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## **EUROPEAN SOCIAL CHARTER**

**Explanations of the Government of the Republic of Slovenia  
regarding the response of the Human Rights Ombudsman of the  
Republic of Slovenia to the 19th report of the Republic of Slovenia on  
the implementation of the European Social Charter (revised)**

## **THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA**

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**CYCLE 2020**



**Explanations of the Government of the Republic of Slovenia regarding the response of the Human Rights Ombudsman of the Republic of Slovenia to the 19th report of the Republic of Slovenia on the implementation of the European Social Charter (revised)**

19 November 2020

**1. Understaffing of the Labour Inspectorate of the Republic of Slovenia**

With regard to the observations of the Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman), the Government of the Republic of Slovenia (hereinafter: the Government) explains that it is aware of the importance of the tasks performed by the Labour Inspectorate of the Republic of Slovenia (hereinafter: the Labour Inspectorate). Since the Ombudsman noted in its annual report that the number of inspectors is insufficient for the potential scope of work, the Government has been making efforts to ensure that the Labour Inspectorate recruits more staff. Thus five new inspectors were recruited in 2018 and 10 in 2019. In addition to recruiting new staff, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, together with the Labour Inspectorate, is working on providing the information support that will help inspectors work more efficiently.

**2. Active employment policy**

With regard to the Ombudsman's observations about the transparency of the inclusion of individuals in the measures of the active employment policy (hereinafter: the AEP), the Government explains that the Employment Service of Slovenia (hereinafter: the Employment Service) is constantly upgrading the scope, form and accessibility of the relevant statistical data. In accordance with increasing needs for frequent updating of certain data and based on user satisfaction surveys, the Employment Service has in recent years developed several elements to increase the transparency and facilitate the monitoring of the developments in the labour market and the implementation of the AEP. Data on the number of unemployed persons participating in AEP programmes are available on the Employment Service's website, grouped by months and years and broken down by gender, age and educational attainment. The data also show the number of persons participating in a particular AEP programme.

As the Government is aware that quick and effective activation of the unemployed is particularly important for vulnerable groups, the Employment Service every month publishes the data on the unemployment structure for more vulnerable target groups in the labour market (young people between 15 and 29 years of age, people over 50, the long-term unemployed, less-educated people and recipients of social assistance in cash), including tables presenting the number of persons included in particular AEP measures for each target group. This allows monitoring the inclusion in AEP programmes, month-by-month, over a longer period. These data are also included in the annual reports on the government measures in the labour market produced by the Ministry of Labour, Family, Social Affairs and Equal Opportunities and include the numbers of both unemployed and employed

persons participating in particular AEP programmes. The annual reports on the government measures in the labour market are presented to the social partners and the Government; they are also made available to the public.

The Government also explains that the number of people included in AEP programmes is not determined by the Labour Market Regulation Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 80/10, 40/12 – ZUJF, 21/13, 63/13, 100/13, 32/14 – ZPDZC-1, 47/15 – ZZSDT, 55/17, 75/19 and 11/20 – Constitutional Court Decision) but depends on the amount of funds allocated to a particular programme. This amount, in turn, depends on the funds available for the AEP within the government budget, which is drawn up with regard to the situation in the labour market and the budget funds available and by taking into account all statutory obligations. Article 35 of the Labour Market Regulation Act determines who has priority with respect to inclusion in AEP measures, i.e. recipients of unemployment allowance, recipients of social assistance benefit, members of vulnerable groups in the labour market and unemployed persons who have not yet participated in any AEP measure. With a view to enabling unemployed persons to participate in particular AEP measures, the priority groups identified in the AEP catalogue may also be extended. In this regard, the Government explains that the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Employment Service regularly monitor the situation in the labour market and expand the unemployed target groups, as appropriate. For example, a new target group has been added to the employment promotion programme Zaposli.me (Employ.me), which is implemented within AEP measures, in order to mitigate the consequences of the COVID-19 epidemic and improve people's social situation. As a result, employers can also receive a subsidy for employing persons over 30 years of age who have lost their jobs for business reasons, bankruptcy, liquidation or compulsory composition as a result of the COVID-19 epidemic.

