

## Memorandum on freedom of expression and media freedom in Slovenia

1. The present memorandum by the Council of Europe Commissioner for Human Rights (hereinafter, “the Commissioner”) addresses a recent increase in the number of reported incidents regarding freedom of expression and media freedom in Slovenia. It builds on the Commissioner’s thematic and country work, including an online dialogue which was held in the course of April 2021.<sup>1</sup>
2. During her online exchanges, the Commissioner met with Borut Pahor, President of the Republic, Lilijana Kozlovič, Minister of Justice<sup>2</sup>, Vasko Simoniti, Minister of Culture, and Aleš Hojs, Minister of Interior. In addition to representatives of the national authorities, the Commissioner met with Peter Svetina, the Human Rights Ombudsman, Mojca Prelesnik, the Information Commissioner, and Tanja Muha, Director of the Slovenian Agency for Electronic Communications (AKOS). She also held exchanges with journalists working for public, commercial, and not-for-profit media, as well as with media experts, representatives of civil society, academics and politicians.
3. The Commissioner would like to express her appreciation to the Slovenian authorities in Strasbourg and in Ljubljana for their kind assistance in organising and facilitating the meetings with officials. She is grateful to everyone in Slovenia she spoke to online for sharing their views, knowledge, and insights.
4. The memorandum first analyses current challenges to freedom of expression, including increasingly polarised and hostile public debate, intimidation of civil society actors, and disproportionate limitations on the right to protest in the context of the COVID-19 pandemic (section I). The memorandum then turns to the subject of threats to media freedom, notably the increasingly difficult working environment for journalists, government actions that endanger public service media, and risks for media independence and pluralism (section II). Each section is followed by the Commissioner’s conclusions and recommendations.

### I. Observations on the right to freedom of expression

5. The right to freedom of expression as protected under Article 10 of the European Convention on Human Rights (ECHR), includes the right to receive and impart information and is an essential pillar of a functioning democracy, where a variety of views can thrive, and differences of opinion can be debated and resolved through dialogue.
6. The Commissioner notes firstly that Slovenia consistently scores very high in international freedom and democracy evaluations.<sup>3</sup> Since gaining independence in 1991, the country has built a robust democratic tradition, with strong checks and balances, including the parliament, courts, national human rights structures, and a vibrant media landscape and civil society. Civil and political rights, including the right to freedom of expression and freedom of peaceful assembly, are generally protected in law and in reality.

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<sup>1</sup> This memorandum was finalised on 21 May 2021.

<sup>2</sup> Lilijana Kozlovič resigned from her post on 27 May.

<sup>3</sup> Freedom House, “[Slovenia: Freedom in the world 2020 country report](#)”, 2020.

7. The Commissioner is however concerned about certain developments and also some steps taken by the Slovenian authorities in recent months that risk undermining the ability of critical voices to speak freely. In this section, the Commissioner wishes to look more specifically at how hostile public discourse negatively affects freedom of expression in the country, as well as instances of intimidation of civil society activists and those who wish to express a critical or different opinion. She then goes on to discuss recent obstacles to the right to protest, which is essential for collective expression.

#### **a. Freedom of expression and offensive public discourse**

8. The Commissioner was made aware of the fact that, for several years now, public debate in Slovenia has increasingly been marked by hostile, intolerant, and downright disrespectful communication. This is visible in public statements by politicians, articles in traditional media, as well as comments by the public on the internet and on social media.

9. Article 10 of the ECHR and the corresponding [case law](#) of the European Court of Human Rights (the Court) make clear that the right to freedom of expression is not an absolute right. One's freedom of expression must be balanced with the protection of others' fundamental rights.

10. As pointed out by the European Commission against Racism and Intolerance (ECRI) in its [General Policy Recommendation N° 15](#) on Combating Hate Speech, forms of expression that offend, shock or disturb will not on that account alone amount to hate speech. Action against the use of hate speech should serve to protect individuals and groups of persons, rather than beliefs, ideologies, or religions. As such, threats and incitement to violence against a person, including because of his or her opinions, can be a form of hate speech. This is not the case, however, when the threats relate to opinions – and not to a person specifically. Furthermore, the Commissioner wishes to stress that the concept of hate speech – despite the lack of an internationally agreed definition - is predominantly understood to refer to the advocacy, promotion or incitement to hatred, violence and intolerance against a person or group of persons, on account of their personal characteristics or status.<sup>4</sup>

11. It is of concern that hate speech has been on the rise in Slovenia, in particular against migrants and Muslims, as well as Roma, Jews and lesbian, gay, bisexual, transgender and intersex (LGBTI) people, in particular on the internet.<sup>5</sup> Sexist hate speech is a long-standing problem.<sup>6</sup> Several communications by the Slovenian Human Rights Ombudsman over the years, as well as an OSCE monitoring report on the 2018 parliamentary elections,<sup>7</sup> point to instances of hate speech by representatives of political parties, notably against migrants, and in particular during electoral campaigns. As pointed out in ECRI's [2019 report](#) on Slovenia, there is a concomitant lack of jurisprudence on hate speech, due in part to an overly restrictive interpretation of the law by state prosecutors and the judiciary, requiring a concrete threat to public order to prosecute incitement.<sup>8</sup> According to some of those with whom the Commissioner spoke, this lack of legal adjudication contributes to the existing confusion over the scope of hate speech.

12. The Commissioner observes that several examples of offensive communication which were reported to her during the dialogue do not necessarily constitute hate speech as such. They are nonetheless worrying signs of a polarisation of public debate in the country. The Commissioner was informed that the healthy exchange of ideas that should characterise a democracy is being increasingly overshadowed by personal attacks, exaggeration, and insults. She also noticed strong ideological antagonism with frequent and broad references to the "left" and the "right". In this

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<sup>4</sup> Article 297 of the Slovenian [Criminal Code](#) reads: "Whoever publicly provokes or stirs up hatred, violence or intolerance in respect of nationality, race, religion, ethnicity, gender, skin colour, origin, financial situation, education, social position, political or other beliefs, disability, sexual orientation, or any other personal circumstance, and commits the offence in a manner that can jeopardise or disturb public law and order, or uses force or threat, verbal abuse or insult shall be sentenced to up to two years in prison." Furthermore, Article 8 of the [Mass Media Act](#) prohibits media outlets and broadcasters from promoting hate and intolerance.

<sup>5</sup> ECRI, [Fifth report on Slovenia](#), 2019. The Peace Institute, "[Hateful narratives in online media and online communications in Slovenia](#)", 4 December 2020.

<sup>6</sup> See, for example, The Peace Institute, "[Hate speech in Slovenia. Slovenian racism, sexism and chauvinism](#)", 2000.

<sup>7</sup> Organization for Security and Co-operation in Europe (OSCE), "[Republic of Slovenia, Early parliamentary elections of 3 June 2018, ODIHR Election assessment mission final report](#)", 12 September 2018.

<sup>8</sup> ECRI, [Fifth report on Slovenia](#), 2019, p. 11.

context, politicians from across the political spectrum have been insulted, and threatened and there have been incidents of graffiti, vandalism, and in at least one case, a violent attack on a politician's home.<sup>9</sup> Long-standing and unaddressed societal opinions and tensions dating from the Second World War and the former Yugoslavia keep being revived. The Commissioner received information about the use of social platforms such as Twitter and Facebook, in fuelling the tensions or undermining fair democratic debate. A journalistic investigation by the outlet Pod Črto recently unveiled the increasing presence of fake Twitter accounts in Slovenia, which are sometimes used by politicians to create the impression of public opinion agreeing with an idea or to initiate and relay extreme positions that would otherwise not be appropriate for them to voice (a technique called astroturfing).<sup>10</sup>

13. Letting these practices fester unchecked has serious consequences not only for the persons targeted but also for social cohesion. Such intimidation harms free expression too and can have a chilling effect on media freedom (as discussed in the second section of this memorandum). Indeed, in such a hostile environment, people may not feel free and safe to express their opinions anymore. In this regard, the Commissioner welcomes calls by the President of the Republic for more respectful exchanges of ideas.

