

Slovenia

Human Rights Ombudsman of the Republic of Slovenia

International accreditation status and SCA recommendations

The Slovenian NHRI was accredited with A-status in December 2020. The SCA commended the efforts undertaken by the NHRI to advocate for the amendments to its enabling legislation, which took place in 2017 and addressed the SCA previous recommendations.

The SCA encouraged the NHRI to advocate for the formalization and application of clear, transparent and participatory process for the selection and appointment of the Ombudsman. While acknowledging the actions taken by the NHRI, the SCA also considered important that the ability to encourage ratification of and accession to regional and international human rights instruments is explicitly included in the NHRI's enabling legislation.

Moreover, the SCA noted that the NHRI would benefit from additional funding in order to continue to effectively carry out the full breadth of its mandate. The SCA encouraged the NHRI to advocate for changes that would grant it further financial autonomy and independence.

Impact of 2020 rule of law reporting

Follow-up by State authorities

The European Commission 2020 Rule of Law Report received attention from several public media and some professional journals in Slovenia. However, the Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman) is not aware of any concrete follow-up made by state authorities regarding the report and notes that there has also been a lack of a broader expert discussion about the report in Slovenia.

The Ombudsman welcomes that the 2020 ENNHRI rule of law report was referred to by the European Commission in its country chapter of the rule of law situation in Slovenia (1).

References

- (1) European Commission, 2020 Rule of Law Report, Country Chapter on the rule of law situation in Slovenia. SWD(2020) 323 final, 30. 9. 2020.

Impact on the Institution's work

The Ombudsman has based its activities and priorities on various grounds, including the follow-up to key issues reported on in the 2020 ENNHRI rule of law report, in particular in the area of hate speech, the functioning of the justice system and the monitoring of the impact of COVID-19 and the measures taken to address it on human rights.

Follow-up initiatives by the Institution

The Ombudsman has not taken any follow-up initiatives solely based on the 2020 report due to the increase of workload related to the COVID-19 situation, and to some extent, to the lack of human resources.

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The national regulatory framework applicable to the Ombudsman has not changed since the 2020 Rule of Law report. However, a highly relevant Decision of the Constitutional Court of the Republic of Slovenia for the Ombudsman's work was adopted in December 2020 (1). This Decision annulled several provisions (Articles 20, 40/2, 103/1) of the Public Finance Act on budgetary funds, insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit. It also decided that Article 95/1 of the same Act was inconsistent with the Constitution. In particular, the Constitutional Court has decided that the funds received by the four independent institutions must not be dependent on the government. It has exposed that the existing legislation allows the government or the finance minister to accumulate budgeting powers concerning the independent institutions in question, thus significantly affecting their financial independence. However, to implement their constitutional role, the four independent institutions must have a legal position in budgeting equal to the government. Until the law is amended, the Finance Ministry must thus include the proposals of financial plans made by the four independent institutions into the draft state budget.

The Ombudsman expects the Parliament to implement the mentioned decision within one year from its publication in the Official Gazette of the Republic of Slovenia, i.e., before 23 December 2021, as required by the Constitutional Court.

In addition, the Ombudsman advocates to further amend the Human Rights Ombudsman Act in order to comply with the GANHRI Sub-Committee for Accreditation recommendations of

December 2020 (2). The Ombudsman also asks for the necessary legislative changes to comply with the Venice Principles on the Protection and promotion of the Ombudsman Institution (3).

The Ombudsman has at several occasions (4) also clearly indicated that it is prepared to assume the responsibility and mission of an independent body for promoting, safeguarding and monitoring the implementation of the Convention on the Rights of Persons with Disabilities (the Convention) in accordance with paragraph two of Article 33 of the Convention. However, no concrete results have been reached in this regard, and Slovenia has so far not established an independent body under Article 33 of the Convention.

References

- (1) The Decision on the annulment of Article 20, second paragraph of Article 40, the first paragraph of Article 103 in connection to the first and second paragraph of Article 103 of the Public Finance Act insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit, on the ruling that the first paragraph of Article 95 of the Public Finance Act insofar as they relate to the National Council, the Constitutional Court, the Ombudsman and the Court of Audit in inconsistent with the Constitution and on the ruling that the fifth point of the first paragraph of Article 3, as well as the first and the third to seventh paragraph of Article 40 of the Public Finance Act, are not inconsistent with the Constitution, Official Gazette of the Republic of Slovenia, No. 195/2020 of 23 December 2020. Available also at <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-3501/> (1 March 2021).
- (2) Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendation of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7–18 December 2020, pp. 22–24, available at <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf> (1 March 2021).
- (3) Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”), adopted at the Venice Commission at its 118th Plenary Session (Venice, 15–16 March 2019), endorsed by the Committee of Ministers at the 1345th Meeting of the Ministers’ Deputies (Strasbourg, 2 May 2019), available also at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)005-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)005-e) (1 March 2021).

- (4) Annual Report of The Human Rights Ombudsman of the Republic of Slovenia for 2019, also available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2021).

Enabling space

In general, enabling space for the Ombudsman is sufficient, including with regard to access to legislation and policy process, as well as a level of cooperation among different human rights bodies. Regarding the recommendations given by the Ombudsman to the state authorities, mainly to the government but also to the Parliament, courts and other bodies, the Ombudsman noted in its last annual report that there were more than 200 recommendations that had not been implemented or only partially. Some had been topical since 2013, and the competent authorities had not approached them seriously enough. Nevertheless, the Ombudsman issued numerous new recommendations, 158 in its last annual report, to address countless and frequently new challenges faced in Slovenian society (1).

