



**‘Strengthening the rights of persons suspected or
accused of crime through National Human Rights
Institutions’**

National Report - SLOVENIA

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I. Overall role of the NHRI in the national context with regard to the rights of suspects and accused

In Slovenia, the Human Rights Ombudsperson (hereinafter: Ombudsperson) is the national human rights institution.

The institution was established as a classical national parliamentary ombudsperson with broad powers with regard to state and other bodies exercising public authorisation, competent to receive and investigate complaints. The Ombudsperson was introduced by the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), adopted in December 1991: In order to protect human rights and fundamental freedoms in relation to state authorities, local self-government authorities, and bearers of public authority, the office of the ombudsman for the rights of citizens shall be established by law.¹ In December 1993 the National Assembly adopted the Human Rights Ombudsperson Act (*Zakon o Varuhu človekovih pravic*) to determine its mandate and powers and provide the necessary legal basis for establishing and functioning of the institution.² The organisation and the system of work of the Ombudsperson, the division of fields and the proceeding of dealing with petitions are further determined by the Rules of Procedure.³ The HR Ombudsman officially began its work on 1 January 1995.

In accordance with the law, the Ombudsperson has the mandate to protect human rights and fundamental freedoms against the state bodies, local self-government bodies, and bodies entrusted with public authorities.

The areas of Ombudsperson's work are defined with the above-mentioned Rules of Procedure. Areas of work are now divided into the following fields:

- Equality before the law and prohibition of discrimination;
- Protection of dignity, personality rights, safety and privacy;
- Freedom of conscience and religious communities;

¹ Article 159 of the Constitution of the Republic of Slovenia, Official Gazette RS No. 33/91-I and subsequent modifications

² Slovenia, Human Rights Ombudsman Act, Official Gazette RS No. 71/1993

³ Rules of Procedure (Poslovník varuha človekovih pravic), Official Gazette RS No. 63/1995 and subsequent modifications

- Freedom of expression;
- Assembly, association and participation in the management of public affairs;
- National and ethnic communities;
- Foreigners;
- Restriction of personal liberty;
- Pension and disability insurance;
- Health care;
- Social security;
- Labour law matters;
- Justice administration;
- Police proceedings;
- Environment and special planning;
- Regulated activities;
- Housing matters;
- Children's rights;

Since 1995, the Rules were amended several times and show the evolution of the institution, as areas of work were further defined, and new areas were added. However, since its establishment, the Ombudsperson has been monitoring the areas of restriction of personal liberty, judicial proceedings/justice administration (focusing on the functioning of the judiciary, state prosecution and attorneyship) and police proceedings, as well as protection of dignity and personality rights. These areas of work enabled the Ombudsperson to be an important independent institution to monitor the rights of suspects and the accused.

The Ombudsperson's influence is informal. It is an office without any responsibility for authoritative decision-making.⁴ The Ombudsperson's basic task is to address initiatives or petitions: Any person who believes that his/her human rights or fundamental freedoms have been violated by an act or an action of a body may lodge a petition with the Ombudsperson to start the proceedings.⁵

The Ombudsperson may also institute the proceedings on its own initiative.⁶ However, in this case the consent by the aggrieved person is required to start the proceedings.⁷ The latter can be sometimes difficult and there were cases when the Ombudsperson was not able to obtain such a consent, limiting the HR Ombudsperson's possibilities to act.⁸

The Ombudsperson may also deal with more general issues relevant to the protection of human rights and fundamental freedoms and legal security of the citizens of the Republic of Slovenia.⁹ Due to this mandate, the Ombudsperson already performs tasks of analysis and promotion of human rights, however due to the lack of resources and staff, these activities are limited.¹⁰

The proceedings before the Ombudsperson are non-formal and free-of-charge for the petitioners.

