THIRD PARTY INTERVENTION BY THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA IN REGVAR V. SLOVENIA, application no. 36538/25

Introduction

The Human Rights Ombudsman of the Republic of Slovenia is a National Human Rights Institution (NHRI) accredited by Global Alliance of National Human Rights Institutions (GANHRI) with A Status under the 1993 United Nations Paris Principles[1]. NHRIs are independent institutions established by law with a mandate to protect and promote human rights. They are separate from both the government and civil society organisations.

On 12 March 2026, the European Court of Human Rights (ECtHR, the Court) granted the Ombudsman leave to intervene in application no. 36538/25 by way of written submissions in accordance with Article 36 (2) of the European Convention on Human Rights (ECHR, the Convention) and Rule 44 (3) of the Rules of the Court. In Ombudsman's view, the case Regvar v. Slovenia raises important issues concerning the confidentiality of communication and legal professional privilege under Article 8 of the Convention (the right to private life).

Legal assistance in international protection procedures in Slovenia

Civil society organisations provide legal counselling and representation to applicants for international protection (i.e. asylum seekers) during the first-instance administrative proceedings. At the judicial stage[2], legal assistance is primarily provided by refugee counsellors, as mandated by Article 9 (1) of the International Protection Act[3]. These counsellors initiate judicial reviews against the decisions of the Ministry of Interior and represent applicants for international protection in court free of charge. Refugee councillors are selected by public tender and appointed by the Ministry of Justice for a term of 5 years.[4] To be appointed on the official list, they must meet specific educational and professional criteria, including a university degree in law. Instead of the general bar exam, candidates must complete specialized training and pass an examination on international protection and asylum law, both organized by the Ministry of Justice. However, practicing attorneys and members of the Bar are not precluded from becoming refugee counsellors and providing representation within this state-funded scheme of free legal aid awarded to the applicants for international protection. The list of refugee counsellors is exclusive to bar-certified lawyers and legal professionals from civil society organizations and other independent experts who meet the specialized requirements (i.e. specialised training and exam organised by the Ministry of Justice).

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[1] These principles were adopted by the UN General Assembly in Resolution 48/134 of 20 December 1993, and set out objective criteria under which NHRIs are tested for their independence, pluralism, impartiality and accountability. Available here: https://www.ohchr.org/en/instruments-mechanisms/instruments/principles-relating-status-national-institutions-paris.

[2] Applicants cannot appeal (negative) decisions issued in the international protection procedure on the first instance. Instead, they can start an administrative dispute. This is a judicial review of an administrative action, initiated by filing a lawsuit against the decision of the Ministry of the Interior. In the court proceedings that follow, the applicant for international protection acts as a plaintiff and the Ministry of the Interior as a defendant. Decisions of the Administrative Court can be challenged before the Supreme Court (Article 70 of the International Protection Act). In the mentioned court proceedings applicants for international protection are represented by refugee counsellors.

[3] Official Gazette of the Republic of Slovenia, Nos. 22/16, 5/17, 54/21 and 42/23. In Slovene: Zakon o mednarodni zaščiti (ZMZ-1).

[4] For a detailed information on the legal assistance in international protection procedures in Slovenia, see the AIDA Report for Slovenia (update: July 2025), available here: https://asylumineurope.org/wp-content/uploads/2025/08/AIDA-SI_2024-Update.pdf (p. 42-45).

In all other judicial proceedings legal representation is strictly reserved for attorneys who have passed the bar exam. Consequently, if an asylum seeker opts for private representation outside the state-funded system, their chosen lawyer must be bar-certified. While applicants retain the right to hire private attorney at their own expense, it is reasonable to expect that only a negligible number will choose this option, largely due to the associated costs. Under the Slovenian legal system asylum seekers are not entitled to state-funded legal aid outside of the official refugee counsellor scheme, which means that through refugee counsellors the state provides the only form of free legal assistance and representation in court proceedings to asylum seekers.

The provisions in the International Protection Act concerning legal assistance and refugee counsellors represent the implementation of the provisions of the (EU) Asylum Procedures Directive II[5], more specifically its Article 20, entitled "Free legal assistance and representation in appeals procedures," and Article 21, entitled "Conditions for the provision of free legal and procedural information and free legal assistance and representation." Furthermore, it is important not to overlook Recital No. 23 of the Asylum Procedures Directive II, which states that, in appeals procedures and subject to certain conditions, applicants should be provided with free legal assistance and representation by persons competent to provide such services under national law. In addition, applicants should, at all stages of the procedure, have the right to consult, at their own expense, legal or other advisers admitted or permitted as such under national law.

