

**A written contribution on different aspects concerning
the implementation of the Convention on the Rights of Persons with
Disabilities in the Republic of Slovenia -
from practice of the Human Rights Ombudsman of the Republic of Slovenia**

The Human Rights Ombudsman (hereinafter: the Ombudsman) is not a national institution for human rights protection, which is why our report is based on complaints we receive from affected individuals. We do not perform any special analyses of the situation or the realisation of individual sections of the legislation which provides special protection for persons with disabilities.

We usually learn about the problems encountered by disabled persons from specific complaints submitted to us by affected individuals, whereby, it must be emphasised that they frequently expect the Ombudsman to change the decision of competent state authorities or courts, or amend individual regulations governing a certain field. The Ombudsman has no such competence, as it may only point to established irregularities or violations of rights, and on the basis of its arguments, the competent state authorities may make their decisions, whereby they are in no respect bound by the Ombudsman's recommendations or proposals.

Occasionally, the Ombudsman meets representatives of individual associations for the disabled. At these meetings, people with disabilities particularly present systemic problems preventing them from implementing all the rights ensured them by legislation.

In 2018, the Human Rights Ombudsman Council will be established at the Ombudsman, on which the people with disabilities will have a representative. By law, the Council is appointed as the Ombudsman's consultative body, observing the principles of professional autonomy.

People with disabilities implement their rights on the basis of: the Equalisation of Opportunities for Persons with Disabilities Act, the Vocational Rehabilitation and Employment of Disabled Persons Act, the Act on Social Care of Persons with Mental and Physical Impairments, the Personal Assistance Act and the Act on the Use of Slovene Sign Language. Certain acts will enter into force only at the beginning of 2019 or later (e.g. Personal Assistance Act and the Act on Social Inclusion for People with Disability, which is undergoing a parliamentary procedure), which we find unsuitable. The manner of implementing individual rights is also determined in executive acts: the Rules on technical aids and adaptation of vehicles, the Rules on the EU Disability Card, the Decree establishing the employment

quota for persons with disabilities, the Rules on the criteria and procedure for acquiring the status of a person with disability and the right to vocational rehabilitation and to assess the employment opportunities of persons with disabilities and on the activities of rehabilitation commissions, the Rules on employment centres, the Rules on social enterprises and the Rules on the criteria and procedure for determining the subsidy amount for salaries of disabled workers.

The new Personal Assistance Act, assessed as an improvement in the field of rights of the disabled, governs the right to personal assistance. It determines the method of its implementation in order to enable a person with long-term physical, mental, intellectual or sensory impairments, which in connection with various limitations, may prevent the person from fully and effectively participating in the society (hereinafter: service user) like others in all fields of life and have the same possibilities, improved independence, activity and equal participation in the society compliant with the provisions of the Convention on the Rights of Persons with Disabilities. Users of personal assistance receive aid for all the tasks and activities which they cannot do on their own due to the type and degree of disability, but which are needed daily at home or outside their home in order to enable them to live independently and actively, and to be equally involved in the society. When implementing personal assistance, a user must have control over the organisation and formation of the personal assistance service according to their own needs, abilities, living circumstances, conditions and wishes. If they are unable to manage their own assistance, the tasks of the user are assumed by their legal guardian. Personal assistance includes help with the fundamental activities of daily life and communication, mandatory presence with the user in the case of the severest disabilities, help with the physical tasks of daily life, accompaniment, help with work and education, and help with other activities in which the service user is involved. The user may freely select a provider of personal assistance and a personal assistant.

The Act on Social Inclusion for People with Disability, which is undergoing a parliamentary procedure, will primarily replace the currently applicable Act on Social Care of Persons with Mental and Physical Impairments from 1983. It will govern the implementation of the disability status for persons with permanent congenital or acquired impairments who, without the provision of support services, could not independently carry out most, or all, life functions and provide a means of subsistence, implement the right to cash benefits and possibilities provided by the state for their equal inclusion in society. The purpose of the Act is to create conditions for the disabled to lead a life as equal and equivalent as possible with the widest social support from everyone coming into contact with disabled persons in any way. Chapter II (Cash benefits) is to be implemented at the beginning of 2019 if the Act is passed, and Chapter III (Support services) only in 2022.

