MOTION FOR A RESOLUTION

to wind up the debate on the statements by the Council and the Commission
pursuant to Rule 132(2) of the Rules of Procedure

on fundamental rights and the rule of law in Slovenia, in particular the delayed
nomination of EPPO prosecutors
(2021/2978(RSP))

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European Parliament resolution on fundamental rights and the rule of law in Slovenia, in particular the delayed nomination of EPPO prosecutors (2021/2978(RSP))

The European Parliament,

– having regard to the Treaty on European Union (TEU), and in particular Article 2 thereof,

– having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 86 thereof,

– having regard to the Charter of Fundamental Rights of the European Union (‘the Charter’),

– having regard to the case-law of the Court of Justice of the European Union (CJEU),

– having regard to the European Convention on Human Rights (ECHR), and to the related case-law of the European Court of Human Rights (ECtHR),


– having regard to its resolution of 24 June 2021 on the Commission’s 2020 Rule of Law Report¹,

– having regard to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office (‘the EPPO’)²,

– having regard to Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (‘the Rule of Law Conditionality Regulation’)³,

– having regard to its resolution of 7 October 2020 on the establishment of an EU Mechanism on Democracy, the Rule of Law and Fundamental Rights⁴,

– having regard to the mission report of 17 November 2021 by the Committee on Civil Liberties, Justice and Home Affairs following the visit of an ad hoc delegation to Slovenia of 13-15 October 2021 to assess respect for EU values and the rule of law,

¹ Texts adopted, P9_TA(2021)0313.
– having regard to the work undertaken by the Committee on Civil Liberties, Justice and Home Affairs’ Democracy, Rule of Law and Fundamental Rights Monitoring Group (DFRMG),

– having regard to the European Parliament plenary debate on 25 November 2020 on Hungarian interference in the media in Slovenia and North Macedonia,

– having regard to the letters sent by the Commission on 15 February, 29 April and 23 June 2021 to the Minister of Justice expressing certain concerns regarding the finalisation of the pending national procedure for the nomination of the two European Delegated Prosecutors, raising concerns that the national procedure had not been properly followed,

– having regard to the letter of the Minister of Foreign Affairs of the Republic of Slovenia sent on 4 May 2020 to the Commissioner for Justice, reacting to the preparation of the Commission’s first Annual Rule of Law Report,

– having regard to the letter of the Prime Minister of the Republic of Slovenia sent on 23 February 2021 to the President of the Commission, in preparation of the Slovenian Presidency of the Council of the EU,

– having regard to Rule 132(2) of its Rules of Procedure,

A. whereas under Article 2 TEU, the EU is founded on respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, values which are shared by all Member States and which must be upheld by the EU and by each individual Member State in all their policies;

B. whereas the rule of law is one of the common values on which the EU is founded; whereas the Commission, together with Parliament and the Council, is responsible under the Treaties for guaranteeing respect for the rule of law as a fundamental value of the Union and for making sure that EU law, values and principles are respected and adhered to;

C. whereas an effective, independent and impartial judicial system is essential to ensure the rule of law and the protection of the fundamental rights and civil liberties of citizens in the EU;

D. whereas the regulation establishing the EPPO on the basis of enhanced cooperation among 22 Member States, which included Slovenia, was adopted on 12 October 2017 and entered into force on 20 November 2017; whereas the EPPO, as an independent and decentralised prosecution office of the European Union, has the competence to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption or serious cross-border VAT fraud;

E. whereas the EPPO is organised at both central and national level; whereas the decentralised level consists of European Delegated Prosecutors in the participating EU countries, who deal with cases and carry out investigations and prosecutions in their Member States of origin; whereas the European Delegated Prosecutors are an integral part of the EPPO and, as such, are functionally and legally independent when
investigating and prosecuting offences within the remit of the EPPO;

