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**Comments on the findings and recommendations of the Fifth Opinion of
the Advisory Committee on the Framework Convention for the
Protection of National Minorities on the implementation of the Council of
Europe's Framework Convention for the Protection of National Minorities
in the Republic of Slovenia
14 September 2022**

INTRODUCTION

The Government of the Republic of Slovenia hereby submits to the Advisory Committee its response to the Fifth Opinion on the implementation of the Framework Convention for the Protection of National Minorities and the recommendations for its implementation, adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities on 18 May 2022.

The protection and promotion of respect for human rights, including minority rights, is of great importance to Slovenia. That is why it supports the efforts of independent human rights monitoring mechanisms. It is also satisfied with the Committee's finding that the level of protection of national minorities in Slovenia is high.

The Government of the Republic of Slovenia (hereinafter: the Government) has examined the findings and recommendations of the Advisory Committee's Fifth Opinion and its previous opinions, and strives to implement them, taking into account all the relevant legislative and other aspects.

Slovenia ratified the Framework Convention for the Protection of National Minorities (hereinafter: the FCNM) in 1998. Since the FCNM does not contain a definition of the term 'national minority', and each party to the Convention is therefore free to determine which ethnic groups are to be treated as national minorities covered by the Convention within their respective territories, the Republic of Slovenia, in compliance with the Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, Nos 33/91-I, 42/97 – UZS68, 66/00 – UZ80, 24/03 – UZ3a, 47, 68, 69/04 – UZ14, 69/04 – UZ43, 69/04 – UZ50, 68/06 – UZ121,140,143, 47/13 – UZ148, 47/13 – UZ90, 97, 99, 75/16 – UZ70a and 92/21 – UZ62a) (hereinafter: the Constitution) and its national legislation, upon ratifying the FCNM, declared in writing that the autochthonous Italian and Hungarian national communities in the Republic of Slovenia are regarded as national minorities. Insofar as this is not in contravention of the Constitution and other legislative acts of the Republic of Slovenia (in conflict with the legal order), the rules in the FCNM also apply to the members of the Roma community living in the Republic of Slovenia.

As a Contracting State, the Republic of Slovenia appreciates the good cooperation with the Bodies of the Council of Europe on the implementation of the FCNM and other control mechanisms, including the European Charter on Regional and Minority Languages.

The Republic of Slovenia guarantees special constitutional rights to members of national minorities as follows: it guarantees not only to individual members of minorities but also to communities, representation in national or local representative bodies, special rights regardless of the number of members of the minority, and has expressly undertaken to support, materially and morally, the exercise of such rights.¹

National minorities are regulated in Articles 5, 11, 61, 62 and 64 of the Constitution. Their position and the manner of exercising rights are also regulated in sector-specific laws and

¹ "In accordance with the Constitution of the Republic of Slovenia, everyone, irrespective of their nationality, has the right to freely express their national affiliation, to foster and give expression to their culture, and to use their language and script, particularly in procedures before national and other authorities deciding on their rights. In addition to the mentioned rights, the Italian and Hungarian national communities are guaranteed additional special collective rights (the right to use their national symbols freely, the right to education and schooling in their own languages, the right to foster relations with their nations of origin, the right to establish their own self-governing communities, the right to be represented in representative bodies, and the right to give consent to the adoption of regulations that concern their rights). Roma are guaranteed only some of these collective rights, for example the right to be represented in municipal councils."

(*Ustavnopravno varstvo manjšinskih narodnih skupnosti v Sloveniji* (Constitutional protection of minority national communities in Slovenia), Ciril Ribičič, 2004, <https://revus.revues.org/1530>)

other regulations and legal acts. Since members of minorities are citizens of the Republic of Slovenia, it is all the more important that they are guaranteed special status by the state. The collective rights of the Italian and Hungarian national communities are laid down in the Constitution, and the collective rights of Roma are regulated by a special Act and sector-specific legislation.

In the process of monitoring the implementation of the FCNM, the Republic of Slovenia also considers the issues of other ethnic groups in Slovenia that enjoy the rights under Article 61 of the Constitution.

The Declaration of the Republic of Slovenia on the Status of National Communities of the Members of the Nations of the Former SFRY in the Republic of Slovenia adopted in 2011 ensures continuous concern for creating opportunities for the members of the communities of Albanians, Bosniaks, Montenegrins, Croats, Macedonians and Serbs to preserve and develop their identity. It also provides the basis for the foundation of the Council of the Government of the Republic of Slovenia as an advisory body of the Government of the Republic of Slovenia concerning the questions of these national communities. In September 2020, the Ministry of Culture established a working group for permanent dialogue with representatives of the German-speaking ethnic group, consisting of representatives of organisations of the German-speaking ethnic group in Slovenia and representatives of the Ministry of Culture, the Ministry of Foreign Affairs and the Ministry of Education, Science and Sport. The working group is tasked with considering these matters within the remit of the participating ministries, including language and culture, thus ensuring the preservation and further development of linguistic and cultural diversity.

