



REPUBLIC OF
SLOVENIA



HUMAN
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OMBUDSMAN

Written contribution by the Human Rights Ombudsman of the Republic of Slovenia on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)

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The Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) submits this report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) for its consideration of the baseline report of Slovenia.

The Ombudsman is a constitutional body mandated to protect and promote human rights in Slovenia. It carries its mandate by investigating complaints, monitoring, research, addressing opinions and recommendations to the authorities, human rights education and awareness-raising. With the establishment of the Center for Human Rights (as an Ombudsman's organisational unit) in 2019, it was able to increase its capacity to report to treaty monitoring bodies. The Ombudsman is a National Human Rights Institution (NHRI) with the B status according to Paris Principles, currently in the process of accreditation for A status.

While commending positive developments concerning legislation, policies and measures to prevent and combat violence against women and domestic violence, the Ombudsman observes several issues where improvement is warranted to reach compliance with the requirements of the Istanbul convention.

The information provided in this document reflects the topics where the Ombudsman can provide input on the grounds of received complaints and own research and should thus not be taken as an exhaustive list of systemic problems regarding preventing and combating violence against women and domestic violence in Slovenia.

The report concentrates on the following:

- COVID-19 and violence against women
- Rape and sexual violence – legislation and lack of special crisis referral centres for victims
- Access to state compensation
- Victim support in proceedings and training of professionals
- Research and population-based surveys

1. COVID-19 and violence against women

In June and July 2020, the Ombudsman collected the following information from the Ministry of Interior and NGOs and state-run social work centres regarding the impact of the restrictive measures and lockdowns in the context of the COVID-19 epidemic on women, victims of domestic violence.

From 16 March to 31 May 2020,¹ the police² treated 351 persons as victims of domestic violence criminal offences³ which is a 10,93 per cent increase in comparison to the average in the previous five years. Two hundred ninety-five were women (84 per cent).⁴ During the same time, the police handled 541 cases of misdemeanours of “violent and daring behaviour”⁵ towards an intimate partner or a family member which is a 5,71 per cent decrease in comparison to the average number of cases in the previous five years. Among 389 victims, 269 (69,15 per cent) were women. During that time, one person was reported as a victim of manslaughter by an intimate partner.

In its study on criminology in times of COVID-19, the Institute of Criminology at the Law Faculty Ljubljana noted that the police data on domestic violence is considered to represent a smaller share of all crimes committed, as the reporting rate is relatively low. Moreover, since control by perpetrators was much more intensive during the lockdown, seeking help could have been, therefore, difficult.⁶ In its statement during the lockdown, the police warned that the measures have caused people to spend more time at home, in the circle of the closest family, which can also lead to friction between family members. The police added: “Schools and bars are closed,

¹ On 12 March 2020, the Government of the Republic of Slovenia adopted an ordinance declaring the epidemic. All schools and pre-schools programs closed on the 16 May, and the lockdown measures started significantly influencing the family living. The ordinance declaring the end of COVID-19 was effective from 15 May 2020, however, the general and specific measures adopted pursuant to the decision on the application of measures under the Communicable Diseases Act continued to apply until 31 May 2020.

² All statistics in this paragraph were provided to the Ombudsman by the Ministry of Interior of Republic of Slovenia on 6 July 2020 (Letter No 2310-1602/2020/2 (2213-03).

³ Article 191 of the Criminal Code (KZ-1) – Family violence: (1) Whoever within a family treats badly another person, beats them, or in any other way treats them painfully or degradingly, threatens with a direct attack on their life or limb to throw them out of the joint residence or in any other way limits their freedom of movement, stalks them, forces them to work or give up their work, or in any other way puts them into a subordinate position by aggressively limiting their equal rights shall be sentenced to imprisonment for not more than five years. (2) The same punishment shall be imposed on whoever commits the acts under the preceding paragraph in any other permanent living community. (3) If the act under paragraph 1 is committed against a person with whom the perpetrator lived in a family or other permanent community, which fell apart, however, this act is connected to the community, the perpetrator shall be sentenced to imprisonment for not more than three years.

⁴ Out of this, 26 were under 18, and 27 were above 65 years old.

⁵ Article 6 of Protection of Public Order Act (ZJRM-1) sanctions physical fighting, beating, provoking or inciting physical fighting, behaving in a bold, violent, rude, insulting or similar manner or causing humiliation, threat, hurt or fear by pursuing someone.

