



FUNDAMENTAL RIGHTS AND THE RULE OF LAW

Report on the visit to Slovenia

17 - 18 November 2022



European Economic
and Social Committee



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Five members took part in the visit to Slovenia. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media and the legal professions, as well as the Slovenian authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

1. Fundamental rights related to the social partners

Participants in this session stated that Slovenia had historically had high standards in terms of **social dialogue**. The social partners had always cooperated well by reaching compromises and adopting legislative acts after fruitful discussions in the Economic and Social Council (ESC), the body responsible for social dialogue. However, the COVID-19 pandemic and the lack of political will under the previous government had had a negative impact on social dialogue.

It was explained that the model of Slovenian **collective bargaining** dated back to the 1990s. Currently there was no general collective agreement for all economic activities. According to participants, the Act regulating collective agreements would need to be reformed. One participant felt that collective bargaining agreements needed to apply to all activities, even in cases where employer associations would not be signatories. The Act on trade union representation also dated back to the 1990s, and set a minimum threshold of trade union members employed in an individual sector, profession or by an employer as the entry condition for acquiring the properties of the union's representativity at a certain level. Trade union membership had been declining and differed significantly across sectors.

Participants informed the delegation that, since 2017, all socio-economic and labour-related draft law had to be discussed in the ESC before being put forward by the government. They also referred to a non-written rule whereby such fundamental proposals had to be adopted with the consensus of the social partners. According to participants, this prior agreement of the social partners had been an accepted practice until the situation changed under the previous government. Participants acknowledged the government's urgency to act fast in response to the COVID-19 pandemic, but they also indicated that the social partners' trust had been abused on multiple occasions in that context. In their view, the COVID-19 pandemic had been used as an excuse for accelerated law-making, bypassing meaningful **consultations with the social partners**. As a protest against what they considered as disrespect of social dialogue standards, the trade unions stepped out of the ESC in 2021. They returned to the negotiation table in mid-2022, trusting that the change of government would be conducive to a revitalisation of social dialogue.

Despite acknowledging the re-establishment of the former consultation pattern, participants remained worried about the **potential long-lasting weakening** of social dialogue. They feared, in particular, that the involvement of the social partners in upcoming reforms related to the labour market, the pension system and healthcare would not be sufficiently meaningful. Participants perceived that social dialogue was treated by the government as a way to inform the social partners rather than as a proper consultation process. The Slovenian authorities acknowledged setbacks over the past two years, but sought to reassure the delegation that social dialogue had been re-established since mid-2022.

Participants were very critical of the fact that, in their view, trade unions had not been properly involved in national **discussions on EU initiatives** such as the European Semester, the National Recovery and Resilience Plan (NRRP), and the Energy Package. They wanted the social partners to be informed in good time and involved in the preparation and design of measures, especially those related to European funds. They suggested that the European Commission could request an independent opinion from the social partners, and that it could also check their level of involvement in transposing EU legislation.

It was pointed out that **hate speech** had escalated under the former government and during the COVID-19 pandemic, and that the social partners were among the recipients of such attacks. One participant mentioned that the new government had promised the introduction of a coordinator for the prevention of hate speech-related activities.

2. Freedom of association and freedom of assembly

Participants agreed that the **legal framework** for protecting freedom of association and freedom of assembly was up to international standards. There was no legal restriction on the activities of CSOs. The right to participate in decision-making was guaranteed by law and every draft law had to be subjected to mandatory consultation. Participants regretted that cooperation with the previous government on topics such as migration and the rule of law had been impossible.

According to participants, the COVID-19 crisis and the installation of the government of that time coincided with **limitations on freedom of association, assembly** and other rights. For example, protesters were fined and gatherings were sometime banned. Participants however appreciated that checks and balances had been resilient in that context: CSOs stood up to defend fundamental rights, and the review of COVID-related measures by the Constitutional Court was protective of rights. Participants believed that lessons could be learned from the crisis to ensure that Slovenia was better prepared to face situations of misuse of power through, for example, the inclusion of experts and an overall improvement of decision-making processes.

