

Report on specific Civil and Political Rights in Slovenia

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Submitted by



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INTRODUCTION

The present report is submitted to your valuable Committee on the occasion of hearing the 3rd Periodic Report of the Republic of Slovenia. The Slovenian NGO Društvo za osveščanje in varstvo – center antidiskriminacije – OVCA (Society for awareness and protection – Antidiscrimination Center), hereby OVCA, is specialised on non-discrimination HR issues. However OVCA is actively involved also in other HR topics and cooperates in various HR NGO networks such as those specifically concerned with children rights, issues of persons with disabilities and refugee issues.

At the present moment the situation of NGOs in Slovenia is particularly marked by refugee crisis and other pressing issues which require our unprecedented full and constant attention. Due to overwhelming lack of resources of many NGOs, including OVCA, no one from the civil society was able to manage and coordinate a joint submission of the shadow report to this valuable Committee, although we share our full commitment to the HRs protected under the International Covenant on Civil and Political Rights.

In given circumstances OVCA is able to present only its own personal views and even in this we must focus predominately on issues related to discrimination. But it should be noted, that the content of the present submission to a very large extent only follows and highlights the key concerns and recommendations contained in the joint submissions of the civil society organizations which were submitted in the recent two years to the UN Committee on the Elimination of Discrimination against Women (CEDAW)¹ in 2015 and to the UN Committee on Economic, Social and Cultural Rights (CESCR) in 2014 respectively². In both reporting coalitions OVCA was inter alia responsible for the reports' inputs on non-discrimination issues. The present report is therefore focusing particularly, but not exclusively on non-discrimination issues (Article 2 para. 1, 2 and 3, Article 3, Article 20 para. 2, Article 24 para. 1, Article 25, Article 26 and Article 27 of the CCPR) and on HR machinery. In this OVCA is not merely replicating information from those two parallel reports, but tries to provide additional, updated and more focused information. We are trying to reflect most recent developments in this field. Therefore OVCA takes full responsibility for all information and views submitted to your valuable Committee, although it cannot solely claim full authorship of all the information gathered.

The report aims primarily at complementing missing or misrepresented elements of the 3rd report of the Republic Slovenia, submitted to the Committee. Besides pointing out once more to some long-standing human rights violations and omissions which are well reflected by the practice of UN HR treaty bodies, we particularly wish to highlight trends of stagnation or even regression and the persistent lack of demonstrated will to effectively address some of the key pressing issues.

¹ See Shadow report of the Slovene NGOs to the CEDAW Committee to the Fifth and Sixth periodic reports of the Republic of Slovenia (April 2015), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=970&Lang=en.

² See Parallel Report by the Coalition of NGOs on Economic, Social and Cultural Rights in Slovenia submitted for the CESCR's 53rd Session (May 2014), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=822&Lang=en. Report was prepared by Društvo Humanitas, Društvo informacijski center Legebitra, Društvo Vita Aktiva, Društvo za nenasilno komunikacijo, OVCA, Ekvilib Inštitut, Gibanje za trajnostni razvoj Slovenije –TRS, Klub ActRight, Mirovni inštitut, Pravno-informacijski center nevladnih organizacij – PIC, YHD - Društvo za teorijo in kulturo hendikepa and Zavod Open.

HUMAN RIGHTS MACHINERY

OVCA wishes to express its deep concern over the state's general attitude towards protection and promotion of human rights.

This field is marked by inadequate and ineffective institutional structure, but even the existing one is seriously malnourished in terms of financial and human resources, so it is unable to fulfil all obligations, yet to reach its full potential. The area is clearly out of the policy priorities.

Furthermore the state's policy making is marked by the lack of human rights and/or anti-discrimination strategy. There is no comprehensive monitoring system in place for the field of human rights. This means that the state does not have comprehensive overview of the level of human rights enjoyment of the population, particularly of the most vulnerable groups. Hence it does not have a clear picture on what the needs are nor what are the effects of its policies, legislative and particularly austerity measures on human rights standards in the country and how it would be plausible to adjust or enhance its policies to foster respect, protection and fulfilment of all HR.

The state clearly does not secure and use maximum available resources to implement its HR obligations.

For example, despite the moderate economic growth in past two years, the State is not only maintaining the majority of the most grave existing austerity measures, but it is even imposing new ones; including austerity measures imposed on the municipalities, which can have extremely negative effect on basic rights, including on the right to education and access to affordable housing (i.e. subsidies for financially weak tenants are suspended), for the most vulnerable groups and individuals. Furthermore, despite selected positive measures, too little has been done to seriously address corruption, and thus comprehensively tackle the loss of resources needed to address the gaps in human rights protection and fulfilment. Although positive steps have been made in some fields, proposed measures are too often seen as only partial and are far from sufficiently addressing the seriousness of violations or omissions in human rights protection, promotion and fulfilment.

Also, beside some sector-specific meetings, in which the proposals from the civil society have been partly considered, there are no indications that the government plans to expand its dialogue and to start meaningful cooperation with the NGOs in the field of certain human rights and non-discrimination in particular. On the contrary, in some cases the Government even blocks and aims to abolish existing platforms for social dialogue, such as The Council for the Implementation of the Principle of Equal Treatment, which ceased to exist in 2014 and has not been operational even from spring 2012. To our information, the Government does not consult NGOs in preparing the content of reports to most treaty bodies, including this one.

National Human Rights Institution

No independent institution for human rights promotion and protection and monitoring of the situation exists. These tasks are only partly and insufficiently performed. Although the pressing need for establishing independent national human rights institution is well reflected by the Ombudsman in its annual reports, and despite repeated recommendations by the various HR treaty bodies³, there are no serious discussions and plans to remedy this

³ For example CESCR in its Concluding observations from November 2014 states in the recommendation no 9: "The Committee recommends that the State party take urgent measures to

situation. One single discussion on the session of the governmental Inter-ministerial Commission on Human Rights, mentioned in the reply to the current list of issues does not change this perspective. There are no serious background analyses on alternative solutions to this problem and their impacts, pros and cons, so the issue is yet again postponed to be solved in “better times”.

In our firm opinion the state does not fully exploit all existing internal (including human) and external resources that are at its disposal. A whole set of weak state (predominately policy making) bodies exists, which are taken as a whole employing quite a significant number of people, but are individually weak and more over inadequately coordinated (e.g. lack of cooperation in joint projects and programmes). The state also has large number of HR related working bodies that meet only rarely (e.g., Council for the Disabled) or are even practically paralysed (Council for the Implementation of the Principle of Equal Treatment) and have no specific focus (i.e they are only informed on the outcomes of the legislation process rather than involved in the process). In 2012, a large number of these bodies (with the exception of those required by law) were abolished, among others the Inter-ministerial Working Group for Human Rights. Working group was re-appointed in 2013, but for a considerable time no longer involved external members, such as representatives of NGOs or academia, in its work. This was remedied relatively recently. A number of key policy decisions lack serious and straightforward expert and public discussion and appropriate HR impact assessment. Revisions of the legislation (e.g., pension reform, the Fiscal Balance Act) often follow after only weeks or months after laws come into force, suggesting that the state’s measures are often reckless.

bring the Ombudsman office in compliance with the Paris Principles. The Committee also requests the State party to strengthen the capacities of the Ombudsman with a view to expanding its outreach, and to broaden its mandate and powers so as to enable it to have oversight function on actions of private actors and impose legally binding measures.” Document E/C.12/SVN/CO/2, pg.3, see footnote no.2. Similarly Committee on the Elimination of Racial Discrimination (CERD) in Concluding observations on the eighth to eleventh periodic report of Slovenia, december 2015, in para 17 pg 6. Document CERD/C/SVN/CO/8-11, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/SessionDetails1.aspx?SessionID=998&Lang=en.

NON-DISCRIMINATION AS A CROSS CUTTING ISSUE

(ARTICLES 2 PARA. 1, 2 AND 3, ARTICLE 3, ARTICLE 20 PARA. 2, ARTICLE 24 PARA. 1, ARTICLE 25, ARTICLE 26 AND ARTICLE 27 OF THE CCPR)

The state lacks vision and strategy both for protection of human rights and for combating discrimination. The state does not provide for the respect and effective protection of the right to equal treatment. Slovenia's far reaching ambit legislation (going even beyond CCPR obligations) is not implemented in practice. The existing protective mechanisms are ineffective and critically lack resources. Victims of discrimination do not have trust in them, which is resulting in a wide scope of underreported discrimination cases. The prohibition of discrimination is in practice very often violated by private and public sector alike, with no real consequences for perpetrators. The vicious circle is thus concluded: institutions are becoming co-responsible for the preservation of status quo and effectively give legitimacy to the situation where protection against discrimination is only guaranteed on paper. No efforts made by state nor civil society for achieving actual equality can replace these shortcomings.

Although there are governmental plans to tackle at least some of these shortcomings, these plans are in our opinion not ambitious enough and do not correspond to the pressing actual needs. It seems that they are driven mostly by external (international) pressure (aimed to end the practice of HR bodies which raise these issues constantly) rather than internal needs as those plans do not seek optimum protection, clearly fail to achieve maximum synergies and the much needed critical mass. The alleged lack of resources is just an improper excuse and under circumstances cannot be taken seriously. It is crucial that the state itself sets and provides its own clear example and leadership in this field.

STRATEGIC POLICY MAKING AND MONITORING

With the exception of the situation of certain groups (i.e. women), there are no coherent data and analyses available in Slovenia on the position of vulnerable groups (such as the elderly, youth, many ethnical minorities, people with disabilities, etc.), especially in relation to their exposure to discrimination. This is one of the key consequences of the *absence of a comprehensive monitoring system*.⁴ In some fields, such as the LGBT rights, the NGOs are trying to fill this evident gap with its own initiative. But event this alone cannot remedy the

⁴ This inter alia results in the non-existence of segregated data on degree of respect of human rights for particular vulnerable groups. This is often highlighted by various UN HR treaty bodies: see for example *Concluding observations on the combined third and fourth periodic reports of Slovenia*, adopted by the Committee of the Rights of the Child at its sixty-third session (2013). CRC/C/SVN/CO/3-4, Page 4. See the CESCR in its Concluding observations in November 2014 points in its recommendation no. 6 » The Committee recommends that the State party takemeasures to establish a system for the collection and monitoring of annual data on Covenant rights, disaggregated by the currently prohibited grounds of discrimination, including race and language, and include such comprehensive annual data, on all the recommendations below, in its next periodic report.« Document E/C.12/SVN/CO/2, pg.2, see footnote no.2.

scope and the nature of the problem. There is an evident *lack of state strategy, leadership and coordination of antidiscrimination policies*. Discrimination is therefore not being addressed in coherent and multifaceted way. Relevant recommendations of the Human Rights Ombudsman (hereafter the Ombudsman; see Annual reports for 2002 and 2003), the Parliament⁵ and the Advocate of the Principle of Equality (hereafter the Advocate; see Annual reports for 2010 and 2011)⁶ were not taken seriously in the past. Even the more recent observations of the duty to monitor and to have a strategic approach to protection of HRs, as provided by UN HR treaty bodies, i.e. recently by CESCR⁷, is not taken into account. As the most recent developments (draft of the of Protection against Discrimination Act) clearly show, the government, although called to do so by NGOs, even refuses to legally commit itself in this respect in internal legal order. Moreover, Slovenia *does not even have a general human rights protection strategy* (Vienna Declaration and Plan of Action), what is being continuously highlighted by various HR bodies (i.e. the CESCR Concluding Observations, document E/C.12/SVN/CO/1 point 22, from 2006), *nor strategy against racism and xenophobia* (the Durban Declaration and Programme of Action)⁸. No such strategies are even planned to be drawn up. Even the strategies that exist (i.e. re position of women, Roma, persons with disabilities etc) have very little, if any, focus on non-discrimination. Instead policies targeting vulnerable groups are focused on healing consequences (i.e. by positive action...) rather than tackling structural and systemic discrimination as one of the key reasons for their unfavourable position. In the situation where non-discrimination (response to violations) is practically disregarded, most of the attempts and strategies to achieve de facto equality seem to be absurd as they cannot be effective. In many situations, such as with quota, they can even perpetuate the exclusion mechanisms.

