

Human Rights Committee

**Concluding observations on the third periodic report of
Slovenia***

1. The Committee considered the third periodic report submitted by Slovenia (CCPR/C/SVN/3) at its 3246th and 3247th meetings (CCPR/C/SR.3246 and CCPR/C/SR.3247), held on 15 and 16 March 2016. At its 3259th meeting (CCPR/C/SR.3259), held on 24 March 2016, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Slovenia, albeit four years late, and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/SVN/Q/3/Add.1) to the list of issues (CCPR/C/SVN/Q/3), which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The amendment of the Criminal Code, in 2015, which defines stalking as a criminal offence, including through electronic means of communication; establishes criteria for partial exclusion of liability in cases of offences relating to the disclosure of classified information which are of public interest; and introduces a new offence of forced marriage or other marriage-like union;

(b) The amendment of the Enforcement of Penal Sanctions Act, in 2015, to ensure a more efficient response to allegations of poor conditions of detention;

(c) The adoption of a new National Programme for Equal Opportunities for Women and Men for the period 2015 - 2020 to improve the situation of women;

* The present document is being issued without formal editing.

(d) The adoption of the National Programme of Measures for Roma for the period between 2010 and 2015 and the initiatives taken under the programme to empower the Roma community.

4. The Committee also welcomes the information provided by the State party concerning instances in which provisions of the Covenant were invoked and applied by the national courts.

C. Principal matters of concern and recommendations

National human rights institution

5. While welcoming the work undertaken by the Human Rights Ombudsman of the Republic of Slovenia to protect the rights enshrined in the Covenant, including as a national mechanism for the prevention of torture, the Committee regrets that it is not yet a national human rights institution in line with the Paris Principles, and that it lacks adequate funding (art. 2).

6. The State party should take measures to establish a fully functioning and independent national human rights institution with a broad-based human rights mandate and provide it with adequate financial and human resources, in line with the Paris Principles (General Assembly resolution 48/134, annex).

Racism and xenophobia, including hate speech

7. While noting the legislative measures taken to prohibit hate speech, the Committee is concerned at the use of racist and xenophobic rhetoric by political figures towards persons belonging to minority groups, including migrants and refugees. It also expresses concern that hate speech on the Internet and online forums is on the rise, particularly against migrants, Roma, lesbian, gay, bisexual and transgender (LGBT) persons and Muslims. The Committee also regrets the low rates of reporting of and legal responses to cases of racial discrimination, including prosecution of serious cases of hate speech which amount to incitement to hostility or violence (arts. 2, 18, 20 and 26).

8. The State party should strengthen its efforts to prevent and eradicate all forms of racism and xenophobia, including by:

(a) Establishing an independent and effective body to respond to cases of discrimination, including reforming the Advocate for the Principle of Equality to this end;

(b) Adopting a clear strategy on the prevention and elimination of discrimination, in consultation with civil society representatives;

(c) Ensuring that there is an easily-accessible system of transparent and effective legal remedies for victims of discrimination and improving the reporting of and legal responses to cases of racial discrimination, including prosecution of serious cases of hate speech which amount to incitement to hostility or violence;

(d) Condemning racial discrimination and adopting awareness-raising campaigns aimed at promoting respect for human rights and tolerance for diversity, as well as promoting awareness that hate speech is prohibited under law.

Discrimination on the grounds of sexual orientation and gender identity

9. While commending the efforts made by the State party to guarantee the equal rights of LGBT persons under domestic law, the Committee regrets that the amendments to the Law on Marriage and Family Relations granting, on an equal basis, the rights of same-sex couples to inheritance, to access reproductive treatments and to adopt children, were made

subject to a referendum in December 2015 notwithstanding the provisions of the Constitution to the contrary, and were rejected (arts. 2 and 26).

10. The State party should ensure that all LGBT persons are guaranteed equal rights under the Covenant and the Constitution, and intensify its efforts to combat stereotypes and prejudice against LGBT persons, including by launching a nationwide awareness-raising campaign, in cooperation with civil society organizations working in this field.

Participation of women

11. While the Committee welcomes the measures taken by the State party to promote gender equality and the resulting increase in the representation of women in public bodies, the Committee remains concerned that women remain underrepresented in senior and managerial positions and on boards of private enterprises (art. 3).

12. The State party is encouraged to further support the participation of women in high-level and managerial positions and on boards of private enterprises, including through enhanced cooperation and dialogue with partners in the private sector.

Violence against women

13. While noting the measures taken by the State party to address violence against women, the Committee is concerned at reports of high prevalence of domestic violence and the limited effectiveness of protection mechanisms for victims of domestic violence, including lack of enforcement of restraining orders issued against alleged perpetrators. It is also concerned at the absence of a permanent mechanism to coordinate, monitor and assess the effectiveness of measures taken to combat violence against women (arts. 3 and 7).