Physically impaired persons

The Ombudsman has discussed the issue of accessibility of buildings in the public sector several times, including problems of physically impaired persons when overcoming obstacles on public surfaces. The Construction Act determines that physically impaired persons must be enabled unhindered movement. When discussing these complaints, we supported the efforts of physically impaired individuals and their associations to supplement the existing regulations with provisions on universal construction and adjustment of buildings and all public surfaces (roads, pavements, parks, accesses to buildings) to the needs of the physically impaired. We have not received such complaints in the last year, and we thus assess that the situation is improving.

Blind and partially sighted persons

In this field, we discussed complaints from blind and partially sighted persons seeking the implementation of the right to comprehensive treatment of the blind and partially sighted, including medical treatment and the rehabilitation of blindness and vision impairment in accordance with the applicable classification of the World Health Organisation. The implementation of comprehensive rehabilitation was said to be supported also by the Health Council at the Ministry of Health already in 2012.

The Ombudsman assesses that seven years, since legal grounds for implementing the right to comprehensive rehabilitation of the blind and partially sighted (CRSS) were determined, is too long, irrespective of the complexity of procedures that had to be executed in order to enable the actual realisation of the right.

Deaf and hearing impaired persons

The representatives of their organisation presented to the Ombudsman their problems with communication, particularly when communicating with people who can hear, since the majority of people who hear do not use sign language, which is the shared language of the deaf. To reduce the dependence of people with hearing impairment on the hearing environment, the Ombudsman installed an induction loop on its premises. This electromagnetic communication system enables users of hearing aids to understand what is being said in noisy rooms because it prevents interruptions such as echo, hissing, crackling and other interruptions that may occur. Better quality communication in the conference room will thus be enabled to hearing impaired persons who contact the Ombudsman, as the Ombudsman is fully aware of the burden of this invisible disability, which frequently prevents the equal participation of deaf and hearing impaired persons. On this note, the Ombudsman also called on state authorities, local community authorities and bearers of public authority to do everything necessary for proper, complete and as independent as possible communication with deaf and hearing impaired persons. The state should also be more consistent when supervising the implementation of legislation regarding construction. All adjustments for the needs of the disabled (including the

installation of an induction loop) must be observed for new constructions and adaptations. The Ombudsman will enable communication with hearing impaired persons with the aid of two portable induction loops when holding monthly meetings outside its head office in Ljubljana.

As per the legislation on disability, the deaf may be recognised as no more than 70 per cent disabled, which is deemed unfair. Their requirements in this field should be heard and regulations amended.

Deafblind persons

Deafblind persons encounter numerous problems in their everyday life. Deafblind persons are classified under one of the severe forms of disability, since two sense organs (ears and eyes) are impaired to a degree which severely hinders and limits their everyday activities. This disability receives too little attention in Slovenia. Certain rights are granted only by the Equalisation of Opportunities for Persons with Disabilities Act, which determines that deafblind persons must be enabled access to state authorities in a way that material is accessible in a format understandable to them, i.e. in Braille, audio or enlarged black print. They must also be enabled the right to technical aids in order to overcome communication barriers to a more independent life. Deafblind persons are striving to abandon the 'medical' definition of deafblindness and to adopt the Nordic definition of deafblindness by which deafblindness would be acknowledged as a specific form of disability. Similarly to other European countries, the functional criterion of deafblindness would have to be observed in order to determine the functional condition of a deafblind person. While observing the functional criteria, the existing regulations would have to be amended. It is mandatory to supplement the list of physical impairments and define this disability as a specific independent disability.

Likewise, the status of deafblind persons who, due to their impairments and limitations, are unable to obtain a suitable period of employment to implement the rights arising from disability insurance must be resolved.