Ineffective system for the promotion of equality, adoption and exercise of policies.

Policy-making bodies⁹ for various vulnerable groups are numerous but dispersed between various ministries and consequently weak. Some groups such as elderly, LGBT persons, other ethnical groups and many more do not have any such structures. This indicates an *irrational resource management*, the consequences of which are also *inefficiency, non-transparency, lack of intersectional approach, bad coordination and lack of leadership on a horizontal level*. Occasional reorganizations of the public sector are poorly planned (like the one in 2012, which, among others, abolished the Office for Equal Opportunities) and produce no real financial savings, let alone substantive synergies. In the field of gender equality and religious communities service for example, the staff of the policy-making bodies almost halved. On the other hand, we have seen the number of employed representatives of the political parties in the cabinets of the executive power on the rise,¹⁰ even after 2008. This proves that the financial resources are not a decisive problem. The scope and reach of the projects in the fields of promotion, awareness-raising and training of key stakeholders (i.e. the prosecution, the judiciary, public sector, employers, etc.) is comparatively very small. Due to the absence of any strategy, the projects are not focused and lack continuity and

⁵ »Government should adopt a strategy of antidiscrimination policy and in this context also study the possibility of forming an independent institution which would tackle prevention against discrimination in all areas, education on human rights and monitor human rights obligations in this areas in cooperation with other stakeholders.« See Point 1 of the decision - recommendation of the Parliament when hearing 8th Annual report of the Ombudsman for 2002.

⁶ Available in Slovenian only at <http://www.zagovornik.gov.si/si/informacije/letna-porocila/index.html>.

⁷ CESCR in its Concluding observations in November 2014 points in its recommendation no. 10 a) that "recommends the state to develop and adopt a comprehensive anti-discrimination strategy in collaboration with civil society". Document E/C.12/SVN/CO/2, pg. 3, see footnote no.2.

⁸ See CERD in Concluding observations on the eighth to eleventh periodic report of Slovenia, December 2015, in para 19., pg 6. Document CERD/C/SVN/CO/8-11, see footnote 3.

⁹ Such as Office for Minorities, sector for Religious Communities, the Directorate for the disabled, Equal Opportunities sector, Youth Office, Directorate for Family, etc.

¹⁰ Article in *Dnevnik* daily, February 19, 2014, available at <http://www.dnevnik.si/slovenija/od-podmladka-do-ministrovega-kabineta>.

sustainability. The lack of the state's proactive approach cannot be replaced by the activities of the NGOs.

ANTIDISCRIMINATION LEGISLATION

Antidiscrimination legislation is not clear, precise and definite enough to be easily understood by their addressees (victims, perpetrators, even public bodies tasked with the protective function). At the moment it is absolutely necessary to know in detail several different laws and/or international law to claim proper protection against discrimination and even here far too often the complex legal interpretation is needed. *Some of the definitions of discrimination are missing and/or are imposed just in particular fields of social life* (such as incitement to discrimination, multiple and intersectional discrimination, sexual harassment, reasonable accommodation...). Exceptions from prohibition of discrimination are not clear and evident and legal tests to determine them are misleading. Hate crimes are not defined (except for the case of murder) and discriminatory motivation of the offender is thus not necessarily taken into account in criminal law. Focused awareness and training, particularly of public authorities, is thus even more crucial; so far, however, it has been inadequate. Moreover, inadequate effort and resources were employed to inform and raise awareness of the public in general, as well as to form a more concrete guidelines, models and standards (especially by the state), even when the later is explicitly prescribed by the legislation. To illustrate this: under The Equalisation of Opportunities for Persons with Disabilities Act (Zakon o izenačevanju možnosti invalidov, ZIMI) ministerial regulation should had been adopted years ago to clearly regulate accessibility of goods and services (possibly also public services) and housing. This regulation should above all provide for the minimum non-discrimination standard. The lack of this regulation seriously hinders the effective implementation of rights under the Convention on the Rights of Persons with Disabilities (CRPD), especially from the non-discrimination perspective: it should specify requested adjustments of practices (reasonable accommodation) and provide tools to overcome discriminatory (structural) obstacles. Relevant general (on imprecise legislation) and specific warnings (i.e. on lack of regulation) from the Ombudsman's¹¹ and the Advocate's annual reports were met with no response.

THE SYSTEM OF PROTECTION

The absence of effective institutional system of protection is a key shortcoming, which is a logical paradox. The system of protection is very far reaching in appearance and offers various civil, administrative and punitive (criminal) remedies. They are in principle not mutually exclusive, but several are only applicable in specific contexts. For victims it can be especially demanding *to seek proper remedy(ies)* in various legal proceedings (i.e. to find appropriate inspection or the court, to make an appropriate claim) to gain redress (i.e. full compensation cannot be always claimed before one single court in one proceeding, such as in the case of discrimination in employment in public sector), there are ambiguities as to the very short deadlines for filling the claims etc. From the victim's perspective, such system is very *complicated, non-transparent and ineffective*. The authorities mostly lack much needed specialisation (expertise and sensitivity), and instead of focusing on their duties to protect they often tend to "rely" on others in their inaction. This makes it impossible to establish the responsibility. The symptom of this situation is a *frightening scale of unreported*

¹¹ On non-implementation of ZIMI, see the Ombudsman's Annual report 2010, page 68. Annual reports are available at www.varuh-rs.si/publikacije-gradiva-izjave/letna-porocila.

discrimination: both the numbers of known reported cases and their outcomes are insignificant. There is almost no court practise. The non-binding opinions of the Ombudsman and the Advocate do not affect much the legal reality, as these are remedies of auxiliary nature, not replacing legal remedies. A few interventions of the Ombudsman to the Constitutional Court (CC) are known, but even here some outcomes of the rulings are regrettable.¹² Incredibly small number of cases is reported even in areas where discrimination is widespread, such as employment and work-related cases (i.e. redundancy, promotion...) of discrimination on the grounds of gender (young women, pregnant women, caretakers, harassment, see below), political opinion (employment and promotion in public administration, see below) and race and ethnicity in and particularly in the area of access to goods, services and housing.¹³

Legal protection against victimization (retaliation) is purely notional. Victimization is merely prohibited (*lex imperfecta*), there are no specific, effective sanctions nor other protective measures available (save potential interim measures that could be imposed by courts).

Lack of confidence in the protective function of the state can be further illustrated with NGOs research data of the LGBT population: NGO data indicate that LGBT individuals experience multiple forms of homophobic violence and discrimination.. The questionnaire Discrimination Based on Sexual Orientation (Diskriminacija na osnovi spolne usmerjenosti)¹⁴ shows that almost 50 % of gay and lesbian respondents had such experiences. Similar research project Everyday Life of Gays and Lesbians (Vsakdanje življenje gejev in lezbijk)¹⁵ confirms that 53 % of respondents from this group had experienced homophobic violence. A study Everyday life of Gay and Lesbian Youth (Vsakdanje življenje istospolno usmerjenih mladih)¹⁶ indicates that 63 % of secondary school students, 35 % of students at the university level and 34 % of the employed young LGBT people share this experience. 67,6 % of respondents in research project Activate (Povej naprej!)¹⁷ have reported an experience with homophobic violence and/or hate crime. Out of these, as much as 92 % of victims did not report the case¹⁸. Similar results are evident from the most recent research conducted in 2014.¹⁹

The scope of underreporting is therefore alarming. In our opinion, this behaviour cannot be attributed solely to the lack of awareness (especially in the light of the data on perception of

¹² For example, unsuccessful attempts to end unequal treatment between autochthonous and non-autochthonous Roma: arbitrary and discriminatory regulation of their political participation (representation) on both the state and local level (cases U-I-176/08 and U-I-15/10); maximum age limit imposed by austerity measures and hence discrimination in redundancy measures in public sector (case U-I-146/12).

¹³ Results of the research on accessibility of one-room apartments (situation testing), conducted in 2013, are rising serious concern: 33 % of professional housing agencies (!) was discriminating against non-Slovenian potential tenants. See more at

www.zagovornik.gov.si/si/informacije/osvescanje/novice/novica/date/2013/07/24/rasna-diskriminacija-na-trgu-najemnih-stanovanj-pogosta/index.html.

¹⁴ ŠKUC. *Anketa o diskriminaciji na osnovi spolne usmerjenosti*. 2001. Available at www.ljudmila.org/lesbo/separat.PDF.

¹⁵ The Peace Institute. *Neznosno udobje zasebnosti*. 2005. Available at www2.mirovni-institut.si/slo_html/publikacije/pdf/MI_gay_slo_final.pdf.

¹⁶ Legebitra. *Vsakdanje življenje istospolno usmerjenih mladih*. 2008. Available at www.drustvo-legebitra.si/images/stories/LGBT_Mladi/Istospolno_usmerjeni_mladi.pdf.

¹⁷ Legebitra. *Povej naprej!* (report). 2009. Available at www.drustvo-legebitra.si/images/stories/Povej_naprej/POVEJ_NAPREJ.pdf.

¹⁸ Ibid.