The Ombudsman as Slovenian National Human Rights Institution (NHRI) continued its endeavours to be accredited as a status A institution under the 1993 Paris Principles, which relate to the status and functioning of national human rights institutions. During the COVID-19 crisis, the Ombudsman increased its involvement at the international level with global and regional international organizations as well as NHRI networks. The aim has been to further promote international human rights standards at the national level. Regarding the accreditation, the GANHRI Sub-Committee on Accreditation session was postponed from March 2020 to December 2020. In January 2021, The Slovenian Ombudsman received recognition by the SCA that it fulfils the Paris Principles and was declared as a status A institution (1). It has therefore been officially confirmed that the Ombudsman meets the highest performance standards of an independent national institution for the protection and promotion of human rights. For the Ombudsman, the newly acquired status is principally a great acknowledgement and recognition of the work done so far and will also enable its full participation in various meetings within the United Nations, at the regional level, as well as within the Global Alliance of National Human Rights Institutions (GANHRI) and the European Network of National Human Rights Institutions (ENNHRI), where it was granted voting rights (2).

The SCA, however, regularly highlights that even the institutions accredited with “A” status must continue to strive to enhance their effectiveness and independence and to realise the GANHRI recommendations (2). The Ombudsman concurs with the commentary of the SCA; it notes, however, that attention and real support from the authorities, especially the Government and the legislature, will also be needed for the realisation of the targets set. The Ombudsman’s accreditation will again be reviewed in five years’ time. The Ombudsman is committed to continuing its work until then with due diligence and professionalism. The Ombudsman supports all recommendations of the SCA: on the procedure for selecting and appointing the Ombudsman and deputies, the financial autonomy of the institution, and on competence to encourage ratification or accession to human rights treaties (3).

References

- (1) Annual Report of The Human Rights Ombudsman of the Republic of Slovenia for 2019, also available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2021).
- (2) Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendation of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7–18 December 2020, pp. 22–24, available at: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20December%202020%20-%2024012021%20-%20En.pdf> (1 March 2021).
- (3) For the Press Statement of the Ombudsman, see <https://www.varuh-rs.si/en/news/news/hro-slovenia-with-the-paris-principles-highest-status/> (1 March 2021).

Developments relevant for the independent and effective fulfilment of the NHRIs’ mandate

The Center for Human Rights, an organizational unit of the Ombudsman, greatly increased its activities in 2021 s in the following fields:

- research (i.e., a continuation of an analysis on the prosecutor’s practice regarding hate speech; analyses of schooling of Roma children during the COVID-19 epidemic, analyses COVID-19 and violence), short research of the access to courts);

- promotion activities (i.e., information on the position of international organizations on human rights-based approach to tackle epidemic, a project “If you see injustice, use justice” (1) on children’s rights in December 2020, the Ombudsman’s Short Guide “How and when can an individual submit a communication to UN human rights treaty bodies” (2));
- monitoring activities (i.e., the Ombudsman’s Report on the Placement of Detainees at the Postojna Aliens Center of 10 November 2020 (3), the Ombudsman’s Submission to Grevio of October 2020 (4));
- training (i.e., a webinar on individual complaint mechanisms under the United Nations Treaty Body System (5));
- opinions (i.e., on the accessibility of websites for vulnerable groups is a commitment for the EU Member State)
- international cooperation and reporting (i.e., on COVID-19 situation, on questionnaires of the UN special rapporteurs on human rights; to United Nations, to FRA, EU, Council of Europe (alternative report to the Committee on Social Rights and other global or regional organizations/networks).

The Ombudsman also opened new staff positions in order to respond to the workload and tasks of the Institution.

References

- (1) See: <https://www.varuh-rs.si/za-otroke/> (1 March 2021).
- (2) See: <https://www.varuh-rs.si/vodic-mednarodne-pritozbe/?categories=%2F> (1 March 2021).
- (3) See: <https://www.varuh-rs.si/en/news/news/the-ombudsmans-report-on-the-placement-of-detainees-at-the-postojna-aliens-centre/> (1 March 2021).
- (4) See: <https://www.varuh-rs.si/en/news/news/the-ombudsmans-submission-to-grevio/> (1 March 2021).
- (5) <https://www.varuh-rs.si/projekti/projekt/pritozbeni-postopki-po-mednarodnih-pogodbah-o-clovekovih-pravicah-zdruzenih-narodov/> (1 March 2021).

Human rights defenders and civil society space

During the COVID-19 epidemic, the Ombudsman found cases of laws, measures and practice that could negatively affect civic space and reduce human rights defender's activities.

The Ombudsman received several comments related to the alleged controversial nature of Article 42 of the amendments to the Act on measures to mitigate the effects of the epidemic (ZIUZEOP-A) (1). The Ombudsman emphasized that it is in the interest of all that the economy after the Covid-19 crisis is recovering as soon as possible; however, that the measures taken to limit public participation in environmental issues, without addressing other reasons for the length of the process, are unacceptable for present and future generations. The Ombudsman found a violation of the rule of law (Article 2 of the Constitution), a violation of the right to judicial protection (Article 23 of the Constitution), a violation of the right to a healthy living environment (Article 72 of the Constitution) and a violation of the prohibition of retroactive effect of legal acts (Article 155 of the Constitution). However, the authorities did not react, and the issue is currently under the review of the Constitutional Court (2). In the mentioned ZIUZEOP-A case on the involvement of civil society and NGOs in environmental issues, the Ombudsman forwarded its findings and a proposal for the elimination of irregularities to the Ministry of the Environment and Spatial Planning. It appealed to the Ministry to consider preparing a proposal to amend, repeal or abolish Article 42 of the ZIUZEOP-1 while taking into account also negative opinions of the Legislative and Legal Service of the National Assembly and the Commission for the Prevention of Corruption. The Ombudsman identified several violations of human rights and urged to eliminate the identified inconsistencies with the Constitution of the Republic of Slovenia and the Aarhus Convention by (again) ensuring adequate and effective public participation in all administrative and judicial proceedings that have and could have an impact on the environment, adequate and effective legal protection and eliminate all other shortcomings (below) which are pointed out not only by the institution of the Ombudsman but also by other already mentioned bodies (3).

