

State of the Rule of Law in Europe in 2022

Reports from National Human Rights Institutions

Slovenia



Slovenia

The Human Rights Ombudsman of the Republic of Slovenia

Impact of 2021 rule of law reporting

Follow-up by State authorities

There was an intensive public debate focusing mainly on two aspects addressed in the European Commission's 2021 rule of law report on Slovenia. These concern a delay of the Government's nomination of two European Delegated Prosecutors to the European Public Prosecutors Office (EPPO) and the Government's withholding of state funding of Slovenian Press Agency (STA) for the performance of its public service function.

Between 13 and 15 October 2021 the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) organized an ad-hoc Fact-Finding Mission on the state of the rule of law to Slovenia, led by the Dutch MEP Sophie in 't Veld (1). The Slovenian Human Rights Ombudsman Mr. Peter Svetina responded to the invitation and met with the members of the European Parliament (2), who conducted interviews in Slovenia with the representatives of national authorities, independent institutions, civil society, various experts and the media to examine the situation regarding the rule of law, freedom of the media and the fight against corruption. The EP's Mission Report of 17 November 2021 (3) was critical on several aspects of their visit and findings.

Furthermore, on 16 December 2021 the European Parliament adopted a Resolution on fundamental rights and the rule of law in Slovenia, raising in particular the delayed nomination of EPPO prosecutors (4). In the resolution, MEP expresses, inter alia, deep concern "about the level of public debate, climate of hostility, distrust and deep polarization in Slovenia, which has eroded trust in public bodies and between them". On EPPO, the resolution welcomed, after a delay of six months, the appointment of the two Delegated Prosecutors from Slovenia to the EPPO College on 24 November 2021. The Parliament also called on the Government to resume state funding and to ensure regular payments to the STA in full accordance with national law, while guaranteeing the Agency's editorial independence.

References

- (1) <https://www.europarl.europa.eu/news/sl/press-room/20211011IPR14622/poslanci-evropskega-parlamenta-zakljucili-prvi-obisk>
- (2) <https://www.varuh-rs.si/en/news/news/the-ombudsman-met-representatives-of-the-ep-fact-finding-mission/>
- (3) See the report on: https://www.europarl.europa.eu/doceo/document/LIBE-CR-699255_EN.pdf
- (4) European Parliament resolution of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPO prosecutors (2021/2978(RSP)) , available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0512_EN.html

Impact on the Institution's work

The 2021 rule of law report has, in addition to informing the current rule of law debates in Slovenia, as explained above, influenced the work of our institution enhancing the engagement of the Ombudsman with European institutions (the Commission and European Parliament) on rule of law related topics (1).

References

- (1) See for example: <https://www.varuh-rs.si/en/news/news/the-ombudsman-met-representatives-of-the-ep-fact-finding-mission/> and <https://www.varuh-rs.si/sporocila-za-javnost/novica/varuh-svetina-v-bruslju-na-razpravi-o-svobodi-medijev-in-vladavini-prava-v-sloveniji/>

Independence and effectiveness of the NHRI

International accreditation status and SCA recommendations

The Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) was re-accredited with A-status in December 2020.

Among the recommendations (1), the SCA encouraged the Slovenian NHRI to advocate for the formalization and application of a selection and appointment process that includes requirements to broadly advertise vacancies, maximise the number of potential candidates from a wide range of societal group and educational qualifications, promote broad consultation and participation, and assess applicants based on pre-determined, objective and publicly available criteria. The Slovenian NHRI reported that, in practice, the call for

applications is made public and that there is consultation with representative of political parties.

The SCA encouraged the Slovenian NHRI to advocate for the funding necessary to effectively carry out the full breadth of its mandate. The SCA also encouraged the NHRI to advocate for appropriate modifications to applicable administrative procedures to ensure that its independence and financial autonomy is guaranteed. In this respect, it is worth mentioning that, on 10 December 2020, the Constitutional Court adopted the decision that certain provisions of the Public Finance Act, as much as they pertain to the National Council, Constitutional Court, Human Rights Ombudsman, and Court of Audit, are inconsistent with the Constitution (decision No. U-I-474/18 of 10 December 2020, Official Gazette of the Republic of Slovenia, no. 195/2020) (2). The Constitutional Court prescribed a deadline for its implementation, which expired on 23 December 2021. However, the Parliament has so far not adopted the needed amendments to the Public Finance Act nor has the Government proposed any changes to it. The mentioned Constitutional Court decision applies also to the Ombudsman, which is at the same time an A-Status National Human Rights Institution (NHRI).

Finally, while the SCA acknowledged that the Slovenian NHRI interprets its mandate broadly and carries out activities encouraging the state to ratify or accede to international human rights instruments, it encouraged the Ombudsman to advocate for legislative amendments to make this mandate explicit.

References

- (1) Global Alliance of National Human Rights Institutions (GANHRI), Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 7-18 December 2020, 2.5 Slovenia Human Rights Ombudsman of the Republic of Slovenia (the Ombudsman), pp. 22-24: <https://ganhri.org/wp-content/uploads/2021/01/SCA-Report-December-2020-24012021-En.pdf>
- (2) Official Gazette of the Republic of Slovenia, No, 196/2020 of 23 December 2020. See: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2020-01-3501/> and <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-474-18-z-dne-15-12-2020/>

Regulatory framework

The Ombudsman has a constitutional basis and the national regulatory framework applicable to the institution has not changed since the 2021 report.

