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FOLLOW-UP REPORT ON SLOVENIA(2003 – 2005)

Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights

**For the attention of the Committee of Ministers
and the Parliamentary Assembly**

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Introduction

1. The Commissioner for Human Rights visited Slovenia in May 2003 on the invitation of the Government. The Commissioner would like to reiterate his gratitude to the Government of Slovenia for their co-operation at the time of the visit and, again, on the occasion of the follow-up visit conducted by members of his Office¹ from 17 to 20 May 2005. In his first report², the Commissioner identified a number of concerns regarding law and practice in Slovenia with respect to human rights and made recommendations in order to assist the Slovenian authorities in their pursuit of remedying the shortcomings.

2. The purpose of this follow-up report is to examine the manner in which the Slovenian authorities have implemented the recommendations made by the Commissioner in 2003. The report follows the order of the main recommendations and does not as a matter of principle aim to address any issues other than those included in the recommendations of the first report.

3. The report is based on information gathered during the follow-up visit³, written submissions from the Slovenian authorities⁴, reports by human rights experts, local and international non-governmental organisations and inter-governmental organisations and other public sources.

4. The members of the Commissioner's Office would like to express their gratitude for the assistance and openness of all with whom they met during the course of their visit.

1. Minority protection

5. In his report, the Commissioner recommended that the regime of minority protection be strengthened, notably by reassessing the concepts of autochthonous ("indigenous") and non-autochthonous ("new")⁵ minorities and by making the Framework Convention for the Protection of National Minorities applicable to groups of persons originating from other parts of the former Yugoslavia.

6. The Commissioner considered it important that the Slovenian government take measures to remedy the existing differences in the level of protection provided for the Roma on the basis of whether they are autochthonous or non-autochthonous, as these notions are not legally defined. He expressed his concern that the use of these notions raises legal and practical uncertainties and carries a risk of arbitrary exclusion, as even a person, who is a citizen of Slovenia and whose family has long roots in Slovenia, is not necessarily considered autochthonous.

7. As regards persons originating from other parts of the former Yugoslavia, the Commissioner noted with concern the fact that they remain unrecognised as minorities in Slovenia, which poses significant obstacles to the preservation of their language, religion, culture and identity.

The development of the situation and measures taken

8. During the follow-up visit, the authorities informed the Commissioner's office that there were no foreseeable plans to change the current regime of minority protection. This position is also clear from a report, which the Slovenian government submitted to the Council of Europe on 2 July 2004, pursuant to Article 25 of the Council of Europe Framework Convention for the Protection of National Minorities.⁶ The report provides detailed information about the constitutional and legislative framework in place for the protection of minorities in Slovenia and indicates a number of measures that have been taken to implement the Framework Convention. It does not, however, provide much information about the real situation of the minorities and the impact of the measures taken.

9. Since the situation of minorities in Slovenia is currently under comprehensive review by a specialized Council of Europe monitoring body, this report will not try to cover all the aspects of minority protection. Some issues, however, such as the situation of Roma, were focused on during the follow-up visit and will be discussed in more detail.

10. As regards the legal status of the Roma⁷, there have been no changes since the Commissioner's report. According to the Constitution, the Roma are considered an ethnic community, not a national minority, and do not enjoy the same level of minority protection as the Hungarian and the Italian national communities, although the Roma are included in the application of the Framework Convention for the Protection of National Minorities. The difference in the level of protection afforded on the basis of whether Roma are considered autochthonous or non-autochthonous continues to be applied.

11. On the basis of Article 65 of the Constitution, regulations relating to the status and rights of Roma have been introduced to a number of laws, but there is still no specific law devoted to the rights of the Roma as required by the Constitution. There is an ongoing discussion as to the possible enactment of such a law in Slovenia and a draft is currently being prepared by the government.

12. There remain many Roma in Slovenia, who have not been able to become Slovenian citizens, notwithstanding real factual ties to Slovenia, in many cases dating prior to the independence. They are precluded from accessing a number of social and economic rights as a result. Some of these Roma were among the 18,305 victims of the 1992 erasure⁸.

Conclusions

13. The Commissioner regrets the reluctance on the part of the Slovenian Government to strengthen the regime of minority protection and encourages the Slovenian authorities to engage in a constructive dialogue with all minority groups regarding the measures that are necessary to improve the situation of all minorities in Slovenia.

14. The Commissioner is concerned about the discriminatory impact of the application of the terms autochthonous and non-autochthonous on the enjoyment of rights by Roma and urges the Slovenian government to abolish the use of such notions.⁹ The Commissioner encourages the authorities to continue the consultations that are currently underway relating to the enactment of the specific law devoted to the rights of the Roma.

15. The Commissioner urges the authorities to do their utmost to actively assist those Roma, who, while being entitled to it, are still without citizenship.

2. Situation of Roma

16. In his report, the Commissioner recommended that the Slovenian authorities take measures to ensure the effective implementation of the national programmes for the improvement of the situation of Roma at a local level, and to ensure that all Roma children have access to education on a par with other children.

Development of the situation and measures taken

2.1 Education

17. In June 2004, a new Strategy of Education of Roma in the Republic of Slovenia ("the Strategy") was adopted¹⁰. One of the main aims of the new Strategy is to achieve the integration of Roma in education at all levels ranging from pre-school to adult education. The Strategy proposes various measures to achieve full integration. These measures include early integration of Roma children in pre-schools in order to help them learn Slovenian; additional support to classes with Roma children; the introduction of Roma assistants; the introduction of Roma language as an optional subject and the inclusion of Roma culture and history in the curriculum. Indeed the practical measures foreseen generally reflect the policy directives included in the Committee of Ministers' Recommendation on the education of Roma/Gypsy children in Europe¹¹.