⁶ Mojca M. Plesničar, Marko Drobnjak, Katja Filipčič, Kriminaliteta v času COVID-19, 30 April 2020, study is available in Slovene language here: <http://inst-krim.si/wp-content/uploads/2020/04/Kriminaliteta-v-dobi-covid-19.pdf>.

and all other services are limited, which means that violence may exist, but no one sees it, and no one reports it. During this time, victims find it harder to break the cycle of violence and call for help. We are aware that, due to the current situation, it is less likely that victims would call the police, centres for social services or non-governmental organisations.”⁷

In June 2020 the Ombudsman inquired regarding the availability and accessibility of protection orders and access to justice during the epidemic. The police imposed 194 protection orders from 16 March to 31 May 2020, similarly to the numbers in the same period in the last five years.⁸ The courts continued to hear cases in “urgent matters”, concerning the of violence against women, that included matters where the defendants were deprived of their liberty and requests for prohibition orders under Article 19 of the Family Violence Prevention Act.⁹

The Ombudsman also inquired regarding the availability and accessibility of helplines and shelters for women victims of domestic violence during the epidemic. Helplines were available, some 24 hours 7 days a week. Some NGOs and social work centres reported an increase in the number of calls, while others didn't see any change in demand for their services. Some suspected that was due to increased presence of the abusive partner leaving the victim with fewer opportunities to access help via telephone.¹⁰ NGO's reported using new ways to communicate to provide psychosocial support to survivors of violence through Skype, Messenger, Facebook video call and made additional attempts to reach victims of violence, including by increasing their media presence and putting up posters with helpline numbers in big supermarket chains.

Shelters and crisis centres remained open and available throughout the epidemic. However, NGOs and social work centres running the shelters or crisis centres reported to the Ombudsman upon our inquiry the following obstacles encountered during the COVID-19 lockdown:

- Victims of violence isolating with an abusive partner found it more challenging to call for help due to the constant presence of the perpetrator.
- No public transport was available to get to the shelters, crisis centres or access other help services.
- Lack of protective equipment in shelters at the beginning of the epidemic.

⁷ Statement available on www.24ur.com/novice/slovenija/nasilje-v-druzini.html.

⁸ According to the Ministry of Interior 154 protection orders were issued from 16 March to 31 May in 2015, 191 in 2016, 189 in 2017, 2012 in 2018 and 225 in 2019. The police can issue a protection order for 48 hours.

⁹ The Domestic Violence Prevention Act, stipulates: The victim can propose to the court to determine the measures for averting further damage. The court can prohibit on request of the victim by issuing of an order to the perpetrator of violence who physically harmed the victim or inflicted damage to their health or has in any other way interfered in their dignity or any other personal rights, in particular, the following: - entering to the accommodation premises where the victim lives; - to come at a specified distance within the proximity of the accommodation where the victim lives; - to come near to places which the victim regularly frequents (workplace, school, preschool facility, etc.). - to establish contact with the victim in any way whatsoever, including by way of the means for distance communication; - to establish any kind of meeting with the victim.

¹⁰ The Ombudsman acquired answers from 12 NGO's and state-run social work centres in June 2020.

- The staff in shelters and crisis centres was additionally burdened with alleviating emotional distress brought by the epidemic, helping with the homeschooling of children during the school closures and doing grocery shopping for the users of the shelters.
- Lack of detailed information/protocols for handling and responding to infections in shelters and crisis centres.
- Lack of isolation/quarantine options in existing shelter capacities. Several organisations expressed concern that their premises and capacities would not suffice if they would face a case of COVID-19 infection among their users.

2. Criminal offences of rape and sexual violence (Article 36)

The offences of rape and sexual violence are not based on the lack of consent as required by Article 36 of the Istanbul Convention. According to Article 170 of the Slovenian Criminal Code,¹¹ rape is committed when someone compels a person to submit to sexual intercourse by using force or threat. Likewise, sexual violence (Article 171 of the Criminal Code)¹² is criminalised only when the perpetrator uses force or threat.

¹¹ Rape - Article 170 of the Criminal Code (KZ-1 – Official Gazette, no. 50/12, 6/16, 54/15, 38/16, 27/17, 23/20 in 91/20).

(1) Whoever compels a person of the same or opposite sex to submit to sexual intercourse with him by force or threat of imminent attack on life or limb shall be sentenced to imprisonment for not less than one and not more than ten years.

(2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving a sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.