The Ombudsman has the mandate to contribute to access to justice for individuals, including through complaints handling and awareness-raising. The Ombudsman can also,

if he deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms, initiate the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority before the Constitutional Court. The ombudsman can equally lodge constitutional complaints with the consent of the person whose human rights or fundamental freedoms he is protecting in the individual case.

The Ombudsman engaged in some strategic litigation initiatives in the field of the protection of migrants' rights and acted as *amicus curiae* in various court cases.

The Human Rights Ombudsman is of the view that the regulatory framework governing its functioning should be strengthened.

The Ombudsman made several recommendations to the Parliament and the Government in order to improve its functioning in compliance with the Paris Principles and Recommendations 2021/1 of the CM of the Council of Europe on NHRIs:

1. The Ombudsman in recommendation No. 1 (2020) of its 2020 Annual Report recommended to the Ministry of Justice and the Government of the Republic of Slovenia to prepare in collaboration with the Ombudsman, and the National Assembly to adopt the suitable legislative amendments, the purpose of which is to strengthen the position of the Ombudsman as the national institution for human rights with Status A according to the Paris Principles about the position and operation of national institutions for human rights (1993) in accordance with the recommendations of the Accreditation Committee (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for Slovenia from December 2020 (1).
2. The Ombudsman in recommendation No. 2 (2020) of its 2020 Annual Report recommended to the Ministry of Justice and the Government of the Republic of Slovenia that in collaboration with the Ombudsman they prepare and the National Assembly adopt appropriate legislative amendments that will reflect international standards, as are defined in the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) from 2019, which were adopted by the European Commission for Democracy through Law (the Venice Commission) of the Council of Europe, and in the Resolution (A/RES/75/186) on the role of the Ombudsman and the mediator in the promotion and protection of human rights from 16 December 2020 (2).
3. The Ombudsman also recommended in its recommendation No 8 (2020) to the National Assembly (and to the Government, which usually proposes the amendments of the acts to the Parliament) to implement the Constitutional Court

decision of 10 December 2020 on the unconstitutionality of Public Finance Act related to financing autonomy of the Ombudsman and three other independent state institutions within the given deadline (3).

However, the above mentioned recommendations have so far not been implemented by relevant authorities.

References

- (1) See: Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2020, EN, at page 51: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf
- (2) Ibidem, at page 54.
- (3) See Annual Report for 2020 (in Slovene), at page 75: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_pop.pdf

Enabling and safe space

In general, relevant state authorities have good awareness of the Ombudsman's NHRI mandate, independence and role.

However, some concerns have emerged in concrete cases or when dealing with particular topics. To address this issue, the heads of four independent institutions in the Republic of Slovenia – the Human Rights Ombudsman of the Republic of Slovenia, The Court of Auditors, Commission for the Prevention of Corruption and the Information Commissioner – issued a joint public statement in June 2021 in which they noted with great concern that their institutions had been subjected to political pressures, which were reflected in direct and often coordinated attacks through the media and social networks. The full substance of the statement is available on the websites of the four institutions. (1)

The Ombudsman has adequate access to information and to policy makers and is generally involved in all stages of legislation and policy making with human rights implications.

The addressees of the Ombudsman's proposals, opinions, criticisms or recommendations are legally obliged to provide a timely and reasoned reply under Article 7 of the Human Rights Ombudsman Act (hereinafter: the Act). According to Article 6 of the Act State authorities, local community authorities and holders of public authority (hereinafter: authorities) should provide all information within their competence, regardless of the level of confidentiality, to the Ombudsman at their request, and facilitate the implementation of

an investigation. Further Article 34 of the same Act provides that all state authorities shall be obliged to provide suitable assistance to the Ombudsman in the implementation of any investigation and provide suitable help if so requested. Article 35 and 36 are also relevant in this regard. The latter provides that all officials and public employees referred to in Article 6 of this Act shall respond to the Ombudsman's request to participate in an investigation and to provide explanations. However, despite such legal obligations, there are still delays by the authorities in responding to Ombudsman's investigations and recommendations. Such attitude has been strongly criticized on several occasions by the Ombudsman when presenting his Annual reports in the Parliament.

According to Article 46 of the Act, at the Ombudsman's request, the President of the National Assembly, the Prime Minister or ministers may also be obliged to meet with the Ombudsman within 48 hours. However, the Ombudsman has used such a possibility only in exceptional circumstances.

Article 59 of the Act further provides that the failure by the responsible official to submit the Ombudsman the materials requested pursuant to Articles 6 and 36 recalled above constitutes a minor offence which may be the object of a sanction. The Ombudsman itself may decide in such cases whether the conduct constitutes a minor offence and impose fines. However, in practice, the Ombudsman has never used these powers so far.

The recalled legal obligations to respond to the recommendations and requests of the Ombudsman, even when respected, do not however necessarily ensure the actual implementation of the Ombudsman's recommendations. The Ombudsman included in his Annual Report for 2020 128 new recommendations (2) and highlighted in addition another 156 relevant past recommendations that remain either fully or partly unfulfilled. Since the Ombudsman's recommendations are not legally binding, the Ombudsman notes that a large number of recommendations still remain fully or partially non-implemented. It is worrying that 11 of Ombudsman's new recommendations and additional 14 from previous years have been simply rejected by the Government (or respective Ministries) due to disagreement. Ombudsman is also particularly concerned that as many as 8 out of 11 rejected recommendations relate to the rights of people with disabilities and other vulnerable groups. In addition to the mentioned recommendations, the Ombudsman, acting in the capacity of National Prevention Mechanism (NPM) made 329 recommendations to various institutions in 2020. The responses from the relevant institutions are generally good. However, the NPM expects a faster response to the given recommendations, as only half of them were implemented by the time the annual report was prepared.

