



## 人权理事会

## 第四十届会议

2019年2月25日至3月22日

## 议程项目3

促进和保护所有人权——公民权利、政治权利、  
经济、社会及文化权利，包括发展权

## 对斯洛文尼亚的访问

## 少数群体问题特别报告员的报告\*

## 概要

少数群体问题特别报告员在本报告中介绍了他 2018 年 4 月 5 日至 13 日访问斯洛文尼亚得出的调查结果。

任务负责人发现的主要问题涉及分类数据、国家人权系统、罗姆少数群体、有效执行和保护少数群体的全面立法、仇恨言论和煽动暴力、聋人少数群体和手语、“被清除者”和前南斯拉夫的少数群体。

特别报告员提出了若干建议和意见，希望能帮助斯洛文尼亚政府和其他有关行为方应对挑战，在斯洛文尼亚实现民族或族裔、宗教或语言少数群体者的人权。

\* 本报告概要以所有正式语文分发。报告正文附于概要之后，仅以提交语文分发。



## Report of the Special Rapporteur on minority issues on his mission to the Republic of Slovenia on his visit to Slovenia

### Contents

	<i>Page</i>
I. Introduction .....	3
II. Mission objectives.....	3
III. Ethnic, linguistic and religious minority communities .....	3
IV. Legal and institutional framework .....	4
A. Institutional framework.....	4
B. Constitutional and legislative framework .....	4
V. Positive developments and good practices .....	5
VI. Main issues in the protection of the human rights of minorities .....	7
A. Disaggregated data.....	7
B. National human rights system.....	8
C. The Roma minority .....	8
D. Effective implementation and comprehensive legislation for the protection of minorities .....	10
E. Hate speech and incitement to violence .....	11
F. The deaf minority and sign language .....	12
G. The “erased” and minorities of the former Yugoslavia .....	12
VII. Conclusions and recommendations .....	13
A. Disaggregated data for better and more effective policies .....	13
B. Strengthening the national human rights system .....	13
C. The Roma minority .....	14
D. Comprehensive legislation for the protection of minorities .....	14
E. Hate speech and incitement to violence .....	15
F. The deaf minority and sign language .....	15
G. The “erased” and minorities of the former Yugoslavia .....	15

## **I. Introduction**

1. The Special Rapporteur on minority issues conducted an official visit to Slovenia from 5 to 13 April 2018, pursuant to the standing invitation of the Government. He visited a wide spectrum of stakeholders at the governmental level, non-governmental organizations, institutions working on issues relating to minorities and minority communities themselves, and their representatives within and outside the capital. The Special Rapporteur met with high-level representatives of a number of ministries and other governmental entities, including the Ministry of Economic Development and Technology, the Ministry of the Environment and Spatial Planning, the Ministry of Public Administration, the Ministry of Labour, Family, Social Affairs and Equal Opportunities and the Ministry of Education, Science and Sports. He also met with representatives of the Office of the Human Rights Ombudsman, the Advocate of the Principle of Equality, the Office for National Minorities, the Ministry of Culture and the Interior, the Supreme Court and the Constitutional Court.
2. The Special Rapporteur held consultations with members of civil society organizations working on issues affecting minorities and of minority communities themselves and their representatives, including the Roma Union of Slovenia and the Roma Community Council of the Republic of Slovenia, and the Roma communities in Pušča, Murska Sobota and the Lokve settlement in Črnomelj, representatives of the Hungarian minority in Lendava, and that of the Italian minority in Koper. Meetings were also held with representatives of other communities, including the Albanian, Bosniac, Croat, Kosovar, Macedonian, Montenegrin and Serb minorities, and of the deaf and hard-of-hearing community who use sign language as members of a linguistic minority.
3. The Special Rapporteur thanks the Government of Slovenia for the cooperation of the Ministry of Foreign Affairs, and for the Government's readiness to engage in an open dialogue allowing the mandate holder to better understand and assess the human rights situation of minorities. He also expresses his gratitude to the officials of the United Nations Office at Vienna in supporting and assisting his mission, and to the numerous national and international non-governmental organizations that provided information and met with him.

## **II. Mission objectives**

4. The Special Rapporteur conducted his mission to Slovenia in order to assess the situation of human rights of persons belonging to national or ethnic, religious and linguistic minorities and the impact of existing legislation, policies and practices in this regard.
5. During his mission, the Special Rapporteur focused on access to quality education, use of minority languages, issues relating to freedom of religion, inclusion and participation in the political process, and current efforts to fight hate speech. He sought to gain an insight into the normative framework regulating the status of minorities, including the impact of more recent changes to legislation and other mechanisms.
6. As often explained in his meetings and exchanges during the mission, the Special Rapporteur uses the term "minorities" to refer to a linguistic, religious or ethnic group that accounts for less than half the population of a country. To be a member of a minority has no negative connotation, does not depend on official recognition, and does not involve any issue of domination, subservience or socioeconomic status. The Special Rapporteur noted the constitutional distinction between autochthonous Italian and Hungarian national communities and other minorities in Slovenia, and the special rights of the Roma community.

## **III. Ethnic, linguistic and religious minority communities**

7. Slovenia has a population of just over 2 million. A republic of the former Yugoslavia, in 1991 it became an independent parliamentary democracy and in 2004 a member of the European Union.