Participants explained that some CSOs experienced **verbal attacks and smear campaigns**. According to them, populist political forces continued to pursue an anti-civil society narrative which sometimes derived into hate speech against civil society. Participants advocated higher protection of human rights defenders at national level and supported the idea of a European Civil Society Strategy to bring further guarantees at EU level. The Slovenian authorities mentioned that an amendment to the criminal code had made hate speech and hate crime an aggravating circumstance.

Participants believed that **pressure on civil society** had diminished after the change of government in 2022. They explained that there was no more misuse of government decrees to narrow the civic space. However, participants also considered that the situation was only partially back to the pre-pandemic situation as some mild actions, like writing on the pavement, could now be fined.

The Slovenian authorities informed the delegation that some guidelines for fostering **cooperation with CSOs** were under preparation. The guidelines would provide contact persons in each ministry for CSOs to liaise with. The Slovenian authorities also indicated that legal solutions for misdemeanours

involving CSO members were also under consideration. The Slovenian authorities expressed their hope that these steps would help rebuild trust between the government and CSOs.

Participants explained that overall, the pattern of **funding for civil society** has been solid enough to resist the agenda changes of successive governments. The previous government had cut funding for CSOs in some specific areas like the cultural sector. The subsequent government had then re-established such funding and restored the funding available for civil society to pre-pandemic levels. Participants however regretted that appealing in court against funding decisions took a long time. One participant explained that all public funding to CSOs were allocated through public tenders and calls, dealt with by the relevant ministry in charge of the area concerned. It was also pointed out that political intervention was prevented by the fact that the minister or the Cabinet could not directly intervene in decisions on the allocation of funds, which were in the hands of civil servants. The Slovenian authorities mentioned that a call for proposals for CSOs promoting democracy, active citizenship and the rule of law was under preparation.

One participant mentioned the challenges faced by the **youth**. Over recent years, young people felt overburdened by the health and political crises while they also lost trust in politics, based on their perception that they had been used for political purposes and often not listened to.

3. Freedom of expression and freedom of the media

Participants explained that the position and **working conditions of journalists** had been deteriorating over the past years. They believed that pressure was constant inside and outside media outlets and that it stemmed from both media owners and politicians. Self-censorship existed as journalists felt that they were restricted as to what topics they could cover depending on who was the owner of their media outlet. It was explained that there was no longer a national collective agreement for journalists since 2017, the existing one being only valid for the public sector.

Participants affirmed that private **media concentration** was increasing, and that a single owner possessed dozens of media outlets, ranging from newspapers to radio channels. Media plurality had been particularly affected under the previous government, marked by the political takeover of the main newspapers, pressure on radio and television services as well as press agencies, and strategic litigation cases against journalists.

It was explained that media outlets were economically weak, and prone to be subject to **economic pressure**, through the threats of litigation and the loss of advertising revenues (which mostly stemmed from a few state-owned companies). In the COVID-19 context, the previous government had also cut funds to around thirty national and local media projects arguing that savings were needed. Participants believed that legal updates were needed to address the spread of misinformation, fake news and hate speech, and to better manage the development of social media.

Participants explained how the **criminalisation of defamation** was being used by politicians to take strategic litigation against public participation (SLAPPs) cases against journalists. Individual investigative journalists, especially active in the area of corruption, told the delegation about dozens of SLAPPs taken against them. Some cases were based on accusations like tax evasion and money laundering. Lawsuits could be launched from both the public prosecutor and private individuals and aimed to hit journalists financially, since there was no limitation on the number of cases that could be opened. Some participants felt that the judiciary also had a poor understanding of the reality of the pressure exerted on journalists through SLAPPs. The Slovenian authorities expressed their full support for the Commission initiative to address SLAPPs presented in April 2022.

Participants described how the Slovenian Press Agency (STA) had been the target of funding cuts by the previous government in 2020, allegedly because the government was not satisfied with the reporting from Brussels. They also explained how smear campaigns, intimidation and bullying

targeted journalists from the public service broadcaster RTV. RTV journalists had been on strike in 2022 to demand full editorial autonomy and an end to politically-motivated interference and censorship. Some TV hosts were removed from their posts at RTV in the context of the plan approved by the TV leadership to reduce news programmes. Journalists considered the difficult situation as the main cause of the very low level of trust towards the media in the general public. They added that two legal cases had been opened against the RTV head, including for lack of respect of the journalists' union rights. The Slovenian authorities considered the ongoing **heated atmosphere** as the outcome of many disagreements, especially on public media, over the last years. They expressed their hope that a return to previous management ways proposed in a November 2022 referendum would appease discussions around RTV and would prevent possible future interferences by governments.