As regards measures to protect and support the NHRI, heads of institution and staff against threats and harassment and any other forms of intimidation, such measures are in general to be considered sufficient. Nonetheless, an issue arose on the occasion of the re-appointment of the Deputy-Ombudsman, whose mandate expires on 29 March 2022: the Deputy-Ombudsman's reappointment was in fact rejected on 26 October 2021 due to the obstruction of the opposition, despite having full support by most of the parliamentary parties. The Ombudsman immediately reiterated her proposal as fully supporting the Deputy-Ombudsman's re-appointment in office. The Deputy-Ombudsman was eventually re-appointed in a second voting session in the National Assembly, on 16 December 2021.

References

- (1) See: <https://www.varuh-rs.si/sporocila-za-javnost/novica/skupna-izjava-za-javnost-stirih-samostojnih-in-neodvisnih-drzavnih-organov-republike-slovenije/>
- (2) For a compilation of the recommendations in Slovene see: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/LP20_-_povzetek_porocila.pdf

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to strengthen the independence and effectiveness of the Ombudsman are the following:

- To implement the Constitutional Court decision No. U-I-474/18 of 10 December 2020 on the unconstitutionality of Public Finance Act related to financing autonomy of the Ombudsman as soon as possible.
- To adopt legislative amendments in collaboration with the Ombudsman on the position and operation of the NHRI in accordance with the recommendations of the Accreditation Committee (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) for Slovenia from December 2020.
- To adopt legislative amendments that would reflect international standards, as are defined in the Principles on the Protection and Promotion of the Ombudsman Institution (the Venice Principles) from 2019, adopted by the Venice Commission of the Council of Europe, and in the Resolution (A/RES/75/186) on the role of the Ombudsman and the mediator in the promotion and protection of human rights from 16 December 2020.

Human rights defenders and civil society space

The Ombudsman noticed a regression in the environment for human rights defenders and civil society space, now considered worrying. In particular, during the COVID-19 epidemic, the Ombudsman found cases of laws, measures and practices that could negatively affect civic space and reduce human rights defender's activities, as also confirmed by the Constitutional Court. The Ombudsman has also continued to pay attention to restrictions on the freedom of assembly and the right to peaceful protest and the cases of alleged abuse of laws or of procedural laws, including strategic lawsuits against public participation (SLAPPs).

Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

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 also continues to pay attention to the measures restricting freedom of assembly and the right to peaceful protest.

On 17 June 2021 the Constitutional Court adopted the Decision No. U-I-50/21 in which it assessed the proportionality of multiple provisions of the ordinances issued by the Government during the COVID-19 epidemic in the parts which completely prohibited public protests between 27 February and 17 March and between 1 April and 18 April 2021, and then limited public protests to up to ten participants between 18 March and 31 March, as well as between 23 April and 14 May 2021. As regards both measures (the prohibition of public protests and limiting the number of participants to a maximum of ten persons), the Court established that due to their length and effects these measures severely interfered with the right of peaceful assembly. The Constitutional Court explained that the two measures were adopted in order to prevent the spread of a communicable disease, which is a constitutionally admissible objective for limiting the mentioned human right. In this respect, it stressed that when balancing the right to health and life, on the one hand, and the right of peaceful assembly and public meeting, on the other, the two rights are in opposition, and they both enjoy a high level of constitutional protection. The Constitutional Court then decided that the mentioned two measures were not necessary because in comparative law it exists a whole set of measures by which it is possible to prevent the spread of communicable diseases at public protests and which interfere to a lesser extent with the right of peaceful assembly and public meeting than the complete prohibition of public protests or the limitation thereof to a maximum of ten people. The Court also observed that, prior to the entry into force of the challenged measures, the

Government had not ascertained whether the objective of ensuring public health could be attained by such milder measures for limiting public protests. Therefore, the Court considered that, in the adoption of these measures, the Government had not taken into consideration the positive duty of the state to ensure to a reasonable degree, in view of the circumstances, the exercise of the right of peaceful assembly, as well as the duty to cooperate with organisers of public protests. Since the mentioned ordinances had in the meantime ceased to be in force, the Constitutional Court merely established that they were inconsistent with the Constitution in the part wherein they prohibited all public protests or limited them to a maximum of ten participants. (1)

References

- (1) Official Gazette RS, No. 60/2021 and Official Gazette RS, No. 119/2021:
<https://www.us-rs.si/decision/?lang=en&q=U-l-50%2F21&caseId=&df=&dt=&af=&at=&pri=1&vd=&vo=&vv=&vs=&ui=&va=&page=1&sort=&order=&id=116659>

