

Comments of the Slovenian authorities to the "Memorandum on freedom of expression and media freedom in Slovenia" by the Commissioner for Human Rights of the Council of Europe

Hereby you will find the comments of the Slovenian authorities - the Ministry of Justice, Ministry of Interior and Ministry of Culture to the "Memorandum on freedom of expression and media freedom in Slovenia" by the Commissioner for Human Rights of the Council of Europe, following the online dialogue with representatives of the national authorities held between 12 and 16 April 2021. The paragraph numbers before each item correspond to those listed in the Memorandum.

Paragraph 11

In the year 2019, after the ECRI report, the Supreme Court of the Republic of Slovenia set an important precedent (Judgment Ref. No. I Ips 65803/2012, dated 4th of July 2019), according to which the elements of the criminal offence Public Incitement to Hatred, Violence or Intolerance (Article 297 of the Criminal Code) are present not only, when the offence is committed "in a manner that can jeopardise or disturb public order and peace" but also, when it is committed "by the use of threat, scolding or insult". In this way the Supreme Court of the Republic of Slovenia invalidated the previous narrow interpretation of the Article 297 of the Criminal Code, as it was applied by the state prosecutors and it consequently strengthened the possibilities for prosecution. The Ministry of Justice will continue to carefully monitor the effects of this decision of the Supreme Court of the Republic of Slovenia on the prosecution of the criminal offences under Article 297 of the Criminal Code.

Paragraph 22

The Ministry of the Interior points out that the claim that "the authorities refused to allow the event on the ground that protests were still banned under the government's ordinance, thus making clear that 10 people may gather for any other reason but not to express their opinions" is untrue.

Paragraph 24

We would like to point out again that officers do not wear "full combat gear" but protective equipment of the riot police unit. It is true that the vast majority of protests were peaceful; however, there were still 17 police officers injured during these protests. The majority of them sustained injuries at the rally of 5.11.2021, when the protest turned into massive public order violations and police officers and journalists were attacked. This fact was explained to the Commissioner by the Minister of the Interior during their conversation.

The Ministry of the Interior wishes to make clear that the rally of 5 November 2020 was anything but peaceful. Protesters threw granite blocks at police officers, participants and paramedics. In these circumstances such equipment and preparation is perfectly understandable.

Paragraph 26

Police officers have been instructed that they have to inform every offender of the violation committed on the spot and serve them with a penalty notice. If this cannot be done on the spot, an offender is sent a notice asking them to make a statement on the facts and circumstances of the alleged violation. Only then is a penalty notice issued. An offender may lodge a request for judicial protection, in which case the procedure is continued in court.

As for the claim that "Some members of the government have also portrayed demonstrators as criminals ...", the Ministry of the Interior would like to point out that this has turned out to be true. One of the organisers of the 5 November rally has been arrested by the Austrian law enforcement authorities for drug trafficking.

Paragraph 27

In the Republic of Slovenia, freedom of expression is guaranteed by the Constitution, part of which is also the free establishment of the media and the independence of journalistic work.

Freedom of the media, and in particular journalistic autonomy and editorial independence, are strongly protected by the Mass media act. Among the general principles, the law stipulates that media activity is based on freedom of expression, inviolability and protection of human personality and dignity, on the free flow of information and openness of the media to different opinions, beliefs, and diverse content. In creating content editors, journalists, and other authors are autonomous, obliged only to follow program concepts of the media and professional and ethical codes.

These rights and freedoms of the media and journalists have not been violated by any authoritative act or legal act of the Government, in particular by the alleged editorial or financial pressures.

The government has not interfered in the field of private media, as it has no powers or levers of power to do so. The government has not influenced or interfered with the editorial independence of the media, influenced the implementation of media program policies, influenced the personnel selections of broadcasters, nor did it interfere with the financial position of the media. Last year the government provided state aid for media, despite the severe impact that the new coronavirus epidemic has caused to the budgetary incomes. The funds were allocated via annual public tenders for co-financing media programs. For 2021 the Ministry of Culture provided the same amount of funds as in 2020, i. e. 2,670,000.00 euros. The Government also allocated tens of millions of euros for covid-19 relief aid to the media – this includes a basic monthly income of 700 euros for independent journalists as well as financing 80% of wages of currently laid-off journalist that work in private media.

