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SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

Alternative report by the Human Rights Ombudsman of the Republic of Slovenia to the Advisory Committee on the Framework Convention for the Protection of National Minorities

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The Human Rights Ombudsman of the Republic of Slovenia, a national human rights institution (hereafter “the Ombudsman”), submits this report to the Advisory Committee on the Framework Convention for the Protection of National Minorities as part of its fifth round of monitoring of the implementation of the Framework Convention for the Protection of National Minorities in Slovenia.

The Ombudsman is a constitutional body mandated to protect and promote human rights in Slovenia, with status A awarded according to Principles relating to the Status of National Institutions (Paris Principles). Its mandate includes investigating complaints, monitoring, researching, addressing opinions and recommendations to authorities, human rights education and awareness-raising. With the establishment of its internal organisational unit Center for Human Rights in 2019, the Ombudsman increased its capacity to report to treaty monitoring bodies.

Relating to the rights and obligations set in the Framework Convention for the Protection of National Minorities, the Ombudsman observed several issues where improvement is warranted for full compliance with Convention’s requirements. The information provided in this report focuses on the topics where the Ombudsman is able to provide input based on its observations when dealing with received complaints and its research of specific issues. It should thus not be taken necessarily as an exhaustive list of systemic problems related to the Convention.

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The Ombudsman’s findings based on received individual complaints and its general assessments of the position and rights of national and ethnic minorities are presented in the Ombudsman’s annual reports in a chapter “National and Ethnic Communities”.¹

¹ Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for:
- 2020, Slovenian version, pages 122-153 , https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2020/Letno_porocilo2020_-_pop.pdf, the English (abbreviated version is planned to be published in November 2021);

In 2020, the Ombudsman received 57 complaints regarding the position and rights of national or ethnic minorities. Forty of these were related to the position and rights of the Roma community and its members, six to position and rights of the Italian and Hungarian national communities and their members, and one to other national or ethnic communities. Among 38 resolved complaints in 2020, the Ombudsman found 11 to be justified.² In 2019 the Ombudsman received 25 complaints. Sixteen were related to the position and rights of the Roma community and its members, two to position and rights of the Italian and Hungarian national communities and their members, and three to other national or ethnic communities. Among 17 complaints resolved in 2019, the Ombudsman found one to be justified.³ In 2018 the Ombudsman received 26 complaints⁴ and 27 in 2017.⁵

From 2017 to 2020, the Ombudsman regularly met with representatives of national and ethnic communities, including during some monthly “business” days outside the office in Ljubljana. These are organised to make the Ombudsman as accessible as possible to individuals who cannot attend a meeting at the head office in Ljubljana due to distance or for another reason. To that end, and to get a broader picture of the situation, the Ombudsman also regularly visits the Roma settlements on its own initiative.

In 2017 the Ombudsman published a brochure presenting its work and the mandate. The brochure was translated into Italian and Hungarian and three versions of the Roma language. A new brochure in all those languages is being prepared in 2021.

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- 2019, English abbreviated version, pages 75-81, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf;
 - 2018, English abbreviated version, pages 95-106, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf
 - 2017, English abbreviated version, pages 91-111, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf.

² More information can be found in the table in the 2020 Ombudsman's annual report (Slovenian version), page 122.

³ 2019 Ombudsman's annual report (English version), page 75.

⁴ 2018 Ombudsman's annual report (English version), page 95.

⁵ 2017 Ombudsman's annual report (English version), page 91.

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THE SITUATION AND RIGHTS OF THE ROMA COMMUNITY AND ITS MEMBERS

The Ombudsman has been repeating the same recommendations regarding improving the human rights of members of the Roma community for years. His recommendations focused on the access to water, sanitation, electricity; legal and communal regulation of settlements; adoption of detailed municipal sectoral programs; a collection of data on inclusion and performance in schools and employment.⁶

Reviewing the Seventh Report of the Government of the Republic of Slovenia on the Situation of the Roma Community in Slovenia published in November 2020, one cannot conclude that nothing has been done for the Roma, as the report, together with the annexes, covers as many as 137 pages. The Ombudsman undoubtedly commended the inclusion of Roma assistants in primary schools and partly in secondary schools and the systematisation of the Roma assistant position, which took place in 2021. The Ombudsman also welcomed the legal and communal regulation project of the Roma settlement **Žabjak** - with criticism, however. Due to the **Žabjak** project, all other projects for spatial planning of Roma settlements in the whole country have been stopped for four years.⁷

In general, given that the Government's report contains 137 pages describing the activities to improve the situation of the Roma community, the question arises as to how the report does not reveal anything that would indicate a significant shift in the implementation of the Ombudsman's recommendations.

Quite the opposite, the report includes the National Council of the Republic of Slovenia comment on the previous report saying that for years these reports have been revolving around the same problems and warnings. "No significant progress has been detected; there is even a feeling that the situation in south-eastern Slovenia is deteriorating, despite all the efforts and the financial investment."

Similar were conclusions of the discussions conducted in 2019 by the Government Office for National Minorities within the National Platform for Roma project framework.⁸ The participants were mainly unanimous that the situation, especially in the most vulnerable Roma settlements in the southeast of the country, is getting worse; the problems are accumulating, and coexistence is deteriorating. They pointed out that numerous settlements are still illegal, communally-infrastructurally unregulated and unsuitable for living in dignity. Their de facto ghettoisation further hinders the acquisition of linguistic and social competencies for full inclusion in society. They added that the health condition of the inhabitants of these settlements is deplorable, and their primary source of income is social benefits and child allowances.

⁶ The concrete recommendations are presented through this report and in the Annex in the end.

⁷ E.g. statement from p. 14 of the report: "Due to the co-financing of this project, the Ministry of Economic Development and Technology has not carried out any other activities since 1 January 2017".

⁸ Seventh Report of the Government of the Republic of Slovenia on the Situation of the Roma Community, 5. 11. 2020, page 3.

Based on these findings, the participants identified the regulation of living conditions as one of the preconditions for improving the situation. In this regard, the municipalities made it very clear that they need financial, professional and political support from the state.

The following key area identified in the National Platform for Roma is the need for multidisciplinary treatment and monitoring of families in the most vulnerable environments from birth onwards. Since the preschool period is crucial for acquiring the Slovene language and basic social skills necessary for successful inclusion in school and this period is also vital for inclusion in health care programs and developing a responsible attitude for one's health, the participants suggested that interdepartmental cooperation at both the state and the local level should be developed, to enable comprehensive support programs for Roma children (and their families) in the preschool period.⁹

The authorities should question why all the measures and activities haven't brought much-needed progress over the years and why the situation is deteriorating. Perhaps one of the reasons is that the improvement or deterioration is not measured at all - and implementers and preparers of measures are not tied to any concrete results. For instance, it is more than evident that in the field of education, the most pressing is the involvement and success of Roma children in completing individual grades of primary school. However, the Government's report does not include any information on that.

One of the reasons why the measures do not achieve the desired effects could also be in the design of the National Program of Measures for Roma and related measures and reports on their implementation. Many measures are about analysing the situation and identifying problems, which does not directly affect members of the Roma community, or the measures are about awareness-raising, informing the Roma community.

The problem may also be in the fragmentation of the issue between the Government, ministries, Government Office for National Minorities, municipalities and transferring of responsibilities from the municipalities to the Government, from the Government Office for National Minorities, from the Government Office for National Minorities to the ministries, from ministries to special working bodies, and from these then back to the municipalities or the Government.

The problem is also that when the Government's reports identify individual concrete issues that would require an immediate response from the competent ministries to prepare appropriate legal bases, the identified problem remains unresolved. For instance, the problem of Roma settlements that cannot be legally regulated, the issue of housing for members of the Roma community, the case of monitoring the situation and progress in the Roma community, the adoption of municipal detailed sectoral programs and the issue of providing more favourable legal bases and financial resources for legalisation of Roma facilities.

Therefore, the Ombudsman's conclusion can be quite critical. For instance, it does not follow from the Government's report that in 2019 any of the Roma were provided with a connection to the basic infrastructure (water, electricity, sanitation). Even though there are critical problems

⁹ Ibid, page 36.

regarding effective inclusion in primary schools, we still do not have data on the attendance and performance of Roma pupils, allegedly due to inadequate legal bases for personal data processing.