If the Ombudsperson decides to investigate the matter of a petitioner, it is obliged to conduct impartial and independent investigation and obtain the opinions in each case by all the parties concerned.¹¹ All state bodies are obliged to help the Ombudsperson in conducting an investigation and render adequate assistance upon his/her requirement.¹² Within the scope

⁴ Slovenia, Human Rights Ombudsperson: <http://www.varuh-rs.si/about-us/forms-of-work/?L=6>, accessed on 28 May 2018

⁵ Article 9/1 of the Human Rights Ombudsperson Act

⁶ Article 9/1 of the Human Rights Ombudsperson Act

⁷ Article 26/3 of the Human Rights Ombudsperson Act

⁸ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018

⁹ Article 9/2 of the Human Rights Ombudsperson Act

¹⁰ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018

¹¹ Article 9/4 of the Human Rights Ombudsperson Act; in accordance with the law, the Ombudsperson may also reject a petition when it is obvious from the available data and circumstances that human rights or fundamental freedoms have not been violated nor other maladministration done; when the petition is incomplete and has not been completed on the Ombudsperson's requirement; when proceedings are being conducted in the case before the judicial bodies, except for the cases specified in the act; etc. The Ombudsperson may also decline the petition because it is either anonymous or too late or insulting, thus abusing the right of petition.

¹² Article 34 of the Human Rights Ombudsperson Act.

of its work, the Ombudsperson has unrestricted access to all the data and documents within the competence of the state bodies.¹³

The investigation having been completed, the Ombudsperson drafts a report on the findings and forwards it to the parties concerned. Within the deadline set by the Ombudsperson, they may communicate their comments or proposals to complete the findings of the facts stated in the draft report.¹⁴

In the final report the Ombudsperson states the assessment of the facts and circumstances of the case and establish whether human rights or fundamental freedoms have been violated, or some other maladministration has been done in the investigated case. At the same time, the Ombudsperson recommends how to remedy the established wrongdoing. The recommendation may be that the body repeats a certain procedure in accordance with the law, compensation for the damage, or some other way to remedy the wrongdoing that has affected the individual. The Ombudsperson may propose the initiation of disciplinary proceedings against the officials of the bodies who did the established maladministration that led to an injustice.¹⁵

In addition to further developing the areas of work, new mandates were entrusted to the Ombudsperson.

¹³ Article 35 of the Human Rights Ombudsperson Act

¹⁴ Article 38 of the Human Rights Ombudsperson Act

¹⁵ Article 39 of the Human Rights Ombudsperson Act

National Preventive Mechanism

With the 2006 Act of Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment, the Ombudsperson also took over the role of the National Preventive Mechanism.¹⁶ That Slovenia needs to ratify the Optional Protocol, the HR Ombudsperson emphasized in its previous annual reports.¹⁷ Prior to the ratification the HR Ombudsperson gave special attention to the petitions of persons in places of detention and had an established and well-functioning system of visiting these institutions.¹⁸ In this respect, together with the independence of the institution, the choice of the HR Ombudsperson as the National Preventive Mechanism was obvious.

The 2006 Act enabled that the HR Ombudsman may cooperate with NGOs when performing visits to places of detention.¹⁹ Activities began in 2007 with selection of staff members and participating NGOs. The staff performing NPM activities continued to perform tasks from the Ombuds mandate.

However, the need to separate the tasks was underlined, which led to the 2015 establishment of an NPM unit.²⁰ At the moment two persons are involved only in NPM, while two are also handling petitions (Ombuds mandate). They plan to include a third person to work exclusively within the NPM and to eventually completely separate the two mandates.

The NPM mandate is of particular relevance for the protection of the rights of suspects and accused, as the staff regularly visits police stations (premises of police custody), prisons (and detention wards).

¹⁶ Slovenia, Act of Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment (Zakon o ratifikaciji Opcijskega protokola h Konvenciji proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju), Official Gazette No. 114/2006)

¹⁷ Slovenia, Human Rights Ombudsperson, Annual Report 2004, p. 30; Annual Report 2005, p. 34.