During the COVID-19 crisis the public discourse was degraded, and the rhetoric was elevated, mainly due to an intense scrutiny of measures introduced by the government to protect the public health. The elevated discourse took place in the social media and resulted in intense confrontation between the members of the government and public media services (Radiotelevizija Slovenija – RTV Slovenija and Slovenian Press Agency - STA). In our opinion the current situation cannot in any way be considered as an attack on the freedom and independence of journalistic work but represents a normal democratic process. We must emphasize that the freedom of expression is a right that belongs to everyone, including the government and its representatives and it innately also includes expressions of criticism. The European Court of Human Rights has repeatedly emphasized that freedom of expression does not only refer to information or ideas that we accept favourably, but also to those that affect, shock, or upset.

Paragraph 39

As for the statement in the Memorandum that “the Minister stated that, in his view, journalists should not be exempt from criticism”, the Ministry believes that journalists should indeed not be exempt from criticism, particularly when they reports are untrue and they deliberately spread lies.

Paragraph 41

In connection with footnote no. 38, the Ministry wishes to add that protesters also attacked police vehicles. This occurred during a lawful eviction of persons from a building in the centre of Ljubljana. The individuals had stayed there illegally and the building was not safe for residence.

As for footnote no. 40, the Ministry wishes to add that a protester attacked the camera crew of one of the TV stations, while one of the organisers of the protest made statements on public television on which journalists it is acceptable to physically attack and which not.

Paragraphs 76 and 77

Slovenia is the safe haven for journalists and journalism and provides one of the highest levels of journalist protection. Journalistic autonomy and editorial independence are protected by the law. According to the Mass Media Act the editorial board, editorial personnel, journalists, and other authors of media content are independent in their work within the framework of the programme concept of the media and in accordance with the publisher's/broadcaster's basic legal act. The legal relations between the publisher/broadcaster and the editorial board are defined in the publisher's/broadcaster's basic legal act in accordance with the Mass Media Act. Mass Media Act obliges media publishers to acquire the

opinion of the editorial board prior to an essential change or amendment to the programme concept and prior to the appointment or dismissal of managing editors.

In addition, the Mass Media Act stipulates that a journalist's employment or a contract concluded with a journalist may not be terminated, that a journalist's salary may not be reduced, that a journalist's status on an editorial board may not be changed and that a journalist's situation may not be aggravated in any other way because of the expression of his or her positions and opinions in accordance with the programme concept and professional rules, criteria and standards.

The last attack on a journalist happened in 2001, when Miro Petek was beaten severely in front of his house. He currently serves as the advisor to the Minister of culture.

There were two additional instances of violence against individuals involved with news media – one where a radical left activist tried to steal a camera from a Nova24TV news reporter another during violent anti-government protests where a news photographer was severely beaten by protestors.

The case of investigative journalist Bojan Požar is a very concerning example of suspected institutional and systemic pressure on a single investigative journalist that was never covered by the Slovenian press, since he was mostly targeted by people who belong to centers of political, economic and administrative powers of previous governments. Mr. Požar was targeted by several high-ranking individuals close to left-wing political parties and members of the establishment who filed dozens of lawsuits against him, all of which ended as acquittals or as withdrawals of the lawsuit. There is a strong suspicion, that a group of people rather than one individual are trying to exploit SLAPP tactics to scare the independent journalist into self-censorship.

We are potentially seeing erosion of journalistic freedoms exclusively in private media, where detrimental media concentrations have formed, which enables the owners of large media companies that control the market to influence what journalists write about. It has been an ongoing concern for years that journalists of large daily newspapers which are owned by three media tycoons are not allowed to report about misdeeds of their owners. The new Mass-media act is trying to tackle this issue.

Paragraph 81

We want to emphasize that both politicians and journalists have their ethical and professional standards to which they are committed. However, if they do not adhere to these standards, it is a matter of their personal beliefs and style, that either being rewarded or punished by the public. Politicians face consequences in the elections and journalists in their rating and credibility.