¹⁹ Dr. R. Kuhar et al. *Raziskava o pravni podinformiranosti LGBT Skupnosti in vsakdanjem življenju gejev in lezbijk*, november 2014, available at http://www.legebitra.si/wp-content/uploads/2016/01/RAZISKOVALNO_POROCILO_socioloska_raziskava.pdf

the problem)²⁰, but *mostly to distrust* in the protective function of the state and the consequent fear of victims to face victimisation. Ombudsman and the Advocate of the principle of equality in their annual reports consistently repeat that **the remedies for the protection against discrimination are not put into practise and exist on paper only**. An extensive system of civil, administrative and penal sanctions exists; it is however extremely unlikely that the offender will suffer any serious consequence. Serious lack of efficient protection against discrimination is also reported by the Amnesty International (especially regarding access to goods, services and housing, but also in general)²¹ and repeatedly outlined by various international human rights institutions, such as Special Rapporteur on the human right to safe drinking water and sanitation²². Committee on the Elimination of Racial Discrimination (CERD) expressed concern that very few acts of racial discrimination have been prosecuted and convicted. This can be an indication of the absence of relevant specific legislation, lack of awareness of the availability of legal remedies, or of insufficient determination on the part of the authorities to prosecute.²³ In 2014 The European Commission against Racism and Intolerance (ECRI) in its report on Slovenia (fourth monitoring cycle) established the following observation »The Law Implementing the Principle of Equal Treatment is dysfunctional. Racial discrimination has not been established in any case so far.«²⁴

ASSISTANCE TO VICTIMS AND EQUALITY BODY

There is no efficient and independent assistance to the victims of discrimination. There is no efficient and independent specialised equality body in Slovenia,²⁵ which could significantly contribute to a more effective protection, monitoring and promotion of respect of the right to equal treatment. The Advocate of the principle of equality (in place since 2005) is a sole public officer in executive institutions (in the Office for Equal Opportunities, in the Ministry for Labour, Family, and Social Affairs and Equal Opportunities since 2012), and consequently does not possess even an appearance of autonomy,

²⁰ According to the Eurobarometer research No. 393 (2012), 17 % of respondents in Europe believes they were victims of discrimination in the last year, and 34 % witnessed such an event. Available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_393_en.pdf. That means that, according to the research, about 35,000 people in Slovenia believe they were discriminated. Taking into account the fact that considerable proportion of the victims are not even aware of the discrimination, it is clear that only fraction of percent of discrimination cases are reported (Merely 150–250 estimated reported cases to all authorities combined!). Labour law inspection clearly stipulates that discrimination is amongst the most common violations in the public sector, and furthermore that the phenomena “is probably much more widespread than the numbers in the official statistics show«. Labour Inspectorate of the Republic of Slovenia. *Annual report 2012*, page 64. Available at www.id.gov.si/fileadmin/id.gov.si/pageuploads/Splosno/LETNA_POROCILA/LETNO_POROCILO-2012/Inspektorat_RS_za_delo_-_Letno_porocilo_za_letno_2012-20.05.2013.pdf.

²¹ *Parallel lives, Roma denied rights to housing and water in Slovenia*, index: EUR 68/005/2011, AI Ltd, London, March 2011. Available at www.amnesty.org/en/library/info/EUR68/005/2011/en.

²² Report of the Special Rapporteur on the human right to safe drinking water and sanitation, Catarina de Albuquerque. Mission to Slovenia (2011). A/HRC/18/33/Add.2. Available at www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add2_en.pdf.

²³ CERD. Concluding observations of the Committee on the elimination of racial discrimination. 2010. CERD/C/SVN/CO/6-7, Paragraph 14. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/451/55/PDF/G1045155.pdf?OpenElement>.

²⁴ See document CRI(2014)39, pg. 9, available at <https://www.coe.int/t/dghl/monitoring/ecri/country-by-country/slovenia/SVN-CbC-IV-2014-038-ENG.pdf>

²⁵ Required by the European Council directives – Article 8a of the Directive 76/207/ES, Article 7 of the Directive 2002/73/ES, Article 12 of the Directive 2004/113/ES and Article 20 of the Directives 2006/54/ES, Article 2 of CEDAW (protection of women), partly also article 4 of the Convention on the Rights of the Child (protection of children) and Article 33, Paragraph 2 of the Convention on the Rights of Persons with Disabilities (protection of people with disabilities).

independence and impartiality of the advocate, let alone his/her formal, objective and factual independence. It lacks any organisational and budgetary independence, adequate organisational support or personnel. According to the Advocate, his mission seems to be impossible to accomplish properly under the current legal and factual capacities. The acute deprivation of human resources is aggravated by the rising backlog. Furthermore, the Advocate of the Equal Opportunities for women and men, a special body for fight against gender-based discrimination (required by the Article 20 of the Equal Opportunities for Woman and Men Act – Zakon o enakih možnostih žensk in moških, ZEMŽM) has not been nominated since August 2008, despite the fact that the inflow of cases has doubled since then. For this it seems strange if not even misleading to state in the Core document (see HRI/CORE/SVN/2014 at para. 113., pg. 29) that »in 2005, the office of the Advocate for Equal Opportunities for Women and Men ... evolved into the Advocate of the Principle of Equality«. There is no office and there never was any »office« of the Avocate – this is merely one single post, which is not even a legal entity. The “evolution” in practice meant just that the additional burden of hearing all cases of discrimination was put on a single person, who was before that hearing “just” gender discrimination cases. It seems clear (i.e. from the responses of the Government to the EU commission’s infringement proceedings) that the Government was up until now simply on the position that a single person equality body is doing “enough”. The Advocate struggles unsuccessfully for available resources to improve his performance and tackle staff deprivation: he was deprived of special funds from the *Progress* program²⁶ and under the Norwegian Financial Mechanism,²⁷ etc. To illustrate the »responsiveness « of the government: advocate's annual report for 2011 was not even heard by the government.²⁸ The absence of the real and effective equality body is apart from HR ombudsman and the Advocate himself persistently highlighted by NGOs. It is acknowledged even by the governmental study since 2010²⁹. ECRI has in 2007 already recommended that the Slovenian authorities keep under constant review the status, powers and duties of the Advocate of the Principle of Equality to ensure the most effective protection for the victims of racial discrimination, and highlighted the need of independence of such a body.³⁰ Similar recommendations were given by the Committee on the Elimination of Discrimination against Women (CEDAW) in 2008³¹ and most recently in 2015. In 2011, the Advisory Committee On

²⁶ Since 2011 Advocate was unable to use funds from restricted call for proposals action grants (annual amount approximately 300.000 euro) for support to national activities aiming at combating discrimination and promoting equality (JUST/2011/PROG/AG/D4, JUST/2012/PROG/AG/AD in JUST/2013/PROG/AG/AD).

²⁷ In the project DIKE for capacity building of LGBT persons and their NGOs, approved for financing under the Norwegian Financial Mechanism in 2013, the Ministry of Labor approved the Advocate's involvement in the project but refused to take financial resources (EUR 10,000) available.

²⁸ It also includes history of warnings, recommendations and proposals from domestic and international human rights institutions, and lists a number of international studies, which highlight dubious endeavours of Slovenia in this area. Available at www.zagovornik.gov.si/si/informacije/letna-porocila/lp-2011/index.html.

²⁹ Analiza institucionalne ureditve spodbujanja enakosti in varstva pred diskriminacijo v Republiki Sloveniji, available at www.vlada.si/si/delo_vlade/gradiva_v_obravnavi/gradivo_v_obravnavi/?tx_govpapers_pi1%5Bsingle%5D=%2Fupv%2Fvladnagrdiva-08.nsf%2F18a6b9887c33a0bdc12570e50034eb54%2F3947bc30d254a3afc1257829004f0f2e%3FOpenDocument&cHash=93f12ffa29.

³⁰ ECRI. *Third report on Slovenia*, CRI(2007)5, page 13, Available at http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/SVN-CbC-III-2007-5-ENG.pdf.

³¹ In the *Concluding observations of the Committee on the Elimination of Discrimination against Women: Slovenia* (2008), CEDAW expressed concern regarding the low number of cases examined by the Advocate for Equal Opportunities for Women and Men and the current appointment of only one Advocate for implementation of equal treatment, who has a wide mandate as a general anti-discrimination advocate and whose position is that of a governmental official. The Committee recommends that the government consider the establishment of an Advocate for Equal Opportunities for Men and Women with independent status and adequate mandate, authority and visibility. It also

The Framework Convention For The Protection Of National Minorities³² even highlighted the problem amongst the »issues requiring immediate action«. In early 2013, the domestic authorities were faced with an intervention of the EQUINET network, and in 2014 the European Commission installed infringement proceedings for failure to respect EU law in this respect. Moreover, the Special Rapporteur on the human right to safe drinking water and sanitation expressed concern that nobody conducts systematic monitoring on prevention and protection from discrimination. She urges the state to consider revision of the existing legislation and promptly eliminate these shortcomings.³³ She further recommends that such function be performed by an independent body or institution, which would be able to provide more accurate data on discrimination events and social patterns and be able to give more decisive suggestions for improvements of the situation.³⁴ In 2014 ECRI (under request for priority implementation) “urges the authorities to find a suitable solution with all parties involved in order for a fully independent national specialised body to combat discrimination, in particular racial discrimination, to start operating as soon as possible.”³⁵

The Ombudsman is unable to fulfil all the tasks of the equality body: assistance to victims is only given in relation to violations in public sector (but not in court proceedings and other open proceedings) and is subject to the subsidiarity rule. The institution’s former endeavours in this area (especially in the period 2006–2008) were subsequently reduced both in substance (promotion, monitoring) and in scope. In 2008, its antidiscrimination department was abolished.

As a result, the tasks of the national equality body are currently performed by less than two state officials (with the Advocate being the only one who is actually dealing with this issue continuously and focused). Considering the extent and gravity of the problem, as well as internal resources of the state, this is absolutely unacceptable and comparatively unique.³⁶ The abovementioned shortcomings after 2008 *ipso facto* represent a clear and **unacceptable regression**, rather than “evolution”. For this reason, the state should prove that everything in its power was done under the given circumstances.

Furthermore, the State does not enable NGOs to actively assist victims (representation in litigation, third party intervention), **particularly in the most complex legal proceedings**, as required by valid EU legislation (relevant concerns are constantly raised by the Ombudsman, the Advocate and the European Commission). The state does not provide support for these NGO activities either. It even raises *new barriers in regard to access to the courts* by limiting access to free legal aid for the most vulnerable, by introducing fees in labour disputes etc. For more on this, see below.

encourages the state to establish a deputy Gender Equality Ombudsperson with a specific mandate to promote the rights of women. See CEDAW/C/SVN/CO/4, available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/SVN/CO/4&Lang=En, (Paragraphs 13 and 14).

³² *Third opinion on Slovenia*, March 31, 2011, ACFC/OP/III(2011)003, available at http://www.coe.int/t/dghl/monitoring/minorities/3_FCNMdocs/PDF_3rd_OP_Slovenia_sl.pdf, In the field of anti-discrimination legislation, the Law on Equal Treatment of 2004 was amended in 2007 but further improvements are needed to ensure effective protection against discrimination, and in particular, the access to effective remedies. The powers of the Advocate of the Principle of Equality, established under the Law on Equal Treatment, appear to be particularly ineffective in protecting the victims of discrimination and, more generally, preventing and monitoring discrimination in society. This institution lacks independence, financial and human resources, and its competences are very limited. It is essential to remedy these important shortcomings as a matter of urgency. See paragraph 14.

³³ *Ibid.*; Paragraph 7.

³⁴ *Ibid.*; Paragraph 56. See also recommendations under ‘i’.

³⁵ See document CRI(2014)39, pg. 43, see footnote 22.

³⁶ See presentation data on equality bodies available by EQUINET, available at <http://www.equineteurope.org/-Member-organisations>.