A research project was commissioned by the Ministry of Foreign Affairs and the Office of the Government of the Republic of Slovenia for National Minorities as part of the "CRP 2021" Target Research Programme, entitled "Analysis of the Situation of the Croatian, German and Serbian Communities in the Republic of Slovenia", which is expected to be completed at the end of 2022.

The competent national authorities (ministries and government offices) as well as the Advocate of the Principle of Equality of the Republic of Slovenia, RTV Slovenia, AKOS – the Agency for Communication Networks and Services of the Republic of Slovenia, the Roma Community Council of the Republic of Slovenia, the Coastal Italian Self-Governing National Community and the Hungarian Self-Governing National Community of Pomurje were involved in the preparation of these comments.

With regard to recommendation 19, Slovenia wishes to notify and thank the Secretariat for organising a follow-up event in November 2022 to discuss the most effective ways of implementing the recommendations of this Opinion.

The news on the adoption of the Fifth Opinion on the implementation of the FCNM will be published, together with the original and the Slovenian translation of the opinion, on the website of the Office of the Government of the Republic of Slovenia for National Minorities when the Fifth Opinion on the implementation of the FCNM is made officially available on the website of the Council of Europe.

Below are the comments of the Republic of Slovenia on the findings and recommendations of the Fifth Opinion on the implementation of the FCNM.

PART 1

1. SUMMARY OF THE FINDINGS

1. Scope of application

The formal recognition requested by the representatives of the German-speaking ethnic group and the Albanian, Bosniak, Croatian, Macedonian, Montenegrin and Serbian national communities as national minorities has not been achieved.

Upon accession to the FCNM, the Republic of Slovenia stated that its provisions in the Republic of Slovenia pertain to the Italian and Hungarian national communities as well as the Roma community.

Nevertheless, in the process of monitoring the implementation of the FCNM in Slovenia, the issues of other ethnic groups in Slovenia that enjoy the rights under Article 61 of the Constitution, which includes German-speaking ethnic groups and other national communities, are also considered. This Article ensures the right to freely express affiliation with their nation or national community, to foster and give expression to their culture, and to use their language and script. In this regard, the representatives of these communities are guaranteed an appropriate level of constitutional protection of their rights.

2. The promotion of full and effective equality

The number of Roma settlements without access to public services (water, electricity, sanitation) has not decreased since 2017. In some parts of Slovenia, inadequate housing conditions in segregated settlements still hamper the inclusion of Roma into society and have a detrimental effect on the quality of life and access to national minority rights. There is an urgent need to guarantee access to basic infrastructure and access to private or public/social housing.

The Ministry of the Environment and Spatial Planning (hereinafter: the MESP) states that under the constitutional regime and the legislation in force, the municipality is responsible for spatial management and spatial planning at the local level, and thus also for the regulation of Roma settlements. The competent state authorities provide municipalities with Roma settlements guidance, expert support, and co-financing for the regulation of these settlements in various ways. In doing so, both municipalities and state authorities take into account the vulnerability of the residents of these settlements and, through the measures they take, aim to ensure that these residents have equal starting opportunities and to increase the participation of individuals in addressing issues relating to living conditions and housing.

As, in accordance with the legislation in force, municipalities are dealing with a number of complex challenges relating to Roma settlements, some strategic measures have been implemented at the national level in the past with the aim of identifying and addressing the spatial challenges of these settlements and, by defining possible approaches, helping to guide municipalities in their tasks and thus contribute to the greater and faster integration of Roma into society.

With regard to the regulation of Roma settlements on existing sites, the Building Act (hereinafter: the GZ), which has been in force since 1 June 2018, introduces various legal mechanisms for the legalisation of buildings already built.

In addition to the regular legalisation procedures that have been in place up to now (obtaining a regular building permit, the regular amendment of spatial planning documents), the GZ allows for the legalisation of buildings where minor deviations can be found on the basis of the acquisition of an operating permit, maintains the possibility of the legalisation of buildings built

before 1968, adds the possibility of the legalisation of long-standing constructions built before 1 January 1998 and, in addition, allows for legalisation under the rules in force at the time the buildings were built. The GZ thus offers a comprehensive set of measures to address the different legal and factual situations that give rise to the illegality of buildings.

Some of these measures will certainly also help in the legalisation of buildings occupied by members of the Roma community, but there are still a number of obstacles for them on the path to legalisation. The first and greatest obstacle is the fact that, the same as for regular construction, the right to build must be demonstrated (primarily the right of ownership).

Another obstacle is the fact that the preparation of the documentation needed for legalisation and the payment of the related charges (the community infrastructure levy and compensation for environmental degradation and usurpation) are still significant financial contributions.

The third obstacle is the fact that not all Roma settlements have the necessary municipal infrastructure in place for the buildings to be connected to it and thus meet the essential requirements for their use, particularly in terms of hygiene conditions (drinking water, waste water discharge and treatment).

