

## Slovenia

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### *Human Rights Ombudsman of the Republic of Slovenia*

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Slovenian NHRI was re-accredited with B status in March 2010. At that time, the SCA recommended the NHRI to advocate for legislative changes to grant it with strong promotional functions. The SCA also encouraged the NHRI to engage with international and regional human rights bodies, and to advocate for sufficient and adequate funding. Since then, the Slovenian NHRI took concrete steps to follow-up with the SCA recommendations. It was scheduled to be re-accredited in March 2020, but the SCA session was postponed due to the COVID-19 outbreak.

### Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The **number of the institution's employees** increased from 40 at the end of 2017 to 54 at the beginning of 2020 in order to implement a broader mandate of the Human Rights Ombudsman of the Republic of Slovenia (herein after: the Ombudsman) (1) and the **financial resources** were strengthened for the same reason and reach 3.150,000 EUR in 2020 (2), which is approximately 30% more than before the adoption of the amendments in 2017.

However, the Ministry of Finance usually sets a specific date in the year after which direct budget users, including the Ombudsman, **must obtain prior consent** from the Ministry of Finance for all procurement of goods and services, even though the commitments are in accordance with the adopted budget (this is also the case in current COVID-19 budget situation). This undermines the full independence of the Ombudsman, brings uncertainty into its operations and hinders implementation of activities in accordance with the adopted budget. Also, if the Government fails to reach an agreement with the Ombudsman, then the draft budget which is submitted for adoption to the Parliament is the budget proposed by the Government, while the Ombudsman's budget proposal is included only in the explanation of it.

Further, the **salaries** of the high officials of the Ombudsman have not been increased since the last accreditation review in 2010, even though the Salary System in the Public Sector Act already in 2007 classified the functions of the Ombudsman, Deputy Ombudsmen and Secretary-General to lower salary categories than provided by the Human Rights Ombudsman Act.

### Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

There have been some important developments in the regulatory framework since last SCA review in 2010.

In September 2017, the Parliament adopted amendments to the Human Rights Ombudsman Act, which entered into force on 14 October 2017 (3). The main objective of the amendments was to provide an adequate legal basis in accordance with the Paris Principles, i.e. to **strengthen the mandate** of the Ombudsman with the aim to strengthen its general mandate, which includes the promotion and the protection of human rights, human rights education, research and analyses as well as to strengthen international cooperation and reporting. For this reason the Centre for Human Rights, a special internal organisational unit within the Ombudsman, and the Human Rights Ombudsman Council, an advisory body, were established by the Act. The aim of the Act was also to strengthen the plurality of the Ombudsman through the mentioned Council. The Ombudsman also promotes the signature, ratification or accession to human rights treaties to which Slovenia is not yet a party.

The new units of Ombudsman established by law have become operational. Human Rights Ombudsman Council was constituted in June 2018 and held several thematic meetings since then (4), while the Centre for Human Rights became operational in 2019 (5).

Regarding the **procedure for the selection of the Ombudsman** the President of the Republic in practice prescribed a new requirement (comparable to the selection of the Constitutional Court judges) that a candidate for the Ombudsman has a public presentation at the Office of the President before (s)he is proposed to the Parliament for appointment (with a two-third majority of all MPs).

## References

- (1) <http://www.varuh-rs.si/o-instituciji/zaposleni/informator/> (28. 4. 2020)
- (2) [https://www.gov.si/assets/ministrstva/MF/Proracun-direktorat/Drzavni-proracun/Sprejeti-proracun/Sprejeti-2020/lzpsi/SP2020\\_POS.pdf](https://www.gov.si/assets/ministrstva/MF/Proracun-direktorat/Drzavni-proracun/Sprejeti-proracun/Sprejeti-2020/lzpsi/SP2020_POS.pdf) (28. 4. 2020), p. 1.
- (3) Official Gazette of the Republic of Slovenia, No. 54/17.
- (4) <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/svet-varuha-za-clovekove-pravice/>(28. 4. 2020)
- (5) <http://www.varuh-rs.si/o-instituciji/zaposleni/center-za-clovekove-pravice/>(28. 4. 2020)

## Human rights defenders and civil society space

In the field of **freedom of association and freedom of assembly** (on COVID-19 restrictions see the relevant chapter below) the legislative framework, measures and practices are in general sufficient. The Ombudsman proposed, however, a legislative amendment, aiming to determine the body for management and decision-making in minor-offence proceedings in a case of violations of the legal provisions that the work of the disability organisations is public.