18. Since the 2003/2004 school year, the creation of separate classes for Romany children has not been permitted. All the Roma children should now attend regular classes at all levels of instruction. According to the information received by the Commissioner's office, the new instruction appears to be generally well implemented. However, during the time of the visit, segregation still continued in some form in at least two schools. The authorities themselves acknowledged that full integration had not yet been achieved and cited the situation at the elementary school of Brsljin in Novo Mesto as an example of a failed attempt to integrate Roma children due to the lack of adequate preparation.

19. In April 2005, the parents of some non-Roma children at Brsljin elementary school had started a school boycott. They requested that the 86 Roma pupils of the Brsljin elementary school be dispersed evenly across the schools in the Novo Mesto municipality. In the absence of an agreement, the Minister of Education proposed a solution, which continued the segregation of Roma pupils. This then led to a boycott by the Roma. The decision of the Ministry was later modified and according to the

education authorities, a number of measures have since been taken to find a solution. One of them was the introduction, from the first year onwards, of ability-based streaming for certain subjects. This measure, which runs counter to the standard practise of streaming only after the third year, has resulted in a de facto segregation. Additional professional support and Roma assistants have, however, been made available to the school according to the education authorities.

20. During the follow-up visit, the members of the Commissioner's office visited the municipality of Novo Mesto and the Brsiljin elementary school to assess the situation first hand and to understand the viewpoints and concerns of all parties. The parents of non-Roma pupils explained that their main concern was the declining standard of education in the school, which according to them, was due to the high number of Roma pupils in the class rooms, especially in the lower grades. According to them, the Roma children, who often have difficulties with the Slovenian language, require much of the time and attention of the teachers.

21. The members of the Commissioner's office also visited the Roma settlement in the vicinity of the Brsiljin elementary school and spoke with some of the parents and local Roma representatives there. Concerns were expressed about the low standard of the pre-school within the settlement

22. After the follow-up visit, the Commissioner received further information¹² from experts on education in Slovenia, who expressed their concerns about the implementation model in use in the Brsiljin Elementary school. The experts had appealed to the Ministry of Education and Sports to find an effective solution in accordance with professional and legal standards. According to their information, the Roma in Brsiljin are taught in separate classes for half of the lessons, at least in the lower grades of the elementary school. The subjects that are taught separately – in the study groups - are Slovenian language, mathematics and learning about the environment. Although the criteria for separating the children are formally based on knowledge, and not on ethnicity, this is said to affect primarily the Roma children due to their lack of sufficient Slovenian language skills.

Conclusions

23. The Commissioner welcomes the adoption of the new Strategy of Education of Roma in the Republic of Slovenia and the new measures implemented from the beginning of 2003/2004 school year, which aim at full integration of Roma in the mainstream education. It is regrettable, however, that the new measures have not yet been fully implemented in all the schools. The new Strategy, at present only a concept paper, should be developed into an operational Action Plan as soon as possible with sufficient resources to ensure its effective implementation.

24. Regarding the model implemented in Brsiljin elementary school, the Commissioner's view is that the separation of Roma children from the others in important subjects does not fulfil the criteria of full integration. It also increases the risk of Roma children being taught at a lower standard than the others, which could have serious consequences for the Roma children and their prospects for the future. It is of concern that the model currently implemented in Brsiljin represents a step back from the already achieved levels of integration and falls short of the impressive ambitions contained in the national strategy.

25. The Commissioner recommends that the authorities revise the implementation model adopted in Brsiljin and ensure full integration of Roma children in the normal classroom for all the subjects. The model should be revised in consultation with experts on education and Roma representatives. Additional support should be made available to the school, teachers and the Roma pupils and their families.

2.2 Employment and housing

26. In recent years the Slovenian authorities have paid increasing attention to the situation of Roma and several programmes to improve the situation of Roma have been put in place. Despite these efforts, the Roma in Slovenia continue to face discrimination and exclusion and serious problems remain in the field of employment and housing, in addition to the educational difficulties already examined.

27. The housing conditions of many of the Roma continue to be unsatisfactory with many Roma living in isolated, often illegal settlements, far away from services and other communities, as the members of the Commissioner's Office were able to observe when visiting Novo Mesto. The unemployment rates in many Roma settlements are well above 90 %.¹³ This can be partially explained by the fact that many Roma lack sufficient level of education and skills required, but it is also due to discrimination of Roma in the society in general. The legal and practical obstacles resulting from lack of citizenship prevent some Roma from accessing employment or social services.

28. During the visit, the representatives of the Ministry of Labour, Family and Social Affairs provided information about measures taken to address some of the underlying problems causing unemployment. An Action Programme for employment of Roma 2003-2006 has been adopted and includes the following measures: the inclusion of young unemployed Roma in primary and vocational schools; the inclusion of adult Roma in programmes of subsidised jobs; job creation through public works and the employment of Roma advisers at employment service offices. Roma assistants have also been employed in some regions to assist in communicating with Roma and to increase the confidence of Roma in public services. A group of 25 young Roma, all of whom have completed their secondary education, has been trained and employed as Roma tutors/mentors. A new National Action Programme for Employment and Social Inclusion of Roma will be drawn up during the course of 2006.

29. The authorities drew the attention of the Office of the Commissioner to the National Action Plan on Social Inclusion for 2004-2006 (NAP), which has been drafted under the auspices of the European Commission.¹⁴ In this framework, a National Action Programme for Employment and Social Inclusion of Roma is being drawn up. The NAP includes a range of measures to improve the social inclusion and employment prospects of Roma and indicates financial means for the implementation of the measures. The NAP also sets objectives to include Roma in education and to tackle the problem of Roma settlements by legalising them and providing for the appropriate infrastructure.