The new GZ also emphasises, in particular, the "right to respect for one's home", which is protected under the right to the inviolability of dwellings under paragraph one of Article 36 of the Constitution, and which is also referred to in the Constitutional Court Decision No. UP – 619/17 of 14 February 2019.

With the new GZ, the deadline for legalising unauthorised works moves from buildings built since 1998 to 2003.

The MESP is of the view that the legalisation of Roma settlements is carried out in the context of the preparation of municipal spatial plans and their amendments; at the same time as preparing a municipal spatial plan and the detailed municipal spatial plan, local authorities are required to prepare servicing programmes as a basis for the construction of community infrastructure in all settlements. European cohesion funds are available for that purpose, which are awarded to local communities through calls for tenders; in addition, funds from the national budget for regional development have been available in the past and will continue to be available in the future.

Most of the Roma settlements identified by the local authorities as part of the preparation of the municipal spatial plan in their settlement system are already equipped with basic community infrastructure (water supply, sewerage, electricity), while secondary distribution and connection to individual users are only possible if the conditions laid down in the applicable building legislation are met (final building and operating permits, at the request of the investor and with the conclusion of a contract on the payment of the costs).

The current measures within the housing policy, in terms of the development of Roma settlements and ensuring the current housing standards, provide members of the Roma community with roughly comparable conditions for obtaining non-profit rental housing or a housing unit, with the active assistance of the local community and other competent professional institutions (the Housing Fund of the Republic of Slovenia, municipal housing funds, social work centres, etc.). This is a general measure, with Roma as one of the target groups, aimed at acquiring public rental housing and housing units throughout Slovenia for all population groups, by providing co-financing opportunities for eligible applicants, including self-governing local communities and public real estate funds of local communities where Roma live.

According to the Housing Fund of the Republic of Slovenia (hereinafter: the HFRS), the term "social housing" is not defined in the Slovenian housing legislation. We therefore propose that this term be deleted or that the term "rental housing" be used throughout the Fifth Opinion on the implementation of the FCNM. The types of rental housing are defined in Article 83 of the Housing Act (SZ-1).

The HFRS, a public fund as a state-owned fund and the body implementing the Resolution on the National Housing Programme 2015–2025 and the provider of public rental housing, enables Roma in all its public calls for applications to rent apartments and residential units for young people under non-discriminatory conditions, which was recognised by the Roma applicants themselves as well as the humanitarian organisations working with them. The fund also provides co-financing from its own funds to build public rental apartments and residential units at the local level, which is open to eligible applicants for providing rental apartments and residential units for Roma. The HFRS stated that it already provides Roma access to housing for young people, the elderly, families and individuals under the same conditions as apply to all other potential beneficiaries, without question or discrimination.

To strengthen the implementation of measures in the field of housing policy, the Government Office for National Minorities, within the framework of the National Platform for Roma project (SIFOROMA5) and in close cooperation with the Housing Fund of the Republic of Slovenia, carries out information and awareness-raising activities to make better use of the opportunities available for the construction of non-profit housing and the provision of housing units under the Fund's co-financing programmes. The Housing Fund of the Republic of Slovenia has set itself these tasks in its operating policy and in its business and financial plans, and will continue such activities in the coming period and, in cooperation with the Office, will strengthen the provision of information to municipalities about these opportunities and to interested residents, members of the Roma community, about the possibilities to rent apartments through the Fund's public calls for applications.

Through the implementation of the Promotion of Balanced Regional Development Act (Official Gazette of the Republic of Slovenia [*Uradni list RS*], 20/11, 57/12 and 46/16; hereinafter: the ZSRR-2) and the activities of the Ministry of Economic Development and Technology (hereinafter: the MEDT), financial incentives have been consistently provided from the national budget to municipalities to accelerate the development of settlements where members of the Roma community live. The ZSRR-2 is the basis for preparing the regional development programmes, agreements for the development of regions and measures of endogenous policy, taking into account the specific needs for the development of areas in which members of the Roma community live. In previous periods, over the 18 years of implementation, the MEDT, through calls for tenders for co-financing basic community infrastructure projects in Roma settlements, allocated EUR 16 million to municipalities with densely built-up Roma settlements lacking community infrastructure and which had a representative of the Roma community in the municipal council during the current term of the municipal council or which, on the date of the publication of the call for tenders, had a special working body of the municipal council tasked with monitoring the status of the Roma community and whose members were also members of the Roma community, to co-finance the following projects in Roma settlements:

- primary water supply systems, including reservoirs and pipelines to a customer's connection;
- a primary sewerage network, for the collection and discharge of wastewater to a wastewater treatment plant to protect water resources or to meet other ecological requirements;
- the electrification of legally built buildings in densely built-up settlements;
- new or reconstructed local roads and public paths;
- the purchase of land to develop and consolidate settlements.

The Roma Community Council of the Republic of Slovenia (hereinafter: the RCCRS) calls attention to issues concerning the living conditions (the legalisation of Roma settlements and infrastructure), which remain the same in some Roma settlements, as has been pointed out. The RCCRS confirms that the conditions in Roma settlements in Slovenia have improved, also due to state funding. However, it is true that such funding is not always available. The RCCRS also notes that there are internal conflicts between the Roma (particularly in south-eastern

Slovenia) and that some Roma choose to move away or purchase or hire apartments or houses outside Roma settlements.