¹⁸ Slovenia, Human Rights Ombudsperson, 20 let of the Human Rights Ombudsperson: 1994 – 2014, p. 97.

¹⁹ Article 5 of the Act of Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment states that the participant organisations are NGOs registered in the Republic of Slovenia and organisations with the status of humanitarian organisations in the Republic of Slovenia.

²⁰ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018

Child advocacy – A Child’s Voice

With the 2017 amendment of the Human Rights Ombudsman Act the pilot project “Advocate – a child’s voice” (which was conducted for the last 10 years) formally became a part of the HR Ombudsman’s mandate.²¹ In the framework of advocacy, the Ombudsman manages the development of the network of advocates, the organisation and execution of training of candidates for advocates. The advocacy is organised as a network of voluntary advocates who are particularly trained to communicate with children and obtain their opinion, which is then used in legal proceedings where children’s rights are being decided on.

²¹ Slovenia, Human Rights Ombudsman, Annual Report 2018, p. 411.

NHRI A status according to the Paris Principles

Under the Paris Principles, the Ombudsperson is currently a Status B NHRI. On 20 September 2017 the National Assembly adopted the Act Amending the Human Rights Ombudsperson Act,²² broadening the Ombudsperson mandate to fully respect the Paris Principles. The act provides for the establishment of a **Human Rights Council** as a Ombudsperson's consulting body (16 members: 7 members of the civil society, 3 representatives of science/academia, 2 representatives of the government, Advocate of the Principle of Equality (Slovenian equality body), Information Commissioner, 1 representative of the National Assembly and 1 representative of the National Council of the Republic of Slovenia). The Ombudsman asked the Accreditation Board of the Office of the United Nations High Commissioner for Human Rights for A status in October 2018.

Further, under the amended law, the **Human Rights Centre** was established. The Centre is responsible for the promotion, informing, education and training, preparing analysis and reports in various fields of human rights, organizing consultations for promoting and protecting human rights, cooperation with civil society, trade unions and state bodies, and cooperation with international human rights organisations.

The Human Rights Council was established in the summer of 2018, while the Human Rights Centre started its work in January 2019.²³

²² Slovenia, Act Amending the Human Rights Ombudsman Act (Zakon o dopolnitvah Zakona o varuhu človekovih pravic (ZVarCP-B)), Official Gazette RS No. 54/2017

²³ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018

Cooperation among mandates

There is no specific department dealing with criminal justice issues, however each field of work falls within the competence of one of the Deputy Ombudspersons. The criminal justice issues fall within the competence of the Deputy responsible for justice and the NPM.

As mentioned above, in 2015 a separate NPM Unit was established. Two persons are involved only in NPM, while two are also handling petitions (Ombuds mandate).²⁴ That staff members work both on petitions as well as within NPM is both positive and negative. Positive is that the staff members are also acquainted with the content of the petitions, the negative is that the staff members are overburdened.²⁵

However, there are other mechanisms and protocols ensure cooperation among the Ombuds and NPM mandate. Information sharing is facilitated by the internal information system and established communication among the Ombudsperson's staff.²⁶

Internal information system allows checking the petitions that were lodged with the Ombudsperson in relation to the institution the NPM makes a visit to.²⁷ There are also weekly expert meetings for sharing past and future activities, the NPM staff also share visit reports with Ombuds staff.

As a result, individual petitions are a good source of information to initiate and steer the work of the NPM. And vice versa, the NPM activities can lead to the activation of the Ombuds mandate, by getting involved in individual cases.

²⁴ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018

²⁵ Slovenia, Human Rights Ombudsperson, 20 let of the Human Rights Ombudsperson: 1994 – 2014, p. 98.

