FUNDAMENTAL RIGHTS SERIES

E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
(CFR-CDF)
RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS FONDAMENTAUX

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN THE SLOVAK REPUBLIC IN 2003

January 2004

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* Submitted to the Network by JUDr Martin Buzinger in January 2004

Le **Réseau UE d'Experts indépendants en matière de droits fondamentaux** a été mis sur pied par la Commission européenne (DG Justice et affaires intérieures), à la demande du Parlement européen. Depuis 2002, il assure le suivi de la situation des droits fondamentaux dans les Etats membres et dans l'Union, sur la base de la Charte des droits fondamentaux de l'Union européenne. Chaque Etat membre fait l'objet d'un rapport établi par un expert sous sa propre responsabilité, selon un canevas commun qui facilite la comparaison des données recueillies sur les différents Etats membres. Les activités des institutions de l'Union européenne font l'objet d'un rapport distinct, établi par le coordinateur. Sur la base de l'ensemble de ces (26) rapports, les membres du Réseau identifient les principales conclusions et recommandations qui se dégagent de l'année écoulée. Ces conclusions et recommandation sont réunies dans un Rapport de synthèse, qui est remis aux institutions européennes. Le contenu du rapport n'engage en aucune manière l'institution qui en est le commanditaire.

Le Réseau UE d'Experts indépendants en matière de droits fondamentaux se compose de Elvira Baltutyte (Lituanie), Florence Benoît-Rohmer (France), Martin Buzinger (Rép. Slovaque), Achilleas Demetriades (Chypre), Olivier De Schutter (Belgique), Maja Eriksson (Suède), Teresa Freixes (Espagne), Gabor Halmai (Hongrie), Wolfgang Heyde (Allemagne), Morten Kjaerum (Danemark), Henri Labayle (France), Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), Bruno Nascimbene (Italie), Manfred Nowak (Autriche), Marek Antoni Nowicki (Pologne), Donncha O'Connell (Irlande), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Dean Spielmann (Luxembourg), Pavel Sturma (Rép. Tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par Olivier De Schutter, assisté par Valérie Verbruggen.
Les documents du Réseau peuvent être consultés via :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_fr.htm

The **EU Network of Independent Experts on Fundamental Rights** has been set up by the European Commission (DG Justice and Home Affairs), upon request of the European Parliament. Since 2002, it monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. A Report is prepared on each Member State, by a Member of the Network, under his/her own responsibility. The activities of the institutions of the European Union are evaluated in a separated report, prepared for the Network by the coordinator. On the basis of these (26) Reports, the members of the Network prepare a Synthesis Report, which identifies the main areas of concern and makes certain recommendations. The conclusions and recommendations are submitted to the institutions of the Union. The content of the Report is not binding on the institutions.

The EU Network of Independent Experts on Fundamental Rights is composed of Elvira Baltutyte (Lithuania), Florence Benoît-Rohmer (France), Martin Buzinger (Slovak Republic), Achilleas Demetriades (Cyprus), Olivier De Schutter (Belgium), Maja Eriksson (Sweden), Teresa Freixes (Spain), Gabor Halmai (Hungary), Wolfgang Heyde (Germany), Morten Kjaerum (Denmark), Henri Labayle (France), Rick Lawson (The Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), Bruno Nascimbene (Italy), Manfred Nowak (Austria), Marek Antoni Nowicki (Poland), Donncha O'Connell (Ireland), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Dean Spielmann (Luxembourg), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by Olivier De Schutter, with the assistance of Valérie Verbruggen.
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CHAPTER I : DIGNITY

Article 1. Human dignity

International case law and concluding observation of international organs

The United Nations Human Rights Committee in its concluding observations[1] pointed out, that it remains concerned at reports of forced or coerced sterilization of Roma women. In particular, the Committee regrets that in the written answers submitted after the oral consideration of the report, the Slovak Republic does not clearly deny or admit breaches of the principle of full and informed consent but it asserts that an investigation related to maternity wards and gynecology departments of 12 hospitals did not result in findings of infringements of "medical indication" of sterilization. The reference made, in the same submission, to "the fact that not all administrative acts were fulfilled in every case" appears to amount to an implicit admission of breaches of the requirement of informed consent. The Committee recommended the Slovak Republic to adopt all necessary measures to investigate all alleged cases of coerced or forced sterilization, publicize the findings, provide effective remedies to victims and prevent any instances of sterilization without full and informed consent.

Practice of national authorities

In January 2003 the Centre for Reproductive Rights, New York, in cooperation with the Centre for Civil and Human Rights (*Poradňa pre občianske a ľudské práva*) – an NGO with the base in Košice, Eastern Slovakia, officially published a report entitled *Telo a duša: Násilné sterilizácie a ďalšie útoky na reprodukčnú slobodu Rómov na Slovensku* [Body and Soul: Forced sterilisations and other assaults on Roma reproductive freedom in Slovakia; hereinafter referred to as the "Body and Soul Report"]. The Body and Soul Report has quickly come to national and international attention. It is claiming that Roma women have, in recent years and on an on-going basis, been subject to sterilisation in some hospitals in Eastern Slovakia without their full and informed consent. During the communist period, an official policy existed according to which Roma women were offered financial incentives to undergo sterilisations. This policy was discontinued in 1989, after the fall of communist regime, but, according to the Body and Soul Report, the practice of sterilisation of Roma women, without necessary safeguards to ensure that they are fully aware of – and in agreement with – the implications of the procedure, has continued in some hospitals. According to the Body and Soul Report, some women have been asked to sign consent forms while under anaesthesia for caesarean sections, some have been told that the sterilisation is necessary since further pregnancies would prove fatal for them or for their children, and some have been presented with consent forms for signature after the operation had taken place. A number of the cases mentioned in the Body and Soul Report concerned the sterilisation of minors. The Body and Soul Report also claims that some hospitals are practicing segregation of Roma women in maternity care, for example by allocating them to separate rooms or by holding separate antenatal consultation sessions for Roma women.