Conclusions

30. The Commissioner welcomes the efforts made by the employment services in assisting Roma in gaining employment and accessing public services and recommends that these types of projects are implemented in all the regions where Roma reside, regardless of their status.

31. The Commissioner notes the efforts that have been made in developing the National Action Plan on Social Inclusion for 2004-2006 and the fact that a new National Action Programme for Employment and Social Inclusion of Roma, which is being drawn up. The projects improving the situation of Roma in different fields, be it housing, employment, or education, should be given a high priority in the allocation of financial resources, as they remain one of the most disadvantaged groups in Slovenian society. It will be important to involve Roma communities in all stages of the cycle, from planning and implementing, to monitoring the impact of the program, also at a local level.

32. The Commissioner regrets that only piece-meal progress appears to have been made in addressing the housing difficulties faced by many Roma. Information on concrete projects, or results so far, do not seem to be available. The Commissioner is aware of the funding possibilities offered to solve the Roma housing problems under the Housing Fund of the Republic of Slovenia.¹⁵ The Commissioner urges the Slovenian authorities to pay particular attention to the local level implementation of the strategy of the Housing Fund of the Republic of Slovenia and to ensure that housing improvement programmes are adequately resourced. For the most marginalised groups greater efforts and specific programs are needed to secure their right to adequate housing. The recent Recommendation by the Committee of Ministers of Council of Europe on improving the housing conditions of Roma and Travellers in Europe, provides useful and detailed policy guidance.¹⁶

3. Non-discrimination

33. In his report, the Commissioner recommended that the authorities step up efforts to combat discrimination, notably by strengthening anti-discrimination legislation, ratifying Protocol 12 to the European Convention on Human Rights and ensuring the full transposition of the EU equality directives into domestic legislation.

Development of the situation and measures taken

34. A number of measures have been taken to further strengthen the legislative and institutional framework for combating discrimination. The Act on Implementation of the Principle of Equality Treatment, aimed at transposing one of the two major EU anti-discrimination directives¹⁷, was adopted in May 2004. It covers equal treatment in every field of social life, including access to and supply of goods and services and bans direct or indirect discrimination.

35. As required by the Directive 2000/43/EC, two new bodies to combat discrimination were established by the Act: the Council of the Government for the Implementation of the Principle of Equal Treatment and the Advocate for the Principle of Equality, a body mandated to deal with individual complaints. A special Unit to deal with complaints of discrimination was also recently created within the office of the Human Rights Ombudsman, with additional funding and posts approved by the National Assembly.

36. In his report, the Commissioner highlighted two specific issues relating to discrimination. The building of a Mosque in Ljubljana continues to be stalled despite the efforts of the Slovenian Muslim community for over 30 years and the favourable attitude of the Mayor of Ljubljana. As a result, the Muslim community in Slovenia is deprived of a formal place of worship. At the time of the follow-up visit in May 2005, the issue had moved to the local courts as the owners of the neighbouring properties of the future building site had withheld their consent on the demarcation plans for the site.

37. The other issue raised was discrimination on the basis of sexual orientation and lack of equal rights of same-sex couples in legal and social respects. In this context, the Commissioner also expressed his concern about homophobic statements that were frequently published in the media.

38. On 22 June 2005, the Law on Registered Same-Sex Partnership was adopted by the Slovenian National Assembly. The law regulates property and inheritance rights and provides for the right and obligation to support the socially weaker partner. It does not, however, grant equal rights, in comparison with married couples, in the area of social security, including social and health insurance and pension rights.

39. According to the information available in the media, homophobic and intolerant statements were made by some politicians during the hearings in the National Assembly. Some of the statements included personal and highly insulting remarks made to parliamentarians in favour of further amendments to the law.

Conclusions

40. The Commissioner welcomes the legislative and institutional developments made in combating discrimination and recommends that adequate resources be made available to the Advocate for the Principle of Equality. The Commissioner welcomes the Ombudsman's strengthened focus and new resources allocated to combating discrimination.

41. The Commissioner regrets that the building of the Mosque in Ljubljana continues to be held up. The Commissioner urges the authorities to work together to find a solution to this long standing problem. It is to be hoped that the various legal and political obstacles so far employed to prevent the building of the mosque, will rapidly give away to a consensus, recognising the rights of the Muslim community to effectively practise their religion.

42. The Commissioner welcomes the enactment of the Law on Registered Same-Sex Partnership, but regrets that it does not guarantee full equality for sexual minorities in the area of social security, in respect of which the law falls behind increasingly common legal standards in many EU countries and the general principle of non-discrimination. The homophobic and intolerant public statements made by some politicians during the discussions about the draft law in the Parliament cannot fail to be of concern.

43. Finally, the Commissioner encourages the Slovenian authorities to take steps towards the ratification of Protocol 12 to the European Convention on Human Rights relating to non-discrimination.

4. Situation of persons erased from the list of permanent residents

44. In his report, the Commissioner recommended that the situation of those persons erased from the list of permanent residents be regularised without delay in the manner prescribed by the Constitutional Court.

