



EUROPEAN COMMISSION

Directorate-General JUSTICE and CONSUMERS

Directorate D: Equality and Citizenship of the Union

Unit D.3: The rights of Union citizenship and free movement

Head of Unit

Subject: CHAP(2019)1382 - Društvo za pravice invalidov Slovenije

Dear Mr. Zoran,

I am writing to you regarding the complaint (CHAP(2019)1382) submitted electronically on 11 May 2019 on your behalf by Mr. Sebastjan Kamenik of *Društvo za pravice invalidov Slovenije*. I also refer to the additional information and documents sent under cover of letter of 1 June 2019 along with the email of 15 November 2019.

First of all, please accept my apologies for the delay to this reply. The Commission takes its correspondence with citizens very seriously, but it is not always possible to address all correspondence in due time.

In this complaint, you describe the difficulties persons with intellectual disabilities face in Slovenia when they want to vote. You state that under Slovenian law, persons with intellectual disabilities are not automatically included in the voter registry for European elections in Slovenia. Instead, a capacity assessment decision is taken by court decision when they reach 18, the age at which a person is normally registered in the voter roll. You describe that each person must individually challenge such a decision in court to obtain an affirmation of their capacity and be included in the voter roll. Such proceedings have limited chances of success.

You argue that this is neither in line with EU law and international standards nor with the Slovenian Constitution. You also reference a decision taken by the German Constitutional Court on 15 April 2019, where that Court ruled that German procedures which automatically deprived German citizens with intellectual disabilities of the right to vote were unconstitutional. You say that according to the Slovenian Ministry of Interior, 2035 persons with intellectual disabilities were excluded from the electoral rolls on the day of the European elections, 26 May 2019.

Democracy is a founding value of the European Union. Citizens are directly represented at Union level in the European Parliament, the Members of which must be elected by direct universal suffrage in a free and secret ballot. The European Commission takes the rights of citizens, including citizens with disabilities, to vote and stand in the elections to the European Parliament very seriously. Promoting democratic participation is a shared responsibility among the local, national and European levels, and it has been a particular focus of the Commission's efforts in this respect to encourage best practices to increase the participation of young people and vulnerable and underrepresented groups, including persons with disabilities. The Commission has provided substantial funding since 2014 to support such activities, as well as promoting the exchange of good practices among the competent national authorities and having studies conducted of such activities and of the challenges that underrepresented groups of citizens face in the exercise of their democratic rights.

In this regard, I refer you to the Commission's report on the 2019 elections to the European Parliament which is now published on our website: https://ec.europa.eu/info/files/com_2020_252_en.pdf_en. This report reviews measures to promote the democratic participation of all European citizens and page 7 entitled, 'EU Citizens with disabilities' may be of particular interest to you.

From the documents your representative sent on your behalf, your situation appears to be as follows:

- Decision No N43/2017 of Novo Mesto District Court of 14.7.2017 deprived you of your right to vote.
- In response, you submitted an application at the Constitutional Court of the Republic of Slovenia challenging Article 7 of the Slovenian National Assembly Elections Act (UL RS Nos 109/06, 54/07, 23/17). This request for review was dismissed on a number of grounds, including that the request was not duly signed, there was a lack of legal interest, and there are other legal remedies available.
- Article 7 of the National Assembly Elections Act provides that a citizen of the Republic of Slovenia who has reached the age of eighteen but who lacks capacity due to mental illness, retardation or impairment, or for whom parental rights or other guardians' rights were extended after the age of their adulthood because they are not able to understand the meaning, purpose and effects of elections, does not have the right to vote and be elected. On the basis of this law, the court must specifically decide on the question of whether a person is capable of exercising the right to vote and stand for election in the proceedings determining the withdrawal of capacity or extending the rights of parents or guardians over an individual after the age of adulthood.

EU citizens have the right to vote for and stand as a candidate in European Parliament elections in their country of origin, or if they live in another EU country, they may choose to vote and stand there, under the same conditions as the nationals of that country. This is provided in Article 22 of the Treaty on the Functioning of the European Union and Articles 39 and 40 of the EU Charter of Fundamental Rights. Article 1 of the Act concerning the election of the members of the European Parliament by direct universal suffrage of 20 September 1976 ('1976 Act') provides that elections shall be by direct universal suffrage and shall be free and secret. Article 8 states that subject to the provisions of the Act, the electoral procedure shall be governed in each Member State by its national provisions.

As the Court of Justice of the European Union found in its judgment in *Delvigne*¹, the 1976 Act does not define expressly and precisely who is to be entitled to exercise the right to vote or to stand in the elections to the European Parliament. As EU law currently stands, the definition of the persons entitled to exercise that right falls within the competence of each Member State in compliance with EU law.

Article 52(1) of the Charter accepts that limitations may be imposed on the exercise of rights such as those set forth in Article 39(2) of the Charter, as long as the limitations are provided for by law, respect the essence of those rights and freedoms and, subject to the principle of proportionality, are necessary and genuinely meet objectives of general interest recognised by the European Union or the need to protect the rights and freedoms of others. Restrictions must also not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; they must pursue a legitimate aim and be proportionate.²

Subject to the respect of certain basic principles, such as those laid down in Articles 2 and 14 of the Treaty on European Union, it is the competence and the responsibility of the Member States to define the franchise and lay down the specific conditions for the conduct of elections, and of the competent national administrative and judicial authorities to ensure compliance with applicable law and relevant standards. As such, the European Commission does not have a general competence in electoral matters.

National courts play the key role in securing rights of individuals.

This means that where there are further legal remedies available to you to challenge the decision depriving you of your right to vote, you should seek redress at national level through the competent authorities, including, the courts.

In addition, anyone who considers that his or her rights or freedoms guaranteed by the European Convention on Human Rights have been violated may lodge a complaint with the European Court of Human Rights (Council of Europe, 67075 Strasbourg Cedex, France³). In this regard, the Court's prior judgment on related issues in *Kiss v. Hungary*⁴ may be of general assistance to you. Please note, however, that this Court may only deal with a complaint after all domestic remedies have been exhausted.

Furthermore, Slovenia is a party to the UN Convention on the Rights of Persons with Disabilities (UNCRPD). In addition, the EU is also a party to the UNCRPD. The UNCRPD is an integral part of the EU legal order. Article 29 on Participation in political and public life requires State Parties to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others. Slovenia is also a party to the Optional Protocol of the UNCRPD. Consequently, an individual or groups of individuals, who claim to be victims of a violation of the provisions of the Convention by that Member State, under certain conditions, may send complaints to the United Nations Committee on the Rights of Persons with Disabilities. These conditions include in particular that all available domestic remedies have been exhausted. Further information

¹ Case C-650/13 *Delvigne* ECLI:EU:C:2015:648.

² Compare with the judgment of the European Court of Human Rights of 6 October 2005 in *Hirst v United Kingdom*, Application No. 74025/01, paragraph 62.

³ <http://www.echr.coe.int/ECHR>

⁴ European Court of Human Rights, *Alajos Kiss v. Hungary*, Application No. 38832/06, 20 May 2010.

can be found at the website of the United Nations Office of the High Commissioner for Human Rights⁵.

Thank you very much for the valuable information that you have provided but unless we receive new information that would indicate that there is an infringement or a general practice violating EU law within four weeks of the date of this letter that could cause us to change our assessment, we will close your complaint.

Yours sincerely,

(e-Signed)
Marie-Hélène Boulanger

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⁵ <http://www.ohchr.org/EN/Issues/Disability/Pages/DisabilityIndex.aspx>