

BENJAMIN FLANDER*

State Sovereignty in the Trenches: Legal Aspects of Vigilantism in Slovenia

- **ABSTRACT:** *This article addresses the legal aspects of vigilantism in Slovenia. It aims to present to an international audience how Slovenia and its legal system reacted to the sudden appearance of anti-migrant vigilante groups, which caused a considerable shock in a country unaccustomed to such phenomena. To this end, we first define and typologize vigilantism in general terms and identify its recent manifestations in Slovenia. Next, the article outlines the divergent state responses to vigilantism from a theoretical perspective, focusing on strategies premised on the legal prohibition—e.g., legal exclusion—and prosecution of—the activities of—vigilante groups on the one hand, and the tolerance toward them and authorities' cooperation with them, while performing official tasks, on the other. The author demonstrates how Slovenia resorted to the former. The author analyses the legislative amendments, which—according to the proponents and parliamentary majority that approved the amendments—were necessary to ensure an effective response of the state and its legal system to the threat posed to national security and sovereignty by the Styrian Guard and other anti-migrant vigilante groups. Finally, the author provides a brief analysis of the criminal conviction of the Styrian Guard leader, the key figure of vigilantism in Slovenia.*
- **KEYWORDS:** state, legal system, sovereignty, vigilantism, Styrian Guard, Slovenia

* Associate Professor of Law at the Faculty of Criminal Justice and Security of the University of Maribor, Slovenia and Senior Research Associate at the Law Institute of the Science and Research Center Koper, Slovenia. Email address: benjamin.flander@um.si; ORCID ID: 0000-0002-2738-1590.



1. Introduction

At the beginning of September 2018, social networks and Slovenian mass media were flooded with photos of the formation and training of a masked and armed group of people. It was discovered that the scenes were filmed in the forests of Pohorje near Maribor, the second-largest city in Slovenia, that the group is called the Styrian Guard (*Štajerska varda*), and that it is led by Andrej Šiško, who is also the founder and president of the non-parliamentary political party United Slovenia (*Zedinjena Slovenija*). The reaction of many Slovenians was that it was either a joke or fake news, as most people believed that such events cannot happen in Slovenia.¹ Surprise quickly turned to shock as it became clear that the images were real and that they were filmed in the country, on the sunny side of the Alps. The common belief of most citizens of the country, often referred to as ‘an oasis of peace and non-violence,’ was that groups such as vigilantes and paramilitary factions are unacceptable and inadmissible in Slovenia. With rare exceptions, state officials shared these opinions of citizens. The then Minister of the Interior expressed the opinion that any creation of parallel armed structures was dangerous, inadmissible, and extremely problematic. Similarly, Borut Pahor, President of the Republic and Supreme Commander of the Slovenian Armed Forces, assessed the creation of the armed group, led by Andrej Šiško, as completely unacceptable. He publicly expressed the opinion that Slovenia is a safe country in which no one who is not authorized to do so is required or allowed to arbitrarily take care of the security of the country and its borders.²

News about masked and armed men saluting and marching in idyllic Slovenian forests was also published by some foreign media. The Hina, Jutranji list and other Croatian media outlets published headlines such as ‘Panic in Slovenia due to the formation of a paramilitary group’, ‘Armed Styrian Guard marching in Pohorje,’ and ‘Images of a paramilitary formation of extreme rightists caused panic in Slovenia.’ The American news agency AP and the New York Times published images of men in military uniforms holding axes and rifles. They wrote, *inter alia*, that ‘the event caused concern in the small EU member state.’ The EU Observer reported that anti-migrant militias are emerging in Central Europe. This journalist drew attention to the anti-immigrant rhetoric of politicians in Slovenia, where the far-right Slovenian Democratic Party (SDS) became the strongest party in the summer 2018 elections, but failed to form a government. Reuters and the BBC also reported unusual events from Slovenia. The journalist of this British media wrote that Šiško described himself as a patriot and a fighter for the Slovenian nation, but occasionally, his ideological struggles became violent. He pointed out that Šiško

1 Maribor24.si, 2018.

2 Rabuza and Atelšek, 2018.

had been in prison in the past and that the Slovenian public was indifferent to his activism, as his political party had only 0.6% voter support.³

A journalist from the tabloid Slovenian News (*Slovenske novice*), who visited the Styrian Guard's three-day military training camp, reported that everything at the camp is like in a real army. Members learn to handle weapons and that they must respect the group hierarchy and ranks; they also have their own ambulance service. Drinking alcohol is prohibited for the members of the guard, and nothing is allowed without a superior's order.⁴ In his statements to the media, Šiško himself explained, among other things, that the Styrian Guard is a voluntary defense group of the region of Styria, that it has more than a thousand members, that they will not allow themselves to be disarmed, and that they will 'respond if the homeland and nation are at risk'.⁵ Based on his statements, it could be concluded that the members of the Styrian Guard see illegal migrants as the most serious threat to Slovenia and its citizens. More particularly, in the eyes of members of the guard, the biggest and most serious threat to the security of the country and its inhabitants are asylum seekers; that is, migrants who illegally enter Slovenian territory—usually from Croatia—and then apply for asylum.