#### **b. Stigmatisation of civil society and independent voices**

14. The Commissioner regrets to learn about the constant negative political discourse by some members of the current government regarding the mission and work of non-governmental organisations (NGOs) and human rights defenders and the effect this discourse is having on the latter's ability to freely express their opinions.
15. The Commissioner was informed that vilification of NGOs and their work has become "the new normal" for NGOs since the Slovenian Democratic Party (SDS) of Prime Minister Janez Janša took the lead in a new coalition government in March 2020. The Prime Minister, several SDS officials and associated media constantly portray NGOs as enemies of the people, "parasites" who squander public money.<sup>11</sup> The Commissioner was informed that in February 2021 the ruling party SDS sent a questionnaire to all households in the country containing misleading information about state funding for NGOs, comparing it to investment in student dormitories and care homes for older people.<sup>12</sup>
16. According to civil society representatives with whom the Commissioner spoke, the effect of these constant smear campaigns is to distract the public from the message which human rights defenders seek to convey. They lead to psychological exhaustion on the part of activists, who reported a clear chilling effect for their freedom of expression and advocacy work. Activists reported that sometimes, for fear of being personally sucked into the whirlwind of a "character assassination" campaign, they have to decide whether it is worth speaking up or not.
17. The Commissioner is aware of several other attempts to silence other voices critical of the current government. Media expert and professor Marko Milosavljević, for example, was subjected to degrading personal attacks after he participated in a hearing organised by the European Parliament Democracy, Rule of Law and Fundamental Freedoms Monitoring group about media freedom in Slovenia on 6 March 2021. This prompted a group of academics from the region to publish an open letter of support which stated: "the public shaming that he [Marko Milosavljević] has been exposed to by some members of the Slovene government and some media is a direct threat to this academic freedom. No government should use media and social networks to silence the voices of academics who have an absolute right to express their criticism, in accordance with the democratic values of our societies."<sup>13</sup> The Commissioner also raised with the Minister of Justice the case of a Ljubljana magistrate who had been disciplined after posting a comment critical of the government in a small

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<sup>9</sup> See, for example, STA, "[Rise in Insults, threats aimed at politicians](#)", 21 January 2021; EURACTIV, "[Local Slovenian politician's house attacked with petrol bomb](#)", 12 April 2021; STA, "[Vandals target the home of SNS leader](#)", 21 April 2021. On 17 April, the Minister of Interior [reported](#) a graffiti on the floor at the entrance of his house.

<sup>10</sup> Pod Črto, "[Astroturfing \(part 1\): fake twitter profiles attacking SDS party critics](#)" (unofficial translation, available in Slovenian only), 4 February 2021.

<sup>11</sup> CIVICUS, "[Slovenia: the government has taken advantage of the pandemic to restrict protest](#)", 26 February 2021.

<sup>12</sup> Civil Liberties Union for Europe, "[EU 2020: demanding on Democracy](#)", Slovenia chapter, op. cit.

<sup>13</sup> See Večer, "[Signatories from Zagreb to Skopje in support of Marko Milosavljević: public humiliation and pressure are unacceptable](#)" (unofficial translation, available in Slovenian only), 18 March 2021.

and private Facebook group.<sup>14</sup> The Commissioner was informed that the judicial council had recently ruled that the magistrate had not committed any violation in this case. Finally, civil society drew the Commissioner's attention to the fact that ordinary citizens can also find themselves the target of smear articles in media close to the SDS party when they express criticism of government measures.<sup>15</sup>

### c. Restrictions on the right to protest

18. In Slovenia, the year 2020 was marked by the COVID-19 pandemic combined with an unusually intense period of public protest. The demonstrations started soon after the new coalition government led by the SDS party took office in March 2020. Protestors gathered to express their opinions on a variety of issues. Initially, these included anger at allegations of corruption in the procurement of COVID-19 protection equipment and support for environmental NGOs whose right to participation was being restricted by the government.<sup>16</sup> The protests have occurred in the capital Ljubljana and in other cities; the largest have attracted up to 10 000 people. They have taken place almost every Friday over many weeks and are still going on at the time of writing, leading some observers to comment that rarely has the country seen such a prolonged period of public mobilisation.<sup>17</sup>
19. The right to freedom of peaceful assembly is guaranteed under Article 42 of the Slovenian Constitution. The Commissioner stresses that there is a close connection and even an interdependence between freedom of peaceful assembly and freedom of expression, as one of the objectives of freedom of peaceful assembly is the protection of the free expression of personal opinions. As she articulated in a recent [human rights comment](#), the Commissioner underscores that, in times of crisis perhaps more than ever, public assemblies and the right to protest are crucial in articulating grievances and aspirations, and influencing public policy. The COVID-19 pandemic has precipitated a human rights crisis, increasing isolation, fear and anxiety. Even if some restrictions to freedom of peaceful assembly are allowed under international human rights law to protect public health, these should be very limited and proportionate; assemblies should be preserved as places for democratic debate and discussion.<sup>18</sup>
20. Measures to contain the spread of COVID-19, including restrictions on gatherings, on freedom of movement and on school attendance have been regulated via [multiple ordinances](#) issued by the government. The legal basis for these restrictions is Article 39 of the [Communicable Diseases Act](#).<sup>19</sup> The initial ordinances prohibiting public gatherings and movement between municipalities, adopted in March 2020, placed no specific time limit on the restrictions. In April 2020, the Constitutional Court of Slovenia issued [a decision](#) emphasising that restrictions on public gatherings and movement had to be limited in time and reviewed at regular intervals.
21. The Commissioner was further informed that assemblies for the purpose of protesting were not allowed at all in Slovenia for long periods of time in the context of the pandemic, with some exceptions between mid-May and mid-July 2020, and again at the beginning of October 2020. It is worth noting that the epidemiological situation was better in Slovenia between the first and second wave of the pandemic and, at some point, protests were banned while other public gatherings, including for sport or cultural events, for example, were allowed, subject to approval by the Health Inspectorate. The Commissioner notes that a blanket ban on assemblies constitutes a serious infringement of the right to freedom of peaceful assembly, as recently stressed in a decision of the Slovenian Constitutional Court which, in April 2021, [suspended](#) the latest applicable ordinance providing for such a ban. The Commissioner also points out that, while authorities can request that advance notice be given of assemblies so as to ensure their smooth running, such notice should not amount to a condition of authorisation by the authorities, in line with international standards.<sup>20</sup>

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<sup>14</sup> STA, "[Judge loses post after criticising Janša in closed Facebook group](#)", 11 January 2021.

<sup>15</sup> They drew attention, for example, to this article on the Nova24TV website about a teacher having expressed doubts about anti-COVID-19 measures: [\[Ekskluzivno\] To je učiteljica, ki je hkrati organizatorica protestov! Nasprotuje cepljenju, testiranju in je mnenja, da "zgodovino pišejo zmagovalci"! | Nova24TV](#), 11 April 2021.

<sup>16</sup> The Peace Institute, "[Slovenia: New government restrict rights of environmental groups](#)", 22 May 2020.

<sup>17</sup> See Balkan Insight, "[Slovenia's Marathon anti-government protests enter 23<sup>rd</sup> week](#)", 23 September 2020.