Furthermore, the RCCRS disagrees with the statement about the supposed differentiation of and discrimination against non-traditionally settled Roma in Slovenia coming mostly from the republics of former Yugoslavia. According to the RCCRS, nowhere in Europe do the non-traditionally settled Roma receive such attention as in Slovenia. All Roma, including Roma migrants, enjoy the same rights in Slovenia.

The RCCRS also adds that the situation of Roma in Slovenia is undoubtedly better than in other European countries. Slovenia is one of the few countries whose constitution refers to Roma. It also adopted the Roma Community in the Republic of Slovenia Act (ZRomS-1) and sector-specific laws, and Roma are represented in the municipal councils of twenty municipalities.

3. Intercultural dialogue and mutual respect

A comprehensive approach to the promotion of intercultural dialogue is needed, especially in education (curricula, teacher training, educational materials), culture and the media. More information about the minority communities in Slovenia and their history, culture and contributions to society should be provided in mainstream education and in the broader society.

The response is provided in section 13 of the recommendations for immediate action.

4. Hate speech and hate crime

The number of complaints about cases of hate speech and ethnic intolerance has increased. The authorities should intensify efforts to combat stereotypes and prejudice against minority communities exposed to hate speech. All instances of hate speech and anti-minority rhetoric in the public and political discourse should be condemned and hate crimes effectively prosecuted and sanctioned.

The response is provided in section 12 of the recommendations for immediate action.

5. Media

Public radio and television broadcast programmes in the Hungarian, Italian and Romani languages. However, the duration and frequency of such broadcasts is relatively limited in Hungarian and very short in Romani and should therefore be extended. In addition, public media should provide for adequate television and radio broadcasting in the languages of the other minority communities and programmes should contain information about them in order to contribute to cohesion and mutual understanding.

The response is provided in section 13 of the recommendations for immediate action.

4. The use of minority languages with administrative and judicial authorities

The Hungarian and Italian languages are used in contacts with local authorities and before judicial authorities. In order to overcome practical shortcomings, more civil

servants mastering these languages should be recruited. In addition, the authorities should consult the Roma national minority about its needs concerning the use of Romani in contacts with authorities.

The Ministry of Public Administration (hereinafter: the MPA) reiterates that the Public Employees Act (ZJU) defines knowledge of the language of the Italian or the Hungarian national community as a special condition for employment (Article 17 of the ZJU). If, by virtue of law, a public sector job requires the use of a language of a national community as an official language, the knowledge of such language shall be set as a condition for such employment. Accordingly, a public employee must meet this requirement as a preliminary condition for employment. This means that public employees must have the necessary knowledge of the language of the national community even before starting employment, or that knowledge of the language of the national community is a preliminary condition for employment with a particular authority. In other words, it is not possible to employ a person that lacks the required level of knowledge of the language of the national community in jobs where this is required by law.

The MPA has previously called attention to constitutional restrictions regarding the rights of the Roma national community in the sense that it should not be equated with the members of the autochthonous Italian and Hungarian communities, as Roma community members do not enjoy the same rights as the members of the Italian and Hungarian communities. The difference in their legal status is derived from the Constitution. The obligation to establish a legal basis that would provide the Roma community the same rights as the Italian and Hungarian communities to use its language before state authorities is therefore constitutionally problematic. As the official language(s) is (are) laid down in the Constitution, the operations of authorities in Romani languages would be in contravention of the Constitution, interfering directly with the constitutional provisions on official languages.

5. Effective access to education for Roma

The authorities have taken measures with a view to increasing the enrolment of Roma children in pre-school education. However, the inclusion of Roma in kindergarten is still lower than in the average population.

The Ministry of Education, Science and Sport (hereinafter: the MESS) estimates that 180 Roma children were enrolled in kindergarten and 106 children in "Roma programmes" in the school year 2019/2020. Altogether, approximately 286 preschool children were enrolled in kindergarten in the past school year. The questionnaires filled out by kindergarten principals also provided the approximate percentages of Roma children in kindergarten, based on which the average percentage of Roma children in kindergarten amounted to 35%. In the school year 2021/2022, 231 children are enrolled in kindergarten and the number of children in Roma programmes in 2022 increased by 15 from the previous year. It is estimated that the smaller number of children in Roma programmes in 2021 is a result of the coronavirus epidemic and the closure of kindergartens based on Government ordinances.

In spring 2022, the MESS adopted the Strategy for the Education of the Roma in the Republic of Slovenia 2021–2030²; the relevant measures are also included in the National Programme of Measures for Roma of the Government of the Republic of Slovenia for the 2021–2030 period, adopted in December 2021³.

² Available at: [Strategy for the Education of the Roma in the Republic of Slovenia 2021–2030](#) (8 September 2022).

³ Available at: [Roma Community](#) (8 September 2022).