EU Member States are therefore required to provide applicants for international protection with legal assistance and representation free of charge when their applications are rejected by the competent authority. In the Ombudsman's view, the legal assistance provided by refugee counsellors in international protection proceedings constitutes formal delivery of free legal aid before judicial authorities. This established institution of legal representation ensures the effective exercise of the right to judicial protection on the basis of equality. It specifically addresses the social vulnerability of applicants who, without such assistance, would be unable to exercise their rights without jeopardizing their own livelihood or that of their families.

According to the Administrative Court of the Republic of Slovenia, the role and the activities of refugee counsellors - as established under both EU law and the International Protection Act - are *de facto* identical to those of attorneys practising under the Attorneys Act[6]. Attorneys providing free legal aid and refugee counsellors share several fundamental characteristics. Both are bound by the duty to perform their duties professionally, honestly, and diligently (professional standards). Both provide legal assistance before courts (judicial representation). While the scope for refugee counsellors is limited to proceedings before the Administrative and the Supreme Court in matters of international protection, the nature of the representation remains the same. Both are mandated to pursue the legal interests and benefits of their clients (client-centred advocacy). Both provide services within the framework of free legal aid, fulfilling an obligation of the State under the Constitution of the Republic of Slovenia.[7] And finally, both are entitled to remuneration for their work and reimbursement of expenses, with funds provided from the public budget.[8] Consequently, given these substantive similarities, the Administrative Court's findings reinforce the argument that the same standards of confidentiality and professional privilege should apply to both roles.

In 2021, the amendments of the International Protection Act[9] included several novelties regarding the work of refugee counsellors, among them the contested grounds for dismissal of the refugee

[5] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).
[6] Official Gazette of the Republic of Slovenia, nos. 18/93, 24/01, 54/08, 35/09, 97/14, 46/16, 36/19, 130/22 and 10/26. In Slovene: Zakon o odvetništvu (ZOdv).
[7] Decisions of the Constitutional Court no. Up-40/97 of 7 March 1997 and no. U-II-1/09 of 5 My 2009.
[8] See, for example, judgments of the Administrative Court no. U 2135/2004 of 14 November 2005 and no. I U 937/2016 of 28 February 2017.
[9] Official Gazette of the Republic of Slovenia, no. 54/21.

counsellor. Under Article 9 (10) of the International Protection Act, the Ministry of Justice *must* dismiss a refugee counsellor, if it is established that they:

- are aware of the true identity of the asylum seeker;
- have the identity documents of the asylum seeker;
- are aware of the asylum applicant's actual age, in case the asylum seeker claims they are underage; or
- are aware of facts based on which the asylum seeker is not eligible for refugee status or subsidiary protection

and does not disclose these facts to the Ministry of the Interior.[10] The Ministry of the Interior is the competent authority, responsible for examination of international protection applications in the first instance. In 2025, the Constitutional Court of the Republic of Slovenia reviewed the constitutionality of the International Protection Act's provision regarding the reporting obligations of refugee counsellors and found it to be in compliance with the Constitution.[11]

The aforementioned EU Directive does not authorize Member States to impose an obligation on refugee counsellors to disclose certain relevant information about an applicant that they acquire in their professional capacity as a legal representative. The same holds for the new EU Pact on Migration and Asylum. Consequently, it cannot be argued that such a reporting requirement serves to implement EU law.

A comparative analysis of AIDA (Asylum Information Database) reports reveals that the Slovenian model of "dismissal for non-reporting" is an anomaly within Europe. Legal representatives across other European jurisdictions - whether they are attorneys or specialized legal counsellors - are consistently bound by strict confidentiality and protected by legal professional privilege. The AIDA reports do not identify any other system where legal representatives face dismissal or other sanctions for failing to disclose client information in international protection cases.

The importance of legal assistance in international protection procedures

Free legal assistance provided by refugee counsellors ensures access to judicial protection for all applicants for international protection, regardless of their financial status. Beyond financial accessibility, this representation is vital for addressing the profound imbalance of power between the individual applicant and the state authorities.