8. Slovenia is not hugely diverse when compared to many other countries; ethnically, religiously and linguistically, Catholics and Slovenes constitute, according to the most recent census data (collected in 2002) the clear majority. The largest religious minorities are Muslims (2.4 per cent) and Orthodox (2.3 per cent); the largest three ethnic minorities are Serbs (2 per cent), Croats (1.8 per cent) and Bosniaks (1.1 per cent). Ethnic Slovenes represent 83.1 per cent of the entire population. No disaggregated population data have been collected since 2002.

## **IV. Legal and institutional framework**

### **A. International framework**

9. Slovenia is a party to numerous human rights treaties of particular relevance to the protection of the human rights of minorities, such as the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, and the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization. Slovenia has also extended a standing invitation to the special procedures of the Human Rights Council. It is a member of the Council of Europe and has ratified both the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

### **B. Constitutional and legislative framework**

10. The Constitution of 1991 guarantees a wide range of human rights and freedoms, including its provision on the prohibition of discrimination that conforms with the general international approach, and even the right to water, which Slovenia declared in 2016, thereby becoming the first European State to do so. The Constitution also provides for an ombudsman responsible for the protection of human rights and fundamental freedoms in relation to State authorities, local authorities and persons in public office.

11. Slovenia has a three-tiered framework for the protection of the human rights of minorities. At its apex are two “autochthonous national communities” (Hungarians and Italians) recognized in the post-independence Constitution of 1991.

12. The status of the above-mentioned autochthonous communities is not based on the number of their members, but is rather a response to historical and bilateral factors. Article 64 of the Constitution and other legislative measures guarantee these communities extensive rights within specific territories in the form of self-government, including the right to education in their own language, the right to establish autonomous organizations and the right to be directly represented at the local level and in the National Assembly. The specific rights provided for by the Constitution for the Hungarian and Italian communities may not be adopted without the consent of representatives of these groups, which are considered “autochthonous national communities”. These minorities are thus afforded a widely recognized, high level of protection. Although a number of legislative and other changes have been made in recent years, both the Hungarian and the Italian minorities have aged and declined, and have had access to decreasing resources. Their numbers have decreased by almost half since the 1950s. In the census conducted in 2002, only 7,713 people declared the Hungarian language as their mother tongue, while 3,762 did so for Italian.

13. The second level of minority rights is limited to “autochthonous” Roma who have, according to article 65 of the Constitution, “special rights regulated by law” subsequently elaborated in the 2007 Roma Community Act. While those rights are not as extensive as those recognized for the Hungarian and Italian communities, Slovenia was still the first State in Europe to adopt such a law dedicated to advancing the rights of Roma. In recent years, significant efforts have been made by Slovenian authorities through a range of

measures to break down the barriers of prejudice and intolerance and be more inclusive of the Roma in various fields of daily life. Noticeable progress has been made in areas like education, but significant obstacles of prejudice and discrimination persist in many areas of daily life of the Roma, such as employment, access to public services, and even drinking water and sanitation. Improvements such as the proposed Roma Community Act has still not been adopted, and discrepancies between the situation on the ground and official policy are all too frequent. Often, the actual implementation of measures or legislation for members of the Roma community does not live up to expectations.

14. The third level of minority rights could be described as encompassing “other minorities”, including members of the deaf linguistic minority. Ethnic minorities of the former Yugoslavia – Albanian, Bosniak, Croat, Kosovar, Macedonian, Montenegrin and Serb communities – and religious minorities, such as Muslims and Jews, and some small but long-established ethnic communities, such as the German-speaking ethnic group (including the Kočevje Germans, known as *Gottscheer*), find themselves in this category, although in the case of members of the deaf community and those of the former Yugoslavia, a few additional legislative measures or programmes are in place. The country’s three largest minorities in demographic terms – Bosniaks, Croats and Serbs – are all at this last level of recognition and protection.

15. Freedom of religion and the legal status of religious minorities are regulated by articles 7 and 41 of the Constitution and by the Religious Freedom Act. There are 54 churches and other religious communities registered in the national register.

## V. Positive developments and good practices

16. Slovenia has frequently and rightfully been known for its long-standing examples of good practices, especially with regard to the rights enjoyed by the Hungarian and Italian minorities. The degree of recognition and implementation of the rights of the Roma has also made noticeable progress in some areas, but still has a long way to go before it complies fully with relevant international standards, such as the prohibition of discrimination. Members of the deaf community for their part can be said to have had for a period of time a good level of acknowledgment and response to their linguistic rights, and Slovenia can be proud in many of its achievements in regard to this minority. How to respond to migrants and other minorities, particularly those of the former Yugoslavia and despite some incremental positive developments, has overall been more of a challenge for Slovenian authorities, and one that will require further steps to improve the human rights of these individuals and communities.

17. Institutionally, notable changes have been made in the general human rights protection regime in Slovenia in recent years. The rights of minorities, such as those contained in the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities and the Framework Convention for the Protection of National Minorities, are human rights; and since minorities tend to be among the most vulnerable and marginalized segments of society, the Government of Slovenia is to be commended for the strengthening of its mechanisms for the protection and recognition of human rights that will have an impact on minorities.