Non-implementation of the legislation, not providing for the effective, proportionate and dissuasive sanctions. The legislation provides a comparatively wide and strict system of civil, administrative and criminal sanctions in the discrimination cases. However, the statistics on the results of the applied legal remedies is extremely worrisome: the probability of the perpetrator suffering any real consequences for his actions is close to zero. The Ombudsman³⁷, the Advocate, NGOs and international organizations are trying to draw attention to these facts for several years. The available data on sanctions imposed show that these are usually under the minimum prescribed (i.e. warnings instead of fines). In some of the most crucial cases, such as those concerning suspicions of hate crimes (i.e. two Roma women killed in bombing of Roma settlement in 2005) the criminal proceedings have still not been concluded yet or resulted in acquaintance of the offenders (i.e. organised attack on LGBT activists in 2008). All these deeply concerning facts, circumstances and developments raise very serious doubts of the implementation of the legislation in practice, and it is for the state to prove otherwise.

Even the incentive part of legislation is not being implemented properly. See observations above on the absence of Council for the Implementation of the Principle of Equal Treatment and information below regarding the situation of women in decision making, the situation of the Roma and the situation of the people with disabilities.

All of the above is merely the **symptom of underestimating the weight and extent of the problem of discrimination and lack of the will to tackle it**. Political will is the crucial and decisive missing factor, as prove the state's inadequate responses to numerous continuous warnings and recommendations by the local and international organizations for the protection of human rights.³⁸ What is more, the shortage of data about the violations is the perfect excuse of some sceptics in the political debate, that *»in fact there is no problem, that it is insignificant in extent and that it is made-up by the controlling institutions in order to justify their existence»*.

DUTY TO RESPECT

The cases of disregard for the prohibition of discrimination by the state are multiplying, especially in connection to regressive austerity measures. In addition delays in elimination of the serious systemic discrimination (disrespect for the judgements of the Constitutional Court³⁹) are common. Lately, the legislator insists on the regressive measures in the field of protection. Let us list a few examples. The Criminal code in 2008 narrowed significantly the scope of the criminalisation of hate speech. The new Employment Relationships Act (Zakon o delovnih razmerjih, ZDR-1) provides for lower sanctions for employment-related discrimination in comparison to the general antidiscrimination legislation for no apparent reason. It also reduces the transparency of

³⁷ See HRO annual report 2009, page 50. Available at http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/Letno_porocilo_Varuha_za_2009.pdf.

³⁸ See also the Special Rapporteur on the human right to safe drinking water and sanitation, Document No. A/HRC/18/33/Add.2 (Paragraphs 44 and 47, page 14 and 15). Available at www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add2_en.pdf.

³⁹ For one of the historically gravest cases see the situation of the »Erased« below. Currently the following judgements which are not implemented should be mentioned as they affect rights of Roma in municipality Grosuplje (U-I-345/02 from 2002), LGBT persons (cases no. U-I-425/06 from 2009 and U-I-212/10 from 2013) persons with disabilities (U-I-156/11 from 2014) etc. See below under specific issues.

recruitment procedures, e.g., shortening the deadlines for submitting bids and exonerating the invitation to tender. The proposed Act on Equality between Women and Men contained clearly regressive legal definitions of the forms of gender discrimination, widened the permissible exceptions, eliminated the special body for the gender equality, abolished the proactive duties of the political parties to adopt relevant strategies to raise participation of women, etc. For the observations on the new draft of the Protection against Discrimination Act, see below.

Some examples of such systemic and structural violations are presented below, i.e. in respect to the right to housing, social and labour rights, children's rights, the situation of the Roma communities and the people with disabilities, the situation of the "erased", etc. At this point, we would like to outline just a few such examples.

The first is the Fiscal Balance Act (Zakon o uravnoveženju javnih financ, ZUJF⁴⁰), which came into force on May 31 2012. This Act is a typical example of wide regressive and indirectly discriminatory austerity measures. It produced numerous irregularities, many are still not recognised by the courts. The most brutal was the *retroactive intervention into pensions* for specific groups, such as supposedly privileged pensioners, once employed in the institutions of the former nondemocratic regime. ZUJF reduced the pensions of more than 26,000 beneficiaries whose pension payments had no basis in the contributions to the Slovenian pension fund. The reduction of such pensions was made without issuing decisions, so that legal protection was only provided by the intervention of the Constitutional Court. The state acted in a discriminatory manner (because of political beliefs, among others, this measure has affected all former federal employees and soldiers in the Ex-Yugoslav army) and arbitrarily targeted only one group of the beneficiaries – it was a case of retroactive interference with vested rights. In its judgment no. U-I-186/12⁴¹, the Constitutional Court annulled certain provisions of the Fiscal Balance Act and declared others inconsistent with the Constitution. This would in principle enable restitution of pensions ex post to all, and would be beneficial to all who had launched legal remedies against the reduction. But the legislator deemed necessary to adopt an additional law requiring repayment of unduly reduced pensions ex ante to all, including those who did not vindicate their rights, but preventing, among others, reparation (with interests), including to those who were protecting their rights vigilantly by legal means. Thus, the state emptied the right to compensation due to discrimination and recklessly caused an additional financial burden due to initiated legal proceedings and appeals against encroachments on the rights, resulting in unnecessary administrative burdens. Certainly quite substantial are also the costs of the implications of a special law requiring repayment of the unduly reduced pensions, applicable to all, irrespective of whether they lodged an appeal or not.

The second mass discrimination caused by ZUJF introduced *compulsive redundancy age in the public sector* (termination of working contract), but the criterion of qualifying for retirement, which is currently lower for women, has *indirectly discriminated women* (the Constitutional Court judgement in the case U-I-146/12⁴²); unfortunately, the age discrimination claim was rejected in the same judgement. Data on the number of affected civil servants is unavailable.

⁴⁰ Fiscal Balance Act, Official Gazette of the Republic of Slovenia, No. 40/12. Available only in Slovene at: <http://www.uradni-list.si/1/content?id=108751>.

⁴¹ Judgment of Constitutional Court in Case U-I-298/96. Available at: <http://odlocitve.us-rs.si/en/odlocitev/AN01809?q=298%2F96>.

⁴² Judgment of Constitutional Court in Case U-I-146/12. Available at: <http://odlocitve.us-rs.si/en/odlocitev/AN03723?q=u-i-146>.

ZUJF and later The Parental Protection and Family Benefits Act⁴³ introduced certain changes that affect the status of women. *Reduction in compensation for parental leave* from 100 % to 90 % of salary affects disproportionately women, because they are the majority recipient, receiving the compensation in more than 92 % of all cases. In addition, the amount of the compensation was limited to 2 times of the average wage (previously 2.5 times). The state is thus sending out a strong message that the unpaid care work is worth less than the paid work, which on a symbolic level presents the devaluation of care and household work in the private sphere. This measure affects women in the fullest extent possible and constitutes *indirect discrimination of women*.

The next example indicates the fundamental unresponsiveness of the state to use all available resources to dismantle segregation of LGBTI population. It is well known that LGBTI persons, same-sex couples and families are systemically discriminated against in the numerous legal acts and regulatory provisions. Discrimination persists in the Health Care and Health Insurance Act (Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, ZZVZZ; see below), Housing Act (Stanovanjski zakon, SZ-1; see below), Code of Obligations (see below), The Criminal Code, Enforcement of Criminal Sanctions Act, Criminal Procedure Act, General Administrative Procedure Act, Civil Procedure Act, Marriage and Family Relations Act, etc. Recent extensive study, done by NGOs in 2015 has provided evidence that hundreds of discriminatory provisions can be found in the legal system in more than 70 pieces of legislation alone (no review was done of other regulations)⁴⁴. The Constitutional Court has already found years ago The Registration of a Same-Sex Civil Partnership Act⁴⁵ and Inheritance Act⁴⁶ both discriminatory and has ordered the legislator to remedy this unconstitutional situation in six months, but this was not done. Existence of various clearly unconstitutional legal gaps with regard to the exercise of the social and economic rights of registered and unregistered same-sex couples (see below) can be clearly visible even from relevant judgements of the European Court of Human Rights (ECtHR) and the Court of European Union, for example health insurance for the partner is unavailable to the employed partner, paid leave for same-sex registration is not available etc.⁴⁷ According to the Health Care and Health Insurance Act (Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, ZZVZZ),⁴⁸ registered or non-registered partner is not entitled to take official leave for the care of the sick partner and to the right to compensation for the care of family member.⁴⁹ Unemployed registered or non-registered partner is not entitled to a health insurance on behalf of his/her partner.⁵⁰ This arrangement is clearly discriminatory and in breach with the *erga omnes* obligations imposed on state by the ECtHR.⁵¹ It is absolutely

⁴³ Parental Protection and Family Benefits Act, Official Gazette of the Republic of Slovenia, No. 26/14. Available only in Slovene at: <http://www.uradni-list.si/1/content?id=117071>.

⁴⁴ Dr. B. Rajgelj *et al.*: Pravni položaj istospolnih partnerstev in starševstva v Sloveniji, march 2015 available in Slovenian only at http://www.mirovni-institut.si/wp-content/uploads/2015/03/Pravni-položaj-istospolnih-partnerstev-in-star%C5%A1evstva_feb_2015.pdf.

⁴⁵ Constitutional Court judgment no. U-I-425/06. 2009. Available at <http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/5EC66748A09C70A4C12575EF002111D8>.

⁴⁶ Constitutional Court judgment no. U-I-212/10. 2013. Available at <http://odlocitve.us-rs.si/usrs/us-odl.nsf/o/FC62EF78571FE59EC1257B4800408D62>.

⁴⁷ See the judgment of the Frédéric Hay v. Crédit agricole mutuel de Charente-Maritime et des Deux-Sèvres C-267/12, (2013).

⁴⁸ Official Gazette of the Republic of Slovenia, No. 72/2006-UPB3, No. 114/2006-ZUTPG, 91/2007, 71/2008, 76/2008, 118/2008 Skl.US: U-I-163/08-12.

⁴⁹ Article 30, Paragraph 1 of the ZZVZZ provides the right to a social benefit due to care for a close family member relating to the Article 20, Paragraph 1 of the ZZVZZ, which defines close family members as spouses and children of the person insured.

⁵⁰ According to Article 21 of the ZZVZZ, a spouse can be insured as a family member, if they are not insured (Paragraph 1). According Paragraph 2, the same applies for a person living in a partnership with the insured person, which is, in legal consequences, equalized with a marriage by the Marriage and Family Relations Act.

⁵¹ Compare with the judgment of the ECHR in the case *P.B. and J.S. vs. Austria* (2010).

necessary to dismantle discrimination from the legislation, which is affecting practically all legal proceedings (before courts, administrative bodies and in public law in general). These problems affect the right to fair trial before impartial tribunals, including in the criminal law so not only same-sex partners rights but potential everybody's rights can be affected. Close relationship between same-sex partners is simply not taken into account re the possible exclusion of judges and other persons (being biased before of this partnership link) from making decisions in those proceedings, the same problem is pressing in voting proceedings, the conflict of interests is not taken into account in some of the key anticorruption legislation etc. Very grave is the problem of the position of (privileged) witnesses (the right not to witness against one's partner). In some cases the partner is obliged to announce his/her own partner or face criminal charges. In civil law, the absence of the right to claim damages in the event of the responsibility for death of the partner stands out as one of the most evident flaws. All these and other problems have been raised in the campaign for the governmental proposal of the Family Code, which was then rejected in the referendum in 2013. In March 2015 the Parliament, upon the proposal of one opposition party adopted a change in the Marriage and Family Relations Act (Zakon o spremembah in dopolnitvah Zakona o zakonski zvezi in družinskih razmerjih) enacting marriage for all, levelling up rights of same-sex married and unmarried couples to the rights of heterosexual married and unmarried couples, including the right to adopt children (for married couples). This law would *ipso iure* eliminate all discrimination (and effectively end segregation) but it was quashed on the referenda on held in December 2015 again. It should be noted that in both referenda the government refused to take part in the referenda campaign which is in our opinion not in line with the positive duties of the state under the Covenant. The Government, although it has acknowledged all these grave systemic discriminations, has currently no plan on how to dismantle segregation of the LGBTI population. It is apparently unwilling to consider using legal tools, i.e. to file the proceedings before the Constitutional court.

