



European
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07/10/2020

RAP/RCha/SVN/19/com/(2020)

EUROPEAN SOCIAL CHARTER

Comments on the
19th National Report on the implementation of
the European Social Charter

submitted by

THE HUMAN RIGHTS OMBUDSMAN OF THE REPUBLIC OF SLOVENIA

Article 1, 9, 10, 15, 18, 20, 24 and 25

for the period 01/01/2015 - 31/12/2018

Report registered by the Secretariat on

1 October 2020

CYCLE 2020



Human Rights Ombudsman
Dunajska cesta 56
1109 Ljubljana, Slovenia
www.varuh-rs.si

Comments to the 19th National Report on the implementation of the European Social Charter

September 2020

The **Human Rights Ombudsman of the Republic Slovenia** (the Ombudsman) is an independent institution, which contributes to the protection and promotion of human rights and fundamental freedoms in Slovenia through the investigation of complaints submitted to it by affected individuals, submission of its opinions and recommendations to any authority, publicly addressing pressing human rights issues, conducting on-site inspections, conducting human rights education and research, through cooperation with civil society as well as through its own initiatives and statements on legislative proposals. It is a **national human rights institution under the Principles relating to the Status of National Institutions (the Paris Principles)**, currently in the process of being accredited A Status.

Having examined the **19th National Report on the implementation of the European Social Charter, submitted by the Government of the Republic of Slovenia**, the Ombudsman commends the progress achieved so far in the respect for social and economic rights and would like to draw attention to some of the still unresolved issues detected through its work, which relate to the implementation of provisions of the European Social Charter under the current reporting cycle. This submission reflects the topics where the Ombudsman can provide input on the grounds of received complaints and concluded research and should thus not be taken as an exhaustive list of systemic problems regarding protection of social and economic rights in the Republic of Slovenia.

1. Understaffing of the Labor Inspectorate of the Republic of Slovenia

The Ombudsman is concerned about the long-lasting problem of understaffing of the Labor Inspectorate of the Republic of Slovenia (LIRS), which negatively affects the protection of rights of persons in employment.

The Ombudsman has been continuously warning about this issue in its annual reports. As stated, for example, in the Ombudsman's 2018 Annual report,¹ less than 80 inspectors is certainly an insufficient number for all fields covered by the LIRS and for about 200,000 companies employing over 800,000 people in Slovenia. **Due to their limited number, inspectors are unable to respond efficiently to reports or to take action based on their**

¹ English abbreviated version available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf, see p. 164.

own observations and findings, so violations are not eliminated, while the preventive effect of inspection procedures is also questionable. The number of employees at the LIRS therefore directly affects the reduced observance of human rights connected to employment and labor.

In the 2018 Annual report the Ombudsman goes on to point out that the country must maintain a system of labor inspection appropriate to national conditions as per point four of Article A of the European Social Charter. Slovenia is also bound by the International Labour Organisation Labour Inspection Convention No. 81 and Labour Inspection (Agriculture) Convention No. 129. Similarly to the European Social Charter, both relevant international legal instruments demand, that its member states also maintain a system of labor inspection with a sufficient number of inspectors. Furthermore, the number of inspectors must inter alia reflect the importance of inspectors' tasks and the numbers of employers and employees. The Ombudsman concluded the observations by calling on the competent state authorities to strengthen the workforce of the LIRS, where appropriate also with redeployment of existing staff, in order to enable effective implementation of labor inspection supervisions and thus the observance of human rights.

While the Ombudsman's 2019 Annual report,² published in June 2020, acknowledges that the Government has responded to the problem by employing some additional inspectors, it nevertheless concludes that the LIRS is still not sufficiently staffed. In particular, the situation in the LIRS department for safety and health at work and department for social inspection appears to remain unchanged. Apart from employing additional staff, one specific solution, suggested by the Ombudsman, is to implement the provisions of the Labor Inspection Act³ of 201Li, which introduced professional assistants of labor inspectors. In this way, the efficiency of inspection procedures would be increased, and the professional assistance provided by the inspection to both employees and employers strengthened. The Ombudsman has also been calling on the authorities to strengthen the capacities of the Inspection Board, instituted under the Inspection Act, to further reduce delays which may occur due to unclear competencies of different inspection services.