After the publication of the Body and Soul Report, the *vláda Slovenskej republiky* [Government of the Slovak Republic] has initiated a thorough investigation of all allegations contained in the Body and Soul Report. Due to a social seriousness of the allegations, the criminal investigation was led into a crime of genocide. The *ministerstvo zdravotníctva* [Ministry of Health] had carried out the initial examination only in one hospital, but later the examination was extended to other hospitals. The authorities have made a public call for any

[1] Concluding observations of the Human Rights Committee: Slovakia, 22 August 2003, CCPR/O/78/SVK, point 12.

women concerned to come forward to their local police stations and encouraged them to provide evidence. The possibility of bringing criminal proceedings against the authors of the Body and Soul Report has also been publicly raised by the authorities – either for spreading panic in the society in case that the allegations are untrue or for not informing the authorities at an earlier stage and not providing more details if they are true.

The Generálna prokuratúra Slovenskej republiky [Prosecution General of the Slovak Republic] was also involved and it carried out supervision over the investigation. Other authorities, e. g. the *Výbor Národnej rady Slovenskej republiky pre ľudské práva, národnosti a postavenie žien* [Committee of National Council for Human Rights, National Minorities and the Status of Women], the Ministry of Health, the *ministerstvo vnútra* [Ministry of Interior] were involved in the investigation too. Representatives of the civic sector were also engaged in the process. At the same time, the Slovak Government enabled an examination of the whole issue to experts from different international organisations and institutions directly in Slovakia. For instance, several members of the European Parliament and the vice-president of the Committee of Parliamentary Assembly of Council of Europe for social matters, health and a family had an opportunity to examine the allegations in person. The two reports came from these two independent missions, both confirm that the official policy of the Slovak Government or any other authority regarding the illegal sterilisation of Roma women does not exist. However, the reports clearly pointed out that there was a need to take a number of measures in order to improve the situation of Roma women in the area of their reproductive rights, sterilisation, access to medical files, and non-discriminatory access to health care.

According to the information available from the media, the authors of the Body and Soul Report have refused to cooperate with the state authorities (for instance, they refused to testify and to provide the list of names of aggrieved Roma women to the investigators). During the investigation the Centre for Reproductive Rights and the Centre for Civil and Human Rights were discrediting the open-mindedness of investigation and called an attention to the prejudgements of results of investigation.

The *Podpredseda vlády Slovenskej republiky pre európsku integráciu, ľudské práva a menšiny* [Deputy Prime Minister of the Slovak Republic for the European Integration, Human Rights and Minorities] - following the presented results of the investigation, records and other materials provided by other authorities - has elaborated Report on investigation[2].

The Slovak Government after the deliberations of the Report on investigation has approved the Governmental Resolution[3] which states, *inter alia*, that „*Shortcomings of procedural nature were found during the thorough investigation of certain sterilisations of women. The Government has therefore initiated a revision of the relevant healthcare legislation to bring it in line with EU legislation and Slovakia's international commitments. The Government is prepared to organise further training for healthcare, police, social sphere and public administration staff in order to further humanisation of the services they provide."*

The Committee of National Council for Human Rights, National Minorities and the Status of Women in the *uznesenie č. 152* [Resolution no. 152][4] asked the Minister of Health to submit a report on accomplishing or redeeming the tasks listed in the Resolution no. 1018/2003 to the Committee. The Committee for Human Rights, National Minorities and Status of Women also asked the Plenipotentiary of the Government for Roma Communities to submit an information about the achievement of the goal to incorporate the draft program, oriented on increasing the awareness of marginalized groups about the reproductive rights, especially by means of

[2] *Správa o priebehu a vývoji podozrení z údajných násilných sterilizácií rómskych žien v Slovenskej republike a o prijatých krokoch a opatreniach* [Report on developments with respect to suspicions of alleged forced sterilisations of Roma women in the Slovak Republic and the steps and measures taken], UV-9850/203.
[3] *Uznesenie vlády č. 1018/2003 z 29. októbra 2003* [Governmental Resolution no. 1018/2003 of 29 October 2003].
[4] *Uznesenie č. 152 z 25 novembra 2003* [Resolution no. 152 of 25 November 2003]

activities focused on the education in given communities, to the National Program on Protection of Reproductive Health assigned by the Governmental Resolution no. 1018/2003, to the committee till 15 January 2004.

With regard to the sterilisations see also the comments concerning the Article 3.

Article 2. Right to life

International case law and concluding observation of international organs

The UN Human Rights Committee in its conclusions[5] stated that it is concerned at reports of high rates of domestic violence and regrets that the statistics provided by the Slovak Republic were inconclusive. While noting some positive steps taken by the Slovak Republic in the area of legislation, the Committee regrets that the adoption of the National Strategy for the Prevention and Elimination of Violence Committed against Women and in Families has been delayed.

In the Committee's opinion, the Slovak Republic should adopt the necessary policy and legal framework to combat domestic violence; especially, it should provide a framework for the protection of a spouse who is subjected to violence or threats of violence. The Committee recommends the Slovak Government to establish crisis centre hotlines and victim support centres equipped with medical, psychological, legal and emotional support. In order to raise public awareness, it should disseminate information on this issue through the media.