45. At the time of Slovenia's independence on 23 December 1990, approximately 200,000 people originating from other parts of the former Yugoslavia were permanently residing in Slovenia. Approximately 170,000 people obtained citizenship on the basis of laws, which sought to regulate their status in the new State by giving them the right to apply for Slovenian citizenship within six months. Of the remaining 30,000, about 11,000 left Slovenia, 18,305 did not apply for citizenship within the prescribed time for a number of reasons, or their application was rejected, and were removed, ex officio, from the register of permanent residents on 26 February 1992. As a result, these persons, many of whom had been living in Slovenia for decades, became foreigners in Slovenia and lost the rights attached to a permanent residence status, many without being aware of it. Many were deprived of their pensions, apartments, access to health care and other social rights as a result of the erasure. Their personal documents, such as identity cards, passports and drivers' licenses, were often annulled. A law adopted in 1999 was intended to enable at least some of the erased to reclaim residency.

Development of the situation and measures taken

46. The issue of erased persons continues to be a divisive and politically charged issue in Slovenia and is the subject of heated debate. Regrettably, the issue has been frequently used by some political factions as a campaign tool. Especially during the period leading to the October 2004 general elections, many politicians made xenophobic statements when referring to the issue of the erased persons and to others considered non-Slovene or otherwise different.¹⁸

47. In a ruling of April 2003¹⁹, the Constitutional Court declared the 1999 law aimed at remedying the situation of the erased persons²⁰ to be unconstitutional. The Court ordered that those who had already acquired permanent residency on the basis of the law, be granted permanent residence permits retroactively for the period from 26 February 1992 to the date of its formal acquisition. It also ordered the legislator to amend the law within six months to determine a new time limit for possible new applications for permanent residence permits.

48. The Constitutional Court decision imposed a duty on the Ministry of Interior to issue supplementary decisions giving retroactive effect to the residence permits to all those citizens of other former Yugoslav Republics, who were, on 26 February 1992, removed from the register of permanent residents, but who had since acquired a permit for permanent residence. The Constitutional Court's position was made clear in a further decision issued in December 2003²¹ stating that the decision of April 2003 could be considered as sufficient legal basis for issuing decisions on permanent residence with retroactive effect, without there being any need for specific legislation. Following the Constitutional Court's decisions, the Ministry of Interior, after some delay, started issuing permanent residence decrees with retroactive validity. Approximately 4,100 such decrees have since been issued, but at the time of the follow-up visit, it appeared that the issuance of decisions was suspended.

49. According to the information received from the Association of Erased, out of the 18,305 erased persons, some 12,000 have over time either obtained citizenship or received a permanent residence permit. All of these 12,000 persons, according to the 2003 decision of the Constitutional Court, should have had their permanent residence status recognised with retroactive effect.

50. Regarding the enactment of the law required to regulate the status of those erased persons who had been expelled from or had left Slovenia, the issue is still unresolved. There has been an ongoing and heated discussion regarding this issue, which – quite apart from what the criteria for legitimate absence from Slovenia and the situation of the expelled should be – has focused also on whether the law should be enacted in the normal legislative process or adopted as a constitutional act.

Conclusions

51. The Commissioner urges the Ministry of Interior to immediately continue and finalise the issuance of supplementary decisions giving retroactive effect to the permanent residence permit of all those persons, who are entitled to it.

52. As regards the enactment of the law regulating and reinstating the status of the remaining erased persons, the Commissioner urges the Slovenian government to definitely resolve the issue in good faith and in accordance with the decisions of the Constitutional Court. Whatever the appropriate legislative solution maybe, the current impasse reflects poorly on the respect for the rule of law and the Constitutional Court's judgements in Slovenia.

53. The Commissioner is extremely concerned about the continuous public manifestations of hate speech and intolerance by some politicians. The Commissioner calls for greater responsibility of politicians and media in this regard and for the full respect of the rights and values laid down in European Convention on Human Rights and other international instruments.

5. Problems relating to denationalized property – the situation of tenants²²

54. In his report, the Commissioner recommended that the Slovenian authorities seriously consider the recommendations made by the Ombudsman towards finding a solution regarding the situation of tenants following the denationalization of property.

55. Before 1991, the large majority of urban housing units in Slovenia were socially owned property. In 1991, the new law on housing granted the holders of the occupancy rights of socially owned apartments the right to purchase their accommodation at very low prices, far below the market value for such a property. At the same time, legislation was adopted to denationalise the property that had been nationalised by the State at the end of the Second World War. This law granted the owners of nationalised property the right to the restitution of their property, which was often occupied by holders of occupancy rights.

This led to a situation, where some of the occupants of the socially owned property were unable to purchase their apartments at a low price, but became tenants occupying property, which had been restituted to the original owners. The law provided that the tenants (former occupancy right holders) could remain in the apartments, while the owners took over possession of the property with obligations toward the tenants.

56. In 2002, the Human Rights Ombudsman issued a special report on the situation of tenants living in denationalised apartments, in which he made a number of recommendations aiming at solving the problem. He recommended, among other things, the adoption of substitute privatisation models that would address the problems of the majority of tenants and owners of the nationalised apartments by increasing subsidies to the tenants to buy another apartment or offering higher incentives to owners to encourage them to sell the apartments to tenants. Another recommendation was also more effective legal protection of tenants in denationalised apartments.

57. In its comments to the Commissioner's report, the Slovenian government provided information about the new Housing Act, which had entered into force in October 2003. According to the comments, "the provisions of the Act serve as a legal basis for alleviating – within the financial capacities of the SR – the situation with which tenants of denationalized flats are confronted, if not resolving it". It does so, for example, by "offering considerable material incentives aimed at resolving the conflict of interests between the new owners of the flats and the tenants of the denationalized flats".