Any criticism levelled at the concrete coverage of the media by politicians and the Prime Minister cannot in any way be considered as an attack on media freedom and the independence of journalistic work. Freedom of expression is a right that belongs to everyone, including the government and its representatives, and does not end with high rhetoric, but also includes critical expression. The European Court of Human Rights has repeatedly emphasized that freedom of expression does not only refer to information or ideas that we accept favourably, but also to those that affect, shock or upset. Therefore, politicians and government representatives also have a constitutionally protected right to respond critically and, if necessary, sharply to media reports related to him, especially if they contain unfounded accusations. This is not about any political pressure, but about the exercise of freedom of political expression, which also enjoys special protection under the practice of the ECtHR.

Paragraph 83

Although defamation is incriminated in Criminal Code as criminal offence (insult, defamation etc.), it is not prosecuted ex offa, but by a victims's private criminal lawsuit (the reason being a more "private" interest of the victim). Furthermore, as has already been stated, in Slovenia journalists usually prosecute politicians and other fonctionnaires for defamation type of criminal offences and it is not that politicians would prosecute others. There was a discussion in 2014 and 2015 whether to transfer these offences from the area of criminal law into area of civil law, but the result was negative. Additionally, in 1999

the Constitutional Court of Republic of Slovenia assessed these criminal offences and found them constitutionally compliant (also in accordance with the jurisprudence of the European Court of Human Rights). We therefore do not envisage changing them, and we also opine that their transfer in the area of civil law might be deemed to mean the lowering standard of the protection of human rights in the Republic of Slovenia.

Paragraph 85

As far as the public media RTV Slovenia and STA, founded by the Republic of Slovenia, are concerned, their institutional and program autonomy and editorial independence are strongly protected by special laws. The Government, as the legal representative of the founder, did not carry out any inadmissible or illegal interventions in this area.

The Government did not interfere with resources of RTV Slovenia, did not influence its programming and editorial autonomy, nor did it influence or interfere with the personnel decisions of RTV Slovenia. In accordance with the Radio and Television Act, the Government is only entitled to dismiss and appoint three members of the Supervisory Board (there are 11 members, and the Supervisory Board itself does not have the power to make program decisions, but only supervises the legality of financial operations), the rights of the founder, but not as an interference with the autonomy of the public media.

A special law on Slovenian Press Agency provides adequate financing for the delivering of the public service. STA is entitled to receive the compensation from the state budget, based on an annual contract concluded between the founder and STA. The financing agreement is signed by UKOM on behalf of the founder and he is also responsible for its implementation.

However, any criticism directed at the concrete coverage of the media, including RTV Slovenia or STA, by the Prime Minister cannot in any case be considered an attack on media freedom and the independence of journalistic work. Freedom of expression is a right that belongs to everyone, including the government and its representatives, and does not end with high rhetoric, but also includes critical expression. The European Court of Human Rights has repeatedly emphasized that freedom of expression does not only refer to information or ideas that we accept favourably, but also to those that affect, shock or upset. Therefore, the Prime Minister has the constitutionally protected right to respond critically and, if necessary, sharply to media reports related to him, especially if they contain unfounded accusations. This is not about any political pressure, but about the exercise of freedom of political expression, which also enjoys special protection under the practice of the ECtHR.

Paragraph 86

Criticism regarding draft amendments to three media laws (Media Act, Radiotelevizija Slovenija Act, Slovenian Press Agency Act) are premature, as they are not final amendments but only draft solutions intended for public debate, which is only the first stage of the legislative procedure. The government has not (yet) considered the proposed amendments to the three media laws. Further public deliberations and inter-governmental consultation and coordination will follow, and it is possible that some draft amendments will be withdrawn.

Nevertheless, most of the proposed draft amendments were positively received by the public. Criticism regarding the proposed provision to allocate a 5 % of RTV license fee funds for preparing the programming of local, regional, student and non-profit radio and television stations and 3 % for financing a public service of Slovenian Press Agency is also unfounded, because the loss of the income shall be compensated (for example, by allowing a higher share of advertisements).

Notwithstanding the above, the allegations that the mentioned proposals are supposed to envisage a financial weakening of RTV Slovenia, or that their intention was first to weaken public services financially, then its programme and personnel-wise, and to put "supervisory reins" on STA, are not true.