Two participants considered that there were no restrictions on media freedom but rather a lack of pluralism, due to what they called an **imbalance of views** in the media sector in favour of left-wing takes. They considered that actions under the previous government had not been motivated by the objective of pressuring the media.

4. The right to non-discrimination

Participants considered that the right to non-discrimination was taken very seriously in Slovenia: a vast **legislative framework** provided that discrimination based on any grounds was prohibited in any area of public life, with an open-ground formula. Protection applied not only to individuals but also legal persons.

It was explained that the Equality Body had a far-reaching mandate, and wide-ranging tasks and powers beyond awareness-raising, including representation of victims in court, access to the Constitutional Court and collective action. Its decisions were binding and it could also make recommendations. **Data collection** on equality was considered scarce, affecting the ability of the equality body to monitor the situation. It was also felt that more funding was needed to increase research and data collection by CSOs, for example on ethnic discrimination. The Slovenian authorities informed the delegation that they were working on improving data collection, but that progress in that area required some time.

Despite the existence of good legislation, participants regretted certain gaps in policy implementation and a general prejudice in society. They explained that discrimination hit the most **marginalised persons and groups**, which included LGBTIQ+ people, minorities, foreigners and women. Discrimination was considered as high in access to the labour market and to healthcare, but it was also felt that integration in education, primary and secondary school had progressed significantly.

Participants explained that while there were some specific anti-discrimination **strategies**, an overall strategy was missing. Some essential sectoral strategies were also lacking, such as on racism, while the strategy on gender equality is in the process of adoption. A participant explained that the reasonable accommodation principle had not been implemented in line with EU standards and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD). The sanctioning of hate speech was also considered as flawed by some participants who believed that legislation on hate crime was needed and that intersectional discrimination needed to be better integrated in the law. Participants considered that there were minor issues with the Istanbul Convention (on action against violence against women and domestic violence) but that it was overall well implemented. The Slovenian authorities expressed strong support for the Istanbul Convention and said that a national strategy on preventing domestic violence was under preparation.

Participants explained that three pieces of legislation governed the situation of foreigners in Slovenia, including migrants, asylum-seekers and refugees: the International Protection Act, the Citizenship Act and the Foreigners Act. Participants believed that **pushbacks** at the border had decreased since the

change of government and said that the approach by the new government had included the tearing down of the fence at the southern border. Ahead of Croatia's entry into the Schengen area, one participant feared that pushbacks would increase again. It was explained that the vast majority of foreigners in the country were migrant workers and that the criteria for family reunification were restricted under the previous government.

Participants regretted that public capacity was lacking notably in the area of housing, affecting the ability of migrants to get a permanent address and, as a consequence, to get access to all rights and services. Practical **procedures for migrants** to obtain or renew their documents were considered as very slow, and the opening of a bank account was particularly difficult for migrants from certain countries. Participants explained that persons refused international protection went to detention centres and that in cases where deportation was impossible, they became "invisible" inhabitants, without any right or access to services. A participant said that minor migrants were detained in violation of international law. The Slovenian authorities said that the latest strategy on migration had been adopted in July 2019, providing a holistic and long-lasting approach.

Participants believed that the visibility and social inclusion of **LGBTIQ+ persons** had much improved in the last years. Two landmark Constitutional Court decisions had led to legal equality in the areas of marriage and adoption for same-sex partnerships. However, there had also been increasing episodes of hate crime and hate speech, especially against transgender persons. Female couples and single women were still discriminated against in access to infertility treatments. A participant explained that medical transition was decided by a group of experts, and regretted that no protocol to get a second opinion existed if the transition was denied. Participants acknowledged that laws provided for inclusiveness in education, but said that this mainly applied in relation to children with special needs and ethnic minorities rather than to LGBTIQ+ children. The Slovenian authorities referred to the need to work on awareness-raising to change public perceptions. They also voiced support for the EU LGBTIQ equality strategy, but admitted that no national mechanism was currently in place.