The referral of unemployed persons to AEP programmes is the sole responsibility of the Employment Service. In the referral procedure, the Employment Service must consider the viability of the inclusion of particular persons in appropriate AEP programmes in accordance with Article 114 of the Labour Market Regulation Act. This means that the Employment Service must consider, in particular, the situation in the labour market in an area and occupation, the costs of participation, personal, occupational, work and other abilities of the person concerned, their age, the probability of successful completion of the measure, the person's wishes if justified and sensible with regard to employment opportunities in a certain environment and period, any social or health impairments, funding available, and realistic employment prospects after the measure is completed. The Employment Service must also comply with Article 35 of the Labour Market Regulation Act, according to which priority with respect to inclusion in AEP measures must be given to unemployed persons who have not yet participated in any AEP measure.

A decision on including a person in an AEP programme is made during the formulation of an employment plan, which is a written agreement between an unemployed person and the Employment Service setting employment goals and the time schedule for the person's activities required for job-seeking and participation in AEP measures in order to secure a job as soon as possible (Article 113 of the Labour Market Regulation Act). The employment plan is amended at each meeting with an employment counsellor. It should be noted that an unemployed person may also make a proposal for their inclusion in the AEP (Article 114 of the Labour Market Regulation Act). If an agreement is not reached, the person may reserve the right to a three-working-day period to sign the proposed employment plan. Where no agreement on the content of the employment plan is reached, the Employment Service issues *ex officio* a decision determining the content of the employment plan concerned. Any appeals are decided on by the Ministry of Labour, Family, Social Affairs and Equal

Opportunities. A social dispute may be initiated against a decision of the Ministry of Labour, Family, Social Affairs and Equal Opportunities (Article 113 of the Labour Market Regulation Act). With regard to the observation that the criteria for inclusion in AEP programmes are unclear, the Government explains that in order to ensure greater social inclusion and increase the possibilities for entering the labour market, in AEP programmes the Employment Service gives priority to those groups of unemployed persons that are disadvantaged in terms of participation in employment and would have difficulties returning to the labour market without the government measures. The Employment Service also profiles unemployed persons and focuses on those at risk of long-term unemployment.

With regard to the duration of unemployment and the duration of registration in the Slovenian register of unemployed persons, the Government explains that, in accordance with the AEP guidelines, which are a strategic document for this area, the AEP plan and the Business Plan, with respect to inclusion in AEP programmes, the Employment Service pays special attention to the long-term unemployed, i.e. persons who have been unemployed for 12 months or more, and persons younger than 29 years. The Employment Service also gives priority to those unemployed persons who have been registered as unemployed for a long period of time, are the recipients of unemployment benefit or recipients of social assistance in cash. Furthermore, the funds for AEP programmes, which are partly financed from the European Social Fund, are divided between the Eastern and Western Cohesion Regions. Because of the differences in the development of the two regions, more funds are allocated to the Eastern Cohesion Region. On average, the ratio between the eastern and western regions is 60:40. The distribution of cohesion funds allocated to AEP programmes depends on the permanent residences of the unemployed persons concerned. The costs of the programme for unemployed persons with permanent residence in eastern Slovenia are allocated to the Eastern Cohesion Region and the costs of the programme for unemployed persons with permanent residence in western Slovenia to the Western Cohesion Region. The distribution of funds is not related to the registered office of the employer at which the unemployed person will be trained or employed.

In addition, the Employment Service keeps a record of activities for every unemployed person, including the AEP programmes in which the person participated. The Ministry of Labour, Family, Social Affairs and Equal Opportunities assesses that the scope, transparency, traceability and detail of the data related to inclusion in AEP programmes provided by the Employment Service are adequate. All personal data obtained by the Employment Service and processed in its records are subject to regulations on personal data protection.