However, it is true that the proposed amendments to the Media and RTV Slovenia Act interfered with the funds of the RTV contribution. However, this was a lawful and constitutionally permissible

interference. However, the conclusion that the purpose of this measure would be the financial weakening of RTV Slovenia is by no means true. Namely, the draft amendment to the RTV Slovenia Act substantiates that, despite the loss of part of the RTV contribution, RTV Slovenia will be able to continue to perform all tasks specified by law in an intact scope. A solution was proposed to compensate for the loss of funds of the RTV contribution in the following ways:

- by releasing legal restrictions on the scope of advertising on RTV Slovenia or opportunities to obtain higher funds from the marketing of advertising time,
- by reducing the material costs of RTV Slovenia due to the elimination of the activities of OE Transmitters and Communications,
- with synergy effects due to greater cooperation between RTV Slovenia and STA and finally, a more adequate source of finances for delivering the public media service or STA.

In addition to what has been said, the legislative material clearly justified the purpose of using the RTV contribution for other legal (legitimate) purposes, i. e. for the financing of public interests in the field of media in accordance with the law governing the media, and for the financing of public services of the STA in accordance with the law governing the STS, that is:

- As part of the existing public services of RTV Slovenia, which is also carried out by external collaborators and a network of local correspondents with purpose of informing general public, ZRTVS-1 stipulates the possibility of allocating public funds from mandatory broadcasting fee, which is paid by all holders of receivers in the Republic of Slovenia, for financing of other media in the Republic of Slovenia, which, in accordance with the Media Act, prepare and disseminate program content that is in public interest in the field of media;

- Some activities of public services of RTV Slovenia and STA are related activities (two faces of the same coin). The purpose of the amendment is to join the participation of RTV Slovenia in STA in delivering its services, especially in the field of public services to provide objective and comprehensive information, and thus provide opportunities for the use of synergies in the optimal implementation of public services.

The proposed amendment to the RTV Slovenia Act did not touch on the articles governing the program or public service of RTV Slovenia or its organization, management, and administration. Therefore, the allegations about the program and personnel impairment of RTV Slovenia are unfounded in this direction as well.

Paragraph 88

The proposed amendments to the Mass Media Act will focus, among others, on new model of financing the media, even more appropriate arrangement of transparency of media ownership and restriction of concentration in the media. The government has not (yet) considered the proposed amendments. Therefore, it is premature to talk about final solutions. Prior to the discussion and adoption of proposals by the government, inter-ministerial and coalition coordination must be carried out, which has not taken place yet.

General

As society is becoming increasingly polarized across the EU, threats and attacks on journalists, politicians and other public figures have increased. This trend has become even more pronounced with the emergence of the pandemic.

The police do not keep a separate statistics on threats to journalists. Instead, they monitor these incidents in the context of security-related phenomena. Attacks at journalists and politicians remain at the level of verbal threats, insults, shaming, insulting comments regarding personal life, trolling and discreditation. In most cases, these acts take place online. Physical attacks and intimidation are less frequent.

Threats, insults and shaming are most frequently a reaction to a report or response to current political or social events.

In every single instance, without distinction, the police immediately and consistently investigate each and every report or suspicion of a criminal offence, in accordance with the law and based on instructions and directions of the state prosecutor's office. In doing so, the police rely on the established EU-level case law.

It needs to be pointed out that the prosecution for a criminal offence of "Threat", defined in Article 135 of the Criminal Code is initiated upon a proposal. This means that a victim has to submit a proposal on the basis of which a state prosecutor can initiate the prosecution of the criminal offence which from thereon is prosecuted *ex officio*. The wording "whoever seriously threatens another person with the intention of intimidating or upsetting this person with an attack on his or her life or body or freedom, or threatens to destroy property of his or hers of substantial value or to commit any of these acts against a person close to him or her" means that such a threat has to be serious and objectively possible. The criminal offence of "Insult", defined in Article 158 of the Criminal Code, in accordance with Article 168 of the Criminal Code, is not a criminal offence prosecuted *ex officio* and is therefore prosecuted upon a private action, which needs to be filed with a court of competent jurisdiction within three months from the time the criminal offence and perpetrator become known, in accordance with Articles 52 and 53 of the Criminal Procedure Act.

The principle of equality before the law prevents exceptions to the way journalists, politicians or representatives of public life are treated. The law enforcement authorities are aware of the importance of their activity and are particularly vigilant to any security phenomena that might further jeopardise their safety and restrict them in the way they go about doing their job or carrying out their mandate.