In response to the publication of videos, photos, and reports in the media, the Slovenian Ministry of the Interior and the Police confirmed that, with the increase in illegal migration and the simultaneous polarization of Slovenian society, the establishment of various groups, movements, initiatives, and other forms of security self-organization of citizens was becoming more frequent. Normally, these organizations call themselves guards (*varde*). According to the Ministry of the Interior, certain actions of members of the Styrian Guard and some other groups were a serious security risk for the state and citizens, as their hidden purpose—under the cover of the security self-organization—was to carry out duties including the protection of the state border that are the exclusive competence of state authorities. The foundation and activities of guards and other similar groups were considered a serious and direct threat to the sovereignty and integrity of the Republic of Slovenia.⁶

Throughout 2019, the Styrian Guard became increasingly active and present in public space and public discourse. Given that new similar groups appeared, the opinion that the situation was very serious and that immediate action was required prevailed among legal and security experts, as well as among officials and other politicians from the ruling liberal coalition.⁷ They assessed that, while gathering in the state border area, the actions of members of these groups and

3 Rabuza, 2018.

4 N. Č., 2019.

5 Toplak, 2019.

6 Government of the Republic of Slovenia, 2019, p. 1.

7 In contrast, there was no consensus among the locals living along the border with Croatia. While some said that vigilantes were welcome, others asserted that they would rather not see them in their neighbourhood. See Cek, 2019.

the way they behave produce a feeling of performing official security and defense tasks. Moreover, according to the Ministry of the Interior and the Police,⁸ some actions of members of the Styrian Guard and Village Guards⁹ have had elements of minor offenses, under the provisions of the Protection of Public Order Act, the Weapons Act, the Public Assembly Act, and the Societies Act. Nevertheless, while the most objectionable behavior of vigilantes was their presence and training near the state border, wearing uniforms and imitation weapons, using symbols such as coats-of-arms and flags, and feeling that they actually performed official duties, members of the Styrian Guard and other groups could not be prosecuted for committing minor offenses, except in rare cases. As explained by the Ministry of the Interior and the Police, according to the legal regulation in force at the time, these acts could only be prosecuted as minor offenses if reported by the residents to the police—that the offender caused them to feel uncomfortable or threatened. With rare exceptions, the criminal prosecution of vigilante practices was also out of the question. While most excessive vigilantes' acts did have certain elements of criminal acts, they would only become a criminal offense if or when vigilantes would perform an act or several acts that only an official or a military person⁸ may perform according to the law, and if they are to be caught in the act and arrested.¹⁰ It is assumed that, with the exception of the prosecution of the Styrian Guard's leader¹¹ the State Prosecutor's Office did not prosecute any of the members of the Styrian Guard upon receiving reports from the police. A consensus has therefore been reached in the government coalition and among experts that an adequate response by the police and other state authorities to the activities of vigilantes was impossible¹² and that legal regulation urgently needed amendments.

At the end of November 2019, the liberal government of Marjan Šarec submitted to the parliamentary procedure the proposals for amending the Protection of Public Order Act¹³ (hereinafter the PPOA-1) and the State Border Control Act¹⁴

8 Government of the Republic of Slovenia, 2019, p. 1.

9 When the Styrian Guard consolidated its place in the public space, the locals of some villages and settlements near the border between Slovenia and Croatia established so-called Village Guards. Although these were not directly connected with the Styrian Guard, members of the latter occasionally patrolled together with the Village Guards along the green border with Croatia.

10 Government of the Republic of Slovenia, 2019, p. 1.

11 See Section 3.2.

12 The incident that received the most attention in the media occurred when approximately sixty members of the Styrian Guard visited the police station in Slovenska Bistrica. The members of the Guard came to ask the commander of the police station why the police visited private land of their member while he was with them in the training camp. Members of the Guard streamed the happening in front of the police station live on their Facebook profiles. See V. L., 2020.

13 The Protection of Public Order Act (*Zakon o varstvu javnega reda in miru* [PPOA-1]), Official Gazette of the Republic of Slovenia, Nos. 70/06 and 139/20.

14 The State Border Control Act (*Zakon o nadzoru državne meje* [SBCA-2]), Official Gazette of the Republic of Slovenia, Nos. 35/10 – officially consolidated text, 5/17, 68/17, 47/19, 139/20, 161/21, 29/22.

(hereinafter the SBCA-2). The National Assembly did not vote on this proposal, as Šarec's government resigned in February 2020. The unchanged composition of parliament elected the new Prime Minister, Janez Janša, with a slight majority. His conservative government abandoned the previous government's proposals to amend PPOA-1 and SBCA-2 and did not prepare its own proposals. Accusing Janša's government of not being interested in effectively prohibiting and sanctioning the activities of vigilante groups, new proposals to amend PPOA-1 and SBCA-2 were prepared and submitted by the parliamentary opposition. At the end of September 2020, the National Assembly adopted these proposals.

