

APPENDIX: GOVERNMENT'S VIEWPOINT

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Slovenia

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of Slovenia on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account, except where expressly indicated, developments up until 5 December 2018, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

Comments
by the Republic of Slovenia
on the Fifth Report of the European Commission against Racism and Intolerance
on Slovenia

The Government of the Republic of Slovenia would like to thank ECRI for the adoption of a number of comments made by the Slovenian authorities to the Draft ECRI Report on Slovenia as well as for accepting some of their explanations that improved the quality of the final text of the Report.

The Government appreciates the progress recognized by ECRI in a number of fields and is fully determined to take into consideration the recommendations made in order to further improve the situation in the area of racism and intolerance.

In line with the established procedure concerning the possibility for a country under ECRI monitoring to provide its viewpoints in a separate Appendix, Slovenia would like to provide ECRI with the following additional comments, in particular in the field of legislation against racism and racial discrimination.

Criminal law

As for the "impunity gaps" identified in paragraphs 4 -7 of the Report, "we would like to clarify:

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 carrying out their duties, state prosecutors are independent and autonomous, bound only by the Constitution and the law.

Hate speech goes beyond the boundaries of the criminal offence of public incitement to hatred, violence or intolerance as defined in Article 297 of the Criminal Code. State Prosecutors consider only those cases of hate speech which can be defined as a criminal offence. Criminal proceeding is possible and allowed only on the basis of probable cause when all elements of a criminal offence are in place.

Incrimination of hate speech is considered as the last resort (*ultima ratio*). Before that, other mechanisms must be used, such as liability for minor offense, civil liability as well as the responsibility of the web site administrators for comments under web articles. It should be noted, that in applying the Article 297 in case of doubt and uncertainty of circumstances the restrictive use of incrimination is mandatory. What is more, the potential offender, who is generally not a legal expert, should know and understand the boundaries of incrimination in advance.

The prosecution's practice shows that the state prosecutors evaluate each case of "hate speech" separately, depending on the context, influence and reach of the perpetrator and in relation to other legally relevant circumstances. In June 2018 the Office of the State Prosecutor General provided additional guidelines to the police and proposed joint education. This was done in order to allow, in cases where certain statements exceed the limit of the permissible freedom of speech but they do not reach the limits of the criminal offense, the use of the minor offence legislation which is within the competence of the police.

In relation to the criminal offense under Article 297, the Office of the State Prosecutor General issues statements and statistical data to the media, academics and the public, in accordance with the laws governing the state prosecutor's office, the media, public information access, protection of personal data and confidentiality of data. It should be noted that these regulations limit the information accessible to the public due to the interest of the criminal proceedings, the secrecy of the criminal proceedings or the privacy of persons.

Incrimination is considered only as one of the remedies to address and fight against the criminality. In reacting against it as a society, the priority is put on the prevention and not repression. In tackling the hate speech prevention is essential. Therefore, the emphasis should be on the awareness raising, education and other activities aiming to prevent hate speech, including human rights education and related activities in cooperation with the civil society.

Slovenia strongly supports the EU Code of Conduct to counter hate speech online as we believe it is the right approach to tackle this serious issue, while fully protecting the freedom of speech.

Statistics on the number of cases investigated pursuant to this Article, including the number of cases submitted for prosecution, reveal that the number of prosecuted cases as a percentage of population corresponds to that in other European countries.

However, it should be noted that the Government is planning further measures to sanction milder forms of hostile activities and the spreading of intolerance which do not qualify as criminal offences under the Criminal Code. A related amendment to the Media Act is being drafted. It should classify hostile acts and intolerance in media content as a minor offence and clearly define the elements that constitute it.

The Government is fully committed to take appropriate measures in order to prevent and sanction any manifestations of hate speech or acts while, as indicated above, clearly putting priority on prevention measures as it believes these are the most appropriate and effective way to address this worrying phenomenon.