Development of the situation and measures taken

58. During the follow-up visit, the members of the Commissioner's office met with the representatives of the Association of the Tenants of Slovenia, who described the situation of tenants living in the denationalised flats as being worse than before the entry into force of the new Housing Act, which introduced new restrictions regarding the use of rental property. The law now provides that the tenant can bring another person to live (to cohabit) in the flat only if the owner has given explicit written consent. Apparently the provision applies even to close family members, including (new) spouses. The law also increases the number of culpable reasons for eviction. They also expressed concerns over the significant rental increases over the last few years. These increases have made it extremely difficult for many of the tenants – often elderly people in a weak financial situation – to pay the rent. Due to the serious lack of affordable, non-profit rental housing, the tenants are left without alternatives and live in insecurity.

59. The previously mentioned National Action Plan on Social Inclusion (NAP 2004-2006) prioritises the need to ensure suitable living conditions for all by increasing the number of non-profit housing units, implementing a new system of subsidising rents and by providing suitable housing and living conditions for at-risk groups.²³ The planned number of non-profit housing units is 4,500 in the period 2004-2006.

Conclusions

60. The Commissioner does not have enough information concerning the practical impact of the financial incentives provided under the new Housing Act to make his final conclusion on this issue. Regarding the new Housing Act, it seems that some of its provisions on the use of apartments seem to unduly limit the tenant's use of property. Exemptions from some of the most onerous provisions of the Act maybe required to protect the right to housing of tenants of the denationalised property in the short term until more permanent solutions can be found.

61. The Commissioner welcomes the measures outlined in the National Action Plan on Social Inclusion (NAP 2004-2006) to ensure suitable living conditions for all by increasing the number of non-profit housing units, implementing a new system of subsidising rents and by providing suitable housing and living conditions for at-risk groups. With the effective implementation of these measures, the improvement of at least the most vulnerable tenant's situation is hopefully in sight.

6. Judicial system

62. In his report, the Commissioner recommended that the Slovenian authorities take measures to reduce the length of court proceedings by, *inter alia*, increasing accessibility to mediation.

Development of the situation and measures taken

During the follow-up visit, this issue was discussed with judicial and government authorities. According to the information provided by the Ministry of Justice, the problem will continue at least for a few years despite the efforts made by the Government. A positive trend was reported regarding criminal cases, where in 2004 the backlog had decreased. The problem was most acute in civil cases concerning private persons. In commercial cases there was no backlog at all.

63. As regards the Commissioner's recommendation to increase access to mediation, the President of the District Court in Ljubljana expressed his satisfaction over the rapidly increasing scope of court-annexed mediation. Since its introduction for civil cases in 2001 over 1,000 cases had been resolved through mediation. Both the scope of mediation as well as the geographical coverage has since increased. The impact of mediation, especially in civil cases, was assessed as very positive by the President. As concerns criminal cases, the system of discretionary prosecution was being discussed, and if introduced, access to pre-trial mediation would be made possible.

Conclusions

64. The Commissioner welcomes the government's continued efforts to reduce the judicial backlog and the length of court proceedings. The Commissioner remains concerned, however, about the continued backlog especially in civil cases concerning private persons and encourages the government to take further measures to reduce backlog.

65. The Commissioner welcomes the further development of mediation. In this regard, best practices from the other Council of Europe member states and the Council of Europe recommendations on mediation in different matters can provide useful guidance.²⁴

7. Police

66. In his report, the Commissioner recommended that the Slovenian authorities modify the composition of the complaints board that is responsible for investigating cases of alleged misconduct by police officers by including independently appointed NGO representatives in these boards, in order to ensure their impartiality.

Development of the situation and measures taken

67. In the comments submitted to the Commissioner's report, the Government informed the Commissioner that changes had been introduced in February 2004 to the system of investigating cases of alleged misconduct by police. Article 28 of the Police Act, which defines the method of investigation of complaints, had been amended and now stipulates that complaints must be handled in two stages. During the first stage, the complaint is examined by the head of the police organisation unit, who also carries out the so-called reconciliation procedure. In this procedure, the complainant is provided with information about the established facts and the powers of the police. If the complainant disagrees with the findings, the complaint is assigned to the Ministry of Interior. Otherwise, the complaint is settled. The complaint is always assigned to the Ministry of Interior when the complainant alleges that a police officer has committed a criminal offence prosecutable ex officio. The case at the Ministry is dealt with by a committee of three members headed by the Minister's plenipotentiary. Two members of the committee are representatives of the public, selected by civil society organisations. There is no representative of the police force in the committee, which decides on complaints by a majority vote.

68. During the follow-up visit, the Ministry of Interior provided additional information about the new procedure, which had been in place for one year. According to the Ministry of Interior, the reconciliation procedure has worked, and about half of the cases have been resolved at this level. The number of justified complaints has remained at about the same level as under the old system, with 15 % of the cases found to be justified.

69. Though the reforms have been welcomed as a first step towards greater accountability of the Slovenian police forces, concerns have been voiced that the new regulation still does not adequately ensure that complaints against the police will be thoroughly and effectively investigated in a manner which is truly independent and seen to be independent. The new regulation still allows the police to play a major role in investigating complaints of police misconduct amounting to human rights violations, as it authorizes the Ministry of the Interior to choose a police officer as rapporteur tasked with conducting the investigation and presenting conclusions to the committee. Another concern is the limited powers of the three-member committees which only decide whether the complaint is founded, but has no authority to issue recommendations on disciplinary sanctions against police personnel or on compensation to victims of police misconduct.²⁵

Conclusions

70. The Commissioner welcomes the reforms made so far. The change of the composition of the body, which now includes representatives of civil society, is a notable improvement as such. The fact that human rights NGOs had been involved in the reform process is commendable and the co-operation between the NGOs and the police should continue also in the future. Concerning the functioning of the new procedures, it is too early to assess whether the new procedures are more effective than the ones used in the past. In this regard, the Commissioner encourages careful monitoring of the functioning of the new system by the Ministry of the Interior, the Ombudsman and the local human rights NGOs.