2. Active employment policy

Over the years the Ombudsman has received a considerable number of complaints from users of the Employment Service of Slovenia (ESS) about **unclear criteria for inclusion of an individual in the Active employment policy (AEP) measures.** To ensure greater transparency and avoid allegations that certain individuals are favored, while others are not offered participation in the measures, the Ombudsman has been encouraging the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Employment Service of Slovenia to amend the existing records on implementing AEP measures with:

- data on how individual AEP measures are distributed among unemployed persons,
- the number of measures in which an individual unemployed person most frequently participated,
- the number of unemployed persons not participating in any of the measures,

² Available in Slovenian at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Letno_porocilo_Varuh_19.pdf.

³ Official Gazette of the Republic of Slovenia No. 19/1Li with further amendments.

⁴ Official Gazette of the Republic of Slovenia No. 56/02 with further amendments.

while also taking into account geographical regions, duration of a person's unemployment and the period of their inclusion in the unemployment register.⁵

Likewise, the ESS should also ensure **transparency in the selection of contractors who carry out various AEP measures**. In connection to this, Constitutional Court decision U-1-171/17-16 of 6 February 2020⁶ (delivered in a case initiated in 2017) found that Article 17 of the Labour Market Regulation Act⁷ was unconstitutional. According to the Constitutional Court, the provision, which governed the selection of employers to participate in AEP programs, did not provide clear rules under which an employer could dispute their non-inclusion in an AEP program, nor clearly define which material infringements could be challenged in such procedure.

3. Accessibility for persons with disabilities

The Equalisation of Opportunities for Persons with Disabilities Act (ZIMI),⁸ which entered into force in December 2010, set out several deadlines for adaptations aimed at securing full participation in the life of the community for persons with disabilities. This included a five-year deadline for accessibility to goods and services, 15 years for removal of constructed and communication barriers, five years for adjustment of the school or study process, 10 years for adaptation of public buses and 15 years for adaptation of railway transport, all counted since the law's entry into force.

The Ombudsman welcomes the progress made by the authorities so far, however notes that **many more obstacles for disabled persons remain, even in cases when the above timeframes have already been exceeded**. This has been evidenced by many complaints received by the Ombudsman from persons with disability regarding various aspects of participation in the life of the community, such as accessibility of courthouses, schools, public transport, polling stations, accessibility of TV and radio program for the blind and hearing-impaired and many more.

In 2018, prompted by received complaints, the Ombudsman decided to carry out a broader survey into the **accessibility of courthouses in Slovenia for movement-impaired persons**.⁹ The findings of this research are presented below.

All 66 courts in the Republic of Slovenia received enquiries on the accessibility of their premises, including the accessibility of court rooms, accessibility of toilets and the availability of disabled parking bays. On the basis of the responses, the Ombudsman established that the premises of 15 out of the 66 courts in Slovenia were completely inaccessible for people with mobility disabilities. In at least 10 courts this issue was addressed by carrying the person up or down the stairs, which is problematic from the aspect of ensuring the person's dignity as well as from the aspect of potentially incurring injuries. In one court district (the Gorenjska region), none of the buildings were fully accessible for people in wheelchairs. In addition to the 15 inaccessible courts, 28 were found to be only partly accessible. Furthermore, only 10 out of the 66 courts in Slovenia provided

⁵ See English abbreviated version of the 2017 Annual report, p. 198-199, available at: https://www.varuh-rs.si/fileadmin/user_upload/odf/lo/LP2017_VARUH_ENG.odf.