(3) Whoever compels a person of the same or opposite sex to submit to sexual intercourse by threatening him/her with large loss of property to him/her or his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not less than six months and not more than five years.

(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.

¹² Sexual Violence- Article 171 of the Criminal Code

(1) Whoever uses force or threatens a person of the same or opposite sex with an imminent attack on life or limb thereby compelling that person to submit to any lewd act not covered by the preceding Article or to perform such an act shall be sentenced to imprisonment for not less than six months and not more than ten years.

(2) If the offence under the preceding paragraph has been committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving a sentence or other persons whose personal freedom was taken away, the perpetrator(s) shall be sentenced to imprisonment for not less than three and not more than fifteen years.

(3) Whoever compels a person of the same or opposite sex to perform or submit to any lewd act by threatening him/her with a large loss of property to him/her or to his/her relatives or with the disclosure of any matter concerning him/her or his/her relatives which is capable of damaging his/her or his/her relatives' honour and reputation shall be sentenced to imprisonment for not more than five years.

Following civil society campaigning for a definition of rape based on lack of consent, the Ministry of Justice presented in August 2020 a proposal of amendments to the articles 170 and 171 of the Criminal Code. After reviewing the draft amendments, the Ombudsman welcomed the ministry's attempt to review the legislation towards the consent model. Still, we called on the Ministry of Justice to additionally examine the proposal to make sure that the adopted amendments will indeed be fully in line with Article 36 of the Istanbul Convention.

3. The prosecution of rape and sexual violence committed by an intimate partner (Article 55)

In case of a rape or sexual violence committed against a spouse, extra-marital partner or partner in a registered same-sex civil partnership, a state prosecutor can initiate prosecution only upon a proposal of the victim.¹³ In terms of the rules on the criminal procedure, the victim may withdraw its consent for the prosecution anytime before the end of the main hearing at court. If that happens, the prosecution cannot continue.

In Ombudsman's view, this raises concerns that this is not in line with Article 55 of the Istanbul Convention. According to the Explanatory report, state parties have an obligation to ensure that investigations into offences of rape and sexual violence are not "wholly dependant" upon the report or complaint filed by a victim and that any proceedings underway may continue even after the victim has withdrawn her or his statement or complaint.¹⁴

4. Aggravating circumstances (Article 46)

As per Article 49 of the Criminal Code, the court considers all circumstances, which influence the grading of the sentence.

The Criminal Code does not expressly include all aggravating circumstances set out in Article 46 of the convention, for example, the commission of the act in the presence of a child or the commission of the offence against a former or current spouse or partner. While judges have the discretion to consider all circumstances to increase or mitigate a sentence, it is unclear to what extent judicial practice ensures that all circumstances listed in Article 46 of the Istanbul Convention are considered to aggravate a crime.

In terms of sexual offences, the Criminal Code expressly sets the following circumstances as aggravating:

(4) If offences under paragraphs 1 or 3 of this Article have been committed against a spouse or an extra-marital partner or partner of a registered same-sex civil partnership, the prosecution shall be initiated upon a complaint.

¹³ Paragraph 4 of Articles 170 and 171 of the Criminal Code.

¹⁴ Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence, paragraph 280, <https://rm.coe.int/16800d383a>.

- Rape and sexual violence committed in a cruel or extremely humiliating manner or successively by several perpetrators or against offenders serving a sentence or other persons whose personal freedom was taken away;¹⁵
- sexual abuse of a defenceless person which covers sexual intercourse or performing other sexual act with a person by abusing their mental illness, temporary mental disorder, graver mental retardation, or weakness or any other state, owing to which that person is not capable of resisting;¹⁶
- sexual assault on a person younger than fifteen years, further aggravated if committed by a person to whom the minor was entrusted into education, care, or protection, or if that person is the victim's custodian or parent or parent or if sexual assault is committed against the defenceless person under the age of fifteen or by threatening him/her with an imminent attack on life or limb.¹⁷

In the empirical study of a representative judicial sample of practices related to rape, sexual violence and sexual abuse of a defenceless person the Institute of Criminology at the Faculty of Law Ljubljana noted questionable appropriateness of mitigating circumstances in individual cases ("significant contribution of the victim", short duration of rape, alcoholism of the victim). The authors of the study also noted that courts practically do not use the upper half of the threatened sanctions (the highest imposed sentence for all the offences in question was six years' imprisonment - for the offence under the second paragraph of Article 170).¹⁸

5. Lack of special crisis referral centre for victims of rape or sexual violence (Article 25)

There is no special crisis referral centre in Slovenia for victims of rape or sexual violence, which would perform a medical and forensic investigation and provide trauma assistance and counselling to the victims.