The Ombudsman also paid attention to the freedom of assembly and the right to peaceful protest. There have been several and regular protests since Spring 2020. On 19 June 2020 the Ombudsman checked the police procedures for establishing identity during the protest in Ljubljana. It considered that circumstances such as moving in the direction of a protest rally or staying at the protest rally site immediately before or during the protest rally are not a sufficient reason for suspicion, which is a condition for the execution of the identification procedure provided for in the Police Tasks and Powers Act. The Ombudsman recalled that in cases where different police powers can be used for the successful performance of a police task, police officers must use those with the least harmful consequences. Harmful consequences are measured by the intensity of interference with human rights and fundamental freedoms. The Ombudsman recalled

that any measure or action should be proportional (4). Regarding the June 2020 protests in Ljubljana, the Ombudsman addressed a detailed inquiry to the Ministry of the Interior on 22 June 2020 from the point of view of the protection of human rights and fundamental freedoms. The circumstances provided by the police for identification of individuals were in view of the Ombudsman also so general that they could, most likely, be attributed to all the protesters, who numbered around 7,000. Therefore, it was not entirely clear on what basis the police actually established the identities of only 69 people out of all other protesters. The Ombudsman recommended once again that the police officers always exercise a careful assessment of the conditions laid down by law and other regulations for the exercise of police powers in order to exercise their power of identification (5).

The Ombudsman also called on the Ministry of Culture to engage in a constructive dialogue with NGOs operating at Metelkova 6 (a group of NGOs focused on culture and human rights), to whom the Ministry of Culture in October 2020 proposed to end their rental agreement and called to leave the building by the end of January 2021. With reference to the Council of Europe recommendation (6), the Ombudsman underlined that state authorities have a duty to remove any unnecessary, unlawful or arbitrary restrictions to civil society space, in particular with regards to freedom of association, peaceful assembly and expression. The Ministry, however, did not respond to the Ombudsman's call for dialogue (7).

Concerning other measures related to peaceful protests undertaken by the Government, the Ombudsman underlined on various occasions that the freedom of expression and freedom of assembly are integral rights. Therefore, even for epidemic control reasons, they can only be restricted if this was proportional and necessary to achieve the legitimate aim pursued. In this respect also the sanctions must be proportionate. The limitations of the freedom of assembly should also not be discriminatory; therefore, any regulations, which limit peaceful protests on such a basis and have no grounds on the epidemiological situation, are considered problematic (8).

The Ombudsman also wish to draw attention to the need for dialogue between the authorities and non-governmental organizations. As the Ombudsman publicly wrote, active two-way communication and dialogue are necessary in all areas in order not to enter a crisis of values (9). COVID-19 crisis cannot be an excuse for lack of dialogue, arbitrary decision-making or interference from a position of power. Last but not least, it is a socially responsible community that contributes to co-creating a positive social climate and a culture of dialogue. Only in this way will the recovery process after the coronavirus disease pandemic be effective.

References

- (1) Act Amending the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy, Official Gazette of the Republic of Slovenia, No. 61/2020 of 30 April 2020, also available at <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8190> (1 March 2021).
- (2) <https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-uposteval-varuhaj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/> (1 March 2021).
- (3) <https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-uposteval-varuhaj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/> (1 March 2021).
- (4) https://www.varuh-rs.si/sporocila-za-javnost/napovednik/?tx_news_pi1%5Bnews%5D=5748&cHash=2ff02e01c1f6ad406aa8d534c8b8c384 (1. 3. 2021).
- (5) https://www.varuh-rs.si/sporocila-za-javnost/napovednik/?tx_news_pi1%5Bnews%5D=5748&cHash=2ff02e01c1f6ad406aa8d534c8b8c384 (1 March 2021).
- (6) Council of Europe, Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe, Adopted by the Committee of Ministers on 28 November 2018 at the 1330th meeting of the Ministers' Deputies.
- (7) See https://www.varuh-rs.si/index.php?id=1320&L=306&tx_news_pi1%5Bnews%5D=5949&tx_news_pi1%5Bday%5D=30&tx_news_pi1%5Bmonth%5D=12&tx_news_pi1%5Byear%5D=2020&cHash=781e05d02de31bdec8369f11c5f602b2 (1 March 2021).
- (8) See: <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-v-dz-osvobodi-mirnega-zbiranja-in-zdruzevanja/> (18 March 2021).
- (9) The message of The Human Rights Ombudsman of the Republic of Slovenia Peter Svetina on the occasion of the International Human Rights Day, 10 December 2020, available at <https://www.varuh-rs.si/sporocila-za-javnost/novica/poslanica-varuhaclovekovih-pravic-ob-mednarodnem-dnevu-clovekovih-pravic/> (1 March 2021).

Checks and balances

The Ombudsman continued with its monitoring and calls on the need for the execution of the decision of the Constitutional Court of the Republic of Slovenia as well as of the judgments of the European Court for Human Rights. While in last years a positive development was noticed regarding the execution of the judgments of the European Court for Human Rights, no major positive development could be noticed regarding the implementation of the Constitutional Court decisions (1). Nonetheless, some development was reached regarding the implementation of the Constitutional Court decision U-I-32/15, of 18 November 2018 (2). It ruled that Article 4 of the Act Establishing Constituencies for the Election of Deputies to the National Assembly (3), which determined the area of constituencies, was inconsistent with the Constitution. The necessary changes of the Act did not meet the required deadline determined by the Constitutional Court, which expired on 21 December 2020; however, they were adopted in February 2021 and entered into force on 2 March 2021 (4).