This article addresses the legal aspects of the operation of the Styrian Guard and other vigilante groups in Slovenia. It aims to present to an international audience the way Slovenia and its legal system reacted to the sudden appearance of vigilante groups, which caused considerable shock in a country unaccustomed to such phenomena. To this end, the author first defines and typologizes vigilantism in general—legal—terms and identifies its recent appearance in Slovenia. Next, the article outlines the divergent state responses to vigilantism, from a theoretical perspective, focusing on strategies premised on the legal prohibition—e.g., legal exclusion—and prosecution of—the activities of—vigilante groups on the one side, and tolerance toward them and cooperation with them by the authorities when these are performing official tasks on the other. The author demonstrates how Slovenia resorted to the former. In the core section, the author analyses the legislative amendments, which—according to their proponents and the parliamentary majority that approved them—were necessary for an effective response of the state and its legal system to the threat posed to national security and sovereignty by the Styrian Guard and other vigilante groups. Finally, a brief analysis is provided of the judicial process in which Andrej Šiško was convicted of the crime of Incitement to Violent Change of the Constitutional Order, according to Article 359 of the Criminal Code¹⁵ (hereinafter CC-1).

2. On vigilantism

Often referred to as popular justice and defined as the concept of people taking the law into their own hands, vigilantism¹⁶ is attributed both positive and negative connotations in different contexts. As its definitions depend largely on the space and time in which they appear and are used, it is impossible to resort to

15 The Criminal Code (*Kazenski zakonik* [CC-1]), Official Gazette of the Republic of Slovenia, Nos. 50/12 – officially consolidated text, 54/15, 38/16, 27/17, 23/20, 91/20, 95/21, 186/21.

16 Etymologically, the word vigilante is originally a Spanish adjective meaning watchful, and as a noun is mainly used to mean a watchman or guard. Its Latin root is the adjective *vigilantem* (nominative *vigilans*), which means watchful, anxious or careful. See Nel, 2016, p. 28.

a straightforward universal definition of the multifaceted and slippery social phenomenon that is vigilantism.¹⁷

Provisionally at least, vigilantism may be understood as an arbitrary act or a set of arbitrary acts of seemingly official nature committed by an individual or group in the belief that either an injustice has occurred that the state's official services do not want to correct, or that official services cannot correct it due to its incompetence, dishonesty, corruptibility, or its general inefficiency in the performance of official duties. For an individual or group of individuals and their actions to constitute vigilantism, the following criteria should be met: (a) the vigilante is a civilian—a vigilante group is made up of individuals who are civilians; (b) the operation of the vigilante or vigilante group is planned and coordinated; (c) the conduct that would justify vigilantism is illegal—i.e., it constitutes a crime or a minor offense; (d) vigilantism is directed against—real or imagined—perpetrators of crimes and misdemeanors; (e) vigilantes who operate in groups are hierarchically organized with a self-proclaimed or elected leader and a clear chain of command.¹⁸

As vigilantes conventionally perceive themselves to be filling the gap left by unsatisfactory state power—i.e., administrative power, law-enforcement, and/or the judiciary system—, certain manifestations of vigilantism may be understood as the unlawful and intentional conduct or use of force by private citizens to prevent or punish someone who is the perpetrator of real or perceived forms of deviance.¹⁹ In other words, vigilantes who take the law into their own hands to prevent or punish deviance seemingly exemplify an instance where law and order are detached from each other for practical reasons, with vigilantes choosing order over law.²⁰ As such, vigilantism is aimed, at least in part, at offering guarantees of collective security and social order in circumstances where there is a real or perceived absence of effective formal guarantees of order and security.

In their work, Nel asserts that vigilantism exemplifies the insight that an ostensibly clear boundary between crime and punishment is often blurred and arbitrary. This is because of the twofold displacement of culpability inherent to vigilantism.²¹ On the one hand, vigilantes view themselves as the purveyors of morally sanctimonious violence that must be meted out to evildoers in the absence of suitable formal remedies. On the other hand, the formal legal perspective on vigilantism obstinately ignores the underlying causes of vigilantism, with the state preferring simply to blame vigilantes for their acts and punish them for taking the law into their own hands. Occupying an awkward borderland between law and

17 Abrahams, 1998.

18 Abrahams, 1998; Hine, 1998; Haas, 2010.

19 Nel, 2016, pp. 3 and 165. See also Harris, 2001, pp. 22 and 27. Harris notes that vigilantism is sometimes justified as necessary and inevitable reaction to police lethargy – an attempt to awaken the police sleeping on the job – i.e., vigilantism's existence is explained as a way of filling the policing gap left by failing authorities.

20 Nel, 2016, p. 2. See also Stettner, 1976, p. 65.

21 Nel, 2016, p. 6. See also Sundar, 2010, pp. 113–114.

illegality, paradoxically breaking the law to thereby respect it, the phenomenon of vigilantism implies the uncertain and contested nature of the distinction between deviance and responses to deviance, including vigilantes' ambiguous status as perpetrators.²²

Drawing from Rosenbaum and Sederberg, Haas²³ divided vigilantism into three types, which differ in their specific purposes: crime-control vigilantism,²⁴ social-group-control vigilantism, and social-regime-control vigilantism.²⁵ Another type is virtual vigilantism,²⁶ which has emerged with the development of information technologies and the Internet. In the context of this article, the most relevant type is vigilantism with the aim of controlling social groups. It is directed against groups that allegedly threaten society's values. Unlike crime-control vigilantism, this type of vigilantism does not require a criminal—i.e., a person who committed or allegedly committed a crime or misdemeanor—as a target. Vigilante groups of this type emphasize the importance of race, culture, and religion, and understand personal violence as a response to racial or cultural conflict. The goal is to intimidate or oppress members of certain social groups, such as minority social groups and migrants.

