



REPUBLIC OF
SLOVENIA



HUMAN
RIGHTS
OMBUDSMAN

HATE SPEECH, SOCIAL MEDIA AND MINORITIES
Submission to the United Nations Special Rapporteur on Minority Issues

December 2020

The Human Rights Ombudsman of the Republic of Slovenia, a National Human Rights Institution (from now on referred to as the Ombudsman), submits the following information to the UN Special Rapporteur on Minority Issues, Dr Fernand de Varennes, in response to his request to receive information on hate speech, social media and minorities for his thematic report for the 46th Session of the UN Human Rights Council.¹

1. Please provide annual disaggregated data since 2017 if possible on hate speech in social media, and in particular hate speech targeting minorities (national or ethnic, religious and linguistic minorities). Please additionally indicate whether there are future plans to include specifically disaggregated data on hate speech targeting minorities, considering that in most countries, the victims of hate speech on social media are usually members of minorities.

In general, equality data collection in Slovenia is critically weak.² Apart from complaints data to human rights bodies or NGO's, hardly any disaggregated data is collected.

The Slovenian Police do not record data according to the mentioned categories. However, upon request, the Ministry of Interior provided the Ombudsman with the below data from their records that could partially answer the question.³

¹ Call for Submissions: "Hate Speech, Social Media and Minorities",
www.ohchr.org/Documents/Issues/Minorities/SR/HateSpeechSocialMediaMinorities_EN.pdf.

² An EU study has shown that it is far below the efforts of most EU member states to expand, improve and use available equality data. 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.

³ Ministry on Interior's letter to the Ombudsman, No. 070-66/2020/2 (2202-02), dated 4. 12. 2020.

Table: Number of criminal charges and reports⁴ submitted by the Police to the State Prosecutor's Office regarding the crime of public incitement to hatred, violence and intolerance (Article 297 of the Criminal Code).⁵

	2017	2018	2019	1. 1. – 18. 11. 2020
Criminal charges - total	13	12	16	47
Reports - total	13	18	23	43
Criminal charges where the Police recorded 'Internet, computers or telecommunications equipment' as the means by which the criminal offence was carried out	5	3	4	34
Reports where the Police recorded 'Internet, computers or telecommunications equipment' as the means by which the criminal offence was carried out	1	9	16	18
Criminal charges with the criminalistics designation 'national, racial, religious, incitement to religious inequality, incitement to racial inequality, ethnic.'	2	0	0	6
Reports criminalistics designation 'national, racial, religious, incitement to religious inequality, incitement to racial inequality, ethnic.'	0	1	6	3

In 2020, the Ombudsman analysed almost all (i.e. 145) archived state prosecution's files regarding the criminal offence of public incitement to hatred, violence and intolerance under Article 297 of the Criminal Code covering the period from 2008 to 2018 (the said article is considered to be the most direct criminal incrimination of the so-called **'hate speech' in the national legislation**). Out of 145 analysed cases, the alleged criminal offence was directed against Roma in 15 cases, in 14 cases against migrants and Muslims, in 12 cases against other nations of the former Yugoslavia

⁴ 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.

⁵ 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.«

and in six cases against black persons. The analysis also showed that in 30 instances, the alleged criminal offences were committed by the internet users on social media (in 27 cases on Facebook, in two on YouTube and one on Twitter). Thirty-four cases ended with some form of a sanction for the perpetrator. Ten of these were directed against Roma, five against black persons, one against Muslims (as a disgrace to a Muslim religious symbol) two against Bosnians (once in a Facebook group called “against the building of a mosque” and once with the ridicule of the Srebrenica massacre), three against Hungarians and one against Serbs. The frequency of prosecution or sanctioning of crimes against a particular group, however, 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.

Spletno Oko (Web Eye),⁶ which works as a hotline, enabling anonymous reporting of hate speech online, received 773 reports of alleged hate speech in 2019. 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 90 cases, 53 % were posted on social media networks (Facebook, YouTube and Twitter). Most were directed towards migrants and Muslims, who can be understood to some extent as a common category, as a large proportion of cases were directed against Muslim refugees and migrants. Together, these two groups were targets in 65 % of instances (in 42 % hate speech was directed towards refugees and migrants and in 23 % of cases against Muslims). In 10 % of the cases, the reported speech was homophobic, in 4 % xenophobic and in 3 % racist.⁷ In 2018 Spletno oko received 591 reports of alleged hate speech and deemed 35 as potentially illegal under Criminal Code. Out of those 35, 26 % were posted on social media, 23 % were directed towards Muslims, 14 % against refugees and migrants, in 26 % reported hate speech was xenophobic, in 9 % homophobic, in 6 % antisemitic and in 3 % racist.⁸ In 2017 Spletno oko received 556 reports of hate speech. Out of them, Spletno oko considered 25 to include the elements of a criminal offence. 67 % of those were posted on social media. Spletno oko noted the influence of social developments in Slovenia concerning refugee migration on the increase of the hate speech directed against migrants and Muslims. These two categories if counted together, represented almost 80% of reported potentially illegal hate speech in 2015, 61 % in 2016 and 44 % in 2017. In 2017 8 % of reported potentially illegal hate speech was directed against Roma and 12 % based on nationality.⁹

⁶ 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.