Access to and involvement of civil society actors in law and policy making

As indicated in 2021 rule of law report, 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 affecting the length of procedures, 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 still under the review of the Constitutional Court (2). The Ombudsman made a recommendation No. 15 (covid-199 in its Annual Report for 2020 (3). The Ombudsman warns against the discrepancy between the ZIUZEOP-A (Official Gazette of the RS, no. 80/20) with the constitution and the Aarhus Convention regarding the appropriate and efficient collaboration of the public in all administrative and judicial proceedings that have or could have any influence on the environment. The Ombudsman discussed points b, d, e, f, and g of Article 105 of the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (ZIUZEOP-A). Relating to the initiatives received and at its own thorough professional discretion, the Ombudsman identified a number of irregularities and

constitutional contentiousness. Therefore, it addressed to the MOP an extensive opinion including a proposition for the elimination of the identified irregularities. The Ministry of Spatial Planning (MOP) did not accept the Ombudsman's proposition. The Ombudsman took into account the fact that the Constitutional Court of the RS with decision no. U-I-184/20-27 from 2. 7. 2020 accepted for consideration the initiative to launch proceedings to assess the constitutionality of the disputed intervention legislation and withheld the implementation of Article 2 of the ZIUZEO until the final decision, continue to follow the procedure before the Constitutional Court of the RS. Upon the final decision of the Constitutional Court, the Ombudsman will decide potential further action. Further activities of the MOP in the preparation of legislative amendments (ZON, ZVO-1) indicate an alarming trend of complete exclusion of the non-governmental sector from the proceedings, the result of which could have an impact on the environment (4).

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: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO8190>
- (2) <https://www.varuh-rs.si/sporocila-za-javnost/novica/mop-ni-uposteval-varuha-naj-s-spremembo-42-clena-ziuzeop-a-znova-zagotovi-sodelovanje-javnosti-v-ok/>
- (3) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf , at pages 590-591
- (4) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf , at page 339.

Threats and attacks, including strategic litigation against public participation (SLAPPs)

The Ombudsman follows cases of alleged abuse of laws or of procedural laws, including strategic lawsuits against public participation (SLAPPs), to intimidate civil society organisations, rights defenders and other actors, such as journalists, speaking out on matters of public interest.

For example, media reported that in January 2022 one of the protestors of the so-called Friday's anti-government protests was the object of a lawsuit for allegedly organizing a protest against the Government of the Prime Minister Janez Janša. The Ministry of the Interior has accused him of causing around 2,255 euros in costs to the Police who guarded the rally in October 2020. The protestor disputes that he was an organizer of the protest.

The ministry, represented by the State Attorney's Office, claims that the protestor organized an unregistered rally in the Centre of Ljubljana on October 2, 2020, which means that the police have higher costs of protecting events than if the rally had been reported. Among other things, Police claims that they had to bring eighty police officers to the streets instead of twenty because they did not know how many people would gather at the rally (1).

References

- (1) <https://www.delo.si/novice/slovenija/jenull-prejel-tozbo-zaradi-domnevne-organizacije-protesta/>; <https://www.rtvsl.si/slovenija/vlozena-prva-tozba-zoper-domnevnega-organizatorja-protestov/605789>; <https://www.24ur.com/novice/slovenija/jenull-prejel-tozbo-zaradi-domnevne-organizacije-protesta.html>; <https://n1info.si/novice/slovenija/drzavno-odvetnistvo-klonilo-pod-hojsovimi-pritiski-in-vlozilo-prvo-tozbo/>

NHRI's role in promoting and protecting civil society space and human rights defenders

A good practice example is the 2021 Ombudsman's National Report on the Human Rights Situation of Migrants at the Borders (1), which was prepared in the context of the ENNHRI project, which aimed to improve the promotion and protection of the human rights of migrants at the borders through various activities of European NHRIs, such as capacity building, advocacy, communication and reporting (2).

The report covers the Ombudsman's work in the field of migration over the last three years. It presents findings and recommendations addressed to the Ministry of the Interior on the basis of investigations into police procedures conducted in relation to migrants at different locations. The report includes the findings of the Ombudsman's visits to the two border police stations of Črnomelj and Metlika (June 2018), the findings of an investigation concerning a border incident that included a visit to the border police station of Ilirska Bistrica (October 2019), the findings of the investigation conducted at the Centre for Foreigners in Postojna (31 July and 3 September 2020) and the NPM's visit to the Asylum Centre in Ljubljana (2018), where the Ombudsman documented the living conditions of migrants. Every group performing a visit is composed of representatives of the Ombudsman and selected non-governmental organisations collaborating with the Ombudsman in the implementation of the NPM tasks.

The report also contains information on the Ombudsman's written submissions made to the national courts in cases concerning migrants, including the constitutional complaint he initiated in the case of a migrant returned to the Croatian authorities at the border

crossing point on the basis of the bilateral agreement between Croatia and Slovenia, and the amicus curiae opinion that he delivered to the Administrative Court of the Republic of Slovenia regarding a case of chain returns from Slovenia through Croatia to Bosnia and Herzegovina. The report also highlights recent changes to Slovenian legislation on migration and asylum, which may affect the rights of migrants and asylum seekers in the country.

References

- (1) <https://www.varuh-rs.si/en/news/news/in-the-context-of-the-ennhri-project-the-ombudsman-draws-up-a-national-report-on-the-human-rights-s/>
- (2) <https://ennhri.org/news-and-blog/ennhris-regional-report-examines-the-human-rights-of-migrants-at-borders/>

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to better protect and support civil society actors, including human rights defenders in Slovenia are the following:

- The Ministry of the Interior should implement the Ombudsman's recommendations included in its 2021 National Report on the Human Rights Situation of Migrants at the Borders, made on the basis of investigations into police procedures conducted in relation to migrants at different locations.
- The Authorities should refrain from any activity, which could cause an abuse of laws or of procedural laws, including strategic lawsuits against public participation (SLAPPs), to intimidate civil society organisations, rights defenders and other actors, such as journalists, speaking out on matters of public interest.