F. whereas the EPPO assumed the investigative and prosecutorial tasks conferred on it by Regulation (EU) 2017/1939 on 1 June 2021; whereas at least two European Delegated Prosecutors ought to have been appointed for each Member State before 1 June 2021; whereas Slovenia, as the last participating country and with a significant delay, nominated two Delegated Prosecutors on 22 November 2021; whereas in the view of the Slovenian Government these nominations were only temporary, pending the conclusion of the national selection procedure; whereas the College of the EPPO appointed two European Delegated Prosecutors from Slovenia on 24 November 2021 for a period of five years; whereas a Member State may not dismiss, or take disciplinary action against, a European Delegated Prosecutor for reasons connected with their responsibilities under the EPPO Regulation without the consent of the European Chief Prosecutor;

G. whereas in the wake of the appointment of the two Delegated Prosecutors to the EPPO, the Minister of Justice announced a legislative amendment, drafted by the office of the Prime Minister and passed in a fast-track procedure without the usual consultation of experts, which provides for discretionary powers for the Ministry of Justice to propose candidates in the event that an insufficient number of candidates had come forward in the public call, thereby shifting power from the State Prosecutorial Council to the government;

H. whereas the same legislative amendment provides for transitional provisions that would enable the replacement of Delegated Prosecutors to the EPPO within the three months following the entry into force of the law;

I. whereas public prosecutors are an integral part of the justice system and play a key role in safeguarding the rule of law; whereas it is essential that public prosecutors are independent and are able to perform their duties and responsibilities without unjustified interference or pressure; whereas in Slovenia only 206 of the 258 available posts for prosecutors are currently occupied; whereas at least 15 state prosecutors-elect are awaiting to be appointed by the government; whereas in its country chapter on Slovenia in the 2021 Rule of Law Report, the Commission stated that the appointments of state prosecutors had been unjustifiably delayed;

J. whereas media freedom is one of the pillars and guarantees of a functioning democracy and the rule of law; whereas media freedom, pluralism and independence and the safety of journalists are crucial components of the right of freedom of expression and information, and are essential to the democratic functioning of the EU and its Member States;

K. whereas Slovenia ranks 36th worldwide in the 2021 Reporters Without Borders World Press Freedom Index (in 18th place within the EU), having dropped four places from 32nd place last year; whereas according to the Commission’s 2021 Rule of Law Report, this means that the country is experiencing a deterioration in media freedom and the protection of journalists; whereas the Council of Europe’s Commissioner for Human Rights

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5 https://rsf.org/en/ranking/2021
Rights notes in her memorandum of 4 June 2021 that Slovenia has ‘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’; whereas the Commissioner for Human Rights also notes ‘the deterioration in the conditions that underpin media freedom in Slovenia over the past year’, and that ‘in the past 13 months, 13 alerts concerning Slovenia have been published on the Council of Europe Platform’; whereas this represents a significant increase over past years;

L. whereas the Slovenian Press Agency (STA), as the national and public information provider, has an important role in guaranteeing media freedom and media pluralism in the country; whereas the independence of the agency, without political interference and benefiting from stable financing, is paramount for the public service it provides; whereas Article 3 of the STA Act clearly establishes the state’s duty to ensure the STA’s institutional autonomy, editorial independence and adequate funding for the performance of its public service function;

M. whereas according to the Council of Europe Commissioner for Human Rights, the relevant legislation in Slovenia does not address the conflict of interest between media owners and political parties; whereas the lack of transparency and of specific obligations for state bodies to report on the amounts spent by the state or state-owned companies on advertising in the media raises the issue of the potential political instrumentalisation of state advertising; whereas a revision of the media and audiovisual services laws is still pending; whereas according to the Commission’s 2021 Rule of Law Report, if the draft amendments to the Mass Media Act, which were published by the government in July 2020, were adopted, they would improve the transparency of media ownership;

N. whereas in spite of its legal obligation to pay a state subsidy, the Slovenian Government withheld for 312 days in 2021 the STA’s funding for providing its public service; whereas the STA filed a request in court for the execution of the payment for providing its public service; whereas on 8 November 2021, the STA and the Government Communication Office (UKOM) signed a public service contract for the provision of public services for November and December 2021; whereas on 17 November 2021, UKOM paid EUR 676 000 for the STA’s public service for the period from January to April; whereas, in addition, EUR 140 000 has been paid for the STA’s public service for the month of August; whereas at least EUR 507 000 of claims for public service funding remain unpaid;