18. One noticeable development is the Protection from Discrimination Act (2016), which resulted in the Advocate of the Principle of Equality becoming an independent State body. The mandate of the new Advocate includes independent research on the situation in the field of discrimination, the publication of reports and the making of recommendations and proposals on the adoption of special measures to prevent discrimination and provide legal assistance. The mandate also has investigative and decisional powers ordering the end of discriminatory practices, though no direct punitive powers. The new Advocate of the Principle of Equality took up his position in October 2016.

19. Another significant and welcome development were the amendments to the Human Rights Ombudsman Act made in late 2017, which set out a new legal basis for the Office of the Ombudsman to apply for A status under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). The

amendments provide for the establishment of a consultative body to the Ombudsman, with pluralistic representation in order to strengthen cooperation with civil society, as well as the establishment of a centre for human rights as a component dealing with a general mandate in relation to educational, training and promotional activities. Additional financial support for the office and further staff to aid in the fulfilment of its mandate were also envisaged.

20. The Special Rapporteur commends Slovenia for the considerable efforts it has made in recent years to improve the situation of Roma and the protection of their human rights, including in key areas such as education and employment, and its participation in initiatives such as the Dosta! (“Enough!”) campaign organized by the Council of Europe to fight prejudice against the Roma. The Slovenian authorities clearly wish to address many of the prejudice, exclusion and discrimination that the Roma still face in the country, and the pace of addressing such urgent issues has not abated in recent years. Some of the more recent initiatives taken include:

- The formation on 11 May 2017 of an interministerial working group to address housing problems in Roma settlements
- The amendments proposed by the Government in 2018 to the Roma Community Act (which were, however, suspended pending the national elections)
- The National Programme of Measures for Roma for the Period 2017–2021, prioritizing education, employment, housing, health care, social security and social integration, culture, awareness-raising and anti-discrimination measures
- Since 2017, the inclusion by the Police Academy in its annual plan of work of special training on “recognizing stereotypes, overcoming prejudice and eliminating discrimination in a multicultural society” for police officers and civil servants who regularly come into contact with members of the Roma community
- Progress witnessed with regard to the training and employment of Roma teaching assistants in schools and Roma mediators to liaise with Roma families
- The establishment in 2018 of seven multipurpose Roma community centres

21. Because of the difficulties many Roma homes experience in their access to, inter alia, drinking water, mention should be made of the constitutional amendment made in November 2016 to include the right to drinking water. Article 70 (a) of the Constitution now states that “water resources shall be used to supply the population with drinking water and water for household use”. What is also noteworthy is the increasing number of Roma success stories and pride in their achievements, such as when the primary schoolchildren in the Roma community of Pušča were hosted by the mayor of the municipality of Murska Sobota after almost all had completed successfully their studies, or when the country’s only Red Cross first aid team, made up exclusively of members of the Roma community, won a national competition.

22. Slovenia provides concrete examples of good practices on how to implement in an overall generous and flexible way the linguistic rights of the Italian and Hungarian minorities in its constitutional and legal framework.

23. Despite the modest size of the two communities, persons from these minorities have enjoyed a wide range of rights and a significant degree of autonomy in ethnically mixed areas. These constitutional and other arrangements allow members of the two minorities to participate in many aspects of the decision-making and management of public affairs relating to their culture, education, language and the media, and to obtain a significant amount of financial support for cultural and other activities. Outside the officially recognized ethnically mixed areas, persons belonging to these minorities are entitled to be placed on a special electoral register for the election of a Hungarian or Italian member of the National Assembly, and can receive education in their own language upon the request of the parents of at least five children. The Hungarian minority includes around 6,000 individuals concentrated in five municipalities: Hodoš, Moravske Toplice, Šalovci, Lendava, and Dobrovnik. The municipalities of Koper/Capodistria, Izola/Isola, Piran/Pirano, and Ankaran/Ancarano are home to most of the 2,000 people who form the Italian minority of Slovenia. The members of the self-governing community in each of these municipalities are represented at the State level by an umbrella self-governing

community council. A policy framework aimed at strengthening the use of minority languages, in particular Hungarian and Italian (and other languages), has been adopted, and interministerial working groups dedicated to monitoring implementation have been established accordingly. Initiatives such as the plan of measures for the implementation of regulations in the field of bilingualism for the period 2015–2018 reflect the State's willingness to ensure the realization of the linguistic rights of both Hungarian and Italian communities in Slovenia.

24. The situation of other minorities in Slovenia has not seen much change in a significant period of time. Although more inclusive activities have been conducted, such as workshops on diversity, training on cultural sensitivity and the production of material in a variety of languages (such as a multilingual aid for better communication in health-care settings for new migrants and minorities), little progress has been made beyond the adoption in Parliament in 2011 of a symbolic declaration on the status of national communities of members of nations of the former Yugoslavia in Slovenia. The declaration led to the establishment in the same year, within the Ministry of Culture, of a consultative council comprising six government officials and six minority representatives of the former Yugoslavia to consider issues and coordinate actions in the fields of culture, media and language.

25. One positive development concerning members of the deaf linguistic minority was the adoption in 2002 of a law on the use of sign language (one of the first in Europe), and the official recognition by Slovenia, in 2014, of 14 November as National Sign Language Day. Funding and other support for activities, such as a 24-hour year-round Internet interpreter call centre and others, have made an important contribution to the integration of members of the deaf community in society, reflecting also the greater acceptance of the role that members of the deaf community can play in Slovenian society.