Time and time again, the special rights of the Roma community revolve around the same circle: long-term unemployment means no means to improve living conditions which mean living in deplorable living conditions, which affect success in school. Poor education leads to unemployment, and the vicious circle of the hopeless situation of members of the Roma community is thus closed. Unfortunately, most measures aimed at the Roma community are focused on various consultations, analyses, problem identification and (non-binding and always the same) proposals for measures by different (always new) bodies. However, it has been clear for decades where the most significant obstacles to Roma inclusion into Slovenian society are: in living conditions, primary education and employment. Measures to improve the situation should be practical, aimed at directly improving the Roma community members' situation "here and now". Their effects should be measurable.

Living conditions

The vast majority of Roma in southeast Slovenia live in segregated Roma settlements, frequently lacking basic living conditions, including access to drinking water, sanitation and electricity.

In 2012 the Ombudsman prepared a special report on the living conditions of Roma in the area of south-eastern Slovenia,¹⁰ in which it made six recommendations to local authorities and the Government of the Republic of Slovenia.

The Ombudsman has repeatedly called for ensuring access to safe drinking water to all inhabitants of Roma settlements and highlighted the importance of the supply of electricity.

The Ombudsman found that the conditions in Roma settlements, which are not regulated legally and in terms of municipal infrastructure, are worse than in places where settlements are legalised. The Ombudsman repeatedly reiterated that the legal and communal disorder of Roma settlements endangers the fulfilment of the human rights and special rights of the Roma community on the one hand, and the fulfilment of the human rights and fundamental freedoms of citizens living in the vicinity of illegal Roma settlements on the other hand – so that both rightly feel affected in their dignity, personal rights, property rights, equality before the law, and, ultimately, in their confidence in the rule of law.¹¹

There is an obvious need for a Government strategy for settlements that, for one reason or another, actually cannot be legalised. Therefore, the Government should address the perceived problem immediately and adopt a solution, but nothing has been done for years.

¹⁰ https://www.varuh-rs.si/fileadmin/user_upload/pdf/posebna_porocila/POSEBNO_POROCILO_ROMI_-_maj_2012_-_za_splet.pdf

¹¹ 2019 Ombudsman's annual report (English version), page 75, 2017 Ombudsman's annual report (English version), page 92, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf

From 2017-2020 the Ombudsman issued the following recommendations in annual reports:

- The Ombudsman called on the Government of the Republic of Slovenia to promptly see to the preparation of appropriate legal groundwork enabling members of the Roma community who live in illegal settlements to actually and effectively enforce their human rights, i.e. access to drinking water, toilet facilities, and electricity. (Issued in 2017)
- The Ombudsman advised the Government of the Republic of Slovenia to enhance activities for drafting a special act for emergency regulation of Roma settlements. (Issued in 2019)
- The Ombudsman recommended that the Government of the Republic of Slovenia draws up a strategy on what to do with Roma settlements that cannot be legalised. (Issued in 2020).

All of the above recommendations remain unrealised.

Unfortunately, the draft National Programme of Measures for Roma 2021-2030 also doesn't bring much to be optimistic about. Under strategic goal "to improve living conditions, speed up the regulation of settlements with a majority Roma population, ensure access to public goods and promote the elimination of de facto **segregation**," one could only find the following proposed measures: data entry into the spatial information system and preparation of a proposal for a unified, systematised, periodically implemented database and its updating.¹²

At the local level, the readiness to make long-term arrangements to improve conditions for Roma depends on mayors and **majorities'** (political) will in municipal councils. Political survival with such priorities in the local environment is difficult, so the state should help municipalities by providing financial assistance and taking the necessary decisions when local politicians cannot or do not want to. Municipalities are realising the commitments from the national programme for the Roma as they wish; however, there is no readiness at the governmental level to sanction those who do not want to realise the programme or even fail to provide information about this.¹³

The Seventh Report of the Government of the Republic of Slovenia on the Situation of the Roma Community, for instance, states: "It is still possible to establish that most municipalities have not adopted a detailed sectoral program based on the second paragraph of Article 6 of Roma Community in the Republic of Slovenia Act ZRomS-1 in the form of a comprehensive and realistic document that would systematically implement and monitor progress at the local **level**." The municipalities do not fulfil the minimum obligations from ZRomS-1 without any (legal) consequences.

The Ombudsman has been warning for years and has also been making making concrete recommendations, but nothing concrete has happened yet.

- In 2019, the Ombudsman recommended that the Government of the Republic of Slovenia appoints a ministry to implement supervision as per Chapter 10 of the Local Self-Government Act

¹² <https://www.gov.si/zbirke/javne-objave/osnutek-nacionalnega-programa-ukrepov-vlade-republike-slovenije-za-rome-za-obdobje-2021-2030/>

¹³ 2015 Ombudsman's annual report (English version), pages 38-39, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/vcp_lp_2015_eng.pdf

over the (un)fulfilment of the legal obligation of the Municipality of **Brežice** regarding the adoption of a detailed sectoral programme and measures for the legal regulation of the settlement of **Krušče** and the provision of municipal utility services (paragraph two of Article 6 of the Roma Community in the Republic of Slovenia Act).

- In 2018 and again in 2019, the Ombudsman recommended that the Government Office for National Minorities proposes or submits an incentive to the Government of the Republic of Slovenia to order the ministry responsible for this field to examine the detailed sectoral programme and measures of the Municipality of **Šentjernej**, if these exist, or provide reasons why these do not exist and determine whether the municipal administration acts in accordance with the Roma Community in the Republic of Slovenia Act and, if necessary, propose suitable measures and report to the Government on this matter.

- In 2019, the Ombudsman recommended that the Government of the Republic of Slovenia instructs the Ministry of the Environment and Spatial Planning to examine the fulfilment of legal obligations concerning the adoption of a detailed sectoral programme and measures for arranging spatial issues in Roma settlements (paragraph two of Article 6 in connection with paragraph eight of Article 16 of the Roma Community in the Republic of Slovenia Act) in the Municipality of **Šentjernej** and implement a task in this regard as per sentence two of paragraph three of Article 88a of the Local Self-Government Act.

All of the above recommendations remain unrealised.

Regarding adequate access to water, the Ombudsman noted a setback instead of the much-needed progress. The Ombudsman considers providing drinking water through a water tank as a step backwards with regard to the Government statement from 2011 that the observance of the right to drinking water arising from Slovenian and international legislation requires the provision of access through a public water supply system. He reiterated that installing plastic water tanks in Roma settlements could only act as a temporary measure. Such measures are completely unsuitable in times of particularly high and low temperatures.

The situation regarding access to drinking water in Roma settlements can be illustrated with the following concrete example.

In the Roma settlement of **Goriča vas** in the municipality of Ribnica, a baby died at the end of 2019, according to the available information, also due to inadequate living conditions.

The Ombudsman issued a recommendation to ensure adequate access to drinking water in the Special Report on the Living Conditions of the Roma in South-Eastern Slovenia from May 2012. Concerning **Goriča vas**, in March 2014, the Ombudsman issued a recommendation to the mayor that the local population be provided with access to basic infrastructure, especially drinking water and sanitation, which the mayor did not follow. Then Ombudsman again in 2015 called on the Government of the Republic of Slovenia to take and implement all necessary measures to ensure access to drinking water and sanitation in the Roma settlement of **Goriča vas** as soon as possible, providing public access or access at a public connection. As the Government did not follow this

proposal, the Ombudsman made a final assessment that the human rights and fundamental freedoms of the inhabitants of the Roma settlement of **Goriča** was were violated.

Following the above-mentioned tragic event involving a baby, the Ombudsman, in assessing that the communal disorder of the Roma settlement of **Goriča** was is seriously endangering the health of members of the Roma community living there, in February 2020 (again) proposed to the Government of the Republic of Slovenia to urgently take and implement all necessary measures to ensure access to drinking water, sanitation and electricity in the said Roma settlement - or to provide its inhabitants in another appropriate way (e.g. by relocation) to ensure decent living conditions, with guaranteed access to drinking water, sanitation and electricity. The Ombudsman did not receive a response within the set deadline.

The Ombudsman also regularly draws attention to the close connection between living conditions for children with school performance and (later) employability. As a result of the violation of the right of access to water and sanitation, Roma children face serious threats to their health and the health of those they come in contact with (e.g. at school) and to severe obstacles to growing up and education, which will permanently mark their personality and further life path.