²⁶ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018

²⁷ Deputy of the Human Rights Ombudsperson, Budapest Workshop, February 2019

III. Good Practices in the work of the NHRIs with regard to the rights of suspects and accused persons

Slovenian NHRI handled cases where procedural rights of suspects were violated or hindered both in the auspices of the Ombuds mandate (based on received petitions) and NPM mandate (cases observed while performing visits as NPM). Many cases are related to police proceedings and deprivation of liberty.

Right to information

A petitioner, who was a minor at the time of the event, was arrested and taken to a police station. Police custody was not ordered. Police record did not contain information whether the petitioner was informed of his rights as a detained person, or has received a written document containing information on his rights – although the petitioner was arrested on the suspicion of committing a criminal offence and a criminal charge was later filed against him.

At the time of the event, there were visible injuries on the petitioner's body, but the medical examination has not been performed.

The Ombudsperson made an inquiry with the Ministry of the Interior about the petitioner's status after he was taken to the police station and until he was released in the care of his parents; and why there was no medical examination despite the visible injuries on the petitioner's body.

The Ministry of the Interior deemed the actions of the police officers legal, as they allegedly brought the petitioner to the police station with the purpose of establishing his identity. As a result, the police officers informed the petitioner about the establishing of the identity as the grounds for temporary restriction of movement. As there were no grounds for deprivation of liberty, they did not provide the petitioner with the information on the rights of detained persons. The inquiry revealed that the police did not fill out the official note on the arrest.

Regardless of these explanations of the Ministry, the Ombudsperson concluded that the procedure in question was deprivation of liberty and the Police should inform the petition of

his rights accordingly. The police also did not fill-out the necessary documentation. The HR Ombudsperson concluded that the Police violated the petitioner's right to information.²⁸

Right to inform a third person about deprivation of liberty

2017 case

In 2017 the Slovenian NHRI processed a petition put forward by three foreign nationals detained by the police. They claimed that during their deprivation of liberty they were not given the possibility to notify their family members of their arrest and detention. Police documents showed that the foreign nationals were informed of the rights of a detained person, including the right to notify family members, however, while they did not request family members or other people be notified, they did not confirm this with their signature. The Ministry of Interior explained that this was not specifically anticipated in the existing forms. The CPT also perceived problems in this area during its 2017 visit to Slovenia. At the end of the visit, the delegation suggested that the Slovenian authorities include the information as to whether the detainee availed themselves of their rights or waived them in a document to be signed by the detainee. The communication by the Government of the Republic of Slovenia that the form in which police officers record information on the (non) enforcement of rights of detainees will be updated with the possibility of adding the detainee's signature is encouraging."²⁹

2019 case

The police arrested a petitioner, following a house search. The petitioner claimed that upon the arrest she demanded that the police informs her husband about the deprivation of liberty, but the police failed to do so. Her husband later became very concerned when he could not reach the petitioner on the phone and none of their friends and family had any information of the petitioner's whereabouts.

The Ombudsperson sought information about the case from the Ministry of the Interior. The Ministry explained that the petitioner asked that her husband is informed of her deprivation

²⁸ Slovenian Ombudsman, Annual Report of 2017 (*Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2017*), p. 243.

²⁹ Slovenian Ombudsman, Annual Report 2017, p. 155.

of liberty but that the police postponed the action due to concern that the husband may hide or destroy evidence if he learned of the procedure before the house search was concluded. This option of postponing the informing of a third person is prescribed in Article 208 of the Criminal Procedure Act (CPA).

The Ombudsperson cautioned the Ministry that the CPT clearly states that detainees have the right to inform a third person from the very start of deprivation of liberty and that any postponing must be clearly stipulated and limited; CPT recommended additional safeguards at the first visit to Slovenia in 1995 and again in 2017.

The Ombudsperson sought additional information from the Ministry how the postponing of this right is implemented and what safeguards are in place. The Ministry responded, that informing a third person is only postponed when a house search is to be performed and there are reasons to believe that the suspect's family or close ones would hide or destroy evidence. In such cases the police inform a third person at the start of the house search and the postponing is recorded.