The Court has long recognized this inherent power gap. In criminal proceedings, this imbalance is mitigated through the strict enforcement of Article 6 (fair trial) rights, particularly the right of access to a lawyer. In the landmark ruling Salduz v. Turkey[12], the Court emphasized that an accused person is often in a particularly vulnerable position, especially during the early stages of

[10] The dismissal entails the removal of the counsellor from the registry of practitioners authorized to provide legal assistance in international protection proceedings. Accordingly, the counsellor loses their standing to represent applicants within the state-funded legal aid framework and their entitlement to state remuneration.

[11] Decision of the Constitutional Court no. U-I-52-22 of 19 June 2025.
According to the Constitutional Court, the relationship between a refugee counsellor and an applicant for international protection is of such a nature that the existence of a confidential relationship is essential for the effective performance of the counsellor's duties; therefore, this relationship is protected under the right to privacy as set out in Article 35 of the Constitution. However, the efficient conduct of international protection procedures, as well as measures aimed at preventing the abuse of such procedures, constitute constitutionally permissible objectives for interfering with the right to privacy. Refugee counsellors are obliged to report to the competent authorities the information for which an applicant for international protection cannot reasonably expect the counsellor's confidentiality, as such information is indispensable for the correct determination of the facts and the issuance of a lawful decision on the application for international protection. Consequently, the Constitutional Court ruled that this obligation - even if it undermines the stability of the confidential relationship between the refugee counsellor and the applicant - does not constitute an excessive interference with the right to privacy under Article 35 of the Constitution.

[12] Salduz v. Turkey (GC), application no. 36391/02, judgment of 27 November 2008.

proceedings. The Court noted that this vulnerability can only be properly compensated for by the assistance of a lawyer, whose role is not merely to advise, but to act as a necessary check on state power and ensure the right against self-incrimination. In Öcalan v. Turkey[13], the Court demonstrated how a state can effectively handicap the defence, thereby creating a structural imbalance of power. By restricting the defendant's private consultations with his lawyers and providing the lawyers only limited access to voluminous case files only shortly before trial, the state unfairly tilted the scales of justice in its own favour. The Court ruled that such restrictions of the defence's ability to prepare fundamentally violate the principle of equality of arms.

This recognition of power imbalances extends beyond criminal law into civil proceedings. In Steel and Morris v. the United Kingdom[14], the Court addressed a stark disparity between two activists and a major corporation. While the corporation utilized elite legal teams and vast financial resources, the defendants were denied legal aid and represented themselves. The Court held that this denial created such a significant inequality of arms that it rendered the trial unfair, depriving the applicants of a meaningful opportunity to present their case.

In the above judgments, the Court recognised the lawyer not just as a legal representative of a client, but as a structural necessity to level the playing field in the legal proceeding. Without a lawyer, the "imbalance of power" between the state's resources and the individual's lack of expertise and knowledge makes a "fair trial" impossible. Consequently, the state is under a positive obligation to provide legal assistance whenever the disparity in resources between parties is so vast that it precludes an effective defence. In the context of international protection, where applicants face the full specialized machinery of the state, the provision of a refugee counsellor is not merely a policy choice - it is a mandatory safeguard to ensure that the equality of arms remains a reality rather than a theoretical concept. Immigration law is notoriously complex, making it nearly impossible for an individual to navigate successfully without professional guidance. People on the move are frequently detained, exhausted, and face significant communication barriers, placing them in a position of extreme vulnerability.[15] Often unaware of their fundamental rights or the legal avenues available to them, they face overwhelming obstacles when attempting to assert their interests in international protection or other immigration procedures. While the provision of legal assistance is intended to rectify this profound imbalance of power, its effectiveness depends entirely on the integrity of the lawyer-client relationship. If an applicant cannot trust their legal representative with the full truth - due to fear of state surveillance or mandatory reporting - the very purpose of legal aid is undermined. Trust, underpinned by absolute confidentiality, is the essential precondition that transforms the theoretical right to judicial protection into a practical and effective reality.

