Shadow report of the group of non-governmental organisations on the implementation of human rights obligations in Slovenia (2014 – 2019)

Prepared for the Human Rights Council on the occasion of the Universal Periodic Review
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INTRODUCTION

During its second Universal Periodic Review, Slovenia received numerous recommendations. These included a range of human rights concerns, including topics like anti-discrimination, access to economic, social, cultural and economic rights and the rights of minorities, notably the Roma minority.

This shadow report does not have an ambition to be a comprehensive one and does not reflect all rights under review and all areas under the scrutiny of the Council. Instead, it aims to give input only on specific topics, which are probably underrepresented or misrepresented (i.e. non-discrimination, hate speech and hate crimes, minority rights, persons with disabilities…). In certain areas (i.e. certain social and political rights) and on some of the cross cutting issues (i.e. HR architecture, monitoring, policy making and strategies, coordination…). We think we simply must provide also our own point of view to encourage and possibly enable a fruitful and focused discussion (which is sadly often avoided in domestic framework) and strive towards positive progress in the most problematic areas.

In our opinion, the key and most extensive violations of HR obligations are the consequences of omissions, i.e. or lack of regulation and / or non-implementation of effective policies. We particularly wish to highlight certain trends of stagnation or even regression and the persistent lack of demonstrated will to effectively address some of the key pressing issues. Although the Government is not the only stakeholder responsible for this situation, we miss its irreplaceable guidance and leadership in shaping the policy and key legislative solutions.

We would be extremely grateful if you could, as you deem appropriate, direct the attention of the Slovenian Government to these important issues.

THE PRESENTATION OF THE CONSORTIUM

Društvo za osveščanje in varstvo – center antidiskriminacije (OVCA)
Society for awareness raising and protection - centre of antidiscrimination (OVCA)
Society OVCA is a voluntary, independent non-governmental and non-profit organization established in 2008 by the members of the ex-Ombudsman's for HR anti-discrimination department and former Advocate of the Principle of Equality. It is specialised in human rights and anti-discrimination. It is a sort of a think-tank and a platform for expert dialogue and work; it aims to foster a base of knowledge of various anti-discrimination and HR topics. OVCA is vividly involved in HR advocacy, especially in reflections on policy making and legislation (HR impact assessment, i.e. interventions in legislative proceedings, policy papers), in assistance to victims of discrimination and other HR violations (i.e. strategic litigation), in capacity building, in awareness raising and trainings, situation testing and in notably in shadow reporting (see our inputs under ESCR, CCPR, CEDAW, CRPD…).
A: Poljanska 54, 1000 Ljubljana, Slovenia
T: 0038631446540 (Bostjan Vernik Setinc)
E: bostjanv@hotmail.com
W: www.drustvo-ovca.si

Zveza romske skupnosti Slovenije Umbrella – Dežnik
Association of the Romani Community of Slovenia Umbrella - Deznik
Established in 2010, it is an independent, voluntary, non-governmental organization formed as a cluster of 14 other societies of Roma community. It has a status of operating in the public interest in the sphere of promoting and developing culture of the Roma community. Its main task is to provide a platform for a more effective capacity building of the individuals and organisations of Roma community and to foster their participation at shaping local and national policies. Apart from various cultural activities (music, exhibitions, poetry, media, radio, training the Roma journalists…) it provides information and raise public awareness in HR. It is very active in the endeavours to fight discrimination (assistance to victims, research…) and counteract prejudice and stereotypes against members of the Roma community (trainings, discussions, round tables, public protests) and in promoting social inclusion. It is actively involved in shadow reporting, especially in the COE system, but supported also UN representatives when inspecting the situation in Slovenia. One of its key priorities is addressing challenges of the illegal and harmful division (discrimination) of the Roma minority between autochthonous and (non)autochthonous parts of the community and exclusion of Sinti from the life and protective mechanisms of the minority.