With regard to greater transparency in the procedures for selecting contractors to carry out various AEP measures, the Ministry of Labour, Family, Social Affairs and Equal Opportunities is drafting a proposal for a new normative regulation of the selection procedure (amendment to Article 47 of the Labour Market Regulation Act).

### **3. Accessibility for persons with disabilities**

The Government explains that, since the adoption of the Equalisation of Opportunities for Persons with Disabilities Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 94/10, 50/14 and 32/17), it has been trying to make progress in ensuring the accessibility of the built environment and public services to people with disabilities, which is explained in detail in additional clarifications within the 19th Report on the Implementation of the European Social Charter (revised) in the Republic of Slovenia. The Government is aware that some barriers still exist, and the competent institutions are continuously striving for their elimination. In its 2019 annual report, the Ombudsman highlighted the accessibility in primary and secondary schools. In accordance with the Ombudsman's

recommendation, the Ministry of Education, Science, Culture and Sport is conducting an analysis of the status of public infrastructure in upper secondary schools, higher vocational schools, residence halls for upper secondary students, institutions for children with special needs, and centres for school and extracurricular activities in Slovenia. The analysis will cover public institutions, i.e. 111 upper secondary schools (including affiliated residence halls for upper secondary students and higher vocational schools), 13 independent residence halls for upper secondary students, 2 higher vocational schools, 14 institutions for children with special needs, and centres for school and extracurricular activities.

Since the founders and owners of public primary schools and kindergartens in Slovenia are the local communities, the Ministry of Education, Science and Sport plans to obtain from municipalities information on the accessibility of these institutions, including whether access to the entrance and to rooms inside the institution is ensured for disabled people, by the end of the year. First results are expected in the coming months, while the analysis should be finished in March 2021. Based on the results of the analysis, a plan for further action will be made.

The Government also states that every year several new schools and extensions to existing ones are build, in which physical access for persons with disabilities is ensured, and that accessibility is ensured within major maintenance and repair works. The Ministry of Education, Science and Sport ensures that any new or renovated buildings are accessible to students with impaired mobility in accordance with construction regulations, which means that all buildings financed by the Ministry of Education, Science, and Sport within the last 15 years have a lift that allows access to all rooms necessary for carrying out the education programme.

If a student with impaired mobility is interested in enrolling in a secondary school with limited access, the school and the Ministry of Education, Science and Sport together find a solution to ensure access to schoolrooms for the student concerned. If there are no construction or technical barriers preventing this, the Ministry of Education, Science and Sport pays for the installation of a lift. As this is a considerable construction project that takes some time, the instruction of the student is adjusted accordingly until the project is concluded, usually during the student's schooling. If the construction and technical characteristics or the location of the building prevent the installation of a lift, accessibility for persons with impaired mobility is ensured with stair lifts or special chairs when a stair lift is not suitable for the student concerned.

#### **4. Vocational rehabilitation**

With regard to the Ombudsman's reference to complaints regarding the vocational rehabilitation of disabled persons, the Government explains that the Vocational Rehabilitation and Employment of Disabled Persons Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 16/07 – official consolidated version, 87/11, 96/12 – ZPIZ-2 and 98/14) regulates the right to vocational rehabilitation and determines the forms of and measures and incentives for the employment of disabled persons. The purpose of the Vocational Rehabilitation and Employment of Disabled Persons Act is to improve the employability of disabled persons and to establish conditions for their equal participation in the labour market by eliminating barriers and creating equal opportunities. All the measures provided by the Act pursue this purpose. As the competent ministry, the Ministry of Labour, Family, Social Affairs and Equal Opportunities was informed of the Ombudsman's claims about the deficiency of the current regulation of benefits in Article 17 of the Vocational Rehabilitation and Employment of Disabled Persons Act and has already established a dialogue with the Ombudsman on this matter. In its reply to the Ombudsman regarding the deficiencies in the regulation of benefits presented by the beneficiaries,

the Ministry of Labour, Family, Social Affairs and Equal Opportunities committed to proposing an appropriate amendment of Article 17 of the Vocational Rehabilitation and Employment of Disabled Persons Act when the Act is next amended.