Checks and balances

The Ombudsman has noticed worrying developments deteriorating the health of the national checks and balances system over the past year. In particular, the Ombudsman observed a growing number of the Constitutional Court decisions which are not executed by relevant authorities, as well as a growing number of recommendations of the Ombudsman and other independent bodies which remain unimplemented. There are also expressions of disrespect towards the decisions and actions of the independent state institutions, which role is conduct checks and balances.

The Ombudsman presented its 26th Annual Report to the National Assembly in October 2021 (1). The National Assembly adopted the report on 26 October 2021 and recommended to all relevant institutions and officials to implement all Ombudsman's recommendations as well as all recommendations of the National Prevention Mechanism. However, the Ombudsman is concerned about poor and slow implementation of his recommendations by relevant authorities as well as about the attitude of some politicians not taking the Ombudsman's position and recommendations seriously.

As mentioned above, the Ombudsman proposed in his Annual Report for 2020 128 new recommendations to improve the work of various bodies, legislation and implementation of human rights standards in legislation and in practice (2). In addition, the Ombudsman highlighted another 156 relevant past recommendations that remain either fully or partly unfulfilled. The Ombudsman has repeatedly called on the competent authorities to take into serious account the need for ensuring the implementation of all recommendations and to remedy concrete violations for the benefit of the individuals. Although the Ombudsman's recommendations are not legally binding, their implementation is an indicator of the extent to which relevant authorities are actually committed to strengthening respect for human rights and fundamental freedoms.

In 2021, too, the Government has prepared a response report (3) that replies to all Ombudsman's recommendations. The Ombudsman notes that a large number of recommendations remain fully or partially non-implemented. It is worrying that 11 of Ombudsman's new recommendations and additional 14 from previous years have been rejected by the Government (or respective Ministries) due to disagreement. The Ombudsman is also particularly concerned that as many as 8 out of 11 rejected recommendations relate to the rights of people with disabilities and other vulnerable groups.

In addition to the mentioned recommendations, the Ombudsman, acting in the capacity of National Prevention Mechanism (NPM) made 329 recommendations to various institutions. The responses from the relevant institutions are generally good. The NPM expects a faster response to the given recommendations, as only half of them were implemented by the time the annual report was prepared.

The Ombudsman also recalls that it was worrying that a number of unexecuted judgments of the Constitutional Court of the Republic of Slovenia increased during last year. At the end of 2020, there were already 18 unfulfilled so-called declaratory judgments, while at the end of 2019, there were 13 such judgments. For example, it is unacceptable that the decision of the Constitutional Court regarding the established unconstitutionality in the Infectious Diseases Act has not yet been implemented, even though the deadline has

expired already at the end of August 2020, and that the Constitutional Court confirmed the violations on several occasions. Also, the Decision of the Constitutional Court Nos. U-I-477/18-19 and Up-93/18-37 of 23. 5. 2019, based on the Ombudsman's request for constitutional review, regarding the unconstitutionality of the Mental Health Act, remains unimplemented since several years.

References

- (1) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_pop.pdf
A shorter version of the Annual Report is also available in English:
https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf
- (2) For a compilation of the recommendations in Slovene see: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/LP20_povzetek_porocila.pdf
- (3) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp_odzivna_porocila_vlade/Odzivno_porocilo_Vlade_na_LP_VCP_in_LP_DPM_za_let_2020.pdf

Trust amongst citizens and between citizens and the public administration

The Ombudsman considers that state authorities do not sufficiently foster trust amongst citizens and between citizens and the public administration. This is reflected in the low level of public debate and a too frequent disrespect by public authorities of final rulings of courts, including Constitutional Court decisions, as well as recommendations of the Ombudsman and other independent state bodies. Any public criticism is highly politicized and understood as a political tactic to weaken the Government; therefore, little constructive dialogue is possible among the authorities and checks and balances institutions.

As outlined already in the Ombudsman's rule of law report in 2021, the Ombudsman alerted public authorities on several occasions regarding the lack of disaggregated data in Slovenia (1). An EU study (2) has indeed shown that equality data collection in Slovenia is critically weak, far most EU member states. The collection of 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 (3). In this regard, the

Ombudsman made recommendation within the Third Cycle of the Universal Periodic Review (4) as well as in its last Annual Report to the National Assembly (5).

References

- (1) See ENNHRI, Rule of Law Report 2021, Slovenia, Checks and Balances: http://ennhri.org/rule-of-law-report-2021/slovenia/#Independence_and_effectiveness_of_the_NHRIs
- (2) 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)
- (3) 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
- (4) <https://www.varuh-rs.si/nc/en/about-us/organisational-units-and-hro-council/center-for-human-rights/levi-meni/universal-periodic-review-upr/>
- (5) https://www.varuhrs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf (1 March 2020)

NHRIs as part of the system of checks and balances

The Human Rights Ombudsman regularly engages in monitoring authorities' accountability and making recommendations to improve effective checks on the executive and public authorities. A recent example is the 2021 Ombudsman's National Report on the Human Rights Situation of Migrants at the Borders, mentioned above.

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to strengthen the system of checks and balances, including the role of NHRIs within such system are the following:

- The responsible authorities should take concrete steps, including a timeline, to implement recommendations made by the Human Rights Ombudsman, other independent state institutions as well as relevant international human rights bodies.
- The responsible authorities should ensure effective implementation of decisions of the Constitutional Court and of the European Court of Human Rights against

Slovenia as a priority and within a determined deadline. The Ombudsman in this regard recommends to the Government that following the example of the mechanism it established to implement the judgments of the European the Court of Human Rights, it establishes a mechanism to provide expert support for the implementation of declaratory decisions of the Constitutional Court and to inform public on the status of implemented decisions in a transparent manner, including regarding the ongoing activities of the competent authorities for their realization.