The Committee on Economic, Social and Cultural Rights in its concluding observations[6] notes that, despite the Slovak Republic had adopted legislative measures on domestic violence, the problem persists and is widespread. The Committee calls upon the Slovak Republic to enforce its legislation on domestic violence and to take appropriate preventive measures in order to give the required assistance to victims of domestic violence.[7]

National legislation, regulation and case law

Right to life v. abortions/

In May 2001 a group of members of the *Národná rada Slovenskej republiky* [National Council of the Slovak Republic] launched a motion to the *Ústavný súd Slovenskej republiky* [Constitutional Court of the Slovak Republic] demanding the commencement of action to review the conformity of certain provisions of the Act on abortion[8] and of the Regulation on abortion[9] with the *Ústava Slovenskej republiky* [Constitution of the Slovak Republic].[10] The members of National Council were mainly arguing against unconformity of both the statutory and the regulatory provisions on abortion with the Article 15 paragraphs 1 and 4 of the Constitution guaranteeing the right to life. [11]

[5] CCPR/O/78/SVK, point 9
[6] Concluding observations of the Committee on Economic, Social and Cultural Rights: Slovakia. 19/12/2002. E/C.12/1/Add.81., point 15
[7] E/C.12/1/Add.81., point 29.
[8] *Zákon č. 73/1986 Zb. o umelom prerušení tehotenstva v znení zákona č. 419/1991 Zb.* [Act no. 73/1986 Coll. on artificial termination of pregnancy as amended by the Act no. 419/1991 Coll.]
[9] V*yhláška ministerstva zdravotníctva č. 74/1986, ktorou sa vykonáva zákon Slovenskej národnej rady č. 73/1986 Zb. o umelom prerušení tehotenstva v znení zákona č. 98/1995 Z. z.* [Regulation of the Ministry of Health no. 74/1986 Coll. which regulates in more detail the Act on abortion as amended by the Act no. 98/1995 Coll.].
[10] Ref. no. PL. ÚS 12/01.
[11] Article 15 paragraph 1 of the Constitution states: *„Everyone has the right to life. Human life is worth protection even before birth.".*

Pursuant to the Section 4 of the Act on abortion, a pregnancy shall be artificially terminated if the woman makes a written request to this effect, the pregnancy has not passed the twelfth week, and there are no contraindications on health grounds.

The Section 5 of the Act on abortion states that a pregnancy may be artificially terminated on health grounds with the woman's consent, or at her instigation, if her life or health or the healthy development of the fetus are endangered, or if fetal development manifests genetic anomalies.

The Section 2 of the Regulation on abortion regulates in more detail an artificial termination of pregnancy on health grounds. This provision states that (i) a pregnancy may be artificially terminated on health grounds provided that the pregnancy has not passed the 12th week; (ii) regardless of the length of a pregnancy, the pregnancy may be artificially terminated, if the life of woman is endangered, or if the fetus is not viable or it is hardly damaged; (iii) on the genetic grounds a pregnancy may be artificially terminated if the pregnancy has not passed the 24th week.

The motion of the group of deputies is focused on the review of the range of constitutional protection of unborn life and ability and limits of constitutional protection of unborn life in case of its concurrence with another constitutional right(s).

In the opinion of claimants, an unborn life during its first 12 weeks of existence deserves the same constitutional protection as an unborn life after the 12 week of its evolution. Therefore, in their opinion, an unborn life must be protected by the constitution during the whole period of pregnancy. Furthermore, in the opinion of claimants, the Regulation on abortion exceeds the statutory limits for regulation of abortion when allowing an artificial termination of pregnancy up to 24 weeks (although only if the fetus is genetically malformed). Therefore, the claimants have also required the Constitutional Court to declare the regulation in this part inconsistent with the Article 123[12] and the Article 2 paragraph 2[13] of the Constitution.

In April 2003 another group of deputies tried to push an amendment to the Act on abortion that would anchor in statutory law a woman's right to later-term abortions in case of genetic malformation as it is currently guaranteed by the Regulation on abortion. As stated in the explanatory report to the amendment, the purpose of the amendment is to remove the incompatibility of some provisions of the Regulation on abortion with the Constitution, but, at the same time, to maintain the rights of pregnant women at current legal standard.

On 3 July 2003 the National Council approved the amendment to the Act on Abortion, but the President of the Slovak Republic thereafter applied his power to veto the bill and he has returned the amendment back to the National Council arguing that he deemed advisable to wait for the decision of the Constitutional Court on this issue. The National Council has not re-debated the returned law as yet.

The Constitutional Court has not made the decision as yet, but its president has already emphasized in public media, that this issue concerning the constitutional limits of protection of unborn life is a very complex one, and it would take some time while the court will bring a final ruling.

Article 15 paragraph 4 of the Constitution states: *„No infringement of rights according to this Article shall occur if a person has been deprived of life in connection with an action not defined as unlawful under the law.“.*

[12] Article 123 of the Constitution states: *„Ministries and other state administration bodies shall, under the laws and within their limits, adopt generally binding legal regulations provided they are empowered to do so by a law. These generally binding legal regulations shall be promulgated in a manner laid down by a law.“.*

[13] Article 2 paragraph 2 of the Constitution states: *State bodies may act solely on the basis of the Constitution, within its scope and their actions shall be governed by procedures laid down by a law.*

The use of technical means to prohibit the illegal crossing of borders:

On 23 October 2003 the National Council approved the Border Protection Act[14], which came into force on 1 January 2004.