Through several public statements and interviews, the Ombudsman brought several issues also to the attention of the general public (5). In exercising its mandate, the Ombudsman did not encounter any major obstacles with respect to its check and balances powers.

The Ombudsman made several calls regarding the lack of disaggregated data in Slovenia. It pointed out that combating discrimination requires valid, accurate and representative data on the situation of persons or groups of persons with a specific personal ground (protected ground) in different areas of social life. Equality data is used to determine the current state and trends of de facto (in)equality and is of utmost importance for the planning, implementation and review of non-discrimination policies, particularly regarding positive measures. Such data and measures to counter discrimination and inequality will also be of particular importance in the post-Covid-19 world. An EU study (6) has indeed shown that equality data collection in Slovenia is critically weak, far most EU member states. Data disaggregated by protected grounds has also been recommended to Slovenia by several international monitoring mechanisms, including the Committee against Torture, Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights, Committee on the Elimination of Racial Discrimination and, recently, the UN Rapporteur on Minority Issues and the Committee on the Rights of Persons with Disabilities (7). In this regard, the Ombudsman recommended within the Third Cycle of the Universal Periodic Review (8) as well as in its last Annual Report to the National Assembly (9) that:

- The Government drafts and the National Assembly adopts suitable legislation on personal data protection and sector-specific legislation to determine special exemption with regard to collecting disaggregated data as per individual personal grounds in order to promote

equal treatment and equal opportunities when observing applicable national and international standards on personal data protection.

- The competent authorities enable and ensure systematic collection of disaggregated data as per protected personal grounds in all areas of social life in order to accurately determine the situation and trends regarding (in)equality in society and that the competent line ministry takes over the management of the informal working group for resolving the issue of disaggregated data collection as per paragraph one of Article 62 of the State Administration Act (ZDU-1) (10), and, if the ministries fail to reach an agreement, the Government of the Republic of Slovenia should decide on the issue as per paragraph two of Article 62 of the ZDU-1.

Both recommendations remain unimplemented.

Last but not least, according to various sources, there is, in general, a low level of trust among citizens to the state authorities and between citizens and the public administration, including regarding the measures to tackle the epidemic.

References

- (1) See for example: Vlasta Nussdorfer: Zakaj se odločbe ustavnega sodišča tako težko uveljavijo, 13. 1. 2021, available at: <https://www.iusinfo.si/medijsko-sredisce/kolumne/277623> (1 March 2021).
- (2) Official gazette of the Republic of Slovenia, No 82/2018 of 21 December 2018, also available at <https://www.us-rs.si/odlocitev-ustavnega-sodisca-v-zadevi-u-i-32-15/> (1 March 2021).
- (3) Official Gazette of the Republic of Slovenia, No. 24/05 – official consolidated text.
- (4) See: Act Amending the Act Establishing Constituencies for the Election of Deputies to the National Assembly, Official Gazette of the Republic of Slovenia, No. 29/2021 of 1 March 2021.
- (5) See <https://www.varuh-rs.si/sporocila-za-javnost/vsa-sporocila-za-javnost/> (1 March 2021).

- (6) European Commission, Analysis and comparative review of equality data collection practices in the European Union, Equality data indicators: Methodological approach, Overview per EU Member State, Technical annex, p. 49, https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793 (1 March 2021)
- (7) CAT/C/SVN/C0/3 of June 2011, CRC/C/SVN/C0/3-4, of July 2013, E/C.12/SVN/CO/2 of December 2014, CERD/C/SVN/C0/8-11 of January 2016, CRPD/C/SVN/CO/1 of April 2018 and A/HRC/40/64/Add.1 of January 2019.
- (8) <https://www.varuh-rs.si/nc/en/about-us/organisational-units-and-hro-council/center-for-human-rights/levi-meni/universal-periodic-review-upr/>.
- (9) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2020).
- (10) Official Gazette of the Republic of Slovenia, No. 113/05 – official consolidated text, 89/07 – odl. US, 126/07 – ZUP-E, 48/09, 8/10 – ZUP-G, 8/12 – ZVRS-F, 21/12, 47/13, 12/14, 90/14 in 51/16.

Functioning of the justice system

Regarding the functioning of the justice system, the Ombudsman continued focusing on the operation of the justice system. During 2020, the Ombudsman noted a significant increase in the number of breaches of the right to judicial protection under Article 23 of the Slovenian Constitution – while the Ombudsman found six such violations in 2019, it found 22 in 2020.

The Ombudsman reiterates that, based on the complaints, a trial within a reasonable time is no longer a systemic problem in Slovenia (this also follows from the European Commission's 2020 Rule of law Report). However, according to the President of the Supreme Court (1) and in view of the Ombudsman, the restrictions relating to the new coronavirus epidemic importantly undermined the functioning of the judicial system, especially in the courts of the first instance. This shall have an effect on the increasing backlog of cases before the Courts in the future.

On the operation of the courts, despite repeated warnings by the judiciary (2) and the Ombudsman, there still are no tangible measures aimed at improving working conditions, business organization and financial situation of judges and some groups of judicial employees. For several years, the issue of resources for the provision of appropriate staff has not been resolved - especially the appropriate support of court staff and spatial conditions. The proposals

regarding a single first-instance judge have also not been implemented. The main challenges for the judiciary in 2020 were the increased number of complex new cases (e.g., transfer of competences in family matters from social work centres, administrative procedures) and preparation for a large number of specific procedures.