RECENT DEVELOPMENTS

We would like to comment here separately and in more detail the most recent developments on the **draft of the Protection against Discrimination Act**⁵². The *public discussion* on the Act in late June 2015 was astonishingly short (lasting for a bit more than two weeks effectively) and provided very limited time to give appropriate input. The first draft was extremely disappointing and heavily criticised by NGOs and the Advocate. Later several other drafts, varying considerably in many aspects from the original-one were prepared in the second half of 2015 but they remained completely unknown to the interested public, including NGOs who "participated" in the initial consultation. NGOs and even the Advocate had to request the insight into one of the last drafts via the right to access public information in January 2016. NGOs will apparently have the only chance to cooperate meaningfully in decision making in the Parliament, as the latest draft has been already sent to the Government in January 2016 to be adopted. The draft does offer hope for some positive progress in the field of legal protection and would improve position of the Equality body (e.g. special claims before court, the possibility for independent Equality body to use it, the possibility for NGO participation in litigation, some other substantive improvements). However, even this version *is not ambitious and does not follow many key recommendations* of NGOs, Advocate and UN HR bodies, such as most recent CEDAW Committee COs. For example it still foresees only four (4) employees working in the new independent equality

⁵² »Predlog Zakona o varstvu pred diskriminacijo« is available from 22.1.2016 (in Slovene only) at: [http://www.vlada.si/delo_vlade/gradiva_v_obravnavi/gradivo_v_obravnavi/?tx_govpapers_pi1\[single\]=%2FMANDAT14%2FVLADNAGRADIVA.NSF%2F18a6b9887c33a0bdc12570e50034eb54%2F086fb042941c71f6c1257f420027c3d1%3FOpenDocument&cHash=e1e3c4910bb2e3d80aa7281a6809578a](http://www.vlada.si/delo_vlade/gradiva_v_obravnavi/gradivo_v_obravnavi/?tx_govpapers_pi1[single]=%2FMANDAT14%2FVLADNAGRADIVA.NSF%2F18a6b9887c33a0bdc12570e50034eb54%2F086fb042941c71f6c1257f420027c3d1%3FOpenDocument&cHash=e1e3c4910bb2e3d80aa7281a6809578a)

body (with many new and complex tasks), which is still incomparable to almost any EB in Europe. It is rather sarcastic to state that such a capacity is enough to make any considerable impact, yet reach the critical mass for structural changes in the system of protection, monitoring and promotion with guidance. The draft does not depart from this original “framework” of resources despite Advocates warnings and estimations for minimum required resources and even after CEDAW Committee very recently raised concerns about such a plan by the following remark: “the Committee is concerned about the discrepancy in the human, technical and financial resources allocated to the Advocate of the Principle of Equality as compared to the Human Rights Ombudsman, even after the planned increases for the former.”⁵³ The draft of the Act fails to be precise as to the scope of the state’s duty to respect (i.e. how and where it binds public bodies) and duty to protect (positive duties to protect), it does not acknowledge and define multiple discrimination, intersectional discrimination⁵⁴ and reasonable adjustment (accommodation), it does not close the gap between the constitutional prohibition of hate speech (which remains to a large extent *lex imperfecta*), and criminal/misdemeanour aspects etc. It certainly does not make *any change in paradigm in policy making*. It does not introduce a clear and precise operational system of monitoring and data collection. Furthermore it fails to commit the Government to elaborate a strategy on prevention and elimination of discrimination and to provide for an effective system of coordination of governmental policies (this task is no longer even mentioned). The proposal abolishes the Council for the Implementation of the Principle of Equal Treatment and provides for no alternative platform for social dialogue. The proposal is not immune even to regression. For example it even lowers certain punitive sanctions for misdemeanours in comparison to the present legislation. Moreover some discriminatory state action (precisely: the persons responsible for such action) would be no longer even liable to such sanctions. Under line: the current draft act as a whole is a step forward, but evidently insufficient one. As such it represents a great disappointment and a very clear sign of the persistent attitude towards this topic.

RECOMMENDATIONS

The Committee shall request immediate and strong action of the state with all the available resources. The Republic of Slovenia should immediately improve its system of protection against discrimination and enjoyment of the rights under the Covenant and under its own legislation without any discrimination, and should to this end provide and ensure:

- **the elimination of all systemic discrimination from its legislation, particularly all indirect discrimination caused by austerity measures;**
- **sufficiently clear legislation and a system of transparent and effective legal remedies for the protection against discrimination, which should be easily accessible to the victims;**
- **NGO assistance to the victims of discrimination in all, even the most complex proceedings;**
- **an independent and effective equality body for the protection against discrimination, qualified to assist the victims in pursuing protection of their rights, monitor the situation independently and perform proactive work in the form of general recommendations, guidelines, awareness raising, information, and general assistance on the subject;**
- **the strategy of prevention and elimination of discrimination, including punitive policy strategy and**

⁵³ See CEDAW's Concluding observations from November 2015, document CEDAW/C/SVN/CO/5, Para 13, pg. 4 in footnote 1.

⁵⁴ Ibidem. CEDAW calls the state to “review its legal definition of discrimination against women with a view to including intersecting forms of discrimination», pg.3.

- **necessary and sufficient human, organizational and financial resources for all these ends.**

SPECIFIC ISSUES

OBLIGATION TO PROTECT - ACCESS TO FREE LEGAL AID

Article 2 para. 1, 2 and Article 26 of the CCPR

(from Parallel Report by the Coalition of NGOs on Economic, Social and Cultural Rights in Slovenia to CESCR 2014)

Limited access to free legal advice and legal aid after 2008 results in ineffective protection of the right to judicial protection,⁵⁵ in particular for vulnerable groups.

In 2001, Slovenia adopted the Free Legal Aid Act to implement the right to judicial protection on the principle of equality, taking into account the social position of people who cannot exercise this right without harm to their livelihood or the livelihood of their family. The Act regulates several forms of legal assistance, including the so-called initial legal advice. At first, this instrument was available free of charge to permanent or temporary residents, without prior verification of the eligibility. The system provided extensive protection to all, but especially enabled access to legal assistance free of administrative barriers to the most vulnerable social groups. The free initial legal advice is especially important for addressing basic rights concerning labor law and social security, which need to be addressed without delay (termination of the employment, wages, pay for annual leave, the right to social transfers, subsidized housing, legal assistance to victims of domestic violence ...). At least 10,000 people took advantage of this instrument annually.

Free initial legal advice is also important in terms of prevention of the growing number of newly initiated litigations. There is far too much litigation in Slovenia with respect to the capacity of courts, as evidenced by the Lukenda project⁵⁶, designed to reduce the case backlog.

Under the 2008 amendment to the Free Legal Aid Act, beneficiaries and their family members have to meet certain conditions regarding financial situation and property status in order to be eligible for the free initial legal advice. These conditions are determined in the process conducted by the competent district court. There are only 11 district courts in Slovenia. The financial census (EUR 530,44) is fixed below the poverty threshold (EUR 606),⁵⁷ allowing access to this service to less than 10 % of the population. Established

⁵⁵ The right to judicial protection includes the right to advice on the possible initiation of legal proceedings.

⁵⁶ The Lukenda project was initiated as the result of the ECHR judgment in the case Lukenda. It is a national project for elimination of the backlog of cases, run by the Ministry of Justice in cooperation with the Office of the state Prosecutor General.

⁵⁷ Source: Statistical Office of the Republic of Slovenia, *Income and poverty indicators, Slovenia, 2012*. Provisional data of 09/16/2013.

conditions concerning financial and property status⁵⁸ make it impossible for most citizens and other beneficiaries to access these free services. Furthermore, the amendment introduced an administrative barrier, which in practice leads to diminished access to justice. The 2008 amendment to the Act has been drawn up in response to the audit report of the Court of Audit on the implementation of free legal aid instrument, but it only contributed to an even more inefficient use of public funds.

The cost of the initial legal advice is EUR 18, while the court spends more than three times that amount only for determining eligibility for free legal advice. But above all, the procedures take from one to two months, rendering legal advice meaningless in the meantime. **In this way, the most vulnerable groups are denied access to legal assistance and effective protection of their rights.** In some cases that are less important in terms of human rights protection (e.g. in the fields of consumer protection and tenants), the state indeed provides such legal aid without verifying the financial conditions, but this constitutes, in our opinion, violation of the principle of equal protection rights. On the other hand, the applicable regulations are not being implemented. The Social Security Act, for example, still provides obligatory advice and assistance to employees in corporations, public sector and other employers in solving problems in the workplace, upon termination of employment and in exercising their rights to health, pension and disability insurance and to child and family care (Article 18), but this provision is very rarely exercised by the state since the amendments to the Free Legal Aid Act in 2008.

RECOMMENDATIONS

The right to free legal aid, including the initial legal advice, should be granted to all below the at-risk-of poverty threshold.

⁵⁸ Property of the beneficiary of free legal aid and his family must not exceed EUR 15,913 (60 minimum salaries). In determining eligibility, annual leave allowance, maintenances, etc. are taken into account as well.

FAILURE TO REMEDY THE VIOLATIONS OF THE RIGHTS IN THE CASE OF THE “ERASED”

Article 2 para. 1, 2 and 3, Article 20 para. 2, Article 24 para. 1, Article 26 of the CCPR
(from Parallel Report by the Coalition of NGOs on Economic, Social and Cultural Rights in Slovenia to CESCR 2014)

Failure to remedy the mass and continuing violations of the rights of the Erased people since 1992 is one of the gravest violations in history of this state. Slovenian authorities continuously failed to comply both in content and in due time with the relevant decisions of the Constitutional Court and the ECHR. Despite the gravity and wide scale of the initial arbitrary act of erasure, the state has continuously posed and is still posing obstacles to the victims in their efforts to remedy the violations, which inevitably resulted in mass and long lasting racial discrimination and especially ESC rights deprivation.