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

With regard to the Ombudsman's observation and reference to the 2019 annual report of the Court of Audit with regard to inadequate access to long-term care in Slovenia, the Government explains that it is aware of the complexity of the issue and the intensity of care required in old age, which is why it is essential to ensure sufficient capacities for the institutional care of elderly people. In order to ensure additional accommodation, the Ministry of Labour, Family, Social Affairs and Equal Opportunities issued two invitations to tender for concessions for providing institutional care in homes for the elderly, one in 2018 and one in 2020. A few concessions have already been awarded. According to the contracts concluded, the majority of capacities should be available by the end of 2022. Furthermore, in the past few years homes for the elderly have been supplementing the traditional and established institutional care with more flexible forms of care (day care and temporary accommodation, providing care services in sheltered housing, and providing social inclusion services, physiotherapy, work therapy, etc. for users living at home) and expanding their activities by providing services in the community, such as home help and domestic services.

The Ministry of Labour, Family, Social Affairs and Equal Opportunities is particularly endeavouring to strengthen the community care services, as they support living in the home environment and lengthen the time elderly people live at home. It promotes services for transition from institutional to community care and the building of residential units for the elderly and persons with special needs. These services strengthen the autonomy of individuals and their freedom of choice, maintain their self-reliance, and encourage them to live independently. In order to promote deinstitutionalisation in Slovenia, in September 2019 the Ministry of Labour, Family, Social Affairs and Equal Opportunities established a project unit for the implementation of deinstitutionalisation within the Operational Programme for the Implementation of European Cohesion Policy, which, in collaboration with the project partner, examines the situation regarding deinstitutionalisation, identifies the areas that require special attention, and participates in the drafting of proposals for new acts or amendments to existing acts or the Resolution on the National Social Assistance Programme.

Through projects within the current operational programme and planned projects within the 2021–2027 financial perspective, the Ministry of Labour, Family, Social Affairs and Equal Opportunities co-finances the setting-up of facilities for day care and temporary accommodation and the building of residential units for the elderly and people with intellectual impairment and mental health disorders, including the provision of the necessary infrastructure for these units. The setting-up of facilities for day care and temporary accommodation and the building of new smaller residential units increases the accessibility of social assistance services. The Labour and Social Affairs Ministry puts special emphasis on social inclusion and the establishment of residential groups to provide accommodation for persons younger than 65, with the aim of ensuring a more independent and a better-quality life for adults with long-term mental health problems, intellectual impairments, or mobility or sensory impairments due to which they are unable to live in their home environment and are placed in various public social protection institutions. The Ministry of Labour, Family, Social Affairs and Equal Opportunities also envisaged additional funds for investments in institutional care in the budgets for 2021 and 2022.

With regard to the systemic regulation of long-term care, the Government explains that Slovenia currently has no uniform system of long-term care. Instead, many different pieces of Slovenian legislation include rules governing the fields and rights that fall within the international definition of long-term care. Persons for whom it is established that they need assistance in basic and instrumental activities of daily living may choose between in-home support services and institutional services. The content of in-home services is different from the content of institutional services. In-home services are provided as formal services or services provided by informal care providers. The majority of informal care is provided within the family and by friends. A person may also apply for an assistance allowance on the grounds of the need for the assistance of another person.