Health

The Ombudsman would also like to draw the attention of the esteemed Committee to the very worrying data on the health of the Roma. The research published by the National Institute of Public Health in 2018 showed that the average life expectancy for Roma men is 48 years and 63 years for women, which is on average almost 20 years less than the general population of Slovenia (with an average life expectancy of 77 years). The share of premature mortality among Roma is 69 %, significantly higher than the average for Slovenia, 19 %. The research also showed that the mortality rate of Roma children from the age of one to the age of five is seven times higher compared to children of the same age in the entire population, that Roma women have a very high rate of hospitalisations due to conditions related to pregnancy, childbirth and the postpartum period (16 times higher than entire population), and that Roma have a higher rate of hospitalisations due to respiratory diseases, infectious and parasitic diseases, circulatory and gastrointestinal diseases. The Institute concluded that the health of Roma in Slovenia is generally affected mainly by socio-economic factors such as unsuitable living conditions, low level of general and health literacy, multigenerational unemployment, poverty, multiple disadvantage and social exclusion.¹⁴

Inclusion of Roma children in education

There is no publicly available data on the total number or percentage of Roma children attending preschool and elementary school in Slovenia. In general, the educational structure of Roma is considered to be very poor.

¹⁴ https://www.nijz.si/sites/www.nijz.si/files/publikacije-datoteke/javnozdravstveni_pristopi_romi.pdf.

According to the Institute for Ethnic Studies research results, around 166 to 172 Roma children attended secondary schools in 2018/2019, and 14 Roma students were pursuing a university degree.¹⁵ It can be understood from the draft National Programme of Measures for Roma 2021-2030 that the Institute is currently undertaking a study on the level of participation in the success of Roma pupils in elementary schools, which should provide valuable new information.¹⁶

The Ombudsman commended the measure to include Roma assistants in primary schools and partly in secondary schools. In 2020 it recommended systematising the post of Roma assistant (for kindergartens, primary and secondary schools with a Roma population). The Ministry of Education, Science and Sport realised the Ombudsman's recommendation in 2021.

In April 2018, the Ombudsman visited five Roma settlements in the Municipality of Šentjernej. In one of them, **Draškovec**, residents said that their schoolchildren were not ensured free transport to school, even though the school is far away from their home and the path leading to the school is dangerous (no pavements, street lights, marked pedestrian crossings, etc.). The right to free transport to school is regulated in the Basic School Act, which stipulates that pupils have the right to free transport if their home is more than four kilometres away from the primary school and that pupils have the right to free transport regardless of the distance between their home and the elementary school in the first grade. They also have this right in higher grades if the competent road safety authority establishes that the pupil's safety is at risk on their way to school. Funds for the transport of primary school pupils are provided from the funds of the local community. In its responses, the municipality did not manage to explain why Roma children from settlements **Draškovec** and **Roje**, which are both more than four kilometres away from the school, must walk 2 or 1.5 kilometres on an unlit and dirt track road without pavements to the bus stops in settlements which are less than four kilometres away from the school. The Ombudsman also found out that when planning free bus transport, the municipality didn't take into account the unique position of children living in those Roma settlements (no pavements and street lights from Roma settlements to the bus stop; poor living conditions; no access to drinking water, sanitation and electricity; uneducated and unemployed parents; poor economic situation; poor educational achievements of children...).¹⁷

In 2018 and again in 2019, the Ombudsman advised the Government Office for National Minorities to propose or submit an incentive to the Government of the Republic of Slovenia to order the ministry responsible for this field to examine the organisation of free bus transport for Roma children to primary school in the Municipality of Šentjernej and determine whether the municipal administration is acting in accordance with legislation and, if necessary, propose suitable measures and report to the Government on this matter. Unfortunately, the recommendation remains unrealised.

¹⁵ <http://www.inv.si/Dokumenti/dokumenti.aspx?iddoc=944&idmenu1=19&lang=slo>.

¹⁶ <https://www.gov.si/zbirke/javne-objave/osnutek-nacionalnega-programa-ukrepov-vlade-republike-slovenije-za-rome-za-obdobje-2021-2030/>.

¹⁷ Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018, English abbreviated version, pages 102-103, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf

Distance learning for Roma pupils in time of covid-19

One of the measures to curb the covid-19 epidemic was the closure of primary schools. From 16th March to 25th May 2020, classes were held only at a distance. Knowing the socio-economic situation of many Roma in Slovenia (life in informal settlements without access to electricity, poverty, frequent illiteracy of parents, comparatively lower percentage of children completing **primary education...**) and the fact that distance learning was largely based on access to information technology and required at least some active parental involvement with young schoolchildren, the Ombudsman estimated that adaptations and special attention were needed for students living in such circumstances so they would be guaranteed the right to education during the duration of the distance learning measure, and the gap between children in terms of their access to education and performance will not increase (even more) during this time. Therefore, at the beginning of April, the Ombudsman addressed the principals of 34 primary schools with Roma students with questions about how distance learning takes place, how they send instructions, assignments, etc. to students or parents; whether children and parents need access to electricity, internet, computer/tablet/smartphone/printer to learn from home; whether they have information about all students or whether they have the necessary goods at their disposal; what deficiencies or other specific challenges may be observed in Roma children; whether they have information, if the parents of one of the younger children are unable to help with homework because they are illiterate, their help would be needed; and whether they have in any way ensured that children who lack any of the above nevertheless have equal access to education and how. The Ombudsman received responses from 31 primary schools. In June, the Ombudsman also addressed questions to Roma assistants, who are available to Roma children in 33 schools as part of the *Together for Knowledge* project to help them overcome various problems (in this context, they work with professionals. schools or kindergartens), help children to become more easily involved in the learning process, and also represent an important link between the school, students and parents, members of the Roma community. The Ombudsman asked them what deficiencies or other specific challenges, in general, they might observe in Roma children, what specific problems or challenges they perceived in distance learning, how care was taken to ensure that Roma children had equal access to education during this time; where the gaps were. Due to the epidemiological situation at that time, the Ombudsman could not check the situation through conversations with Roma children or their parents, as we could not visit them.

It follows from the answers that distance education took place in online classrooms, with the help of an eAssistant, through the school website, where students and parents received all the instructions for work. Pupils communicated with teachers via telephone, e-mail, social networks (Skype, Messenger, Viber, Facebook), and online video communication tools (Zoom). In all schools, students needed electricity, internet, and a computer or tablet to work. The responses show that schools mostly checked whether Roma children had these goods at their disposal and found that they mostly did not have the electronic devices needed to work from home through online classrooms and other online tools and routes. Many schools provided children with computers with the ministry's help, the municipality, and even donors. Still, they warned that they perceived a lack of knowledge in the use of information technology. Many reported that

students did not have a computer or the internet in individual cases where the material was delivered to them or sent by mail. It seems that Roma assistants were very helpful in implementing distance education and were actively involved in the implementation itself - helping students understand the tasks, or helping to communicate with Roma parents or copying and delivering materials to Roma students. Some schools said that they adapted the material for Roma children. It concerns that some of them stated that they had prepared materials for Roma in accordance with “minimum standards”. All responses highlighted the specific problems and challenges facing Roma children. The following were pointed out repeatedly: children do not have access to technology or do not know how to use it; work via computers and tablets presents a considerable problem; living conditions make schoolwork difficult, some children do not even have the necessities: their desk, chair, work materials (paper, glue, crayons, pencils...); motivation to learn is low... Principals and Roma assistants pointed out that some students do not have a supportive environment at home. Their parents often do not know how to help them (also due to poor understanding of the Slovenian language), and some parents do not cooperate well with school. Some principals also noticed a lack of parental awareness that school is important. Based on the answers, the Ombudsman estimated that primary schools in principle had in mind the special circumstances of Roma students and that quite a bit of effort and additional activities were invested in support of Roma students - through communication, printing and delivery of teaching materials and computers. However, according to the answers received, it is worrying that not all children were effectively included in school (the school did not get to them at all or were educated according to lower standards). The answers also show that many Roma children face shortages and special challenges and are in a very bad and comparatively worse position than other students in schooling in general, and even more so during distance learning.¹⁸

Violence against (Roma) women

The Ombudsman notes that Slovenia lacks (national) representative research on the incidence of violence against women, domestic violence and violence in general, which would reveal a complete picture of the presence of violence, not of only what is being reported to law enforcement authorities. The Ombudsman believes that more attention should be paid to effective research and documentation of the extent, causes, consequences, and signs of violence and obtaining reliable, comparative data that would lead to effective policies to prevent and eliminate the consequences of violence and enable the effectiveness of measures to be effectively assessed. In the context of domestic violence, it is necessary to explore the extent of violence against women, men, children, the elderly and to pay due attention to people with disabilities, migrants and those living in Roma communities, etc. Adequate attention should be given to identifying the exposure to sexual and domestic violence and help-seeking behaviour of Roma women.

Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) noted in its 2021 report on Slovenia that the particular situation of Roma women and girls and their exposure to gender-based violence is not sufficiently studied. Therefore GREVIO encouraged

¹⁸ The schools were closed again in October 2020 and January 2021.

the Slovenian authorities to address, through research, all forms of violence against women such as sexual violence, sexual harassment and forced marriage or other traditional practices harmful to women, as well as violence affecting vulnerable groups of women such as Roma women and girls, women and girls with disabilities and migrant women.¹⁹

While appreciating the efforts made by the authorities in Slovenia to raise awareness of the different forms of violence against women, GREVIO noted that some forms of violence such as psychological and economic violence, forced marriage and sexual harassment at work or the harm done to children who witness violence remain insufficiently addressed. Thus, it pointed to the need to extend the scope of awareness-raising campaigns to address all forms of violence against women covered by the Convention, especially those that remain underreported. GREVIO also noted that none of the campaigns seems to address Roma women. GREVIO, therefore, emphasised the need to address explicitly the needs and concerns of women at risk of intersectional forms of discrimination.²⁰

Two Slovenian NGO's - Association for non-violent communication and Association SOS Help-line for women and children – victims of violence – warned in their submission to GREVIO in November 2019 that despite consultations and round tables on forced and early marriages organised by the Government's Office for National Minorities in 2018 and 2019, professionals in the education, health and the social welfare sectors who come into contact with the victim still do not intervene when cases occur. That is either due to the lack of knowledge and practical training or due to the still present stigmatisation and normalisation of such abuse within the Roma community.²¹ GREVIO noted that this seems to indicate that more training is needed, in particular training that deconstructs the persistent stigmatisation of the Roma community and the perception of customary and forced marriages as an inevitable consequence of cultural differences, which should not be addressed through the application of the law.²²

GREVIO also noted that »despite the specific criminal provision on forced marriage, concerns have been expressed in relation to its enforcement by law-enforcement agencies. There seems to be a tendency to consider forced marriage as a cultural practice, prevalent mostly among the Roma community, which does not necessarily entail the state's responsibility to act. This may explain why there have been no convictions for forced marriage in Slovenia since the introduction of the offence in 2015. Another reason is the reluctance shown by girls from the Roma communities to report forced marriage, mainly because of fear and lack of information about the available remedies. The same reluctance and hesitation have also been noticed among

¹⁹ GREVIO's (Baseline) Evaluation Report on legislative and other measures giving effect to the provisions of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) Slovenia, adopted in June 2021, published in October 2021, paragraphs 89 and 90, <https://rm.coe.int/first-baseline-report-on-slovenia/1680a4208b>.

²⁰ Ibid, paragraphs 95 and 96.

²¹ Association for non-violent communication and Association SOS Help-line for women and children – victims of violence, Alternative Report for consideration by Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) November 2019, <https://rm.coe.int/grevio-alternative-report-2019-svn/1680a31c10>.

²² GREVIO's (Baseline) Evaluation Report on Slovenia, paragraph 121.

professionals in fields such as education, health and social welfare, who are the first and sometimes the only professionals to come into contact with potential and actual victims of forced marriage and whose timely intervention is essential when dealing with such cases. According to indications shared by members of civil society, professionals are unable to identify cases of forced marriage, which points to the need for more specific training around this issue. According to information provided by the Slovenian authorities, no cases of forced marriage were reported in 2017 and 2018.«

GREVIO welcomed »the measures recently taken by the Slovenian authorities to tackle the challenges around reporting in connection with forced marriages, which include the drafting of a protocol to respond to early and forced marriage in the Roma community. Moreover, since 2018 the Judicial Training Centre has been organising lectures for judges and other judiciary officials on early and forced marriage. In addition, awareness-raising activities targeted at potential victims (primary and secondary school students) were carried out in Roma communities. However, the result of such efforts is not yet visible, which proves that the efforts should be intensified and additional measures considered, for example, closer cooperation with community-based organisations, representatives of the Roma community and women’s NGOs experienced in the issue.«²³

GREVIO strongly encouraged the Slovenian authorities to:

- a.) amend the criminal offence of forced marriage, with the aim of bringing the act of luring a person abroad with the intention of forcing this person to marry against her or his will in line with the definition provided in Article 37, paragraph 2, of the Istanbul Convention;
- b.) collect data on early and forced marriages and follow trends in this area;
- c.) effectively investigate and prosecute cases of forced marriage with a view to bringing perpetrators to justice and, if convicted, punishing them adequately, and pursue efforts to provide appropriate training to relevant professionals, in particular prosecutors, judges and social workers;
- d.) collect information on the root causes, extent and impact of forced marriage among the Roma community, in cooperation with women’s NGOs that assist Roma women and girls, and develop and implement a holistic strategy to respond to it in full compliance with each of the pillars of the Istanbul Convention (prevention, protection and prosecution).²⁴

The Ombudsman welcomes that in July 2021, the Government’s Office for National Minorities published a handbook on recognising early and forced marriages in the Roma community and how to act in these cases. According to the Governments’ internet site, the handbook will be followed by professional training and consultations with professionals in regions or environments where the issue of early and forced marriages can be detected.²⁵

²³ Ibid, paragraphs 265 – 267.

²⁴ Ibid, paragraphs 269.

²⁵ <https://www.gov.si/zbirke/projekti-in-programi/krepitev-nacionalnega-posvetovalnega-procesa-nacionalna-platforma-za-rome-siforoma-3/prirocnik-o/>

THE SITUATION AND RIGHTS OF THE ITALIAN AND HUNGARIAN NATIONAL COMMUNITIES AND THEIR MEMBERS

The Ombudsman does not receive many complaints regarding the rights of the Italian and Hungarian minorities and their members. In 2020, it received only three. The Ombudsman opened one case on his initiative regarding informing the Italian and Hungarian national communities about the covid-19 disease.

On the initiative of a member of the Hungarian national community, in 2020, the Ombudsman addressed the issue of publishing publicly valid programs, curricula and examination catalogues in the Hungarian language. The initiator believed that the Ministry of Education, Science and Culture position that “curricula and other curricular materials are translated into Hungarian according to financial resources and staffing possibilities” is discriminatory and pointed out that the ministry’s website does not contain Italian and Hungarian content.

The Act Regulating the Special Rights of Members of the Italian and Hungarian Ethnic Communities in the Field of Education (ZPIMVI) stipulates that educational programs for members of the national community and bilingual education programs should be adapted, the curricula and »knowledge catalogues« and examination catalogues should be published bilingually and publicly valid programs adapted following ZPIMVI should be published in the language of national communities. In its response to the Ombudsman, the Ministry of Education, Science and Sport acknowledged that not all curricula had been translated and that translations of (revised) implementation instructions, subject catalogues, and other curricular documents were missing. Despite the Ombudsman’s explicit request, the ministry did not provide information on available content in individual years and each language. The response of the ministry and their website showed that for primary schools, curricula in Hungarian were available for four subjects (for the Hungarian language, Hungarian as a second language, mathematics and sports), as well as for six elective subjects (Ethnology of Hungarians, Theater and Drama, Literary Club, Hungarian Folk Music, Hungarian Folk Dance and School Journalism). Only three curricula were available in Italian (for Italian language, Mathematics, Sports). The vast majority of curricula were not available in either Italian or Hungarian. The Ombudsman also did not find any information on the website of the Ministry of Science, Education and Sports about knowledge catalogues and examination catalogues, which are subject to the legal obligation to be published bilingually. As to the high school education programs, the Ombudsman also found that they were not available in Italian and Hungarian. The Ombudsman also did not find primary school curricula in Hungarian and Italian on the Ministry’s website and no implementation instructions in both languages of national minorities.