<sup>18</sup> Council of Europe Venice Commission and OSCE/ODIHR [Guidelines on freedom of peaceful assembly](#), 3rd edition, 2019.

<sup>19</sup> FRA, Coronavirus pandemic in the EU, Fundamental rights implications, [Slovenia chapter](#), May 2020.

<sup>20</sup> [Guidelines](#) on Freedom of Peaceful Assembly by the Venice Commission and OSCE/ODIHR (para.76).

22. The Commissioner was informed that in February 2021, protest organisers gave notice of a small protest involving 10 people, who would stand 2 meters apart and wear masks. Gatherings of up to 10 people were allowed at the time. 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. This administrative decision prompted a NGO alliance created in January 2021 to provide legal support to citizens, the Legal Network for the Protection of Democracy, to file a constitutional challenge.<sup>21</sup> The Human Rights Ombudsman confirmed that the language of the government's ordinance, allowing some public gatherings but no protests, was problematic and explained to the Commissioner that he had referred the matter to the Minister of Interior in March 2021. The Minister of Interior informed the Commissioner that the language of the ordinance had been modified. The ordinances now make no distinction between protests and other forms of gatherings. While gatherings of up to 100 people were allowed for a short period of time in April, they were later limited to 10 again.
23. According to publicly available information, protestors used creative ways to continue demonstrating while at the same time complying with precautionary health measures.<sup>22</sup> During the spring of 2020, this included, for example, cycling in front of Parliament and sticking paper footprints on the pavement (symbolising that they would have stood there if allowed). Later on, when Slovenia was hit very hard by the second wave of COVID-19, protestors resorted to individual or small group actions, using symbols of opposition to the government (like bicycles and umbrellas) and car protests.
24. In the view of some of those with whom the Commissioner spoke, the authorities have sought to dissuade and intimidate protestors who gathered despite the bans. Mention was made of a very heavy police presence with officers patrolling the streets and squares in full combat gear on Fridays. The Minister of Interior told the Commissioner that the equipment was necessary to ensure the safety of the police, but the Commissioner notes that the vast majority of protests in Slovenia over the past year have been entirely peaceful.<sup>23</sup>
25. Another key concern has been the very heavy fines imposed on protestors. The fines usually amount to 400 euros, the minimum amount,<sup>24</sup> or more when other violations are added, such as disobeying police orders. This is a very considerable amount of money which can have a chilling effect on participants. The Commissioner was told that, despite community crowd-funding initiatives to help pay the fines, the situation has reached a point where it has become too expensive for some people to protest. No tolerance was shown for small protests that were clearly not posing any risks for public health, with people being fined for taking part in these too.<sup>25</sup> The Commissioner notes that, in December 2020, the Constitutional Court of Slovenia raised an important issue about the legal basis for some of the fines, when [it found](#) that extending the validity of an ordinance without publishing it in the Official Gazette was unconstitutional.<sup>26</sup> The same method of extension was used for other ordinances on public gatherings, and state prosecutors have expressed concern that they may be inundated with individual claims for reimbursement of the fines.
26. In multiple instances, protestors received the fines by post after the demonstrations. This reportedly happened either after a brief exchange with the police, who did not inform the individuals concerned that they were going to be fined, or, in some cases, without any personal identity checks being conducted by police at the time of the demonstration. The Information Commissioner indicated that she has opened an investigation into the methods and legal basis of police identification that led to these fines being issued *a posteriori*. Those with whom the Commissioner spoke stressed that

<sup>21</sup> See Civic Space Watch "[Slovenia: CSO challenges the constitutionality of a decree banning protests in Court](#)", 3 March 2021.

<sup>22</sup> See, for example, Balkan Insight, "[Slovenia's cycling protesters try to push Janša off course](#)", 15 May 2020; STA, "[Anti-government protests enter 13<sup>th</sup> week](#)", 18 July 2020; STA, "[Six children called to court over remote schooling protest](#)", 1 March 2021.

<sup>23</sup> One exception was the demonstration held on 5 November 2020, see Bloomberg, "[Anti-lockdown protest turns violent for the first time in Slovenia](#)", 5 November 2020. Organisers of the other peaceful protests distanced themselves from this demonstration.

<sup>24</sup> The fines for contravening the Communicable Diseases Act range from € 400 to €4 000 euros for those participating in demonstrations and from € 2 000 to € 12 000 for the organisers of the protests.

<sup>25</sup> The Commissioner was informed about a few cases. For example, children who protested in support of re-opening their school in Maribor were fined even though the protest was very small and children were spaced out and wearing masks. A couple who carried an over-sized make-shift bike across the parliament square was also fined.

<sup>26</sup> In this decision, the Constitutional Court was dealing specifically with an ordinance concerning school attendance.



receiving the fines after the protest without having been informed or identified in advance has a chilling effect on protestors. Some members of the government have also portrayed demonstrators as criminals, blamed them for spreading the virus and even for the death of fellow Slovenian citizens, and used their personal data to defame them.<sup>27</sup>

#### **d. Conclusions and recommendations**

27. The Commissioner is concerned about the negative impact on freedom of expression of the overly confrontational tone of public debate and of the rise in insults and threats in Slovenia. Freedom of expression is one of the fundamental values in a democracy. Yet, exercising it carries duties and responsibilities. She calls on the Slovenian authorities to take immediate steps to defuse tensions and to encourage mutual respect in the exchange of opinions, including even radically opposed ones.
28. As has been stressed by the Parliamentary Assembly in its [Resolution 2275](#) on the role of political leaders in combating hate speech and intolerance, political leaders bear a specific responsibility in this regard. In particular, the Commissioner appeals to members of the government, including the Prime Minister, to make responsible and dignified use of social media platforms. The Commissioner notes that the [code of ethics](#) adopted by the National Assembly of Slovenia in June 2020 states, *inter alia*, that “deputies shall act in a decorous, respectful, tolerant and non-discriminatory manner” and that in National Assembly meetings “deputies (...) shall foster democratic dialogue and shall not be offensive”. She invites political parties to consider extending such rules of conduct to politicians’ communication outside of the chamber.
29. The Commissioner points out that Council of Europe member states have a duty to create an enabling environment for the work of civil society and human rights defenders, in line with the 1998 [UN Declaration on human rights defenders](#) and [Recommendation \(CM/Rec\(2018\)11\)](#) of the Committee of Ministers to member states on the need to strengthen the protection and promotion of civil society space in Europe. She welcomes the fact that the [new law](#) passed in 2018 on NGOs and the [National Strategy](#) for the Development of the Non-Governmental Sector and Volunteering 2018-2023 seek to improve the working environment of civil society organisations in Slovenia. The Commissioner calls on members of the government to refrain from making stigmatising, derogatory or misleading comments about the work of human rights defenders, which can have a chilling effect on their freedom of expression, and to condemn such discourse by others.
30. As she has explained in a [human rights comment](#), the Commissioner stresses that demonstrating is a way for citizens to engage in public debates on societal and political problems and an essential component of freedom of expression. Undue restrictions on the right to freedom of peaceful assembly can further exacerbate tensions in society and have a negative impact on freedom of expression. The Commissioner acknowledges that the COVID-19 pandemic creates unprecedented challenges for member states which have a responsibility to protect their populations’ lives and health. Both the ECHR and the Slovenian Constitution permit restrictions to freedom of assembly on the grounds of public health. The European Court of Human Rights has, however, consistently emphasised in its case law that such restrictions should be limited and well-regulated: they must be prescribed by law, pursue a legitimate aim in a democratic society, and be proportionate.<sup>28</sup>
31. The Commissioner is concerned, therefore, that several measures taken by the Slovenian authorities in the past year may have constituted disproportionate restrictions on the right of peaceful assembly. In particular, the imposition of blanket bans on public gatherings as decided at times by the Slovenian authorities appears to be disproportionate. She regrets to note that the Slovenian government seems to have used the pandemic as a pretext to discourage the expression of dissent or political opposition.
32. The Commissioner refers to a 2020 [Joint Declaration](#) on the Right to Freedom of Assembly and Good Governance by several United Nations and regional human rights mechanisms, which outlines important steps to protect the right to freedom of expression and peaceful assembly, even in the course of the pandemic. She invites the Slovenian authorities to devise, in consultation with

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<sup>27</sup> CIVICUS, “[Slovenia: the government has taken advantage of the pandemic to restrict protes](#)”, 26 February 2021.