⁶ Available in Slovenian at: <https://www.us-rs.si/wo-content/upload/s/2020/02/u-i-171-17o.df>.

⁷ Official Gazette of the Republic of Slovenia No. 80/10 with further amendments.

⁸ Official Gazette of the Republic of Slovenia No. 9Li/10 with further amendments.

⁹ See English abbreviated version of the 2018 Annual report, p. 6Li-66, available at: https://www.varuh-rs.si/fileadmin/user_upload/odf/lo/LP_2018_ENG.odf.

toilets for people with mobility disabilities. Slightly more than half (52 %) of court buildings had special disabled parking bays.

The situation was alarming from the aspect of the provisions of ZIMI, mentioned above, which stipulated a 15-year transitional period regarding the accessibility of public buildings to eliminate architectural and communication barriers. The transitional period was halfway through in 2018, yet the responses received did not show that architectural barriers in Slovenian court buildings were eliminated in any significant way between the entry into force of the ZIMI and the first half of 2018.

However, as presented in the Government's official written response¹⁰ to the Ombudsman's 2018 Annual report as well as in further communication with the Ombudsman, several projects for adaptation of court buildings across Slovenia have been carried out since 2018, while others are still in progress. The Ombudsman welcomes these significant steps towards accessibility of court buildings and hopes the Government makes further concrete advancements towards full accessibility of **all facilities and services provided to the public**, by removing barriers related to the physical environment, transportation, information and communications, in order to assure the **right of persons with disabilities to participate fully in all aspects of life**.

As an example of an area where significant progress still needs to be made, the Ombudsman draws attention to the issue of **accessibility of schools and other facilities related to education** (e.g. dormitories), where information provided by complainants and preliminary research carried out by the Ombudsman shows that the general level of accessibility is low, while no official data on accessibility of facilities across Slovenia is even available. The Ombudsman therefore advised the Government in its 2019 Annual Report to immediately start with an analysis of the accessibility of secondary and primary schools, and on this basis draw up a workable plan for required adaptations, which will also include a timetable and financial framework for the implementation of measures. As already mentioned, ZIMI set out a five-year timeframe for adjustments of the school or study process, therefore these adaptations are, as of the time of preparation of these comments, almost five years overdue.

1.i. Vocational rehabilitation

Over the years the Ombudsman received several complaints in which individuals drew attention to the issue of vocational rehabilitation, especially in connection with the right to cash benefits (payment for their participation in vocational rehabilitation). Pursuant to Article 17 of the Vocational Rehabilitation and Employment of Persons with Disabilities Act (ZZRZI),¹¹ a disabled person who has been granted the right to vocational rehabilitation has the right to a cash benefit in the amount of 1.10 percent of the minimum wage per month, provided that vocational rehabilitation is carried out for at least 100 hours and the disabled person is not a recipient of cash benefits or financial social assistance as an unemployed person or cash benefits from disability insurance.

¹⁰ Available in Slovenian at: <https://www.gov.si/assets/ministrstva/MP/AKTIVNOSTI-NA-PODRDCIU-CLOVEKOVI-H-PRAVIC-IN-IZVRSEVAN-IA-SODB-EVRO-PSKEGA-SODISCA-ZA-CLOVEKOVE-PRAVICE/Odzivna-porocila-vlade/Odzivno-porocilo-Vlade-na-porocilo-VCP.pdf>, see p. 53-5.

¹¹ Official Gazette of the Republic of Slovenia No. 63/0 with further amendments.

The complaints received by the Ombudsman exposed several problems with the described arrangement. People with disabilities who participate in vocational rehabilitation exceeding 100 hours per month are not rewarded for additional hours. In addition, any absences, even due to justifiable reasons (e.g. illness), are not counted towards working hours. The situation is even worse for disabled people who are able to work only part-time (e.g. four hours per day), since the benchmark of 100 hours of work per month is almost impossible to reach with part-time work and they are therefore not eligible for the cash receipt under Article 17 of the ZZRZI. Unlike employed workers, persons participating in vocational rehabilitation also do not have the right to reimbursement for meals during work.