- The competent authorities should adopt adequate legislation in order to enable and ensure systematic collection of disaggregated data as per protected personal grounds in all areas of social life with the aim to accurately determine the situation and trends regarding (in)equality in society and to promote equal treatment and equal opportunities when observing applicable national and international standards on personal data protection.

Functioning of the justice system

There are several ongoing issues, which call for the improvement of the justice system in Slovenia, as illustrated in last year's rule of law report. The Ombudsman continued to engage on several key challenges, as illustrated above, but in 2021 no major changes occurred. The EC Justice Scoreboard 2021 also shows no major divergences in the operation of the Slovenian justice system with respect to the previous year.

Role of the NHRI in contributing to the effective functioning of the justice system

The Ombudsman took several actions to monitor and help make progress in addressing issues affecting the functioning and effectiveness of the justice system, including written initiatives, opinions and proposals to relevant authorities to recommendations made in its Annual Report to the Parliament (1).

The Ombudsman has, in particular, recommended to the authorities to prepare - upon proposal of the Slovenian Bar Association (OZS) – a draft of the necessary changes or amendments to the current legislation (including the necessary changes and amendments to tax legislation) to increase the availability of pro bono legal aid. Although the necessary changes in this area have not yet taken place, it is encouraging that the OZS continues the »day of pro bono legal aid«, in which attorneys provide free legal advice to those who need it.

The Ombudsman also continued to engage on the inappropriate regulation concerning the provision of the Crime Victim Compensation Act (ZOZKD), which determines the right to a special state compensation for victims of acts of violence and their relatives for acts

committed on the territory of the Republic of Slovenia. Article 5 of this act determines as a formal condition for the awarding of the compensation that the victim has to be a citizen of the Republic of Slovenia or any other member state of the European Union. Therefore, victims who are citizens of other countries do not have the right to this state compensation. However, the interpretation of the Explanatory Report to the Istanbul Convention in Article 30 stipulates the right to state compensation for both nationals and non-nationals, since numerous victims of violence are not citizens of the country on the territory of which a criminal offence was committed.² This deficiency was also warned against by the Group of Experts on Action against Trafficking in Human Beings with the Council of Europe (GRETA) and appealed to the Slovenian bodies to include all victims of human trafficking in the ZOZKD, regardless of their citizenship.

In its work last year, the Ombudsman once again noticed the critical lack of court experts in family matters. Hence, the Ombudsman again calls on all competent institutions in the country to finally eliminate this serious problem, since it is the permanent task of courts. In cases of child advocacy, the Ombudsman finds that the lack of court experts in family matters can lead to violations of children's rights and thus recommends to the Government of the Republic of Slovenia and the Medical Chamber of Slovenia to do whatever is necessary to eliminate this unbearable situation in the shortest possible time.

The Ombudsman also participated with comments in the process of preparing the draft Act Amending the Criminal Procedure Act (ZKP-O). This amendment to the Act also implemented Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural guarantees for children suspected or accused in criminal proceedings (Directive (EU) 2016/800), which sets out minimum procedural guarantees. According to the original plans, this directive should be transposed into the legal order of the Republic of Slovenia by an Act that will deal with juvenile offenders. Therefore, we would like to issue another reminder that it is high time that the criminal law for minors, announced by Criminal Code (KZ-1) at the time of its entry into force, came into force; also, the deadline for transposing the directive into internal legal order expired on 11 June 2019.

References

- (1) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Annual_Report_2020.pdf

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to improve the independence, quality and efficiency of the justice system in Slovenia are the following:

- To adopt additional measures to contribute to or assist in providing various forms of free legal aid outside the framework provided by the Legal Aid Act.
- To adopt an amendment to the Crime Victim Compensation Act (ZOZKD), which would determine the right to state compensation also for persons who are not citizens of the Republic of Slovenia and other EU countries.
- To do everything necessary to ensure a sufficient number of judicial experts in family matters (especial in the fields like clinical psychology or child psychology), because a lack of such judicial experts may lead to violation of children's rights.

Media freedom, pluralism and safety of journalists

The Human Rights Ombudsman has noticed a deterioration of media freedom, pluralism and safety of journalists in Slovenia, assessing the overall environment as currently worrying. The European Parliament also adopted on 16 December 2021 a dedicated resolution on the rule of law in Slovenia, mentioned above, which raises, among others, issues relating to media freedom, pluralism and safety of journalists. (1)

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 in May 2021 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 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. An English summary of conclusions is available at pages 9-10 of the analysis. (2). The Ombudsman made also a public presentation of the analysis in June 2021 (3).

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 Reporters without borders ranked Slovenia at the 36th place in 2021, which is 4 places lower than in 2020 (4).

In the above-mentioned resolution of the European Parliament of 16 December 2021, the European Parliament expresses its deep concern “about the level of public debate, climate of hostility, distrust and deep polarisation in Slovenia, which has eroded trust in public bodies and between them”.

The European Parliament also called on the Government to resume state funding and to make these payments regularly and in full accordance with national law, while guaranteeing the Slovenian Press Agency's (STA) editorial independence. On 8 November

2021 the new Director of STA and director of the Governmental Communication Office signed the agreement on the STA's public service for 2021 (5), however there have been concerns raised on the future financing and editorial independence of the STA (6).

The mentioned resolution also addresses the issues of media ownership and smear campaigns, slander, criminal investigations, as well as strategic lawsuits against public participation (SLAPPs) brought by prominent public figures and politicians, including members of the Government.