A: Litijska cesta 81a, 1000 Ljubljana, Slovenia
T: 0038670431949 (Haris Tahirovic Jelenc, president)
E: drustvo.anglunipe@gmail.com
W. http://anglunipe.si/category/zvezaumbrella/

I. THE NATIONAL HUMAN RIGHTS FRAMEWORK

Institutional architecture

Despite adopted improvements in the institutional architecture, Slovenia has not yet resolved all pressing issues of HR architecture under the international HR law.

After years of agony, the Protection against Discrimination Act (ZVarD) was finally adopted in 2016. Advocate of the principle of equality was set up as the independent equality body, but until the most recent amendment of the budget for 2019, the institution was without necessary means for operation. In this way the start of its efficient operation was additionally delayed for more than two years.

In 2017, the amendments of the Human Rights Ombudsman Act set out a legal basis for the Ombudsman to improve and expand its organisation of the system of providing effective means for right of the child to be heard (article 12 CRC) and to become a national human rights institution. In 2018, Council of the Human Rights Ombudsman, an advisory body was set up to ensure plurality and inputs of relevant stakeholders for the Ombudsman. The Human Rights Centre, another internal organisational unit, with a mandate to research and promote HR and engage in HR education, did not become operational on 1.1.2019 as prescribed by the law, due to the lack of financial resources. As a result, the window for achieving status A at the GANHRI (which would enable its full and effective involvement in the UN HR machinery) is postponed at least until 2020. We doubt that the enacted solutions (and resources) are sufficient to establish a proper and effective full monitoring of all HRs or sufficient promotion (see below under monitoring).

Slovenia still lacks a fully operational specialized independent body to monitor the situation and promote the development of children's rights under the obligations of the CRC (article 4). The newly created Council of the Republic of Slovenia for Children and Family cannot act as an independent supervisory body, as its operation is limited to the sphere of consulting the Government. The Ombudsman does not exercise and due to the limitations of its mandate cannot carry out certain key tasks (as set by CRC Committee's general comment no. 2 (CRC / GC / 2002/2), in particular it does not have:

- sufficient powers to obtain information in all the private sector, i.e. from legal persons, they are disputed even by public service providers;
- any powers to intervene at violators or make recommendations throughout the private sector (i.e. foster parents, guardians, private schools and other educational institutions without concessions ...),
- the power to directly represent and protect children before administrative authorities and courts, except at the very end of all available legal channels, i.e. via constitutional complaint before the Constitutional Court (where consent of the parent/guardian is necessary). It is extremely questionable whether during open procedures, especially judicial ones, it can even intervene even as amicus curiae, since the possibility of mediation is explicitly limited to undue delays in proceedings and the abuse of power.

In addition independent supervision of the CRPD under Article 33 is still missing; since the Council of the Republic of Slovenia for Persons with Disability clearly does not fulfil the tasks and purposes of this control mechanism, nor has necessary resources (see CRPD/C/SVN/CO/1, Paragraphs 57 and 58).

Furthermore, the issue of control over the implementation of Directive 2014/54/EU of the European Parliament and the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers. The Employment Service of Slovenia does not have the quality of an independent and independent institution and thus the capability to carry out necessary tasks (investigations of restrictions and obstruction of the right to freedom of movement of EU workers and their family members).

We regret that the debate on these open issues was not possible at the time when the ZVarCP-A was adopted, although we explicitly pointed to them (in terms of legal obligations, but also search for synergies and optimisation) and called for an open and focused public debate. Unfortunately, we did not receive any comments on the given comments at all, nor there were any reflections given at least in the official explanation of the draft law.

We are also questioning the planning of the resources for the NHRI to become fully operational. We are wondering about the reasons for the relatively modest allocation of additional resources for the tectonic expansion of the Ombudsman's duties. For all tasks in all areas of operation of the new Centre for HRs (and the Council of the HR Ombudsman), only 4 additional persons are envisaged, which is, for example, comparable to the functioning of the organizational structure of the advocacy system set for the enforcement of Article 12 of the CDC. It seems that for the mandate of education and promotion of HRs, The Ombudsman did not receive sufficient funds and personnel, so it will most probably have to heavily rely on the active involvement of non-governmental organizations. We are aware that the launch of the Centre for Human Rights is only the starting point in the process of transforming the functioning of the institution of the Ombudsman as a whole, but the state, in our opinion, should and could have invested certainly much more resources, inter alia to dismantle the development gap.