Based on that, the Ombudsman concluded that the Ministry of Education, Science and Culture had not fulfilled its legal obligation to ensure bilingual educational programs (including curricula, knowledge catalogues and examination catalogues), add implementation instructions and publish them (online) in Hungarian. The same applies to educational programs for members of the Italian national community and their publication in the Italian language. In Ombudsman’s opinion, the failure to fulfil this legal duty (for 19 years) constitutes discrimination against

Hungarian and Italian communities members, prohibited by the Protection Against Discrimination Act (ZVarD). The Ombudsman called on the Ministry of Science, Education and Sports to fulfil the duties imposed by the ZPIMVI as soon as possible, and by the end of 2020 at the latest, and to inform the Ombudsman of the time-bound plan in this regard. In response, the ministry submitted a plan to the Ombudsman, which is, according to the Ministry, “in line with the human resources of the National Education Institute of the Republic of Slovenia and external contractors with appropriate professional competencies”. The Ombudsman was critical that some translations of documents are not planned until 2022, and plans for a large part of them are indefinite (“after 2020”).

In its report for 2018, the Ombudsman pointed out the use of the language of autochthonous national communities in enforcement proceedings based on an authentic instrument, for which, in the first instance, the District Court in Ljubljana has exclusive territorial jurisdiction. The Ombudsman pointed out that the adoption of the amendment, which determined the exclusive jurisdiction of the court in Ljubljana, did not take into account the position of members of indigenous national communities, especially in maintaining the achieved level of minority protection, i.e. the use of national communities in enforcement proceedings. In the 2019 annual report, the Ombudsman recommended that in 2020 the Ministry of Justice continues the discussion on using the languages of the Italian and Hungarian national communities in judicial proceedings, in which exclusive jurisdiction was determined. The Ombudsman was informed that the Ministry of Justice held an expert discussion on the issue of regulating bilingualism in regulations and that individual provisions of the current law had already been upgraded.

In 2019, one of the complainants, who turned to the Ombudsman, claimed that as a Slovenian citizen living in a bilingual area and working in Italy and at the Koper Regional Unit of the Health Insurance Institute of Slovenia (ZZZS), often expressed a wish to issue a European absence form E115 or E118 (E-form) in Italian based on a certificate of justified absence from work due to illness. He also claimed that the mentioned forms exist in all EU languages but that the ZZZS does not want to issue them in Italian but only in Slovene. The Ombudsman, therefore, recommended the Health Insurance Institute of Slovenia that Koper Regional Unit issues forms in Slovenian and Italian for the applicants requesting e-forms in Italian (the same recommendation applies to the issuance of forms in Hungarian in the territory where, in addition to Slovenian, the official language is also Hungarian). The Ombudsman was able to conclude in 2020 that after Ombudsman’s intervention, the ZZZS intends to ensure the issuance of a physical certificate of temporary absence from work in the Italian language in the bilingual area.

In 2020, the Ombudsman addressed the Pomurje Hungarian Self-Governing National Community, the Coastal Self-Governing Community of Italian Nationality and the Government Office for National Minorities, asking whether members of the Hungarian and Italian national communities are fully informed about the coronavirus epidemic in Italian and Hungarian. No problems were observed by the Pomurska Hungarian self-governing national community. The Coastal self-governing community of Italian nationality pointed out that problems occur in some pharmacies and health centres and regarding the availability of information and forms in Italian related to covid-19 measures for entrepreneurs and self-employed entrepreneurs. It was also

clear from the reply of the Government Office for National Minorities that, according to the Association of Members of the Italian National Community, some problems arose with regard to the provision of information materials, instructions and regulations regarding coronavirus in the Italian language. In this regard, the Government Office for National Minorities called on the competent authorities to provide the necessary information and instructions in Italian and Hungarian.

HATE SPEECH

Criminal prosecution of public incitements to hatred, violence or intolerance

Public incitement to hatred, violence and intolerance is criminalised in Article 297 of the Criminal Code.²⁶

Spletno Oko (Web Eye),²⁷ which works as a hotline, enabling anonymous reporting of online hate speech, received 2268 reports of alleged hate speech in 2020. Of these, Spletno oko recognised 67 as potentially illegal under Article 297 of the Criminal Code and forwarded them to the Police for further consideration. In 3 % of these 67 cases, hate speech was directed against Roma.²⁸ In 2019 Spletno oko received 773 reports of alleged hate speech. Of these, Spletno oko recognised 90 as potentially illegal under Article 297 of the Criminal Code and forwarded them to the Police for further consideration. Out of these, 3 % of cases were directed towards Roma.²⁹ In 2018 Spletno oko received 591 reports of alleged hate speech and deemed 35 as potentially illegal under Criminal Code. The report doesn't provide information on the number of cases of hate speech against Roma.³⁰ In 2017 Spletno oko received 556 reports of hate speech and considered 25 to include the elements of a criminal offence. In 8 %, it was directed against Roma.³¹

²⁶ The first and the second paragraph of Article 297 of the Criminal Code (Kazenski zakonik Republike Slovenije – KZ-1) stipulate:

»(1) Anyone who publicly incites or spreads hatred, violence or intolerance based on ethnic, racial, religious or ethnic origin, sex, skin colour, origin, wealth, education, social status, political or other beliefs, disability, sexual orientation or any other personal circumstance, and the act is committed in a manner which may endanger or disturb public order and peace, or by the use of threats or insults, shall be punished by imprisonment of up to two years.

(2) The same punishment shall be imposed on anyone who, in the manner referred to in the preceding paragraph, publicly spreads ideas about the superiority of one race over another or gives any assistance in racist activities or denies, diminishes, approves, justifies, ridicules or defends genocide, holocaust, a crime against humanity, war crimes, aggression or other crimes against humanity as defined in the legal order of the Republic of Slovenia.«

²⁷ Hotline Spletno oko is part of Safer Internet Centre, which is coordinated by the University of Ljubljana, Faculty of Social Sciences. It is financed by the European Commission (INEA agency) and the Slovenian Ministry of Public Administration. More on: www.spletno-oko.si/english.

²⁸ Information received from Spletno oko on 29. 6. 2021.

²⁹ Spletno oko 2019 annual report, www.spletno-oko.si/sites/default/files/letno_porocilo_spletno_oko_2019.pdf.

³⁰ Spletno oko 2018 annual report, www.spletno-oko.si/sites/default/files/spletno_oko_letno_porocilo_2018_0.pdf.

³¹ Spletno oko 2017 annual report, www.spletno-oko.si/sites/default/files/spletno_oko_porocilo_2017.pdf.

Table: Police statistics regarding the crime of public incitement to hatred, violence and intolerance (Article 297 of the Criminal Code)³²

| | 2017 | 2018 | 2019 | 2020 |
|---|------|------|------|------|
| Number of cases closed as a criminal charge to be sent to the State Prosecutor's Office | 18 | 14 | 22 | 64 |
| Number of cases closed as a criminal report ³³ to be sent to the State Prosecutor's Office | 17 | 29 | 25 | 52 |

Table: State Prosecution's statistics regarding the crime of public incitement to hatred, violence and intolerance (Article 297 of the Criminal Code)³⁴

| | 2017 | 2018 | 2019 | 2020 |
|---|------|------|------|------|
| Number of criminal charges received | 13 | 32 | 28 | 38 |
| Number of issued acts dismissing criminal charges | 19 | 15 | 24 | 32 |
| Number of indictments of motions for an educational measure | 2 | 6 | 2 | 7 |
| Number of court convictions | 1 | | | 3 |
| Number of court judgements based on punitive orders ³⁵ | | 1 | 2 | 3 |
| Court acquittals | | 1 | | 1 |

In its annual report for 2020, the Supreme State Prosecutor's Office of the Republic of Slovenia stated that the extent of the crime of public incitement to hatred, violence or intolerance under Article 297 of the Criminal Code and related offences was affected by the consequences of the covid-19 epidemic and associated measures. The emergence of such illegal practices has manifested itself on online networks and in increased hostility against people who think differently or against individual ethical groups and nationalities. According to Supreme State

³² Data was obtained from the Police statistics available on <https://www.policija.si/o-slovenski-policiji/statistika/kriminaliteta>.

³³ Pursuant to Article 148, par. 10, of the Criminal Procedure Act, the Police sends a report to the State Prosecutor's Office if it establishes based on the collected information that there is no basis for a criminal charge.

³⁴ Supreme State Prosecutor's Office of the Republic of Slovenia, 2020 Annual Report, pages 179 - 180, available in Slovene at <https://www.dt-rs.si/files/documents/Letno%20poroc%CC%8Cilo%20DT%20za%20leto%202020.pdf>

³⁵ Where criminal offences falling within the jurisdiction of a local court are involved, the state prosecutor may, when filing the motion of indictment, propose that the court issue a punitive order imposing the proposed criminal sanction or measure on the accused person without holding the main hearing (Article 445a of Criminal Procedure Act).