Several of the Ombudsman's past recommendations have still not been implemented. For example, in its last Annual Report, the Ombudsman recommended that the Ministry of Justice take additional measures to increase the number of court experts in the field of family relations, yet the recommendation remains relevant. The Ombudsman also calls on the Ministry to strengthen the efficiency of supervisory bodies in order to ensure the quality of the work of courts and to enable a more effective and accessible free legal aid.

The Ombudsman also regularly recommends that all judicial authorities continue to strengthen the efficiency and transparency of their work. It, for example, proposed that the Slovenian judiciary continues to provide appropriate information to the public and the necessary response to media-exposed allegations regarding its work; however, the recommendation has not yet been sufficiently implemented (3). The Ombudsman also recommended to the Supreme Court of the Republic of Slovenia that, in order to ensure uniform case-law, all courts continue to be encouraged to improve the operation and quality of trials, and to the Ministry of Justice to continue to strengthen the judiciary for efficient and quality judicial administration (4).

The number of cases dealt with by the Ombudsman in the wider field of justice increased slightly (to a total of 410 cases). Most of the complaints related to the quality of trials and other (judicial) decision-making issues. The most frequently raised issues in 2020 were again the right to judicial protection, equal protection of rights, the right to legal remedy, legal guarantees in criminal proceedings and other rights, including the principle of good administration. Some issues in this area were also related to the management of the COVID-19 epidemic. The share of permissible complaints is again the highest in the field of proceedings before labour and social courts. However, the activities of the Ombudsman in the field of the judiciary are very much related to its (limited) powers in relation to this branch of state power: the Ombudsman may intervene in ongoing court proceedings only in the event of an unjustified delay in the proceedings or manifest abuse of power. The Ombudsman is not a body, which could give instructions to courts for deciding on matters within their competence. However, the Ombudsman's intervention is possible in the role of a friend of the court (*amicus curiae*) under Article 25 of the Ombudsman Act. The Ombudsman is also not mandated to determine the legality of courts' decisions (and other state bodies). In case of disagreement with the courts, the party in the proceedings has other available legal remedies (regular and extraordinary). In relation to the judiciary, the Ombudsman's actions can only be such that they do not jeopardize the independence of judges

in the performance of their judicial functions. The Ombudsman's intervention, therefore, mainly extends to the judicial or justice administration.

In dealing with cases in this area, the Ombudsman continued to address court presidents and other competent persons (e.g., heads of prosecutors' offices) through its inquiries and other interventions. When necessary, the Ombudsman also turned to the Ministry of Justice for clarifications regarding the legal framework for the functioning of the judiciary and to the Ministry of the Interior when regarding the procedures of the Police as a misdemeanour body and individual police. In general, the Ombudsman is satisfied with the responses of relevant authorities in considering the initiatives, as they mostly responded to inquiries and other interventions in due time.

In September 2020, the Judicial Council proposed again to the President of the Republic to speed up the initiative to amend the Constitution and the Judicial Service Act regarding the procedure for appointing judges (5). The Judicial Council, together with the Supreme Court of the Republic of Slovenia and the Slovenian Judges' Association, has long advocated the withdrawal of the election of judges from the National Assembly, especially of the judges of the Supreme Court, as such a system is an exception to the European Union legal framework. GRECO also recommended, in its Second Compliance Report on Slovenia of 23 March 2018, that the Slovenian authorities consider revisiting the procedure of appointment of judges to the Supreme Court in order to minimise the possibilities of political influence (6). The recommendation of GRECO remains unimplemented.

References

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- (3) 2018 Ombudsman Annual Report, available at https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf .
- (4) 2019 Ombudsman Annual Report, available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf
- (5) Dopis Sodnega sveta, SU 569/2019-55 z dne 16. 9. 2020, also available at [http://www.up-rs.si/up-rs/uprs.nsf/cc1b0c2e0c8f0e70c1257aef00442bbd/749059dca573ed12c12585ff004245be/\\$FILE/Pobuda%20Sodnega%20sveta.pdf](http://www.up-rs.si/up-rs/uprs.nsf/cc1b0c2e0c8f0e70c1257aef00442bbd/749059dca573ed12c12585ff004245be/$FILE/Pobuda%20Sodnega%20sveta.pdf) (1 March 2021).

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- (6) Council of Europe, GRECO, Fourth Evaluation Round, Corruption prevention in respect of members of parliament, judges and prosecutors, Second Compliance Report, Slovenia, adopted in Strasbourg on 23 March 2018, published on 5 July 2018; paragraphs 22-26; also available at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16808c1a9c> (1 March 2021)

Media pluralism and freedom of expression

Regarding freedom of expression, the Ombudsman has kept a focus on the issue of hate speech in the Republic of Slovenia. The Center for Human Rights (an organizational unit of the Ombudsman) has to a large extent concluded its analysis of the prosecution of a criminal offense under the first paragraph of Article 297 (Public incitement to hatred, violence, and intolerance) of the Criminal Code of the Republic of Slovenia, which is going to be the first analysis giving an inside look to the Public Prosecutors' as well as, to a certain extent, to the courts' practice over the period from 2008 to 2018.

The situation in the field of freedom of expression (and media freedom) remains strongly linked to current social developments – both numerically and substantively – as well as to the epidemic situation. The Ombudsman draws attention on several occasions to the need for the ethics of the public world (1). Online harassment of and threats against journalist remains an issue of concern. The Ombudsman has for years recommended (2) that the Ministry of Culture, within the scope of its competences, make every effort to determine, with regard to the implementation of the norm on the prevention of the spread of hate speech in the media (Article 8 of the Media Act):

- protection of public interest (inspections, minor offences control),
- remedial actions (such as immediate removal of illegal content)
- sanctions for the media allowing hate speech.

Unsurprisingly, public debate on the needed reform of (a set of) media legislation is highly politicized, and therefore status quo remains for years.