14. The State party should strengthen measures aimed at preventing and combating violence against women, including domestic violence and sexual abuse, by, inter alia:

(a) Ensuring that victims have access to effective remedies and means of protection, including police protection, adequate emergency shelters, rehabilitative services, legal assistance and other support services;

(b) Encouraging the reporting of cases, including by strengthening measures aimed at informing women of their rights and legal avenues through which they can receive protection;

(c) Ensuring that all cases of violence against women, including domestic violence, are thoroughly investigated, that perpetrators are prosecuted, and are punished with appropriate sanctions;

(d) Improving the system of data collection on complaints, investigations, prosecutions and convictions in cases of violence against women, including domestic and sexual violence, which would enable the State party to adopt targeted and effective measures to combat violence against women.

Asylum-seekers, migrants and refugees

15. The Committee regrets the measures taken by the State party to respond to the recent influx of asylum-seekers and migrants, including: (a) the construction of a razor wire fence on its border with Croatia; (b) the adoption, on 18 February 2016, of a joint statement of the heads of police services of Austria, Slovenia, Croatia, Serbia and the former Yugoslav Republic of Macedonia, which limits entry to the State party solely on the basis of nationality and possession of identification documents, rather than on an individual assessment of whether or not they are in need of protection against non-refoulement; and

(c) the amendment of the Defence Act granting the armed forces additional powers, including with regard to crowd control, in a manner which is vague and broad, and lacking sufficient oversight, accountability and complaint mechanisms. The Committee is also concerned that the amendments to the International Protection Act, adopted by the Parliament in March 2016, may undermine the rights of persons seeking protection against non-refoulement to have their application effectively determined, particularly as a result of the simplification and expedition of the asylum application processing procedure for those arriving from so-called “safe countries”. The Committee also expresses concern at the lack of free access to legal representation for persons needing it and seeking protection against non-refoulement (arts. 2, 6, 7, 13 and 26).

16. The State party should:

(a) Ensure that any response to the influx of asylum-seekers and migrants are in line with its obligations under the Covenant, and regularly review the necessity and proportionality of the measures adopted;

(b) Take effective steps to allow persons in need of international protection access to the relevant procedures for international protection, and ensure that any measures taken by the State party, including in relation to bilateral and regional agreements, do not discriminate on the basis of the applicant’s country of origin, arrival or transit;

(c) Ensure that the procedure for international protection allows an individual assessment based on the circumstances of each case by trained professionals with legal expertise;

(d) Ensure that legal representation of adequate quality is systematically made accessible throughout the entire procedure for international protection;

(e) Ensure full respect of the principle of non-refoulement;

(f) Consider steps to facilitate the process of family reunification for beneficiaries of international protection.

17. The Committee regrets the lack of information provided by the State party concerning the general condition of refugee camps and shelters, particularly given reports of cases of hypothermia, lack of access to basic needs, including food and medicine, overcrowding, and unsanitary conditions in Brezice and Dobova (art. 7).

18. The State party should take immediate measures to ensure adequate living conditions in full respect of the right to be protected against inhuman or degrading treatment in all refugee camps and shelters, and guarantee access to their basic needs, including food, health care services, psychological support and legal counselling.

Vulnerable persons within the migration flow

19. The Committee is concerned at the lack of adequate protection provided to unaccompanied minors and victims of sexual and gender-based violence and/or trafficking who are among the recent migration flow passing through the State party. It also notes with concern the lack of psychosocial support provided to such individuals at entry and exit points, as well as of a formal mechanism to refer victims to assistance. The Committee is also concerned that access to long-term State-funded assistance for victims of trafficking is limited to those who cooperate with law enforcement authorities in investigation and criminal proceedings (arts. 8 and 24).

20. The State party should establish a uniform and formal mechanism to identify vulnerable persons within the migration flow, including unaccompanied minors and victims of sexual and gender-based violence and/or trafficking, as well as a common

referral mechanism to ensure their protection and rehabilitation. It should also ensure that law enforcement officials and other relevant professionals are fully trained on the appropriate standards and procedures to effectively identify and assist victims. It should also ensure that victims of trafficking are provided adequate assistance regardless of whether or not they cooperate with law enforcement authorities in investigation and criminal proceedings.