Vision, strategies, policy making and coordination

Slovenia does not lack only HR based strategies for realizing the rights of certain most vulnerable groups of people or to tackle some of the gravest structural and systemic problems of HR violations. The key cross-cutting strategies are missing, so it is difficult to expect that at least sectoral (vertical) approaches to the protection of individual social groups could be successful (we are not losing words about the quest of how to find optimal solutions and synergies).

The state is without a serious policy, it does not have a vision, nor a strategy for respecting, protecting and exercising all human rights. Obviously, Slovenia does not fulfil the commitments from the so-called Vienna Declaration and Program of Measures (1993). Slovenia was reminded in this respect by the Committee on Economic, Social and Cultural Rights (in 2006 and then in 2010).

It is obvious that with the exception of the (fragmented, incomplete) parts of the governmental program of measures for the integration of the Roma community 2010-2015 and the national program of measures of the Government of the Republic of Slovenia for the Roma for the period 2017-2021, the Republic of Slovenia still has no serious, let alone the comprehensive policy of preventing and eliminating racism and xenophobia in line with its commitments under Durban Declaration (2001). This is completely unacceptable, having in mind global and domestic situation and trends and the available resources of the state

It also has no anti-discrimination strategy, although the Ombudsman (since 2001), the Advocate of the principle of equality (since 2010), have been raising this issue constantly and the Parliament (2003) backed up this recommendations. In recent years, a number of international human rights watchdogs have been giving recommendations in this respect (the last warning was issued in 2016 by the Human Rights Committee, which oversees the implementation of the ICCPR, see our shadow report). The urge for the state to commit itself to the adoption of this strategy and to define its positive protection and promoting obligations in detail, was one of the key emphasis of the proposals of the former Advocate of the Principle of Equality, as well as numerous non-governmental organizations in the process of adopting ZVarD, which were not taken into account. Even though Slovenia has certain strategies for inclusion of vulnerable groups, these shortcomings are still pressing, as these strategies do not have serious focus on non-discrimination (nor HR based approach). No inclusion can be successful without fighting exclusion in the first place.

The valid Program of Measures for Children has expired in 2016 and the new one is not even in the public debate. Slovenia also lacks serious, HR based housing strategy, migration strategy, the strategy for mitigating effects of the climate change, strategy for addressing challenges of ageing society, HR based strategy to tackle disability, to name only a few the most pressing areas with no clear HR based policies in place. Even if there are several sectoral or vertical strategies (for example, in relation to persons with disabilities, see CRPD / C / SVN / CO / 1, paragraph 4 ...), it is our general observation, that they do not have a serious HR based approach.

In the area of policy making it is clear that nobody is actually leading and coordinating HR policies. At least nominally this would be the task of the Government, but there are no specific structures or processes in place. No systematic and holistic HR impact assessment is performed in legislative and policy making processes. Cross-cutting issues, such as protection against discrimination and ensuring equality, and the general promotion of human rights, are completely marginalized and financially undernourished. It is clear that the state does not deal seriously enough with human rights and that it abandons the obligation to use all available resources and measures for this purpose. Particularly common are the excessive diversification of responsibilities between many very weak and uncoordinated institutions (which only deal with these issues in partial and superficial manner, lack sufficient resources and personnel, especially in the case of intersectional problems), short circuits or even blind spots (absence of action, referring to lack of competence, the shifts of responsibility) and delaying those problems that require close inter-sector cooperation and harmonized solutions. Unsuitable structures, e.g. more than a decade of agony in establishing the equality body, national human rights institution, a full operational body for the protection of children's rights, and a highly questionable functioning of those who exist, are only logical symptoms of this situation. All of this, including the low level of inclusion of people in decision-making and poor levels, or even the absence of public debates, is clearly reflected in the many shortcomings and cases of systemic violations. At the policy level, there are even areas with obvious regression. The body for the coordination of non-discrimination policies (formerly Ministry for Labour, Family, Social Affairs and Equal Opportunities) is not designated by law anymore; similarly the forum for institutional discussion on these issues between the social partners (former Government Council for the Implementation of the Principle of Equal Treatment, SUNEO) was abolished by ZVarD.