The Ministry's proposal of amendments of three media-related laws, introduced in July 2021, was largely criticised as it was subject to a very short public debate, a lack of coalition consensus and was based on questionable principles: the proposals received 193 comments. Consequently, the amendments of the legislation were removed from further proceedings. (3)

The Ombudsman follows several debates on the issue of a free and pluralistic media environment in Slovenia. Politicians are often in conflict with the media or journalists.

References

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- (2) See 2020 ENNHRI Rule of Law Report, Slovenia and Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 13(2018) and p. 107, available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf (1 March 2021).
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Corruption

The responsible independent institution for combating corruption in Slovenia is the Commission for the Prevention of Corruption (1), not the Ombudsman.

The Ombudsman, however, notes the adoption of relatively comprehensive amendments to the Integrity and Prevention of Corruption Act in November 2020 (2), which brought several long-

expected changes (3). The Ombudsman also notes that Slovenia reached 35th place in the Transparency International Corruption Perception Index (CPI 2020) with a score of 60, which is the same score as in 2019. This means that Slovenia has not made progress on the Corruption Perceptions Index since 2012 and is below the EU average (average score of the Member States' Index is 64) and the OECD average (average score of the Member States' Index is 67) (4). The year 2020 was marked with several claims of corruption in relation to providing protective and medical equipment to prevent and limit COVID-19 infections – the procedures are ongoing.

No progress has been made so far regarding the implementation of the 2019 EU Whistleblowers Protection Directive (5). The draft of the envisaged specific law on the protection of whistleblowers in Slovenia has not yet been made available to the public nor to the Ombudsman.

References

- (1) Commission for the Prevention of the Corruption of the Republic of Slovenia, see <https://www.kpk-rs.si/en/> (1 March 2020).
- (2) Official Gazette of the Republic of Slovenia, No. 158/20 of 2 November 2020.
- (3) For some most important changes, see <https://www.kpk-rs.si/2020/11/17/od-danes-veljajo-spremembe-zakona-o-integriteti-in-preprecevanju-korupcije/> (1 March 2020).
- (4) <https://www.transparency.si/8-novice/471-cpi-2020-slovenija-brez-napredka-ze-od-leta-2012> (1 March 2020).
- (5) Official Journal of the European Union, L 305/17, 26 November 2019.

Impact of measures taken in response to COVID-19 on the national rule of law environment

The Ombudsman has been closely monitoring the COVID-19 situation in the Republic of Slovenia and internationally and the measures adopted by state authorities to contain the epidemic and protect the most vulnerable groups of citizens. In these incredibly challenging times, decision-makers must operate the delicate balance between societal interests and individual rights, freedoms or interests.

The most significant impacts of the COVID-19 outbreak and the measures taken to address it for the rule of law and human rights protection rely on the manner in which the authorities exercise their powers to tackle the epidemic. The awareness that the measures are interfering with human rights and fundamental freedoms and should therefore meet the legitimacy test of necessity, proportionality, non-discrimination, professional justification, legality and time-limitation, sometimes seems questionable. In Slovenia, no state of emergency has been proclaimed, and the Government should, in theory, have no extended powers.

In general, a vast majority of governmental decrees claim their legal basis as Article 39 of the Communicable Diseases Act (1), which gives a general authority to the Government to order certain additional measures, when those provided for in this Act cannot prevent spreading certain infectious diseases. However, the governmental decrees include several measures interfering with human rights and freedoms (2) *inter alia*: the obligation to wear face-masks in public, limitations of movement on municipalities and/or statistical regions (while there are no political regions determined in Slovenia), curfew between 9 p.m. and 6 a.m. (currently enforced since 20 October 2020), closure or limitations of operation of services (shops, hairdressers etc.), the closing of schools and schooling from home, obligation to disinfect apartment buildings, limitations to assembling in public space, closure of ski slopes, closure of gyms, conditions to cross a state border, restrictions on health services, an obligation of testing for COVID-19. Since March 2020, hundreds of such decrees, amendments or ministers' decisions have been adopted (3).

These measures had very limited Parliamentary or any other democratic oversight and were not formally explained. They are also not subjected to fast judicial review. Even when the measures are based on the views of the Governmental expert advisory group on COVID-19, related scientific analysis is, in general, not publicly accessible. Furthermore, many measures might change on a daily basis or are prolonged on a weekly basis, which makes the legal framework applicable unpredictable and difficult to follow. Besides, the existing Communicable Diseases Act has proven to be outdated and cumbersome to use in this situation. For this reason, the Ministry of Health introduced a draft of a new law in August 2020 (4), to which the Ombudsman has given several comments and views on identified shortcomings regarding its implementation.

If the above-mentioned approach and powers of the Government might somehow be tolerated due to the epidemic and specific COVID-19 situation, if adopted in good faith and limited to necessary COVID-19 measures, they should be strictly limited to counter epidemic/pandemic and not become new normality and generally applicable.

A long-term implication of the COVID-19 outbreak also concerns the manner in which the laws are adopted in Parliament. The second set of measures to address the COVID-19 situation have

been adopted by the National Assembly in the form of so-called “omnibus laws”, which means that one act changes several other sectoral acts. Such an approach had been rarely used before the health crises for reasons of legal certainty. As of 1 March 2021, eight packages of such laws were adopted. These acts predominantly address COVID related matters such as economic situation, social benefits, limit functioning/ access to courts, schooling from home etc. (5). However, some acts also address issues, which have no direct connection with the COVID-19 situation, like the provisions which limit the participation of environmental civil society organizations in decision-making (6). In addition, deadlines for a public debate and comments are often extremely short. More attention should be paid to democratic participation, which could also increase the trust of the public in the adopted measures.