8. Placement of persons in the centres for foreigners

71. In his report, the Commissioner recommended that the Slovenian authorities ensure speedy court involvement in decisions relating to the placement of persons in the centres for foreigners.

Development of the situation and measures taken

According to the information received from the Human Rights Ombudsman, the legal procedures remain the same as before. The decision on the placement is taken by the police and the person concerned may file a complaint with the Ministry of Interior against the decision. Only thereafter may proceedings be initiated at the Administrative Court and ultimately the Supreme Court.

Conclusions

72. The Commissioner encourages the Slovenian authorities to review the procedures for retaining foreigners prior to expulsion so as to enable appeals to be promptly lodged before the Administrative Courts, without having to pass through a prior administrative appeal before the Ministry of Interior.

9. Situation of asylum-seekers and refugees

73. In his report, the Commissioner recommended that the Slovenian authorities strengthen the integration of recognised refugees into society, and afford adequate rights to asylum-seekers, notably in the field of health care and education.

Development of the situation and measures taken

74. In April 2004, a new Integration Decree was adopted. The new Decree provides for additional support measures for recognised refugees, such as a six-months special housing allowance. An individual integration plan is concluded between the Ministry of Interior, which is responsible for refugee integration, and the refugee, who will also be provided with necessary information by integration counsellors.

75. A number of NGOs that the members of the Commissioner's met, expressed doubts regarding the effectiveness of the integration measures. The long term housing support for refugees was considered inadequate. It should be

noted, however, that the housing situation in Slovenia is generally difficult. The NGOs expressed their feeling that there was a lack of interest on the part of the authorities in co-operating with them, although they have the expertise and willingness to assist in integration.

76. The regulations regarding the rights of asylum-seekers in the field of health care and education have not been changed. The right to education is limited to primary education only and health services are limited to emergency care with no provisions for persons in special need. The authorities, with whom the delegation raised this issue, considered that the restrictions were not significant in practice. They explained that the health care covers most treatments and includes, for example, the right to reproductive health care. As regards education, the authorities acknowledged that there are limitations in law. However, based on agreements with the Ministry of Education, and on a case by case basis, access to education beyond primary education has always been granted to interested applicants.

Conclusions

77. The Commissioner welcomes the adoption of the new Integration Decree as a positive step. Recognised refugees often require support and assistance by the authorities, as well as the non-governmental sector, in order to be able to fully integrate into a society. To ensure that the support given to the refugees is adequate, the Commissioner calls for improved co-operation between the various authorities, and more inclusive approach to the NGOs qualified to work in this field.

78. The Commissioner urges the authorities to provide access to all asylum-seekers and refugees to adequate healthcare and education, not only emergency healthcare and primary education. Even if this is already the case in practise, as reported by the authorities, the situation should be regulated by law.

10. Trafficking in human beings

79. In his report, the Commissioner made a general recommendation that the authorities step up efforts aimed at combating trafficking in human beings.

Development of the situation and measures taken

80. A number of measures to combat trafficking in human beings have been taken, indicating that the Slovenian authorities treat the issue as a priority despite the relatively small numbers of cases.²⁶ The work is co-ordinated by the Interministerial Working Group on the Fight against Trafficking in Human Beings (IWG).²⁷

81. In the first half of 2004, the IWG focused on preparing the Action Plan for 2004-2006, which was adopted by the Government in July 2004. The Action Plan covers the following thematic areas: legislation on investigation and prosecution of criminal offences related to THB; assistance and protection of the victims of trafficking; prevention; training; and international co-operation. The Action Plan is an operational document, which assigns those responsible for the implementation and financing of the activities.

82. Regarding the legal framework, in April 2004 the National Assembly ratified both the UN Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, Especially Women and Children. In March 2004, amendments to the Criminal Code created a new criminal offence, Trafficking in Persons, with adequately severe penalties.²⁸ In May 2005, efforts were also underway to finalise a Witness Protection Act.

83. One of the priority tasks of the IWG has been to ensure that all forms of assistance are rendered to the victims. The assistance to the victims is being provided by a local NGO called Society Kljuc – Centre for Fight Against Trafficking in Human Beings, based on an agreement with the Ministry of Interior signed in September 2003. However, during the visit it was brought to the attention of the members of the Commissioner's office, that there was uncertainty concerning the financing of the activities of the NGO Kljuc by the responsible authorities.

84. The agreement stipulates the criteria for granting a reflection period, services provided (such as shelter and access to primary health care) and the conditions for issuing, prolonging and cancelling the provisional residence period. While all the victims are entitled to a reflection period of three months, based on a certificate issued by the NGO Kljuc, and as provided by the Aliens Act, a temporary stay of residence can be issued for the duration of the proceedings only if the victim is willing to testify in the proceedings and his/her testimony is considered important for the criminal proceedings. The lack of willingness to testify is considered as an abuse of the granted rights.

85. A number of measures have been taken in the area of prevention. Awareness-raising activities and campaigns have been conducted and co-financed by the various ministries, the UNHCR and NGOs. Two projects that have been implemented, both providing information about the risks of trafficking, deserve particular mention: the VIOLET project, which targets school children and the PATS project, which targets vulnerable asylum-seekers residing at the reception centre.

86. Training has been provided to key actors, such as the police, who are often the first ones to come into contact with victims of trafficking in human beings. The police have received training on trafficking in human beings since 2002. In April 2004, a joint training of members of the NGO Kljuc and employees of the Criminal Police took place, human trafficking was included in the annual training programme for prosecutors in the context of the amendments to the Criminal Code and in January 2005 a joint training with NGOs and prosecutors was organised.