To guarantee fair and effective access to asylum and enhance procedural efficiency, United Nations High Commissioner for Refugees (UNHCR) emphasizes that the design of national systems for legal counselling, assistance, and representation should ensure high standards, including information, accessibility, cooperation, continuity, establishing trust, communication and interpretation, confidentiality and data protection, ensuring quality, and empowering asylum seekers. UNHCR underlines that asylum-seekers should be provided with concrete and practical information on legal counselling and assistance in a language and format they can understand. Legal counselling and assistance should create an atmosphere of trust, understanding and respect, engaging cooperatively with asylum-seekers and without prejudice. Substantive conversations must take place in a confidential environment in which third parties can neither listen to nor disturb the discussions. According to the UNHCR, the relationship between asylum-seeker and legal counsellor/representative is covered by the obligation of professional confidentiality. In addition, relevant legal provisions relating to data protection are applicable. Confidentiality and data protection are necessary to safeguard sensitive information and to ensure effective, trust-

[13] Öcalan v. Turkey (GC), application no. 46221/99, judgment of 12 May 2005.
[14] Steel and Morris v. The United Kingdom, application no. 68416/01, judgment of 15 February 2005.
[15] M.S.S. v. Belgium and Greece (GC), application no. 30696/09, judgment of 21 January 2011, para. 233 and 251.

based legal counselling and/or representation. Legal counsellors and representatives as well as assisting staff are thus bound by discretion on all matters relating to the asylum-seeker and his/her application for international protection. Asylum-seekers can release legal counsellors and representatives from their duty of confidentiality and must be adequately informed about this possibility. The confidentiality obligation of legal counsellors and representatives applies towards all third parties, including the authorities of the MS and the authorities of the country of origin or former habitual residence. Providers of legal counselling and assistance must take appropriate measures to ensure confidentiality and data protection.[16]

Refugee counsellor's reporting duty in light of the Article 8 of the Convention

The case law of the Court considers the confidentiality of consultations with the lawyer a precondition for effective legal assistance. The legal basis for protection is found either in Article 8 or (for criminal cases) in Article 6 (3) (c) of the Convention.[17] As has been indicated by the Court, legal professional privilege is of great importance for both the lawyer and his client and for the proper administration of justice. It is one of the fundamental principles on which the administration of justice in a democratic society is based. It is not, however, inviolable, and the Court has already found that it may have to give way, for example, to the lawyer's right to freedom of expression.[18] The judgment in Michaud v. France[19] appears to be the most pertinent precedent for the case at hand. Drawing on the Court's reasoning in Michaud, the Ombudsman reached the following conclusions:

(a) Interference with the exercise of the rights protected by Article 8

A refugee counsellor's reporting duty derives from the "dismissal for not reporting" approach to legal assistance in international protection cases, as provided for in the Slovene International Protection Act. Such duty interferes with the Article 8 of the Convention, which protects the confidentiality of "private communications". Requiring from lawyers, who are refugee counsellors, to report to the government authority, responsible for determining international protection case, information concerning their clients, which came to their knowledge through exchanges or communication with them, constitutes an interference with the lawyer's right to respect for their correspondence. It also constitutes an interference with their right to respect for their "private life", a notion which includes activities of a professional or business nature.[20] The same as in Michaud, the refugee counsellor's obligation to report amounts to a continuing interference with his/her enjoyment, as a lawyer, of the rights guaranteed by Article 8. Such interference violates Article 8, unless it is in accordance with the law, pursues one or more of the legitimate aims referred to in paragraph 2 and is necessary in a democratic society to achieve the aim or aims concerned.

(b) The interference is not justified

(i) In accordance with the law?

The interference has a basis in the Slovene International Protection Act, which is available to the public and as such sufficiently accessible. It outlines the information the refugee counsellor is obliged to report and prescribes the consequence for failing to do so. However, the Ombudsman argues that legal certainty is undermined by the lack of clear standards defining severity of the breach and the standard of proof required to justify the dismissal of a refugee counsellor.

[16] UNHCR Advocacy Brief: Legal counselling, legal assistance, and representation under the European Union Pact on Migration and Asylum. Available here: https://www.refworld.org/legal/intlegcomments/unhcr/2025/en/150577.
[17] Niemietz v. Germany, application no. 13710/88, judgment of 16 December 1992.
[18] Mor v. France, application no. 28198/09, judgment of 15 December 2011.
[19] Michaud v. France, application no. 12323/11, judgment of 6 December 2012.
[20] Niemietz v. Germany, application no. 13710/88, judgment of 16 December 1992, para. 29.

