

Questionnaire NHRI - OHCHR September 2012 - responses Slovenia (prepared by the Human Rights Ombudsman)

1. a) Please provide a brief overview of the legislation framework adopted to establish a National Human Rights Institution in your country. Please cite the name of any such laws or regulations in full.

The Human Rights Ombudsman of the Republic of Slovenia (hereinafter: the Ombudsman) was included in the legal system of the Republic of Slovenia by the Constitution of the Republic of Slovenia of 1991 **The Ombudsman is defined in Article 159 of the RS Constitution which states:**

(1) 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.

(2) Special ombudsmen for the rights of citizens may also be established by law for particular fields.'

The Human Rights Ombudsman Law was adopted in 1993 and published in the Official Gazette RS No. 71/93 corrig. 15/94 of 30 December 1993.

1. b) Please indicate how these laws and regulations comply with international human rights standards, and in particular, the Paris Principles.

The Slovenian Ombudsman is not a classic national institution according to the Paris Principles, but acts as a NHRI according to human and other resources at disposal. Human Rights Ombudsman has asked for and was granted a status B as NHRI in the accreditation process. All further details about accreditation process and complacency are available within the Office of the UN High Commissioner for Human Rights.

2. a) Please provide details outlining the mandate adopted by the Institution in relation to the protection and promotion of human rights in accordance with the range of competences and responsibilities specified in the Paris Principles.

The Human Rights Ombudsman Law defined the Ombudsman's position as an independent and autonomous body for the protection of human rights and fundamental freedoms in relation to state authorities, local government and public authorities. It sets out its responsibilities and powers, the procedures, the rights and the operation of specialist services. Mandate and competences are more detailed regulated in the Ombudsman Act and Rules of procedure (see: <http://www.varuh-rs.si/legal-framework/legal-documents-of-ombudsman/?L=6>).

2. b) Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violation.

Any person who believes that his/her human rights or fundamental freedoms have been violated by an act, an action or maladministration of a state body, local self-government body, or body entrusted with public authority may lodge a petition with the Ombudsman to start the proceedings. The law stipulates that proceedings before the Ombudsman shall be confidential. The Ombudsman may also institute the proceedings on his own initiative. If the Ombudsman is to institute the proceedings, either on his own

initiative, or upon a petition which has been lodged on behalf of the aggrieved person by a third party, the consent by the aggrieved person shall be required to start the proceedings.

2. c) If relevant please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police and/or the military are permitted and how they are dealt with.

Ombudsman's mandate is not limited to any specific rights to identify violations of human rights. The Ombudsman shall have the powers, specified by Human Rights Ombudsman Act, over the state bodies, local self-government bodies, and bodies entrusted with public authorities. In performing his function he shall act according to the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. While intervening he may invoke the principles of equity and good administration.

The police and military are not excluded from ombudsman mandate. Moreover, for example, the Defence act (Official Gazette of the Republic of Slovenia, No 103/2004) provides that a military person may initiate a commencement of a procedure with the Human Rights Ombudsman when he/she believes his/her rights and fundamental freedoms were limited or violated during the military service.

All public bodies shall furnish the Ombudsman, upon his requirement, all the information and data within their competences, irrespective of the level of secrecy, and shall enable him to carry out the investigation.

2. d) In this regards, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanism and conducting visits to detention facilities.

Question is not clear enough, but we can say that Ombudsman is not specifically empowered to carry out protection related functions including providing remedies to victims of human rights violations.

According to the Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment the Ombudsman also perform duties and have powers under the National Preventive Mechanism (NPM). The NPM is an independent national body and it is committed to strengthening the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment. Every year the members of the NPM conduct multiple visits to places of detention where they check how the persons deprived of their liberty are treated, and have private interviews with them (also without any staff present). The NPM draws up a report on the findings of each visit, and makes recommendations to the management of the visited institutions about how to correct any irregularities and improve the situation.