Most academic definitions of vigilantism assume that violence, or the threat thereof, is an essential component of vigilantism.²⁷ Even authors who do not concede that vigilantes necessarily engage in forceful action note that only groups who at least permit the use of force as part of their operational philosophy may qualify as vigilantes. The threat of violence is implicit in even the most peaceful forms of vigilantism, which makes it difficult to distinguish meaningfully between a non-violent and a restitutive form of popular justice. While violent force may

22 Nel, 2016, pp. 6–7. See also Abrahams, 1998, pp. 7 and 153 and Burrows, 1976, p. xv.

23 Haas, 2010. See also Keller, 2009.

24 This type of vigilantism involves violence against the people who break or appear to break the law. It coincides with the classic definition of vigilantism, where an individual or a group takes justice into their own hands. Crime-control vigilantism often appears in the entertainment industry's products, which represent a man who respects the laws, but breaks them the moment he realizes that he will not get satisfaction through them for the wrong that was done and needs to be repaired.

25 This type of vigilantism wants to control or change the existing social regime/order, due to dissatisfaction with the current conditions. In this type, vigilante groups seek ways and solutions to replace the dysfunctional state bodies with bodies that share the interests and values of society. While resorting to political assassinations and the establishment of paramilitary groups, the targets of this type of vigilantism are politicians and government representatives.

26 This new type can encompass all elements and types of vigilantism. Although it takes place in the virtual world, it can also affect people and society in reality. The Internet enables the rapid transfer of large amounts of data and ideas between users and connects users with similar views, regardless of where they live. At the same time, it provides anonymity and allows the user to create new identities and a sense of power, influence and freedom, which is difficult to achieve in the real world. Power, influence, freedom, and anonymity are the paramount motivators of Internet vigilantism. See also Chang and Poon, 2016.

27 Nel, 2016, p. 42.

not always be used, its future utilization is always implied.²⁸ The forceful acts potentially committed by vigilantes to achieve their crime-fighting objectives can be divided into two main categories: crimes against specific victims and crimes against wider community interests, including the interests of the state. The former category may again be sub-divided into crimes against the life and bodily integrity of the target of vigilantism and crimes against the vigilante victim's property. Regarding infringement against the interests of the community, it is likely that vigilantes also resort to public violence, which entails several people acting together in a manner that is serious enough to forcibly disturb public peace or security, or to invade the rights of others.²⁹

Renowned historian Timothy Snyder argues that most governments seek to monopolize violence. If only the government can legitimately use force, and this use is constrained by law, then the forms of politics that we take for granted become possible. It is impossible to carry out democratic elections, try cases in court, design and enforce laws, or indeed manage any other business of government when agencies beyond the state also access violence. Therefore, according to Snyder, paramilitary groups are a threat to modern democratic states. People and parties who wish to undermine democracy and the rule of law create and fund violent organizations that involve themselves in politics. Such groups can take the form of a paramilitary wing of a political party, the personal bodyguard of a particular politician, or apparently spontaneous citizens' initiatives, which usually turn out to have been organized by a party or its leader. Such armed groups first degrade the political order and then transform it.³⁰

Vigilantism occurs globally, in one form or another; however, it is more prevalent in certain places or countries. Just as cultures differ, so do forms of vigilantism.³¹ In Slovenia, vigilantism was a virtually unknown phenomenon before the appearance of the Styrian Guard, Village Guards, and similar anti-migrant groups in 2018. In the past, however, the most prominent example of vigilantism was the Slovene Home-Guard (*Slovenska vaška straža*), which appeared during the Second World War. This group was an anti-communist and anti-partisan volunteer militia of collaborators organized under the Nazi command during the 1943–1945 German occupation. It was closely linked to Slovenian right-wing anti-communist political parties and organizations, which provided most of its membership. Perhaps vigilantism can also be attributed to the activities of Franc Guzej in 1862. Franc Guzej, known as the Slovenian Robin Hood, allegedly 'took from the rich and gave to the poor.' Guzej chose the vigilante path when he was wrongfully convicted

28 Nel, 2016, p. 42; Abrahams, 2002, p. 26; Johnston, 1996, p. 228; Lee and Seekings, 2003, p. 113; Rosenbaum and Sederberg, 1976, p. 28.

29 Nel, 2016, p. 43; Burchell Principles 755.

30 Snyder, 2017 (6–Be wary of paramilitaries).

31 On vigilantism in the United States, the United Kingdom, India, and Russia, for example, see Abrahams, 1998, Sundar, 2010, Sen and Pratten, 2007, Galeotti, 2007; and Brown, 1976.

and decided to take justice into his own hands.³² On his marauding expeditions, which stretched across southern Styria and Croatia, he chose lords and priests to steal from. The police unsuccessfully hunted Guzej from Krško to Vienna. He was found and shot on September 10, 1880, in Košnica.³³ Franc Rihtarič, who after the Second World War acted with similar motives as Guzej, was also considered to be a vigilante. Rihtarič was sentenced to death, and his execution in 1957 is considered the last death sentence carried out in Slovenia.³⁴

3. Legal aspects of vigilantism in Slovenia

In this section, the response of the state and the legal system to the sudden appearance of the Styrian Guard and other vigilante groups in Slovenia will be analyzed in more detail. The original version of the legislative amendments, unsuccessfully proposed by the liberal government of Marjan Šarec, will be compared with the amendments that were adopted after the appointment of the conservative government of Janez Janša, at the proposal of the liberal wing of the parliamentary opposition. The section concludes by shedding light on the criminal conviction of the leader of the Styrian Guard.