Prosecutor's Office, sharpened communication between political representatives, with their disrespectful communication, also added to the creation of intolerance.³⁶

From 2013 on, several legal practitioners and academics expressed criticism over the existing practice of criminal prosecution of hate speech and specifically the interpretation of the provision of Article 297 of the Criminal Code (KZ-1),³⁷ which from 2012 on stipulates that a public incitement and spreading of hatred, violence or intolerance is punishable only when (i) it is likely to disturb public order or (ii) is expressed in a manner which is threatening, abusive or insulting. However, despite this, a comprehensive overview of how state prosecutors have dealt and decided in individual cases of criminal charges or interpreted the legal text of Article 297 of the Criminal Code was not available. That is why in 2019, the Ombudsman decided to analyse the practice of state prosecutors. The analysis³⁸ aimed to offer an insight into and contribute to understanding the actual practice regarding the prosecution of criminal offences under Article 297 of the Criminal Code in 2008–2018.

The Ombudsman analysed almost all (i.e. 145) archived state prosecution's files against known perpetrators under Article 297 and published its findings in June 2021. The analysis included a general overview of the international and national legal framework for the prosecution of hate speech; an overview of the characteristics of the prosecution; state prosecutors' explanations of the constitutive elements of the criminal offence; a year-by-year comparison of prosecuted cases and a comparison between the practice of different state prosecutor's offices; a possibility of subsidiary prosecution (injured party acting as a prosecutor); and prosecution under Article 297 of the KZ-1 in relation to the concept of hate crimes.

The analysis showed that nearly 25% of cases (36 out of 145) were concluded with sanctions for the offender, either by way of a judgment convicting at least one offender (23 cases) or with the offender fulfilling the imposed obligation under the institution of deferred prosecution (14 cases – in one case, both outcomes occurred). The convictions imposed suspended sentences of one to six months of imprisonment. In cases of deferred prosecution, the offenders' had to pay a contribution to a public institution or non-governmental organisation in the public interest (in

³⁶ Supreme State Prosecutor's Office of the Republic of Slovenia, 2020 Annual Report, page 179, available at <https://www.dt-rs.si/files/documents/Letno%20poroc%CC%8Cilo%20DT%20za%20leto%202020.pdf>.

³⁷ The first and the second paragraph of Article 297 of the Criminal Code (Kazenski zakonik Republike Slovenije – KZ-1) stipulate:

»(1) Anyone who publicly incites or spreads hatred, violence or intolerance based on ethnic, racial, religious or ethnic origin, sex, skin colour, origin, wealth, education, social status, political or other beliefs, disability, sexual orientation or any other personal circumstance, and the act is committed in a manner which may endanger or disturb public order and peace, or by the use of threats or insults, shall be punished by imprisonment of up to two years.

(2) The same punishment shall be imposed on anyone who, in the manner referred to in the preceding paragraph, publicly spreads ideas about the superiority of one race over another or gives any assistance in racist activities or denies, diminishes, approves, justifies, ridicules or defends genocide, holocaust, a crime against humanity, war crimes, aggression or other crimes against humanity as defined in the legal order of the Republic of Slovenia.«

³⁸ Published in Slovenian. Available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/Razne_publikacije/Sovrazni_govor_knjizica2.pdf.

amounts from 100 to 300 EUR), perform community service (lasting 20 to 50 hours), or pay compensation to the injured party (in two cases).

In 23 cases, hate speech was targeted against LGBTI+ persons, in 15 cases against Roma and in 12 cases against persons of other nationalities of the former Yugoslavia. People with various political beliefs – communists, right-wing supporters, etc. were targets of hate speech in eight cases, Muslims in seven, refugees and migrants in six – two of which were also related to the Islamic religion, and black people in six instances. However, the frequency of prosecution or sanctioning of crimes against a particular group does not necessarily reflect the frequency of public incitement to hatred, violence, or intolerance against this group since not all cases of potentially criminal hate speech are reported to law enforcement.

The analysis showed that since 2013, there had been a significant decrease in the proportion of cases in which the public prosecutor filed an indictment or concluded a case by imposing an obligation on the offender under the institution of suspended prosecution. In the period 2008–2012, public prosecutors proposed sanctions in 40% of the cases considered, while in 2013–2018, this was only done in 13% of the cases.

A comparison of stated reasons for dismissing charges in the period following the entry into force of the KZ-1B amendment to the Criminal Code (i.e. after 15th May 2012) showed that the state prosecutors as a reason for dismissing charges most commonly cited a failure to meet the newly imposed condition “the offence must be committed “in a manner that can jeopardise or disturb public law and order, or by use of force or threat, verbal abuse or insult”. As an exclusive or one of the reasons for dismissing a criminal charge, it appeared in 39 of all 80 dismissed cases from 15th May 2012 to 2018, that is in 49% of cases.

However, the analysis did not find the new condition and its interpretation to be a decisive factor in dismissing most cases. Solely based on not meeting this new requirement,³⁹ the state prosecutors dismissed seven out of a total of 80 dismissed cases between 15th May 2012 and 2018. In 32 cases, in addition to that, public prosecutors stated at least one other reason for rejecting the criminal charge (e.g. there was no intention; conduct not directed against protected individuals or groups or their members; not public...). In the remaining 42 cases, criminal charges were dismissed only due to other reasons.

In relation to the new condition in Article 297 of the KZ-1, introduced by the KZ-1B amendment, which stipulates that an offence must be committed “in a manner that can jeopardise or disturb public law and order, or by use of force or threat, verbal abuse or insult”, several state prosecutors followed the interpretations from (i) the scientific monograph,⁴⁰ which followed the adoption of the amendment, (ii) the legal opinion of the Supreme State Prosecutor’s Office⁴¹, and (iii) the

³⁹ Stipulating that an offence must be committed in a manner that can jeopardise or disturb public law and order, or by use of force or threat, verbal abuse or insult.

⁴⁰ Matjaž Ambrož in Hinko Jenull, Kazenski zakonik (KZ-1): z novelama KZ-1A in KZ-1B / razširjena uvodna pojasnila, GV Založba, Ljubljana, 2012

⁴¹ Vrhovno državno tožilstvo, Pregon kaznivega dejanja Javnega spodbujanja sovraštva, nasilja ali nestrpnosti po 297. členu KZ-1 – pravno stališče, Ktr 2/13-6/HJ-TL/vg, 27. 2. 2013, available at www.spletno-oko.si/sovrazni-govor/pravna-podlaga.

judgment of the Ljubljana Higher Court, adopted in 2013.⁴² All cited sources interpreted the new condition so that an act of incitement to hatred can be prosecuted as a crime only in case of concrete danger to public order. The analysis showed that in 16 dismissed cases, the state prosecutors interpreted the wording “offence is committed in a manner that can jeopardise or disturb public law and order” so that it required *concrete* danger. The analysis also showed that of the 39 cases that were dismissed because the act was not conducted in the first alternative manner, i.e. that the “offence is committed in a manner that can jeopardise or disturb public law and order”, in only 10 cases (26 %) state prosecutors mentioned that the act was also not conducted “by use of force or threat, verbal abuse or insult”, i.e. in the second alternative manner. If all state prosecutors considered this condition to be an alternative and not a cumulative one, they should have made this assessment in all 39 cases.

In 2018, the Supreme State Prosecutor filed a request with the Supreme Court of the Republic of Slovenia for protection of legality against the already mentioned and repeatedly cited in prosecutorial decisions judgment of the Ljubljana Higher Court of 11th December 2013 in the case of a comment against the Roma community. In the request, the prosecutor alleged that the court misinterpreted the wording of the first paragraph of Article 297 of KZ-1, as it did not take into account that the law defines two alternative forms of the criminal offence: the first in a way that may endanger or disturb public order and peace, and the other through the use of threats, verbal abuse or insults. His request also questioned the position of the Higher Court on the interpretation of the possibility of endangering and disturbing public order and peace, pointing out that it doesn't necessarily need to reach the level of concrete danger. On 4th July 2019, the Supreme Court of the Republic of Slovenia found that the judgment of the Ljubljana Higher Court violated the provision of the first paragraph of Article 297 of the Criminal Code.⁴³ The Supreme Court said that the meaning of the legal text is unambiguous at the linguistic level, as it does not allow for any other interpretation other than that the additional conditions are set alternatively and not cumulatively. Furthermore, the Supreme Court stated that it is evident from the legal text of the first paragraph of Article 297 of KZ-1 that only a potential and not a concrete possibility of endangering or disturbing public order and peace must be given.