O. whereas the Association of Slovenian Journalists, together with the STA, collected EUR 385 132 in its two crowdfunding campaigns entitled ‘#zaobSTAnek’ in 2021 in order to avoid bankruptcy, as the survival of the professional and autonomous agency and the jobs of around 100 employees were at serious risk;

P. whereas the public service contract for 2022 is currently being negotiated between the STA and UKOM; whereas on 12 November 2021, in a joint statement the Media

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7 https://www.zaobstanek.si/en
8 https://ipi.media/slovenia-mfrr-welcomes-end-to-sta-funding-crisis/
Freedom Rapid Response signed by the European Centre for Press and Media Freedom (ECPMF), the European Federation of Journalists (EFJ), Free Press Unlimited (FPU), the International Press Institute (IPI), and OBC Transeuropa (OBCT) issued a warning about the STA’s long-term financial viability and expressed concerns that UKOM’s new oversight of the STA’s financial activities could infringe editorial independence, while adding that the commercial conditions under the deal signed weaken the sustainability of the STA’s business model under the conditions of the current contract, as adequate and fair funding, while guaranteeing its editorial autonomy, as prescribed by law, is vital;

Q. whereas online harassment, threats and lawsuits against journalists, targeting women journalists in particular, by prominent politicians and public figures, including members of the government, continue to increase in Slovenia; whereas instances of political interference in the media in Slovenia have been reported; whereas journalists continue to face obstacles in obtaining access to public information and documents;

R. whereas there is no transparent and clear set of principles in place for the distribution of advertising to media outlets by national, regional and local governments; whereas the situation for local media is particularly lacking in transparency; whereas the economic situation of the media in Slovenia has worsened during the COVID-19 pandemic and no specific measures have been adopted to alleviate its impact on media outlets;

S. whereas the European University Institute Monitoring Media Pluralism Report 2021 and different stakeholders have reported concerns about the financial situation of the national broadcaster RTV Slovenia and about political pressure on it; whereas the EFJ and Media Freedom Rapid Response have expressed concerns about the proposed changes to news programming at the Slovenian public television station, RTV Slovenia, which could reduce the broadcaster’s ability to inform the public and exercise scrutiny over those in positions of power⁹;

T. whereas Slovenia, along with certain other Member States, has not yet implemented all of the Audiovisual Media Services Directive (Directive (EU) 2018/1808) and the European Electronic Communications Code (Directive (EU) 2018/1972), in particular those regarding the independence of the national media market regulator, and the reinforced rules for combating incitement to violence or hatred or for promoting a safer, fairer and more diverse audiovisual landscape;

U. whereas continuing concerns about pressure on independent public institutions and on the media have been reported, including smear campaigns, slander, criminal investigations, as well as strategic lawsuits against public participation (SLAPPs) brought by prominent public figures and politicians, including members of the Government; whereas Slovenia has not fully decriminalised defamation, which can have a chilling effect on the freedom of expression and on the reporting of abuses by those in public office, and can lead to self-censorship;

V. whereas the restrictive measures to fight the spread of COVID-19 pandemic were mostly adopted in the form of ordinances and decrees, but less frequently in the form of

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⁹ https://www.ecpmf.eu/slovenia-concerns-over-controversial-changes-to-rtv-programming/
laws and acts; whereas several Slovenian government decrees and legal provisions related to restrictive measures have been declared unconstitutional by the Constitutional Court, either because they are in breach of the principle of proportionality or because they lack a legal basis;

W. whereas in the country chapter on Slovenia in its 2020 and 2021 Rule of Law Report, the Commission found that providing adequate resources for the Judicial Council and the State Prosecutorial Council is an important condition for the independent and effective functioning of these self-governance bodies;

X. whereas a record number of cases have been brought before the Constitutional Court; whereas a number of Constitutional Court rulings were not implemented within the required time frame;