When Slovenia gained independence from Yugoslavia in 1991, citizens of the former Socialist Republic of Slovenia automatically became citizens of the new country, the Republic of Slovenia. Furthermore, according to the Citizenship of the Republic of Slovenia Act, all citizens of other republics of the former Yugoslavia with permanent residence in the Socialist Republic of Slovenia had the right to apply for Slovenian citizenship within six months of the date of independence. Those who did not apply for citizenship (for various reasons, e.g. not knowing they do not have the republican citizenship or failing to apply in due time) or did not obtain citizenship (because their application was refused or discarded or because the procedure was terminated) were deprived of their permanent residence status by the act of “erasure”. On February 26, 1992, 25.671 (ex-)Yugoslav citizens, permanently residing in Slovenia and mainly originating from other Yugoslav republics, were arbitrarily erased from the register of permanent residents, without proper legal ground and without any administrative act (i.e. written decision). As a consequence, they lost virtually all economic and social rights linked to this status. Many erased people were subsequently forced to leave the country and to reside outside the country for many years.

Erasure was declared unlawful by two rulings of the Constitutional Court (in 1999 and 2003).⁵⁹ None of them was fully respected by the legislator. Respective legislation in 1999 (Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia; hereinafter: Legal Status Act) enabled some of the erased to acquire new status of permanent residence (*ex nunc*). But this was declared insufficient and unconstitutional by the second Constitutional Court judgement in 2003 which *inter alia* required *restitutio in integrum* (return of the status *ex tunc*). After the judgement, a serious political deadlock on the issue prevented any reasonable solution to this problem. Respective amendment of the Legal Status Act, required by the Constitutional Court decision in 2003, was adopted only in 2010, *but further failed to abide to the decision*. Due to very restrictive conditions for acquiring permanent residence permit under this law, the majority of the Erased who applied were not able to acquire the status and they are still unable to exercise their economic and social rights, including the rights to work, social security, health care and education. This amendment of Legal Status Act introduced a list of unjustified conditions for regularization of status of the Erased, including a proof that they continuously (actually) lived in Slovenia since the erasure, which in practice prevents regularization to all those who have been forced to reside outside the country for many years and could not return. This legislation imposed conditions retroactively, which means that today the erased persons cannot do anything to change the circumstances in the past, i.e. in 1992 and onwards, to

⁵⁹ Constitutional Court judgments No. U- I-284/94 as of February 4, 1999 and No. U-I-246/02 as of April 3, 2003.

meet the conditions required by the law. With 2010 amendments, some exceptions have been added, according to which a person is entitled to receive a permanent residence permit even if he or she was absent from Slovenia. However, these exceptions are limited, difficult to prove⁶⁰ and are therefore further unduly excluding a number of persons from the regularization of their status. Moreover, the law did not address the issue of family reunification for the family members of the Erased who started their families while living abroad and acquired residence permit but are now not able to return with their families due to non-compliance with the conditions for family reunification, applicable to non-residents in general. Furthermore, the administrative fee for initiating the procedure for regularization of their status (EUR 95 per application) is further discouraging the Erased to apply for the status. To illustrate the impact: out of 987 applications⁶¹ for a permanent residence under the 2010 legislation, only 138 applicants were granted permanent residence; 175 applications were denied; and additional 674 applications are still pending. The low number of applications also indicates that the information about the possibility to regularize was not widely available.

At the deadline for the applications under the amended 2010 Legal Status Act (July 24, 2013), over 13.000 Erased were still without any kind of status in Slovenia. With the expiration of the 2010 Legal Status Act, they were left without any effective legal remedy to regularize their statuses, unable to return to Slovenia and/or denied an opportunity to reintegrate into Slovenian society.⁶² During this time, the problem was internationalised by the petitions to European Court of Human Rights, which confirmed the seriousness of the human rights violations.

In order to implement the judgment of the European Court of Human Rights in the case Kurić and others vs. Slovenia, the National Assembly adopted the Act Regulating Compensation for Damage to Persons Erased from the Permanent Population (hereinafter: Compensation Act) as late as November 2013. The law further discriminates between different groups of the Erased, depriving a large group of people from access to compensations for the violation of their rights.

The Grand Chamber of the ECHR issued a pilot judgment on June 26, 2012 in the case *Kurić and others vs. Slovenia* no. 26828/06, in which it determined that the Republic of Slovenia has violated the rights of the Erased. It determined violations of Article 8 (right to privacy and family life), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights, as the Erased, being citizens of the former Yugoslavia, were treated less favorably than those with a foreigners status,

⁶⁰ The 2010 amendments introduced an additional, unjustifiable condition stating that if a person manages to prove they fall within one of the exceptions, only the first five years of their absence are considered justified; to justify the next five years of their absence, they also have to prove that “they tried to return to Slovenia during their absence”. This provision is unclear and effectively blocks status regularization for all those who do not live in Slovenia, as it is impossible to prove that a person tried to return. In many cases they were inquiring about their options in Slovenian consulates abroad, but have no proof of that.

⁶¹ From 24 June 2010 to 31 July 2013 there were 987 applications for a permanent residence permit filed under the 2010 legislation - 841 by the Erased individuals, 51 by children of the Erased and 95 by the citizens of the former FRY republic who had not been “erased”.

⁶² After the expiration of the deadline in July 2013, there were cases that indicate that there are still some erased persons residing in Slovenia without any kind of status for the past 22 years – without any kind of legal status and documents and without access to economic and social rights, including the rights to work, social security and health care. After July 2013 many of the erased residing abroad also sought help with Slovenian authorities and civil society organizations, expressing interest to regularize their status in Slovenia, which are now not able to do, since the deadline for filing applications under the 2010 Legal Status Act expired.

who at the time resided in Slovenia in a comparable position. The Court awarded each of the six applicants compensation for non-pecuniary damages in the amount of EUR 20,000, recognized insufficiency of the measures taken by the government to address the structural problem of the Erased, and ordered Slovenia to set up an ad-hoc mechanism for recognition of the compensations, with the deadline of June 2013. The National Assembly only adopted the Compensation Act as late as November 2013 and it will not come into effect before June 2014. The law was never coordinated with the Erased and the civil society and their numerous concerns were not even addressed. Under the Compensation Act, only those who have already obtained either a permanent residence permit in Slovenia or Slovenian citizenship will be entitled to compensation. Another group of beneficiaries was included - the Erased who applied for a permanent residence permit or citizenship before the adoption of the 2010 Legal Status Act and whose application was rejected, dismissed or the procedure was terminated. However, this group will still have to prove their actual living in Slovenia under similar provisions that proved to be too restrictive under the 2010 Legal Status Act. Exclusion of certain groups of the Erased from the effects of this legislation has no legitimate aim and represents unjustified discriminatory treatment of different groups of the Erased. This position is even supported in the observations of the Legislative and Legal Service of the National Assembly. The Erased and civil society organization also contested the delayed effect of the legislation; the amount of compensation and its limitation without a proper justification; the time limits for payment of compensation (in case the amount exceeds EUR 1,000, the person shall be paid in up to five instalments); and the fact that the law does not include children of the Erased as beneficiaries and does not allow the heirs of the deceased Erased to claim compensation.

With the Legal Status Act expiring and the Compensation Act conditioning the access to compensation with already acquired legal status, but not addressing the issue of status regularization, approximately 12,000 Erased will not have access neither to statuses nor to compensations. Furthermore, it is rather clear from the most recent decision of the ECHR of March 12, 2014 (the case *Kurić and others vs. Slovenia* no. 26828/06, in which the Court awarded compensation for pecuniary damages to the six applicants) that the compensation amounts under the Compensation Act are too low. Furthermore, according to the ECHR ruling, the rights of the family members (i.e. spouses, children) that were not themselves “erased”, were also gravely violated, but the national legislation does not address this issue at all.

RECOMMENDATIONS

The state should enable status regularization for all the Erased who wish to reintegrate into Slovenian society – without additional conditions and free of administrative fees. Furthermore, the authorities should enable reunification for the family members of the erased without additional conditions. The state should enable access to compensations to all the Erased in the light of equal treatment, as they were all “erased” unlawfully in the same way.

 EQUAL RIGHTS OF MEN AND WOMEN

Article 3

(from Parallel Report by the Coalition of NGOs on Economic, Social and Cultural Rights in Slovenia to CESCR 2014 with minor adjustments by OVCA)

Legislative and political measures on gender equality and equal position of women did not have the desired effects, with protection against discrimination also remaining ineffective. Although numerous indicators show that position of women has been worsened by the economic recession, the adoption of protective and political stimulation measures is also in regression. The at-risk-of-poverty rate for women is increasing, alongside with the unemployment of women and income difference between man and women. Gender segregation in the labor market, double burden for women and stagnating women's political representation at the state and community level are also remaining a reality in society.⁶³

Women are, in relation to men, placed in a disadvantaged position in several social domains. Independent analyses (as opposed to official statistical data, according to which the income difference between men and women amounts to 8.3 %) show that on the average, in the period 2003–2007 men earned 23 % more than women and 18 % more for equal work for the same employer. In public sector, this difference was 24 % and 14 %, respectively.⁶⁴ The income gap is increasing with the level of education of women, and is bigger among self-employed workers and in precarious forms of work. Although unemployment data show decrease in unemployment among men in recent years, this does not apply to women. Increase in unemployment is particularly high among women with higher education (in 2005–2012, the increase was 15 % for women and 3 % for men). On average, women seek employment longer than men, with this period being the longest for young women looking for a first employment, middle-aged women, women members of ethnic minorities and migrant women.⁶⁵ For the first time, the unemployment rate for women reached above the EU-28 average, with the position of young women being particularly worrying (see below). According to an OECD estimate, women in the EU perform unpaid domestic work in the value of 33 % of GDP, compared to as much as 40 % of the women in Slovenia; employed women spend 42 hours per week for domestic and caring work, while men spend 28 hours. Researches show that the difference in time spent for domestic work between men and women in Slovenia is among the highest in Europe.⁶⁶

After 2009, this situation has been deteriorating due to economic recession and social crisis, while the status of women has also been disproportionately influenced by the governmental counter-crisis measures, including by more stringent criteria for obtaining minimum pension support (before the austerity measures, two-thirds of the beneficiaries for support were women);⁶⁷ furthermore, women represent two-thirds of the retired population that is receiving pensions lower than EUR 622. Even in 2011, when the general at-risk-of-poverty rate was 15 %, this rate was 24 % for women aged over 60, and 34 % for women aged over 75.⁶⁸

⁶³ Statistical Office of the Republic of Slovenia. *International Women's Day*. 2008–2013. Available at www.stat.si.

⁶⁴ Humer, Ž., Roksandić, M. 2013. *Counter-crisis measures and gender equality*. Ljubljana, Women's Lobby of Slovenia. Available at www.zls.si/images/PROTIKRIZNI_UKREPI_ENAKOSTSPOLOV.pdf.

⁶⁵ *Ibidem*.

⁶⁶ Aliaga, C. 2006. »How is the time of women and men distributed in Europe?«. *Statistics in Focus*, No. 4. Luxembourg, Eurostat. Available at http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-NK-06-004/EN/KS-NK-06-004-EN.PDF.

⁶⁷ Humer, Ž., Roksandić, M., op. cit.; For more, see also *The right to social assistance*.

⁶⁸ Humer, Ž., Roksandić, M., op. cit.

