



CRI(2022)05

**ECRI CONCLUSIONS  
ON THE IMPLEMENTATION OF THE RECOMMENDATIONS  
IN RESPECT OF SLOVENIA  
SUBJECT TO INTERIM FOLLOW-UP**

*Adopted on 7 December 2021<sup>1</sup>*

*Published on 3 March 2022*

---

<sup>1</sup> Any developments which occurred after 30 June 2021, the date on which the response of the authorities of Slovenia to ECRI's request for information on measures taken to implement the recommendations chosen for interim follow-up was received, have not been taken into account in this analysis.

ECRI Secretariat  
Directorate General II - Democracy  
Council of Europe  
F - 67075 STRASBOURG Cedex  
Tel.: +33 (0) 390 21 46 62  
E-mail: [ecri@coe.int](mailto:ecri@coe.int)

[www.coe.int/ecri](http://www.coe.int/ecri)



@ECRI\_CoE

## **FOREWORD**

As part of its fifth round of monitoring work, ECRI has renewed its process of interim follow-up with respect to two specific recommendations made in each of its country reports.

In line with the Information Document on ECRI's fifth monitoring cycle brought to the attention of the Ministers' Deputies on 14 November 2012<sup>2</sup>, not later than two years following the publication of each report, ECRI addresses a communication to the Government concerned asking what has been done in respect of the specific recommendations for which priority follow-up was requested.

At the same time, ECRI gathers relevant information itself. On the basis of this information and the response from the Government, ECRI draws up its conclusions on the way in which its recommendations have been followed up.

It should be noted that these conclusions concern only the specific interim follow-up recommendations and do not aim at providing a comprehensive analysis of all developments in the fight against racism and intolerance in the State concerned.

---

<sup>2</sup> CM/Del/Dec(2012)1154/4.2.

1) *In its report on Slovenia (fifth monitoring cycle) published on 5 June 2019, ECRI recommended that, in keeping with ECRI's General Policy Recommendations No. 7 on national legislation to combat racism and racial discrimination and No. 15 on combating hate speech, the authorities remedy the gaps identified in paragraphs 4-6 of its report. In particular the prosecution 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.*

In paragraphs 4 and 5 of its fifth-cycle report, ECRI considered that there were serious shortcomings in the prosecution of hate speech, resulting in hate speech potentially amounting to criminal offences being rarely prosecuted in Slovenia. This stems from two factors. The first one is a condition set out in Article 297(1) of the Criminal Code, which provides that in order to be punishable by law the offence of hate speech should 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”.<sup>3</sup> The second one is a legal opinion issued by the Office of the Prosecutor General in 2013,<sup>4</sup> according to which i) the conditions set in this Article should be taken cumulatively, not alternatively, and ii) the causal link of “the concrete danger to public order” is a necessary requirement for prosecuting hate speech under this criminal law provision.

ECRI notes with interest the establishment of a working group within the Supreme State Prosecutor's Office in 2018 with the aim of specialising state prosecutors and harmonising practices in prosecuting hate speech.<sup>5</sup> Furthermore, ECRI welcomes the judgment issued by the Supreme Court on 4 July 2019,<sup>6</sup> which provides a broader interpretation of Article 297 of the Criminal Code. According to the Supreme Court, the conditions set for prosecuting hate speech potentially amounting to hate crime should clearly be taken alternatively<sup>7</sup> and it is not necessary for the conduct of the perpetrator to represent a concrete danger to public order. ECRI is also pleased to note that relevant prosecution and police services subsequently received guidance from the Prosecutor General's Office in the light of the Supreme Court's judgment.<sup>8</sup>

However, ECRI notes with concern that a proposal aimed at formally and fully aligning the Prosecutor General's previous legal guidance with the 2019 Supreme Court judgment was rejected by the council of senior state prosecutors. Recent data shows that there is little change in practice. More specifically, in spite of a significant increase in the handling of hate speech cases by the police, the number of indictments issued by prosecutors remain comparatively low.<sup>9</sup>

---

<sup>3</sup> [Slovenia - Criminal codes - Legislationline](#).

<sup>4</sup> Legal opinion prepared on 27 February 2013 and available at:

[www.spletno-oko.si/sites/default/files/sovrazni\\_govor\\_pravno\\_stalisce\\_-\\_vrhovno\\_tozilstvo\\_0.doc](http://www.spletno-oko.si/sites/default/files/sovrazni_govor_pravno_stalisce_-_vrhovno_tozilstvo_0.doc).

<sup>5</sup> The group was transformed into a working group on hate crime in March 2021.

<sup>6</sup> Judgment n. I Ips 65803/2012, available at: <https://www.sodisce.si/vsrs/odlocitve/2015081111431656/>.

<sup>7</sup> See also the statement by the Advocate of the Principle of Equality dated 8 August 2019, available at: <https://www.rtvsllo.si/slovenija/po-novem-kazniv-ze-govor-ali-zapis-ki-sam-po-sebi-predstavlja-groznjo-ali-zalitev/496480>.

<sup>8</sup> For example, a prosecution service document dated 21 May 2020 specifically referred to the 2019 Supreme Court judgment and provided the police with guidelines on the manner in which police officers should deal with hate speech cases in times of Covid-19. Moreover, in a statement of 6 September 2021, adopted at a meeting of supreme state prosecutors, the prosecutors concerned were requested to use the interpretation given by the Supreme Court in its 2019 judgment when prosecuting hate speech under Article 297 of the Criminal Code.