Persons with mental disabilities

The content of their complaints referred to efforts relating to the issue of employment or certain work activity. They proposed that, in addition to inclusion in care and occupational centres, they are also enabled to find employment or participate in a regular working environment in accordance with their abilities and wishes. Despite their established 'inability to live an independent life and work', persons with mental disabilities who claim rights according to the Act on Social Care of Persons with Mental and Physical Impairments (ZDVPDTP) may now apply as job seekers at the Employment Service of Slovenia if they are aged between 15 and 65; however, by doing so, they lose the rights arising from their 'inability to live an independent life and work'. According to the Ombudsman, this arrangement is not suitable or realistic. The possibility of 'transferring between statuses' should be provided. Furthermore, persons with recognised rights as per the ZDVPDTP usually cannot compete equally in

the labour market. Since employment for them means in particular social inclusion and not primarily a means of subsistence, the rights arising from the ZDVTDP should be retained. The Ombudsman supports their proposals.

Dysfunctionality of The Council for the Disabled of the Republic of Slovenia

The Human Rights Ombudsman of the Republic of Slovenia was able to conclude in 2017 on its own, that The Council for the Disabled of the Republic of Slovenia (Svet za invalide Republike Slovenije), which was established on the basis of Article 28 of Equalization of Opportunities for Persons with Disabilities Act, is indeed not fully functional. According to the said legal norm, the Council is an independent tripartite body, its membership consisting of representatives of representative organizations of disabled persons, representatives of expert institutions in the field of protection of persons with disabilities and representatives of the Government of the Republic of Slovenia; it is supposed to be mandatory advisory forum on questions in relation to disability policy; and one of its tasks being also to submit opinions on bills and other proposed regulations dealing with protection of persons with disability.

While dealing with a case in regard to issues of adaptations of apartments for assisted living for the disabled, the Ombudsman was not able to obtain meaningful explanations in relation to questions and suggestions made to the Council – the latter instead responded¹ by explaining that it does not in fact function completely as autonomous body, as it should, and that it has no employees who could deal with the content of the Ombudsman's letter. The Council further explained to the Ombudsman that they have problems even with determining dates of its sessions, as this depends on coordination of all of its 21 members. Declaring its main goal of becoming autonomous legal subject with its own staff, which would be able to prepare quality responses to all burning disability issues in due time, the Council concluded that by becoming state party to the Convention on the Rights of Persons with Disabilities, the Republic of Slovenia committed itself to abiding by Article 33, which states that state parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the Convention – whereas the Council does not regard itself as such a body yet, *“as it does not have its staff nor financial means and it is not autonomous legally regulated subject.”*

¹ Letters No. 013-11/2013 dated 12. 4. 2017, No. 013-11/2013 dated 23. 5. 2017, and No. 013-11/2013 dated 5. 6. 2017.

Even more worrisome, as was published by the Ministry of Labour, Family, Social Affairs and Equal Opportunities itself² on 22. 6. 2016, the Prime Minister personally has already met with the Council's delegation and was thereby directly presented with circumstances which arguably prevent the said body to "fulfil the required conditions and expert tasks, which stem from the Convention (preparation of the Action plan for monitoring, monitoring of implementation and reporting on the Convention, supervision of the preparation of the disability legislation, etc.)". Even though, as reported by the Ministry, the Prime Minister "expressed his contentment with the constructive talks and announced further regular dialogue of the Council with him and his colleagues as well as with representatives of ministries", and, as the Council itself stated in its first response to the Ombudsman, that they have "already gotten support from the President of the state, the Prime Minister and State Secretary of the Prime Minister, as well as majority of the ministries", it seems from the first two paragraphs above that there still is no progress actually presenting itself.

That being said, the Ombudsman also wishes to point out that the Equalization of Opportunities for Persons with Disabilities Act already defines that (section (6) of Article 28) expert, administrative and technical works for the Council shall be done by the competent ministry (i.e. Ministry of Labour, Family, Social Affairs and Equal Opportunities), as well as that (section (7) of Article 28) the funds for the Council's work shall be provided for within the budget of the Republic of Slovenia. In its response to the Ombudsman, the Council did not touch upon these two provisions and e.g. point to any concrete difficulties in relation to its relationship with the Ministry, which is already now supposed to provide to the Council what the Act stipulates it should provide.