Pursuant to the Section 4 paragraphs 1 and 3 of the Border Protection Act, the Police Corps is empowered to place and use technical means, which detect, record or prevent the illegal border crossing. The Police Corps must respect the rights of owners of the estate regarding the placement of technical means. The Section 4 paragraph 5 of the Border Protection Act states that technical means placed in the monitored area need not to be clearly marked. The Border Protection Act introduces neither in general nor in detail the definition of technical means used for the border protection.

The use of firearms by the security forces:

On 23 April 2003 National Council adopted the Act on the firearms and the munition[15]. This law, however, does not regulate the use of firearms by security forces.

Domestic violence:

Cardinal changes in legislation, especially in connection with the reinforcement of the status of victims of domestic violence in the area of criminal law, had been realised during 2002 and they came into force from September 2002. In the period under scrutiny no substantial changes has been taken in the area of domestic violence.

Reasons for concern

Needed legislative changes have been realised and now they are gradually putting into the practice. The Government should concern especially on the edification in the area of domestic violence and on the education and training of relevant state clerks, mainly of the judges and the prosecutors operating in the area of the protection of victims of violation. The *verejný ochranca práv* [public defender of rights/ombudsman] should be interested in this area in more detail.

Article 3. Right to the integrity of the person

National legislation, regulation and case law

Following the suspicion of execution of forced and coerced sterilisations of Roma women, the Slovak Republic has been preparing a change of some legal standards amending patients´ rights.

The Ministry of Health worked out a proposal of new Health Care Act (the Health Care Bill) which is nowadays submitted to a notice and comment proceeding and which should replace current Act on Health Care[16]. The Health Care Bill specifies basic patients' rights and obligations of provider of healthcare services.

A principle of informed consent of patient (including informed consent of person participating on biomedical research) was incorporated into the Health Care Bill in accordance with the

[14] *Zákon č. 477/2003 Z. z. o ochrane štátnej hranice* [Act no. 477/2003 Coll. on the Protection Border]
[15] *Zákon č. 190/2003 Z. z. o strelných zbraniach a strelive a o zmene a doplnení niektorých zákonov* [Act no. 190/2003 Coll. on the firearms and the munition and amendments of some other acts].
[16] *Zákon Národnej rady Slovenskej republiky č. 277/1994 Z. z. o zdravotnej starostlivosti v znení neskorších predpisov* [Act of the National Council of the Slovak Republic no. 277/1994 Coll. On Healthcare as amended].

definition of complete and informed consent according to the Chapter 2 Article 5 of the Convention on Human Rights and Biomedicine[17]. The bill contains a new legislative framework for sterilisation executions and a revision of access to medical files. A field of transplantation and problems regarding cloning of human beings were newly changed, too.

According to the Health Care Bill, a healthcare will be provided to a person only if he/she was sufficiently informed and gave a prior consent with the providing of healthcare.

Matters regarding sterilisation executions are nowadays regulated by the v*yhláška ministerstva zdravotníctva č. 9/1972 Zb. o vykonávaní sterilizácií* [Order of the Ministry of Health no. 9/1972 on sterilisation execution]. Also due to suspicions of illegal sterilisations of Roma women in the Slovak Republic, the sterilisation executions will be regulated by statute.

According to the proposed bill, a sterilisation procedure can be performed on grounds of health reasons or at the request of natural person. A written consent of given person is always required (if he/she has legal capacity). In the case of a minor or a person under legal incapacity, the sterilisation procedure is possible only following the decision of medical consilium and written consent of his/her legal representative. In the case of a person so able, that he/she understands meaning of this action, also his/her consent is needed. A written consent with sterilisation procedure and the decision of medical consilium become a part of the medical file of person, who was a subject of sterilisation procedure. Before sterilisation procedure of a person, a doctor must inform given person about the nature of the operation, its permanent consequences and possible risks. The edification should be performed in an attendance of witness – another doctor and in the case that the person requires his/her own witness, also in an attendance of him/her. The edification has to be recorded in full extent into medical file of given person, and for affirmation purposes it should be dated and authentically signed by the person who is the subject of sterilisation procedure and also by his/her witness, if he/she asserted a claim on his/her own witness; the doctor who provided the information (edification) and the other doctor, the witness, must affirm the document by the stamp and by their signatures. The date of sterilisation execution must not forego the date of affirmed edification.

The Health Care Bill explicitly anchors the right to copy the medical records on own costs to persons with authorisation to review the medical file of patient (e. g. patient and his/her representative).

According to the Health Care Bill, the patient has the right to be informed in adequate way about the purpose, nature, consequences and risks of provided healthcare as he/she could fully participate in all decisions related to his/her health care and it is obligatory for healthcare provider to provide the patient all necessary information. The patient should receive comprehensive, easily understood and true information, however with the respect of human dignity. Patient has the right to refuse the information. The way of providing of information and its refusal become a part of medical file.

The Health Care Bill contains a definition of assisted reproduction. According to the bill, it is possible to perform assisted reproduction only in case of married couple (so not in the case of heteresexual couple, who live together indeed but who didn't get married). The assisted reproduction requires consent of both, wife and husband, based on written application addressed to healthcare provider specialisingd on assisted reproduction. Written application becomes a part of medical file of wife. The assisted reproduction can be performed, if it is very unlike or completely impossible for wife to get pregnant with her husband naturally or genetic tests of one or both of the couple indicate the risk for child to be born with genetic disease.

[17] Slovak Republic ratified this convention in December 1999.

The current legal regulation on healthcare does not include total prohibition of cloning of human being, i.e. it is not including the prohibition of cloning for therapeutic purposes. The new bill anchors the prohibition of reproductive cloning as well as therapeutic cloning. The Health Care Bill prohibits "*any interference made in order to create a human being in any stage of its development genetically identical with another live or dead human being*".