■ 3.1. *The genesis and content of the amendments to the Protection of Public Order Act and the State Border Control Act*

As indicated in the introduction, at the end of November 2019, the government of Marjan Šarec submitted parliamentary procedure proposals for amending PPOA-1 and SBCA-2. Owing to the state's security interests, the government proposed an urgent procedure for consideration of the draft law in the National Assembly. According to the government, the typical activities of the Styrian Guard and similar groups posed security risks for the Republic of Slovenia. By referring to self-organization with the goal of ensuring security, such groups can unite, with the hidden purpose of protecting the state border and performing defense and security tasks that are the exclusive competence of state authorities. Considering that restricting and sanctioning the activities of the Styrian Guard and other vigilante groups is necessary to ensure the effective performance of the duties and tasks of the police—which are directly related to providing safety and security to individuals and the community—the government concluded that Article 11 of PPOA-1 and Article 4 of SBCA-2 shall be amended.³⁵

For the reasons explained above, the Šarec government's proposals were not adopted. After the resignation of Šarec's government and the election of Janez

32 STA, 2012.

33 SAMA Navitas, 2022.

34 Rihtarič, 2021.

35 Government of the Republic of Slovenia, 2019, p. 1.

Janša's new conservative government, amendments with almost identical content were proposed – not by the government, but by the left wing of the parliamentary opposition. The Act Amending the Protection of Public Order Act³⁶ (PPOA-1A) and the Act Amending the State Border Control Act³⁷ (SBCA-2E) were adopted in September 2020, at a session where 84 deputies of the 90-member National Assembly were present. They passed 48 votes for and one against. In addition to the deputies from the parliamentary opposition, the amendments were also supported by deputies from the political parties of the government coalition. Members of the largest party in the conservative government coalition—i.e., the SDS—and members of one of the opposition parties—i.e., the Left—abstained from voting.³⁸

The amended Article 11 of PPOA-1 stipulates that a fine of 500 to 1,000 Euros shall be imposed on an individual who carries, displays, or uses decorative weapons, imitation weapons, weapons intended for alarm, signaling, or other objects that look like weapons, in a manner that creates the feeling of performing the duties of the official or military persons. If the act is committed in a group of at least two people, the individual shall be fined between 1,000 and 2,000 Euros.

The amended PPOA-1 also had a new Article 11a, which is entitled 'Use of camouflage clothing, uniforms, or other clothing similar to uniforms.' According to this provision, a fine of 500 to 1,000 Euros shall be imposed on an individual who wears camouflage clothing, uniform, or clothing similar to the uniform of official or military personnel, and by their behavior, conduct, movement, and presence in a certain public or private place, or by the use of equipment or accessories, create the impression of performing the tasks of official or military personnel. If these acts are committed in a group of at least two people, each individual shall be fined between 1,000 and 2,000 Euros.

A fine of between 1,500 and 2,500 Euros will also be imposed on an individual who, in a group of at least two persons, wears camouflage clothing, a uniform, or clothing similar to the uniform of official or military personnel, and by their behavior, conduct, movement, and presence in a certain public or private place, and by using symbols, coats-of-arms, flags, or by creating the impression of a hierarchical organization of the group, or by using vehicles bearing recognizable marks, or by using equipment or accessories, create the impression of a police or military force, the operation of which has no basis in law.³⁹

Similar additions were introduced by the amendments to SBCA-2. The new provisions of Article 4 prohibit and sanction any conduct by an individual or a

36 The Act Amending the Protection of Public Order Act (*Zakon o dopolnitvah Zakona o varstvu javnega reda in miru* [PPOA-1A]), Official Gazette of the Republic of Slovenia, No. 139/20.

37 The Act Amending the State Border Control Act (*Zakon o dopolnitvah Zakona o nadzoru državne meje* [SBCA-2E]), Official Gazette of the Republic of Slovenia, No. 139/20.

38 K. T., 2020. See also Pušnik, 2020.

39 PPOA-1, Art. 11.a.

group that, with the aim of controlling the state border, is carried out in a way that is identical or similar to the performance of police tasks in the implementation of state border control. They also prohibit and sanction any behavior that hinders the police from carrying out control of the state border. Any behavior by a legal entity or an individual encouraging, organizing, or facilitating the aforementioned actions is also prohibited. For these violations, a fine of at least 1,000 Euros shall be imposed on an individual and a fine of at least 1,500 Euros for an individual who commits such an act in a group of two or more people.