The Ombudsman finds the described state of affairs unacceptable and also intends to report on this subject in its soon-to-be-released Annual Report for the Year 2017 to the Parliament.

Discrimination of the disabled students

The Ombudsman had already warned of the systemic problem of regulating the issue of disabled students in its Annual Report of the Human Rights Ombudsman for 2010. Among other things, the 2010 Annual Report warned that a student with special needs must have equal opportunities for

²The Prime Minister of the Republic of Slovenia, Dr Miro Cerar, received a delegation of the Council for Persons with Disabilities of the Republic of Slovenia

(http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/invalidi_vzv/PV_Cerar_sprejel_delegacijo_Sveta_za_invalide_220616.pdf)

studying, so they should be provided with reasonable accommodations of the study process³. The Ombudsman has also regularly warned of another unregulated field since 2013, namely of the discrimination of disabled students with regard to their transport from their place of residence to place of education⁴.

Pursuant to paragraph two of Article 52 of the Constitution of the Republic of Slovenia, disabled persons have the right to education and training for an active life in society, and Article 14 of the Constitution provides disabled persons with equality before law. Pursuant to paragraph five of Article 24 of the Convention on the Rights of Persons with Disabilities, *“States Parties shall ensure that persons with disabilities are able to access general tertiary education, vocational training, adult education and lifelong learning without discrimination and on an equal basis with others. To this end, States Parties shall ensure that reasonable accommodation is provided to persons with disabilities.”* At a statutory level, the protection of individuals from discrimination based on disability is provided by the Protection Against Discrimination Act (hereinafter: the ZVarD) and the Equalisation of Opportunities for Persons with Disabilities Act (hereinafter: the ZIMI). Section (2) of Article 11 of the latter expressly provides that disabled persons *“have the right to reasonable accommodations when included in the educational, schooling, or study process, and a right to reasonable accommodations of the schooling or study process related to the individual needs of a disabled person.”* Section (3) of Article 38 of the ZIMI provides that the deadline for a reasonable accommodation of the schooling and study process referred to in Article 11 of the said Act is a maximum of five years after this Act entered into force. This deadline expired on 11 December 2015.

³ E.g., a disabled student turned to the Ombudsman for assistance because her faculty failed to extend her student status, and it justified its decision on the basis of the provisions of the Higher Education Act (ZVis). The student appealed the faculty’s decision. In her opinion, the faculty should have recognized the extension of her student status as a special form of reasonable accommodation, as she was unable to finish her studies within the expected deadline due to her disability. However, even the senate of the faculty, as a body of second instance, did not grant her appeal. The explanatory note of the decision stated, among other things, that the student *“has taken advantage of all possibilities for enrolment laid down by law, and no further enrolment option and the resulting student status are possible.”* In addition to suggesting to the complainant that she institute an administrative challenge to the faculty’s controversial decision, the Ombudsman decided to consider the issue of the (statutory) regulation of disabled students’ status from a systemic perspective.

⁴ In short, students (in general) are entitled to state-subsidized monthly ticket for public transport - but since the category of students in question is unable to use the public transport, they are put into unequal position compared to those who are able to use public transport and can for this purpose take advantage of a state subsidy for the monthly ticket.