It is estimated that the employment of Roma assistants in kindergartens has improved the situation of Roma children and employees, particularly in overcoming language barriers and the level of the parents' trust in kindergarten as an institution.

Incentives for opening short kindergarten programmes encouraged more kindergartens (two kindergartens in the year before) to apply in 2011; the Municipality of Kočevje, which ran this type of programme for the third year in a row, stands out as a positive example. At the beginning of 2021, the MESS organised five virtual meetings with kindergarten, primary school and municipality representatives, calling on the municipalities and kindergartens with a larger share of Roma to adopt a proactive approach and attempt to open one short programme a year, as the programme is free of charge for parents, and the kindergartens receive the funding directly from the MESS.⁴

In order to increase the enrolment of children in preschool education programmes, Slovenia is carrying out a national evaluation study to analyse the needs, conditions and possibilities of the compulsory inclusion of children in a preschool education programme with a view to reducing social, economic and cultural inequalities. The study can serve as a basis for possible changes regarding the inclusion of children in preschool programmes.

In addition to the measures already in place to increase the enrolment of preschool children in kindergartens, the National Assembly of the Republic of Slovenia adopted an amendment to the Kindergartens Act in January 2021 that addresses some of the shortcomings of the current system identified in practice.

In order to increase the enrolment rate of preschool children in kindergartens, the amendment reintroduces free-of-charge kindergarten for a second child from the same family enrolled in kindergarten at the same time as his or her older sibling. The right to free-of-charge kindergarten is extended to families with at least three children, as the third (and any subsequent) child in the family will be eligible regardless of whether any siblings are still in kindergarten. This will make kindergarten financially more accessible for parents and is expected to increase the enrolment rate of preschool children in kindergartens.

The RCCRS believes that the state is devoting significant resources to Roma education and that the situation in this area is improving thanks to the programmes being implemented. Significant progress has been made in the integration of Roma children into preschool education, particularly in the south-eastern part of Slovenia.

6. The teaching of and in minority languages, teacher training, and educational materials

Education in Italian continues to be available at all levels. Hungarian is taught in bilingual lessons with Slovenian, and there is a consensus that this educational model needs to be improved, including through the training of teachers able to teach in Hungarian.

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2. RECOMMENDATIONS FOR IMMEDIATE ACTION

⁴ Source: The Ninth Report of the Government of the Republic of Slovenia on the Status of the Roma Community in Slovenia, No. 09500-1/2022/3 of 28 July 2022. Available at: [Roma Community](#) (8 September 2022).

11. The Advisory Committee urges the authorities to ensure access to drinking water, sanitation and electricity in the relevant Roma settlements, to promote equal opportunities for Roma as regards access to private and public/social housing, and to offer adequate housing to Roma from settlements whose regularisation is not possible.

The response is provided under point 2.

12. The Advisory Committee urges the authorities to combat stereotypes and prejudice against minority communities exposed to hate speech, including through community-specific awareness-raising campaigns, as well as to publicly condemn anti-minority rhetoric and effectively prosecute and sanction all instances of hate speech, including in public and political discourse.

With regard to the effective prosecution and sanctioning of hate speech, we explain that Article 63 of the Constitution provides that any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious, or other hatred and intolerance are unconstitutional and that any incitement to violence and war is unconstitutional. The prohibition of hate speech is therefore a permissible restriction on the freedom of expression; however, this restriction must also be in accordance with the constitutional principle of proportionality in cases where a category of expression that is considered particularly harmful pursuant to the Constitution is involved. The most deviant and reprehensible instances in this area are defined as criminal offences, while less intense infringements are defined as offences against public law and order.

Article 297 of the Criminal Code (hereinafter: the KZ-1) defines public incitement to hatred, violence or intolerance as a criminal offence. The definition of said criminal offence was last amended by the KZ-1B amendment in 2011, when it was harmonised with Council Framework Decision 2008/913/JHA (of 28 November 2008) on combating certain forms and expressions of racism and xenophobia by means of criminal law. By way of the KZ-1B amendment, paragraph one of Article 297 of the KZ-1 was amended with an additional requirement that a criminal offence be committed in a manner that can endanger or disturb public law and order, or with the use of threats, verbal abuse or insult as additional elements, the purpose of which was to define the criminal offence more precisely so that it can be appropriately distinguished from minor offences under Article 20 of the Protection of Public Order Act (hereinafter: the ZJRM-1).

By way of the KZ-1B amendment, paragraph three of Article 297 of the KZ-1 was amended to explicitly include, as a statutory element, "publication on websites", which are becoming a prevalent public means of communication and also a means of committing the criminal offence of incitement to hatred, violence or intolerance. The said amendment dispelled doubts over whether "mass media" also include websites as the public part of the internet, which includes the possibility of punishing the editor or the person substituting therefor.

