is guaranteed. However, **the case from 2023 showed that it would be necessary to strengthen the housing policy for members of the Roma community in Slovenia (and possibly with specific focus on relevant municipalities)**. The Ombudsman found that a young family from a Roma settlement, who found themselves without a roof over their heads and had already turned to City Municipality of Novo Mesto with a request for help, was not even aware of the possibility of applying for a public tender for rental apartments for young families, which took place at that very time. The Ombudsman proposed that the coordination group, as part of its regular weekly visits, informs the inhabitants of Roma settlements that a public tender for the allocation of dedicated rental apartments for young people has been published, and offers assistance to potential interested parties in applying for it. The Ombudsman is aware that the Roma living culture can have certain peculiarities and, above all, that the Roma community must also take responsibility for successful integration into Slovenian society (as well as Article 2 of the Roma Community Act (ZRomS-1)). Regardless, the Roma community needs incentives for progress in this area, as a large part of its members currently live in legally (and sometimes communally) unregulated settlements and in indecent conditions (even without drinking water, sanitary facilities and in overcrowded shacks, even trailers). Local communities (i.e. municipalities) must provide it with an appropriate framework for solving these problems, in particular comprehensive information about their (real) chances of applying for and succeeding in tenders for renting apartments, and this information must be constant and encouraging. Even if the Roma do not decide on this option when they first encounter it, perhaps persistent encouragement can change their view, and in particular the examples of (still rare) families who have succeeded in transitioning to an urban environment can have a positive effect on it. It is therefore important that local communities disseminate information and encourage applications for housing fund tenders. Thus, members of the Roma community would often decide to move to an urban environment, which could lead to many

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<sup>15</sup> The concrete recommendations are presented throughout this report and in the Annex in the end.

<sup>16</sup> Official Gazette of the Republic of Slovenia No. 33/16 with further amendments.

<sup>17</sup> See: <https://www.gov.si teme/vkljucevanje-romov-v-vzgojno-izobrazevalni-proces/> .

positive effects (prevention of segregation, ghettoization, hope for an increase in living quality, learning by imitating good examples from a stimulating "majority" environment, employment, education, etc.).

There are also **no priority criteria for access to rental apartments for families from Roma settlements**. Instead, the authorities insist on the legalization of existing Roma settlements, which are ghettoised, and often without access to water, sanitation and electricity. On page 146 of the National Report, the Government states that Roma are treated equally to other eligible persons, as regards access to non-profit apartments. However, such approach is not sufficient for achieving real progress and implementation of specific measures to ensure equality (e.g. incentives, priority criteria). In this context, the Ombudsman has been repeatedly recommending to the Government through its annual reports<sup>18</sup> and other communications **to adopt a law that would provide the legal basis for the authorities to provide water, electricity and sanitation in Roma settlements**. In view of the Ombudsman, such action is *a condition sine qua non* to achieve actual progress concerning living conditions and enjoyment of other rights of Roma. In its recent Annual report for 2023 the Ombudsman has for this reasons make the following recommendation:): **The Ombudsman recommends the Government of the Republic of Slovenia to encourage municipalities with Roma settlements to include strategies, goals and measures for strengthening the housing policy for members of the Roma community in their detailed regional programs and measures (Recommendation no. 7 (2023))**.