The Ombudsman has therefore been proposing in its annual reports an amendment to the ZZRZI so that disabled persons are entitled to a cash receipt in a proportionate share of the number of working hours, i.e. even in the case of fewer or more than 100 hours. Other improvements to problems presented above (justifiable absences, reimbursement for meals) should also be made in order to assure successful implementation of the right to vocational rehabilitation.

5. Inadequate access to care for the elderly and those with physical or mental disabilities who are in need of assistance

In September 2019, the **Court of Audit of the Republic of Slovenia** presented findings¹² of its audit carried out to establish whether in the period of 1 January 2007 to 30 June 2018 the Government was successful in ensuring the accessibility of social care services, and to answer the question whether the Republic of Slovenia satisfactorily cares for those who, due to age, mental or physical disability, need the assistance of others. The Court of Audit concluded that the Government's concern for providing assistance to all those in need during the audit period was not satisfactory. It stated that the Government has been unsuccessful in ensuring the accessibility of social care services to all those in need, ensuring equal treatment of the beneficiaries and adequately designing a new long-term care system.

In 2018, the **Committee on the Rights of Persons with Disabilities** expressed its concern¹³ about the large number of persons with disabilities still residing in institutions because of the lack of an explicit policy, national and municipal capacity and measures for the deinstitutionalization of persons with disabilities, and the insufficient provision of independent living services in the community. The Committee recommended Slovenian authorities adopt and implement a strategy and action plan aimed at deinstitutionalization, provide sufficient funding for developing community-based independent living schemes, and allocate sufficient resources to ensure that services in the community are available, accessible, affordable, acceptable and accommodating of persons with disabilities, so that such persons may exercise their right to live independently and be included in their communities, in both urban and rural areas.

¹² Available in Slovenian at: http://www.rs-rs.si/fileadmin/user_upload/Datoteke/Revizije/2019/KAM/KAM-2_RSP_RevizijskoP.pdf.

¹³ Concluding observations on the initial report of Slovenia, 16 April 2018, available at: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=60_kG1d%2FPPrICAq_hKb7yh_siV%2Bq2wB82cx_wrVotBOWIsoWAUSWNgtvkKM_FtURxyZOCNkBX8rxl_f9hTyugdOKLQSL6%2FSOsrz_EUsgCntgOXLiAvdg8G5TOe%2BIND1%2FAWIH8BHG.

Based on the visits to care institutions for the elderly and other social welfare institutions, as well as received complaints, the Ombudsman also finds the current situation critical. The identified problems include a lack of capacity in institutions, long waiting periods for admission, an underdeveloped system of deinstitutionalized care (care in the community), non-transparent system of charging for institutional care, staff shortages and cases of poor treatment of care recipients.

The Ombudsman has therefore been calling on the Government to **ensure adequate, accessible, affordable and acceptable services** for the elderly people and people with disabilities in need of assistance and to **make further steps towards deinstitutionalization**, so that such persons may exercise their right to live independently and be included in their communities, in both urban and rural areas. The Ombudsman hopes that these challenges will be adequately addressed in the upcoming Act of long duration treatment.

6. Home care assistants

As a specific issue under the broader topic described in section 5., the Ombudsman is concerned about the systemic weaknesses of the institution of home care assistants, which affect the enjoyment of rights of disabled persons.

Pursuant to the Social Assistance Act (ZSV)¹ Article 18.a, an adult with a severe mental disability or an adult with a severe mobility impairment who needs assistance in performing all basic living needs has the right to choose a home care assistant.

The current regulation does not provide sufficient social security for home care assistants, does not give home care assistants the right to annual leave or other forms of rest and does not provide temporary alternative solutions for the disabled in case of a home care assistant's illness. It is therefore not surprising that home care assistants, who turn to the Ombudsman with complaints, point out that their work is demanding and undervalued.