<sup>28</sup> See European Court of Human Rights, [Guide on Article 11 of the European Convention on Human Rights](#), 31 December 2020.

civil society and protest organisers, solutions that enable the exercise of the fundamental right to freedom of peaceful assembly while at the same time protecting public health. Finally, the Commissioner calls on the authorities to stop issuing prohibitively large fines and to devise a practical reimbursement scheme for any fines that may have been issued outside of a valid legal framework.

33. Taking public opinion into consideration is vital for democratic governance. There is a need for the Slovenian government to enable public participation and to pay attention to public opinion, as expressed through public protests, by civil society or the media, on issues of crucial importance for the well-being of Slovenian society.

## **II. Threats to media freedom**

34. The Commissioner notes the deterioration in the conditions that underpin media freedom in Slovenia over the past year. In the past 13 months, 13 alerts concerning Slovenia have been published on the Council of Europe Platform to promote the protection of journalism and safety of journalists (Council of Europe Platform), compared to one the previous year. It is significant that, while still achieving a good ranking, Slovenia dropped from 32<sup>nd</sup> to 36<sup>th</sup> place between 2020 and 2021 in the World Press Freedom Index of Reporters Without Borders, which pointed to a “dangerous path for media freedom” over the past year.<sup>29</sup>
35. Current challenges to media freedom in Slovenia include an increasingly hostile environment for journalists and actions by the authorities that risk undermining public service media, against a backdrop of long-standing systemic weaknesses relating to the independence and regulation of the media landscape.

### **a. Increasingly hostile environment for journalists**

#### **i. Harassment and intimidation**

36. A striking deterioration in media freedom over the past year in Slovenia can be seen in the markedly more toxic and hostile environment in which journalists have to do their work.<sup>30</sup>
37. During the online dialogue, the Commissioner was disturbed by reports she heard from several sources concerning ongoing insults, threats, and smear campaigns against journalists on social media as well as through some traditional media. A recent shocking example involved the publication of an article in an online magazine attacking the journalistic credibility of a journalist from the public broadcaster RTV, Erika Žnidaršič, and suggesting she risks being viciously stabbed because of her reporting.<sup>31</sup> Journalists also reported anonymous phone calls, e-mails and letters, graffiti being sprayed on media buildings and stalking, causing tremendous psychological pressure, and, in some cases, fear for personal safety.
38. The Commissioner considers that one important factor fanning this increasingly hostile environment for journalists is the flawed attitude of some members of the current government towards the press.<sup>32</sup> She notes that on 11 May 2020 the Prime Minister published on the government’s website a letter entitled “war with the media”.<sup>33</sup> As the letter shows, he considers that independent and critical journalists are waging a “war” against him, his party and his government through their reporting. At the same time, the Prime Minister has made numerous denigrating comments about some journalists, suggesting society does not need them, or blaming them for the spread of the COVID-19 virus. He has constantly undermined journalists’ credibility, including that of foreign

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<sup>29</sup> Reporters Without Borders, [2021 World Press Freedom Index](#), Slovenia.

<sup>30</sup> These difficulties have been well documented in a recent report by the Slovene Association of Journalists (DNS): [“Monitoring attacks on journalists, from physical violence, threats and harassment, to cyberbullying and systemic pressures”](#) (unofficial translation, available in Slovenian only), 2021.

<sup>31</sup> See Mapping Media Freedom, [“Slovenia: Article in far-right outlet suggests RTVS presenter could be violently stabbed”](#), 3 April 2021.

<sup>32</sup> See Council of Europe, 2021 Annual report of the Platform to promote the protection of journalism and safety of journalists, [“Wanted! Real Action for Media Freedom in Europe”](#), p. 23.

<sup>33</sup> Prime Minister of the Republic of Slovenia, [“War with the media”](#), 11 May 2020.

journalists,<sup>34</sup> through social media, in particular Twitter, accusing them of lying, and using offensive hashtags such as #fakenews and #presstitutes. As noted in a background report prepared within the framework of the European Parliament's monitoring of Slovenia, this "behaviour is uncommon for leaders of European democratic states based on the rule of law and fundamental rights and respectful of European values."<sup>35</sup>

39. It has been brought to the Commissioner's attention that other members of the government, including the Minister of Interior,<sup>36</sup> the head of the government communications office (UKOM)<sup>37</sup> and politicians from the ruling SDS party also regularly target journalists on social media. During the dialogue, the Commissioner raised concerns with the Minister of Interior about some of his tweets about journalists. The Minister stated that, in his view, journalists should not be exempt from criticism. Some traditional media, such as Nova24TV and Demokracija which are close to the SDS party, have initiated or relayed smear campaigns about critical journalists.
40. This negative rhetoric by officials, as relayed in traditional media close to the SDS party, has clearly led to an uptick in insults, threats, and harassment of journalists by the public, both online and offline. For instance, the Commissioner was informed of an incident where a TV crew had been told they "would get what they deserve" if they came to cover a protest. A report by the Slovene Association of Journalists indicates that threats of physical violence are often made in the online comments sections of media and, although they are obligated to do so by law, the providers do not always delete them.<sup>38</sup>
41. Unusually for Slovenia, there were also a number of worrying incidents involving violence against journalists in 2020. For example, in March, an RTV TV crew was verbally assaulted while reporting on the COVID-19 lockdown in Ljubljana.<sup>39</sup> The assailant eventually deflated the tires of the crew's vehicle. In June, RTV journalist Evgenija Carl received a letter containing white powder which gave her an allergic reaction.<sup>40</sup> In November 2020, photojournalist Borut Živulovič was brutally beaten up at a demonstration and suffered a broken jaw.<sup>41</sup> These violent attacks against journalists were condemned by the authorities. The Minister of Justice and the Minister of Interior informed the Commissioner that the assault against the photojournalist has been investigated and the perpetrator identified and charged.
42. The Commissioner was informed that journalists rarely turn to the police or the judicial system when threatened with violence. Police have reportedly discouraged such complaints, considering that online threats, in particular, are not sufficiently concrete or real.<sup>42</sup>
43. While independent journalists who are critical of the government are the primary target of the negative rhetoric and attacks mentioned above, the Commissioner notes that the overly hostile climate can have consequences on a variety of journalists. For example, in 2018, people waited for

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<sup>34</sup> Reuters, "[Brussels condemns Slovenian premier's criticism of reporter \[Lily Bayer of Politico\]](#)", 18 February 2021; Tagesschau, "[Sloweniens Premier kritisiert ARD scharf](#)", 8 April 2021; N1 Sarajevo, "[BH Journalists Association concerned over Janša's tweet targeting BiH journalist](#)", 4 May 2021.

<sup>35</sup> European Parliament, LIBE committee, Rule of Law, Democracy and Fundamental Rights Monitoring Group, "[The situation of Democracy, the Rule of Law and Fundamental Rights in Slovenia](#)", 25 March 2021.