A comparison between the rejected and accepted proposals for legislative amendments reveals that the differences between the two are minimal. The PPOA-2E, compared to the failed proposal of Šarec's government, foresees a wider range of prohibited actions—i.e., the use of symbols, coats-of-arms, and vehicles with markings, etc.—by which an individual or a group wearing camouflage clothing, a uniform, or clothing similar to the uniform of official or military personnel, can create the impression of performing the duties of official or military personnel. In terms of the amounts of fines, there were no significant differences between the rejected proposal and adopted amendment. There were no significant differences between the rejected and accepted proposals for SBCA-2 either.

■ 3.2. *Criminal persecution and conviction of the leader of the Styrian Guard*

On September 9, 2018, a few days after his speech on the formation and training of the Styrian Guard in Apače, the police arrested Andrej Šiško, the leader of the Styrian Guard. Šiško was detained on the suspicion of committing the crime of Incitement to Violent Change of the Constitutional Order, according to the first paragraph of Article 359. He was also charged with the Unauthorized Production and Trafficking of Weapons or Explosives, according to Article 307, and the Unauthorized Production and Trafficking of Illegal drugs, Illegal substances in sports, and Precursors for the Production of Illegal Drugs, according to Article 186 of the CC1.

Along with Šiško, Matej Lesjak, who at the time of the alleged crime was a member of the executive committee of the youth wing of the SDS, was also detained on suspicion of assisting Šiško. The police conducted searches of Styrian Guard members' homes at five locations, including the house of the leader of the Styrian Guard. Šiško was brought before the investigating judge, who ordered his detention on the remand. After the investigation was completed, the Maribor District Prosecutor's Office filed an indictment against Šiško, accusing him of the Criminal Act according to the first paragraph of Article 359. The allegations referred to his speech in Apače in front of approximately sixty members of the Styrian Guard. In this speech, he stated, *inter alia*, that the Republic of Slovenia is under threat, that the police and army are incapable of providing security, and that the current government must be removed. He also called the Prime Minister a traitor. The

indictment also referred to Šiško's other statements at public gatherings and in the media, both mainstream and social.

Šiško's defense was carried out in two hearings, which lasted almost 12 hours, in total.⁴⁰ At these hearings, he stated that he felt offended because the court addressed him as the leader of the Styrian Guard, instead of the elected president of the United Slovenia Movement (*Gibanje Zedinjena Slovenija*). He submitted the book 'Peace, Freedom, Victory' to the court file and emphasized that he did not destroy the constitutionality, but rather defended it. He maintained that the gathering at the Apače was only a provocation: 'I wanted to make people realize that we live in a country where nothing works. I did the provocation to get into the public eye.' In his defense, he also said that the Styrian Guard was part of the program of the United Slovenia Movement, and that it was confirmed by the Ministry of the Interior. In a statement to the media before the verdict was announced, Šiško's defense attorney said that the accusations in the indictment were too abstract for her client to present a more concrete defense. According to her, the prosecution filed the indictment against Šiško for political reasons, and the trial was a political construct.⁴¹

On March 29, 2019, the District Court in Maribor found Šiško guilty of the criminal act of Incitement to Violent Change of the Constitutional Order, under the first paragraph of Article 359 of the CC-1.⁴² With the same verdict, Matej Lesak was convicted of helping the convicted Šiško. The higher court in Maribor rejected the appeals filed by both convicts, his counsel, and the state prosecutor, and confirmed the verdict of the court of first instance. The court sentenced the leader of the Styrian Guard to eight months in prison, while Lesjak was handed a suspended sentence. For both, the court added a time of deprivation of liberty and detention to the sentence.

The convicted Šiško and his legal counsel contested the final verdict before the Supreme Court of the Republic of Slovenia by filing a request for legal protection. His legal counsel claimed that the criminal act allegedly committed by her client was not appropriately specified; that is, the elements of the criminal offense, as stipulated in the CC-1, could not be discerned from the description of

40 Before the start of the trial, approximately fifty members of the Styrian Guard and Šiško supporters gathered in front of the Maribor District Court. At the pre-trial hearing, the defendant said that he called for the respect of the constitution, that he had never committed the crime that the prosecution accuses him of, and that he had no intention of doing so. He pleaded not guilty to the alleged crime. He replied to the judge that his actions were a provocation and that he had nothing to confess. He greeted his supporters in the courtroom with a raised hand and told them that he was grateful to the prosecution that he would be able to explain the reasons for his actions. See Maučec, 2019a.

41 Maučec, 2019b.

42 The provision of the first paragraph of Art. 359 of the CC-1 reads: 'Whoever, with the intention of threatening the existence, constitutional order or security of the Republic of Slovenia, incites or instigates the immediate execution of criminal offenses under Arts. 348 to 357 of this Penal Code, shall be sentenced to imprisonment for not more than five years.'

the criminal act in the reasoning of the judgment. She accused the court of the first instance of violating the provisions of the criminal procedure, because the court allegedly did not provide reasons related to the nature of the convict's guilt (*dolus coloratus*). In her opinion, the provisions of the criminal procedure were also violated because the reasoning of the judgment was based on the statements of persons recorded on websites or given on television shows, whereas the defendant did not have the opportunity to hear them.⁴³