References

- (1) European Parliament resolution of 16 December 2021 on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPO prosecutors (2021/2978(RSP)) , available at: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0512_EN.html
- (2) https://www.varuhr.si/fileadmin/user_upload/pdf/Razne_publicacije/Sovrazni_govor_knjizica2.pdf
- (3) <https://www.varuh-rs.si/sporocila-za-javnost/novica/analiza-kazenskopravnegapregona-sovraznega-govora-v-sloveniji-in-razprava/>
- (4) <https://rsf.org/en/slovenia>
- (5) <https://www.sta.si/2963984/kadunc-in-urbanija-podpisala-pogodbo-o-opravljanju-javne-sluzbe-za-letos> and <https://english.sta.si/2964066/sta-signs-deal-on-public-service-with-ukom-valid-until-end-of-the-year>
- (6) See for example: <https://www.sta.si/2964027/dns-in-sindikatsindikat-novinarjev-s-previdnostjo-spremljata-podpis-pogodbe-med-sta-in-ukomom>

Role of the NHRI in promoting and safeguarding an enabling environment for media and freedom of expression

The Ombudsman made in the past a recommendation on the effective enforcement of the provision concerning the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act), and proposed that the Ministry of Culture does everything possible within its power to identify the appropriate approach to protect public interest (inspection and minor offence supervision); to adopt measures to eliminate irregularities (e.g. immediate removal of unauthorized content); and to determine sanctions for the media that fail to curb the spread of hate speech (recommendation No. 64 (2019) and No. 14 (2018) (1). The Ombudsman however notes that these recommendations have not yet been

implemented and that is also not clear whether and when relevant action would be considered by the Ministry of Culture (2).

References

- (1) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf , at pages 154 and 155
- (2) https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_pop.pdf , at page 263.

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendation to national and regional authorities on how to better ensure media freedom, pluralism and the safety of journalists in Slovenia is the following:

- The Ministry of Culture should do everything possible within its power regarding the realisation of the provision on the prohibition of spreading hatred in the media (Article 8 of the Mass Media Act) to determine 1. the manner of protecting public interest (inspection and minor offence supervision); 2. measures to eliminate irregularities (e.g. immediate removal of unauthorised content); and 3. sanctions for the media that allow the publication of hate speech.

Corruption

The Ombudsman notes a deterioration of the level and perception of corruption in Slovenia, now considered as worrying.

It is to be noted that the responsible independent institution for combating corruption in Slovenia is the Commission for the Prevention of Corruption (1), not the Ombudsman.

The Ombudsman, nonetheless, has remarked that the non-governmental organization Transparency International (TI) downgraded Slovenia to the 41st place on the Transparency International Corruption Perceptions Index for 2021, with a 57 points score (where score 0 means high state corruption and score 100 indicates absence of corruption). Compared to last year, Slovenia lost 3 points, slipped six places down and further deviated from the EU average ranking (the average score of EU Member States being 64) and the OECD (the average score of OECD Member States being 67) (2).

It further needs to be noted that no visible progress has been so far made regarding the implementation of the 2019 EU Whistle blowers Protection Directive.

References

- (1) Commission for the Prevention of the Corruption of the Republic of Slovenia, see: <https://www.kpk-rs.si/en/>
- (2) <https://www.transparency.si/oznaka/raziskave-in-indeksi/> and <https://www.transparency.si/novica/cpi-2021-slovenija-najslabse-po-letu-2013/>

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

The Ombudsman noted an increasingly worrying impact of measures taken in response to COVID-19 on the national rule of law environment and on human rights protection.

Emergency regimes and related measures

Over the last year and a half, the Ombudsman has often drawn attention to the problem of governing by decrees (and ordinances), as an appropriate and concrete legal basis is needed when it comes to restricting human rights and fundamental freedoms. The Government should, according to the Slovenian Constitution, submit human rights restrictions to the assessment of the legislature. The Ombudsman expects that the work of the authorities in this area improve and does not give rise to a new regular “unconstitutional” practice (1). In addition, it is worrying that the Ombudsman’s opinions and recommendations in relation to the Covid-19 measures, and even more Constitutional Court decisions in relation to the covid-19 measures, which also address human rights concerns, are to a large degree not respected and taken seriously by the Government and the Parliament.

Indeed, the Constitutional Court decided on more occasions that certain measures adopted through acts and ordinances in relation to COVID-19 measures are unconstitutional, such as several provisions of Article 39 of the Communicable Diseases Act (ZNB) (see Constitutional Court decisions U-I-79/20-24 of 13. 5. 2021 (1) and U-I-155/20-24 of 7. 10. 2021 (2)), Article 104 of Act Determining Temporary Measures to Mitigate and Remedy the Consequences of COVID-19 (U-I-8/21-34 of 16. 9. 2021) (3), Article 10a Ordinance on the method of meeting the condition of morbidity, vaccination and testing to curb the spread of SARS-CoV-2 virus infections (U-I-210/21-25 of 29. 11. 2021) (4), and several provisions of other ordinances (Constitutional Court decisions No. U-I-445/20-22, U-I-473/20-22 of 16. 9. 2021 (5)).