The status of disabled students is partly regulated by the rules of universities on students with special needs, which also define their rights and obligations (e.g. the Rules on the Study Process of Disabled Students of the University of Maribor of 25 February 2008; the Rules on Students with Special Needs at the University of Primorska of 18 September 2013; and the Rules on Students with Special Needs at the University of Ljubljana of 16 September 2014). In the Ombudsman's view, such rules offer significant support to students with special needs during the inclusion and participation in the study process - however, they do not govern their status comprehensively. Firstly, from a formal point of view, because the manner of exercising human rights and fundamental freedoms can be prescribed only by law (paragraph two of Article 15 of the Constitution) and not also by means of an implementing regulation, such as e.g. university rules. Secondly, the issue is not governed comprehensively because these rules do not resolve sets of significant issues – e.g. extending the student status (with regard to this, the last indent of paragraph three of Article 3 of the Rules on Students with Special Needs of the University of Ljubljana even expressly refers to the restrictions arising from the Higher Education Act (hereinafter: ZVis)) and arranging the transport of disabled students. An additional argument supporting the prompt regulatory arrangement in these regards is that it is not clear whether all higher education institutions even have such rules.

In the Ombudsman's view, the actual result of the situation described is systemic discrimination of disabled students with regard to accessing study programs and fulfilling their study obligations (e.g. the possibility of extending their student status, transport of students with impaired mobility, etc.), and therefore a systemic violation of paragraph two of Article 52 and of Article 14 in conjunction with Article 57 of the Constitution, and also a violation of the provisions of the Convention on the Rights of Persons with Disabilities (paragraph five of Article 24) and the ZIMI (paragraph two of Article 11).

It was evident from the response which the Ombudsman obtained from the Ministry of Education, Science and Sport, that the said ministry is aware of these issues. The Ministry furthermore explained in the same letter that the new and comprehensive ZVis which would systemically regulate disabled students' rights regarding their studies would be ready for governmental and parliamentary readings in 2017. However, in 2017 the Ministry informed the Ombudsman (upon inquiry) that the new ZVis will in fact not come to be. There were some amendments, however, including new Article 69.a of the ZVis which now defines who students with special needs are and stipulates abstractly that they are entitled to a more favourable treatment in the selection process in case of limited enrolment and to adjustments of study programs and additional expert help with studies, as well as them being entitled to more time to advance through and complete the studies.

That being said, the Ombudsman was able to establish that the mentioned amendments do not deal with issues of transport of the disabled students⁵. The Ombudsman's question if the mentioned option of more time to advance thorough and complete the studies has any upper limit, also went unanswered - as the explanation of the Ministry was that these aspects are "*still in progress*".

The promise of a new ZVis which would deal clearly and systematically with rights of the disabled students therefore remains unfulfilled. The mentioned adopted amendments also seem to be relatively disappointing in their vagueness, as the new article does not deal clearly enough with two important areas in relation to disabled students – possibilities for prolonging the student status and ensuring transports. By the end of 2017 the authorities are therefore already more than two years behind the five-year deadline to pass the needed legislation for adequate adjustments (as defined by Section 3 of Article 38 of the ZIMI). This is the case despite constant warnings from the Ombudsman to the Executive as well as the Legislature.

As described on pages 99-100 of the English version of Annual Report for the Year 2016, the Ombudsman has for years been making efforts to make the competent ministries eliminate discrimination related to the transport of disabled students with impaired movement from their place of residence to the place of education. We have already reported on discrimination in this field in the Annual Reports of the Human Rights Ombudsman for 2013⁶, 2014 and 2015. In 2016, due to the inactivity of the competent ministries with regard to resolving this issue (Ministry of Labour, Family, Social Affairs and Equal Opportunities – hereinafter: MDDZS, Ministry of Infrastructure – hereinafter: MZI, and the Ministry of Education, Science and Sport), the Ombudsman contacted the Office of the Prime Minister of the Republic of Slovenia no fewer than four times, and once time even contacted the Prime Minister directly. In the mentioned letter to the Prime Minister, the Ombudsman warned of the extremely lengthy procedure for drafting regulations eliminating discrimination and of the related and, in our opinion, severe violation of the human rights of one of the most vulnerable groups in our country. There did not seem to be (sufficient) real will or interest in achieving a specific shift, whereby constant postponing of urgent changes is affecting the vulnerable group – the disabled – the most. We provided our assessment that the reason for this situation may also lie in the fact that three ministries are competent to draft such amendments, but they are obviously not sufficiently coordinated, and no

⁵ In 2017 too, one of the students turned to the Ombudsman, claiming discrimination in relation to transport from his home to the faculty. In this case, Ministry of Education, Science and Sport explained that they managed to reach an agreement with Ministry of Labour, Family, Social Affairs and Equal Opportunities to jointly finance tender for transport of such students, which is supposed to represent temporary solution until adoption of an adequate systemic one.

