

Welcome developments regarding possibilities for the Ombudsman to eventually acquire status A according to the Paris Principles have indeed occurred

- 1 (also in relation to recommendations 115.32-39 (Ireland, Malaysia, Morocco, Tunisia, Ukraine, Chile, Azerbaijan, and Greece) in A/HRC/28/15, page 15)** The Ombudsman currently holds status B according to the Paris Principles relating to the Status of National Institutions for Human Rights of 1993. In 2017, certain amendments¹ to the Human Rights Ombudsman Act were adopted, which refer to the expansion of the institution of the Ombudsman, providing the needed basis for eventually acquiring status A. The amendments allow for (among other things) the setting up of Human Rights Ombudsman Council (established as the Ombudsman's consultative body, functioning on the basis of the principle of professional autonomy, and consisting of a president and 16 members - seven representatives of civil society; three representatives of science; two representatives of the Government, and the Advocate of the Principle of Equality, the Information Commissioner, the National Assembly and the National Council having one member each) and a special internal organizational unit - Human Rights Centre (with tasks of promoting, informing, educating, training, preparing analyses and reports regarding individual fields of promoting and protecting human rights and fundamental freedoms; organizing consultations regarding the realization, promotion and protection of human rights and fundamental freedoms; cooperating with civil society, trade unions and other state authorities).
- 2** The above development is **the result of commendable inclination of the Government of the Republic of Slovenia and intensive operative endeavors of the Ministry of Justice** in preparing the concrete amendments to the above mentioned legislation, with the Ombudsman itself being involved (consultations,...) in the process.
- 3** The Ombudsman has already undertaken activities needed to apply for the mentioned accreditation (status A).

Disregard for the Decisions of the Constitutional Court

- 4** In the Ombudsman's view, one of the unacceptably persistent issues that remain, is the issue of disregard for the decisions of the Constitutional Court. While the problem is not to be described as rampant it is nonetheless far from negligible – both in the sense of numbers as well as on the level of the core societal principles. As already stressed on a number of occasions by the Constitutional Court of the Republic of Slovenia itself², the competent authority is to remedy the established unconstitutionality or illegality within the specified time limit – as failure to respond in such a way entails *a serious violation of the constitutional principles of a state governed by the rule of law (Article 2 of the Constitution) and the principle of the*

separation of powers (the second sentence of the second paragraph of Article 3 of the Constitution).

- 5 To briefly sum up here for illustrative purposes the state of affairs in the last three years, the situation with regard to (dis)respect for the decisions of the Constitutional Court has not improved but actually worsened, as at the end of 2016 there remained 10 such unimplemented decisions³, 13 at the end of 2017⁴ and 14 at the end of 2018⁵ (with the oldest unimplemented decision remaining from 1998⁶, followed by the still partly unimplemented decision from 2002⁷ (establishing the inconsistency of certain municipal charters with the Local Self-Government Act for not providing that representatives of the Roma community are to be included as members of the respective municipal councils – with one municipality still not having amended its municipal charter accordingly), etc.).
- 6 To now turn focus directly on the Ombudsman's experience in this regard, it is to be pointed out that (e.g.) it has now also been already more than three years since in a procedure for review of constitutionality which had been instigated at the Ombudsman's request, the Constitutional Court annulled⁸ certain provisions of the Mental Health Act and decided that the annulment should become effective one year after the publication of this decision in the Official Gazette of the Republic of Slovenia⁹. The Court decided on this solution so as to allow the legislator sufficient time to deal with the complex matter and adequately harmonize the procedure of admitting people who have been deprived of their legal capacity to secure departments of social care institutions with the Constitution – and postponed the effect of the annulment for the maximum possible time, i.e. for one year. It therefore cannot be acceptable that the legislator has still to provide for a timely, constitutionally compliant procedure for the admission of individuals who have been deprived of their legal capacity to secure departments of social care institutions. Even such important decisions, as this one dealing with deprivation of liberty of one of the most vulnerable categories, therefore are not implemented in timely fashion.
- 7 As also already stressed by the Constitutional Court on several occasions, remedying unconstitutionality in laws falls within the competence of the National Assembly as the legislature, however not to be forgotten is also the duty of the Government to prepare draft laws promptly and submit them for the legislative procedure. Remedying unconstitutionality and illegalities in local regulations falls within the competence of municipal authorities.