In the petitioner's case, there was no record that the petitioner was informed about the police postponing the informing of her husband, only a note that the husband was not informed in accordance with Article 208 CPA. The petitioner claimed that she asked the police officers several times if the husband was informed but that they only told her they postponed it approximately 6 hours after the arrest.

The Ombudsperson pointed out that the Police should inform the petitioner of the grounds for postponing the informing of her husband and clearly record it in their documentation. The Ombudsperson also deems that the grounds for the postponing should be exceptional, since this can cause great stress and fear with the detained person's close ones. While a house search can be a valid reason for postponing the informing, the latter cannot be done every time a house search is planned. Such decision should be carefully considered and adopted on a case by case manner and only as an exception, when the risk of destroying evidence cannot be mitigated with other measures. The decision should also be adopted by a senior officer / body and not by police officers investigating the case.³⁰

³⁰ Ljubljana Workshop, May 2019, case published in 2019 (<http://www.varuh-rs.si/medijsko-sredisce/aktualni-primeri/novice/detajl/odstop-od-uporabe-pravice-do-obvescanja-je-lahko-le-izjemen/?cHash=6255b4f0a40c7acfbe199ead1515cc18>).

Right to a lawyer

Informing the selected lawyer (2012)

In 2012, the Ombudsperson received a petition of a person who was arrested and placed in police custody. The petitioner was duly informed of his rights, including the right to a lawyer. He expressed his wish that a lawyer is present, and the police officers postponed the questioning for two hours. However, the officers did not call the chosen lawyer but enabled the suspect to inform the lawyer himself (according to the officers). They did so because they believed that the legislation requires only that they enable the suspect to contact the lawyer but does not impose a duty upon them to inform the lawyer themselves. The claims of the suspect and the officers, whether they actually enabled the suspect to inform a lawyer, were contradictory. The Ombudsperson found the petition well founded as violations of the petitioner's rights were also found in the appeals process at the police. Not only the police officers breached the Rules on police Powers by not calling and informing the lawyer that the suspect chose, but also by questioning the suspect without a lawyer present and not informing the state prosecutor about the case and that the suspect is in police custody.³¹

Accessing a lawyer in the time of judicial holidays (2017)

In 2017, the Ombudsperson received an individual complaint from a petitioner stating that she was a subject to house search during the judicial summer holidays, in the early hours of the morning. She wished to have a lawyer present and the police enabled her to call several lawyers. In some cases, no one picked up the phone, while others said that they are on annual leave and cannot attend. The house search was in the end performed without a lawyer present, because the police did not wish to wait any further. The Ombudsperson found that there is no information available about the lawyers who are available during the judicial summer holidays or that there is no quick or simple way for persons to find out which lawyer is available and would therefore be able to attend a house search. The Ombudsperson recommended to the Bar Association to consider possible improvements regarding transparent informing about available lawyers during judicial summer holidays, such as

³¹ Slovenian Ombudsman, Annual Report of 2012 (*Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2012*), p. 160.

publishing lists of lawyers so that persons requiring representation would not need to check their availability over the phone.³²

Lists of available lawyers (2017)

During NPM visits to police stations the Ombudsperson pointed out police stations must have an updated list of lawyers in the room intended for the admittance of persons deprived of their liberty, as visits to several police stations revealed that appropriately updated lists of lawyers are missing. This deficiency was pointed out in the reports and it was recommended that appropriate updating of the list of lawyers be pointed out to the management. NPM noted that the importance of access to legal aid was also pointed out by the CPT during its 2017 visit. The Committee emphasised that the possibility for people taken into police custody to have access to a lawyer during this period is a fundamental safeguard against ill-treatment. This safeguard should be available to all detained people, irrespective of their financial situation. NPM recommended that the Slovenian authorities take the necessary steps to ensure that, in practice, all detained people effectively benefit from the right of access to a lawyer from the very outset of their deprivation of liberty, if necessary free of charge; a list of ex officio lawyers that detained people can consult and use should be compiled for each police station, in consultation with the Bar Association. Furthermore, NPM emphasized that all ex officio lawyers should be reminded, through appropriate channels, of the importance of their role in preventing and, if necessary, reporting ill-treatment or intimidation by the police.³³