There are large gender differences in childcare, although the legislation also provides for child nursing and care leave for fathers since 1979. However, in 2010 and 2011, only 7 % of fathers among parents actually took the parental leave. In 2010, two-thirds of these fathers took the leave for no longer than 3 months out of 8.5 available. Non-transferable paid 15-day paternity leave was taken by 63 % of fathers in the second year since its adoption (2003), and in 2011, more than 80 % of them took the leave. Since 2006, fathers can also benefit from the 75-day paternity leave without compensation, but with paid social security contributions calculated from the minimum wage. In 2011, this leave was taken by less than 20 % of fathers.⁶⁹ Overall, measures therefore do not equalize participation of women and men in childcare.

In 2012, the austerity legislation has imposed additional burden on young families: preschool care for the second child has ceased to be free of charge, and previously universal childbirth allowance and large family allowance have become conditional on the minimum level of income. While the maternity allowance still remains at 100 %, the childcare allowance (as well as the paternity leave and adoption leave allowances) have dropped to 90 % and have been limited with the amount of 2.5 average salaries (the measure was supposed to affect only one hundred women across the country – with 21,947 children born annually!). As fathers only rarely take the paternity leave, this reduction mainly affects mothers. In relation to reduction of allowances and incentives, it also needs to be pointed out that as many as one quarter of families in Slovenia are single-parent families where the main provider for the family is woman in 85 % of the cases.⁷⁰ »Excessive social expansion«, as this situation was assessed by the Government in its proposal of Parental Protection and Family Benefits Act, is thus to be contained indirectly by discriminatory regressive measures.

Gender inequality remains high in decision making. Slovenia indeed had a female Prime Minister for the first time in its history from 2012-2014, but it has never had neither a female president of the National Assembly nor the National Council. The representation of women in politics is poor, with the exception of the National Assembly (in previous mandate 32.2 % after the elections in 2014 this percentage increased to 38 %), which, according to our assessment, is not just a result of systematic efforts but even more so a result of changes in the political arena (completely new winning parties). The National Council only has 7.5 % female members; today there is almost 32 % of female council members on the local level. Number of female mayors has increased to 16, but their share of 7.5 % is insignificant in relation to the total number of 212 municipalities, furthermore none of the big city municipalities has a female mayor. The proportion of women in the parliamentary group of members of European parliament from Slovenia ranged from 28 to 50 %, today it is 37.5 %. There are also few women on key decision-making positions in economy.⁷¹ Quota system clearly can address just the access to some, but not all elected posts. In this context we would like to highlight the fact that the obligation of political parties to prepare the strategy for inclusion of women in all aspects of their operation, including standing for offices (Article 31 of the Act on Equal Opportunities for Women and Men) has been neither respected nor monitored, and the violations have not been sanctioned with the provided fines.

⁶⁹ Statistical Office of the Republic of Slovenia. *International Father's Day 2013*. Available at www.stat.si/novica_prikazi.aspx?id=5558. *Harmonisation of Family and Professional Life, Slovenia, Second Quarter 2010 – final data*. Available at www.stat.si/novica_prikazi.aspx?id=3821.

⁷⁰ Humer, Ž., Roksandić, M., op. cit.

⁷¹ Statistical Office of the Republic of Slovenia. *Statistical Yearbook 2013*. Available at www.stat.si/letopis/LetopisVsebinska.aspx?poglavje=5&lang=si&leto=2013. Antić Gaber, M. 2011. *Women on the margins of politics*. Ljubljana, Založba Sophia.

DISCRIMINATION IN THE CONTEXT OF EMPLOYMENT AND RIGHTS AT WORK

Article 25 and 26

Although relevant legislation is in place since 2003 the prohibition of discrimination in employment and work is rarely invoked and yet more scarcely sanctioned. The problem affects gravely women and older workers and certain analyses suggest the violations of other groups are widespread. We would like to present a few such indices.

From 2006 to 2010, the Labour Inspectorate registered only 45 complaints relating to discrimination on any ground. The actual outcomes of these proceedings remain unknown. On the average, the numbers remain below 10 reports a year even after 2010. Most cases concerned gender and age discrimination.

Political discrimination in employment and promotion in public sphere (Article 25 point a and c) and the underreporting in this particular area speaks volumes. In our opinion and according to the Advocate, the situation in this area is the key to explain the actual reasons and motives why the State refuses to install the effective system of protection against discrimination. The political parties are unwilling to give away this additional tool for influence on the government of public affairs. The Commission for the Prevention of Corruption in its 2014 study presents analyses of the practices of the Government and municipalities of nomination/removals of certain high public officials, persons selected to sit in supervisory boards of major publicly owned companies etc. in the last 10 years. When tracking and analysing these nominations and other human resource decisions (i.e. to transfer of these people from political posts to other permanent administrative posts) some worrying patterns appeared which correspond exactly to periods before and after each new elections (political changes in the structure of the Government). It should be noted that despite selected posts where political affiliation is natural, genuine and decisive requirement the “spoils system” is prohibited in the legislation (via prohibition of discrimination) and the criteria of meritocracy are prescribed by law. The outcome of the study suggests that non-regulation (i.e. lack of criteria, conflicts of interests, i.e. persons being on the political posts and sitting in supervisory boards at the same time) or/and non-transparency of these practices in employment and promotion presents serious risks for clientelism and corruption.⁷² The persons who risk discrimination most are quite naturally those who insist on remaining politically neutral.

As a symptom of the omnipresence of these practices it seems only natural, that political discrimination shamelessly “occurred” even at the nomination of the Advocate (the equality body!) in 2008 - the person chosen for the post was a party official who clearly did not meet the criteria prescribed by law. It is especially disturbing, that the only effective check for these practices is the use of legal remedies by the unsuccessful candidates. This alone cannot be seen as effective, especially in the light of present non-protection from victimisation (see above) which suggests that employees are afraid to report for fear of retaliation. As some other rare but rather absurd successful court cases suggest, discrimination occurs where

⁷² See »Končna analiza za sistemsko oceno korupcijskih tveganj, vključno s klientelizmom, pri zaposlovanju v javnem sektorju v obdobju menjave vlad za zadnje štiri menjave vlad in menjave županov od lokalnih volitev leta 2004 do danes«, document no. 06299-3/2014/106428, available at https://www.kpk-rs.si/download/t_datoteke/11154

expected the least also in other spheres, i.e. disability discrimination (blind teacher discriminated against in the public school for blind children), or discrimination based on health diagnosis (HIV positive candidate refused an administrative post in public health institution, responsible for labour medicine). It is reasonable to suspect that if cases occur in such institutions, the situation in private sector might be much worse.

Although undoubtedly very much present (for example it is estimated that up to 80% of Roma people are unemployed) **the scale of racial discrimination is practically unknown and remains poorly researched.**

As indicated above the labour legislation prevents **LGBT persons** living in registered or non-registered partnerships from exercising the right to leave to care for a sick partner and the right to paid leave upon registration of the same-sex partnership. **Young people were disproportionately affected by the systemic austerity measures in public sector** such as moratorium on new employments and on promotion in the public sector **in recent years.**

There is severe structural exclusion and concomitant lack of incentives, and even asymmetric incentives, in the field **of employment of persons with disabilities** – e.g., within the existing quota system, lower employment quotas are set for public administration and information services than for mining sector and other labour-intensive industries. Several measures (incentives) paradoxically promote segregation in the labour market (supported employment, sheltered enterprises ...) rather than engaging target groups in the usual forms of employment. Half of employers, who are obliged to fulfil the quotas, rather pay charges than employ people with disabilities. Although considerable public funds are raised annually as a result of imposed charges, these are practically spent only for subsidies and rewards (for going beyond quota) to employer, and the funds spent to actually remove discriminatory obstacles are simply negligible.

RECOMMENDATIONS

The state should effectively prevent individual, structural and systemic discrimination against the most vulnerable groups in employment and workplace. The state should remove all discriminatory laws and practices and adopt a strategy with effective programs to reduce unemployment and increase job security of the most vulnerable groups.

DISCRIMINATION IN THE CONTEXT OF HOUSING

Article 2 para. 1, 2 and 3 and Article 26

The Housing Act is clearly unconstitutional and discriminatory to the financially weaker regarding the access of benefits, since it excludes all foreign non-EU countries residents⁷³ from the possibility of hiring public non-profit housing (this greatly affects migrants, among others, as well as “the Erased”). The same problem affects them in access to subsidies available for rents at the open market. Furthermore, surviving partners in non-registered same-sex partnerships are excluded from the entry into the tenancy by this Act.⁷⁴

Discrimination in the field of housing (access to housing and real estate) is widespread, while remedies are evidently ineffective. In addition to the structural disadvantage and apparently widespread discrimination of foreigners,⁷⁵ there is also marginalization of persons with disabilities, who are so often forced to reside in institutions. In order to secure dignified independent life, the state should, among others, provide support for personal assistance (see also obligations under CRPD). Institutional forms of accommodation are proven to be irrational in terms of available resources, as they are unduly more expensive than an inclusive approach to accommodation in a normal living environment, which must of course be adapted accordingly.

People with disabilities are often forced to reside in institutions, in part because there are not enough accessible housing available for them and because of the absence of supportive measures such as personal assistance (which also affects many other economic, social and cultural rights, such as the right to work and the right to independent living).

RECOMMENDATIONS

Discriminatory provisions from the Housing Act should be repealed and the housing policy that addresses, inter alia, access to social housing by all residents without discrimination and the special housing needs of persons with disabilities, should be adopted.

⁷³ Repeated warnings of The European Committee of Social Rights concerning the rights of migrant workers. E.g. *Conclusions* 2006. Available at www.coe.int/t/dghl/monitoring/socialcharter/Conclusions/state/Slovenia2006_en.pdf.

⁷⁴ Compare with the ECHR judgments in the case of *Jakobski* against Poland no. 18429/06 and *Kozak* against Poland no. 13102/02 (both 2010).

⁷⁵ See results of the situational testing above under Article 2 (Discrimination).

**DISCRIMINATION OF PERSONS WITH DISABILITIES RE THE RIGHT TO VOTE,
PARTICIPATE IN PUBLIC AFFAIRS AND IN ACCESS TO COURTS**

**Article 2 para. 1, 2 and 3, Article 3, Article 20 para. 2, Article 24 para. 1, Article 25,
Article 26 of the CCPR**

Numerous buildings in public use remain physically inaccessible for persons with physical impairments, especially for persons with disabilities and the elderly. Despite the fact that relevant legislation requesting accessibility has been in place for decades its implementation remains extremely weak. The majority of the objectives on improving accessibility (the Accessible Slovenia strategy which is not operational anymore) remain unmet. We already mentioned the lack of ministerial regulation in this respect above (see non-implementation oz. ZIMI; regulation should cover all aspects, also communicational accessibility etc.), but we want to highlight here the consequences - the inaccessibility of premises of various public authorities. For example according to the analyses of Ministry of justice⁷⁶, more than a third of all premises of judiciary are inaccessible, more than half are without elevators. This problem affects numerous HR and other rights, hinders the right to access to justice and to enjoy equal protection before the courts, the right to participate in public life (ipso facto to be employed in such institutions, regardless of one's physical impairment), the right to vote etc.