In principle, the Ombudsman notes that municipalities with a Roma population and Roma settlements generally plan to improve the living conditions of members of the Roma community in the manner of legal and communal regulation of existing settlements, but are also thinking in the direction of relocating (entire) settlements. Although in this way the living conditions of the members of the Roma community are at least partly improving, the isolation of these settlements and the consequent ghettoization of the community can cause concern. The ghettoization of the Roma community can (or rather should) be prevented primarily by integrating members of the Roma community into regular settlements within the local community (eg. by providing access to rental apartments). But local communities rarely, if ever, decide to do so. Regarding the regulation of living conditions, the reporting of the Housing Fund of the Republic of Slovenia in the Tenth Government Report on the Roma Community (for the year 2022), p. 17: "During the duration of the two tenders, the SSRS [Housing Fund of the Republic of Slovenia] did not receive or consider the application of any eligible entity from the municipalities where Roma live, who would explicitly or indirectly state that they will exclusively solve the housing hardship of the Roma population through acquisition." However, it should not be forgotten that it has actually already been shown that the living conditions of the residents of a shanty town can be significantly improved by relocating all the residents of such a town to non-profit apartments and housing units. In the only case so far, this was carried out by the Municipality of Ljubljana, which, after relocating the residents of the shacks near Žale, demolished them for good between 2004 and 2017. Therefore, it is worth presenting the experience with this in a little more detail.<sup>19</sup>

During the visit to the Roma settlements of Roslanice and Svržaki in the municipality of Metlika in 2023, the Ombudsman's main observation was that **the municipality had not adopted a**

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<sup>18</sup> Available in Slovenian at:

<https://www.varuh-rs.si/porocila-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/>;

abbreviated English versions available at:

<https://www.varuh-rs.si/en/publications-events/publications-documents/annual-reports-test/>.

<sup>19</sup> For further details see: Ombudsman's Annual Report for 2023 (to be published in May 2024), Chapter 2.2.1.3 Specifically on Roma community and its members.

**detailed regional program and measures** (obligation from the second paragraph of Article 6 of ZRomS-1 in connection with the Article 16(8)). Ombudsman is of the opinion that a detailed regional program and measures are of fundamental importance for planning the regulation of the spatial problems of Roma settlements (access to water, sanitation, and electricity), the inclusion of members of the Roma community in the education system and the promotion of their employment. The lack of such programs and measures at the local level has a negative impact on the processes of integration of members of the Roma community into Slovenian society, and seriously threatens the realization of the human rights of members of the Roma community, their special rights and also the rights of residents living in (in)direct surroundings of Roma settlements. Since the municipality has already been 13 years late in fulfilling its legal obligation and did not fulfil it even after being called upon by the decision of the Government of the Republic of Slovenia, the Ombudsman suggested that it immediately fulfil its legal obligation and adopt a detailed regional program and measures (by January 2024) at the latest, and the municipality provided, that it will really start the admission procedures.

Concerning the development of the Žabjak–Brezje settlement, it should be noted that in 2021, due to this project, all other projects for spatial planning of Roma settlements in the entire country were stopped for the fourth year in a row. Furthermore, the Ombudsman has expressed criticism of the authorities' approach of investing funds into the improvement of living conditions, while the more fundamental issue of legal ownership and status of real estate in the Žabjak–Brezje settlement is not being resolved. In 2023 the Ombudsman also approached the government regarding the **(un)appropriated use of funds intended for municipalities with a Roma population**, and related provisions of Act on Local Finances (ZFO-1). E.g. certain clear priorities should be adopted by the municipalities (providing drinking water, sanitation, a healthy living environment), while in practice in accordance with Article 20a of the ZFO-1 the funds may even be used for "many other projects, aid and activities (specially organized school transport, school subsidies (e.g. school in nature), debt cancellation in schools, gifts to new-borns, municipal cash social assistance, provision of a school for adults, jobs - public works, saving and writing off funds for electricity consumption, etc.", since in most of these projects, assistance and activities (e.g. organized school transport, gifts for new-borns, monetary social assistance, etc. Such spendings are not about the realization of any special rights of members of the Roma community, but about general rights that belong to all citizens... Finally, the Ombudsman was informed that the currently valid provision of Article 20.a of ZFO-1 regarding the purposeful use of funds is too loose also in the opinion of the government, therefore, based on the decisions of the National Assembly's Committee for Internal Affairs, Public Administration and Local Self-Government, the responsible ministry has already prepared a draft amendment of this article to ensure the purposeful use of funds to regulate the situation and rights of the Roma community. On this issue, however, the Ombudsman gives in its Annual Report for 2023 the following **recommendation (No. 8 (2023))**: **The Ombudsman recommends to the Government of the Republic of Slovenia to propose to the National Assembly for adoption an amendment to ZFO-1, according to which funds intended for municipalities with a Roma population should be used for their purpose, primarily to improve the living conditions of members of the Roma community (which is an express statutory duty of the municipalities according to Article 1 of ZRomS-1).**