In the defense attorney's opinion, in its judgment, the court did not specify the key elements of the criminal act, because it did not describe the way the act was carried out and did not define the addressee—i.e., it did not define who was incited or instigated to execute criminal offenses by the convicted, and did not describe these acts. In the opinion of Šiško's counsel, referring only to the provision in CC-1 is not sufficient for the criminal act to be specified. She assessed that his statements were within the limits of political speech, which was protected by freedom of expression. She also posited that, with his conduct, her client did not fulfill the requirements of incrimination, according to Article 359 of CC-1. According to her, her client's behavior did not deviate from the normal forms of permitted association and freedom of expression – the courts wrongly concluded that with his statements, he was inciting a violent change to the constitutional system of the Republic of Slovenia or the overthrow of state authorities.⁴⁴

In the reasoning behind its judgment, the Supreme Court first defined the constitutional and criminal law framework for assessing the case. It assessed, *inter alia*, that the crime in question belonged to a group of—pure—political crimes. A criminal act from the first paragraph of Article 359 of the CC-1 is committed by the person who only incites or instigates actions that may threaten the existence, constitutional order, or security of the Republic of Slovenia, without their execution actually taking place. Behaviors that constitute incitement or instigation include the use of texts, drawings, speeches, audio or visual messages, media, and the Internet. The provision in question should be understood as a normative concretization of the second paragraph of Article 63 of the constitution.⁴⁵ As it is a blanket norm, its substantive scope can only be recognized with the help of supplementary norms from Articles 348–357 of the CC-1, and with the help of a legal interpretation of the terms existence of the Republic of Slovenia, constitutional order of the Republic of Slovenia, and security of the Republic of Slovenia. These are the so-called indefinite legal terms that require special attention in criminal law. Even if their use in criminal law is not excluded, the requirements of the principle of legality in criminal law must be strictly followed when interpreting them. It is also crucial that the interpretation of the provision

43 See Judgment of the Supreme Court of the Republic of Slovenia, No. III K 40945/2018, dated 29 March 2019.

44 III K 40945/2018.

45 This provision stipulates that any incitement to violence is constitutionally prohibited.

strictly follows the constitutionally permissible limits of criminal law responses to actions with which an individual wishes to participate in the management of public affairs.⁴⁶

Considering the above constitutional and criminal law starting points—due to limitations in the scope of this article, they could not be shown in more detail—, the Supreme Court disagreed with the statements of the convicted and his counsel and rejected their request for the protection of legality as unfounded. It was found that the examples of his expressions, as described by the court of first instance in the judgment, can undoubtedly be understood as concretization of incitement to violence in the form of incitement and instigation, as prescribed in the first paragraph of Article 259 of CC-1. According to the Supreme Court, Šiško's messages to his addressees had a single common thread: to convince them of the necessity of violent behavior—i.e., of the necessity of organizing an armed rebellion. More particularly, his messages, as described in the judgment of the court of first instance, clearly express the need to commit the crime of organizing an armed rebellion under the first paragraph of Article 355 CC-1. Šiško expressed this need by convincing the addressees that, for the security and defense of the Republic of Slovenia, an alternative to the regular armed forces—that is, the armed provincial guard—must be established. He continued that by demonstrating the use of force as the only possible way to achieve these goals—the security and defense of the Republic of Slovenia—was by establishing the illegal armed group called the Styrian Guard and by publicly displaying the military formations of its masked members. In his statements, while encouraging the establishment and operation of alternative armed forces, Šiško repeatedly and persistently denied the validity of the Republic of Slovenia's legal order.⁴⁷

The Supreme Court ruled that the court of first instance correctly assessed that Šiško's conduct exceeded the limit of permitted political expression, and that a criminal law response is necessary, appropriate, and proportional, to ensure the pursued legitimate goal—i.e., the protection of the state and its democratic constitutional order. The Supreme Court also found that it is not possible to follow the applicant's allegations of violations by the court of the first instance of the provisions of the criminal procedure, neither from the point of view of the presumption of innocence, nor from the point of view of the right to judicial protection before an independent court.⁴⁸ The verdict was reached with the votes of the four judges. One judge voted against the majority's decision.

46 III K 40945/2018.

47 Ibid.

48 Ibid.

4. Discussion and conclusion

In their work, Nel critically observes that, despite its wider societal and political repercussions, which make vigilantism a fascinating and fertile topic for legal research, it has largely been overlooked as a topic.⁴⁹ Its legal neglect is unfortunate and inexplicable, as the fundamental issues of law, order, justice, and power that lie at the heart of vigilante activities have a myriad of significant legal implications. This seems to reflect the fact that in most legal systems, there has been no legislative attempt to consider vigilantism in depth, and define acts of vigilantes separately, as specific criminal and minor offenses. Similarly, vigilantism is only occasionally referred to in court judgments. While the courts and the executive acknowledge that vigilantism exists, they seem to share the reflexive—albeit unreflective—assumption of popular culture that vigilante violence deserves harsh condemnation. According to Nel, case law considering vigilantism, without exception, has something negative to say about it.⁵⁰