It is likely that after the 2019 judgment of the Supreme Court, the prosecutor's practice regarding the interpretation of the legal conditions that the act must be committed in a way that it may threaten or disturb public order and peace, or through the use of threats, verbal abuse and insults, may change and unify and take a more consistent account of the linguistic interpretation of the law.

⁴²Judgment of the Ljubljana Higher Court of 11 December 2013, II Kp 65803/2012. With this judgement the Hight Court acquitted A. L., who was found guilty by the District Court of Novo mesto for the offense of inciting hatred, violence or intolerance under paragraph 1 of article 297 of KZ-1 and sentenced to a suspended sentence of one month in prison with a probation period of one year. A. L. posted a comment online, directed against the Roma community, which read: “A couple of sticks of ammonal, a couple of M75 bombs and a couple of AK-47s just in case, I don't think there is other way. Or perhaps doing it one-by-one could also work, making them think a little. Krka, I ask for a song request; Korado / Brendi, where have all the gypsies gone. Thank you.”

⁴³ Supreme Court judgement I Ips 65803/2012.

Finding answers as to why the number of indictments and cases concluded with imposing sanctions on offenders has declined between 2013 and 2018 would require further research. In principle, we assume it could be influenced by at least the following factors (or a combination of thereof): an indirect effect of the amended text of Article 297 of KZ-1 or its restrictive interpretation; the conduct of the Police in connection with the reporting of a criminal offence under Article 297 of KZ-1 and other relevant articles; a lower number of cases of online hate speech examined by state prosecutors between 2013-2018. The latter could be relevant because the analysis also uncovered that in the period 2008-2012, 53% (20 of 38) of cases of online hate speech led to indictment or deferred prosecution, while in the period 2013-2018, the Ombudsman did not come across a single case of online hate speech where state prosecutor would file an indictment and only one case where deferred prosecution was used. We must remind that the Ombudsman only analysed cases against known offenders.⁴⁴

The Ombudsman's analysis also showed that prosecutors do not collect information or assess the impact of the offence on the injured party or the community when dealing with a criminal charge, as recommended by the European Commission's Guidance Note on the practical application of Council Framework decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law.

The Ombudsman also looked into the possibility of subsidiary prosecution. According to Article 60 of the Criminal Procedure Act (ZKP), the injured party has the right to initiate or continue the prosecution if the state prosecutor decides not to prosecute. The question arose as to who could take over the subsidiary prosecution. Among analysed cases, the Ombudsman came across two cases where the institution of subsidiary prosecution was used, in one case by the direct victims and in the other by an organisation working in the field of cultural activity of a particular community. In its legal opinion, the Supreme State Prosecutor's Office⁴⁵ stated that according to court practice, an individual as a member of a particular community, in cases when the hate speech was directed against the whole community, and not specifically against the individual, cannot be considered a victim, as the crime hasn't violated his or her personal rights. In its analysis, the Ombudsman concluded that legislative amendments would likely be necessary in order to guarantee subsidiary prosecution in the event of the criminal offence under Article 297 of the KZ-1 not only to the specific individual against whom the hate speech was directed but also to persons belonging to an affected community or group.

Legal, institutional and policy challenges to address online hate speech

The Police believe that digitisation, changing trends and hate speech increasingly moving to the internet require new approaches. They think that they and other relevant bodies need to urgently

⁴⁴ Summary of all conclusions in English can be found on pages 9-10 of the analysis.

⁴⁵ Vrhovno državno tožilstvo, Pregon kaznivega dejanja Javnega spodbujanja sovraštva, nasilja ali nestrpnosti po 297. členu KZ-1 – pravno stališče, Ktr 2/13-6/HJ-TL/vg, 27. 2. 2013, available at www.spletno-oko.si/sovrazni-govor/pravna-podlaga.

prepare themselves for new challenges. For that, they would require additional knowledge, tools and resources.⁴⁶

In the Slovenian legal system, there is a vast grey field of expression which is prohibited by the Constitution of the Republic of Slovenia⁴⁷ but is not sanctioned, which the Ombudsman has been persistently drawing attention to since 2010.⁴⁸

State authorities can only sanction hate speech on social media through criminal prosecution (which the Ombudsman agrees should be used as the last resort). As the Ombudsman observed in its analysis of prosecution practice, there were no criminal indictments for hate speech on social media between 2013 and 2018.

Other legislation addressing hate speech, namely the Mass Media Act and the Protection of Public Order Act, does not cover all online hate speech. The internet is not considered a 'public space' according to the Protection of Public Order Act, and social media are not considered 'media' under the Mass Media Act.

Due to the relatively strict conditions for prosecuting public incitement to hatred, violence, and intolerance under Article 297 of the Criminal Code, the Ombudsman recommended that the state authorities consider sanctioning online hate speech online (including on social networks) as a misdemeanour under the Protection of Public Order Act. The Ombudsman held that with an appropriate interpretation of the definition of a "public place" in the Protection of Public Order Act, online communication could also be considered a public place, i.e. a place "accessible to everyone under certain conditions".

In 2016, the Ministry of Justice drafted a proposal for amendments to the Protection of Public Order Act, which included provisions to help uncover perpetrators of minor offences of hate speech (acquiring data on holders of IP addresses). However, this provision was unanimously removed from the draft proposal at the National Assembly at a session of the Committee on Justice, as the parliamentarians felt that the provision excessively interfered with the right to communication and freedom of expression. There were even some allegations stating that censorship was being introduced. Following that, the Ministry of Justice stated⁴⁹ that "the work on this issue is concluded and the Ministry deems that all arguments regarding this issues have been tested".⁵⁰

⁴⁶ Ministry on Interior's letter to the Ombudsman, No. 070-66/2020/2 (2202-02), dated 4. 12. 2020.

⁴⁷ Article 63, par. 2: »Any incitement to national, racial, religious, or other discrimination, and the inflaming of national, racial, religious, or other hatred and intolerance are unconstitutional.«

⁴⁸ <https://www.dt-rs.si/files/documents/Letno%20poroc%CC%8Cilo%20DT%20za%20leto%202020.pdf>

⁴⁹ In the response report of the Government of the Republic of Slovenia to the 21st Regular Annual Report of the Human Rights Ombudsman for 2015.

⁵⁰ Annual report of the Human Rights Ombudsman of the Republic of Slovenia for 2016, page 70, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2016_VARUH_ENG.pdf.

LACK OF DISAGGREGATED EQUALITY DATA

In 2017 the Ombudsman reiterated that Slovenia should seriously consider the recommendations provided by international monitoring bodies, which have recommended that Slovenia improve its systems for monitoring the situation of minority groups in different areas of life by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin, and ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent, and voluntary self-identification. The arguments of the Ministry of Justice that there are serious constitutional and legislative obstacles to such gathering of data have not fully convinced us. Even the simple question of how many Roma children do not complete primary school cannot be answered with official data, yet this could serve as a starting point for designing more effective programmes and for the state to create real possibilities for the implementation of the constitutional right to education.⁵¹

The Ombudsman believes that combating discrimination requires valid, accurate and representative data on the position of persons or groups of persons with a specific personal ground (protected ground) in different fields of social life. Equality data is used to determine the current state and trends of de facto (in)equality and is of utmost importance for the planning, implementation and review of non-discrimination policies, particularly regarding positive measures. A recent EU study⁵² has shown that equality data collection in Slovenia is critically weak, far below the efforts of most EU member states to expand, improve and use available equality data. Apart from complaints data, which is far from representative of the de facto situation, hardly any disaggregated data is collected. The most common argument against disaggregated data collection is personal data protection.

In its report on Slovenia, ECRI recommended in 2019 “that the authorities gather disaggregated equality data for the purpose of combating racial discrimination. If necessary, the authorities should propose legislative clarification to ensure that data is collected in all cases with due respect for standards on data protection, including principles of confidentiality, informed consent and voluntary self-identification.”⁵³ Following this recommendation, the Ministry of External Affairs issued a call for the appointment of members to “an informal inter-ministerial working group to address the issue of collection of disaggregated data” and set up a meeting in November 2019. The meeting was attended by the representatives of the Ministry of Foreign affairs, Ministry of Justice, Police, Ministry of Health, Ministry of Education, Science and Sport, Office for National Minorities, NGO Legebitra, Information Commissioner, Advocate for the Principle of Equality and the Ombudsman. The working group discussed the need for a collection of disaggregated data

⁵¹ Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2017, page 14, https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf

⁵² European Commission, Analysis and comparative review of equality data collection practices in the European Union, Equality data indicators: Methodological approach, Overview per EU Member State, Technical annex, p. 49,

https://ec.europa.eu/newsroom/just/document.cfm?action=display&doc_id=45793.

