

## United Nations Human Rights Committee

8 January 2020

The Human Rights Ombudsman of the Republic of Slovenia, a national human rights institution, would like to draw attention to some of the issues referred to in recommendations in paragraphs 8, 16, and 20 of the Concluding Observations of the Human Rights Committee on the third periodic report of Slovenia<sup>1</sup> and in connection with the obligation of the Republic of Slovenia to provide further information regarding their implementation within one year from the adoption of the concluding observations.<sup>2</sup>

### **Racism and xenophobia (para. 8)**

Despite numerous calls to do so, the state still has not adopted a national strategy and action plan on the prevention and elimination of discrimination.

The Ombudsman would also like to draw your attention to the lack of valid, accurate and representative data on the position of persons or groups of persons with a specific personal ground (protected ground) in different fields of social life, which is of utmost importance for the planning, implementation and review of non-discrimination policies. A recent EU study<sup>3</sup> has shown that equality data collection in Slovenia is critically weak, far below the efforts of most EU member states to expand, improve and use available equality data. Apart from complaints data, which is far from representative of the de facto situation, hardly any disaggregated data is collected. The most common argument against disaggregated data collection is personal data protection.

Collection of data disaggregated by protected grounds has been recommended to Slovenia by several international monitoring mechanisms, including the Committee against Torture, Committee on the Rights of the Child, Committee on Economic, Social and Cultural Rights,

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<sup>1</sup> Adopted by the Committee at its 116<sup>th</sup> session (7-31 March 2016), UN Doc. CCPR(C/SVN/CO/3 of 21 April 2016.

<sup>2</sup> *Ibid.*, paragraph 34.

<sup>3</sup> European Commission, Analysis and comparative review of equality data collection practices in the European Union, Equality data indicators: Methodological approach, Overview per EU Member State, Technical annex, p. 49, [https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc\\_id=45793](https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793).

Committee on the Elimination of Racial Discrimination and, recently, the UN Rapporteur on Minority Issues and the Committee on the Rights of Persons with Disabilities.<sup>4</sup>

*The Ombudsman therefore recommends to the authorities to:*

*Amend national legislation on personal data protection and sector-specific legislation so as to include a specific exception on collecting data disaggregated by protected personal grounds for the purposes of promoting equal treatment and equal opportunities while adhering to existing national and international standards on personal data protection.*

*Systematically collect data disaggregated by protected personal grounds in all fields of social life so as to allow for an accurate determination of the current state and trends of (in)equality in society.*

### **Asylum seekers, migrants and refugees (para. 16)**

In June 2018, the media and non-governmental organisations started reporting about many asylum-seekers claiming to be forcibly returned to Croatia even though they expressed their intention of claiming asylum to police officers. These allegations were also supported by statistics received by the Ombudsman. For example, in May 2018, police officers at the Črnomelj police station dealt with 379 persons who irregularly entered Slovenia, of which 371 expressed their intention to submit an application for international protection, which amounts to 97.88%. In June, out of a total of 412 foreign nationals treated, only 13 (i.e. 3.15%) were recorded as expressing their intention to submit an application for international protection. The Ombudsman's findings established during visits to police stations showed the seriousness of the allegations that there may have been irregularities in some police procedures, including the implementation of collective expulsions prohibited under Article 4 of Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Ombudsman is also concerned about the fact that foreign nationals who are caught entering Slovenia irregularly and do not apply or cannot apply for asylum are returned to Croatia as part of so-called "informal returns" under the bilateral Readmission Agreement between Slovenia and Croatia, without any procedural safeguards against *refoulement*.

Furthermore, the Ombudsman would like to draw your attention to the excessive length of asylum procedures, a systemic problem of the Slovenian asylum system, which the Ombudsman has been detecting and addressing since 2010.<sup>5</sup> While the authorities often cite high numbers of applicants as the reason for delays, it seems that the number of applications is not so high as to prevent decision making in accordance with all statutory standards or

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<sup>4</sup> CAT/C/SVN/CO/3 of June 2011, CRC/C/SVN/CO/3-4, of July 2013, E/C.12/SVN/CO/2 of December 2014, CERD/C/SVN/CO/8-11 of January 2016, CRPD/C/SVN/CO/1 of April 2018 and A/HRC/40/64/Add.1 of January 2019.

<sup>5</sup> Ombudsman's Annual Report of 2018 (abbreviated English version), p. 112-113, [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/lp/LP\\_2018\\_ENG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf).

human rights standards with certain suitable organisational and other measures. Such a conclusion was also made by Nils Muižnieks, Council of Europe Commissioner for Human Rights, in his report on the visit to Slovenia between 20 and 23 March 2017. At the same time, he proposed that the authorities consider certain systemic adaptations of the asylum system for it to be able to consider more asylum seekers than in the past, and to ensure the quality of the procedure, particularly in terms of the duration of asylum procedures.

Another issue of concern is the deprivation of freedom of movement of those waiting to file an application for international protection. After being processed by the police and having expressed their wish to file an application for international protection, a foreigner is accommodated in the reception area of the Asylum Centre or other asylum accommodation facilities, awaiting the lodging of their asylum application. When visiting the Asylum Centre at the end of 2018 in the role of the National Preventive Mechanism,<sup>6</sup> the Ombudsman established that asylum seekers were locked in rooms under video surveillance for several days (without a suitable legal basis) and considered such practice as a deprivation of freedom of movement which was not in line with national and international legal standards.

*The Ombudsman therefore recommends to the authorities to:*

*Ensure that all asylum seekers have access to asylum procedure in accordance with national and international law.*

*Refrain from returning foreign nationals to other countries without providing procedural safeguards against returns that could put people at risk of human rights violations in the country to which they may be directly or indirectly returned.*

*Consistently document all the circumstances of the police procedures with foreign nationals (including their statements) in order to enable later insight into the correctness and legality of the decisions taken.*

*Provide the systematic informing of asylum seekers and migrants about their rights and relevant procedures in a language they understand.*

*Refrain from depriving asylum seeking migrants of freedom of movement without legal basis while awaiting filing of asylum application.*

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<sup>6</sup> The Report of the Human Rights Ombudsman of the Republic of Slovenia on Implementing the Tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for 2018, p. 40, [http://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/Porocila/DPM\\_2018\\_ENG.pdf](http://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Porocila/DPM_2018_ENG.pdf).

## **Persons in vulnerable situations in the migration flow (para. 20)**

The Ombudsman would like to draw your attention to the detention of migrant children.

According to national legislation (Foreigners Act), unaccompanied minors and families with children should be primarily accommodated in adequate institutions for the accommodation of children. However, in practice families with children and some unaccompanied minors are detained in the Postojna Centre for Foreigners, which is a closed facility.

The Ombudsman acknowledges the efforts made by the Government in recent years to provide alternative solutions for the accommodation of unaccompanied minors in the Postojna dormitory, but a systemic form of accommodation and treatment of unaccompanied minors as a separate unit for their comprehensive treatment has not been established yet. Also, no alternative accommodation has been found for families with children.

According to the information provided by the Ministry of Interior, 245 unaccompanied and 66 accompanied minors were detained at the Postojna Centre for Foreigners in 2018 and 190 unaccompanied and four accompanied minors from 1 January to 28 August 2019.

*The Ombudsman therefore recommends to the authorities to:*

*Ensure that unaccompanied/separated minors are accommodated in an open (or semi-open) establishment specialised for minors.*

*Ensure that adequate alternative accommodation facilities are ensured for minors with their parents, and their placement in a detention centre should only occur as a last resort.*