With regard to paragraph one of Article 297 of the KZ-1, this means that the possibility of endangering public law and order is irrelevant in the case of the use of threats, verbal abuse or insults. Furthermore, the phrase "endanger public law and order" suggests that this is a situation that falls between offences of abstract endangerment (where no concrete endangerment is required, since the legislature has assessed that the conduct itself is so dangerous as to be criminal) and offences of concrete endangerment (where the consequence is not merely the result of a lucky coincidence). With regard to the above, Prof. Matjaž Ambrož summarises the German regime of "suitability crimes", which require a court to find that the perpetrator's conduct is suitable to pose a risk.[5] In the same way, in the case of Article 297

of the KZ-1, it is not necessary to prove that the statement in question endangered or disturbed public law and order, but rather "whether it could do so". It should be stressed that this is a matter of state-prosecutorial and judicial discretion in each specific case, where it is necessary to always weigh the proportionality between freedom of expression as one of the most important human rights under Article 39 of the Constitution of the Republic of Slovenia and the right of assembly and public meeting, and, on the other hand, the possibility of a criminal law response, which should be the last resort (*ultima ratio*).

With regard to the above, after the entry into force of the KZ-1B amendment, the competent authorities, in practice, have held the view that, in specific cases, even if the statutory element of "threats, verbal abuse or insult" exists, there must also be a real possibility of the endangerment of public law and order, which excessively limited the scope of the offence in question or the possibility of prosecuting and trying the perpetrators of the offence.

Concerning the effectiveness of prosecution and sanctioning, it is worth noting a judgment of the Supreme Court of the Republic of Slovenia, Ref. No. 65803/2012 of 4 July 2019, which clarified the aforementioned dilemmas in the practice of the courts (and consequently also of the state prosecutor's offices when dealing with criminal complaints) and clearly defined the elements of the offence under paragraph one of Article 297 of the KZ-1. It also follows from the reasoning of the aforementioned judgment (in particular, point 10 of the reasoning) that "... it is clear from the statutory wording of paragraph one of Article 297 of the KZ-1 that there must be only a potential, and not a concrete, possibility of the endangerment or disturbance of public law and order. It is not required that a direct endangerment actually occurs, but it is sufficient that the act, by its content, nature, place or other circumstances in which it was committed, is capable of posing a concrete risk which manifests itself in the endangerment or disturbance of public law and order. This concerns a potential, abstract – concrete endangerment, so it is not necessary that a concrete risk actually occurs, but the court must determine, in the context of the description of the act, whether the perpetrator's conduct was capable of posing such a concrete risk. In determining this, it must evaluate the relevant factors of the life situation in question, such as the nature, content, form, and circumstances in which the act was committed, the climate in society, etc. In the case of the first of the alternative forms of the commission of the offence, the abstract risk to public law and order alone is not sufficient, but the assessment of the potential risk of endangerment must be based on an assessment of the concrete circumstances in which an objective basis for such a prognosis must be provided."

The criminal offence referred to in Article 297 of the KZ-1 and those suspected of committing such criminal offence are prosecuted *ex officio*. According to the aforementioned judgment of the Supreme Court of the Republic of Slovenia, publicly uttered "threats, verbal abuses or insults" with a view to inflaming hatred are punishable even without affecting the possible threat to public law and order.

At the same time, it should be emphasised that, including according to the views of the academic legal profession (The Comprehensive Expert Commentary), the criminal offence referred to in Article 297 of the Criminal Code (KAZ-1) is primarily intended to protect less privileged groups, which is also consistent with the aforementioned Council Framework Decision 2008/913/PNZ.

During Slovenia's Presidency of the Council of the EU, the Ministry of Justice also organised a conference on the effective fight against online hate speech and acts of hate and the protection of victims, and in cooperation with the ODIHR and FRA, they will organise a workshop on more effective reporting on criminal offences of hatred in cooperation with the State Prosecutor's Office and the Police in autumn 2022.

13. The Advisory Committee urges authorities to promote awareness, respect and understanding in relation to all minority communities, including by reviewing

curricula, teacher training, educational materials and the mission of public broadcasting services, and by providing dedicated funding for cross-cultural activities.

As concerns the media, the individual programme content of media in the public interest, which also include programme content that enables both national communities and the Roma community, as well as other ethnic communities, to exercise the right to inform the public and to be informed, is funded from the state budget by way of an annual public tender conducted by the Ministry of Culture in an amount totalling approximately EUR 2.9 million a year. Regarding a special segment of this public tender, which is intended for the co-financing of programme content of local, regional, student and non-profit radio and television programmes of special importance, the evaluation criteria also take into account facilitating exercise of the right of local and minority communities to inform the public and to be informed and whether the programme content is disseminated in minority languages and whether it ensures that the principles of cultural diversity, equal opportunities of both sexes, and the enforcement of tolerance have been taken into account.

Public service broadcasting has a particular statutory mission in this area. The Radio and Television Slovenia Act defines the broadcasting of radio and television programmes of the Italian and Hungarian national communities, radio and television programmes for the Roma ethnic community, and radio and television programmes for abroad as a public service activity performed by Radio-Television (RTV) Slovenia. In its programmes, RTV Slovenia also supports, among other things, the spread of knowledge about other cultures that are represented in Slovenia and their representatives.