What Nel asserts matches the situation in Slovenia. In the Slovenian legal system—i.e., in its criminal law and law on minor offenses—, vigilante acts are not defined as a separate category—i.e., acts typically committed by vigilantes are not determined as a special group of criminal acts and minor offenses—, which can be partly explained by the fact that Slovenia had almost no experience with vigilantism before 2018. With the 2020 amendments to PPOA-1 and ZNDM-2, the situation has not changed. Most of the typical activities carried out by members of the Styrian Guard and other vigilante groups on the so-called green border between Slovenia and Croatia shall be processed according to the general provisions of Article 11 of PPOA-1 on the Use of Dangerous Objects—see above. These provisions do not consider the specific nature of typical vigilante acts, and do not define them as special minor offenses. Similarly, Andrej Šiško, the leader of the Styrian Guard, was arrested, prosecuted, and convicted of the general crime of Incitement to Violent Change of the Constitutional Order, according to Article 359 of the Criminal Code, which is determined in the CC-1 as one of the Criminal Offenses against the Sovereignty of the Republic of Slovenia and its Democratic Constitutional Order. Similarly, Šiško was arrested, prosecuted, and convicted of

⁴⁹ Nel, 2016, p. 2.

⁵⁰ Nel, 2016, p. 8. Nel points out that their analyses of vigilantism aims to evaluate the feasibility of state efforts that encourage vigilantes to become legitimate criminal justice partners, including whether such incorporation might reverse the tendency of vigilante groups to degenerate into delinquency. In sharp contrast to Nel, Snyder maintains that mob justice is a threat to a modern democratic state. The paramilitary groups first degrade a political order, and then transform it. ‘When the men with guns who have always claimed to be against the system start wearing uniforms and marching with torches and pictures of a leader the end is nigh. When the pro-leader paramilitary and the official police and military intermingle, the end has come.’ Snyder, 2017 (6 Be wary of paramilitaries).

the crime of Incitement to Violent Change of the Constitutional Order, according to Article 359 of the Criminal Code, which is determined in CC-1 as one of the Criminal Offenses against the Sovereignty of the Republic of Slovenia and its Democratic Constitutional Order.

The amended legislation, which categorically prohibits and sanctions as minor offenses the most typical behavior of vigilantes, and the criminal conviction of the leader of the most notorious vigilante group in the country, may create the impression that Slovenia resorted to what Nel calls ‘the popular culture’s reflexive—albeit unreflective—assumption’ that vigilante acts—and even more so, vigilante violence—deserve zero tolerance and harsh condemnation. However, our study shows that this impression may not be completely correct. In the reasoning of the final judgment in the criminal case against the leader of the Styrian Guard, the Supreme Court pointed to the constitutional aspects of the prosecution of criminal offenses against the state’s security and sovereignty. In the Supreme Court’s view, it is crucial that the interpretation of CC-1 provisions strictly follows the constitutionally permissible limits of the criminal law response to actions with which an individual wishes to participate in the management of public affairs. More specifically, the limits of the incrimination of Incitement to Violent Change of the Constitutional Order in the first paragraph of Article 359 of CC-1, which protects the constitutional order of the Republic of Slovenia and its existence as a democratic republic, must be sought in the constitutionally permissible limitations of freedom of expression and association. This incrimination should be understood as a normative concretization of the second paragraph of Article 63 of the Constitution⁵¹—the provision of this Article/paragraph prohibits any incitement to violence. When implementing this constitutional provision at the concrete level—e.g., in a court judgment—, the test of legitimacy and proportionality must be applied, and the court must proceed from the constitutional requirement that the restriction of freedom of expression—i.e., political speech—must pursue a legitimate goal, that such a restriction must be appropriate and necessary to achieve this goal, and that the official prohibition must also be proportionate – in the narrower sense. In other words, the categorical nature of the constitutional prohibition of any incitement to violence and the CC-1 incrimination does not free the court from assessing the proportionality of the authorities’ restriction of freedom of—political—speech on a concrete level. In light of this requirement, the Supreme Court had applied both tests when deciding on the application for protection of legality, as filed by the leader of the Styrian Guard. It assessed whether, in this case, the elements of incrimination—according to the first paragraph of Article 359 of the CC-1—were specified in the judgment of the court of first instance

51 The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije* [Constitution]), Official Gazette of the Republic of Slovenia Nos. 33/91, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13, 47/13, 75/16, 92/21.

in such a way that it was possible to recognize in it a limitation of freedom of expression, which is in accordance with the CC-1 and the Constitution.⁵²

In conclusion, we wish to refer again to Nel's excellent composition on vigilantism. They remarked that the advantage of theorizing about vigilantism in general terms, rather than focusing exclusively on specific vigilante incidents, is that the insights offered may be applicable in a range of practical contexts.⁵³ The purpose of this article is exactly the opposite; we did not want to engage in exploring vigilantism and its versatile forms theoretically and scientifically. Moreover, the focus of the article was not on exploring the extent to which vigilantism is a product of weak or eroded state legitimacy, or the extent to which it threatens state sovereignty. Instead, we wanted to address vigilantism at a concrete level; that is, in a specific Slovenian—legal—context, which is unique because this phenomenon practically did not exist in the independent Slovenia before 2018. The main motivation for undertaking the research, which was the basis for this article, was to evaluate and explain to international readers the Slovenian reaction—i.e., the reaction of the Slovenian state and legal system—to the sudden appearance of vigilantism, which brought great unrest to Slovenian society.

52 III K 40945/2018.

53 Nel, 2016, p. 8.

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