(ii) A legitimate aim?

The Government defends the measure as necessary to reduce abuse of the asylum process and increase its efficiency and prevent secondary movements. The Ombudsman maintains that the contested measure is unsuitable for achieving these goals (see the supporting arguments below).

(iii) Necessary in democratic society?

While Article 8 of the Convention protects the confidentiality of all correspondence between individuals, it affords strengthened protection to exchanges between lawyers and their clients. According to the Court, this is justified by the fact that lawyers are assigned a fundamental role in a democratic society, that of defending litigants. Lawyers cannot carry out this essential task if they are unable to guarantee to those they are defending that their exchanges will remain confidential. The relationship of trust is essential to the accomplishment of that mission. Indirectly but necessarily dependent thereupon is the right of everyone to a fair trial. This additional protection conferred by Article 8 on the confidentiality of lawyer-client relations, and the grounds on which it is based, lead the Court to find that legal professional privilege, while primarily imposing certain obligations on lawyers, is specifically protected by that Article. The Court reiterates that for the purposes of Article 8 of the Convention the notion of necessity implies that the interference corresponds to a pressing social need and, in particular, that it is proportionate to the legitimate aim pursued.[21]

Bearing in mind the legitimate aim pursued, the obligation for refugee counsellors to report information about their client amounts – in the Ombudsman's opinion - to disproportionate interference with legal professional privilege. Namely, it is not clear how the notion of "abuse of the asylum procedure" is to be understood. Government materials[22] indicate that the problem of abuse of the procedure and its inefficiency is mainly linked to statistics showing that the vast majority of persons who apply for international protection in Slovenia and are accommodated in the reception facilities soon leave the country, with proceedings consequently being discontinued (without a substantive decision on the application). In such cases, it cannot be said that all these applications are substantively unfounded, as no substantive assessment has even been carried out as to whether a person is entitled to international protection. To a large extent, this reflects the fact that individuals wish to choose for themselves the country that will examine their application for international protection (so-called asylum shopping and secondary movement). This, however, is regulated by the so-called Dublin Regulation[23], which establishes the rules for determining which Member State is responsible for examining an application for international protection. It is entirely clear that the obligation imposed on refugee counsellors to report certain information about their clients cannot resolve this problem. An applicant for international protection is only assigned a refugee counsellor after their application for international protection has been rejected or dismissed - meaning that this concerns largely applicants who remain in Slovenia and submit to domestic proceedings and not those who opt to move elsewhere.

At most, the measure addresses the problem of false applications for international protection, in which applicants provide false information and submit false evidence. Even in such cases, however, the measure does not resolve the potential issue of false positive decisions granting

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[21] Michaud v. France, para. 117-119.

[22] According to the Resolution on the National Security Strategy of the Republic of Slovenia (ReSNV-2, Official Gazette of the Republic of Slovenia, no. 59/19), the vast majority of migrants who apply for international protection in the Republic of Slovenia leave the country before the procedure is concluded, which suggests an *abuse* of this institution. Secondary movements of applicants for international protection thus mostly take place from the Republic of Slovenia to other European Union member states.

[23] Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast).

international protection. In such cases, by definition, no subsequent judicial proceedings arise in which representation by a refugee councillor would be required. The measure can only affect first-instance decisions rejecting or dismissing applications for international protection, which applicants challenge before the courts with the assistance of a refugee councillor. In such circumstances, the councillor's disclosure of information to the authority can only serve to enable the authority to further substantiate its negative decision (for example, by more convincingly demonstrating that the applicant is not eligible for international protection). Information obtained in this way would constitute subsequently acquired evidence that the authority could use in judicial proceedings.[24]