6. Access to state compensation (Article 30)

Crime Victim Compensation Act provides the victims of deliberate acts of violence and their relatives with the possibility to submit a claim for state compensation to the Ministry of Justice. Victims of domestic violence, victim minors, and victims of unknown perpetrators (or if the perpetrator cannot be persecuted) are eligible to claim compensation even before they claim it from the perpetrator and before the criminal proceedings start if there is reasonable suspicion that the crime has been committed.

¹⁵ Paragraph 2 of Article 170 of the Criminal Code.

¹⁶ Article 172 of the Criminal Code.

¹⁷ Article 173 of the Criminal Code.

¹⁸ dr. Mojca M. Plesničar, dr. Matjaž Ambrož, Sila, objektivno sposobna streti odpor, Empirična študija reprezentativnega vzorca pravosodne prakse v zvezi s kaznivim dejanjem posilstva, spolnega nasilja in spolne zlorabe slabotne osebe s pregledom možnih modelov novih zakonskih rešitev, November 2019. The study was commissioned by the Ministry of Justice of the Republic of Slovenia.

The right to state compensation is, however, limited only to Slovenian citizens and citizens of the European Union.¹⁹

In its first evaluation report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Slovenia Group of Experts on Action against Trafficking in Human Beings (GRETA) urged the Slovenian authorities to include all victims of trafficking in the scope of the Crime Victim Compensation Act, irrespective of their nationality.²⁰

A 2019 – 2020 National Action Plan for Combating Trafficking in Human Beings set a goal to amend the Article 5 of the Crime Victim Compensation Act by excluding the limitation of the scope of its application only to Slovenian and EU citizens. Upon inquiry regarding the implementation of this goal, the Ministry of Justice informed the Ombudsman in July 2020 that it began a study of the implementation of the Crime Victim Compensation Act, intending to prepare comprehensive amendments including in connection with the condition of nationality set in Article 5.

7. Victim support in proceedings and training of professionals (Articles 55 and 15)

According to Article 7 of the Domestic Violence Prevention Act,²¹ victims of violence may choose a person who can accompany them in all violence-related procedures. However, in 2019 the Ombudsman observed that it still happened in practice that the victim's companion was not allowed to be present during the victim's interview at the social work centre.

The Ombudsman recommended that the competent authorities should continuously provide training for its professionals (in social work centres, educational institutions, health care, justice, the police) to make sure that the victims of violence receive appropriate help.²²

8. Protection of child victims and child witness (Article 56)

The Ombudsman notes the shortage of forensic experts (especially in the field of clinical psychology) which is reflected in delays in criminal and family proceedings before the courts and is concerned over the general shortage of experts in clinical psychology of children and adolescents, psychiatry and pedopsychiatry in Slovenia.

¹⁹ Article 5 of the Crime Victim Compensation Act (Zakon o odškodninah žrtvam kaznivih dejanj), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4264>.

²⁰ Paragraph 142, January 2014, <https://rm.coe.int/greta-2013-20-fgr-svn-with-comments-en/168078e393>.

²¹ Zakon o preprečevanju nasilja v družini (Official Gazette of the Republic of Slovenia, no. 16/08, 68/16 and 54/17 – ZSV-H), <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5084>.

²² Recommendation No. 118 (2019) in the Ombudsman's Annual Report for 2019, page 196, www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Letno_porocilo_Varuh19.pdf (English version is yet to be published).

9. Research and population-based surveys (Article 11)

More attention should be given to effectively documenting the magnitude of violence by producing robust, comparative data to guide effective policy on violence prevention and to monitor the implementation of measures.

Slovenia lacks (national) representative surveys on the incidence of violence against women. Ten years have passed since the last national survey was carried out by researchers at the Faculty of Social Work. For this purpose, according to the State report to GREVIO, the Statistical Office of the Republic of Slovenia will join the survey by Eurostat, which will be carried out in 2020–2021.²³

Additionally, the Ombudsman is of the opinion that adequate attention should be given to identify the exposure to sexual and domestic violence and help-seeking behaviour of Roma women and migrant women.

²³ Report submitted by Slovenia pursuant to Article 68, paragraph 1 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Baseline Report) to GREVIO, October 2019, page 20, <https://rm.coe.int/grevio-inf-2019-15-eng/pdfa/1680989a54>.