Conclusions

87. The Commissioner welcomes the efforts made by the Slovenian authorities in preventing and combating trafficking in human beings. Progress made so far can be largely attributed to the timely implementation of the Action Plan and the co-ordination efforts of the IWG. Another important factor has been the good co-operation established between the various ministries, the General Prosecutor's office and the NGOs, who are also represented in the IWG.

88. The Commissioner's conviction is that respect for the human rights and dignity of the victim should be central to any efforts to combat trafficking, including the prosecution of perpetrators. The Commissioner welcomes the reflection period of three months, which is granted for all victims of trafficking in Slovenia, but is concerned about the strict conditions for issuance of even a temporary residence permit.

89. The Commissioner's view is that the needs of the victim and assessment of her/his situation should be the basis for any assistance given and for the availability of protection measures, including the issuance of a residence permit. The Commissioner hopes that solution is found to the current lack of financing of the activities of the NGO Ključ, so that it can continue to operate the safe house and to provide care to the victims of trafficking in human beings in Slovenia.

90. The Commissioner encourages the Slovenian authorities to sign and ratify the Council of Europe Convention on Action against Trafficking in Human Beings, which was opened for signature in May 2005.

11. Institutions for persons with disabilities

91. In his report, the Commissioner recommended that the Slovenian authorities allocate sufficient resources for the ongoing reform of institutions for persons with disabilities.

Development of the situation and measures taken

92. In their comments, the Slovenian Government informed the Commissioner that they were in the process of devising a project to renovate special social institutions, including the social institution for persons with disabilities in Lukavci, which a delegation of the Commissioner's Office visited in 2001. During the follow-up visit, the Ministry of Labor, Family and Social Affairs provided further information regarding the improvement plans, which were adopted for 10 institutions in 2004. In Lukavci, the proposal was to transform it into a smaller unit and to move many of the inhabitants outside the institution to communal care. The authorities also made assurances that the cage beds, mentioned in the Commissioner's report, were no longer in use. The general policy adopted, based on a study made in 2003, is that the care in social institutions will be based on a community approach, which stresses the individual treatment of persons.

Conclusions

93. The Commissioner welcomes the plans for the improvement of social institutions and welcomes the community-based approach adopted in caring for persons with disabilities in social institutions, the first results of which are beginning to be seen.

12. Employment Rights

94. In his report, the Commissioner recommended that the Slovenian authorities take measures to ensure equal access to employment for all, in particular the elderly, women and the Roma; strengthen the monitoring of respect for labour laws, including those relating to minimum wages and offer swift legal redress to victims of irregularities.

95. In its comments on the Commissioner's original report, the Slovenian Government provided information on the legislative provisions in force and in particular on Article 6 of the Employment Act, which bans discrimination on any grounds, including age and gender in employment. The Government also provided information on the activities of the Office for Equal Opportunities, such as the free phone line opened recently, which is offering consultations on employment relations and cases of non-discrimination, and various programmes dealing with the labour market, employment, training and education.²⁹

Development of the situation and measures taken

96. Regarding equal access to employment, in particular the elderly and women, the representatives of the Ministry of Labour, Family and Social Affairs informed the members of the Commissioner's office about the specific measures taken to assist the several thousand unemployed textile workers, mainly women, who had been laid off due to the crisis within the textile industry in Slovenia. The Commissioner had taken up their situation in his report, recommending that measures, such as offering retraining possibilities and introducing in the law a clear prohibition against discrimination based on age, should be taken. In 2003-2004 active employment policy programs had been implemented for the benefit of this group. Due to the low vocational skills of the women, programs had included retraining, motivation and on-the-job training. Although the program had been costly, it had not yielded many results so far, according to the authorities.

97. As regards the strengthening of the implementation of labour legislation, the Government's comments provided additional information about the legislation in force and the supervision of violations relating to employment and wages by the Labour Inspectorate. Following the entry into force of the new Inspection Supervision Act in 2002, certain new powers had been given to the inspectors. As a consequence, the preventive role of the Labour Inspectorate, according to the authorities, was further strengthened. In case of serious violations, the inspectors were also given new possibilities to act. During the follow-up visit, the Ministry of Labour, Family and Social Affairs provided information about labour inspections, the number of which had risen by 10 % in 2004. More than 4,000 violations had been found, mainly in the area of catering, construction and shops, and in small businesses in general. The violations were most often related to breaching contracts of employment, pay, overtime and holidays.

Although the mechanism has been strengthened in recent years, the authorities expressed doubts that this mechanism alone could fully address labour law violations.

Conclusions

98. The Commissioner welcomes the measures taken so far in respect of improving equal access to employment as well as the efforts taken to enforce the monitoring of labour rights. He shares the views expressed by the authorities that these measures alone will not be sufficient and encourages the authorities to increase the use of preventive measures, such as providing information to the employers, employees and the public about their rights and duties.

¹ Ms. Sirpa Rautio and Mr. Ignacio Perez. ² Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, CommDH(2003)11, 15 October 2003, on his visit to Slovenia, 11-14 May 2003, for the attention of the Committee of Ministers and the Parliamentary Assembly. The report was presented to the Committee of Ministers on 15 October 2003 and can be found on the Commissioner's website at www.commissioner.coe.int.

³ The follow-up visit included contacts with the Slovenian Ombudsman, Deputies of the National Assembly, the Mayor of Ljubljana and representatives of the Ministry of Foreign Affairs, Interior, Justice, Culture, Labour, Family and Social Affairs, Education and Sports the Office of the Director General of the Slovenian Police, the Government Office for Nationalities, the Ministry of Justice, the Government Office for the Disabled and Chronically Sick, the President of the District Court in Ljubljana and the President of the Constitutional Court of the Republic of Slovenia. In Novo Mesto, meetings were organised with municipal and school authorities, teachers, Roma representatives and representatives of parents of non-Roma children.