<sup>36</sup> For example, in April 2020, the Minister of Interior called on social media for journalists covering anti-government demonstrations to be prosecuted for violating COVID-19 related restrictions, despite journalists' clear duty to report on these events. Later in the year, the Minister blamed journalists for the violence that erupted at an anti-government demonstration in November.

<sup>37</sup> For example, in August 2020, the Director of UKOM, Uros Urbanija, urged Slovenian citizens to "denounce journalists who manipulate facts", launching a hashtag #manipulators which was later used by other officials.

<sup>38</sup> Slovene Association of Journalists (DNS): "[Monitoring attacks on journalists, from physical violence, threats and harassment, to cyberbullying and systemic pressures](#)", op. cit.

<sup>39</sup> Mapping Media Freedom, "[Slovenia: RTV reporting crew threatened, vehicle tires slashed](#)", 31 March 2020.

<sup>40</sup> Committee to Protect Journalists, "[Slovenian reporter Evgenija Carl receives threatening letter with white powder](#)", 8 June 2020.

<sup>41</sup> International Press Institute (IPI), "[Photojournalist Borut Živulovič hospitalised covering violent protests in Slovenia](#)", 6 November 2020.

<sup>42</sup> Slovene Association of Journalists, "[Monitoring attacks on journalists, from physical violence, threats and harassment, to cyberbullying and systemic pressures](#)", (unofficial translation, available in Slovenian only), 2021, p.



RTV journalist Jože Možina at the exit of the building, carrying banners and threatening him verbally.<sup>43</sup> On 15 April 2021, the façade of the Nova24TV office in Maribor was vandalised.<sup>44</sup>

44. Several of those with whom the Commissioner spoke remarked that journalists are increasingly inclined to retreat from social media, seek to change assignments, or stay away from news stories that are likely to make them the target of smear campaigns, pointing to the potential for self-censorship that may arise from such an environment.

## **ii. The specific situation of female journalists**

45. The Commissioner wishes to express particularly grave concern about sexist harassment of female journalists, which represents not only an affront to their human dignity but also a serious impediment to their full participation in the field of journalism.
46. Female journalists in Slovenia are subjected to misogynistic abuse. They are the victims of sexually explicit insults or personal attacks suggesting subordination to their husbands and targeting members of their families. The Commissioner was informed that, in one case, a comment posted about a female journalist's reporting suggested that her "husband should push her down the stairs". Female journalists also reported offensive comments based on their age or physical appearance, frequent insults referring to prostitution, and even rape or death threats. They stress that these sexist attacks are profoundly humiliating, deeply distressing and sometimes make them fear for their physical safety. The Commissioner was informed that there is no systematic approach to tackling sexist hate speech against female journalists. Even in the most extreme cases involving death or rape threats, female journalists are reluctant to go to the police because they do not think it will achieve anything.
47. Prominent politicians and public figures are among those using sexist speech. The Commissioner considers that such abuse from politicians and public figures sets an unacceptable tone for public debate and serves to fuel sexism in society.

## **iii. The use of criminal lawsuits against journalists**

48. The Commissioner notes with concern that the Slovenian Criminal Code still contains a number of defamation-related offences punishable with imprisonment.<sup>45</sup> In the course of the dialogue, the Ministry of Justice stressed that Article 168 of the Criminal Code concerning defamation against public officials was amended in 2015. Cases of criminal defamation or insult committed against public officials must now be brought by means of a private suit rather than by a public prosecutor, as was the case before.
49. In addition, the Commissioner notes that journalists have been the target of abusive legal proceedings aimed at inhibiting critical reporting. She was informed of at least one clear instance of Strategic Lawsuits against Public Participation (SLAPPs) directed at journalists working for one Slovenian media outlet in 2020. Throughout August and September 2020, 39 defamation lawsuits were brought against three journalists at the investigative news website Necenzurirano. Primož Cirman, Vesna Vuković and Tomaž Modic are facing 13 different criminal defamation lawsuits each.<sup>46</sup> They were filed by a tax expert who argues that certain articles by Necenzurirano reporting on his business dealings - including a controversial loan to the SDS - contains false information and has damaged his honour and reputation.
50. As the Commissioner has stressed in a [human rights comment](#), SLAPPs divert journalists' time, energy and resources and have a profoundly intimidating effect.

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<sup>43</sup> Ibid. p. 15.

<sup>44</sup> E-Maribor, "[New Leftist Hatred! They smashed the Nova24TV board and ruined the wall!](#)" (unofficial translation, available in Slovenian only), 15 April 2021.

<sup>45</sup> In particular, defamation against the head of state, the state and its symbols, and foreign heads of states remains a criminal offence punishable by imprisonment, under, respectively, Article 163, Article 165 and Article 164(1) of the Criminal Code. See OSCE, "[Defamation and insults laws in the OSCE region: a comparative study](#)", 7 March 2017; IPI, Media Laws Database, [Slovenia page](#).

<sup>46</sup> IPI, "[Slovenian Investigative News Outlet Necenzurirano hit with 39 SLAPP lawsuits](#)", 1 October 2020.

51. Another impediment faced by Slovenian journalists over the years has been attempts to legally compel them to reveal their sources, especially when publishing classified information.<sup>47</sup> In the course of the dialogue, the Ministry of Justice informed the Commissioner about amendments to the Criminal Code adopted in 2015 to address this issue. Article 260 was modified to introduce create a public interest defence for those who publish classified information. In this context, the Commissioner has taken note of the opening in May 2021 of an investigation into the weekly magazine Mladina for disclosing the draft national recovery and resilience plan submitted by the government to the European Union.<sup>48</sup>

#### **iv. Restrictions on access to public information**

52. According to the [latest report](#) by the Council of Europe Group of States Against Corruption (GRECO), Slovenia has a comprehensive policy on public access to information, which is regulated by the 2003 [Access to Public Information Act](#) and the [Mass Media Act](#), with the possibility for citizens and journalists to seek redress before the [Information Commissioner](#). Slovenia has also signed, but not yet ratified, the Council of Europe [Tromsø Convention](#) on Access to Official Documents. As the Commissioner pointed out in a recent [human rights comment](#) on this topic, effective access to public information bears great relevance for investigative journalism and for democratic accountability.

53. During the first wave of the COVID-19 pandemic, deadlines for responding to journalists' Freedom of Information requests were suspended, leading to considerable delays.<sup>49</sup> Journalists have also reported difficulties in obtaining public information and more generally in receiving answers to their questions from the authorities over the past year. For example, between March and May 2020, the government's press conferences were held online and the right of journalists to ask questions was initially limited, with them being asked to submit their questions in advance. The Slovene Association of Journalists objected, and an arrangement was put in place to allow questions. Journalists also complained about difficulties in obtaining court decisions in 2020, an issue that was eventually addressed through legislative changes.

54. The Commissioner was further informed that several government authorities, including the government communications office UKOM and the Ministry of Culture, allegedly often fail to respond to journalists' questions or respond only after long delays. It was also reported that UKOM limited journalistic access to public officials, ministers, and heads of different expert bodies, who needed authorisation to appear in evening news shows, for example.<sup>50</sup> Journalists were able to turn to the Information Commissioner for redress when their Freedom of Information requests were denied or left without reply. The Information Commissioner mentioned that she has observed an increase in the number of complaints received by her office in 2020, both under the Mass Media Act and under the Public Information Act. She evaluated the number of claims received from journalists at around 20 in 2020 and 13 since the beginning of 2021.

55. The Commissioner wishes to underline that, in times of crisis such as the COVID-19 pandemic, promoting greater openness and transparency in the provision of information by the authorities helps not only to preserve public health, but also to build public trust and confidence in the health measures and the authorities concerned.