Y. whereas allegations have been reported of political interference in investigating and prosecuting authorities, in particular in the National Bureau of Investigation (NBI); whereas in October 2020 the Administrative Court ruled on the illegality of the dismissal of the former Director, and whereas this ruling is pending appeal; whereas according to the country chapter on Slovenia in the Commission’s 2021 Rule of Law Report, concrete results of the investigations by the Bureau into high-level corruption cases are lacking;

Z. whereas the government passed a new amended Law on Organisation and Work in the Police, in force since 13 November 2021, which includes transitional provisions stipulating that high-ranking police officers cease to hold their positions effective immediately, thereby terminating the employment of around 130 police chiefs, including the directors of the uniformed and criminal police, the directors of all eight police administrations and 110 police station commanders; whereas amendments to the police law change the procedures governing the moment when the Public Prosecutor takes charge of a case, which could have an effect on the independence of the public prosecutor’s office; whereas three directors of the NBI were dismissed in 2021 and there were several significant changes in the higher echelons of the police, including the unlawful dismissal of the Director of the National Police Unit; whereas the Minister of the Interior and the Director-General of the Police have so far failed to implement ruling No 82/2020-33 regarding this unlawful dismissal10;

AA. whereas the space for civil society has ‘narrowed’ according to the country chapter on Slovenia in the Commission’s 2021 Rule of Law Report; whereas smear campaigns against non-governmental organisations (NGOs) have been reported, especially through the use social media; whereas civil society organisations dealing with migrants, media literacy or human trafficking have been particularly affected by these campaigns; whereas, according to data obtained by the Slovenian national NGO umbrella network, CNVOS, only NGOs that have been granted the status of operating in the public interest are successful in obtaining public funds; whereas funding for NGOs was increased from EUR 372 million in 2019 to EUR 416 million in 2020, and whereas the Government

implemented several legislative changes to support NGOs during the pandemic\textsuperscript{11};

AB. whereas the Supreme Court of Slovenia has found that Slovenian police’s conduct in the case of an asylum seeker who had been a victim of a chain pushback to be illegal and in violation of the prohibition of collective expulsions, the prohibition of torture and the applicant’s right to access asylum procedures\textsuperscript{12};

AC. whereas a DRFMG delegation visited Slovenia from 13 to 15 October 2021 and concluded that, overall, the public institutions work well, in particular the Constitutional Court, the Data Protection Commissioner and the Supreme State Prosecutor; whereas at the same time, it expressed deep concern about other issues addressed in this resolution or identified pressure on some public institutions;

1. Considers it essential to guarantee that the common European values listed in Article 2 TEU are upheld in full;

2. Is deeply concerned about the level of public debate, climate of hostility, distrust and deep polarisation in Slovenia, which has eroded trust in public bodies and between them; underlines the fact that prominent public figures and politicians, including members of the government, have to lead by example and need to ensure a respectful and civilised public debate, free from intimidation, attacks, slurs and harassment;

3. Welcomes, after a delay of six months, the appointment of the two Delegated Prosecutors from Slovenia to the EPPO College on 24 November 2021, which means that the EPPO has now been fully constituted and that Delegated Prosecutors have been appointed by all participating Member States; considers a fully functioning EPPO to be crucial for protecting the integrity of the EU’s budget and ensuring the prosecution of crimes against the EU’s financial interests; expresses concerns at the Ministry of Justice’s proposed changes to the legislation on State Prosecutors, which would allow retroactive changes to the appointment criteria for prosecutors, and lead to the risk of the two newly appointed EPPO Delegated Prosecutors from Slovenia being dismissed\textsuperscript{13}; calls on the Government of Slovenia to ensure the effective structural operation of the EPPO in Slovenia, in accordance with the rules stipulated in the EPPO Regulation;

4. Calls on the government to conclude the appointment process for the national prosecutors currently awaiting confirmation as soon as possible; notes the increase in resources of the Judicial Council and State Prosecutorial Council, and underlines the importance of these self-governing bodies’ financial autonomy and of providing adequate resources for them;