The situation does not improve even after the 2014 decision of the Constitutional Court in the case no U-I-156/11⁷⁷ which should be seen as a final alarm: the Constitutional court was called to decide on unconstitutionality of voting legislation which was allowing very high extent of inaccessibility of the voting polls (which are mostly but not exclusively set in public premises). The Constitutional court found the relevant legislation to be discriminatory. But it went further and (in obiter dicta though, para 25 of the judgement) practically declared as unconstitutional systemic legislation (ZIMI) in part where it postpones full effect of the request for accessibility indefinitely or with too long transitional periods. It underlined that this is the case whenever the inaccessibility of the premises is compromising effective enjoyment of the right to vote (in analogy: other most important HR). The legislator failed to react in due time even re the situation of the voting polls alone. The situation of accessibility both on the general and specific voting area remains unchanged. On the most recent public poll (referenda on LGBT rights), electoral commission has still failed to request more than 33 percent of the voting polls should be accessible, even though the turnout has become in the meantime the crucial legal factor (quorum) for the very legal effect of the referenda. This is completely unacceptable as the problem of inaccessibility of the voting polls is persistently mentioned by the Ombudsman for more than a decade, was underlined in connection to communication inaccessibility of information on alternative means of voting by the Advocate's opinion in 2013⁷⁸ and even highlighted by Organisation for security and cooperation in Europe in 2012⁷⁹. Once more lack of demonstrated political will hinders the enjoyment of crucial HRs.

⁷⁶ See draft of the latest state report to CRPD (Drugo redno poročilo o izvajanju določil Konvencije o pravicah invalidov (2010 – 2014), January 2016, pg. 13.

⁷⁷ Available in Slovenian at <http://odlocitve.us-rs.si/sl/odlocitev/US30398?q=zvdz+dostopnost>.

⁷⁸ See in Slovenian at

http://www.zagovornik.gov.si/fileadmin/migrated/content/uploads/mnenje_volilno_informiranje.docx.

⁷⁹ See relevant report of OSCE/ODIHR from 7.2.2012, pg. 22 and 23., available at <http://www.osce.org/sl/odihr/elections/88778>.

SEGREGATION OF THE ROMA COMMUNITY

Article 2 para. 1, 2 and 3, Article 3, Article 20 para. 2, Article 26 and Article 27 of the CCPR (from Parallel Report by the Coalition of NGOs on Economic, Social and Cultural Rights in Slovenia to CESCR 2014 with adjustments by OVCA)

Segregation of the Roma community in access to housing is not comprehensively analyzed (except the fact that a very large part of this community live in about 100 "Roma settlements"), but segregation obviously exists and is maintained, particularly in regions where municipalities remain passive (e.g., do not want to solve spatial and communal challenges in the settlements). It is estimated that approximately 2/3 of these settlements are built without permissions of authorities. Due to discriminatory behaviour patterns, the Roma also find it difficult to rent or buy housing on the open market and subsequently gain subsidized rents.

Segregation is, among others, illustrated by individual forced relocations (e.g., proceedings with Strojan family following orders of the Minister of the Interior in 2006) and by even more common practices of preventing the settlement of the Roma. Due to the pressure from the majority population, municipalities de facto support or include such practices in their policies (as a rule, such events tend to coincide with the period of local elections). These phenomena are observed, for example, in the annual reports of the Ombudsman (2006) – occasionally, they grow large and build on the abuse of democratic institutions (see unacceptable conclusions of a number of municipalities that no Roma are welcome in their community in attempts of relocating Strojan family). In his report in 2007, the Ombudsman describes the behavior of the Municipality of Žužemberk in the misuse of pre-emption rights and the actions of the Municipality of Novo mesto, which is conditioning even individual Roma settlements with the consent of the majority population. There are known incidents of petitions against Roma settlements in Vranoviči in 2012, in the Municipality of Kočevje in 2013, in the Municipality of Celje in 2014 and so on. Intolerance and discrimination are unfortunately too often tools for gaining cheap political points.

In the Slovenian school system, the Roma population is discriminated against and subjected to segregation. Slovenia was among the first Member states to reach the European relative measure for 2010: to have a maximum of 10 % of those who leave school early. But a more detailed data raise concerns: in most cases it is Roma who leave school early⁸⁰, reflecting the suspicion of discrimination against Roma in the Slovenian school system.⁸¹ On average, more than 65 % of the Roma community have not completed elementary school; in the population of Roma women, this share is 70 %.⁸² Persisting problems are: a) Roma children are rarely included in pre-school education; b) in primary and secondary levels, many of them attend schools for children with special needs;⁸³

⁸⁰ Integra, Human Resources Developing Institute. *Stop dropout!* 2014. Available at www.stop-dropout.eu/index.php?id=2&L=7.

⁸¹ In 2008, 90 % of the Roma in Prekmurje region were involved in the educational process, compared to only 39 % in Dolenjska region (Nečak Lük, A.; Novak Lukanovič, S. 2011. *Inclusion of Roma Children into Education in Slovenia: The Language Competence and Culture Dimensions*. The Open Education Journal, 4, 164–173. Available at <http://benthamsience.com/open/toeduj/articles/V004/SI0130TOEDUJ/164TOEDUJ.pdf>).

⁸² REDUPRE project. *Položaj Romov v Sloveniji*. 2011–2012. Available at www.project-redupre.eu/datoteke/Slovenija/REDUPRE-AnalizapoloajaRomovvSloveniji.pdf.

⁸³ In the 2004–2005 school year, 8 % of Roma children attended schools for children with special needs, compared to 1 % of the Slovenian children. (Committee on the Rights of the Child. *Concluding observations on the combined third and fourth periodic reports of the Republic of Slovenia*, adopted by the Committee at Its sixty-third session. 27 May - 14 June 2013. UN Doc.: CRC/C/SVN/3-4. Available at <http://www.crin.org/docs/CRC-C-SVN-CO-3-4.pdf>).

c) high illiteracy rate due to the failure of Roma children in primary schools, mainly due to lack of knowledge of the Slovenian language and rare opportunities to learn Romani language, irregular attendance, lack of adequate clothing, lack of financial resources and inadequate living conditions; d) use of school materials that reinforce prejudices and stereotypes about the Roma, and at the same lack of information on Roma culture, language and history in regular curriculum.⁸⁴

MINORITY PROTECTION

Article 27 of the CCPR

The lack of efficient protection from discrimination as the core of minority protection undoubtedly affects deeply many members of national and religious communities. The disparity in the range and quality of minority protection for different minority communities is striking. It is particularly evident when size of those communities is compared. Apart from general individual right to cherish one own identity and culture, only “constitutionally recognised minorities” (Italian, Hungarian and to certain extent Roma community, with total number of all three communities being around 20,000) enjoy special minority rights, including the right to participation in public affairs. In contrast much more numerous “**constitutionally unrecognised minorities**”, especially communities of persons originating from other parts of former Yugoslavia (Bosniaks, Serbs, Croats, Macedonians, Montenegrins and Albanians altogether count at around 200,000) but do not. It is a well documented historic fact that at least Serbs, Germans and Croatians in some parts of Slovenia (i.e. Bela krajina, Kočevska...) reside for centuries, so the differentiation in enjoyment of some rights (and state structures to support them) is not taking into account even the much debated criteria of “autochthonous” communities.

There are approximately 10.000 to 12.000 **Roma** in Slovenia, some living in the country for centuries (so called “autochthonous” Roma), others for decades (so called “non-autochthonous” Roma, Roma who mostly moved to Slovenia from other former Yugoslav Republics in 1980s and 1990s).⁸⁵ There are differences throughout the regions, but it is clear there is no nomad Roma. Officially, only 3.246 individuals declared as Roma on the last public poll in 2002, while 2.834 declared their mother tongue is Romani. At the national level, Roma are currently represented by the State Council of Roma of the Republic of Slovenia, but its composition is securing 2/3 majority of one interest group (Zveza Romov Slovenije) which fails to recognise the political heterogeneity and plurality within the community and underrepresents some Roma communities, especially those from the south-easter part of Slovenia. On the local level Local Elections Act establishes the Roma municipal councillors, which members of the so called autochthonous Roma communities vote among themselves. The law prescribes 20 municipalities, in which a Roma representative must be included in the Municipal council. However, municipalities with significant “non-autochthonous” Roma community (counting several hundreds or more than thousand in particular cities for example) are excluded from the list. Moreover, municipality Grosuplje persistently fails to implement even the Constitutional court judgement no. U-I-

⁸⁴ Committee on the Rights of the Child. *Concluding observations on the combined third and fourth periodic reports of the Republic of Slovenia*, adopted by the Committee at its sixty-third session. 27 May – 14 June 2013. UN Doc.: CRC/C/SVN/3-4. Available at www.crin.org/docs/CRC-C-SVN-CO-3-4.pdf.

⁸⁵ The distinction on autochthonous and non-autochthonous Roma is evident in Local Self-Government Act, which lists municipalities where Roma minority is autochthonous and has the right to at least one council member.

345/02 (from 2002), which specifically imposed the duty to secure Roma municipal councillor's position (by stipulating and protecting this right in its statute).

Although they are considered to be an integral part of the Roma community, the position of small "autochthonous" **Sinti** community (counting just a few hundred people) remains completely unregulated, i.e. they do not have any right to representation in the Roma Community Council, at the local level... Although very much endangered from assimilation, this would be even more important. Also, they lack sufficient support to preserve effectively their own identity and language, which is completely different from Romani.

PROHIBITION OF ADVOCACY OF NATIONAL, RACIAL OR RELIGIOUS HATRED

(Article 20)

Triggered by recent developments (Charlie Hebdo attacks and subsequent massive Paris terrorist attacks in 2015) and the refugee crisis (several hundred thousand refugees have entered and departed Slovenia since September 2015) we are appalled by an unprecedented rise of open **xenophobia and islamophobia** in media, on social networks but even in the political sphere.

It is rather clear from the historic developments that the criminal offence of hate speech (now defined in article 297) was not considered as particularly important before 2010 (almost no practice). After 2008 the scepticism against this offence becomes even more evident, because criminal sphere of the named offence has been narrowed down considerably in comparison to the previous definition in the Criminal code (Article 300). In our opinion the prosecution of these offences, although it has partly improved over the last few years has few if any impacts on the reality. Cases actually prosecuted (i.e. sentences) remain unknown to the wider public, whilst in most well known and grave incidents, the offenders are often acquitted (see Škocjan bombing murder of Roma, Caffè open attack on LGBT activists). Fear to often scepticism on the preservation of "freedom of speech" is invoked in these contexts as a defence. This is sarcastic since in contrast the offence of defamation especially in part where it can be prosecuted on private incentive, is widely used in the practice. The Advocate and the NGOs proposed, that the gap between the constitutional prohibition of hate speech (in Article 63 which remains to a large extent *lex imperfecta*), and criminal/misdemeanour aspects should be closed by introducing hate speech provision as one of the definitions of discrimination (best practices in most recent antidiscrimination legislation i.e. in the countries on the Balkans) into the draft of the Protection against Discrimination Act, but this was not taken into account. The lacuna between what is officially prohibited (by constitution), and what can be prosecuted (sanctioned) is therefore wide, in trend it even widens, so this in our opinion causes anomie.