So-called “erased” persons

21. The Committee notes the adoption in 2010 of the Act Regulating the Permanent Registry Status of All Citizens of the Successor States of the former Socialist Federal Republic of Yugoslavia to enable persons who have been removed or “erased” from the Slovenian registry of permanent residents in 1992 to re-establish their permanent residency status. The Committee also notes the adoption in 2013 of the Act Regulating Compensation for Damage Sustained as a Result of Erasure to provide compensation for the damage suffered as a result of the erasure from the registry. However, the Committee expresses concern that there are currently no avenues for restoring the legal status of a significant number of “erased” persons since the expiry in 2013 of the 2010 Act, and that only a limited number of persons have received compensation (arts. 2, 17 and 26).

22. The State party should ensure that all remaining “erased” persons have the possibility to restore their legal status without undue administrative constraints. It should also ensure that all “erased” persons are provided full and effective reparation, including restitution, compensation and satisfaction.

Roma

23. The Committee is concerned that despite the measures taken by the State party, including the amendment in 2009 of the Local Self-Government Act, the adoption in 2007 of the Roma Community Act, and the adoption in 2010 of the National Programme of Measures for Roma, limited progress has been achieved in improving the situation of Roma, who continue to suffer from prejudice, discrimination and social exclusion. It is also concerned at: (a) instances of child and/or forced marriages among the Roma community; (b) the distinction made by the State party between the so-called “autochthonous” and “non-autochthonous” Roma communities, with only the former being granted special rights and opportunities and the latter being unrepresented at the local level; and (c) the lack of effective functioning of the Roma Community Council, as well as the composition of the Council, which does not reflect the diversity of groups within the Roma community (arts. 2, 23, 24, 26 and 27).

24. The State party should:

(a) Consider repealing the distinction between the two types of status among the Roma community, and strengthen measures aimed at improving the situation of all Roma in the State party;

(b) Engage with representatives of the different Roma communities to improve the functioning of and representation of diverse Roma communities in the Roma Community Council, and take effective measures to increase the participation of Roma in public life and decision-making processes;

(c) Ensure that the prohibition of child and/or forced marriage is effectively implemented in practice, including by effectively investigating and prosecuting such acts, bringing the perpetrators to account, and providing victims with appropriate rehabilitation and counselling services;

(d) Strengthen awareness-raising programmes among the Roma community concerning the harmful impact of child and/or forced marriage.

Conditions of detention

25. The Committee is concerned at reports of poor living conditions in detention facilities, overcrowding in some prisons, including Ljubljana Prison, poor sanitary conditions, and lack of prison staff (art. 10).

26. The State party should expedite its efforts to improve the living conditions in detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). The State party should consider not only the construction of new prison facilities, but also the wider application of alternative non-custodial sentences, such as electronic monitoring, parole and community service.

Administration of justice and fair trial

27. While welcoming the significant reduction of the number of cases pending consideration by courts, the Committee remains concerned at reports of a large backlog of cases in labour and social courts. It also expresses concern at the lengthy duration of court proceedings, as well as the lack of timely and effective access to free legal aid in criminal proceedings where the interests of justice so require (art. 14).

28. The State party should adopt a comprehensive strategy to address the backlog of cases throughout the judiciary, particularly in labour and social courts, and ensure the right to a fair trial without undue delay, in accordance with article 14 of the Covenant and the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to fair trial. It should also ensure that free legal aid is available in criminal proceedings without undue delay to all those who do not have sufficient means to pay for it.

Corporal punishment

29. The Committee notes that the proposed amendments to the Family Code to prohibit corporal punishment was rejected in a referendum in 2012, and expresses concern that corporal punishment is not explicitly prohibited in the State party (arts. 7 and 24).

30. The State party should take practical steps, including through legislative measures, to put an end to corporal punishment in all settings. It should encourage non-violent forms of discipline as alternatives to corporal punishment, and should conduct public information campaigns to raise awareness about its harmful effects.

Freedom of expression

31. The Committee notes that defamation constitutes a criminal offence under articles 159, 160 and 161 of the Criminal Code with a maximum penalty of two years imprisonment (art. 19).

32. The State party should reconsider decriminalizing defamation and restrict the application of criminal law to the most serious cases, bearing in mind that imprisonment is never an appropriate punishment in such cases, as underlined in the Committee's general comment No. 34 (2011) on freedoms of opinion and expression.

D. Dissemination of information relating to the Covenant

33. The State party should widely disseminate the Covenant, its two Optional Protocols, its third periodic report, the written replies to the Committee's list of issues and the present

concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public and minority and marginalized groups. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

34. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year of the adoption of the present concluding observations, information on its implementation of the Committee's recommendations made in paragraphs 8 (racism and xenophobia, including hate speech), 16 (asylum-seekers, migrants and refugees) and 20 (vulnerable persons within the migration flow) above.

35. The Committee requests the State party to submit its next periodic report by 31 March 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and on the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country, as well as minority and marginalized groups. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.