26. Migrants, asylum seekers and refugees were identified by various government departments for greater attention in 2016 and 2017 in a growing number of activities, campaigns and efforts aimed at assisting their adaptation and integration, and at dispelling the stereotypes some faced following the massive migrant influx witnessed in Slovenia in 2015 and ensuing reactions. The initiatives included "Refugee Day" events in 12 cities, "social activation" workshops for migrant and refugee women from 2018, the creation of a government office for the integration of migrants, and the organization of Slovenian language tuition.

## **VI. Main issues in the protection of the human rights of minorities**

27. Slovenia can be proud of the significant strides that it has made in a number of areas. It can also be proud of the many positive developments and strengthened good practices witnessed in recent years in relation to human rights and the protection of minorities. Nevertheless, human rights challenges remain in certain areas, where the rights of minorities still have to be addressed more directly and comprehensively.

### **A. Disaggregated data**

28. Accurate information on a country's population can be used to design government policies and programmes that reflect the situation on the ground. Governments need such data to efficiently fulfil the needs of the population and plan use of State resources. Authoritative data are particularly useful when measuring the impact of policies and programmes on those who are most vulnerable and marginalized, such as minorities.

29. Slovenia does not officially collect disaggregated data on ethnicity, language or religion, apparently mainly for considerations of privacy and the need to protect personal data. The only information available on the importance and size of various communities is that collected during the census conducted in 2002. For this reason, no one has a clear idea of the actual size of the country's most vulnerable and marginalized minorities.

30. As many international and European organizations have noted, the lack of updated information makes it particularly difficult to identify those subject to discrimination and to build adequate, evidence-based policies to guarantee access to services or full compliance with even basic rights, such as the right to education. In the Special Rapporteur's view, as in the case of most if not all international observers, disaggregated data are indispensable to ensure that measures taken to address human rights issues, including those of minorities, are effective. The issue was acknowledged in many discussions with various parties, governmental and non-governmental organizations, and the Special Rapporteur sensed during some of them a degree of frustration, particularly in the case of civil society parties, at the situation, which is viewed as an obstacle to concrete progress on human rights issues involving Roma and others.

31. It is unfortunate that Slovenia has not yet studied how a variety of States have been able to protect personal data while still collecting disaggregated data in their censuses or through other means. Slovenia has well-established research centres, such as the Institute for Ethnic Studies and the Peace Institute, which in the past have conducted high quality work on the effectiveness of State policies. They now find themselves clearly hampered owing to the lack of reliable, long-term data, and are therefore unable to provide the guidance and knowledge that would be essential to gain a clear insight into the impact of current or potential policies in critical areas such as education, equality, social services and development for minorities and all other vulnerable segments of society.

## **B. National human rights system**

32. The rights of minorities are human rights, and any strengthening of the State's human rights mechanisms will therefore benefit minorities. The Special Rapporteur was impressed by the work and research conducted by such human rights mechanisms as the Office of the Ombudsman and the Office of the Advocate of the Principle of Equality. He was able to examine their work in detail and the type of issues that they address, and the role they are or can play in relation to minorities. In the case of the Advocate, long-term funding (even if the office receives sufficient funding to carry out its new mandate) is far from finalized; although funding for 2018 had not yet been determined at the time of the mission, the amount of funding projected for the Office – €500,000 – appeared insignificant when its new responsibilities are taken into consideration. In the case of both mechanisms, inconsistencies in legislation need to be addressed, while much more remains to be done in terms of awareness-raising initiatives for the general public, and minorities in particular.

## **C. The Roma minority**

33. Though not among the largest minority communities in Slovenia, the Roma and Sinti communities continue to be the most marginalized and vulnerable. The specific rights (housing, education and employment) provided for under the Roma Community Act (2007) are restricted to "autochthonous" Roma. Officially, "non-autochthonous" Roma have no status nor specific rights under this constitutional and legal framework, a fact criticized widely by numerous international and European organizations. Almost none of the people the Special Rapporteur met in Slovenia thought the distinction necessary or useful. The amendments proposed to the Roma Community Act were unfortunately not adopted in 2018 because of the upcoming national elections. This is perceived by some as a setback, since there is no guarantee the amendments will be adopted after the elections. The contentious distinction drawn between "autochthonous" and "non-autochthonous" Roma, however, remains untouched, even in new proposals.

34. Members of Roma communities in Slovenia referred to the ongoing difficulties encountered in obtaining any legal status for their settlements, when exercising voting rights, in their access to drinking water, sanitation and electricity, and more generally to employment, housing and public services. Despite some progress and a willingness of State authorities to conduct new initiatives and take measures to address these challenges, discrimination and prejudice from the majority community, including some municipal authorities, continue to hamper concrete improvements on the ground.



35. The Special Rapporteur visited two Roma communities during his mission. He was disheartened to witness the continuing cycle of poverty and the difficult living conditions, with little access to services most people in Slovenia would consider normal. While real progress was being made and pride was evident in one of the communities visited, as the academic success of children in the community school reflected, the Special Rapporteur was also informed that this unfortunately remains the exception rather than the rule in the approximately 130 Roma settlements in Slovenia. In some areas (such as Novo Mesto), no improvement had been seen in recent years despite the efforts made at the national level. The lack of political will from the authorities was described as one explanation for the failure to take comprehensively and systematically the steps necessary to address the root causes of these issues. Most parties acknowledged that the main obstacle faced by Roma communities was the informal nature of their settlements, and consequently their lack of security of tenure with regard to their homes and property, while led to restrictions on their rights to adequate housing and to water and sanitation.