Since 1 September 2003, the Criminal Code Amendment[18] came into force, which, inter alia, in Section 246a introduces the new crime of human being cloning into the Slovak law.

According to the Criminal Code "*a person, who will perform any interference in order to create a human being in any stage of its development, genetically identical with another live or dead human being, will be sentenced to deprivation of liberty from 3 to 12 years or to the suspension of activity or to pay a fine"*.

Practice of national authorities

According to the statistical data of the Ministry of Justice, as far as the crime of unauthorised taking of human organs and tissues (Sections 209a and 209b of the Criminal Code) is concerned, 3 offences were registered and 3 offenders were sentenced in the Slovak Republic during the period between January – November 2003.

Article 4. Prohibition of torture and inhuman or degrading treatment or punishment

International case law and concluding observation of international organs

The UN Human Rights Committee in its conclusions pointed out that it is concerned about the persistent allegations of police harassment and ill-treatment during police investigations, particularly in case of the Roma minority, which the delegation described as resulting from psychological failure to handle the situation rather than to problems with legislation or police incompetence. The Slovak Republic should take measures to eradicate all forms of police harassment and ill-treatment during police investigations of the Roma, including prompt investigations, prosecutions of perpetrators and the provision of effective remedies to the victims.[19]

The Committee is also concerned at the continual use of cage-beds as a device of restraint in social care homes or psychiatric institutions. Cage-beds should cease to be used.[20]
In October 2000 a delegation of European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the **"CPT"**) visited Slovakia. The CPT delegation visited two social services homes, each intended for year-round operations: the Okoč Home for Disabled Children and Adults and the Veľký Biel Home for Disabled Adults supervised by the Ministry of Labour, Social Affairs and Family. CPT delegation indicated that the situation concerning the care of disabled people at the Okoč and Veľký Biel social services homes could be considered as inhuman and degrading treatment in case of some residents and the Slovak authorities should be called to inspect the situation and to take appropriate remedial actions.

[18] *Zákon č. 171/2003 Z. z., ktorým sa mení a dopĺňa Trestný zákon* [Act no. 171/2003 Coll. which amends and supplements the Criminal Code].
[19] CCPR/O/78/SVK, point 11.
[20] CCPR/O/78/SVK, point 13.

National legislation, regulation and case law

Act on Social Assistance[21] deals with the placing disabled people in care homes. In 2003 the Ministry of Labour, Social Affairs and Family prohibited the use of cage or net beds in social care services homes. The Act no. 453/2003 Coll. on state administration organs of social affairs, family and employment services, which amends and supplements the Act on Social Assistance and which entered into force on 1 January 2004, prohibits the use of cage and net beds in social care services facilities.

Pursuant to the Article 18a of the Act on Social Assistance, which came into force on 1 January 2004, provision of additional care of physically or mentally disabled people and/or people with behavioural disorders in social services facilities should not include the means of physical or non-physical restraint of a person neither in the acute phase of his/her disease.

Amendment to the Act on Social Assistance has extended the competence of the Ministry of Labour, Social Affairs and Family on State supervision over the social services providers, in particular regarding the observation of fundamental human rights and freedoms of people placed in social services facilities.

Practice of national authorities

In 2002 the Mental Disability Advocacy Centre (MDAC) seated in Budapest, Hungary, published the report concerning the use of cage beds in four EU Accession Countries. The MDAC has criticised the practices of cage and net beds use in the Slovakia.

Cage and net beds are devices for patient´s pacification. Cage bed is equipped by special cage to confine a person to bed. A distinction is made between the cage bed constructed only of metal bars and net bed consisted of metal frames with nets. The patient has limited room within this cage/net bed and so he/she cannot stand or move there, the only possibility is to sit or to lie there. The MDAC qualified the use of cage/net beds as overcome, inhuman and degrading. According to this report, the cage/net beds are used in the social care homes supervised by the Ministry of Labour, Social Affairs and Family and also in all mental hospitals under the Ministry of Health. The MDAC has recommended that the Slovak Republic should prohibit the use of cage beds in all mental hospitals and social care facilities by adopting the appropriate legislation.

The Ministry of Labour, Social Affairs and Family stated that the cage beds should be used only in rare cases when the patient or resident is too dangerous or aggressive. Concerning the use of net beds, the chief expert on psychiatry of the Ministry of Health in cooperation with the Ministry of Labour Social Affairs and Family worked out a "Professional Guideline for Regional Authorities and Social Services Facilities concerning the use of net beds for Residents suffering of Mental Disorders and/or Behavioural Disorders Placed in Social Services Facilities" on 26 June 2001. The guideline has been distributed to all social services facilities in Slovakia through competent regional authorities. The guideline states that restraint may be ordered only by a physician and that every use of restraint must be properly recorded (the records should contain the period of restraint and the reason for its use). According to the guideline a team of psychiatrists must examine the patient within 24 hours from the time he/she was placed to a net bed.

The prohibition of cage or net beds use does not cover all cases of using these beds in the Slovakia, because it relates only to the social services facilities operating under the provisions of the Act on Social Assistance supervised by the Ministry of Labour, Social Affairs and

[21] *Zákon č. 195/1998 Z. z. o sociálnej pomoci* [The Act no. 195/1998 Coll. on Social Assistance as amended].

Family. This prohibition does not cover mental hospitals under supervision of the Ministry of Health of the Slovak Republic.