**Health.** The Ombudsman would like to draw the attention of the esteemed Committee to the very worrying data on the health of the Roma. The research published by the National Institute of Public Health in 2018 showed that the average life expectancy for Roma men is 48 years and 63 years for women, which is on average almost 20 years less than the general population of Slovenia (with an average life expectancy of 77 years). The share of premature mortality among Roma is 69 %, significantly higher than the average for Slovenia, 19 %. The research also showed that the mortality rate of Roma children from the age of one to the age of five is

seven times higher compared to children of the same age in the entire population, that Roma women have a very high rate of hospitalisations due to conditions related to pregnancy, childbirth and the postpartum period (16 times higher than entire population), and that Roma have a higher rate of hospitalisations due to respiratory diseases, infectious and parasitic diseases, circulatory and gastrointestinal diseases. The Institute concluded that the health of Roma in Slovenia is generally affected mainly by socio-economic factors such as unsuitable living conditions, low level of general and health literacy, multigenerational unemployment, poverty, multiple disadvantage and social exclusion.<sup>20</sup>

**Violence against (Roma) women.** The Ombudsman believes that more attention should be paid to effective research and documentation of the extent, causes, consequences, and signs of violence and obtaining reliable, comparative data that would lead to effective policies to prevent and eliminate the consequences of violence and enable the effectiveness of measures to be effectively assessed. Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) noted in its 2021 report on Slovenia that the particular situation of Roma women and girls and their exposure to gender-based violence is not sufficiently studied. Therefore GREVIO encouraged the Slovenian authorities to address, through research, all forms of violence against women such as sexual violence, sexual harassment and forced marriage or other traditional practices harmful to women, as well as violence affecting vulnerable groups of women such as Roma women and girls, women and girls with disabilities and migrant women.<sup>21</sup>

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The Ombudsman welcomes that in July 2021, the Government's Office for National Minorities published a handbook on recognising early and forced marriages in the Roma community and how to act in these cases. According to the Government's internet site, the handbook will be followed by professional training and consultations with professionals in regions or environments where the issue of early and forced marriages can be detected.<sup>23</sup> Moreover, since 2018 the Judicial Training Centre has been organising lectures for judges and other judiciary officials on early and forced marriage. However the Ombudsman received the information that as a rule, social work centres do not keep statistical data on the escape of minors to harmful environments (e.g. to prevent illegal marriages). In addition, awareness-raising activities targeted at potential victims (primary and secondary school students) were carried out in Roma communities. However, the result of such efforts is not yet visible, which proves that the efforts should be intensified and additional measures considered, for example,

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<sup>20</sup> [https://www.nijz.si/sites/www.nijz.si/files/publikacije-datoteke/javnozdravstveni\\_pristopi\\_romi.pdf](https://www.nijz.si/sites/www.nijz.si/files/publikacije-datoteke/javnozdravstveni_pristopi_romi.pdf).

<sup>21</sup> GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Slovenia, adopted in June 2021, published in October 2021, paragraphs 89 and 90, <https://rm.coe.int/first-baseline-report-on-slovenia/1680a4208b>.

<sup>22</sup> GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Slovenia, adopted in June 2021, published in October 2021, paragraphs 89 and 90, <https://rm.coe.int/first-baseline-report-on-slovenia/1680a4208b>.