Another shortcoming is that self-employed persons cannot become home care assistants.¹⁵ The Ombudsman has therefore been proposing an amendment to the law so that self-employed persons would also be able to obtain the status of a home care assistant under comparable conditions as employees under an employment contract, who can acquire the status even if they remain in part-time employment.

Furthermore, in view of the Ombudsman, the right to obtain home care assistants should be extended to persons with dementia, who are currently left out since they do not count as disabled persons in the sense of Article 18.a of the ZSV.¹⁶

Lastly it should be added, that the Ombudsman is pleased to note the commitment of the Government to address the described issues in the recently published proposal of a new Act of long duration treatment and hopes that best solutions will be enacted in the final version of the law. In this regard, the Ombudsman also calls on the Government to adopt

¹ Official Gazette of the Republic of Slovenia No. 51./i/92 with further amendments.

¹⁵ See English abbreviated version of the 2017 Annual report, p. 211., available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf.

¹⁶ See English abbreviated version of the 2018 Annual report, p. 161-162, available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP 2018 ENG .pdf.

necessary legislative measures for harmonization of ZSV provisions regulating home care assistants, the provisions of the Personal Assistance Act¹⁷ regulating personal assistants, and the upcoming Act of long duration treatment.

7. Posted workers

The Ombudsman notes that despite the adoption of the Transnational Provision of Services Act (ZCm IS),¹⁸ which came into force on 1 January 2018, in practice posted workers are still not sufficiently protected.¹⁹ Pursuant to the ZCmIS, the Health Insurance Institute of Slovenia (ZZZS) is the competent body for issuing and, in case of illegality, revocation of the A1 certificate (a document confirming that regulations on social security of the EU Member State in which the employer is established continue to be applied to the posted worker). The ZZZS must therefore check with employers whether they have paid social security contributions and confirm they have not been fined for non-payment of wages and contributions, violation of working hours, undeclared employment etc.

In 2019 the Ombudsman decided to carry out an investigation at his own initiative and discovered that the ZZZS has so far revoked only a small number of certificates, all issued several years ago, while no certificates, issued after 1 January 2018 have been revoked. Since ZZZS failed to provide a well-founded reason for not fulfilling their statutory duty, the Ombudsman therefore concluded that the supervision over the implementation of the ZCmIS is ineffective.

The Ombudsman also recommends that the Government of the Republic of Slovenia adopts rules, defining the procedure for the reimbursement of contributions and costs related to compulsory health insurance, and the procedure for cross-border reimbursement, in cases of revocation of the A1 certificate. Pursuant to Article 30 of the ZCmIS this by-law was supposed to be adopted within two months from the coming into force of the law.

8. Protection of workers' claims in the event of the insolvency of the employer

The Ombudsman has been recommending to the Government since 2013 to amend the Financial Operations, Insolvency Proceedings, and Compulsory Dissolution Act (ZFPPIPP)²⁰ in a way that unpaid wages to workers, for work they had to carry out before submitting an extraordinary notice of termination of employment, will also have the status of priority claims in the bankruptcy procedure. According to the current ZFPPIPP, only wages for the last three months before filing for bankruptcy are considered priority claims, while it may happen that an individual gives extraordinary notice in accordance with Article 111 of the Employment Relationships Act²¹ (due to the employer not paying him a salary for a certain period) and the employer only files for bankruptcy after a longer period of time has passed.

¹⁷ Official Gazette of the Republic of Slovenia No. 10/17 with further amendments.

¹⁸ Official Gazette of the Republic of Slovenia No. 10/17.

¹⁹ See English abbreviated version of the 2018 Annual report, p. 165, available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf.

²⁰ Official Gazette of the Republic of Slovenia No. 126/07 with further amendments.

²¹ Official Gazette of the Republic of Slovenia No. 21/13 with further amendments.