There is a commission for process coordination concerning the elimination of racially motivated crimes and extremism operating under the Ministry of Interior.[22] The commission has been established by the Decree of the Minister of Interior no. 36 of 19 March 2003 on the initiative of several NGOs dealing with the protection of human rights, particularly the NGOs dealing with the racism and lack of toleration within the society. The members of the commission come from the Ministry of Interior and the Headquarter of police forces. The commission closely cooperates with the non-governmental organizations. It has already visited several places in the regions of Slovakia, in particular in the eastern part of the country, with the aim of investigation of concrete incidents concerning the breach of the law by the police officers in connection with the recording of racially motivated crimes and monitoring the racism, xenophobia, and lack of tolerance in other areas of social life. One of the aims of the commission is to improve the relationship between the members of Roma communities and police officers. New regional offices for coordinated action concerning the elimination of racially motivated crimes should start to operate in 2004.

According to the statistical data of the Ministry of Justice, as far as the crime of ill-treatment of close person and person in care (Section 215 of the Criminal Code) is concerned, 143 offences were registered and 109 offenders were sentenced in the Slovak Republic during the period between January – November 2003. As far as the crime of torture and other inhuman or cruel treatment (Section 259a of the Criminal Code) is concerned, no offence was registered in the Slovak Republic during the period between January – November 2003.

Case law:

On 27 June 2003, the Constitutional Court ruled on violation of the Article 16 paragraph 2[23] of the Constitution. In its ruling (*nález*) ref. no. III. ÚS 70/01 Constitutional Court held that the offices of the prosecution on all levels, specifically the District Prosecution Office in Prievidza (*Okresná prokuratúra v Prievidzi*), the Regional Prosecution Office in Trenčín (*Krajská prokuratúra v Trenčíne*), and the Prosecution General (*Generálna prokuratúra*) by not ensuring an effective and proper investigation of allegations of abusive police misconduct, had infringed the rights of claimant guaranteed by the Article 16 paragraph 2 in connection with the Article 19 paragraph 1[24] and the Article 46 paragraph 1[25] of the Constitution. The Constitutional Court pointed out, *inter alia*, that although, it was more than evident from the evidence obtained, including several medical reports, that the claimant had suffered severe bodily injuries while he had been interrogated as accused person by police officers (including members of special forces) in December 1998, the prosecution had not been able, or rather it had not been willing to investigate the physical cruelty carried out by the police officers in proper way. In the reasoning to this ruling, the Constitutional Court admitted, at least implicitly, that this police misbehaviour and mistreatment, could be regarded not only as a "*cruel, inhuman and degrading treatment",* but also as a "*torture*", which could not be justified by any "legitimate" reason, since the rights under the Article 16 paragraph 2 of the Constitution might not be restricted in any way.

[22] The former commission was set up by the Decree of the Minister of Interior of the Slovak Republic no. 61 of 28 November 2001 and was also oriented on the racially motivated crimes, but did not covere the extremism.
[23] Article 16 paragraph 2 of the Constitution states: *"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."*.
[24] Article 19 paragraph 1 of the Constitution states: „*Everyone shall have the right to maintain and protect his or her dignity, honour, reputation and good name.*".
[25] Article 46 paragraph 1 of the Constitution states: „*Everyone may claim his or her right by procedures laid down by a law at an independent and impartial court or, in cases provided by a law, at other public authority of the Slovak Republic*.".

The Constitutional Court of the Slovak Republic in its ruling (*nález*) ref. no. I. ÚS 4/02 of 9 July 2003 concerning the proceeding on constitutional complaint held that the Košice I District Court (*Okresný súd Košice I*) and Košice Regional Court (*Krajský súd v Košiciach*) had violated the right of minors not to be subject to inhuman and degrading treatment guaranteed by the Article 16 paragraph 2 of the Slovak Constitution, the right of home inviolability guaranteed by the Article 21 paragraphs 1[26] and 3[27] of the Slovak Constitution and the correspondent right under the Article 19 of the Convention on protection of the rights of child because they had failed to undertake appropriate measures for the protection of minors against grievous treatment from the side of father although the relevant law, including the Convention on protection of the rights of child, prescribed them to be active *ex officio* when the rights of minors are endangered.

Article 5. Prohibition of slavery and forced labour

International case law and concluding observation of international organs

The UN Human Rights Committee pointed out that it notes the efforts made by the Slovak Republic to address the situation regarding trafficking in women, in particular by adopting a preventive strategy by providing information to potential victims and through international cooperation. However, the Committee notes that it has received only limited statistical information from the Slovak Republic. It notes that trafficking is an international crime and therefore it not only concerns women trafficked out of Slovakia, but also those being trafficked into Slovakia from neighbouring countries.

The Slovak Republic should strengthen programmes aimed at providing assistance to women in difficult circumstances, particularly those coming from other countries who are brought into its territory for the purpose of prostitution. Measures should be taken to prevent this form of trafficking and to impose sanctions on those who exploit women in this way. Protection should be extended to women who are the victims of this kind of trafficking so that they may have a place of refuge and an opportunity to give evidence against the persons responsible in criminal or civil proceedings. The Committee encourages Slovakia to continue in its cooperative efforts with border states to eliminate trafficking across national borders.[28]
The Committee on Economic, Social and Cultural Rights stated that it is concerned about the persistent problem of trafficking in women, as well as the sexual exploitation of women and children in the Slovak Republic.[29] The Committee urges the Slovak Republic to adopt effective measures, including through regional cooperation, to combat trafficking in women and to adopt preventive programmes to combat the sexual exploitation of women, adolescents and children.[30]

National legislation, regulation and case law

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography was signed on 30 November 2001 and in December 2003 it was submitted to the National council for approval prior its ratification.