The Government is aware that eligible persons with comparable needs do not always have access to comparable rights as a result of differences in legal bases, entry mechanisms and assessment criteria. Private as well as public expenditure for long-term care has been increasing, which can reduce the accessibility and availability of services to individuals when they are unable to fully care for themselves for long periods of time because of illness, frailty due to old age, injury, disability, or the lack or loss of intellectual ability. Being aware of the need for structural changes and comprehensive regulation that will allow persons who are no longer able to take care of themselves independently have a quality and safe life, the Government has drafted a proposal for an act governing long-term care with the following objectives:

- to harmonise legislation governing the rights concerning long-term care;
- to define long-term care;
- to determine the scope of rights and the range of services pertaining to long-term care;
- to establish a uniform assessment mechanism for entry into the long-term care system;
- to devise a comprehensive, available, universally accessible, and geographically and financially sustainable and attainable system of long-term care;
- to enable insured persons to live at home with appropriate assistance as long as possible when they so wish;
- to put the individual at the centre of the long-term care system, allowing them to choose the method and form of long-term care within their rights;
- to control the increase in private financing on the part of individuals, which increases the risk of poverty, particularly among the older population;
- to improve planning, management, quality assurance, security and efficiency in the provision of long-term care as a public service;
- to establish effective public supervision of the provision of long-term care.

A public debate for the proposal for the act was concluded on 5 October 2020.

## **6. Home care assistants**

With regard to the Ombudsman's observation on the systemic weakness of the institution of home care assistants, the Government explains that this social security institution was introduced in 2004 with the amendment to the Social Assistance Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 3/07 – official consolidated version, 23/07 – corr., 41/07 – corr., 61/10 – ZSVarPre, 62/10 – ZUPJS, 57/12, 39/16, 52/16 – ZPPreb-1, 15/17 – DZ, 29/17, 54/17, 21/18 – ZNOrg, 31/18 – ZOA-A and 28/19) in order to allow a parent who has cared for a child and received partial payment for loss of income under the Parental Protection and Family Benefits Act (Official Gazette of the Republic of

Slovenia [*Uradni list RS*], Nos. 110/06 – official consolidated version, 114/06 – ZUTPG, 10/08, 62/10 – ZUPJS, 99/13 – ZSVarPre-C and 26/14 – ZSDP-1) to stay at home after the child is 18 years old in order to continue to care for the child and continue to receive a partial payment for loss of income. The Social Assistance Act also stipulated that disabled persons under the Act on Social Care of Persons with Mental and Physical Impairments (currently, the status of a disabled persons is regulated by the Social Inclusion of Disabled Persons Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 30/18)) and elderly people with serious mobility impairment who need assistance in all basic daily activities are also entitled to a home care assistant.

A home care assistant is an alternative for persons eligible for institutional care which allows them greater intimacy, individuality, homeliness and warmth. Eligible persons are granted the right to choose a home care assistant who provides help in the home environment over daily institutional care in a social protection institution or a home for the elderly. Home care assistants have the following rights: they receive partial payment for loss of income; are included in all social insurance schemes (pension and disability insurance, health insurance, parental protection insurance, and unemployment insurance); and are not obliged to cover the disabled person's material costs. They are also not liable to contribute to the payment for the home care assistant. Home care assistants are primarily financed from the income of the eligible person and persons who are obliged to maintain the eligible person. Any difference is covered from the municipal and state budgets. The responsibilities of a home care assistant are to take care of the disabled person and provide them with assistance in accordance with their needs and interests, in particular to take care of accommodation, personal care, food and housekeeping; to manage medical care under the guidance of the disabled person's doctor; to accompany the disabled person to various social activities (e.g. cultural, sports, religious and educational activities); and to attend training programmes.

Persons eligible for a home care assistant who are disabled also have the right to the social assistance service of guidance, care and employment under special conditions, which is provided by special social care and employment centres and is financed from the state budget. This service is generally provided eight hours a day, five days a week (from Monday to Friday). The purpose of this social assistance service is to enable disabled persons to be actively included in social life and the working environment and to perform useful work that suits their abilities.