Regarding **freedom of expression**, the Ombudsman has repeatedly condemned the obvious expressions of the constitutionally forbidden (Article 63) incitement to inequality, intolerance and to violence, even though they could not be attributed to any state body, local self-government body or holder of public authority. In 2019 there was an important development in the criminal **case-law regarding hate speech**: on 4 July 2019, the Supreme Court of the Republic of Slovenia issued a judgment in the case of ref. no. I Ips 65803/2012 for a criminal offense under the first paragraph of Article 297 of the Criminal Code – Public incitement to hatred, violence, and intolerance (2). The significance of this judgment of the highest court in the country is in the interpretation of the legal requirement that the conduct has to be either carried out in a manner likely to disturb public order or is threatening, abusive or insulting. According to prior lower court judgment's interpretation, the conduct is only punishable when the public order is "concretely endangered" (also when the conduct is threatening, abusive, or insulting). The Supreme Court stated that the two conditions are set alternatively and not cumulatively and that in case of likelihood of public order disturbance, it is enough that endangerment is only abstract and not concrete.

It had been the Ombudsman's persistent recommendation that the National Assembly adopts a **parliamentary code of ethics** and creates tribunals that would respond to individual cases of hate speech in politics worthy of public condemnation (3). The Code of Ethics for Members of the Parliament was adopted on 12 June 2020 (4)

### *References*

- (1) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, recommendation no. 16(2018), available in Slovenian language at [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2018.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf) (28. 4. 2020).
- (2) Judgment ref. no. I Ips 65803/2012 of the Supreme Court of the Republic of Slovenia, adopted on 4 July 2019, is available in Slovenian language at <http://www.sodisce.si/vsrs/odlocitve/2015081111431656/>
- (3) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, pp. 103-104, available at [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2018\\_ENG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf).

## Checks and balances

Over the years, the Ombudsman has also filed 32 requests for a **review of the constitutionality or legality of a regulation or a general act** issued to exercise public powers (1).

The Ombudsman evidences also some occasions of practice of a **lack of consultations**. For example, in November 2019 the Government and its Office for the Protection of Classified Information prepared a proposal of the Act Amending the Classified Information Act (2). The proposal abolished the direct access of Deputy-Ombudsmen to the classified information, while no prior consultations with the Ombudsman were made. The Ombudsman later disagreed with the proposed text; however, the Act was adopted by the Parliament in January 2020 regardless of the Ombudsman's written opposition (3).

The Ombudsman points out that the issues of the **adoption and the use of the Ombudsman's budget** (see the answer on independence and effectiveness of the NHRI) also erode to some extent a separation of powers: the assessment of the Ombudsman budget proposal should be instead by the Ministry of Finance done by the Parliament. Also, while the requirement, if needed, to obtain prior consent for all procurement of goods and services, even though the commitments are in accordance with the adopted

budget after the specific date in the year, should be made by some other independent authority (i.e. the Court of Auditors) instead of the Minister of Finance. Such a requirement was also enforced during the COVID-19 epidemic.

### *References*

- (1) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 12, available at [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2018\\_ENG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf) (28. 4. 2020).
- (2) See: [https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=C1257A70003EE6A1C12584FE00613B3B&db=kon\\_zak&mandat=VIII&tip=doc](https://www.dz-rs.si/wps/portal/Home/deloDZ/zakonodaja/izbranZakonAkt?uid=C1257A70003EE6A1C12584FE00613B3B&db=kon_zak&mandat=VIII&tip=doc) (28. 4. 2020).
- (3) Official Gazette of the Republic of Slovenia, No. 8/20

## Functioning of justice systems

The Human Rights Ombudsman Act stipulates explicitly that the Ombudsman may not consider cases, which are subject to judicial or other legal proceedings unless an undue delay in the proceedings or evident abuse of authority is established (1). With regard to the judicial branch of power, operations of the Ombudsman may only extend to the point where they do not encroach on the independence of judges in their judicial work.