36. Under Slovenian law, access to services is accorded on the basis of ownership of or some other legal claim over property, together with requisite planning permission. In a special report published in 2012, the Ombudsman noted the inability or unwillingness of municipalities to address the issue of the security of tenure in Roma settlements in south-east Slovenia. The report was followed in 2015 by a call to the national Government to take responsibility for ensuring greater compliance with constitutional and international human rights obligations by municipalities, such as by providing municipalities with financial aid in regularizing Roma settlements. In 2010, the Special Rapporteur on the human right to safe drinking water and sanitation noted that as much as 49 per cent of Roma lived in barracks, containers, trailers or other makeshift accommodation (A/HRC/18/33/Add.2, para. 32), and that about 21 of 95 Roma settlements in Prekmurje and Dolenjska had no access to water, and that many did not have access to sanitation either. This situation also has a serious negative impact on the Roma children who attend and remain in school, with consequent knock-on effects in terms of social exclusion, illiteracy, lack of skills and qualifications, poverty and high unemployment rates. As already mentioned, the lack of disaggregated data on ethnicity in Slovenia makes it difficult to assess the predicament of the Roma, although some unofficial sources presented during the current mission suggest their rate of unemployment is as high as 98 per cent.

37. Despite some measures aimed at facilitating the regularization of Roma settlements, including amendments to the Construction Act that should ease some of the requirements for securing tenure, some of the parties that met with the Special Rapporteur had the impression that those measures would make little change.

38. Given the extremely serious wide-ranging consequences of the discriminatory denial of access to drinking water, sanitation and social services in general, and the subsequent effects in areas such as education and employment, State authorities should play a much more direct and proactive role if Slovenia is to comply fully with its international and constitutional human rights obligations with regard to the Roma minority. The prohibition of discrimination is in itself clearly a sufficient legal imperative to allow the State to intervene in areas of municipal competence, particularly sanitation and water.

39. While this particular dimension was the one most frequently raised during the Special Rapporteur's mission, other issues of concern for the Roma communities in Slovenia were brought to his attention, including the very low rates of schooling of Roma children, the apparently ongoing assignment of Roma children to special classes or schools, and the need for more appropriate forms of pedagogical engagement in the classroom. Roma seem to be the subject of much reported hate speech and incitement to violence. Access to health care and other social surfaces remains difficult owing to, inter alia, the high rates of illiteracy and in some cases to the relative isolation of Roma settlements.

40. The situation on the ground must be appreciated in order to reach a better understanding of the obstacles that members of the Roma face in some communities. For example, there have been reports of water cisterns installed in 2016 in one settlement by national authorities to ensure access to drinking water. Since the cisterns were not always filled regularly, people were forced to use water from a polluted stream for drinking or bathing. The results were predictable, given that children are particularly susceptible to

diarrhoea and skin rashes. Lack of water undermines the ability to maintain basic hygiene, especially in cold weather. The Special Rapporteur heard reports that this was in fact one of the factors contributing to discrimination against Roma children, who consequently avoided schools in more than one community.

41. The above-mentioned examples highlight a fundamental gap between stated policies and programmes on the one hand and reality as experienced by members of the Roma minority on the other. A lack of political will of some municipalities, such as in the Dolenjska region, and the national Government to resolve the legal status of Roma settlements persists, affecting access to education, health care, basic services and employment opportunities.

42. As many others have pointed out, including the Ombudsman in a report published in 2015, these are not only domestic human rights issues but also human rights issues that relate directly to the State's international human rights obligations in relation to minorities. Slovenia is therefore responsible for ensuring that all public authorities seek to realize these rights.

#### **D. Effective implementation and comprehensive legislation for the protection of minorities**

43. Slovenia is an exceptional crossroads of civilizations and cultures in Europe. The rich diversity that this generates and the contributions made by those who make up the country's population are, however, simply not reflected in a balanced way in the current three levels of minority protection: the Hungarian and Italian minorities at the apex; the Roma (at least in theory) in the middle; and all "others" at the bottom. Such a situation can lead to resentment and frustration, as individuals from some of the largest minority communities feel unrecognized, disrespected and left out.

44. State support for cultural activities clearly illustrates the disequilibrium. In 2017, Hungarian and Italian cultural activities received funding worth some €421,000 and €288,000 respectively. All six minorities of the former Yugoslavia received the same year a combined amount of only €130,000 – even though most of the six communities are much larger in number (according to the data collected in the census in 2002) than the Hungarian and Italian minorities combined. Initial promising developments, such as the adoption in Parliament – following consultations with Albanian, Bosniak, Croat, Kosovar, Macedonian, Montenegrin and Serb minority representatives – of the declaration on the status of national communities of members of nations of the former Yugoslavia in Slovenia and the subsequent establishment of a consultative council (see para. 24 above) have not been followed up on in any meaningful way since. In fact, the consultative council actually ceased to function between 2012 and 2015.