⁶ Also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2013_ANG.pdf.

timelines or responsible persons are determined for resolving this issue. We found that the most worrying fact was that, after so many years, such evident discrimination has also still not been eliminated at a systemic level, as in the case of a specific issue encountered by a disabled student which has been considered by the Ombudsman since 2014 (see below). The Ombudsman also expressly suggested to the Prime Minister that he stand up for disabled students and, for this purpose (1) appoint a specific responsible person for drafting amendments at the competent authorities (2) determine clear timelines for drafting them, and (3) to his the best of his ability also contribute to implementing the transport of a specific disabled student, as already proposed by the Ombudsman to competent ministries, at the latest as of the new 2016/2017 academic year.

All of this however did not yield and satisfying results. The Ombudsman did receive a letter from MZL, but with regard to systemic solutions in the field, the explanation was only that competent ministries would propose amendments to the legislation, presumably within the framework of a new ZVis. Because no specific proposals have been drafted in this regard, and no timelines have been set for introducing the planned amendments to the legislation, the Ombudsman at that point reiterated its long-standing recommendation stating that the competent ministries should draft amendments to the regulations as soon as possible in order to eliminate discrimination in the transport of students with impaired movement from their place of residence to the place of their education.

Specifically on the issues regarding the transport of persons with mental disorders

As described on pages 98-99 of the English version of Annual Report for the Year 2016⁷, the Ombudsman already reported in the Annual Reports of the Human Rights Ombudsman for 2014⁸ and 2015⁹ on discrimination related to the regulation of the right to free transport for students with mental disorders who participate in special education programs between the ages of 18 and 26. Pursuant to the provision of paragraph two of Article 75 of the Elementary School Act (hereinafter: the ZOsn), students with special needs may participate in educational programs until the age of 26. If the Act enables these persons to obtain an education, the Ombudsman finds that it should also provide all other rights to which persons included in the education system who are in a comparable position are entitled.

⁷ Also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2016_VARUH_ENG.pdf.

⁸ Also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2014_VARUH_ENGLISH_v025_www-pages.pdf.

⁹ Also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/vcp_lp_2015_eng.pdf.

The Ombudsman's expectations for the competent ministries to immediately draft a proposal for amendments to the controversial regulations (paragraph ten of Article 56 of the ZOsn and point a) of paragraph eleven of Article 8 of the Rules on the Standards and Norms of Social Services) have unfortunately still not been met.

On a more positive note, however, the Administrative Court of the Republic of Slovenia issued a judgment and Decision No. U 1572/2015 of 18 November 2015 (available on the website sodnapraks.si) annulling the decision of the municipal administration and the decision on the appeal against it by means of which the application to establish the right to free transport of children with special needs who are over the age of maturity was rejected. In its judgment, the court found that the administrative bodies of first and second instance interpreted the controversial paragraph ten of Article 56 of the Elementary School Act restrictively, overlooking the provisions of Articles 8 and 57 and paragraph two of Article 52 of the Constitution of the Republic of Slovenia, as well as the provisions of ratified and published international treaties. This is particularly significant considering that a decision on placement was issued to the child of the claimant based on the Placement of Children with Special Needs Act. The court found that the complainants had grounds to refer to the provisions of the Principle of Equal Treatment Act and the Equalization of Opportunities for Persons with Disabilities Act prohibiting discrimination due to disability. On the basis of this judgment, during the new hearing in January 2016, the municipality acceded to the request of the complainants and acknowledged their right to the reimbursement of costs related to the transport of children with special needs from their place of residence to their place of education and back. Therefore, it is reasonable for individuals to resort to legal remedies against a decision on the basis of which a municipality refuses to pay transport costs for any of children with special needs who are over the age of maturity and attending an educational program, and, if necessary, to also file a lawsuit at the Administrative Court against the decision of the court of second instance, whereby they should refer to the principal reasons included in the judgment of the Administrative Court presented above. In addition to the careful and, from the Human Rights Ombudsman's perspective, significant explanatory note of this judgment, the speed of the decision-making of the Administrative Court, which reached its decision in approximately two weeks, should be particularly commended and emphasized as an example of good practice.