Insufficient responses to clearly detected (and by own admission recognized) shortcomings in the national legislation

- 8 **(also in relation to recommendation 115.51 (Belgium), page 16, and 115.148 (Spain), page 22 in A/HRC/28/15)** Not just after certain decisions of the Constitutional court¹⁰, the response of authorities to otherwise clearly detected shortcomings in national legislation all too often seems unacceptably lacking – this being the case even when clear violations of rights are showing and the problem

manifests itself as clearly systemic, with authorities even openly acknowledging it. This can be illustrated by the following two examples.

- 9 Already in 2015, the Ombudsman started to consider cases of people not being able to exercise the right to vote. It has been established that persons who were institutionalized in the period between the tenth day before the voting date and the day of voting were not able to vote. Although their right to vote had not formally been denied, they were still unable to actually vote – with the reason for such a violation being systemic in nature, as in accordance with the applicable legislation, the voter is to express his intention to vote by mail at least 10 days prior to voting. In this way, particular categories of people were de facto and without legal grounds deprived of their voting right, i.e. voting legislation failed to enable them to effectively exercise their right. These are persons whose personal liberty had been deprived in the 10-day period prior to voting (e.g. remand prisoners, persons under special surveillance, persons in secure wards) and persons admitted for hospital treatment for medical reasons in the 10-day period prior to voting (still in 2018, the Ombudsman received such a complaint from an individual who in this case had an accident and was hospitalized less than 10 days before parliamentary elections - and the above mentioned problem occurred¹¹). For already three years in a row now¹² the Ombudsman has reported on this issue to the parliament and also made concrete recommendation that voting legislation should be amended so that people who have been unforeseeably deprived of their liberty less than ten days prior to election day, or who have been admitted for treatment to a hospital or care in a social care institution can have the effective exercise of their voting rights enabled – but to no avail. Even though the Government actually adopted a proposal for the needed amendments already in 2011 (with the required solution under which the election commission would visit a voter), the legislative procedure has so far been unsuccessful (same result with another try in 2016). It has therefore now been almost a decade since the first attempts were made to rectify this problem. The Ombudsman reiterates that this represents an encroachment upon the active right to vote without appropriate legal grounds – even though a person has not been stripped of their right to vote, they in fact are not able to actually vote.
- 10 Similarly, already from 2013 on, the Ombudsman is trying to eliminate¹³ the established discrimination in the arrangement of the transport of physically disabled students who cannot use public transport between their places of residence and education. In spite of the acknowledgement of discrimination and promises of competent ministries to solve the problem, the progress has thus far been insufficient, as no adequate draft amendments have been prepared and submitted for the legislative procedure.

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

- 11 In 2017, the Ombudsman was able to establish that the Council for Persons with Disabilities of the Republic of Slovenia, established in relation to Article 33 of the Convention on the Rights of Persons with Disabilities, does not satisfactorily fulfil the tasks assigned to it by the law.¹⁴

- 12** In the fourth and fifth paragraphs of Article 28, the Equalisation of Opportunities for Persons with Disabilities Act stipulates that the Council must function as a mandatory forum for consultation on disability policy issues. In particular, it must monitor the development and implementation of programmes in the area of the protection of persons with disabilities; participate in drawing up reports on the implementation of national programmes and provide opinions on them; promote and monitor the implementation of the Act Ratifying the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the Convention on the Rights of Persons with Disabilities; and deliver opinions to proposers of laws and regulations applicable to the protection of persons with disabilities during public discussion.
- 13** While responding to certain Ombudsman's inquiries the Council itself explained that it does not function entirely as an independent body, as it should have been, and does not have employees that could deal in substance with the Ombudsman's letter. It was explained that even determining the dates for Council meetings presents a problem, as they have to coordinate all of its 21 members. It was further stated that at the moment, its priority is to promote a change in legal status. The Council wants to become an independent legal entity with its own employees, in order to be able to provide quality and timely answers to all urgent disability issues. It also pointed out that by ratifying the Convention on the Rights of Persons with Disabilities, Slovenia committed itself to implementing its Article 33, which stipulates that "the State's Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor the implementation of the present Convention." The Council estimated that it cannot be considered as such a mechanism at the moment, because it has neither its own employees nor the financial resources, and it is not an autonomous legal entity.