45. Representatives of the Albanian, Bosniak, Croat, Kosovar, Macedonian, Montenegrin and Serb minorities who met with the Special Rapporteur stated that, while they hoped for recognition of some form of status as national minorities in Slovenia, they felt strongly that their presence and constructive role in the country should be fairly acknowledged, also in practical terms, such as support for the teaching of their languages in schools and proportionate funding for cultural activities.

46. Without diminishing the rights already recognized of the Hungarian, Italian and Roma minorities under the Constitution or in relevant legislation, comprehensive general legislation on the protection of minorities, recognition of the rights of minorities of the former Yugoslavia and of those such as the German-speaking, Jewish, Muslim and other religious minorities (as is often the case in many countries) would fill a serious gap and address inconsistencies that are healthy neither for Slovenia as an inclusive society nor for its members, including the individuals belonging to minorities and who are contributing positively to the national community. Not all minorities need to be treated equally, since their needs are not identical; the fact that long-established minorities may be entitled to more generous provisions and policies is widely recognized. Such measures would, as was pointed out by the Office for National Minorities itself, help to complement the legal system in the protection of human rights throughout the country, though they should

include clear mechanisms for implementation. This last point was made to the Special Rapporteur with regard to legislation and other measures addressing the rights of the Hungarian, Italian and Roma minorities.

47. Implementation of or full compliance with the rights of these communities are not always assured comprehensively or in a timely fashion, as was pointed out by the Office of the Ombudsman in its annual report for 2016, which also noted the much lower number of electronic forms in Hungarian and Italian as compared to Slovenian, despite legislation requiring that electronic forms for submitting applications online must all be available also in Hungarian and Italian. Services and information in areas such as health care or education were not always provided for in Hungarian or Italian. The Special Rapporteur was informed that qualifications of teachers to teach in Hungarian or Italian had been strengthened through specific training. According to representatives of these minorities, there was room for improvement, especially in requiring fluency in these minority languages for employment and measuring the level of fluency of prospective teachers and other officials. In addition, while measures had been recently taken to strengthen bilingualism in self-governing areas, they were not sufficiently focused on improving bilingualism in the local administration. Since the Hungarian and Italian minorities have a right to services from the local administration in their own languages, measures more directly addressing these services and activities could be considered. Representatives also referred to delays associated with the use of minority languages in accessing information or obtaining services, which discouraged individuals from insisting on their linguistic rights. Some pointed out clearly that one of the main issues that should be addressed was that the current legislative regime was simply not implemented properly; for example, some government officials were hired even though they did not comply with any requirement for bilingualism. In a school in Lendava visited by the Special Rapporteur, even the description of bilingual education was much weaker than often claimed, since at the secondary level the ratio of those teaching in Slovenian and Hungarian was 80:20, not even remotely close to the 50:50 legally required.

## **E. Hate speech and incitement to violence**

48. Disaggregated data on the targets of hate speech or incitement to violence are unfortunately not readily available to help in the identification of those most at risk and vulnerable, although anecdotal and partial data leave little doubt that minorities have been and continue to be particularly victimized. Most of those met by the Special Rapporteur reported that the surge in hate speech witnessed during the influx of migrants through Slovenia in 2015 had subsided, but that it might also reflect a generalized discontent with the current lack of effective mechanisms to tackle hate speech and incitement to violence. While article 297 of the Penal Code addresses hate speech, its provisions have traditionally been interpreted in a narrow, restrictive way; consequently, in practice, very few cases have led to prosecution and conviction, as confirmed by everyone the Special Rapporteur met during the mission and despite the fairly clear indications of widespread problems in this regard. In 2015, Spletno oko ("Web eye"), an Internet hotline coordinated by the Faculty of Social Sciences of the University of Ljubljana for reporting hate speech and other illegal activities, in cooperation with police, Internet service providers, and other governmental and non-governmental organizations received 1,153 complaints, even only 51 of them were considered likely to reach the threshold prescribed by article 297 and actually transmitted to the police for possible prosecution.

49. Overall, the current wording of article 297, and consequently its current interpretation, has helped to create an environment of impunity and discouragement; those who engage in hate speech and incitement to violence against minorities are unlikely to be prosecuted and can therefore act with little concern of any punishment or consequences, while victims feel there is simply no point in complaining if they believe no one will be prosecuted or punished. Most potential victims probably belong to minorities.

## **F. The deaf minority and sign language**

50. The Special Rapporteur held a meeting in Ljubljana with representatives of the deaf linguistic minority, who recalled that sign language had long been used and recognized in Slovenia, going as far back as 1840 in one of the first schools for the deaf in Austro-Hungary. The Use of Slovenian Sign Language Act (2002) was one of the earliest general frameworks in Europe for the use of sign language by public authorities. The Special Rapporteur was informed about the two schools of members of the deaf minority in Ljubljana and Maribor, and that the court interpretation and other significant services in sign language and Braille were guaranteed by law and in a number of programmes. He was, however, surprised to learn that sign language was not actually used to any significant degree in teaching in these schools, and that some public authorities viewed sign language as a support system for persons with special needs rather than an “actual” or “real” language with its own culture. Although relevant disaggregated data are lacking, the Special Rapporteur did learn of a study on education conducted in 2006, which showed that, while 11 per cent of the general population (and 17.3 per cent of those who were blind) held a university degree, only 0.9 per cent of the deaf community did. One suggestion was that this was linked to the inability or refusal to teach in Slovenia in the language of the deaf community, sign language, and the apparent continuing tendency of teaching mainly orally in vocalization.