The Government explains that the proposal for the act governing long-term care, public debate on which has just been concluded, envisages a comprehensive regulation of the right to a home care assistant for all persons who depend on the assistance of another person if they belong to a certain category, including persons with dementia. The proposed act would rename the home care assistant as a family member carer and regulate the carer's right to payment and the right to 14 days of leave per calendar year and the right of the eligible person to a 14-day substitute placement in institutional care. An important novelty included in the proposed act is that the costs of a family member carer would be covered in full from the long-term care budget and would no longer be borne by the eligible person and the family member who is obliged to maintain them.

## **7. Posted workers**

With regard to the issue regarding the supervision of enterprises posting workers abroad, the Government explains that progress has been made in the supervision of the implementation of the Transnational Provision of Services Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 10/17). Following the Ombudsman's observations, the Health Insurance Institute of Slovenia (hereinafter: the Health Insurance Institute) adjusted their collaboration with the Labour Inspectorate,



so that now the Health Insurance Institute requests that the Labour Inspectorate, when conducting an inspection, provides a clear answer as to whether the inspected entity usually operates in Slovenia or not. As the competent ministry, the Ministry of Labour, Family, Social Affairs and Equal Opportunities notes that the Health Insurance Institute has implemented the Ombudsman's recommendations and presented them to all its regional units.

With regard to a systemic solution to the ineffective supervision of the implementation of the Transnational Provision of Services Act, the Government points out that the Ministry of Labour, Family, Social Affairs and Equal Opportunities, in collaboration with all relevant stakeholders in state administration, is drafting an amendment to the Act. Among others, the amendments will include Article 11 of the Act, so that it will allow the date on which the withdrawal of the A1 certificate takes effect to be clearly set.

With regard to regulations to be issued pursuant to the Transnational Provision of Services Act, the Government explains that the implementing regulation prescribing the form for the A1 certificate has already been issued, while the implementing regulation governing the procedure for reimbursing the contributions and the costs of any exercised rights arising from compulsory health insurance and the procedure for cross-border reimbursement of funds in the event the certificate is withdrawn is being drafted by the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

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

With regard to the Ombudsman's comment regarding the protection of workers' claims in the event of their employer's insolvency, the Government explains that this issue has already been addressed by the amendments to the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], No. 27/16), which entered into force in 2016.

In accordance with point 1 of paragraph one of Article 21 of the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 13/14 – official consolidated version, 10/15 – corr., 27/16, 31/16 – Constitutional Court Decision, 38/16 – Constitutional Court Decision, 63/16 – ZD-C, 54/18 – Constitutional Court Decision, 69/19 – Constitutional Court Decision, 74/20 – Constitutional Court Decision and 85/20 – Constitutional Court Decision), salaries and compensations for the last six (not three) months are now treated as priority unsecured claims before an insolvency procedure is initiated. The Government believes that this period (six months) is sufficiently long to allow the worker to exercise their legal remedies against their employer that did not pay salaries on time due to insolvency. In accordance with Article 111 of the Employment Relationship Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], Nos. 21/13, 78/13 – corr., 47/15 – ZZSDT, 33/16 – PZ-F, 52/16, 15/17 – Constitutional Court Decision, 22/19 – ZPosS and 81/19), the worker may effect extraordinary cancellation of an employment contract and then, independently or with the assistance of the Public Scholarship, Development, Disability and Maintenance Fund of the Republic of Slovenia, file a bankruptcy petition against the employer (Article 231 of the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act). A worker for whom an employer has delayed the payment of salaries up to the level of the minimum wage or contributions for more than two months is exempt from paying the advance to cover the initial costs of bankruptcy proceedings against the employer (paragraph six of Article 233 of the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act).

The Government further notes that, in accordance with paragraph two of Article 21 of the Financial Operations, Insolvency Proceedings and Compulsory Winding-up Act, priority claims in insolvency proceedings also include unsecured claims for the payment of contributions which arose before the start of the insolvency proceedings.