<sup>23</sup> <https://www.gov.si/zbirke/projekti-in-programi/krepitev-nacionalnega-posvetovalnega-procesa-nacionalna-platforma-za-rome-siforoma-3/prirocnik-o/>

closer cooperation with community-based organisations, representatives of the Roma community and women's NGOs experienced in the issue.«<sup>24</sup> In 2022, based on its activities, the Ombudsman concluded that the total annual number of such cases is high, approximately 50. The Ministry of Labour, Family, Social Affairs and Equal Opportunities merely explained that the collection and processing of disaggregated personal data about individual's personal circumstances such as free expression of national affiliation (Article 61 of the Constitution of the Republic of Slovenia), except with certain exceptions, was not possible (on disaggregated data see more in chapter IV.a below).

**Inclusion of Roma children in education.** There is still no publicly available data on the total number or percentage of Roma children attending preschool and elementary school in Slovenia. In general, the educational structure of Roma is considered to be very poor.

While in the field of education certain positive specific measures have been adopted (multi-purpose centres, Roma assistants), the results are unsatisfactory. The analysis "Performance of Roma students in primary schools in Slovenia in the period of 2016/17–2021/22",<sup>25</sup> produced by the Institute for Ethnic Studies,<sup>26</sup> shows that the share of Roma students from South-eastern Slovenia who successfully complete the entire primary school is a modest 11 percent on average.<sup>27</sup> In numbers, only 28 out of 439 Roma children in the City Municipality of Novo mesto in Dolenjska region, finished the nine-year primary school in the period between 2017 and 2021.<sup>28</sup>

**Regarding systematization of the working position of Roma assistants in primary school,** which started to be implemented on 1 September 2021, it should be emphasized that in the employment contract, Roma assistants are addressed as "assistants of physically disabled persons" – and not Roma assistants. The position of the Ministry for Public Administration is that until the Catalogue of functions, jobs and titles in the public sector is completed, the Roma assistant is systematized to the position J035064 - Accompanying students with physical disabilities. The Ombudsman did not find that the renaming of the position Roma assistant would directly result in any disadvantage to the employees in this position. However, the matter is still very important on a symbolic level both for the employees who perform the work of Roma assistants, as well as for the pupils for whom their help is intended.

**Distance learning for Roma pupils in time of covid-19.** The Ombudsman would like to present its **research on the situation of Roma children during the Covid-19 pandemic, carried out in 2020.** Due to the epidemiological situation, the Ombudsman was unable to investigate the situation via conversations with Roma children or their parents. The Ombudsman therefore reached out to the principals of 34 elementary schools with Roma students. In his inquiry from April 2020 he asked them how remote learning is conducted; how instructions, tasks, etc. are sent to students or parents; whether children and parents require access to electricity, internet, computer/tablet/smartphone/printer for lessons from home; do the schools know, whether all students have the necessary resources at their disposal; what unmet requirements or other specific challenges have they observed regarding Roma children; are they aware of situations, where the parents cannot help younger children with lessons at home, because they are illiterate, although their help would be necessary; and whether the

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<sup>24</sup> Ibid, paragraphs 265 – 267.

<sup>25</sup> Available at:

[https://www.gov.si/assets/ministrstva/MIZS/SRI/Uspesnost-romskih-ucencev-v-OS-v-Sloveniji-2021\\_22INV.pdf](https://www.gov.si/assets/ministrstva/MIZS/SRI/Uspesnost-romskih-ucencev-v-OS-v-Sloveniji-2021_22INV.pdf).

<sup>26</sup> Organization's webpage: <http://www.inv.si/domov.aspx?lang=eng>.

<sup>27</sup> See page 32 of the report.

<sup>28</sup> See: <https://www.ds-rs.si/sl/novice/drzavni-svet-tokrat-obiskal-dolenjsko> .

schools have ensured in any way that children who lack any of the above still have equal access to education. The Ombudsman received answers from 31 schools.

