



Input to the European Commission against Racism and Intolerance for its interim follow-up on the recommendations to Slovenia on equality data and prosecution of hate speech

June 2021

The Human Rights Ombudsman of the Republic of Slovenia, a National Human Rights Institution (hereafter “the Ombudsman”), submits the following information to the European Commission against Racism and Intolerance (ECRI), in response to its request to receive information and observations on the implementation of two specific recommendations for which ECRI requested priority implementation from the authorities of Slovenia in its latest report on Slovenia in June 2019, as part of its fifth monitoring round.¹

1. Prosecution of hate speech

ECRI’s recommendation: “In keeping with ECRI General Policy Recommendations No. 7 on national legislation to combat racism and racial discrimination and No. 15 on combating hate speech, ECRI recommends that the Slovenian authorities remedy the gaps identified in paragraphs 4-6² of this report. In particular, the prosecution

¹ ECRI report on Slovenia (fifth monitoring cycle), CRI(2019)21, Adopted on 3 April 2019, published on 5 June 2019, <https://rm.coe.int/fifth-report-on-slovenia/168094cb00>.

² 4. Article 297 of the Criminal Code contains a general prohibition of incitement to hatred, violence or intolerance, including the denial, trivialisation or advocating of genocide, the Holocaust, crimes against humanity and war crimes. An amendment of Article 297, to transpose into national legislation the Framework Decision 2008/913/JHA of the Council of the European Union on combating racism and xenophobia (Framework Decision), provides that conducts described in this Article are punishable by criminal law only when 1) they are likely to disturb public order or 2) they are expressed in a manner which is threatening, abusive or insulting. A legal opinion issued by the Office of the Prosecutor General interprets the Article in a way that an act of incitement to hatred can be prosecuted as a crime only in case of concrete danger to public order.

5. Many legal practitioners, academics and NGOs find that the causal link of public disturbance provided by the law and the even stricter requirements contained in the Prosecutor General’s legal opinion have caused a significant impunity gap, with hate speech almost never prosecuted in Slovenia, and great frustration among victims. Moreover, the absence of an effective legal remedy for the alleged victim if a prosecutor dismisses a criminal complaint or decides not to initiate prosecution also remains a concern. In this context, ECRI would like to refer to Article 43 of the EU Directive 2012/29/EU⁶ providing for the victim of a crime the right to a review of a decision not to prosecute and the corresponding duty of the state to make such a review not only possible but also effective.

6. As a matter of principle, criminal law sanctions against the use, in a public context, of hate speech should be provided when no other, less restrictive, measure would be effective and the right to freedom of expression and opinion is respected. However, ECRI finds that the interpretation contained in the legal opinion of the Office of the Prosecutor General is not fully in conformity with the wording of Article 297; that the “disturbance of public order” causal link is only optional under paragraph 2 of Article 1 of the EU Framework Decision; and that paragraph 18 a) of GPR No. 7 requires only the public context of the

authorities should refrain from introducing requirements for the imposition of criminal responsibility of conduct inciting to hatred and violence, which are not provided by the law.”³

As mentioned in paragraphs four and five of the ECRI report, 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),⁴ which stipulates that conduct 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 analyze the practice of state prosecutors. The analysis⁵ 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 the period 2008–2018.

The Ombudsman analyzed 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 includes 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 organization in the public interest (in

incitement for its criminal liability. In addition, according to GPR No. 15 on combating hate speech, the disturbance of public order requirement may well be relevant to the assessment of the risk of whether any incitement can reasonably be anticipated, but its separate specification as an essential element of criminal liability is considered to add further obstacles to securing convictions.

³ ECRI report on Slovenia, paragraph 7.

⁴ 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.«

⁵ 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 has 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 jeopardize 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,⁶ 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 jeopardize 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,⁷ which followed the adoption of the amendment, (ii) the legal opinion of the Supreme State Prosecutor’s Office⁸ (mentioned in paragraph four of the ECRI report), and (iii) the judgment of the Ljubljana Higher Court, adopted

⁶ 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.

⁷ Matjaž Ambrož in Hinko Jenull, *Kazenski zakonik (KZ-1): z novelama KZ-1A in KZ-1B / razširjena uvodna pojasnila*, GV Založba, Ljubljana, 2012

⁸ 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.

in 2013.⁹ 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 jeopardize 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 jeopardize 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.¹⁰ 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.

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

⁹Judgment 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.”

¹⁰ Supreme Court judgement I Ips 65803/2012.

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 analyzed cases against known offenders.¹¹

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 analyzed 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 organization working in the field of cultural activity of a particular community. In its legal opinion, the Supreme State Prosecutor's Office¹² 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.

Statistics on reported public incitement to hatred, violence and intolerance

Spletno Oko (Web Eye),¹³ 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 recognized 67 as potentially illegal under Article 297 of the Criminal Code and forwarded them to the Police for further consideration. In 45% of cases, hate speech was directed towards individuals or groups based on their political beliefs. A quarter of hate speech was xenophobic (mainly directed against refugees and migrants), and 13 % of hate speech was based on religion. In 7 % of the cases, the reported speech was racist, in 6 % based on intolerance of sexual orientation, and 3 % directed against Roma. In 60 %, hate speech was expressed as calling for murder, in 33 % as a denial or

¹¹ Summary of all conclusions in English can be found on pages 9–10 of the analysis.