#### **b. Government actions that risk weakening public service media**

56. As explained in the Council of Europe's 2012 [Declaration](#) of the Committee of Ministers on Public Service Media Governance, public service media play a specific role in democratic societies in realising the right to seek and receive information. Their mandate is to ensure universal access to impartial, high-quality news and content, serving the public in all its diversity, including minority groups, and with due attention to gender equality. To achieve this, the Declaration stresses that public service media must remain "independent from political or economic interference and achieve high editorial standards of impartiality, objectivity and fairness".

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<sup>47</sup> OSCE Representative on Freedom of the Media: "[Journalists in Slovenia should not face criminal charges for their work, says OSCE Media Representative](#)", 27 February 2015.

<sup>48</sup> See STA, "[Mladina under investigation for running classified recovery plan](#)", 7 May 2021.

<sup>49</sup> IPI, "[Access denied: FOI deadlines extended or suspended across Europe](#)", 2 June 2020.

<sup>50</sup> IPI, "[Slovenia: Government Communications Office must stop controlling COVID-19 news coverage](#)", 8 February 2021.

57. Slovenia benefits from a well-developed public service media sector. The television and radio broadcaster (RTV) offers several popular television and radio channels, as well as a range of online media services.<sup>51</sup> A 2020 survey shows that RTV enjoys a good level of public confidence.<sup>52</sup> RTV has an Ombudsman office which handles questions and complaints from viewers about its programmes. The Republic of Slovenia is also the founder and sole owner of the national press agency STA, roughly 50% of whose budget comes from public funding. STA is an emblematic media outlet since it was created when Slovenia gained independence and it quickly became a symbol of media freedom and a source of objective information in the region. The Commissioner notes that STA is a reliable provider of unbiased information which commands a great deal of respect at both the national and international level.
58. The Commissioner is however concerned about several steps taken by the authorities over the past year that risk weakening the role and perception of public media services, as well as undermining their independence.
59. There have been multiple attempts by members of the government to discredit both RTV's and STA's reporting and to create confusion about their role. For example, on 26 March 2020, the Prime Minister accused RTV in a tweet of "spreading lies" after it aired a news clip discussing a raise in the salaries of government ministers and state secretaries.<sup>53</sup> He also called STA a "national disgrace" in reaction to a comment about the length of articles dedicated to various issues, after having previously accused it of being a "ventilator of lies". Some members of the government regularly call into question the objectivity of public service media, insinuating they are "anti-government" and belong to what they label "leftist" media.<sup>54</sup> The mere fact of covering protests, for example, has been cited as evidence of anti-government bias.
60. In this context, the Commissioner is also concerned about demagogic tactics to question the importance of public service media or to create resentment against them. For example, the Commissioner was informed of a questionnaire sent to all Slovenian households by the SDS party in February 2021 suggesting that the money paid for the RTV licence fee would be better invested in the health system.
61. At the same time, there have been reports of attempts to increase control over public service media and to influence their editorial policies. In April 2020, the government sought to replace three members of RTV's Supervisory Board before the end of their mandates, a move that was challenged before administrative courts.<sup>55</sup> The Commissioner was further informed that members of RTV's [supervisory bodies](#) who are close to the SDS party have allegedly complained about and sought to influence reporting, outside of the supervisory bodies' mandates. Public officials, including the Prime Minister, have no hesitation in stating publicly that certain RTV editors are not competent and should be dismissed. Similarly, it has been reported that the government communications office UKOM asked STA to justify some of its editorial decisions. Most recently, the government, although it has no formal role in the appointment of the agency's Director, called on the Supervisory Board of STA to dismiss the Director amid a row between the government and the agency, discussed below.<sup>56</sup> While the Commissioner has been informed that such attempts to

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<sup>51</sup> The [law on RTV](#) requires it to be independent and autonomous, to respect human integrity and dignity in its programmes, to observe the principle of impartiality, to ensure the truthfulness of information it broadcasts and to represent the pluralism of opinions and religious beliefs in society. The law also requires the public broadcaster to provide radio and TV programmes for the Italian and Hungarian national minorities in Slovenia, which is important for social cohesion.

<sup>52</sup> RTV SLO, "[Survey: a large increase in trust in the health care system and in RTV Slovenia](#)" (unofficial translation, available in Slovenian only), 19 April 2020.

<sup>53</sup> Council of Europe Platform to promote the protection of journalism and the safety of journalists, [Alert no 34/2020 created on 26 March 2020](#).

<sup>54</sup> For example, a study commissioned by the government and published on its website finds that RTV generally tends to be anti-government, based on its reporting on the COVID-19 pandemic, and its coverage of protests and migration issues. See the Government of Slovenia's "[Study on Media Landscape](#)" (unofficial translation, available in Slovenian only), 1 March 2021. The authorities have also argued publicly that RTV, as the successor of the state broadcaster in the former Yugoslavia, is still in thrall to the views of communist managers and editors, see Council of Europe Platform to promote the protection of journalism and the safety of journalists, Slovenia, "[State Reply to alert of 26 March 2020](#)", 7 April 2020.

<sup>55</sup> RTV SLO, "[The administrative court suspended the early dismissal of three supervisors of RTV Slovenia](#)" (unofficial translation, available in Slovenian only), 29 July 2020.

<sup>56</sup> EURACTIV, "[Slovenian PM urges Director of press agency to resign](#)", 10 March 2021; STA, "[Government calls on STA supervisory board to dismiss Director](#)", 18 March 2021.

influence public service media's editorial independence have occurred in the past under other governments, as also argued by the authorities,<sup>57</sup> she stresses that this is hardly an acceptable justification in her view.

62. In July 2020, the Minister of Culture opened for public consultation a package of bills revising media laws, including amendments to the Mass Media Act, the RTV Act and the STA Act. There is a common understanding in Slovenia that the media legislation is outdated and that there is an urgent need to review a number of these laws, something successive governments have failed to achieve. The proposed RTV and STA bills, however, drew strong criticism from national and international NGOs regarding their potential impact on public service media.<sup>58</sup> Among other things, the suggested changes to the funding of RTV could result in budget cuts which might hamper its ability to perform its public service media function, while the draft bill revising the STA Act gives a prominent role to the government in the agency's governance arrangements, in a way that would threaten its autonomy and independence.<sup>59</sup>
63. The current situation regarding STA warrants specific and urgent attention, as the Commissioner pointed out to ministers in her online dialogue. The government has stopped its payments to STA, alleging that the agency has refused to hand over the documentation necessary to evaluate the appropriate level of state funding for the agency's public service. The Commissioner [wrote](#) to the Prime Minister in December 2020 urging him to ensure that the funding is re-instated. At the time of writing this memorandum, STA is facing a second suspension of the government's monthly payments, after they briefly resumed following the adoption of a law to that effect by Parliament. No funding has been provided since February 2021. Worryingly, the Commissioner was repeatedly told that this could be fatal to the functioning of the agency, within a relatively short timeframe.
64. Several of those with whom the Commissioner spoke expressed the view that withholding funding is a means of putting political pressure on STA. The disappearance of the agency would drastically impact the provision of independent information in the national media market. The Minister of Culture told the Commissioner that he has no influence over the situation but expressed the view that STA should be accountable and should provide all the documents requested by UKOM. The Commissioner notes that, according to the information she received, and as confirmed recently by the European Commission,<sup>60</sup> there is a functioning framework in place for ensuring the financial transparency and accountability of STA. The Commissioner stresses that Article 3 of the STA Act clearly establishes the state's duty to ensure STA's institutional autonomy, editorial independence, and adequate funding for the performance of its public service function.