Even before such decisions, the Ombudsman had often warned the Government and Ministries that the legal basis in the Communicable Diseases Act was insufficient, which was later confirmed by the Constitutional Court. In addition, the Ombudsman also proposed at several occasions, including in recommendations 12 (covid-19) and 13 (covid-19) (6), submitted in the Ombudsman's Annual Report for the year 2020, that the Government submits for the adoption of the National Assembly needed amendments to the Communicable Diseases Act (ZNB), which would ensure better protection of human rights, by clearly stating to what extent and under what conditions the Government may restrict relevant human rights in the event of another outbreak of Covid-19 or another communicable disease. In the Ombudsman's view, such safeguards should be designed in such a way that it is clear to the average citizen from the wording of the article what restrictions they may face and which of their human rights could be affected in the event of an epidemic. In addition, as regards comprehensive restrictions of many human rights and affecting citizens and residents throughout the country indistinctly, as set out in the Ordinance, the Ombudsman also alerted on the necessity that the restrictions are (possibly retroactively, when that is appropriate) confirmed by the National Assembly, as human rights are at the foundations of the Slovenian Constitution, and their regulation is primarily reserved to the legislative branch of the government. This (with some exceptions) is indeed the case even in the event of war and the state of emergency under Article 16 of the Slovenian Constitution, so an emergency situation triggered by an epidemic should make no exception. For the same reason, the Ombudsman is also reluctant to accept that the power to restrict freedom of movement is delegated to mayors or municipalities.

Nonetheless, the Government and the Parliament failed to implement the recommendations of the Ombudsman and of the mentioned decisions of the Constitutional Court within the given deadline. Nor the Government (or the Parliament) led any genuine consultations to address the issue of unconstitutionality of COVID-19 measures and to amend these unconstitutional practices. To the opposite, the Government and the Parliament have continued adopting new measures based on unconstitutional legal grounds.

It also needs to be mentioned that although on 15 June 2021 the Government declared the epidemic over in Slovenia, several restrictive human rights measures are still in place and several Covid-19 related ordinances or acts have been adopted or amended since then.

References

- (1) <https://www.varuh-rs.si/kaj-delamo/varovanje-pravic-po-podrocjih/omejitev-osebne-svobode/levi->

[meni/novica/?tx_news_pi1%5Bnews%5D=6288&cHash=cf17260e2b8db0b2179af350c2ad8fb2](https://www.meni.novica/?tx_news_pi1%5Bnews%5D=6288&cHash=cf17260e2b8db0b2179af350c2ad8fb2)

See also:

- (2) <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-79-20-z-dne-13-5-2021/>
- (3) <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-155-20-z-dne-7-10-2021/>
- (4) <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina?urlurid=20213279> and <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-8-21-z-dne16-9-2021/>
- (5) <https://www.iusinfo.si/download/razno/u-i-210-21-odlocba.pdf>
- (6) <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-445-20-u-i-473-20-z-dne-16-9-2021/>
- (7) https://www.varuhrs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf, at p. 552

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Ombudsman and his Council proposed that the authorities assess the COVID-19 measures to make sure they are compatible with human rights standards and the principles of proportionality and necessity, and to appoint focal points in the Government and at the ministries for this purpose. The authorities so far did not accept and implement such a proposal; however, the exchange of views is ongoing.

Efforts by state authorities to mitigate challenges

The Government promptly acted to ensure proper management of the situation and mitigate any long-term harmful consequences for the economy and the population, with swift and strategic intervention measures to help the population and the economy. Most of these measures were adopted through so-called packages of anti-Corona measures, which were adopted through an ordinary legislative procedure by the National Assembly. So far 10 such packages were adopted. (1)

References

- <https://www.gov.si teme/koronavirus-sars-cov-2/odpravljajanje-posledic-epidemije/>

Actions taken by the NHRI to promote and protect rule of law and human rights in the crisis context

The Ombudsman addressed the Parliament and made its assessment of the human rights situation, including concerning COVID-19 measures and human rights (1). Since the

beginning of the epidemic the Ombudsman's institution addressed more than 50 different inquiries to the Government or its President. The Ombudsman also addressed more than 900 opinions, proposals, inquiries and calls to various Ministries.

References

- (1) https://www.varuh-rs.si/index.php?id=1320&L=6%C2%A0&tx_news_pi1%5Bnews%5D=6288&tx_news_pi1%5Baction%5D=detail&tx_news_pi1%5Bcontroller%5D=News&cHash=cf17260e2b8db0b2179af350c2ad8fb2

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

The environment in which the Ombudsman operates has been affected since 2020 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 has instead make itself 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) and in 2021 the number of all cases was even a bit higher than in 2020. During 2021 the Ombudsman received over 1400 individual complaints regarding the COVID-19 measure, while in 2020 over 1000.

Despite the COVID-19 situation, the National Prevention Mechanism (NPM), which operates as an organizational unit of the Ombudsman, continued with the visits of places of deprivation of liberty under its mandate and made 60 visits of various places of deprivation of liberty in 2021. The NPM also addressed some other general issues relevant to persons deprived of their liberty.

NHRI's recommendations to national and regional authorities

The Ombudsman's key recommendations to national and regional authorities on how to mitigate the impact of COVID-19 and of measures taken to address it on rule of law and human rights protection, and how to ensure an inclusive recovery, in Slovenia, are the following:

- The Government and the Parliament should as a matter of urgency enforce the Constitutional Court decisions and Ombudsman's recommendations regarding the needed changes to the Communicable Diseases Act (ZNB), including concerning its impact on human rights and fundamental freedoms limitations, if needed, and the parliamentary review of such measures.

- The Government and the Parliament should refrain from including other COVID-19 unrelated issues, especially on shrinking civic society space, to the legislations addressing covid-19 measures.