¹² 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.

¹³ 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.

glorification of the Holocaust or war crimes. In 6 %, it called or advocated for physical violence and in 1 % incited hatred and contained dehumanizing speech.¹⁴

In 2019 Spletno oko received 773 reports of alleged hate speech. Of these, Spletno oko recognized 90 as potentially illegal under Article 297 of the Criminal Code and forwarded them to the Police for further consideration. Out of these, 42 % of cases were directed towards refugees and migrants and 23 % against Muslims. In 10 % of the cases, the reported speech was homophobic, xenophobic in 4 % and racist in 3 %. Hate speech forwarded to the Police was mainly expressed in its most extreme form, inciting or calling for the murder of an entire social group or individuals based on belonging to these groups (69 %). In 13 % of cases, the hate speech called or advocated for physical violence, in 12 % it denied or glorified the Holocaust or war crimes, and in 3 %, it incited hatred and contained dehumanizing speech.¹⁵

In 2018 Spletno oko received 591 reports of alleged hate speech and deemed 35 as potentially illegal under Criminal Code.¹⁶ In 2017 Spletno oko received 556 reports of hate speech and considered 25 to include the elements of a criminal offence.¹⁷

Table: Police statistics regarding the crime of public incitement to hatred, violence and intolerance (Article 297 of the Criminal Code)¹⁸

	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 ¹⁹ 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)²⁰

	2017	2018	2019	2020
Number of criminal charges received	13	32	28	38
Number of issued acts dismissing criminal charges	19	15	24	32

¹⁴ Information received from Spletno oko on 29. 6. 2021.

¹⁵ Spletno oko 2019 annual report, www.spletno-oko.si/sites/default/files/letno_porocilo_spletno_oko_2019.pdf.

¹⁶ Spletno oko 2018 annual report, www.spletno-oko.si/sites/default/files/spletno_oko_letno_porocilo_2018_0.pdf.

¹⁷ Spletno oko 2017 annual report, www.spletno-oko.si/sites/default/files/spletno_oko_porocilo_2017.pdf.

¹⁸ Data was obtained from the Police statistics available on <https://www.policija.si/o-slovenski-policiji/statistika/kriminaliteta>.

¹⁹ 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.

²⁰ 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>

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 ²¹		1	2	3
Court acquittals		1		1

In its annual report for 2020, the Supreme State Prosecutor's Office of the Republic of Slovenia wrote that the extent of the crime of public incitement to hatred, violence or intolerance under Article 297 of 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 Prosecutor's Office, sharpened communication between political representatives, with their disrespectful communication, also added to the creation of intolerance. The increase must also be sought in the occurrence of the migrant crisis, which did not disappear. Supreme State Prosecutor's Office also added that the dissatisfaction of individuals or groups with government measures to curb the spread of coronavirus has escalated into incitement to hatred, violence, or intolerance, not only against decision-makers but also against anyone who disagrees with their views.²²

Additional information on legal, institutional and policy challenges to address online hate speech

There is a vast grey field of expression in the Slovenian legal system prohibited by the Constitution²³ but not sanctioned, which the Ombudsman has been persistently drawing attention to since 2010.²⁴

The Police believe that digitization, changing trends and hate speech increasingly moving to the internet require new approaches. They think that they and other relevant bodies should be urgently prepared for new challenges and require additional knowledge, tools and resources.²⁵

State authorities can only sanction hate speech on social media through criminal prosecution (which the Ombudsman agrees, should use as the last resort). As the Ombudsman observed in its analysis of prosecution practice, there were no indictments for hate speech on social media between 2013 and 2018. Other legislation addressing hate speech, namely the Mass Media Act and the Minor Offences 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.

²¹ 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).

²² 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>.

²³ 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.«

²⁴ <https://www.dt-rs.si/files/documents/Letno%20poroc%CC%8Cilo%20DT%20za%20leto%202020.pdf>

²⁵ Ministry on Interior's letter to the Ombudsman, No. 070-66/2020/2 (2202-02), dated 4. 12. 2020.

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 hate speech online and 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 stated that censorship was being introduced. Following that, the Ministry of Justice stated²⁶ that "the work on this issue is concluded and the Ministry deems that all arguments regarding this issues have been tested".²⁷

2. Disaggregated equality data

In its report on Slovenia, ECRI also reiterated its recommendation "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."²⁸

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 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

²⁶ 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.

²⁷ 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.

²⁸ ECRI report on Slovenia, paragraph 53.

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.²⁹ 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.³⁰

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 organizations.

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 2021.³¹

²⁹ 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

³⁰ Response report of the Government of the Republic of Slovenia to the 25th regular annual report of the Ombudsman for the year 2019.

³¹ Slovenian version is available on <https://www.varuh-rs.si/sl/porocila-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/>.