\textsuperscript{12} https://www.sodnapraksa.si/?q=\&advanceSerch=1\&database[SOVS]=SOVS\&database[IESP]=IESP\&database[VDSS]=VDSS\&database[UPRS]=UPRS\&submit=\&C5%A1%C4%8D\&doc_code=\&task_code=23/2021\&source2=\&us_decision=\&ecli=\&meet_dateFrom=\&meet_dateTo=\&senat_judge=\&areas=\&institutes=\&core_text=\&decision=\&description=\&connection=\&publication=\&rowsPerPage=20\&page=0\&id=2015081111448095

\textsuperscript{13} https://push-forward.org/novica/javno-pismo-ob-sodbi-vrhovnega-sodisca-glede-nezakonitosti-postopkov-slovenske-policije-na

https://www.gov.si/drzavni-organi/vlada/seje-vlade/gradiva-v-obravnavi/show/7833
5. Notes the resumption of state payments to the STA; underlines the importance of the agency’s long-term financial viability for it to be able to carry out its function independently;

6. Calls on the Government to resume its state funding of the STA, which it is under a legal obligation to provide, and to make these payments regularly and in full accordance with national law; calls on the Government to guarantee the editorial independence of the Agency;

7. Expresses its concern about all attacks, smear campaigns, slander, criminal investigations or SLAPPs by prominent public figures and politicians, including members of the government, in particular when these originate from authorities and public officials, and calls on all actors to cease such actions; calls on the Slovenian Government to secure sufficient funding for the public television RTV Slovenia, to cease all political interference and pressure on its editorial policy and to safeguard this broadcaster’s independence; calls on the authorities to improve media ownership transparency, establish clear rules on the amounts spent on advertising by the state or state-owned companies, and to ensure that the public and journalists can have proper access to public information;

8. Notes the amendments put forward by the Government in July 2020, which were meant to be adopted by the end of 2021, and if adopted, would increase media ownership transparency; calls on the Slovenian Government, National Assembly and National Council to speed up their deliberations on the pending Mass Media Act; underlines, further, the need for clear rules on the allocation of state advertising in order to ensure effective access to public information for the public and journalists;

9. Expresses its concern about the continuing practice of rule by decree, and therefore without parliamentary scrutiny, and is especially concerned about the necessity and proportionality of the current extraordinary measures in the context of the COVID-19 pandemic; notes that many governmental decrees lack a clear legal basis and are often not published in the Official Journal;

10. Notes that the legal and institutional framework for preventing and fighting corruption has continued to improve, which is reflected in particular in legislative amendments which have improved the independence, organisation and functioning of the Commission for the Prevention of Corruption, although this body’s human resources remain limited, and which has strengthened the legal framework on lobbying, the protection of whistleblowers and the declaration of assets; notes that the previous strategy has largely been implemented, but remains concerned by the lack of effective enforcement of the anti-corruption rules and the fact that some actions remain pending and no new plan has been adopted, as well as about the capacity for effective investigations and the low number of convictions for corruption cases, especially for high-level cases;

11. Calls on the Slovenian Government to ensure that amendments to the police law will in no way lead to undue political interference or affect the capacity of the police forces and/or the role and independence of the Office of Public Prosecutor; calls on the Slovenian Government to provide sufficient funding to allow the authorities to carry out
their tasks in full and without undue obstacles;

12. Recommends that the authorities step up their efforts to address major human rights issues affecting asylum seekers and migrants, Roma, the ‘erased’ and people living in poverty;14

13. Welcomes the new A-status national human rights institution accreditation of the Human Rights Ombudsperson, in compliance with the Paris Principles, following efforts to gain this status since 2015;

14. Calls on the Government to fully respect the Slovenian Constitution and EU and international law and obligations;

15. Believes that all Member States must fully comply with EU law in their legislative and administrative practices and must fully respect the rule of law and the principle of the separation of powers;


17. Calls on the Slovenian Government to swiftly and fully implement the rulings of the Constitutional Court; calls on Slovenian Government to ensure sufficient funding for the Judicial Council and State Prosecutorial Council, Constitutional Court and Supreme Court and to respect their financial autonomy so that these self-governance bodies and independent institutions can function independently and effectively;

18. Instructs its President to forward this resolution to the Commission and the Council, the President, Government and Parliament of Slovenia and the governments and parliaments of the Member States.