51. There is therefore resistance to recognizing sign language as an actual language for persons who belong to a community. While a growing number of States around the world recognize sign language as an official language, Slovenia does not, despite legislation providing for its use in a number of contexts. It may also explain why sign language does not feature in the four-year national language policy plan as a full-fledged language.

## **G. The “erased” and minorities of the former Yugoslavia**

52. On 26 February 1992, 1 per cent of the population of Slovenia (25,671 people) were removed (and now referred to as *izbrisani*, the “erased”) from its registry of permanent residents. This was the result of a new law according to which citizens of the former Yugoslav republics who were not citizens of Slovenia had to meet three requirements in order to acquire Slovenian citizenship, including applying for citizenship within six months of the entry into force of the Citizenship Act (1991). Those who failed to meet any requirement by the deadline were deleted from the register of permanent residents, thereby losing their legal status and, by extension, their right to remain in Slovenia.

53. The situation of the “erased” – who for the most part are members of various ethnic, religious or linguistic communities of the former Yugoslavia – is still unsettled. It is also a human rights issue in the sense that nearly all of those removed from the official residence registry of Slovenia in 1992 belonged to minorities. The consequences, from a human rights viewpoint, were discriminatory, and deprived thousands of people of a number of economic, social, civil and political rights, leaving many of them on the margins of society. One of those persons described to the Special Rapporteur how she could not initially buy or subsequently rent the apartment in which she had been living because she was not considered a citizen or permanent resident, how she ended up losing her livelihood and essentially had to live in poverty for years. While half of these people would eventually regain their residency status, or in some cases succeeded in acquiring citizenship after decades of litigation, the situation of perhaps 10,000 who mainly live outside Slovenia is unclear. Compensation is still being fought over despite the judgments made by the European Court of Human Rights (which in 2016 ruled that the government compensation scheme was appropriate in the case of *Anastasov and Others v. Slovenia*), and a decision by the Constitutional Court in April 2018 ruling against the limitations for those who filed claims for damages in judicial processes on the amount of compensation awarded.

54. The continuing predicament of the “erased”, and particularly of those few who still live in Slovenia without any legal status, is a blot on the image of the State. The United Nations High Commissioner for Human Rights and the Commissioner for Human Rights of the Council of Europe, among others, have expressed their concern at this matter, including

at the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (2010), which limits the amount of compensation and was deemed unconstitutional at the time of writing.

55. The ongoing saga of thousands of people who have still not been regularized under the requirements and limitations of the above-mentioned Act raises the spectre of discrimination against the minorities of the former Yugoslavia from the point of view of international human rights obligations. Indeed, as the Constitutional Court of Slovenia announced just a few days before the Special Rapporteur conducted his mission, the government compensation scheme should be amended to ensure that individual claimants can require judicial review of the amount of lump-sum damages.

## **VII. Conclusions and recommendations**

56. In many ways, Slovenia is an impressive country. The State has a strong commitment to and tradition in recognizing and protecting human rights, has long stood out for the way it has protected some of its minorities, and is a haven of peace and stability.

57. Progress in and strengthening of human rights protections, and measures for many of its minorities have been noticeable in recent years, and Slovenia should be commended for them. There are nonetheless omissions, uncertainties, contradictions and gaps that should be acknowledged and addressed to better protect the human rights of minorities.

58. The Special Rapporteur invites the Government of Slovenia, human rights institutions such as the Ombudsman and the Advocate of the Principle of Equality, civil society actors, minority organizations, and other parties to consider his non-exhaustive recommendations below.

### **A. Disaggregated data for better and more effective policies**

59. The current lack of clarity with regard to the demographic situation of minorities, and the continued reluctance to collect data on matters such as ethnicity, religion or language, are frustrating for many and unhelpful for authorities and policymakers. As seen in the case of other countries, respect for an individual's personal data does not necessarily mean that information cannot be collected for the purposes of public policy, just as data on gender, age and other characteristics can be obtained for these purposes.

60. The Special Rapporteur recommends that the Government of Slovenia take steps to address these issues, by:

- (a) Studying how other countries collect and analyse data disaggregated by ethnicity, religion or language while being sensitive to and respecting privacy;
- (b) Considering and proposing, if necessary, legislative clarification to ensure the appropriate balance between the two are taken into account and set out without ambiguity.

### **B. Strengthening the national human rights system**

61. The independence and primary role of human rights institutions should be guarded and cherished, particularly in the light of their importance for the protection of society's most vulnerable and marginalized communities, including minorities. The Special Rapporteur recommends that the Government make greater efforts in this regard, by, inter alia:

- (a) Adopting multi-year funding formulas for both the Office of the Ombudsperson and the Advocate of the Principle of Equality that properly reflect their current or expanded mandates, including the conduct of campaigns aimed at

promoting respect for human rights and tolerance for diversity, and raising awareness with a focus on Roma, minorities and migrants;

(b) Reviewing legislation for both the Ombudsperson and the Advocate of the Principle of Equality with a view to removing current ambiguities and inconsistencies, and considering permitting a use of limited sanctions so as to provide for more effective legal remedies for victims of discrimination and other human rights violations.