RTV Slovenia is guaranteed institutional and programme, i.e. editorial, autonomy by the law. The Government cannot interfere or in any way influence the preparation of RTV Slovenia's broadcasting programmes. RTV Slovenia's programme policy is the sole responsibility of the Programme Council as the highest management body, and the responsibility for specific programme content rests with the competent regional editors-in-chief or RTV Slovenia's management (the Director General, the Television Director, the Radio Director).

The National Education Institute is aware that expert committees should pay attention to minority issues during curriculum renewal and that teachers in study groups should be given appropriate powers.

3. ADDITIONAL RECOMMENDATIONS

14. *The Advisory Committee calls on the authorities to strengthen the legal protection of the German-speaking ethnic group and new ethnic communities, and to consider the possibility of providing them with access to the constitutionally protected rights of the national minorities and extending the full application of the Framework Convention to members of this community.*

Upon accession to the FCNM, the Republic of Slovenia stated that its provisions in the Republic of Slovenia pertain to the Italian and Hungarian national communities as well as the Roma community.

Nevertheless, in the process of monitoring the implementation of the FCNM in Slovenia, the issues of other ethnic groups in Slovenia that enjoy the rights under Article 61 of the Constitution, which includes German-speaking ethnic groups and other national communities,

are also considered. This Article ensures the right to freely express affiliation with one's nation or national community, to foster and give expression to one's culture, and to use one's language and script. In this regard, the representatives of these communities are guaranteed an appropriate level of constitutional protection of their rights.

In 2021, the Ministry of Foreign Affairs, in cooperation with the Office of the Republic of Slovenia for National Minorities, commissioned the implementation of a research project entitled "Analysis of the situation of the Croatian, German and Serbian Communities in the Republic of Slovenia" as part of the "CRP 2021" Target Research Programme. The project, which is scheduled for completion in late 2022, is being carried out by the European Faculty of Law of the New University of Nova Gorica.

15. The Advisory Committee calls on the authorities to introduce and sustainably support, for each minority community concerned, a cultural programme proposed by its representatives and provide increased funding, including to cover administrative and operating costs.

In 2022, the Ministry of Culture (hereinafter: MC) allocated EUR 961,821 for the cultural programmes of the Italian and Hungarian national communities, which is EUR 120,000 more than the year before. These funds are intended for the activities agreed on in the Agreement between the Government of the Republic of Slovenia and the deputies of the national communities in the National Assembly of 3 July 2020 and Annex No. 1 thereto of 15 July 2021. The funds earmarked for this purpose in 2023 total EUR 991,838, representing an increase of EUR 30,017. Each year, the MC sends to the central organisations of the national communities a direct call for requests for the following calendar year by the end of October, at the latest. The selection of the specific content of cultural programmes, their priorities (annual, long-term and development-oriented) and performers organisationally falls under the competence of the central organisations of the national communities, which, based on the MC's directions, decide which activities and in what way the members of national communities can satisfy their cultural needs and exercise their special cultural rights.

EUR 50,000 more than in 2021 was allocated for the public tender for the selection of cultural projects in the area of the Roma community in 2022. The tender amounts to EUR 142,115 and will be used to finance 86 different cultural projects. Funding is provided for projects submitted by the Roma community's non-profit cultural organisations with the status of legal entity governed by private law which are registered for the performance of cultural and artistic activities and the provision of cultural goods in Slovenia and have been operating for at least one year from the date of registration in the area of the Roma community, and for culture professionals of the Roma community in the Republic of Slovenia who have the status of self-employed professionals in culture. Funds can also be provided for administrative costs and operating costs (e.g. premise-related costs, electricity costs, etc.) incurred in the framework of individual registered projects.

The MC earmarked EUR 60,000 under the public tender for the selection of cultural projects within the programme intended for members of the German-speaking ethnic group in the Republic of Slovenia and financed from the budget of the Republic of Slovenia based on the Agreement on Cooperation in Culture, Education and Science between the Government of the Republic of Slovenia and the Government of the Republic of Austria. A total amount of EUR 57,867 was distributed (due to an insufficient amount of funding requested) and will be used to finance 18 projects. The year-on-year increase in the level of funds was EUR 25,759

(45%). Funds can also be provided for administrative costs and operating costs (e.g. premise-related costs, electricity costs, etc.) incurred in the framework of individual registered projects.

16. The Advisory Committee calls on the authorities to take measures in order to increase the duration and frequency of broadcasting in Hungarian and Romani by public media and to continue the support for broadcasting in Italian, including by addressing the shortage of Italian-speaking journalists; the Advisory Committee calls on the authorities to ensure that public media provide for adequate television and radio broadcasting in the languages of the other minority communities.