Although lengthy court proceedings are not considered as a systematic problem anymore, **slow decision making by the judiciary in some specific cases** is still reported as an issue. In its Annual Report for 2018 the Ombudsman noted a position taken by the Judicial Council that the productivity of courts is decreasing, particularly in (complex) cases in which the time expected for them to be resolved is longer. Creditors highlight lengthy bankruptcy proceedings and related procedures, although the law provides that courts and other state authorities must as a priority address cases in which a debtor in bankruptcy is involved as a party or whose outcome affects the course of bankruptcy proceedings. Particularly problematic is the lengthiness of certain judicial proceedings conducted to compensate the damage suffered by complainants in pre-trial proceedings due to slow judicial decision-making and in which parties should use legal remedies again to expedite judicial proceedings referred to in the Protection of Right to Trial without Undue Delay Act (2).

**Free legal aid** and the condition for its allocation are regulated by the Legal Aid Act, which entered into force in 2001. Such aid, whose purpose is to realise the right to judicial

protection, is provided by district and labour courts, and the social and administrative court. Gaps in the field of free legal aid are filled by certain Slovenian municipalities and non-governmental organisations (e.g. the Botrstvo project – free legal aid managed by the Association of Friends of Youth Ljubljana Most, which is carried out in several towns), and free legal aid is also provided by certain attorneys according to the pro bono principle (3).

The Ombudsman regularly monitors the **execution of the judgments of the Constitutional Court and the European Court for Human Rights** in Slovenia. In its Annual Report for 2018 (4) and during 2019 UPR review (5) the Ombudsman highlighted the unacceptable fact that the Government of the Republic of Slovenia and the legislator do not respond promptly to the decisions of the Constitutional Court of the Republic of Slovenia and fail to draft suitable solutions before the expiry of the deadline for elimination of unconstitutionality. The Ombudsman noted with concern that 13 decisions of this court remain unimplemented (6). The Parliament as a legislator is responsible for eliminating the unconstitutionality in the legislation (with one exception, where the municipality should implement the decision); yet, it is the duty of the Government as the constitutionally appointed proposer of acts to draft legislative proposals on time and submit them to the legislative procedure. At the same time, however, the Ombudsman has welcomed the positive developments regarding the execution of judgments of the European Court of Human Rights by Slovenia, as the number of non-executed judgments has been reduced from 317 in 2016 to 13 at the end of 2019 (7).

## References

- (1) Official Gazette of the Republic of Slovenia, No. 69/17, Article 24.
- (2) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 182, available at [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2018\\_ENG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf) (28. 4. 2020).
- (3) Ibidem, page 184.
- (4) Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, page 12, available at [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2018\\_ENG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf) (28. 4. 2020).
- (5) Information paper UPR Pre-session for the 3rd cycle of the Universal Periodic Review of Slovenia 11 October 2019, available at: [https://www.upr-info.org/sites/default/files/document/slovenia/session\\_34\\_-\\_november\\_2019/1.\\_human\\_rights\\_ombudsman\\_of\\_the\\_republic\\_of\\_slovenia\\_nhri\\_additional\\_information.pdf](https://www.upr-info.org/sites/default/files/document/slovenia/session_34_-_november_2019/1._human_rights_ombudsman_of_the_republic_of_slovenia_nhri_additional_information.pdf) (28. 4. 2020).
- (6) The Constitution Court of the Republic of Slovenia The Report on the Work in 2019, pp. 16-18, available in Slovenian language at: [https://www.us-rs.si/media/usrs\\_letnoporocilo\\_2019.pdf](https://www.us-rs.si/media/usrs_letnoporocilo_2019.pdf) (28. 4. 2020).
- (7) See: <https://www.gov.si/podrocja/pravna-drzava-in-pravosodje/izvrsevanje-priporocil-varuha-in-sodb-evropskega-sodisca-za-clovekove-pravice/> (28. 4. 2020).

## Media pluralism

The situation in the field of freedom of expression (and media freedom) remains strongly linked to current social developments - both numerically and substantively. Often there are more or less direct expectations of the public that the Ombudsman should react to publicly expressed thoughts or statements, especially of politically exposed persons.