<sup>9</sup> For instance, the number of hate speech cases dealt with by the police increased from 13 in 2018 to 50 in 2020 and the criminal charges filed by the police increased from 19 in 2018 to 44 in 2020, whereas prosecutors issued six indictments in 2018 compared with seven in 2020. For more details, see: Annual Report of the Advocate of the Principle of Equality for the Year 2020, pp. 100-102, available at: <http://www.zagovornik.si/wp-content/uploads/2021/04/Redno-letno-porocilo-Zagovornika-za-letno-2020-prvi-del.pdf>.

ECRI concludes that, in the absence of a more profound change in the prosecution policy, the impunity gap referred to in the ECRI 2019 report in the prosecution of hate speech remains an issue.

The second gap identified in paragraph 5 of the report concerns the absence of an effective legal remedy for the alleged victim if a prosecutor dismisses a criminal complaint or decides not to initiate prosecution. According to the authorities, in the event of rejection of a complaint or the suspension of prosecution, the victim may opt for subsidiary prosecution under the 2019 Act Amending the Criminal Procedure Act,<sup>10</sup> which regulates the status of crime victims.<sup>11</sup> However, the attention of ECRI was drawn to the fact that a 2005 decision from the Higher Court in Ljubljana<sup>12</sup> precludes individuals from initiating or continuing prosecution by themselves in cases concerning incitement to hatred, violence or intolerance. In addition, in its 2013 legal opinion, the Office of the Prosecutor General<sup>13</sup> stated that in cases where hate speech was directed against a community or group as a whole, persons belonging to the affected community or group cannot be considered as victims. ECRI therefore concludes that alleged victims of hate speech are not yet provided with an effective legal remedy when a prosecutor considers that a complaint is not founded or criminal proceedings not justified.

Overall, ECRI considers that the recommendation has been partially implemented.

2.) *In its report on Slovenia (fifth monitoring cycle), ECRI 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.*

ECRI notes with interest that in October 2019, the Ministry of Foreign Affairs set up an informal working group on the collection of disaggregated equality data, in which the Information Commissioner, the Advocate for the Principle of Equality, the Ombudsman and an NGO representative could participate. However, it appears that the group was convened only once, in November 2019, and did not hold any subsequent meetings.

In 2020 the State Prosecutor General ordered that prosecutorial files on criminal offences where a bias motive has been identified be marked with a special labelling on the cover page of the files.<sup>14</sup> ECRI welcomes this initiative, which would make it easier to identify hate crime cases and may contribute to the future collection of disaggregated equality data. However, it appears that the data emerging from this filing system have not yet been systematically assessed, processed and made available to the public.

---

<sup>10</sup> Official Gazette of the Republic of Slovenia [Uradni list RS], No. 22/19: [www.uradni-list.si.translate.goog](http://www.uradni-list.si.translate.goog).

<sup>11</sup> This law notably provides for an extension of the time-limit available to victims to initiate a subsidiary prosecution (from eight to thirty days).

<sup>12</sup> Judgment I Kp 1050/2004, available at: <https://www.sodisce.si/vislj/odlocitve/34757/>.

<sup>13</sup> Legal opinion prepared on 27 February 2013 and available at: [www.spletno-oko.si/sites/default/files/sovrazni\\_govor\\_pravno\\_stalisce\\_-\\_vrhovno\\_tozilstvo\\_0.doc](http://www.spletno-oko.si/sites/default/files/sovrazni_govor_pravno_stalisce_-_vrhovno_tozilstvo_0.doc).

<sup>14</sup> See the Advocate's Annual Report for 2020, p. 101, available in Slovenian at: <http://www.zagovornik.si/wp-content/uploads/2021/04/Redno-letno-porocilo-Zagovornika-za-letno-2020-prvi-del.pdf>.

Certainly, ECRI takes note of the draft Personal Data Protection Act, which was made public in May 2021 and which includes a provision allowing the processing of personal data on national or ethnic origin of an individual, with a particular emphasis being placed on the consent of the individual concerned. However, it also appears that it should in any event be supplemented by the adoption of sector-specific legal provisions and apply to the public sector only exceptionally.<sup>15</sup> It is also not clear whether the processing of such data should be done for anti-discrimination purposes.<sup>16</sup>

ECRI regrets to note that there are still strong hesitations from the authorities to collect disaggregated equality data,<sup>17</sup> notably due to recent developments in the national legal framework on the protection of personal data. In this connection, it emerged from the information communicated to ECRI that no legislation is currently envisaged to ensure that disaggregated equality data are collected in all cases, with due respect for standards on data protection, including the principles of confidentiality, informed consent and voluntary self-identification. ECRI therefore takes the view that effective action has not yet been taken.

ECRI concludes therefore that this recommendation has not been implemented.

---

<sup>15</sup> The draft is available in Slovenian at:

<https://e-uprava.gov.si/drzava-in-druzba/e-demokracija/predlogi-predpisov/predlog-predpisa.html?id=10208>.

<sup>16</sup> In its annual report for 2020 published in June 2021, the Ombudsman reiterated its 2019 recommendation to the Ministry of Justice to enable and ensure systematic collection of disaggregated equality data: available in Slovenian, p. 75:

<https://www.varuh-rs.si/sl/porocila-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/>.

<sup>17</sup> In the context of the EU anti-racism action plan for the years 2020-2025, the Slovenian Government took the position that “its national legislation does not allow for the collection of data based on race, ethnicity, ethnic origin and other personal grounds”. See Press Release on the Government's 41<sup>st</sup> session on 26 November 2020, available in Slovenian at:

<https://www.gov.si/assets/vlada/Seja-vlade-SZJ/2020/11-2020/SJsevl41.doc>.