On the right to drinking water

- 14 (also in relation to recommendation 115.72 (North Macedonia), 115.75 (Venezuela), 115.82 (Brazil), 115.83 (Chile), 115.86 (Cuba), 115.89 (Mexico), 115.90 (Thailand) in A/HRC/28/15, 115.91 (Austria), pages 16-17, and 115.135 (Algeria), 115.139 (Israel), 115.140 (Portugal), page 21, and 115.154 (Netherlands), 115.155 (New Zealand) and 115.158 (Spain), page 22 in A/HRC/28/15)** At the end of 2016, the National Assembly adopted the proposal for an amendment of the Constitution of the Republic of Slovenia to add the right to drinking water. Before that, the Ombudsman had been persistently recommending such an amendment to the Constitution for over a decade. The Ombudsman also made an explicit recommendation to the Government and the National Assembly of the Republic of Slovenia to prepare and adopt in due time all the required regulations to safeguard the right to drinking water, as stipulated by the Constitution of the Republic of Slovenia, especially the Environmental Protection Act, the Public Utilities Act, and the Local Self-Government Act.¹⁵

- 15** The state was to adapt the said legislation until 25 May 2018 (as per the *Constitutional Act Amending Chapter III of the Constitution of the Republic of Slovenia* itself), but failed to do so. The issue of all legislative and implementing regulations being harmonized with the said constitutional provision therefore remains open.
- 16** The issues related to access to drinking water are particularly widespread in Roma settlements. In this field, the Ombudsman even noted a setback instead of the urgently required progress. E.g. in the Ombudsman's opinion, providing drinking water through a water tank is a step backwards with regard to the opinion of the Government of the Republic of Slovenia dating back to 2011, stating that, the observance of the right to drinking water arising from Slovenian and international legislation constitutes the provision of public access or access through a public connection – at the time, the Government of the Republic of Slovenia also committed to finding a solution for installing a water supply connection itself, if the local community in the Roma settlement failed to provide access to drinking water.¹⁶

On accessibility of health services – aspect of time

- 17** One of the always burning issues in the country is also long waiting lists for health services.¹⁷ The Ministry of Health has regulated the waiting lists normatively by means of rules. However, the rules can not completely solve this problem, but can only help to increase transparency and the possibilities for individuals to find health services with the provider with the shortest waiting lists.
- 18** The Ombudsman's view is that much more attention should be paid to the organization of work, as some healthcare providers achieve much better results in terms of the accessibility of their health services under the same operating conditions (the Ombudsman also already had to repeat reproach to the Ministry of Health that it did not prepare a new health care and health insurance act in due time, as it could have had a significant impact on the accessibility of health services, thereby reducing waiting lists, which are seen by the public as the fundamental problem of the current regime¹⁸).

Problems with ensuring suitable placement for people to be deprived of their liberty in secure departments of a social care institution time

- 19** The Ombudsman also wishes to bring attention to the urgent need for the authorities to start ensuring suitable placement for people subject to court orders to be placed in a secure department of a social care institution, and to ensure additional places in secure departments of social care institutions by adopting a clear and more transparent list of (vacant) capacities in social care institutions with secure departments for the placement (relocation) of people. As sufficient progress has not been made in this area, the Ombudsman prepared a special report on this subject

matter in 2017¹⁹. The report covered the issue of overcrowding in secure departments of social care institutions (especially special social care institutions) and the difficulties faced by people with mental disorders who are placed in these departments, drawing attention to violations of their right to personal dignity. The report has been discussed at the National Assembly of the Republic of Slovenia, which recommended that the Government of the Republic of Slovenia promptly prepare amendments to the Social Assistance Act and the Mental Health Act and adopt measures which will ensure more appropriate involuntary placement and treatment of people with mental health problems in social care institutions, in accordance with the provisions of the Mental Health Act. Until a new regulation in this area is adopted or enforced, the National Assembly recommends that the Government ensures appropriate facilities in social care institutions and sufficient staff who are able to provide appropriate social care services²⁰.

20 Despite the Ombudsman's special report and recommendations, social care institutions are still voicing problems associated with the admittance of people on the basis of court decisions. It cannot be acceptable that social care institutions, the Association of Social Institutions, the courts, and the Ombudsman have been emphasising the problem of overcrowding in secure departments for years, yet the situation has not improved and has even deteriorated.

Issues with the inspection services

21 In the Ombudsman's experience, there are a lot of complaints referred to the work of the inspection services, their staff shortages, responsiveness to notifiers, the transparency of work and priorities and delayed enforcement of complainants' rights.²¹ Consequently, supervision is often insufficient and late when it comes to inspection services²² and it all too often seems that inspection services are neither effective nor fast²³ enough.