### **c. Media pluralism and interference with editorial independence**

65. The relevant legislative framework affirms Slovenia's commitment to promote and protect media freedom as well as media pluralism and diversity.<sup>61</sup> [Recommendation CM/Rec\(2018\)1](#) of the Committee of Ministers to member states on media pluralism and transparency of media ownership offers guidance on how member states can do this.
66. With two million inhabitants, Slovenia is a small readership market. At the same time, the media landscape there is vibrant, with over 2 400 registered media in the government's official [Media Registry](#). This can create difficulties in sustaining and regulating the market. It has also been reported that the media sector has been experiencing financial troubles for some time now, with many journalists facing the threat of losing their jobs and/or poor working conditions, including temporary contracts and low salaries.<sup>62</sup>

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<sup>57</sup> Council of Europe Platform to promote the protection of journalism and the safety of journalists, Slovenia, "[State Reply to alert of 26 March 2020](#)", op. cit.

<sup>58</sup> See, for example, The Peace Institute, "[Comments on the proposed amendments to the media legislation](#)", (only available in Slovenian), 9 September 2020; IPI, "[Slovenia's government targets public media in midst of pandemic](#)", 27 July 2020; European Broadcasting Union, "[EBU and partners concerned for future of public service media in Slovenia](#)", 14 July 2020.

<sup>59</sup> See STA, [press release](#), 13 July 2020.

<sup>60</sup> European Commission, press release, "[State aid: Commission approves €2.5 million compensation to Slovenian Press Agency STA for its public service](#)", 29 April 2021.

<sup>61</sup> The key relevant pieces of legislation are the [Mass Media Act](#) (2006), the [Audiovisual Media Services Act](#) (2011), the [Radio and Television Corporation \(RTV\) of Slovenia Act](#) (2006) (and its [Statute](#)), and the [Act on the National Press Agency](#) (STA) (2011).

<sup>62</sup> See, for example, Freedom House, "[Slovenia: Freedom in the world 2020 country report](#)", 2020, op. cit.; Council of Europe, European Audiovisual Observatory, "[Media Pluralism and Competition issues](#)", Slovenia chapter, 2020.



## **i. Political influence over media**

67. According to the [Media Pluralism Monitor of 2020](#), the indicator on political independence of media scored the highest risk of all the indicators with 91 percent. As detailed in a 2020 [report](#) by the European Audiovisual Observatory on media pluralism and competition issues, this has been a long-standing issue in the country, partly because of the history of privatisation of the media market in the 1990s, an area which also suffers from ineffective regulation.
68. The media are not sufficiently protected against interference, either direct or indirect, from owners, based on their political and commercial interests. There are recurrent and well-documented examples of such interference, which occurs in many media. Furthermore, the legislative framework in Slovenia does not address conflicts of interests between owners of media and political parties, including ruling parties. At least two media outlets in the country, Nova24TV and Demokracija, were co-founded and are co-owned by members of the SDS party and are known to relay the party line. Concentration of ownership is also a difficult issue given the size of the media market in Slovenia. For example, in 2019, the Slovene Journalist Association expressed concerns about the planned merger of the second and third largest-circulation newspapers, Dnevnik and Večer, warning that this could lead to journalists being laid off and jeopardise editorial independence.<sup>63</sup>
69. According to Council of Europe standards,<sup>64</sup> member states must take positive action to create the conditions for an independent, pluralistic, and diverse media environment, where a variety of opinions can be expressed. The Commissioner stresses that political parties using their position in government to increase their own political influence over media only weakens the media environment.

## **ii. Lack of transparency of media ownership and media financing issues**

70. While the Slovenian media laws contain rules governing media concentration and ownership,<sup>65</sup> several persons with whom the Commissioner spoke mentioned that there is a need to further improve the transparency of ownership and financing of media. A recent journalistic investigation showed that the penultimate owners and instances of undue concentration of ownership often remain hidden.<sup>66</sup> This can further hamper the work of regulators, on top of the shortcomings already considered to exist in this area (see section below).
71. Government funding plays an important role in sustaining the media market but is liable to be manipulated or is considered to be not truly effective in strengthening media pluralism. For example, the placement of advertising by the state or state-owned companies is not specifically regulated and can thus be used by any political party in government to reward “loyal” media. Information about state advertising expenses is published but it is difficult to access and analyse it in practice.<sup>67</sup>
72. The Commissioner was further informed that the Ministry of Culture administers an annual fund of 2.67 million euros for projects in the media sector, which is distributed by an Expert Committee through a call for tenders. The minister is free to appoint the members of this committee. Some of the criteria for allocating these funds are objective, while others are less clear, allowing for political considerations to taint the allocation of funds. For example, it was recently reported that five local radio, including a student community radio, Radio Študent, and a radio broadcasting to the Slovenian community in the Carinthia region, failed the tender administered by the current Expert Committee, even though they have received state funding for many years and the criteria have not changed.<sup>68</sup> An evaluation team raised the question of whether the fund was truly effective in

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<sup>63</sup> STA, “[Journalists protest against ministry okaying Večer-Dnevnik merger](#)”, 21 December 2020.

<sup>64</sup> European Court of Human Rights, “[Guide on Article 10 of the European Convention on Human Rights](#)”, 31 August 2020; [Recommendation CM\(2018\)1](#) of the Committee of Ministers to member states on media pluralism and transparency of media ownership, 7 March 2018.

<sup>65</sup> Council of Europe, European Audiovisual Observatory, “[Media Pluralism and Competition issues](#)”, op. cit.

<sup>66</sup> Pod Črto, “[Who is holding the information gun? We are investigating the media landscape](#)” (unofficial translation, article available in Slovenian only), 5 June 2019.

<sup>67</sup> Civil Liberties Union for Europe, “[EU 2020: demanding on Democracy](#)”, Slovenia chapter, op. cit. footnote 2.

<sup>68</sup> See Delo, “[This is an unprecedented media purge](#)” (unofficial translation, available in Slovenian only), 15 May 2021.



strengthening media pluralism and diversity.<sup>69</sup> Another issue of concern is public funding for local newspapers, which is reportedly being used to turn these outlets into tools for promoting local mayors.<sup>70</sup>

### iii. Shortcomings in media regulation and the importance of self-regulation

73. Media regulation in Slovenia is split between three institutions: the Agency for Electronic Communications (AKOS) and the Agency for the Protection of Competition, which are entities separate from the government, and the Ministry of Culture, through its Media Inspectorate. Competencies are split between the three along areas of action (allocation of licences, ownership, content) and the type of media. Both the Media Inspectorate and AKOS, which has a wide mandate beyond media, reportedly lack the resources they need to oversee the media market properly. In addition, the European Commission's Rule of Law [report](#) 2020 has noted a lack of safeguards against political interference in the work of AKOS, whose Director is appointed by the government.
74. A combination of the above factors, together with the wider political sensitivities that surround media market regulation, have resulted in media regulation being slow, timid and ineffective, according to several observers.<sup>71</sup>
75. The Commissioner would like to point out that journalists and media outlets management also bear responsibility for ensuring editorial independence and upholding professional journalistic standards and ethical journalism. In that regard, she stresses that bolstering journalists' labour rights and working conditions, as well as opportunities for not-for-profit independent journalism, is important. Self-regulation is well-developed in Slovenia, notably through the work of the [Honorary Court](#) of the Slovene Association of Journalists, although not all journalists are members of this association. Another journalists' association in the country, the Association of Journalists and Commentators (ZNP), also has an honorary tribunal, although it seems less active, with only two published decisions so far. The Commissioner is particularly concerned about reports of xenophobic and islamophobic coverage in some traditional media, as mentioned in the [2019 ECRI report](#) on Slovenia. Given the lack of action to date on hate speech in the media, the Commissioner was interested to learn that one case concerning hate speech is pending with AKOS.<sup>72</sup>

### d. Conclusions and recommendations

76. Slovenia has a history of being a beacon of media freedom and a safe haven for journalists in the region and beyond. That standing is currently under threat.
77. Free and safe journalism underpins democracy, the rule of law and human rights. These cannot exist unless journalists play their role, which includes informing citizens, as well as uncovering abuses, and holding those in power to account.
78. As detailed in the relevant [case law](#) of the European Court of Human Rights and in the Committee of Ministers [Recommendation CM\(2016\)4](#) on the protection of journalism and the safety of journalists and other media actors, member states of the Council of Europe have positive obligations to create an enabling environment for journalists. The Court has clearly established that politicians, as public figures, must display a much higher level of tolerance for public criticism.<sup>73</sup> The Commissioner is thus very concerned by the attitude of some members of the current government in Slovenia who depict certain media as the enemy.