[26] Article 21 paragraph 1 of the Constitution states: *"The home shall be inviolable. Entrance without consent of the person residing therein is not permitted."*.
[27] Article 21 paragraph 3 of the Constitution states: "*Other infringements of the inviolability of the home shall be legally justified only if it is necessary in a democratic society to protect life, health, or property, to protect rights and freedoms of others, or to avert a serious threat to public order. If the home is used for entrepreneuring or other economic activities, such infringements may be allowed by the law also for the purposes of fulfilling the tasks of public administration*."
[28] CCPR/O/78/SVK, point 10.
[29] E/C.12/1/Add.81., point 16.
[30] E/C.12/1/Add.81., point 30.

Practice of national authorities

According to the statistical data of the Ministry of Justice, as far as the crime of trafficking in children (Sections 216a and 216b of the Criminal Code) is concerned, no offences were registered in the Slovak Republic during the period between January – November 2003. As far as the crime of procurement of prostitution (Section 204 of the Criminal Code) is concerned, 11 offences were registered and 8 offenders were sentenced in the Slovak Republic during the period between January – November 2003. As far as the crime of manufacturing of child pornography (Section 205b of the Criminal Code), crime of distribution of child pornography (Section 205c of the Criminal Code), and crime of possession of child pornography (Section 205d of the Criminal Code) are concerned, no offences were registered in the Slovak Republic during the period between January – November 2003. As far as the crime of trafficking in human beings (Section 246 of the Criminal Code) is concerned, 6 offences were registered and 5 offenders were sentenced in the Slovak Republic during the period between January – November 2003. A far as the crime of illegal employment of children (Section 217a of the Criminal Code) is concerned, 5 offences were registered and 5 offenders were sentenced in the Slovak Republic during the period between January – November 2003.

Reasons for concern

The illegal employment, as a form of modern slavery, usually relates to job-positions occupied by unqualified or low skilled workers, who are often contracted for seasonal works in the field of construction industry or agriculture. Except the cases of low-qualified workers or illegal immigrants, there are also cases, especially in the region of Eastern Slovakia, of employment of graduates of the Faculty of Law, who are forced to operate as trainee-lawyers for minimum wage or they are wageless at all. It is rumoured that in some cases they even have to pay to their employers – attorneys – charges covering the taxes and levies, which their employer levies to the state from fictitious wage of trainee-lawyers. We are not aware of any measures taken by the Slovak Bar Association or by other competent state authorities to eliminate these negative and unlawful practices.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

International case law and concluding observation of international organs

In the period under scrutiny the European Court of Human Rights has delivered its judgment against the Slovak Republic concerning the violation of Article 5 paragraph 1 of the Convention for Human Rights and Fundamental Freedoms in respect of the unlawful deprivation of applicant's liberty[31].

On 30 November 1996 the applicant was placed against his will to a mental hospital on account of the suspicion that he was suffering from a mental disorder. During the 3 days medicaments were administering to him and he had to undergo psychiatric tests. On 10 December 1996 the applicant was released from the hospital. The main issue the European Court of Human Rights had to determine in this case was whether the applicant's deprivation of liberty regarding his placing in a mental hospital was "lawful", including whether it was complying with "a procedure prescribed by law". As the European Court of Human Rights pointed out in the reasoning of judgement, the Slovak law provides for several procedural

[31] European Court of Human Rights, *Tkacik v. Slovakia* judgment of 14 October 2003

steps and safeguards the purpose of which is to protect persons held without their consent in a medical institution from arbitrariness. The documents before the Court indicate that the domestic authorities did not comply with the relevant provisions in that (i) the Košice II District Court (*Okresný súd Košice II*) was informed about the applicant's detention in the hospital on 2 December 1996 which is more than twenty-four hours after he had been placed there, contrary to Article 17 paragraph 6 of the Constitution of the Slovak Republic and to Section 191a paragraph 1 of the Code of Civil Procedure, (ii) the Košice II District Court decided on the lawfulness of the applicant's confinement on 9 December 1996 which is more than five days after his liberty had been restricted, contrary to Article 17 paragraph 6 of the Constitution and to Section 191b paragraph 4 of the Code of Civil Procedure, and (iii) the Košice II District Court's decision on the lawfulness of the applicant's detention was not served on the applicant within five days from the moment when his liberty had been restricted as required by Section 191c paragraph 1 of the Code of Civil Procedure. Thus the domestic authorities failed to comply "with a procedure prescribed by law". As a result, there has been a violation of Article 5 paragraph 1 of the Convention.

National legislation, regulation and case law

The Criminal Code Amendment[32], which came into force on 1 September 2003, has introduced a new legal institute of the Criminal Law named *"Trikrát a dosť"* ["Three strikes law"].

The new principle „Three strikes and you're out" means that in case the court is sentencing offender for some serious crime listed in Section 43 of the Criminal Code, and the offender has already been convicted by the court for any of the crimes listed in Section 43 of the Criminal Code at least twice in the past, the court must sentence the offender to a life imprisonment, otherwise the court shall sentence such an offender to a minimum of 20 (mostly of 25) years in prison.

The Criminal Code Amendment has also specified the access to release on parole of convicts in case that the offender has been sentenced to a term of imprisonment of 25 years. Pursuant to the Section 62 paragraph 3 of the Criminal Code the access to release on parole of convicts should not be allowed to an offender sentenced to a term of imprisonment under the Section 43 of the Criminal Code.