Keeping records while implementing police detention

For every detention, police officers must complete official forms which are required for the implementation of detention, i.e. the Decision on Arrest and Detention, Decision on Detention, Implementation of Activities during Detention – official note, and Receipt for

³² Slovenian Ombudsman, Annual Report of 2017 (*Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2017*), p. 231.

³³ Slovenian NPM, Annual Report 2017, p. 69.

Seized Items for the detainee. The forms must correctly and in detail record all activities which were implemented with the detained person.

During its visits to police stations, the Slovenian NPM reviewed the documentation of a number of detentions. The NPM reported to have found several deficiencies at the majority of the police stations visited, e.g. incomplete information form/or use of old forms. The NPM also identified a case of an incomplete form, which was lacking specific information on the waiver by the detainees of his right to notify a third person about the deprivation of liberty.

In this last case, the NPM also referred to one individual complaint on the issue received by the Slovenian NHRI and a recommendation by the CPT.³⁴ The complainant claimed that during their deprivation of liberty they were not given the possibility to notify their family members of their arrest and detention. Police documents showed that the foreign nationals were informed of the rights of a detained person, including the right to notify family members, however, the form did not request the detainee to confirm whether it had made use or waived this right with a signature. The Ministry of Interior explained that this was not specifically anticipated in the existing forms, and that 'the form in which police officers record information on the (non) enforcement of rights of detainees will be updated with the possibility of adding the detainee's signature is encouraging.'³⁵

Constitutional Complaint

The Ombudsperson rarely files a constitutional complaint.³⁶ 2017, the Ombudsperson filed a constitutional complaint against the decisions of the court of first instance (Ljubljana District Court), second instance (High Court in Ljubljana), and the highest court in the country, i.e. the Supreme Court of the Republic of Slovenia, with regard to involuntary detention for treatment in a psychiatric hospital. This complaint was only the third filed constitutional complaint in the history of the institution of the Ombudsman, and the first successful.³⁷ In 2017, at the

³⁴ Slovenian NPM, Annual Report 2017, p. 70. See also above XXX.

³⁵ Slovenian Ombudsman, Annual Report 2017, p. 155.

³⁶ The second paragraph of Article 50 of the Constitutional Court Act (ZUstS) grants the Ombudsperson the right to file a constitutional complaint concerning a violation of human rights or fundamental freedoms of individuals or legal entities with an individual document of a state or local authority or a holder of public powers.

³⁷ Slovenian Ombudsman, Annual Report 2017, p. 14.

Constitutional Court of the Republic of Slovenia, the Ombudsman was successful with a constitutional complaint against the decisions of the court of first instance (Ljubljana District Court), second instance (High Court in Ljubljana), and the highest court in the country (the Supreme Court of the Republic of Slovenia) with regard to involuntary detention for treatment in a psychiatric hospital.³⁸

Right to medical assistance

The Ombudsperson also warned for several years that the right of a detained person to access a doctor was not regulated by law. The Ombudsperson has highlighted this legal loophole in its annual report for 2003, and other various occasions, especially in relation to the individual cases examined. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment also noted in its report on a visit to Slovenia (2001) that there is no "official legal provision" that a detained person has a right of access to a doctor.

The amendment to the ZPol-E Police Act finally regulated emergency medical assistance for a detained person and granted the right to be examined at his/her expense by a doctor of his/her choice.³⁹

³⁸ Slovenian Ombudsman, Annual Report 2017, p. 28.

³⁹ Ljubljana Workshop, May 2019 and Slovenian Ombudsman, Annual Report 2005.