In our opinion the key and pressing issue of HRs in Slovenia is the gaps and lacunas and the absence of the political will in the area of policy making, and not control. In the area of control, this situation on the policy making level is only showing its grave consequences. The stakeholders are as a rule prefer to observe each other and thus act predominantly reactive, rather than seek to establish a permanent process of cooperation, reflecting and proactive and preventive planning action. These tectonic deficiencies cannot be remedied by any, even the strongest and most proactive independent supervisory institutions, especially if there are so significant gaps even on this level well.

Monitoring and data collection

It is completely unacceptable that, as a general rule, international supervisory mechanisms (UN and COE bodies, EU Fundamental Rights Agency, the EU networks and other independent experts of the European Commission), generally have a much better insight into the situation in respect for HR, as local authorities and the domestic public. Monitoring is the primary, indeed a core obligation for domestic authorities which is essential for prioritizing, introducing and measuring the effectiveness of state policies for the implementation of conventional rights, rather than simply the issue of responsibilities for reporting to international monitoring mechanisms.

We doubt that the adequate monitoring system would be effectively put in place even after Ombudsman starts to function as a NHRI. One of the key problems is, apart from lack of sufficient resources that the system of holistic collection of HR data is not in place.

Despite some good practices, specific and adequately disaggregated data on the level of respect for HR is missing. For example, for example, no data on the number of complaints by children regarding the violation of their rights are available even at the practice of HR Ombudsman. In some areas, even the most recent laws do not adequately regulate this issue, even with the duty of the authorities to monitor their own legal practice of dealing with violations. ZVarD only obliges to collect such data by the Advocate of the Principle of Equality and Inspectorates, but not even the courts or other administrative authorities. Because of this, and given the large lack of qualitative data, the situation is maintained when, instead of HR based approach and strengthening the capacities for their respect, protection and effective enjoyment, the policy easily insist on different forms of assistance (charity, social intervention) and support which are monitored almost exclusively by process indicators most situations policies and measures are mainly aimed at mitigating the negative consequences, rather than the causes of violations of Hrs.

Transposition of international obligations

We would like to raise concern that we encounter instances of improper translations of the legal texts (CRPD, some EU directives…) or CO which can have serious effects on the level of transposition/implementation (i.e. see CO of CRPD). We plead for more scrutiny and transparency (i.e. by inclusion of experts from NGOs) in these processes.

Some of the rights are simply not taken seriously at their core. We would like to highlight the absence of appropriate and sufficient regulation of a number of very important rights marks the realization of all many crucial social and political rights. These remain often insufficiently regulated (imprecise, open to the interpretation, cannot always be vindicated before courts…) and thus secured. Some are explicitly guaranteed only by international law, for example, The European Social Charter and/or the International Covenant on Economic, Social and Cultural Rights (i.e. the right to adequate housing and the prohibition of arbitrary eviction, the right to an adequate standard of living), or the European Convention on Human Rights (i.e. the right to home). Many have tendency to be provided only to citizens (or in addition maybe to citizens of other EU states only, the problem is grave in respect to some of the crucial social rights) or are simply left to be defined in detail by the implementing (administrative) regulations of the government and other regulators, who have both scissors and canvas for determining the content and extent of the enjoyment of rights (i.e. the scope of the right to healthcare is governed by the rules of compulsory health insurance, the criteria for the priority accessibility of non-profit housing are subject to the regulations of municipalities or particular housing funds, some rights, i.e. for social inclusion of persons with disabilities are even explicitly provided only if and when sufficient funds can be provided...).