⁷ Spletno oko 2019 annual report, www.spletno-oko.si/sites/default/files/letno_porocilo_spletno_oko_2019.pdf.

⁸ Spletno oko 2018 annual report, www.spletno-oko.si/sites/default/files/spletno_oko_letno_porocilo_2018_0.pdf.

⁹ Spletno oko 2017 annual report, www.spletno-oko.si/sites/default/files/spletno_oko_porocilo_2017.pdf.

Table: summary of the Spletno oko reports relevant to this question

	2019	2018	2017
Hate speech reported to and recognized by Spletno oko as potentially illegal under Article 297 of the Criminal Code	90	35	25
Posted on social media networks	53 %	26 %	67 %
Against Muslims	23 %	23 %	20 %
Against refugees and migrants	42 %	14 %	24 %
Against Roma	3 %		8 %
Xenophobic	4 %	26 %	
Racist	3 %	3 %	
Anti-Semitic		6 %	
Based on nationality			12 %

Collection of disaggregated data

In its report on Slovenia, the European Commission Against Racism and Intolerance (ECRI) in 2019 recommended Slovenia to ensure that specific and reliable data on hate speech offences and the follow-up given to them by the justice system is available and made public. ECRI added that the authorities should arrange for the gathering of disaggregated data as provided by Article 16 of the Protection against Discrimination Act for the purpose of combating hate speech and racial discrimination while ensuring that this is done in all cases with due respect for the principles of confidentiality.¹⁰

Following that recommendation, the Ministry of External Affairs set up an informal inter-ministerial working group to address the issue of collection of disaggregated data. In November 2019 a first and to this date only meeting of the group took place. It discussed the need for a collection of disaggregated data and the fact that this is currently against national personal data protection legislation. In its 2019 Annual Report, the Ombudsman advised the authorities to 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 authorities to adopt appropriate legislation on personal data protection and sector-specific legislation to determine special exemption concerning collecting disaggregated data as per individual personal circumstances in order to promote equal treatment and equal opportunities while adhering to the applicable national and international standards on personal data protection.¹¹ 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), expectantly by the end of 2020. They added that

¹⁰ European Commission Against Racism and Intolerance, ECRI report on Slovenia (fifth monitoring cycle), 3 April 2019, par. 28, <https://rm.coe.int/fifth-report-on-slovenia/168094cb00>.

¹¹ 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

they believe a special exemption could be constitutionally disputable in terms of the right to free expression of national affiliation and freedom of conscience.¹²

2. Please identify the mechanisms and processes in place to remove, penalize or address hate speech in social media targeting minorities. Please also specify and include any studies or reports assessing their implementation and effectiveness.

The Criminal Code of the Republic of Slovenia prohibits public incitement or spread of 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 when committed in a manner which may endanger or disturb public order and peace, or by the use of threats or insults. The offence is punishable by imprisonment for up to two years. Cases of hate speech constituting public incitement to hatred, violence or intolerance, which are defined as a criminal offence under Article 297 of the Criminal Code are considered by the State Prosecutor's Office.

In its analysis of all archived prosecution files regarding Article 297, the Ombudsman did not come across any cases of online hate speech where, from 2013 to 2018, the state prosecutor would file an indictment; in one case, the state prosecutor imposed on a perpetrator to fulfil a task within the institute of deferred prosecution (see above).

The Protection Against Discrimination Act prohibits incitement to discrimination.¹³ That includes expressing contempt of persons or groups of persons due to their protected personal circumstances, as well as justification of ideas about the dominance or superiority of a person or group of persons with specific characteristics arising from the stated personal circumstances over those that are not members of this group. However, this is a declaratory provision, which does not entail sanctions according to the Act.

Other legislation addressing hate speech, namely the Mass Media Act and the Minor Offences Act, does not cover hate speech on social media. 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.

The process of detecting and removing hate speech against minority communities is not explicitly regulated. Anyone can propose to the provider or the administrator to withdraw the disputed content. According to the Police, a good example is the Spletno oko (Web Eye) – a reporting point for online hate speech which works in close operational cooperation with the Police, which, in

¹² Response report of the Government of the Republic of Slovenia to the 25th regular annual report of the Ombudsman for the year 2019.