⁵³ ECRI report on Slovenia, paragraph 53, <https://rm.coe.int/fifth-report-on-slovenia/168094cb00>

and the fact that this is currently against national personal data protection legislation. To this date, to the Ombudsman's knowledge, that was the only meeting of the group.

In its 2019 Annual Report, the Ombudsman recommended that the authorities enable and ensure systematic collection of disaggregated data as per protected personal circumstances in all fields of social life to determine the exact situation and trends regarding (in)equality in society. The Ombudsman recommended the adoption of appropriate legislation on personal data protection and sector-specific legislation to determine special exemptions concerning collecting disaggregated data as per individual personal circumstances to promote equal treatment and equal opportunities while adhering to the applicable national and international standards on personal data protection.⁵⁴

The Ministry of Justice of the Republic of Slovenia responded that they would examine this issue when drafting the new systemic Personal Data Protection Act (ZVOP-2), expected by the end of 2020. They added that they believe a special exemption could be constitutionally disputable in terms of the right to free expression of national affiliation and freedom of conscience.⁵⁵

In May 2021, the Ombudsman received the proposed text of the new Personal Data Protection Act (ZVOP-2) from the Ministry of Justice for comment. In its preamble of the draft law, the Ministry of Justice wrote that the Slovenian Constitution makes it practically almost impossible to collect and further process information about the national affiliation; and that such processing cannot be justified by the needs of statistical reporting or research or reporting to international human rights organisations.

The proposed text of the sixth paragraph of Article 7 of the ZVOP-2 stipulates that the processing of personal data on the national or ethnic affiliation is exceptionally permissible in the public sector if this is stipulated by law, which also stipulates the obtaining of consent. This provision would not be directly applicable and would require additional regulation in sectoral legislation. It is also not clear whether this exemption could include the processing of data for certain anti-discrimination purposes.

Since the proposed ZVOP-2 would not provide a sufficient legal basis for the State to be able to process the disaggregated data effectively according to protected personal circumstances; and on this basis, identify situations and trends regarding inequality in society, the Ombudsman repeated its recommendation to the Ministry of Justice in May 2021 and in its annual report for 2020, published on 30th June 2021.⁵⁶

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⁵⁴ Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2019, English abbreviated version, page 37, www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2019/Annual_Report_2019.pdf

⁵⁵ Response report of the Government of the Republic of Slovenia to the 25th regular annual report of the Ombudsman for the year 2019.

⁵⁶ Slovenian version is available on <https://www.varuh-rs.si/sl/porocila-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/>.

ANNEX – a list of recommendations regarding national minorities / ethnic groups proposed by the Ombudsman in the period 2017-2020

In the field of protection of national minorities / ethnic groups, the Ombudsman issued the following recommendations in annual reports in the period 2017-2021.

- The Ombudsman recommends systematising the post of Roma assistant (for kindergartens, primary and secondary schools with a Roma population). (Issued in 2020. Realised).
- The Ombudsman advised the Government Office for National Minorities to propose or submit an incentive to the Government of the Republic of Slovenia to order the ministry responsible for this field to examine the organisation of free bus transport for Roma children to primary school in the Municipality of Šentjernej and determine whether the municipal administration is acting in accordance with legislation and, if necessary, propose suitable measures and report to the Government on this matter. (Issued in 2018 and repeated in 2019. Unrealised.)
- The Ombudsman recommended that the Ministry of Labor, Family, Social Affairs and Equal Opportunities examine whether the provision of child allowance should be conditional on the obligation of actual attendance of primary education and, to this end, also to prepare amendments to sectoral legislation. (Issued in 2020, Legislation proposal currently in cross-sectoral coordination).
- The Ombudsman recommends that the Ministry of Labor, Family, Social Affairs and Equal Opportunities examine the possibilities for systematising the special post of Roma coordinator at social work centres in municipalities that are obliged to ensure Roma communities a representative in the municipal council. (Issued in 2020, Unrealized.)
- The Ombudsman recommended that the Government of the Republic of Slovenia draw up a strategy on what to do with Roma settlements that cannot be legalised. (Issued in 2020. Unrealised).
- The Ombudsman advised the Government of the Republic of Slovenia to enhance activities for drafting a special act for emergency regulation of Roma settlements. (Issued in 2019. Unrealised.)
- The Ombudsman called on the Government of the Republic of Slovenia to promptly see to the preparation of appropriate legal groundwork enabling members of the Roma community who live in illegal settlements to actually and effectively enforce their human rights, i.e. access to drinking water, toilet facilities, and electricity. (Issued in 2017. Unrealised.)

- The Ombudsman recommended that the Government of the Republic of Slovenia appoints a ministry to implement supervision as per Chapter 10 of the Local Self-Government Act over the (un)fulfilment of the legal obligation of the Municipality of Brežice regarding the adoption of a detailed sectoral programme and measures for the legal regulation of the settlement of Krušče and the provision of municipal utility services (paragraph two of Article 6 of the Roma Community in the Republic of Slovenia Act). (Issued in 2019. Unrealised.)
- The Ombudsman recommended that the Government Office for National Minorities proposes or submits an incentive to the Government of the Republic of Slovenia to order the ministry responsible for this field to examine the detailed sectoral programme and measures of the Municipality of Šentjernej, if these exist, or provide reasons why these do not exist and determine whether the municipal administration acts in accordance with the Roma Community in the Republic of Slovenia Act and, if necessary, propose suitable measures and report to the Government on this matter. (Issued in 2018 and repeated in 2019. Unrealised.)
- The Ombudsman recommended that the Government of the Republic of Slovenia instructs the Ministry of the Environment and Spatial Planning to examine the fulfilment of legal obligations concerning the adoption of a detailed sectoral programme and measures for arranging spatial issues in Roma settlements (paragraph two of Article 6 in connection with paragraph eight of Article 16 of the Roma Community in the Republic of Slovenia Act) in the Municipality of Šentjernej and implement a task in this regard as per sentence two of paragraph three of Article 88a of the Local Self-Government Act. (Issued in 2019. Unrealised.)
- The Ombudsman proposed that the Government of the Republic of Slovenia pay special attention to the elderly Roma in the next National Programme of Measures for the Roma (Issued in 2018 and repeated in 2019.)
- The Ombudsman recommended to the Government of the Republic of Slovenia to adopt a legally non-binding working definition of anti-Gypsyism or anti-Roma discrimination. (Issued in 2020).
- The Ombudsman recommended adopting appropriate legislation on personal data protection and sector-specific legislation to determine special exemptions with regard to collecting disaggregated data per individual personal circumstances to promote equal treatment and equal opportunities when observing applicable national and international standards on personal data protection. (Issued in 2019 and repeated in 2020. Unrealised.)
- The Ombudsman advised the competent authorities to enable and ensure systematic collection of disaggregated data as per protected personal circumstances in all fields of social life to accurately determine the situation and trends regarding (in)equality in society and that the competent line ministry takes over the management of the informal working group for resolving the issue of disaggregated data collection. (Issued in 2019, repeated in 2020. Unrealised).

- The Ombudsman recommended that the authorities start the ratification procedure for the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and advised that the National Assembly adopts the act on the ratification of the relevant protocol as soon as possible. (Issued in 2019 and repeated in 2020. Unrealised.)

- The Ombudsman recommended that the Ministry of Justice continues the discussion on using the languages of the Italian and Hungarian national communities in judicial proceedings, in which exclusive jurisdiction was determined, and to inform the Ombudsman about new findings and possible measures in this field before the end of the year. (Issued in 2019. In January 2020, the Ministry of Justice held an expert discussion on the issue of regulating bilingualism in regulations and that individual provisions of the current law had already been upgraded in the preparation of the proposed amendment to ZDT-1.)

- The Ombudsman advised the Health Insurance Institute of Slovenia that Koper Regional Unit issues forms in Slovenian and Italian for the applicants requesting e-forms in Italian (the same recommendation applies to the issuance of forms in Hungarian in the territory where, in addition to Slovenian, the official language is also Hungarian). (Issued in 2019. Realised.)