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<sup>69</sup> Government of Slovenia, Ministry of Culture, "[Evaluation of the yearly project tender for co-financing media content](#)" (only available in Slovenian), May 2018.

<sup>70</sup> Pod Črto, "[Municipal newsletters: millions of euros of public money to promote mayors](#)" (unofficial translation, article available in Slovenian only), 6 June 2019.

<sup>71</sup> European University Institute, Centre for Media Pluralism and Media Freedom, Media Pluralism Report 2020, "[Country Report Slovenia](#)", op. cit.; European Commission, "[2020 Rule of Law report – country chapter Slovenia](#)", Council of Europe, European Audiovisual Observatory, "[Media Pluralism and Competition issues](#)", op. cit.; Civil Liberties Union for Europe, "[EU 2020: demanding on Democracy](#)", Slovenia chapter, op. cit.

<sup>72</sup> OSCE, "[Republic of Slovenia, Early parliamentary elections of 3 June 2018, ODIHR Election assessment mission final report](#)", 12 September 2018, op. cit.

<sup>73</sup> See, among others, European Court of Human Rights, *Lingens v. Austria*, Application no. 9815/82, 8 July 1986; *Nadtoka v. Russia*, Application no. 38010/05, 17 October 2016; *Tuşalp v. Turkey*, Applications no. 32131/08 and 41617/08, 21 February 2012; *Turhan v. Turkey*, Application no. 48176/99, 19 May 2005.

79. The Commissioner stresses that democratic political leaders must refrain from promoting hostile speech against journalists. She considers that politicians should lead by example in showing a higher level of tolerance towards public criticism and should make sure that even the opinions they disagree with are protected. Visibility acquired through political activity should not be used to target journalists and NGOs. The Commissioner calls on the Slovenian authorities to ensure that such behaviour is not tolerated.
80. As the Commissioner stressed during the dialogue, constant tit for tat with journalists is toxic and bound to escalate hostility. The Commissioner strongly believes that journalists' criticism is best addressed through convincing policy actions, rather than counter criticism.
81. Appeased government communication vis-à-vis journalists is important to set an example and diminish the level of animosity against the press in the country. The Commissioner rejects the notion that insults, smear campaigns and threats are less serious because they are professed online. Several serious incidents in Europe have shown that threatening words and incitement to hatred towards journalists can unleash violence against them, particularly if this dangerous rhetoric becomes mainstream in public discourse. The Commissioner invites the authorities to reflect on how the police and the justice system can deal more effectively with threats of violence against journalists, including in the case of sexist threats made online and offline against female journalists.
82. The Commissioner also encourages the authorities to initiate a societal debate on how to tackle the scourge of sexist harassment against female journalists. The Council of Europe's Committee of Ministers [Recommendation \(2019\)1 on preventing and combating sexism](#), as well as the Safety of Female Journalists Online [guidebook](#) of the OSCE Media Freedom Representative and the most recent [UNESCO report](#) on online violence against women journalists all offer important guidance on addressing this multifaceted problem. The Commissioner welcomes the efforts of the Slovene Association of Journalists, which is planning to launch an online platform to better inform and sensitise the public to this phenomenon. She also encourages all media outlets in Slovenia to develop internal policies to offer appropriate support to their female journalists who are confronted with gender-based harassment.
83. The Commissioner is concerned that Slovenia has not yet fully decriminalised defamation. As long as defamation is a criminal offence and journalists can be threatened with disproportionate sanctions and fines, a chilling effect risks limiting the freedom of the media. The Commissioner calls on the authorities to repeal all criminal provisions against defamation and to deal with it through strictly proportionate civil sanctions only. The Commissioner also recommends that the authorities amend the legislative framework to prevent SLAPPs. As the Commissioner has previously [explained](#), this can include provisions to allow the early dismissal of patently spurious lawsuits or measures to punish abuse, for example by reversing the costs of proceedings.
84. The Commissioner calls on the authorities to facilitate journalists' access to public information, to be transparent and to provide them with information to the best of their ability. She welcomes information she received from the Minister of Justice about documents being prepared for the ratification of the Council of Europe [Tromsø Convention](#) on Access to Official Documents. She believes such ratification would complement Slovenia's already sound legal framework in this field and hopes the authorities will proceed swiftly.
85. In the Commissioner's view, undermining the independence and credibility of public service media contributes to information chaos and increases societal anxiety. This is particularly problematic in the middle of a pandemic when people are confronted with great challenges and uncertainty. In keeping with the Council of Europe's Committee of Ministers [Recommendation \(2012\)1](#) on public media governance, the Slovenian authorities should strictly respect the independence and autonomy of public service media. In particular, the Recommendation specifies that, while it is legitimate for the state to be involved to some extent in the appointment of supervisory bodies of public service media, the appointments should not be used to exert political or other influence and the mandates of the appointees should be for a specified term that cannot be shortened. The Commissioner also calls on the Slovenian authorities to ensure that public media services have sufficient and sustainable funding to effectively carry out their public interest mission.
86. The Commissioner was informed by the Minister of Culture during the dialogue that it had not yet been decided when the draft media bills package would be submitted to inter-governmental consultation with a view to finalising the texts. She calls on the Slovenian authorities to ensure that

the revised bills take into consideration the input provided by media experts and representatives of RTV and STA and do not include provisions that could weaken public media services.

87. As for STA, the Commissioner stresses that it is of paramount importance for media freedom in Slovenia to preserve the national independent press agency. She reiterates her position that public funding should be immediately reinstated. Unhindered dissemination of independent news to the citizens of Slovenia is far too important to be endangered by alleged procedural or personal issues that have been obstructing the work of STA in recent months. Any procedural disagreements should be addressed separately from funding, and with the clear intention of finding a satisfactory resolution as quickly as possible. To that effect, an independent mediation forum may be considered in addition to any judicial proceedings.
88. The Commissioner recommends that meaningful reforms be considered to address systemic weaknesses in the regulation of the media market in Slovenia in order to promote independent, high-quality and diverse media. Increasing the transparency of media ownership could help alert readers and regulatory authorities about editorial interference or media concentration. Legislation should be considered to address any direct conflicts of interest between political parties and media outlets. A mechanism should be found to ensure more effective regulation of the media market. Finally, the Commissioner recommends that the authorities consider devising a national strategy on strengthening media independence and pluralism in order to better direct public funding to media. Such a strategy should be prepared in consultation with all the parties concerned, including journalists from all types of media and civil society representatives. It should be based on an objective analysis of the media market, assessing information gaps and the needs of all segments of society, beyond the political left/right dichotomy.