At the end of the school year, the Ombudsman also addressed questions to **Roma assistants** who were available to Roma children in 33 schools as part of the Together for Knowledge project. The Ombudsman asked them what unmet requirements or other specific challenges they might see in Roma children in general; what specific problems or challenges they perceived in remote learning; in what way was it ensured that Roma children had equal access to education at that time; and what other gaps in learning have they observed.

The answers of the schools show that remote learning took place in online classrooms, with the help of the eAsistent platform and via the school's website, where students and parents received all the instructions. Students communicated with teachers via phone, e-mail, social networks (Skype, Messenger, Viber, Facebook) and online tools for video communication (Zoom). In all schools, students required access to electricity, internet and a computer or tablet. The answers show that schools usually checked whether Roma children have these resources and found that they mostly do not have the electronic devices needed to work from home via online classrooms and other online tools. Many schools told the Ombudsman that they provided computers to children with the help of the Ministry of Education, the municipality, and also donors, but at the same time pointed out, that they observed a lack of knowledge in the use of information technology. Many reported that in cases, when students did not have a computer or the internet, materials were delivered personally or sent by post. It appears that in the implementation of remote learning Roma assistants were of great help as they were actively involved in the process – helping students to understand tasks, assisting with communication with Roma parents and with copying and delivering materials to the students. In some schools, teachers adapted materials for Roma children; in view of the Ombudsman, it is worrying that some stated they had prepared materials for Roma in accordance with "minimum standards".

In all the answers received, particular problems and challenges faced by Roma children were highlighted. Principals and Roma assistants pointed out that Children do not have access to technology or do not know how to use it, living conditions make school work difficult, some children lack even basic conditions: their own desk, chair, work materials (paper, glue, crayons, pens ...), and that the motivation to learn is often low. They also pointed out that some students do not have a supportive environment at home, that their parents often do not know how to help (sometimes due to poor understanding of the Slovenian language), and that some parents do not cooperate well with the school. Some principals also noted a lack of awareness among parents that school is important.

Based on the answers, the Ombudsman assesses that, in principle, the primary schools were paying attention to the special circumstances of Roma students and that additional effort and activities were invested in their support – through communication, printing and delivery of teaching materials and the provision of computers. On the other hand, the Ombudsman notices that not all children were effectively included in schooling during this time (the schools failed to reach them or they were educated according to lower standards). Generally speaking, the answers show that many Roma children even in normal times face lack of resources and other challenges related to schooling (and even more so during the period of remote learning) and therefore find themselves in a significantly worse situation compared to other students.

**Lack of disaggregated data on Roma community and its members. The absence of data on the actual situation and social circumstances of members of the Roma community is likely one of the main reasons for insufficient progress concerning their standards of living and protection of their human rights.**

## IV. Topics specific to Slovenia

In addition to the information provided in its June 2021 input on ECRI interim follow-up, in the Ombudsman's Input for ECRI interim follow-up on the country specific issues.

### a. Gathering of disaggregated data in Slovenia

The Ombudsman recalls the **lack of gathering of disaggregated equality data in Slovenia**. In addition to its information provided in its June 2021 input on ECRI interim follow-up, further developments and observation of the Ombudsman on the state of gathering of disaggregated data in Slovenia are presented to ECRI in this chapter.

**While it needs to be recognised that a major legislative development was made at the end of 2022, providing legal basis for collecting (at least some) disaggregated data, in practice there is mainly still a lack of sufficient legal grounds, which would allow for actual gathering of disaggregated data in Slovenia.**

After several recommendations of the Ombudsman and other stakeholders, public debate on the draft law, the new Personal Data Protection Act (ZVOP-2, Official Gazette of the Republic of Slovenia No. 163/22), was adopted on 15 December 2022 and entered into force on 26 January 2023. Article 6(5) of ZVOP-2 established a(n almost 30 ye(in years missing) legal basis in Slovenian legal order, in accordance with which it is now possible (at least in principle) to gather disaggregated data based on individual personal circumstances with the aim of promoting equal treatment and equal opportunities. According to the mentioned paragraph, the processing of personal data on national or ethnic affiliation may be specified in the public sector, but only by law and only in exceptional cases, in cases where this is necessary for a decision on personal status, rights, incentives and benefits for of the individual to whom personal data relates, or to ensure and promote equal treatment, equal opportunities and guaranteed special rights of members of the national or ethnic community in the Republic of Slovenia, whereby the law determines the consent of the individual to whom personal data relates, or determines the processing of data, regarding which the individual freely defines himself/herself.