A sign of unease with the binding concept of HRs, especially in the area of social rights, is much apparent on the level of the extent of effectiveness of international controlling mechanisms. Slovenia has not ratified and/or implementation protocols which would enable direct access of victims of HR violations to the HR mechanisms under the ICESCR and CRC in the UN system and under European Social Charter in the COE regional system. The necessary implementing measures to enforce interventions of the Committee on the Rights of the Child (interim measures to suspend decisions) are still not adopted, although The Law on the ratification of the Third Optional Protocol to the Convention on the Rights of the Child on the reporting of violations was adopted and came into force on 25 August 2018. The practical implementation of the essential aspect of this complaint mechanism in cases of the most serious infringements is therefore not in place.

Resources

Slovenia, according to virtually all indicators, belongs to the club of the most developed countries, and its capabilities are significant. Although we do not deny the gravity and extent of the effects of the previous economic crisis, this can no longer be a general, even less permanent excuse for such a slight progress or even a standstill in the implementation of HR law. The state is obliged to use

maximum available resources and take all measures, including in legislative to ensure (full) realization of all HR, including economic and social rights. We believe that the state is responsible for obvious violations of the above-mentioned duty, particularly in the light of the due priority of taking care of vulnerable social groups. The state's ability to provide resources, at least from the end of 2014, when the country technically emerged from the period of economic and fiscal crisis (economic recovery, GDP growth, no more budget deficits ...), according to our estimation was not questionable in no way. However, it is particularly worrying that even under the conditions of exceptional economic growth and budgetary surpluses that we have seen in recent times, there is no tangible progress as regards priority planning, allocation of the use of public resources (financial, personnel ...) for the realization of HRs. This speaks volumes about the true political priorities.

II. SPECIFIC RIGHTS

Equality and non-discrimination

There are several problems with understanding the concept of discrimination**.** Even the adoption of the ZVarD has not improved the situation in many respects. The definition and explicit acknowledgement of the intersectional discrimination is missing, the delimitation between discrimination on the grounds of disability and health status is unclear[1], the obligation to adopt reasonable accommodation is not regulated properly, and segregation was not regulated. Too many issues (i.e. areas where prohibition of discrimination has an effect, even in the public sector) are left to interpretation and there is very little case law. Discrepancies among the definitions of individual forms of discrimination (i.e. the definitions of direct, indirect discrimination, victimisation) in different laws, for example, ZVarD, Equalization of Disabled Persons Opportunities Act (ZIMI), Employment Relationship Act (ZDR-1), Equal Opportunities for Woman and Men Act (ZEMŽM) are completely unacceptable. The proper use of law still requires not only mutual knowledge of the effects of a large number of laws and even international law, but also a demanding legal interpretation, inaccessible to average and legally unqualified subjects. Some forms of discrimination, for example, even the rejection of the requirement for a reasonable accommodation is not properly regulated. For more details on defects of regulating the right to equal treatment and misunderstandings of the key concepts (see the problem of translations) see reflections of CRPD and our inputs from the two submitted shadow reports.

An effective system of legal protection is still not in place. The improvement is mostly formal. It is directed only at the burden of an independent Advocate of the Principle of Equality. In addition the system also counts on NGOs which are supposed to represent the victims, but only if they gain a special status (which has been obtained so far by only one NGO) and can show they have personal with bar exam. This is an excessive burden for claims which are made anyway just before the lowest district courts. Such advocacy programs are not supported by any public funding.

The implementation of ZVarD shows even a regression and not an improvement. It has caused a serious confusion in the enforcement of sanctions. For example: as regards the scale of claims for compensation and the deadlines for their enforcement, it is not clear whether there is a risk of narrowing the scope of civil protection. ZVarD caused serious discrepancy and partly regression in the system of misdemeanour sanctions (for example, it decriminalized some violations even in the sphere of functioning of the authorities, thus preventing the sanctioning of responsible persons in state bodies and local self-government bodies). It has significantly reduced the maximum prescribed fines. In no way did it solve the problems with the factual and legal inability to prosecute these offences. In some areas, there are no misdemeanour bodies or inspections (for example, regarding certain spheres of activity of state authorities, higher education, mobility, work ...), and those who exist are clearly incapable of asserting the responsibility of the perpetrators at the top, ministers or

[1] Except from the interpretation of the jurisprudence of The Ccourt of EU (i.e. cases C-335/11 and C-337/11)

even the prime minister. Due to the lack of sufficient and explicit legal powers for inspectors, mainly (except in part in labour law), only banal, minimum amounts of fined fines can be imposed (for example, with a penal penalty of between 125 and a maximum of 1,500 euros); all the higher-priced fines are dead letter on paper. Even the newly established Advocate of the Principle of Equality already pledges for changes of the legislation, as some of its competencies in the inspection proceedings seem to be unclear.