Another issue regards the access of individuals to effective legal remedies regarding various COVID-19 measures and their access to the courts. Even though there are dozens of cases related to the COVID-19 situation pending before the Constitutional Court, it has rarely suspended the implementation of concerned regulations (7) and so far adopted only two final decisions. The first decision (U-I-83/20 of 27. 8. 2020) assesses the constitutionality of two government decrees restricting movement to the municipality of residence (8). The Court found that the Government pursued a constitutionally permissible goal, i.e., containing and controlling the spread of the infectious disease COVID-19 and thus protecting the health and lives of people at risk. (9) The second decision (U-I-445/20 of 3 December 2020) (10) regards the non-publication of governmental decrees and a decision of the Minister of Education regarding schooling from home. The Constitutional Court ruled that three decrees of the Government and a decision of the Minister of Education extending the period of distance education, published only on the webpage of the Ministry and not in the Official Gazette of the Republic of Slovenia, were invalid. The Court has given the government three days to take action, which it did; otherwise, children would return to school. This decision might also have consequences regarding the validity of other decrees enforced in a similar way. The question of whether the citizens could claim compensation could also be raised.

As to the regular courts, in one case, the Administrative Court found a poorly justified quarantine decision to have no effect (11). In cases of corona-measures related misdemeanour proceedings (including regarding disproportionately high fines for misdemeanours), individuals might undertake regular complaint procedures (although lengthy and expensive). In other cases of challenging alleged human rights violations by corona-measures, in practice the only viable option was to bring the case before the Constitutional Court. The right to an effective remedy is protected by Article 13 of the European Convention on Human Rights and should as such be meaningful and also ensured during the epidemic.

Regarding the rule of law, a publicly very exposed opinion of the Ombudsman stated that a failure to wear a mask in an enclosed public space could not be penalised under the legislation at the time. The Ombudsman noted that the adoption of the decree on the mandatory use of face masks in enclosed public spaces had been based on an article of The Infectious Diseases Act, which was only a general provision and too weak of a legal basis. The Ombudsman was, therefore, of the opinion that an individual who did not wear a facemask in an enclosed public space could not be fined for committing an offence (13).

There have also been several occasions where the Ombudsman called upon the authorities to respect non-discrimination principles and the rights of elderly persons living in institutions. The Center for Human Rights also undertook research on domestic violence during the epidemic and the availability of counselling services and accessibility of crisis centres and shelters for women victims of violence; and distant schooling of Roma children. The Center for Human Rights also undertook a public campaign on children rights and the possibility for children to submit a complaint to the Ombudsman, under the slogan "If you See Injustice, Use Justice!" (14)

On 10 November, the Ombudsman also published a Report on the Placement of Detainees at the Postojna Aliens Center. Given the current epidemiological situation, the Ombudsman proposed inter alia that the competent authorities and epidemiological experts prepare the appropriate organisation of the detention regime at the Aliens Centre. The Ombudsman also called on the Ministry of the Interior to stop the use of service dogs for Center activities (e.g., during mealtimes) involving contact with the detainees (15).

References

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- (2) See <https://www.uradni-list.si/glasilo-uradni-list-rs> (2. 3. 2020).
- (3) Ibidem. There have been 204 issues of the Official Gazette published in 2020 and by 1 March 2021, already 29 issues (while the average per year is usually between 80 and 90 issues).
- (4) <https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=11571> (2 March 2021).
- (5) <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljjanje-posledic-epidemije/> (2 March 2020).

- (6) See: Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic, Official Gazette of the Republic of Slovenia, No. 80/2020. The Constitutional Court suspended the implementation of relevant provisions of Article 2 of the said law until its final decision (case U-I-184/20, Official Gazette of the Republic of Slovenia, No. 101/2020).
- (7) Ibidem. See also: https://www.us-rs.si/neresene-zadeve/?year_nrz
- (8) Namely, the Ordinance on the Temporary General Prohibition of Movement and Gathering of People in Public Places and Areas in the Republic of Slovenia and the Prohibition of Movement Outside Municipalities and the Ordinance on the temporary general prohibition of movement and gathering of people in public places, areas and towns in the Republic of Slovenia and the prohibition of movement outside municipalities.
- (9) See <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-83-20-z-dne-27-8-2020/> (2 March 2021).
- (10) Official gazette of the Republic of Slovenia, No 179/2020 of 3 December 2020, also available at <https://www.us-rs.si/odlocitev/?id=115421> (2 March 2021).
- (11) II U 261/2020-18 of 2 September 2020, also available at http://www.sodisce.si/mma_bin2.php?nid=2020090910514762&static_id=2020090910360488.
- (12) See <https://www.varuh-rs.si/en/news/news/ombudsman-meets-with-directors-of-rtv-sta-and-ukom-on-the-accessibility-of-information-for-vulnerab/> (2 March 2021).
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- (14) See <https://www.varuh-rs.si/za-otroke/> (2 March 2021).
- (15) See <https://www.varuh-rs.si/en/news/news/the-ombudsmans-report-on-the-placement-of-detainees-at-the-postojna-aliens-centre/> (2 March 2021).

Most important challenges due to COVID-19 for the NHRI's functioning

The Ombudsman continued with its activities, promoting a human-rights based approach to the measures taken with regard to the COVID-19 epidemic. The most difficult challenges the Ombudsman had to address have been related to a proper, equitable and legitimate approach to

the COVID-19 epidemic and measures that needed to be adopted. A balance of values such as the protection of the right to life, the right to health, as well as public health on one side and other individual rights and fundamental freedoms on the other side, has not been an easy challenge. For the Ombudsman, an important dilemma was to identify when to respond publicly in a critical way and when to use other more discreet means (dialogue, informal advice). The Ombudsman has both been criticized for being not active enough in protecting human rights and for being too active, therefore presumably threatening the efficiency of the adopted life-saving measures. The Ombudsman also started to promote respect for human rights, fundamental freedoms, non-discrimination, respect for diversity and the rule of law in a post-covid world (1).