4. a) Please indicate whether any member of the Institution's staff has ever been the victim of threats or harassment as a result of work carried out on behalf of the organisation

Every ombudsman was and is from time to time victim of threats of harassment (send by mail or email). The serious ones are sent to competent bodies (police) and dealt with accordingly.

4. b) Please specify what mechanism, if any, are in place to protect Institution members investigating human rights violation. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect Institution members.

The ombudsman Act stipulates that the Ombudsman shall not be held responsible for the opinion or recommendation given while performing his function. The Ombudsman shall not be held in custody in the criminal proceedings instituted against him for having performed his function, without the prior consent of the Parliament.

The Ombudsman may be untimely relieved of his office only on his own request, or may be removed from office if he has been convicted of a criminal act and sentenced to imprisonment, or due to his permanent loss of ability for performing the duties of his office.

Ombudsman, Deputy Ombudsman, officers and authorized officers has an identity card with photograph, details on identity and specification of powers. State bodies, local self-government bodies, and bodies entrusted with public authorities shall furnish the Ombudsman, upon his requirement, all the information and data within their competences, irrespective of the level of secrecy, and shall enable him to carry out the investigation.

The Ombudsman or his representative may enter any official premises of each state body, local self-government body, or body entrusted with public authority, may inspect prisons or other places where people are kept detained, and shall have the right to talk in private with persons from these institutions.

In carrying out its functions ombudsman or officers have never had any security problems.

5. a) Please indicate the main sources of funding for the Institution.

The Ombudsman is an autonomous and independent public authority, the Act defines that the funds for its work are allocated from the state budget by the National Assembly on the proposal of the Ombudsman who decides on their spending.

5. b) In this regard, please indicate whether any challenges exist, particularly in relation to the functional autonomy of the organisation and how this impacts on the work of the Institution.

Austerity measures by the Slovenian government represent a certain degree of risk for the loss of autonomy of the institution, especially with the increasing reduction of funds for salaries and working programme.

6. a) Please describe the procedures in place relating to the selection and appointment of members of the governing body.

Only a citizen of the Republic of Slovenia may be elected as the Ombudsman. The Ombudsman shall be elected by the Parliament with the two-third majority of all MP votes for the term of six years, and after the expiration of this term of office, he may be re-elected only once. The Parliament shall decide on the nomination made by the President of the Republic within forty-five (45) days after it has been submitted.

The Human Rights Act states that the provisions of the Constitutional Court Act, regulating candidature for the constitutional judges, shall apply mutatis mutandis to the candidature for the

Ombudsman. President of the Republic publishes a call for the proposal of possible candidates (in the Official Gazette). Any citizen or national of the Republic of Slovenia may therefore, within a specified period, send a reasoned proposal accompanied by the written consent of the potential candidate that s/he is willing to accept the nomination. The President makes a selection from among the proposed and applied candidates and forwards proposals to the National Assembly. The President has also the right to propose other candidates.

6. b) Please indicate what mechanism are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.

The holding of the office of the Ombudsman shall be incompatible with the holding of any office in the state bodies, local self-government bodies, political parties and trade unions, or the performing of other functions and activities which are incompatible by law with the holding of a public office.

The mandate of the Ombudsman and his Deputies is defined in the Law. The Ombudsman and Deputies have a six-year mandate which does not depend on the mandate of the Parliament or other functions in the state.

The grounds and procedures for dismissal, lay-off and resignation of officials and public servants are defined in the Human Rights Ombudsman Law. The Ombudsman may be untimely relieved of his office **only** on his own request, or may be removed from office if he has been convicted of a criminal act and sentenced to imprisonment, or due to his permanent loss of ability for performing the duties of his office. The procedure for removing the Ombudsman from his office is started upon the motion made by one third of MPs. The Parliament removes the Ombudsman from his office if two thirds of the present MPs have voted for it. The grounds and the procedure for dismissal of the deputy ombudsmen are subject to the same procedure.