It is critical to emphasize that competent authorities already possess a wide array of sophisticated - and arguably more effective - measures to detect false or fraudulent applications early in the procedure. Some of these measures are already in use in Slovenia. These mechanisms are specifically designed to identify inconsistencies through comprehensive credibility assessments, which evaluate whether an applicant's testimony is internally consistent (lacking contradictions between various statements) and externally consistent (aligning with verified Country of Origin Information (COI)). Furthermore, authorities may utilize biometric and database screenings, including EURODAC, the Schengen Information System (SIS), the Visa Information System (VIS), and various national databases, to verify identity and travel history. In cases of doubt regarding an applicant's origin, linguistic experts may be appointed to conduct language and dialect analysis. Modern investigative techniques also include digital forensics, such as the search of mobile devices to analyse GPS data, contacts, and photos, as well as the monitoring of social media to cross-reference testimonies with public online activity. Specialized forensic units are employed to examine physical evidence - including passports, birth certificates, and political membership cards - for any signs of forgery. States may utilize medical and psychological examinations to corroborate claims of persecution or to conduct age assessments. Given this extensive possibilities, imposing a reporting obligation on refugee counsellors is not only redundant but also disproportionately undermines the fundamental principle of legal professional privilege.

While both the government and the Constitutional Court assert that this measure aims to curb abuses of the asylum procedure, its design prevents it from achieving this goal. In practice, the measure addresses only a marginal issue - potentially poorly substantiated negative decisions in cases of false international protection applications - yet it places a disproportionate burden on the relationship between all applicants and refugee counsellors. By significantly compromising the fundamental right to professional confidentiality, it constitutes an excessive interference that the Ombudsman believes cannot be justified by the pursuit of procedural efficiency or the prevention of abuse.

In Michaud two factors were decisive in the eyes of the Court in assessing the proportionality of the interference.

First, the reporting duty in Michaud did not extend to the role of lawyers in defending their clients or to matters relating to judicial proceedings. The Court distinguished between legal advice provided in transactional contexts and the lawyer's role in a defence capacity, finding that the duty "does not go to the very essence of the lawyer's defence role". In the Regvar case, however, this aspect of the reporting duty is significantly different. Here, the duty applies specifically within the context of court proceedings and directly concerns the lawyer's function of representing clients in those proceedings. The compelled information - such as facts that might disqualify an applicant from protection status - is precisely the kind of material elicited during confidential consultations to structure an appellate strategy, manage credibility issues, and calibrate legal arguments.

[24] Article 20 of the Administrative Dispute Act (Official Gazette f the Republic of Slovenia, nos. 105/06, 62/10, 109/12, 10/17 and 49/23. In Slovene: Zakon o upravnem sporu (ZUS-1)): In administrative disputes, parties may not submit facts or propose evidence if they had the opportunity to do so before the issuance of the contested administrative act.

Therefore, this obligation goes to the very essence of the lawyer's defence role, which forms the core of legal professional privilege.[25]

Second, in Michaud, France interposed an independent filter: reports were submitted via the Bâtonnier (the Chair of the Bar), who served as an institutional safeguard for professional secrecy. This filter was designed not merely to reduce the frequency of disclosure, but to preserve the structural lawyer-client relationship by interposing professional judgment between the lawyer's knowledge and the state's access to it. In Regvar, no such filter exists to protect professional privilege. Refugee counsellors are obliged to reveal relevant information directly to the Ministry of the Interior, which is the competent authority in international protection cases. Consequently, disclosed information goes directly to the competent authority without any independent or protective oversight.[26]

In the light of the above considerations, the Ombudsman considers that, having regard to the legitimate aim pursued, the reporting obligation for refugee counsellors constitutes a disproportionate interference with the professional privilege of lawyers and therefore constitutes a violation of the Article 8 of the Convention.

In Slovenia, legal advice and representation in international protection proceedings are provided by two types of professionals: attorneys (members of the Bar) and refugee counsellors (lawyers specialized in international protection who are not Bar members). However, professional secrecy is strictly protected only when attorneys are involved, leaving the relationship between applicants and refugee counsellors legally exposed. The International Protection Act does not require the competent authority, the refugee counsellor, or the court to inform the client that this relationship lacks confidentiality or that the counsellor is mandated to disclose certain information to the Ministry of the Interior if they become aware of it during their work. Nevertheless, the Ombudsman maintains that - even if such a measure were not found to constitute a violation of Article 8 of the Convention - clients must be informed of the differing legal statuses of the legal advisers. As established in Kruglova and Others v. Russia[27], even when attorneys enjoy specific privileges due to their heightened professional obligations, the Court held that leaving the relationship between clients and other professional legal advisers entirely devoid of safeguards would be incompatible with the rule of law.

