

## SLOVENIA/SLOVÉNIE

- 1) What mechanisms have been put in place at national level to ensure the compatibility of legislation (whether draft legislation, laws in force or administrative practice) with the Convention? How do these work (whether or not they are systematic, the competent authorities and any consultations – whether optional or mandatory)? What are the advantages of the mechanism chosen?

According to the Constitution of the Republic of Slovenia (Article 8) statutes (Acts of the National Assembly – the Parliament) and other regulations must comply with generally accepted principles of international law and with international treaties that are binding on Slovenia. Ratified and published international treaties shall be applied directly. Therefore, it should be inherent to our system that draft primary legislation proposed by the Government should be consistent with the Convention.

Different mechanisms for ensuring the compatibility of draft legislation also with the ratified and published treaties (including the Convention and its Protocols), are set up:

- Verification of conformity of every draft law (draft statute) starts within the **competent Ministry**, which initiated the draft law.<sup>1</sup> Ministries responsible for preparing the texts of legislative proposals examine in advance (*ex ante*) the potential economic, social, environmental or other impacts of the different policy options in a regular and formal manner. Other impacts may include also the verification of conformity of a draft law with the Convention and its Protocols, which are binding for Slovenia. Information on the compatibility of draft primary legislation with international treaties (thus also with the Convention) can be a part of the detailed explanation of the proposed draft legislation.
- Ministries responsible for preparing the texts of legislative proposals in their area of responsibility are obliged to send proposals of draft laws prior to being submitted for debate by the government to the **Government Office for Legislation** and to the relevant Ministries (Article 10 of the Rules of Procedure of the Government of the Republic of Slovenia) and to obtain their opinion. Only when it is not possible to reach an agreement or when coordination in advance is impossible due to the urgent nature of the procedure, can materials that have not been harmonised be submitted for government debate. One of the basic responsibilities of the Government Office for Legislation is to consider draft laws and other acts that the government submits to the National Assembly are compatible with the Constitution. However the Office mostly reviews the alignment with the Constitution, only exceptionally (e. g. police legislation and asylum (migration) the legislation) is also assessed with the Convention and its Protocols, including the case law of the European Court of Human Rights.
- The draft laws should be prepared in accordance with the Resolution on Legislative Regulation (the rules for “good legislation”) adopted by the National Assembly, which also foresees consultations with the **civil society**, consequently *this* may cover also fundamental rights compatibility reviews.

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<sup>1</sup> Besides the Government, draft statutes (draft laws) may be proposed also by any Deputy of the National Assembly, the National Council and at least five thousand voters.

- In addition to verification by the executive, examination is before tabling a draft law also undertaken by the **Legislative and Legal Service of the National Assembly**. Laws are adopted in the legislative procedure, which consists pursuant to Rules of Procedure of the National Assembly of multiple stages - from discussing a draft law to tabling amendments (modifications and supplements), voting on the law, promulgating the law, or otherwise concluding the legislative procedure. Legislative and Legal Service of the National Assembly delivers opinions on the conformity of draft laws, other acts, and amendments with the Constitution and the legal system (the ratified and published international treaties are part of the legal system), and on legislative and technical aspects of drafts.

The main control mechanisms for ensuring the compatibility of laws in force or administrative practice include the *ex-post* constitutional review of the Slovenian Constitutional Court. The conformity of domestic legal provisions with the provisions of the Convention must be ensured by the whole system of regular and specialised courts and the **Slovenian Constitutional Court**. The latter verification take place within the framework of judicial proceedings brought by individuals with legal standing to act or even by state bodies, persons or bodies not directly affected.

In recent years constitutional complainants have more and more often referred not only to constitutional provisions but also to the provisions of the European Convention on Human Rights and also significantly more to the decisions of the European Court of Human Rights in cases similar to theirs. The Constitutional Court reviews constitutional complaints differently in relation to the European Convention on Human Rights as compared to the case law of the European Court of Human Rights, and thus regarding the relation of the contents of the European Convention on Human Rights to the Constitutional provisions regulating individual constitutional rights<sup>2</sup>.

The European Convention on Human Rights has been directly cited in more than some hundred decisions of the Constitutional Court, and in more than hundred cases, the Constitutional Court has directly referred to the case law of the European Court of Human Rights in the reasoning of its decisions. Thus, the Constitutional Court has referred to the European Convention of Human Rights and the case law of the European Court of Human Rights in cases in which the complainants have not mentioned them in their applications.