Children with special needs

Children with certain impairments in physical and mental development are discussed by the Ombudsman within a special department dealing with children's rights, because we assess that the Convention on the Rights of the Child in particular can provide much wider protection than regulations relating to disability policy.

In 2017, we discussed 40 per cent fewer complaints in this field than in 2016. Care for children with special needs, and the implementation of their rights is regulated relatively well. We assume that the lower number of complaints, particularly regarding the preschool care of children with special needs, is also the result of the Act Regulating the Integrated Early Treatment of Preschool Children with Special Needs enacted in mid-2017, although it will enter into force only on 1 September 2019. The Act will enable all children early, organised and multidisciplinary treatment directed at every family individually. The services of health care, social assistance, care and education will be provided and upgraded for children and their families. The Act will ensure comprehensive treatment, which is essential for them in order to determine their problems or special needs as soon as possible and to immediately provide suitable multidisciplinary professional assistance to children and their parents.

Most complaints in this field referred to the amount of various social transfers to which the children or their families are entitled, but they did not point to any substantial deficiencies in legal arrangements in this field.

Protection of persons with limited freedom of movement

In 2006 in accordance with the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,¹ the Human Rights Ombudsman assumed important duties and powers of the National Preventive Mechanism (NPM). By being entrusted with the tasks and powers of the NPM, the Ombudsman became an integral part of a generally applicable system under the auspices of the United Nations, which enforces (additional) mechanisms to prevent torture and other forms of ill-treatment of people deprived of liberty at the international and national level.

For quite some time, we have been warning of the unsuitable position of convicted persons who, due to their old age, sickness, or disability, require additional assistance while imprisoned to meet their basic needs in the form of nursing or social care and must live in adapted facilities.

Therefore, thus far, we have had to warn several times of the obligation to respect the special needs of convicts with mobility issues and those with serious health issues, and proposed that they must be appropriately accommodated to provide them with the conditions to serve their sentences appropriately. If a state deprives an individual of their freedom, it must also ensure that the deprivation of liberty and enforcement of penalties are conducted in a way that respects human personality and dignity. It is even more critical to observe the situation of persons who may be affected due to health problems and/or disability. When imprisoned, appropriate placement and living conditions where such persons can serve their sentences decently must be ensured; otherwise, this may be considered inhuman or degrading treatment and could be understood as a violation of Article 3 of the Convention

for the Protection of Human Rights and Fundamental Freedoms and Article 18 of the Constitution of the Republic of Slovenia.

Nonetheless, the Ombudsman still finds that most prisons (ZPKZ) in Slovenia (still) do not (even) have suitable residential or toilet facilities for use by convicted persons (remand prisoners) with impaired mobility. Since prisoners who are unable to use regular toilet facilities due to disability cannot even sustain suitable personal hygiene, for example. Not only does the Prison Administration of the Republic of Slovenia fail to provide suitable facilities for maintaining personal hygiene and care for such persons, but it also lacks suitably qualified staff to offer assistance to such persons when maintaining their personal hygiene.

By means of the new paragraph two of Article 60 of the Act Amending the Enforcement of Criminal Sanctions Act (ZIKS-1F), the state made it mandatory for convicts who need additional assistance with carrying out their basic needs due to age, illness or disability, i.e. in the form of nursing or social care, to be able to reside in adapted premises or a section of one of the institutions. The financial, human resource, and spatial conditions for this should have been met by 1 June 2016 (Article 91 of the ZIKS-1F), but this obligation has still not been fulfilled.