IV. Practices on co-operation with other stakeholders

Relevant Ministries and the Police

The Ombudsperson regularly cooperates with the Ministry of the Interior and the Police.⁴⁰ Many cases related to procedural rights and suspects of accused persons are connected to police proceedings and police detention. The need for cooperation with these institutions is further underlined with the nature of the NPM mandate and frequent visits to police stations where suspects are held in police custody and pre-trial detention wards in prisons. As shown in the above described cases of practices in the work of the NHRIs with regard to the rights of suspects and accused persons, comments and recommendations of the NHRI (both within the Ombuds mandate and NPM mandate) are directed at these institutions.

The Ombudsperson regularly comments on draft laws in the field of suspects' rights prepared by the Ministry of the Interior and Ministry of Justice.⁴¹

NGOs

The Ombudsperson regularly cooperates with NGOs via regular thematic meetings and information sharing. Ombudsperson's representatives also attend events, conferences and consultations organised by NGOs.⁴²

In the field of suspect's rights, the most important form of cooperation with NGOs is the NPM and its "Ombudsman plus" model. The 2006 Act enabled that the HR Ombudsman may cooperate with NGOs when performing visits to places of detention.⁴³

⁴⁰ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018.

⁴¹ E.g. comments of the Ombudsperson to the Draft Law amending Criminal Procedure Act (ZKP-N), 9 May 2016, <https://imss.dz-rs.si/imis/585066249054cb56cdc3.pdf>

⁴² Zbornik 20 let

⁴³ Article 5 of the Act of Ratification of the Optional Protocol to the Convention against Torture or Other Cruel, Inhuman or Degrading Treatment or Punishment states that the participant organisations are NGOs registered in the Republic of Slovenia and organisations with the status of humanitarian organisations in the Republic of Slovenia.

Lawyers and the Bar Association of Slovenia

Cooperation with lawyers takes place on the level of individual cases, where the lawyers file petitions in the name of defendants to the Ombudsperson.⁴⁴

However, cooperation also takes place in relation to more general questions, with the Bar Association, such as in the case of the above-mentioned issues of free legal aid and availability of lawyers. In 2018, for example, the Ombudsperson met with representatives of the Bar Association and together they discussed the relevant findings in the 2017 Ombudsperson's Annual Report.⁴⁵

International Cooperation

The Ombudsman particularly cooperates with international human rights organisations (UN, EU, the Council of Europe, OSCE), ombudsmen and international associations of national human rights institutions ENNHRI and GANHRI and ombudsmen. The latter, however, so far did not include cooperation regarding EU criminal law or procedural rights of suspects and accused.⁴⁶

In general, there is a lack of platforms for EU cooperation with Ombuds institutions (more cooperation is established within CoE). In relation to the NPM mandate, there was a promise of a stronger cooperation within the EU.⁴⁷ A couple of meetings were organized a while ago on the topic of NPM and the EU where more cooperation was promised, however there was no follow-up.

⁴⁴ Deputy of the Human Rights Ombudsperson, Budapest Workshop, February 2019

⁴⁵ <http://www.varuh-rs.si/medijsko-sredisce/sporocila-za-javnosti/novice/detajl/srecanje-z-odvetnisko-zbornico-slovenije/?cHash=450273c0f693866ddddeac031e3c030c>

⁴⁶ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018.

⁴⁷ Ibid.

V. The role of EU law in the work of NHRIs

The Ombudsperson's role vis-à-vis EU law is not formalized in any official document of the Ombudsperson.

In its work the Ombudsperson may refer to international legal documents, including EU law, to further justify its positions. The Ombudsperson, for example, often referred to EU law in the field of migration, asylum and protection of the environment.