¹³ Article 10, Zakon o varstvu pred diskriminacijo (ZVarD), <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7273>.

cooperation with the State prosecutor's Office, assesses the existence of signs of a criminal offence.¹⁴

In 2020 Faculty Social Sciences, Institute of Criminology at the Faculty of Law (both University of Ljubljana) and the NGO Peace Institute analysed the responsiveness of social networks as part of their project "Hate speech on online social networks in Slovenia".¹⁵ They aimed to check how social networks respond to reports, what criteria they follow when removing controversial content, what proportion of reported cases will the social networks remove, and how quickly. For that, they have reported 129 cases of hate speech as 'regular users'. In total, all three social networks removed 64% of the 129 reported cases. YouTube removed 90% of all reported cases and Facebook 63%, all within 24 hours of the report. Twitter did not remove any of the 13 reported tweets. Facebook and YouTube have in the largest proportion removed cases of homophobia and sexism (100%), intolerance against Roma (90% of cases removed), xenophobia (81%), intolerance based on the political background (60%), intolerance of Muslims (58%) and cases of anti-Semitism and racism (both 50%). The lowest share of removals was in cases of identified hate speech against refugees (44%).

3. Please provide (legal and non-legal) examples of good practices of appropriate responses developed by States, internet companies, civil society and other relevant stakeholders to address online 'hate speech', including incitement to discrimination, hostility or violence, against persons belonging to minorities. Please include assessments, if any, on the effectiveness of these examples.

The Peace Institute¹⁶ together with its partners in the project "BEHAVE – SEE Beyond Hate: Learning and Acting to Counter Hate Speech Online in South-East Europe" prepared a Summary of selected good practices of countering hate speech online in Slovenia, Croatia and Serbia.¹⁷ Summary of selected good practices in English can be found at: www.mirovni-institut.si/wp-content/uploads/2020/10/Behave-ENG-summaries-briefing-good-practices-SLO-CRO-SRB.pdf. In full the good practices are described in Slovenian, Croatian and Bosnian at: www.mirovni-institut.si/publikacija-odgovor-na-sovrazni-govor-na-spletu/.

The Police also consider Spletno oko (Web Eye) a good practice example and point out excellent cooperation and appropriateness of the project active approach model.¹⁸

¹⁴ Ministry on Interior's letter to the Ombudsman, 4. 12. 2020.

¹⁵ By following the methodology of the European Commission in the implementation of social network monitoring in the framework of the "Code of Conduct for the Prevention of Hate Speech on the Internet".

¹⁶ Slovenian NGO: www.mirovni-institut.si/en/.

¹⁷ The EU's Justice, and Rights, Equality and Citizenship programme financed the project.

¹⁸ Ministry on Interior's letter to the Ombudsman, 4. 12. 2020.

The Ombudsman participated in an 'Anti-Hate Speech Council',¹⁹ an informal, independent body that, during its two terms (2015/2016 and 2016/2017), responded to instances of hate speech in Slovenia by issuing public written statements. Through public engagement, the Council aimed to contribute to solving the problem of hate speech in Slovenia, to help establish the standards of public discourse, to foster public debate, and to raise public awareness. It sought to connect representatives of the governmental and non-governmental sectors, experts and other interested publics in a joint body that advocated for a zero-tolerance attitude to hate speech through action and systematic responsiveness.

4. Please identify legal, institutional and policy challenges to address online 'hate speech', particularly incitement to discrimination, hostility or violence, on social media against minorities, as well as how specifically is it being addressed so as not to infringe freedom of expression.

There is a vast grey field of expression in the Slovenian legal system prohibited by the Constitution,²⁰ but not sanctioned, which the Ombudsman has been persistently drawing attention to since 2010.

State authorities can only sanction hate speech on social media through criminal prosecution (which they should use as the last resort). As we can observe from the prosecution practice between 2013 and 2018 (see above, on the Ombudsman's analysis in 2020), there were no indictments for hate speech on social media.

Furthermore, the Police believe that the digitization, changing trends and hate speech increasingly moving to the internet, require new approaches. They believe that they and other relevant bodies should be urgently prepared for new challenges and need new knowledge, tools and resources.²¹

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 should 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 defined as a public place - a place "accessible to everyone under certain conditions".

¹⁹ As part of the project, "Responding to Hate Speech in Slovenia" coordinated by the Peace Institute, with the following partners: Faculty of Social Sciences of the University of Ljubljana, Human Rights Ombudsman, and Multimedia Centre of Radio Television Slovenia. Project presentation can be found on <https://www.mirovni-institut.si/en/projects/responding-hate-speech-activation-independent-conjunctive-body-act/>.

²⁰ 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.«

²¹ Ministry on Interior's written answer to the Ombudsman (see footnote 3).

In 2016, the Ministry of Justice drafted a proposal for the amendments to the Protection of Public Order Act including for the purpose of discovering 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 that censorship was being introduced. Following that, the Ministry of Justice stated²² that “the work on this issue is concluded and the Ministry deems that all arguments regarding this issues have been tested«. ²³

²² 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.

²³ 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.