⁴ On 24 March 2004, the Government of Slovenia submitted comments to the Commissioner for Human Rights based on his report. These comments were appended to the first report and the information provided by the Government was taken into account when preparing for the follow-up visit and drafting this report. ⁵ The Government of Slovenia provided an explanation about the notion "autochthonous" in its comments to the Commissioner. According to the comments, the term is found in the Constitution of Republic of Slovenia, in Articles 5 and 64. The autochthonous character or historical settlement of a community usually is referred to if such a community has lived in an area for at least two generations. ⁶ ACTF/SR/II(2004)008. ⁷ In the 2002 census, 3,246 inhabitants declared themselves as Roma and 3,834 stated the Romany language as their mother tongue. According to data from the social work centres and municipalities, around 6,264 Roma autochthonously live in the Republic of Slovenia. It is estimated that between 7,000 and 10,000 Roma live in the Republic of Slovenia, the majority of them in Prekmurje, Dolenska, Posavje and Bela Kranina. Second report submitted by Slovenia pursuant to article 25, paragraph 1 of the Framework convention for the protection of national minorities, July 2004. ⁸ See below, Chapter IV for more information about the situation of the erased persons. ⁹ On 25 July 2005, the UN Human Rights Committee, in its Concluding Observations (CCPR/C/SVN/2004/2) expressed its concern about the difference in status between the so-called "autochthonous" (indigenous) and "non-autochthonous" (new) Roma communities in Slovenia and recommended that the Slovenian government consider eliminating such discrimination in status within the Roma minority. ¹⁰ Slovenia, Ministry of Education, Science and Sport. ¹¹ Recommendation No R (2000) 4 of the Committee of Ministers of Council of Europe. ¹² The letter, which is dated in Ljubljana, April 2005, is entitled "The Implementation model for the Brsiljin Elementary School prepared by the Ministry of Education and Sports is in conflict with the profession and the law". ¹³ The representatives of the Ministry of Labour, Family and Social affairs provides estimates, since there is no official data based on ethnicity, that the unemployment rate is 98% for Roma in Bela Krajina (south of the country) and 90% in Prekmurje (near the Hungarian border). ¹⁴ The NAP builds on the Joint Inclusion Memorandum (JIM) on matters relating to social inclusion signed in December 2003 between the European Commission and Slovenia. ¹⁵ In its 2005 conclusions on Slovenia, the European Committee of Social Rights under the European Social Charter (Revised) also requested detailed information on the steps taken or planned to improve the situation (Article 31, Paragraph 1, Right to adequate housing). ¹⁶ Recommendation Rec(2005)4 of the Committee of Ministers to member states, adopted on 23 February 2005. ¹⁷ Directive 2000/43/EC "Implementing the principle of equal treatment between persons irrespective of racial and ethnic origin". The other Directive 2000/78/EC was transposed to a considerable extent in the Employment Relationships Act, which entered into force already on 1 January 2003. ¹⁸ See for example a study, commissioned by ECRI, from March 2005 by Jean-Yves Camus on "The use of racist, anti-Semitic and xenophobic arguments in political discourse". The Study describes how in Slovenia "the campaigns for the European elections and the October 2004 general elections in Slovenia were marked by two other instances of xenophobia." Reference is made to the Referendum held on 4 April 2004 on restoring the rights of persons deleted from the register of permanent residents in February 1992. According to the Study, the referendum campaign led by the opposition parties was "smattered with xenophobic statements". It is to be noted that the outcome of the referendum was without any legal consequences. ¹⁹ Decision U-I-246/02 of 3 April 2003, Official Gazette RS, No 36/2003. ²⁰ The Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, from 1999. ²¹ Decision U-I-246/02-28, 22 December, issued on a related issue. For details, see the comments of the Slovenian Government in response to the Commissioner's report, page 34. ²² **On the terminology used, it is to be noted that the former holders of the occupancy rights became tenants in the denationalized apartments after the entry into force of the Denationalisation Act in December 1991.** ²³ The NAP's priority objectives in the period 2004-2006 as regards housing are the provision of non-profit housing, reformulated rents policy and introducing an effective system of rent subsidy, pages 10-11. ²⁴ The Council of Europe Committee of Ministers has issued recommendations to the member states on family mediation, mediation in penal matters, alternatives to litigation between administrative authorities and private parties and mediation in civil matters. See Recommendations No. R (98) 1, R (99) 19, Rec (2001) 9 and Rec (2002) 10 of the Committee of Ministers. ²⁵ Amnesty International, Slovenia: More needs to be done to ensure police accountability, Public Statement, 27 February 2004. ²⁶ In 2004, according to the statistics provided, there were only 14 trafficking-related cases, involving 19 victims, dealt with by the police. Additionally, 14 persons, assisted by an NGO, were potential trafficking victims, but were not part to any criminal proceedings. ²⁷ Appointed by a decision of the Government on 18 December 2003. The IWG is comprised of representatives of ministries and government bodies, international organizations and NGOs. ²⁸ New Article 397 a of the Criminal Code, which entered into force in July 2004, stipulates that the penalty for the crime of Trafficking in Persons is imprisonment from one to ten years and in cases involving trafficking of minors or under particularly aggravating circumstances, such as use of force, kidnapping or abuse, a minimum penalty of imprisonment to three years apply. ²⁹ For details, see the Government's comments, pages 40-45.