Particular attention is paid to the judgments of the European Court of Human Rights against Slovenia. In this regard a consideration of Strasbourg case-law is explicitly determined by the

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<sup>2</sup> In cases in which the provisions of the Constitution and the European Convention on Human Rights regarding an individual right are the same or very similar, the Constitutional Court foremost applies the Constitution and only exceptionally are violations of both the Constitution and the European Convention on Human Rights reviewed in parallel. In a few cases, the Constitutional Court explicitly stated that in such cases the European Convention on Human Rights could not have been violated if the Court had established that there had been no violation of the Constitution. Moreover, the Constitutional Court refers to the Constitution in cases in which the Constitution guarantees a higher level of the protection of an individual right compared to the European Convention on Human Rights. In cases in which the European Convention on Human Rights is more demanding than the Constitution or the case law of the European Court of Human Rights guarantees a higher level of protection of rights, the Constitutional Court refers to the European Convention on Human Rights and the decisions of the European Court of Human Rights. Only such manner of deciding by the Constitutional Court is in compliance with paragraph 6 of Article 15 of the Constitution, which explicitly determines that no rights regulated by legal acts in force in Slovenia (the European Convention on Human Rights is undoubtedly such an act) may be restricted on the grounds that this Constitution does not recognize that right or recognizes it to a lesser extent.

Courts Act: The decisions of the European Court of Human Rights are to be directly executed by the competent courts of the Republic of Slovenia (Article 113 of the Courts Act) – if so provided in sectorial legislation (in fact – only for criminal cases – in the Criminal Procedure Act).

Compatibility of the executive regulation is ensured within regular and specialised courts through the so-called *exceptio illegalis* (exception of illegality). If these courts take the view that an executive regulation does not comply with the Constitution (or Convention which is part of national law) or the law (statute), it will not or must not apply it, however, this jurisdiction is very rarely applied in practice. However, these courts cannot exercise constitutional review of laws while deciding in concrete (incidenter) proceedings. That court must interrupt the proceedings and refer the law to the Constitutional Court for a review of its constitutionality and may continue the proceedings only after the Constitutional Court has reviewed the constitutionality of the respective law (Slovenian system is a system of concentrated constitutional review; a law can only be eliminated from the legal system by the Constitutional Court).

An important role in the verification of how laws are applied and, notably, the Convention, plays **Human Rights Ombudsperson of the Republic of Slovenia**. According to Article 23.a of the Constitutional Court Act the Ombudsperson can initiate the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority, if he/she deems that a regulation or general act issued for the exercise of public authority inadmissibly interferes with human rights or fundamental freedoms. In the requests for constitutional review the Ombudsperson often referred to the Convention. Besides that, the Ombudsperson in his recommendations which are part of several annual reports, regularly invites all state institutions and local authorities to unconditionally respect the human rights and fundamental freedoms set out in the Constitution of the Republic of Slovenia, the Convention, and other treaties binding on the State in their work and when making decisions. The National Assembly when considering the Annual Reports of the Human Rights Ombudsperson recommends that all institutions and officials at all level observe these recommendations.

## **2) What obstacles have been encountered in establishing or applying these mechanisms? How have these been overcome?**

We believe that aforementioned mechanisms are suitable at the current situation, however there is a room for further improvements. In the process of ensuring the implementation of individual measures for the implementation of the Court's judgments, also a review of needed general measures has regularly been made, including regarding the possible (needed) legislative changes. In this regard, it has been detected that there is no systematic or mandatory system of verification of the compatibility of laws with the Convention, therefore same proposals were made within the Ministry of Justice on how to improve the existing verification system (see below).

**3) Is there any assessment (or planned assessment) of the appropriateness and effectiveness of the mechanisms in question? If so, how does this work? What obstacles have been encountered in setting up or carrying out such an assessment?**

At the level of the Government, the impact assessment to ensure the compatibility of draft laws with the Convention and its Protocols binding for Slovenia could be made systematic and mandatory. A draft law on State Administration proposes that a new task of the Ministry of Justice would also be “the verification of the suitability of draft laws from the perspective of human rights and fundamental freedoms”. The aim is to give more emphasis to preliminary verifications of the Ministries, when proposing a text of a draft law, and to ensure additional verification system in the intergovernmental procedure. In addition, every draft law prepared by the government would need to have a written statement about the compatibility of its provisions with the rights and freedoms enshrined in the Convention and its Protocols (‘statement of compatibility’).

Also, in the legislative procedures the regular legislative procedure instead of the shortened or urgent procedure - could be used more often, as in the shortened and urgent procedure for the adoption of a law no general debate is held, and the second and third reading are held at the same session of the Parliament. In addition, involvement of the independent bodies during the consultations on the draft laws could be more respected.

Further, at the national level, the Government aims to propose the amendments to the Human Rights Ombudsperson Act with the aim of meeting the “A” status standards of this National Human Rights Institution, in accordance with the United Nations endorsed “Paris Principles”.