Quite a few concrete measures have been taken recently to improve the conditions of radio and television programmes for the Italian and Hungarian national communities and the Roma community in public media and to ensure the stability and development of these programmes. The volume of co-financing in this area has recently increased as follows:

- radio and television programmes for the Roma community broadcast through public channels:
 - an additional EUR 10,000 has been secured for radio and television programmes since 2020 inclusive;
- radio and television programmes for the Hungarian national community broadcast through public channels:
 - EUR 13,333 each year for developing new programme content since 2021 for Pomurje Hungarian Radio and Hidak-Mostovi;
 - EUR 28,500 since 2022 for the employment of a new journalist at the radio and television studio of Hungarian language programmes in Lendava;
- radio and television programmes for the Italian national community broadcast through public channels:
 - an additional EUR 88,000 for new employment positions at the Koper-Capodistria radio and television centre;
 - an additional EUR 100,000 for ensuring the stability of the provision of radio and television programmes since 2021 inclusive;
 - in addition to the above, an additional EUR 200,000 per year has been provided for the aforementioned purposes at the Koper-Capodistria radio and television centre.

An additional answer to this item can be found under item 5 of the summary of findings.

17. The Advisory Committee calls on the authorities to intensify their efforts, in co-operation with representatives of the Roma national minority and the families concerned, to increase preschool attendance by Roma children in mainstream education.

The answer to this item is given under item 7 of the summary of findings.

18. The Advisory Committee calls on the authorities to provide adequate teacher training for teaching in Hungarian; the Advisory Committee calls on the authorities to introduce teaching in or of Croatian, German and Serbian as minority languages and to consult the representatives of the other new national communities about their needs concerning minority language education.

Upon accession to the FCNM, the Republic of Slovenia declared that its provisions in the Republic of Slovenia pertain to the Italian and Hungarian national communities as well as the Roma community. Regarding education in minority languages or languages other than Slovenian or the language of national minorities, it is considered that the legal position of national communities is regulated by the Constitution of the Republic of Slovenia (Articles 61, 62 and 64). Therefore, the commitment to establish a legal basis that would guarantee other communities the same rights as the Italian and Hungarian communities is constitutionally controversial. The official language(s) is (are) defined by Article 11 of the Constitution; therefore, any action to the contrary would be regarded as inconsistent with the Constitution of the Republic of Slovenia.

Croats, Germans and Serbians are not defined as national minorities; therefore, their languages cannot be used in the education system as minority languages. However, all three aforementioned languages are included in the education system as foreign languages.

4. FOLLOW-UP OF RECOMMENDATIONS

- 1. The Advisory Committee encourages the authorities to organise a follow-up event after the publication of this Fifth Opinion on the implementation of the FCNM. It considers that a follow-up dialogue to review the observations and recommendations made in this opinion would be beneficial. Furthermore, the Advisory Committee remains ready to support the authorities in identifying the most efficient ways of implementing the recommendations contained in the present opinion.*

On the proposal of the FCNM Advisory Committee, Slovenia will hold a joint event for the follow-up of the developments according to the FCNM (Follow-up meeting) on 28 and 29 November 2022 and will subsequently also report thereon.

PART 2

1. ADDITIONAL INFORMATION ON THE FIFTH OPINION ON THE IMPLEMENTATION OF THE FCNM

1. In relation to item 134, the MPA states as follows:

Re point 134:

134. Pursuant to the Constitution, employment in public services is possible only on the basis of open competition. Open competition is a legal mechanism by which equal opportunities of employment are guaranteed to all interested candidates. In an open competition, all candidates receive equal treatment under the same conditions, and selection is made on the basis of the best-demonstrated professional qualifications.

2. In relation to points 187 and 189, the MEDT has provided the following new facts:

Re point 187:

187. Representatives of the Hungarian national minority consider that the economic situation in Prekmurje, which is characterised by relatively high unemployment, contributes to the assimilation of persons belonging to this national minority as people have fewer opportunities to find jobs or start businesses and move to other parts of Slovenia or abroad. Two economic programmes – one funded by Slovenia and one by Hungary – have been launched to improve the economic situation. In 2021, the MEDT and the Pomurje Hungarian National Self-Governing Community concluded contracts on the implementation and financing of the Programme for the Promotion of the Economic Base of the Hungarian National Community 2021–2024. The cost of the programme is EUR 10,800,000. The program is aimed at developing the economic base of the area inhabited by members of the Hungarian indigenous national community, which more precisely means the creation of new jobs and the preservation of existing ones, the establishment of new infrastructure and the modernisation of existing ones, the promotion of agriculture and the supply of local agricultural products or foodstuffs in the programme area, and enhanced promotion of tourism in the area. The programme has already facilitated the creation of new jobs.

Re point 189:

189. In 2021, the MEDT and the Coastal Italian Self-Governing National Community concluded a contract on the implementation and financing of the Programme for the Promotion of the Economic Base of the Italian National Community 2021–2024. The cost of the programme is EUR 1,400,000. The programme is aimed at developing the economic base of the area inhabited by members of the Italian indigenous national community, promoting new projects in micro, small and medium-sized enterprises, increasing employment opportunities in the area, developing new products and services, strengthening the cultural identity of the national community, attracting tourists, and promoting and providing technical support for programme implementation.