The environment in which the Ombudsman operates has changed due to the COVID-19 situation and related limitations. In order to prevent the spread of infections and to act responsibly, the Institution has largely (albeit not fully) suspended physical contact in its operations. It has therefore stopped receiving complainants and carrying out fieldwork and is instead available via email, regular mail, toll-free telephone and social media. In 2020 the Ombudsman noted a considerable increase in the number of complaints (from 4.600 cases in 2019 to 6.852 cases in 2020). During 2020 the Ombudsman received over 1000 individual complaints regarding the COVID-19 measures. While the Ombudsman's workload during the COVID-19 outbreak has considerably increased, the Ombudsman still managed to process all complaints, finding 150 different violations of human rights or fundamental freedoms related to the coronavirus epidemic (most of the violations (57) were related to equality before the law and the prohibition of discrimination). The elimination of individual violations or irregularities often had an immediate effect on the initiator as well as on many other individuals, families or groups. The Ombudsman Peter Svetina delivered several public statements and press interviews as well as brought several COVID-19 related issues directly to the attention of the Government and other relevant authorities. He has promoted the human rights-based approach to tackle the epidemic.

Despite the COVID-19 situation, the National Prevention Mechanism (NPM), which operates as an organizational unit of the Ombudsman, visited 51 places of deprivation of liberty and performed two monitoring of the return of aliens (53 in total). The NPM visited 18 police stations, 10 social welfare institutions (homes for the elderly), 7 different educational institutions, 5 prisons, 5 special educational institutions, 3 psychiatric hospitals, detention facilities in the military police, a youth crisis centre, and the care work centres. All visits (except for two monitoring of foreigner returns due to the very nature of these activities) were carried out without prior notice.

Since the beginning of the epidemic, the Ombudsman has addressed more than 40 opinions to the Government or directly to the Prime Minister, and many more to Ministers and Ministries to raise human rights concerns. The Ombudsman has also held several meetings with the Prime

Minister, members of the Government, non-governmental organizations and other stakeholders to address current issues. For example, in December 2020, the Ombudsman met with the Director-General of Public Radiotelevision Slovenia (RTV SLO), Director of the Slovenian Press Agency (STA) and Director of the Government Communication Office of the Republic of Slovenia (UKOM) to discuss the importance of accessibility of information for people with disabilities and vulnerable groups (12).

The Ombudsman brought several human rights concerns to the attention of the authorities, made public statements and calls as well as promotional activities. Raising awareness on the importance of respect for human rights and the rule of law is of crucial importance also in light of the most probable economic and political crises, which will surely follow the present health crisis. Therefore, activities on the promotion of human rights will be a priority in Ombudsman's future endeavours.

Regarding a general approach to the COVID outbreak Slovenia did not declare a state of emergency, as permitted within the conditions set by Article 15 of the European Convention on Human Rights (the Convention) and Article 4 of the International Covenant on Civil and Political Rights, nor did a vast majority of European States. Under the Convention, interference with several rights might be subject only to such limitations as are prescribed by law and are necessary in a democratic society, *inter alia* in the interests of public health (i.e., Articles 8/2, 9/2, 10/2, 11/2). The appropriateness of the increased executive powers, or at least of increased Governmental activity in adopting and amending the governmental decrees, could also be questioned from the separation of powers viewpoint. While no temporary suspension and restriction of rights were invoked under Article 16 of the Constitution, Article 15 of the Constitution stipulates that the manner in which human rights and fundamental freedoms are exercised may be regulated (only) by law whenever the Constitution so provides or where this is necessary due to the particular nature of an individual right or freedom. It could be questioned whether the present interference in these rights and the manner in which the measures are enforced are fully in accordance with the Convention. Yet it is hard to imagine any other exceptional circumstances or public emergency but war, which would better justify invoking Article 15 of the Convention as clearly the life of the nation is threatened in the present situation.

Article 15 (derogation in time of emergency) of the Convention allows governments, in exceptional circumstances, to derogate, in a temporary, limited and supervised manner, from their obligation to secure certain rights and freedoms under the Convention, to the extent strictly required by the exigencies of the situation (2). The use of Article 15 is subjected to procedural and substantive conditions. While it is hard to imagine that substantial conditions would not be met in the present situation, the procedural conditions would include a requirement to keep the Secretary General of the Council of Europe fully informed.

It is a rule of law question, rarely addressed, whether the adopted COVID-19 measures, which interfere with the exercise of several human rights and fundamental freedoms to protect other rights and public health, are *de facto* temporal derogations of several rights. However, if Article 15 on derogation in time of emergency is not invoked, it seems that States also avoid the international reporting obligations and any other procedures, which might be applicable in such a situation.

Quick adoption of so-called corona governmental decrees, laws and their quick and sometimes unclear amendments further raised questions related to the lack of scrutiny or consultation with relevant stakeholders. The Ombudsman, therefore, often raised its voice – sometimes successfully and others not – on behalf of various vulnerable groups, most importantly affected by these measures (3).

References

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- (3) See for example <https://www.varuh-rs.si/sporocila-za-javnost/novica/vlada-ni-sprejela-predlogov-varuha-o-zasciti-otrok-s-posebnimi-potrebami-v-izrednih-primerih/> (1. 3. 2021); <https://www.varuh-rs.si/sporocila-za-javnost/novica/pregled-aktivnosti-varuha-pri-zagotavljanju-clovekovih-pravic-invalidov-oktober-december-2020/> (1 March 2021).