Article 6(5) of ZVOP-2 reads: "(5) By law, the processing of personal data on national or ethnic affiliation in the public sector may be determined only exceptionally, for cases in which this is necessary for a decision on the personal status, rights, incentives and benefits of the individual to whom the personal data refer, or to ensure and promote equal treatment, equal opportunities and guarantee special rights of members of the national or ethnic community in the Republic of Slovenia, whereby the law determines the consent of the individual to whom the personal data relates, or determines the processing of data regarding which the individual freely defines himself."<sup>29</sup>

This provision of ZVOP-2 at least in principle presents the realization of the Ombudsman's calls<sup>30</sup> to the government and the National Assembly to prepare and adopt a legal basis, in accordance with which it would be possible to gather disaggregated data based on individual personal circumstances with the aim of promoting equal treatment and equal opportunities. However, in 2023 the Ombudsman followed what changes or measures are still necessary for an effective legal basis for actual gathering of data and what the new regulation means for the possibility of collecting disaggregated data in practice. The Ombudsman observes that mostly

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<sup>29</sup> Unofficial translation provided by the Ombudsman. So far English translation of the new ZVOP-2 has not yet been publicly available.

<sup>30</sup> See for example Recommendations 5(2019) and 6 (2019) from the Omubdsman's Annual Report for 2019, Annual Report for 2021, pp. 221-222 and Annual Report for 2022, pp. 279-280.

sectoral legislation, which would enable actual gathering of disaggregated data in practice has so far not been drafted or adopted. In practice this means that it is still not possible to gather disaggregated data regarding nationality or ethnicity in Slovenia. There has been, so far, no analyses of the authorities regarding which sectoral laws would need to be amended in order that Article 6(5) of ZVOP-2 would become operations.

It also needs to be emphasized that the content of the proposed solution in ZVOP-2 is limited to data on nationality and ethnicity. The Ombudsman consequently considers its **recommendation no. 6 (2019)**, with which it recommended that the competent authorities ensure the systematic collection of data by protected personal circumstances in all areas of social life, with the aim of accurately determining the state and trends regarding (in)equality in society, as unimplemented

#### **b. The recommendation to ratify Optional Protocol to the International Covenant on Economic, Social and Cultural Rights**

The Ombudsman would like to bring to the attention of ECRI also to its **recommendation No. 14 (2019)**, with which it recommended the Ministry of Labour, Family, Social Affairs and Equal Opportunities, the Ministry of Foreign Affairs and the Government of the Republic of Slovenia to do everything necessary in 2020 to start the process of ratification of the **Optional Protocol to the International Covenant on Economic, Social and Cultural Rights**, and that the National Assembly should adopt a law on the ratification of the mentioned protocol as soon as possible. While Slovenia signed the protocol in September 2009 it has not been ratified for almost 15 years. It does not even appear that the ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights has been more seriously targeted. The Ombudsman notes with disappointment that in five years, none of the three governments managed to ensure that the Optional Protocol was ratified. The ratification of the mentioned Optional Protocol would allow victims of violation of economic, social and cultural rights, to present complaints at the international level, i.e. the individuals could bring a complaint against Slovenia to the UN Committee on Economic, Social and Cultural Rights (CESCR) for alleged violations of economic, social and cultural rights. Thus, in its Annual Report for 2023 for the fourth time in a row, the Ombudsman insists on recommendation no. 14 (2019).