The Ombudsman also follows in general several debates on the issue of a **free and pluralistic media environment** in Slovenia. It needs to be noted at the outset that there is a diverse media space in Slovenia with public radio and television (RTVSLO) as well as several private radio and televisions, around 10 different daily newspapers, numerous weekly and monthly journals as well as online media and platforms. In Slovenia, in general the legislation and other measures ensure the plurality of the media space (1). However, there have been also some alerts, including at the Council of Europe Platform to promote the **protection and safety of journalists** regarding the situation in Slovenia (2), which includes claimed attacks on RTVSLO, the political interference in editorial autonomy of public broadcasters and threats against some Slovenian journalists, including police **pressure to reveal journalistic sources**. The Government (authorities) respond regularly to

such claims (alerts) (3). A dialogue on media freedom in Slovenia remains important as media freedom is at the heart of democracy.

The Ombudsman recommended (4) 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 the **hate speech in the media** (Article 8 of the Media Act): 1. a form of protection of public interest (inspections, minor offences control), 2. remedial actions (such as immediate removal of illegal content) and 3. sanctions for the media, which allow hate speech. This recommendation remains unrealized. At the end of 2018, the Ministry of Culture prepared a draft law on amendments to the Media Act, which included, inter alia, an appropriate amendment to the provision prohibiting the promotion of inequality and intolerance in the media (Article 8 of the Media Act) in accordance with the relevant the Ombudsman's recommendations, but this amendment has not yet been adopted.

### *References*

- (1) <https://www.gov.si/podrocja/kultura/mediji/> (28. 4. 2020)
- (2) <https://www.coe.int/en/web/media-freedom/slovenia> (28. 4. 2020).
- (3) Ibidem.
- (4) 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](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf) (28. 4. 2020)

## **Corruption**

In Slovenia, the responsible independent institution for combating corruption is the Commission for the Prevention of Corruption (1).

However, the Ombudsman follows the situation, which could have an impact on the field of human rights. In this regard, Ombudsman supports full implementation of the EU Directive 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (2), as well as in general the adoption of a law on the **protection of whistle-blowers** in Slovenia.

## References

- (1) Commission for the Prevention of the Corruption of the Republic of Slovenia, see: <https://www.kpk-rs.si/en/> (28. 4. 2020)
- (2) Official Journal of the European Union, L 305/17, 26.11.2019.

## In-focus section on COVID-19 measures

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

It is too early to assess the most significant impacts of the measures taken on the rule of law and the proportionality of these measures to the threats posed. There are however, some trends, which may be acceptable and proportional in the epidemic situation; however, the practices should not be further continued once this situation ends.

The Government of the Republic of Slovenia proclaimed epidemic on 12 March 2020 (1), while state of emergency has not been proclaimed in Slovenia. Since then several administrative (emergency) measures and intervention laws were adopted. So far there have been adopted more than 80 ministerial orders, governmental ordinances or decrees, their amendments and other general administrative acts adopted by various state authorities, which were published in the Official Gazettes of the Republic of Slovenia. These measures, whose impact on fundamental rights is important, were not based on special powers, which would enable the executive to take a large number of measures, but were rather and mostly based on different provisions the Communicable Diseases Act, or of the newly adopted intervention legislation or some other acts. So far, also, seven intervention (emergency) acts were adopted (through an expedited procedure) and entered into force (2), their amendments are already forthcoming. Most of the above-mentioned administrative measures were adopted and published on the same date, while entered into force on the next day (in practice within few hours). While such **accelerated procedures for enacting and modifying governmental orders and of general administrative acts** may be acceptable and proportional in this epidemic situation, such a practice should not continue after the end of pandemic situation. In this situation, it is of vital importance that the government has provided a prompt and effective information campaign aiming to inform the population on the adopted measures as broadly as possible. In such

circumstances the Ombudsman established an Ombudsman Informant on adopted measures, which is regularly updated and published on his website (3).

There has been an initiative for a review of legality and constitutionality of the Governmental Ordinance on the temporary general prohibition of movement and public gathering in public places and areas in the Republic of Slovenia, which prohibited the movement outside the municipality of permanent or temporary residence, with some exceptions (i.e. work, care and assistance to the relative). The Constitutional Court temporarily suspended a part of the decree and ordered that the measure should be time-limited, i.e. the government need to evaluate its proportionality at least on seven-day basis (4). However due to the improvement of the epidemic situation the Government issued a new ordinance, which lifted the mentioned prohibition of movement as of 30 April 2020 (5). Further, it has been reported by the Slovenian Press Agency that the Constitution Court confirmed they have received also over **50 different initiatives for a review of constitutionality of other COVID-19 governmental decrees and intervention laws** (6).