Systemic discrimination, despite warnings, is enforced, or is "maintained" even when new regulations are adopted (i.e. the right to vote, to marry, the custody over persons with intellectual disabilities…) or when facing relevant Constitutional court decisions.
Incompliance with the Constitutional Court decision in case U-I-269/12 is such an example. It established the less favourable treatment of children in private elementary schools regarding the public funding of the basic education program was unreasonable. It seems quite clear that the situation causes discrimination based on religion/beliefs and that it prevents the simultaneous enjoyment of the right to education in the spirit of its own religious beliefs (as an upgrade which is not supported by public funds) and the right to free primary education. The costs of abolishing unconstitutionality would be negligible. Many rights, i.e. those from parental care and insurance are without any compelling reason linked to the status of permanent residence in the Parental Protection and Family Benefits Act (and others). The criteria for allocating a range of social benefits to children and families disproportionately and unjustly neglect aliens in terms of indirect discrimination (and among this category notably affects asylum seekers). The arrangement applies with regard to parental allowance, birth grant, family allowance, childcare allowance, payroll for lost income, access to kindergarten, etc. That the legislation is highly controversial is clear from the Constitutional Court judgment in Case U-I-31/04, which, however, as unconstitutional, annulled that condition only in respect of the child allowance. Some municipalities also practice the conditionality of granting municipal financial assistance at the birth of a child with Slovenian citizenship of parents (and a child), which is clearly discriminatory. Likewise, other legislation is controversial, for example, regarding the access to social benefits for financially weaker families, including non-nationals and members of minorities are often affected disproportionately. For example, third-country nationals (non-EU members) do not have access to non-profit housing due to systemic barriers in the Housing Act (a practice widely reflected under the ESC system and ESCR), as well as rent subsidies in the housing market or other benefits (i.e. For the purchase of housing). In addition, the vast majority of all apartments in Slovenia are in private property, while the housing market comprises only 8% of all housing, and there is widespread discrimination. We conducted situational testing in 2013, which proved the incidence of discrimination against foreigners by professional providers of rental services (agencies) was more than 30%. We also encounter suspicion of other systemic discriminations of the public authorities when dealing with foreigners, asylum seekers and refugees, such as the issue of the denial of the right to one's own name and identity (naming in the documents), the policy of not inscribing fathers in the birth certificates of children born in Slovenia, etc.

Regarding persons with disabilities, we point to the urgent issues of (in) accessibility (not just spatial, where inaccessibility of courts, health institutions, housing stock stands out, we would like to note especially communication and cognitive accessibility), institutionalization (overcrowding of institutions, no roadmap for deinstitutionalisation) and other forms segregation, clearly inadequate legislation in the field of mental health... For more info on this please see the two shadow reports under CRPD.

Regarding members of the Roma community, we should draw attention to the dramatic and shocking picture of drop-outs in elementary schools, according to available data, but also our own survey done in cooperation with ERRC: there is a serious suspicion of a systematic and excessive placement of Roma children in schools for children with special needs. We encounter even many instances of violence against children in schools, intimidation and abuse by the police. The safe environment to ensure these problems are effectively talking is not secured in our opinion.

The government explicitly rejected explicit proposals made by the former Advocate for the Principle of Equality in the process of adopting ZVarD on most of the mentioned problems, but rejection the solutions to specifically regulate the protective and incentive responsibilities of all public authorities, the duty to regulate the system of coordination and policy planning and to adopt a non-discriminatory strategy stands out.

Prohibition of advocacy of national, racial or religious hatred

Triggered by recent developments (various terrorist attacks) 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.