Furthermore, the Minister of Health failed to fulfil the obligation referred to in Article 92 of the ZIKS-1F, as she failed to appoint the special medical board referred to in paragraph three of Article 25 (which stipulates, among other things, the provision of suitable medical care at prisons) by 31 December 2015, and she clarified that the Ministry had problems finding suitable candidates to sit on this board. Not even a protocol between the Ministry of Justice (or the UIKS) and the Ministry of Labour, Family, Social Affairs with regard to the placement of those convicts that require more intensive and demanding nursing and care in elderly nursing homes has been adopted. All of this indicates that the situation of convicts who, due to age, illness, or disability, require additional assistance while imprisoned to meet their basis needs in the form of nursing or social care and whose need to live in adapted facilities has not been met is not regulated.

The Ombudsman warns that it is unacceptable for legislators not to ensure the arrangement of a constitutionally compliant procedure for admitting persons without legal capacity to secure wards of social care institutions within the set deadline. The urgency of timely amendments to the ZDZdr is also evident from the warnings received by the Ombudsman from judges who reach decisions on such detention. They question (with good reason) whether the Decision of the Constitutional Court is even binding on legislators.

The Ombudsman received several petitions drawing attention to the fact that secure wards were overcrowded and to the problems resulting from such overcrowded conditions. Overcrowded secure wards have indeed been one of the themes of the Ombudsman's annual reports ever since 2010.

The Ombudsman constantly monitors the activities of the relevant ministry, i.e. the Ministry of Labour, Family, Social Affairs and Equal Opportunities, which is seeking possible solutions for overcrowded wards, but the situation has remained unchanged for too long. That is why a decision has been made to highlight this issue in a special report.

Pursuant to Article 7 of the Human Rights Ombudsman Act (the ZVarCP), the Ombudsman proposes that the National Assembly should:

consider the Ombudsman's special report at its session and
adopt recommendations for the work of the Government of the Republic of Slovenia to adopt the necessary measures to ensure more appropriate involuntary accommodation and treatment of persons with a mental disorder in social care institutions in accordance with the provisions of the ZDZdr, including amendments and adjustments to the legislative framework (both the Social Assistance Act and the ZDZdr), and, in the short term, provide appropriate capacities in social care institutions and sufficient staff for the provision of appropriate social care services.

The National Preventive Mechanism (the NPM) had carried out a detailed inspection of all secure wards in social care institutions (particularly special social care institutions) and established that in all the wards the number of persons exceeded the wards' official capacity.

According to the data of the Association of Social Institutions of Slovenia, on 1 September 2017, all special social care institutions were fully occupied, and the number of persons in secure wards exceeded the capacity of the wards by a total of 16 persons due to admissions on the basis of court decisions.

The Ombudsman notes that the overcrowded conditions in secure wards affect, in particular:

1. The living conditions of residents in such wards,
2. Relations between residents and staff in such wards, and
3. The quality of the implementation of programmes for maintaining the mental health of residents in secure wards and other wards in individual social care institutions.

The Ombudsman expects the State, which has determined by law that persons with a mental disorder may be accommodated in secure wards in social care institutions without their consent, to provide sufficient and appropriate capacities and ensure appropriate treatment for such persons. The current situation, where such persons are refused accommodation or are admitted and then accommodated in overcrowded rooms, dining rooms, living areas and hallways of social care institutions, is unacceptable and violates the right to dignity and safety.

In conclusion

In 2018, the Human Rights Ombudsman of the Republic of Slovenia will be implementing conditions to obtain A status according to the Paris Principles. As a national institution for the protection of human rights, it will be able to monitor in more depth and analytically the issue of implementing rights, particularly of vulnerable groups. The first important step in this direction will be the establishment of the Human Rights Ombudsman Council in 2018, and the establishment of a human rights centre in 2019, which will bring the Ombudsman's work closer to the public and directly interested parties.

Ljubljana, 30 January 2018

Vlasta Nussdorfer
Human Rights Ombudsman