The Ombudsperson has not been included in the negotiation of the directives on EU level. As mentioned above, there are no platforms for EU cooperation with Ombuds institutions (more cooperation is established within CoE).⁴⁸

In certain cases, the Ombudsperson actively engages in the process of the national implementation of EU law. One such example was the process of the national implementation of the Returns Directive and the monitoring mechanism, including in relation to the NPM mandate of the Ombudsperson. With regard to procedural rights of suspects and accused persons, such opportunity was the 2014 amendment of the Criminal Procedure Act (ZKP-M), transposing the EU directives concerning the right to information and right to translation and interpretation. The Ombudsperson, within the NPM mandate, cooperated with the Ministry of the Interior when adapting the forms related to arrest and police detention to ensure proper implementation.⁴⁹

Once EU directives are transposed into national legislation, the Ombudsperson monitors the implementation. In the current situation, where the Ombuds mandate is dominant, the work of the Ombudsperson is somewhat limited to the issues arising from the individual petitions the institution receives. The areas of complaints are visible from the Ombudsperson's annual reports.

But the Ombudsperson in its opinions and reports has not referred directly to EU instruments on the rights of suspects and accused in criminal proceedings. In these cases, it referred to the requirements of the domestic law and, when necessary, CPT standards (particularly in its role

⁴⁸ Interview with the Deputy of the Human Rights Ombudsperson, 23 May 2018.

⁴⁹ Ibid.

of NPM) and in their view additional arguments from the EU law perspective was not necessary.

VI. Needs of the NHRI and future steps

One of the main obstacles to Ombudsperson becoming more active on the subject of the rights of suspects and accused in criminal proceedings is the Ombuds mandate's dependence on individual petitions and lack of resources and staff to conduct broader activities.

With the establishment of the Human Right Centre on the path to become Status A NHRI under Paris Principles, the Ombudsperson expects the enhancement of its role to promote procedural rights of suspects/accused; particularly through enhancing its activities for promotion of human rights in general, by organizing expert consultations, conferences and trainings.⁵⁰

The Ombudsperson's staff would find it most welcome to receive (regular) training on EU criminal law.

In the future, Slovenian NHRI would like to conduct more thematic visits within its NPM mandate, to monitor the implementation of procedural rights in practice, particularly by involving inmates via interviews, etc.⁵¹

The NHRI would like to enhance cooperation with lawyers, academia, certain NGOs and strengthen the information-sharing with relevant ministries. Furthermore, the Slovenian NHRI recognises importance and added value in informing and awareness-raising among the general public.⁵²

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Ibid.

VII. Recommendations

- Enhance awareness of the EU instruments on procedural safeguards

The awareness of the EU Directives is relatively low among expert and general public alike. The focus remains on the implementation of national legislation (after transposition of EU law). However, EU law provides for a detailed framework of the rights of suspects and accused, it is binding and provides concrete sanctions when a State fails to implement them. As such, it is also valuable tool to strengthen the arguments of the NHRI when advocating for suspects' rights.

- Strengthen cooperation with other national stakeholders

It seems that when transposing EU law into national legislation, there is no formalised path of including NHRI in the legislation process in the early stages. Stronger information-sharing with relevant ministries would be beneficial also in the stage of monitoring of the implementation of the laws. Also, stronger cooperation with other professional stakeholders such as lawyers, Bar Association, academia and representatives of the civil society.

- Use of additional measures to monitor procedural rights in practice

Procedural safeguards in the early stages of detention have been recognised as one of the most effective guarantees to prevent torture and ill-treatment, violations of the right to a fair trial and the right to liberty and security. Introducing and combining different methods of observing procedural safeguards in practice can provide a more comprehensive view of the situation: interviewing persons in police custody or inmates, observing police interviews, conducting thematic visits, etc.

- Establish exchange regarding criminal procedural safeguards on EU level

Lack of exchange on the EU level was identified as problematic. It would be useful to increase possibilities for exchange to all NHRIs (not only to those with NPM mandates). Initiatives

facilitating exchange among NHRIs on procedural safeguards of suspects and accused can further enhance their role in the promotion and protection of those rights.