22 As already recommended by the Ombudsman in its annual reports, the Government must ensure that procedures in all supervisory institutions are carried out within reasonable time limits²⁴ provide all inspection services with appropriate working conditions, i.e. material and financial assets which will also enable increasing the number of staff and effective work of inspection services²⁵, as well as human resources of inspection services should be strengthened where ever possible²⁶;

The issue of ratification of the Convention on the Reduction of Statelessness

23 (also in relation to recommendation 115.17 (Hungary) in A/HRC/28/15, page 14) The Republic of Slovenia has not yet ratified the Convention on the Reduction of Statelessness. The Ombudsman sees no justifiable reason for this.

ENDNOTES:

¹ Act Amending the Human Rights Ombudsman Act (ZVarCP-B) - Official Gazette of the Republic of Slovenia, No. 54/17 as of 29 September 2017.

² See e.g. pages 16-18 of the English version of An Overview of the Work of The Constitutional Court of the Republic of Slovenia for 2017, available also at https://www.us-rs.si/media/rsus_letnoporocilo_2017_eng_web.pdf

³ See page 14 of the English version of An Overview of the Work of The Constitutional Court of the Republic of Slovenia for 2016, available also at https://www.us-rs.si/media/rsus_letnoporocilo_2016_ang_web.pdf

⁴ See page 16 of the English version of An Overview of the Work of The Constitutional Court of the Republic of Slovenia for 2017, available also at https://www.us-rs.si/media/rsus_letnoporocilo_2017_eng_web.pdf

⁵ See page 16 of the *Ustavno sodišče Republike Slovenije : Poročilo o delu 2018* (English version not available yet), available also at https://www.us-rs.si/media/rsus_letnoporocilo_2018_web.pdf

⁶ Decision No. U-I-301/98, dated 17 September 1998, Official Gazette RS, No. 67/98.

⁷ Decision No. U-I-345/02, dated 14 November 2002 (Official Gazette RS, No. 105/02).

⁸ By Decision No. U-I-294/12-20 of 10 June 2015. Available also in English, at <http://odlocitve.us-rs.si/en/odlocitev/AN03775>.

⁹ Official Gazette of the Republic of Slovenia, No. 46/2015 of 26 June 2015.

¹⁰ See paragraph 4-and further above.

¹¹ The case is mentioned on page 116 of the Ombudsman's already published Annual Report for the year 2018 (English version not available yet), also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf; however, for another concrete example, see page 75 of the English version of the Ombudsman's Annual Report for the Year 2016 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2016_VARUH_ENG.pdf).

¹² See pages 75-76 of the English version of the Ombudsman's Annual Report for the Year 2016 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2016_VARUH_ENG.pdf, page 85 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf) and page 116 of the Ombudsman's already published Annual Report for the year 2018 (English version not available yet), also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf.

¹³ See page 35 of the English version of the Ombudsman's Annual Report for the Year 2013 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2013_ANG.pdf); page 42 of the English version of the Ombudsman's Annual Report for the Year 2014 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2014_VARUH_ENGLISH_v025_www-pages.pdf); page 36 of the English version of the Ombudsman's Annual Report for the Year 2015 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/vcp_lp_2015_eng.pdf), pages 99-100 of the English version of the Ombudsman's Annual Report for the Year 2016 (also available at

http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2016_VARUH_ENG.pdf); page 113 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf); and pages 66-67 of the Ombudsman's already published Annual Report for the year 2018 (English version not available yet), also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018.pdf.

¹⁴ See page 114 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

¹⁵ See page 244 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

¹⁶ See page 93 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

¹⁷ See e.g. page 207 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

¹⁸ See e.g. page 206 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

¹⁹ Available (only in Slovene) also at http://www.varuh-rs.si/fileadmin/user_upload/pdf/posebna_porocila/VCP_PP_DUSEVNA_MOTNJA_www.pdf

²⁰ This recommendation was published in the Official Gazette of the Republic of Slovenia No. 60/2017.

²¹ See page 20 of the English version of the Ombudsman's Annual Report for the Year 2014 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2014_VARUH_ENGLISH_v025_www-pages.pdf); also page 19 of the English version of the Ombudsman's Annual Report for the Year 2015 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/vcp_lp_2015_eng.pdf)

²² See page 15 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf).

²³ See page 14 of the English version of the Ombudsman's Annual Report for the Year 2014 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2014_VARUH_ENGLISH_v025_www-pages.pdf); see also page 16 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

²⁴ See page 245 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

²⁵ See page 244 of the English version of the Ombudsman's Annual Report for the Year 2017 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf)

²⁶ See page of the English version of the Ombudsman's Annual Report for the Year 2015 (also available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/vcp_lp_2015_eng.pdf)