The national immune system against hate speech is seriously handicapped though, both on the legislative and implementing level. It is rather clear from the historic developments that the criminal offence of hate speech (now defined in article 297 of the Criminal code) was not considered as particularly important before 2010 (almost no practice). After amendments of the Criminal Code and its application since 2012 the scepticism against this offence becomes even more evident. Criminal sphere of the named offence has been narrowed down (decriminalisation) considerably in comparison to the previous definition in the Criminal code (Article 300). The criminal act is in principle committed only if clear and imminent danger for public order exists, and this test is applied even for denial of holocaust, etc. This is certainly not meeting the required scope of ex officio prosecution with criminal sanctions under Article 4 of ICERD. In addition Article 5 of ICERD, inter alia requires the state to b.) Declare unlawful and prohibit all organizations and organized and any other propaganda activity if they promote and promote racial discrimination and declare participation in such organizations or activities a criminal offense. This is not done in the national legal system either. Furthermore the state refuses to enact the definition and vivid prosecution of hate-crimes. All these deficiencies are highlighted continuously by European Commission against Racism and Intolerance (ECRI) and the advocate of the principle of equality. In the latest fourth report on Slovenia, the ECRI Report on Racism and Intolerance on Slovenia (Fourth Monitoring Phase) CRI (2014) 39 states that ECRI should repeat the warnings from the third CRI report (2007) 5: "The Slovenian authorities should adopt a provision of criminal law, which explicitly defines racist motivation as an aggravating circumstance for any criminal offense. (see page 10) The authorities urge "to improve the response of the criminal justice system to racially motivated offenses" (see page 12).

The gap between the prohibition (Constitution in Article 63, ZVarD in Article 10) of hate speech and its prosecution is extremely wide. The prohibition remains to a large extent *lex imperfecta and no* sanctions for misdemenours are provided under ZVarD or Media Act. This causes anomie.

Minority protection

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 principles 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). 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 represented by the Council of Roma of the Republic of Slovenia, but its composition is securing 2/3 majority of one particular interest group (Zveza Romov Slovenije) a system that completely fails to recognise the political heterogeneity and plurality within the community and underepresents some Roma communities, especially those from the south-easter part of Slovenia, non-autochtonous members of the minority and Sinti. At the moment the only members of the Council ar members of Zveza Romov Slovenije and no one of the other members of the Council was elected from the eligible local communities. The discrimination between autochthonous and non-autochthonous Roma is steming from Local Self-Government Act, which lists municipalities where Roma minority is autochthonous and has the right to at least one council member (but fails to list even Ribnica and Škocjan where autochtonous parts of the comunitiy also live. The system completely ignores Sinti (counting just a few hundred people) as members of the Roma comunity. Political representation is completely ignoring also municipalities with significant “non-autochthonous” Roma community (counting several hundreds or more than thousand in particular cities for example). In recent years and despite unform and persistent criticism of this policy by the Ombudsman, UN machinery (CCPR/C/SVN/CO/3, 21 April 2016, para 24 and25, CERD/C/SVN/CO/8-11, 11 January 2016, para 6, A/HRC/40/64/Add.1 8. January 2019, para 62) and COE HR bodies (i.e. ECRI’s CRI(2014)38, 17. 7. 2017, para 82. - 86) we have to report the tendency to include this discrimination in public policies even in other policy areas is becoming completely transparent. The most regressive in this respect was the proposal of the amendments to the Roma Community Act. We encounter discrimination based on these criteria also in acess to grands for operation of our media and on public tenders for other acticvities of Roma NGOs (in years 2018 and 2019) enforced even by the Roma Community Council. The problem of discrimination can be seen from many angles: as racial discrimination (underinclusive), as political discrimination and intersectional discrimination (residence, origin, perception of “nationality”) or even as a victimisation, as we were bringing up constantly this issue on the various occasions.

Although they are considered to be an integral part of the Roma community, the position of Sinti community remains completely unregulated and unprotected; they even fell out explicitly from the valid strategy. Although very much endangered from assimilation, they lack any support to preserve effectively their own identity and language.