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[25] The European Court of Justice (ECJ) has increasingly extended protection to the confidentiality of lawyer-client communications and legal professional privilege, even outside the context of judicial proceedings. In Akzo Nobel v Commission (C-550/07 P of 14 September 2010), the ECJ established a strict boundary regarding in-house counsel. The Court ruled that communications between in-house lawyers and their employers are not protected by legal professional privilege during EU competition investigations. The Court reasoned that privilege only covers independent, external counsel. In-house lawyers were deemed to lack the necessary full independence due to their employment relationship, which inherently creates a functional link to their client. In Orde van Vlaamse Balies (C-694/20 of 8 December 2022), the ECJ ruled that reporting obligations requiring lawyers to notify other intermediaries (under the DAC6 Directive) violate professional secrecy. The Court declared the contested provision invalid as it breached the right to privacy and confidentiality of communications under Article 7 of the EU Charter of Fundamental Rights. Crucially, the ECJ held that the protection afforded by Article 7 covers all legal advice, regardless of whether it relates to active litigation or the rights of defence. Recently, in Ordre des avocats du barreau de Luxembourg (C-432/23 of 26 September 2024), the ECJ confirmed that legal advice in company law and tax matters is fully protected under Article 7 of the Charter. The ECJ ruled, that instructions based on a national regulation under which advice and representation by a lawyer in tax matters is not covered by the strengthened protection of lawyer-client communication, except where there is a risk of criminal prosecution of the client, are in breach of Articles 7 and 52 (1) of the Charter. The ECJ emphasized that Article 7 guarantees that anyone consulting a lawyer can reasonably expect their communications to remain private. Except in extraordinary circumstances, clients must be able to trust that their lawyer will not disclose the fact of the consultation to any third party without their consent.

[26] See also: Adel-Naim Reyhani & Mohor Fajdiga, What Makes a Lawyer a Lawyer?: From Michaud v. France to Regvar v. Slovenia, Völkerrechtsblog, 24.02.2026, doi: 10.17176/20260224-152641-0.

[27] Kruglova and others v. Russia, application nos. 11264/04 32324/06 26067/08, judgment of 4 February 2020.

Discrimination based on nationality under Article 14 of the Convention

In 2022, the Advocate of the Principle of Equality (i.e. Slovene equality body) conducted an assessment[28] of the discriminatory nature of the contested provision of the International Protection Act at the initiative of several refugee counsellors. The Advocate assessed that the possibility of dismissing a refugee counsellor in cases where it is established that he/she failed to disclose information to the competent authorities that could be detrimental to his/her client is discriminatory. As a result, the right to effective legal protection in court proceedings is guaranteed only for applicants for international protection who can afford legal representation by attorneys. According to the Advocate, the regulation results in unjustified less favourable treatment of applicants for international protection on the basis of their financial situation. The Advocate recommended the Ministry of the Interior to eliminate the discrimination by amending the legislation. However, the ministry has not followed this recommendation.

The Advocate established that, where an applicant for international protection is represented in court proceedings by an attorney, the applicant is protected against the disclosure of information detrimental to them, as attorneys are bound by professional secrecy. However, such protection is not afforded to applicants who are represented by refugee counsellors. Individuals in a comparable situation are therefore treated differently solely on the basis of whether they can afford a lawyer. Applicants lacking the financial means are being placed at a disadvantaged position.

The Advocate then examined whether such regulation could be justified as an exception to the prohibition of discrimination under the Protection Against Discrimination Act[29]. It considered whether the differential treatment pursued a legitimate aim and whether the measure was appropriate, necessary, and proportionate. A finding that any one of these criteria is not met suffices to establish discrimination.

The Ministry of the Interior explained that the additional ground for dismissal of refugee counsellors was introduced to ensure more efficient international protection procedures and to prevent abuses. It also stated that the regulation was based on practical experience. However, the Advocate observed that these claims were not substantiated with evidence during the procedure. The Advocate therefore concluded that the elimination of the alleged deficiencies could not be regarded as a legitimate aim, as the Ministry failed to demonstrate that inefficiencies or abuses in international protection procedures actually existed.