### **C. The Roma minority**

62. Discrimination, prejudice and social exclusion require further and stronger steps to tackle the continuing issues of exclusion and discrimination affecting the Roma community. The Special Rapporteur therefore recommends that the Government of Slovenia:

(a) Remove the unhelpful, probably harmful and possibly discriminatory distinction in legislation and other measures made between “autochthonous” and “non-autochthonous” Roma communities;

(b) Adopt legislation rendering the Roma Community Council more representative, democratic and effective by ensuring that it properly reflects diversity within the Roma community;

(c) Consider a new Roma Community Act to include additional specific measures in the fields of education and social services, including temporary affirmative action programmes in employment, in consultation with civil society representatives, to tackle instances of ongoing discrimination specifically and directly.

63. The regularization of Roma settlements cannot be sidestepped, as it is central to tackling some of the root causes of Roma exclusion and their denial of basic human needs and rights. As a preliminary step, the Government should take the financial and legal measures necessary to regularize all irregular settlements in Slovenia, and initiate consultations with the main parties concerned. In the longer term, the Government should take the legal and budgetary measures required, and put in place a timetable for their effective implementation.

64. Access to drinking water and basic services, such as sanitation and power, is a basic human need that has not been afforded to the Roma in the same way as it has to the vast majority of Slovenians. The Government should address this issue as an emergency matter at the highest levels possible, also by means of a five-year action plan pending the resolution of the status of Roma settlements and other measures currently being taken.

65. Awareness-raising campaigns and training activities on stereotyping have been positive initiatives in Slovenia. The Special Rapporteur recommends that the Government take additional measures to recognize and highlight a positive image of Roma and Roma role models, to provide a more rounded view of members of the Roma community. It is important that the members of the Roma minority be seen and depicted as normal, rather than focusing on a community that involves “issues” or “problems”.

### **D. Comprehensive legislation for the protection of minorities**

66. Although much has been achieved for the protection of the rights of minorities, in particular of Hungarians and Italians, too many Slovenian citizens belonging to minority groups are left out. The Special Rapporteur therefore urges the Government:

(a) To formulate and adopt comprehensive legislation to better protect the rights of all minorities in Slovenia, while respecting the currently established constitutional prominence and status of the Hungarian, Italian and Roma; a consultation process in this regard should be initiated in 2019;

(b) To ensure that legislation on the rights of minorities includes additional provisions on education in the minority mother tongue where there is a sufficient demand in a locality, to the degree appropriate according to the principle of proportionality, or at least provide for teaching of a minority language where possible;

(c) To ensure that fair and proportionate funding of cultural and other activities of minorities, including in the media, is guaranteed.

67. The Hungarian and Italian minorities have well-established rights and autonomy arrangements that continue to be affected by omissions or failure to implement. Bilingual services are not always provided when they should be, while bilingual officials and teachers are either not available or lack the required fluency levels. The Special Rapporteur recommends that the Government conduct a review of hiring policies, language testing and bilingualism requirements for civil servants and teachers in 2019 with representatives of these minorities in order to consider how these issues can be addressed and remedied.

## **E. Hate speech and incitement to violence**

68. Legislation is needed to correct the incorrect interpretation of article 297 of the Penal Code, which makes the successful prosecution of hate speech or incitement to violence against minorities extremely difficult, if not impossible.

69. Pending legislative changes to article 297 of the Penal Code, directives and other clarifications should be issued by police, prosecutorial and other sections proposing less rigid – and discouraging unnecessary – interpretations on applying the requirements of article 297 when investigating and prosecuting hate speech and incitement to violence against minorities.

70. In order to counter hate speech and incitement to violence against minorities more effectively, a clearer picture of which minorities are targeted, by whom and how is necessary. Disaggregated data on these matters should be collated and published by the responsible authorities.

## **F. The deaf minority and sign language**

71. Slovenia has generally a positive and constructive approach to the use of sign language. The Special Rapporteur nonetheless urges the Government to take steps to strengthen and effectively protect the human rights of members of the Slovenian deaf community, including by recognizing sign language as the language used by members of the deaf community, by amending or adopting relevant legislation making it an official language, as it has been in a growing number of countries.

72. Sign language is a living language and the mother language of members of the deaf minority. It should be used to the degree possible as the language of instruction in schools for the deaf to ensure greater access to quality, adapted, appropriate and effective education.

## **G. The “erased” and minorities of the former Yugoslavia**

73. The illegitimate removal of permanent residence status of so many people, with almost no compensation, has lasted too long. Litigation has been ongoing for decades. Slovenia should find the political will and courage necessary to address this matter. Minorities of the former Yugoslavia were the main victims of a sad episode that should be brought to an end, also to avoid protracted, painful and embarrassing litigation. The Special Rapporteur therefore recommends that the Government:

(a) Adopt legislation providing for the restoration of permanent residency status without the burdensome requirements and narrow timelines of the law adopted in 2010 on the regularization of the status of “erased” persons;

(b) Consider providing a more generous compensation scheme, not excluding individuals who have benefited from the previous scheme, readjusted to take into account losses such as property or employment, and is realistic in terms of the pain and suffering endured.

---