The Ombudsman has also urged that it is of crucial importance that the **information** on the COVID-19 measures is made available to everybody, including to persons with disabilities (including deaf and blind), to persons, which have no access to the Internet or television, to national minorities, aliens etc. Most of the measures taken so far are time limited. The Ombudsman urged on several occasions that all measures taken should respect human rights, be proportional to the threats posed and time limited. However, **some groups are more impacted** by the measures taken. The Ombudsman raised voice in this regard at various occasions, such as regarding the protection of children from families, which are in need of social assistance (including Roma children), especially because of distance learning (as schools are closed), and regarding the need to ensure equal rights to old people, especially those leaving in retirement homes (institutions), people with disabilities, persons deprived of liberty etc (7).

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

Regarding the service to citizens throughout the COVID-19 epidemic the Ombudsman was available to individuals by e-mail or toll-free telephone number. Individuals may have been able to obtain information related to the spread of the new coronavirus (COVID-19) or to be informed about their rights and measures taken. The experts have assisted citizens by directing or referring them to other competent institutions if needed or proceed to analyse problems in more detail and provide written answers. Since the proclamation of epidemic in Slovenia on 12 March 2020 there have been more than **300 initiatives (cases) per**

**month referred to the Ombudsman regarding the impact of COVID-19 measures** on human rights, fundamental freedoms and human dignity.

Regarding the National Protection Mechanism (NPM) function of the Ombudsman, the Ombudsman has been actively engaged with relevant authorities and institutions as well as receives information directly from **persons deprived of liberty** on the situation in institutions, despite the fact that the NPM did not perform the on-site visits during the epidemic. The NPM has been evaluating different measures and has given concrete recommendations.

The measures to prevent the spread of COVID-19 were changing on a daily basis; therefore they have raised many issues with regard to the freedom of movement, non-discrimination, the right to dignity, physical and mental well-being, equal access to health services and equal access to education, the rights of children to have contacts with both parents, etc.. Therefore, the Ombudsman also established a **special COVID-19 website** (8), which includes various information on the adopted measures and legislation, on the opinions of the international organisations (including ENNHRI and GANHRI) regarding the human rights dimension of COVID-19 response, views and opinions of the Ombudsman and other relevant information.

## References

- (1) Official Gazette of the Republic of Slovenia, No. 19/20 of 12 March 2020.
- (2) See: <http://www.varuh-rs.si/epidemija-COVID-19/pomembnejsa-zakonodaja/> (28. 4. 2020).
- (3) Ombudsman's Informant (Varuhov informator), see in Slovenian language: <http://www.varuh-rs.si/koronavirus-epidemija/varuhov-informator-o-sprejetih-ukrepih/?L=> (28. 4. 2020).
- (4) A Conclusion of the Constitutional Court, No. U-I-83/20-10 of 16 April 2020, Official Gazette of the Republic of Slovenia, No. 58/20 of 24 April 2020, available in Slovenian language at: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-0843/sklep-o-zadrzanju-izvrsevanja-7--clena-odloka-o-zacasni-splosni-prepovedi-gibanja-in-zbiranja-ljudi-na-javnih-mestih-in-povrsinah-v-republiki-sloveniji-ter-prepovedi-gibanja-izven-obcin-uradni-list-rs-st--3820-in-5120> (28. 4. 2020).
- (5) <https://www.gov.si/en/news/2020-04-29-14th-regular-session-of-the-republic-of-slovenia/> (7.5.2020)
- (6) Slovenian Press Agency (STA), available in Slovenian language at <https://www.sta.si/2754480/ustavno-sodisce-prejelo-vec-kot-50-pobud-za-oceno-ustavnosti-vladnih-aktov?q=ust,sod> (28. 4. 2020) and <https://www.iusinfo.si/medijsko-sredisce/dnevne-novice/262318> (28. 4. 2020).
- (7) Positions and Information of Ombudsman (Stališča in obvestila za javnost Varuha): available in Slovenian language at <http://www.varuh-rs.si/epidemija-COVID-19/staliska-in-obvestila-za-javnosti-varuha/>(28. 4. 2020)
- (8) <http://www.varuh-rs.si/epidemija-COVID-19/> (28. 4. 2020)