The Advocate ultimately concluded that the contested ground for dismissal cannot be justified as an exception to the prohibition of discrimination and that the contested regulation is therefore discriminatory. It places at a disadvantage only those applicants for international protection who, due to their financial situation, cannot afford an attorney. When they must rely on free refugee counsellors in court proceedings, those counsellors cannot guarantee the same level of confidentiality as attorneys, resulting in less effective legal protection and potentially a worse outcome in their court appeals.

The Ombudsman shares the view of the Advocate of the Principle of Equality, that the current legal framework raises concerns regarding the discriminatory treatment. Additionally, the Ombudsman wishes to draw the Court's attention to the 1951 Refugee Convention. While its Article 3 forbids discrimination based on race, religion, or country of origin, Article 16 (2) specifically ensures equal access to justice: “A refugee shall enjoy in the Contracting State in which he has his habitual residence the same treatment as a national in matters pertaining to access to the Courts, including legal assistance.” Consequently, Article 16 of the Refugee

[28] Full assessment report is available here: https://zagovornik.si/wp-content/uploads/2022/08/Ocena-diskriminatornosti_Zakon-o-mednarodni-zasciti-je-po-oceni-Zagovornika-diskriminatoren-do-beguncev-s-slabsim-premozenjskim-stanjem.pdf.

[29] Official Gazette of the Republic Of Slovenia, nos. 33/16 and 21/18. In Slovene: Zakon o varstvu pred diskriminacijo (ZVarD).

Convention guarantees refugees treatment equal to that of nationals of the receiving state regarding court access, including legal assistance. Given that the recognition of refugee status is a declaratory act[30], this right should also extend to applicants for international protection.[31] However, the Slovenian International Protection Act is inconsistent with this provision; unlike nationals, applicants for international protection do not enjoy the same level of confidentiality and professional legal privilege in their relationship with the refugee counsellors providing them with legal assistance. No such disparity exists for Slovene nationals.

Conclusion

In the conclusion of this third party intervention, the Ombudsman would like to emphasize the importance of trust based relationship between an applicant for international protection and his/her legal representative for the work of National Human Rights Institutions (NHRIs).

Confidentiality - underpinned by legal professional privilege - is far more than a procedural rule; it is a cornerstone of human rights protection in a broad sense. It carries a vital psychological dimension by enabling the construction of trust, which serves as the very basis of the relationship between a lawyer and their client. Without guaranteed confidentiality, applicants for international protection may withhold sensitive information, including facts critical to documenting human rights violations against people on the move.

Although NHRIs are designed as accessible mechanisms to report violations and abuses - such as substandard reception conditions, border violence, or restricted access to asylum - significant barriers prevent many people on the move from utilizing them. Fear of state retaliation or reaction is a primary deterrent. Many migrants distrust any state-affiliated body, often perceiving them as extensions of the police or interior ministries rather than independent entities - a fear frequently rooted in past persecution by authorities in their countries of origin. This is compounded by a lack of clear information; guidance at borders or reception facilities is often outdated, linguistically inaccessible, or inaccurate. Furthermore, the perception of NHRIs as ineffective, due to their typically non-binding recommendations, discourages individuals from seeking help without professional guidance.

Legal representatives, including refugee counsellors, are essential in bridging this gap. They overcome these obstacles by providing reliable information and facilitating the reporting of human rights violations. However, any regulatory mechanism that impairs the formation of trust between a legal representative and their client renders this process impossible. Trust can only flourish when people on the move perceive their legal representative as an independent ally, not an instrument of immigration enforcement. Consequently, the Ombudsman views the contested rule - which mandates the dismissal of a refugee counsellor for failing to report certain facts to the authorities - as a deeply concerning barrier that undermines the ability of NHRIs to detect and investigate human rights violations.

For the above mentioned reasons the Ombudsman is of the view that the reporting duty of refugee counsellors to the Ministry of Interior violates confidentiality and undermines the free legal assistance to asylum seekers and is thus non-compliant with Articles 8 and 14 of the Convention.

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[30] UNHCR, Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees. HCR/1P/4/Eng/REV.2. 1 February 2019. Available here: https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967 (p. 39).

[31] See also Emma Dunlop, Access to Courts for Asylum Seekers and Refugees: State Obligations under the 1951 Refugee Convention. 8 February 2024. Oxford Academic. Available here: https://academic.oup.com/book/56435/chapter/448503240.