A participant explained that Slovenia was one of the first countries to adopt legislation on **Roma** inclusion. A public representative body for the Roma communities provided for consultation on policies that affected them. Unfortunately, it was felt that this body was not so representative and actually divided the communities. It was explained that discrimination was seriously under-reported by Roma persons. Many housing settlements still lacked infrastructure like running water, an issue which was being dealt with but in a slow way. Despite some progress in access to the labour market, unemployment for Roma individuals was still high, and so was the drop-out level in education. The health situation in Roma communities was considered as worse than the rest of the population; notably, Roma persons have a twenty-year lower life expectancy compared to other Slovenians. Participants believed that better policies for Roma communities were needed, and the Slovenian authorities stated their commitment to the betterment of conditions for Roma persons.

5. The rule of law

Overall, participants called for **vigilance on the rule of law** given what they considered as attacks led by the previous governments.

With regard to the **independence** of judges, it was explained that the Slovenian Parliament was preparing a change in the procedure for the nominations: candidates would still be chosen by the judicial council, but appointed by the President, and no longer by the Parliament.

Participants considered that courts were generally doing well in terms of **management of cases**: the backlog had decreased, as had the time taken to process cases. However, it was highlighted that the increase in strategic lawsuits (SLAPPs) might contribute to the remaining backlog. It was also said that an increasing number of cases did not end up in court, but were handled via alternative dispute

resolution mechanisms. The Slovenian authorities mentioned that some measures regarding the conditions of judges were under consideration, including assigning certain tasks to judges' assistants, in order to reduce the workload.

One participant pointed out the fact that politicians tended to see the **judiciary as subordinate** to the other powers, despite the fact that constitutional guarantees were clear on the matter. As a consequence of a lack of political will, salaries of judges had not been revaluated adequately. One participant considered that dissatisfaction of judges about their economic and social conditions was high. Judges would not consider as sufficient the future regulation on salaries in the public sector. The participant also regretted that the premises of the courts were old and below standard in terms of facilities, and that self-organisation of the courts was weak, as illustrated by their inability to organise online justice during the COVID-19 period.

It was explained that the **Ombudsman** office had received one third more cases between 2020-21 compared to pre-COVID-19 times. It was however regretted that most of its recommendations were not taken on board by the relevant authorities and that a rising number of Constitutional Court judgements remained unimplemented.

Concerning the profession of **lawyers**, one participant believed that the Slovenian authorities appeared to be reluctant to sign the European Convention on the Legal Profession. The participant also regretted the lack of action to address the fact that some semi-professionals gave legal services without being registered lawyers. One participant highlighted the need for additional measures to provide free legal aid, for amending the criminal victim compensation act as well as hiring more judicial experts. The Slovenian authorities did not consider that the material situation of the judiciary was so negative, and they confirmed their willingness to continue the dialogue with the courts.

Participants explained that, during the **COVID-19 crisis**, the government had pursued a "rule-by-decree" policy, imposing restrictions without parliamentary scrutiny and without always publishing decisions in the Official Journal. The Constitutional Court had declared some of these urgent decrees, notably restricting freedom of movement, as unconstitutional. It was also explained that, during that period, the police had begun claiming the costs of policing against protesters, as a way to restrict freedom of protest.

Participants explained that Slovenia had a bad track record concerning **corruption** and they regretted that not enough political priority was given to the issue. In 2021, Slovenia, on a downward trend, ranked below the Organisation for Economic Co-operation and Development (OECD) and EU average in the Transparency International Corruption Perception Index. It was said that only a tiny minority of alleged corruption cases were investigated, and that the number of cases addressed was lower than before. This was believed to explain the fact that surveys showed that half of Slovenians doubted the usefulness of reporting corruption cases. Participants regretted the absence of a strategy on transparency, the last one having expired in 2019. The Slovenian authorities said that proposals for a future strategy on transparency were under preparation.

One participant explained that the legal protection of **whistle-blowers** took the form of the 2022 Whistle-blower Protection Act, which was going to go through Parliament. The participant regretted that the draft law still presented some shortcomings, and called for protection to be extended to reporting on breaches against the spirit of the law, not only the narrow reading of the law, and for the limitation of reporting cases to be extended beyond the limit of two years.



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