On 20 May 2003 the National Council by its Resolution no. 283 affirmed European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (ETS no. 051). The National Council decided that this international agreement came under the Article 7 paragraph 5 of the Constitution, which means that it has precedence over the laws of the Slovak Republic. The President of the Slovak Republic ratified the Convention on 30 June 2003.

Code of Criminal Procedure Amendment[33], which came into force on 1 December 2003, has extended a possibility of remedial measure in case of a prolongation of custody order. According to the new wording of Section 74 paragraph 1 of the Code of Criminal Procedure, a complaint against the custody order including prolongation of custody order is admissible to be lodged.

[32] *Zákon č. 171/2003 Z. z., ktorým sa mení a dopĺňa Trestný zákon* [Act no. 171/2003 Coll. which amends and supplements the Criminal Code].
[33] *Zákon č. 457/2003 Z. z., ktorým sa mení a dopĺňa Trestný poriadok v znení nekorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 457/2003 Coll. which amends and supplements the Code of Criminal Procedure as amended and on amendments on some other acts].

Case law:

In the period under review the Constitutional Court of the Slovak Republic ruled that the *Krajský súd v Bratislave* [Bratislava Regional Court] violated the right of claimant under Article 5 paragraph 4 of the Convention for Human Rights and Fundamental Freedoms.[34] The Constitutional Court pointed out, *inter alia*, that the period exceeding 2 months during which the Bratislava Regional Court was reviewing the grounds for further extension of applicant's detention was undue and therefore inconsistent with the imperative laid down in Article 5 paragraph 4 of the Convention for Human Rights and Fundamental Freedoms.

Article 7. Respect for private and family life

National legislation, regulation and case law

On 24 April 2003 the National Council approved the Act on protection against tapping[35], which specifies conditions for the use of information technology means without prior consent of the person concerned.

The main purpose of the Act on protection against tapping is to set up more precise and protective measures in respect of citizens´ rights in connection with tapping. The Act more precisely defines the specific state authorities which may use, as well as the specific conditions under which these state authorities are allowed to use information technology means, including electronic, radio and photo-technical means, to infringe upon someone's privacy without his/her prior approval.

If information technology means are not used in compliance with the Act on protection against tapping, any record or any information obtained cannot be used as an evidence by any state or other authority and it must be destroyed within 24 hours from the beginning of the illegal use of information technology means. The State will be held liable for any unauthorised use of information technology means due to its wrongful decision or procedure. Similarly, the individual who ordered, approved, or executed such unauthorised action will face civil and/or criminal liability.

On 1 December 2003 the Amendment to the Criminal Code[36] entered into force. The Criminal Code amendment, *inter alia*, has brought qualified facts of new offence concerning the protection of privacy against unauthorised use of information technology devices. Pursuant to the new Section 240a of the Criminal Code, anyone who unlawfully manufactures, secures or resets devices capable to tap public telecommunication services shall be sentenced to a term of imprisonment up to 3 years or to a sentence of pecuniary penalty or to a forfeiture of a thing.

[34] Constitutional Court of the Slovak Republic, ref. no. I. ÚS 18/03-61 of 2 April 2003

[35] *Zákon č. 166/2003 Z. z. o ochrane súkromia pred neoprávneným použitím informačno-technických prostriedkov a o zmene a doplnení niektorých zákonov (zákon o ochrane pred odpočúvaním)* [Act no. 166/2003 Coll. on protection of privacy against unauthorized use of information technology means (Act on protection against tapping)].

[36] *Zákon č. 457/2003 Z. z., ktorým sa mení a dopĺňa Trestný poriadok v znení nekorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 457/2003 Coll. which amends and supplements the Code of Criminal Procedure as amended and on amendments on some other acts].

Article 8. Protection of personal data

National legislation, regulation and case law

The general framework for protection of personal data has been set up in Personal Data Protection Act[37], which came into force on 1 September 2002. Data protection concerning specific issues is also regulated in a number of other laws.

The Personal Data Protection Act has set up *Úrad pre ochranu osobných údajov* [Personal Data Protection Office] that replaced the institute of *Splnomocnenec pre ochranu osobných údajov* [Commissioner for personal data protection]. The Personal Data Protection Office is a state authority, which is authorized to oversee the protection of personal data in an independent manner and participate in the protection of fundamental rights and freedoms of natural persons in the processing of their personal data. The Personal Data Protection Office issues *odporúčania* [recommendations] and *záväzné stanoviská* [binding opinions].

On 1 January 2003 *zákon č. 417/2002 Z. z. o používaní analýzy deoxyribonukleovej kyseliny na identifikáciu osôb* [Act no. 417/2002 Coll. on the application of deoxyribonucleic acid for the identification of persons] entered into force. This Act regulates conditions of taking the samples for the deoxyribonucleic acid analysis, the competence for the deoxyribonucleic acid analysis execution, establishing of national database of the deoxyribonucleic acid profiles (database) and processing of data from the database.

The sample for the purpose of deoxyribonucleic acid analysis can be taken from the person if it is specified in the special Act in connection with identification of persons for the criminal proceeding purposes, searching of missing persons and identification of unknown identity persons for the fulfilment of tasks of bodies active in criminal proceeding, Police Corps and Railway Police, from the person in the execution of infamous punishment (this person is obliged to suffer the taking of the sample) and from biological parents, children and other relatives of missing person, if there is a searching of missing person. The taking of the sample is executed in the way that must not threaten the human health neither degrade the human dignity.

The database is established, operated and administered by the Police Corps. The Police Corps is obliged to ensure the protection of data preserved in database against the steal, loss, damage destruction, non-authorised access, change or distribution. The database is the part of Police Corps information systems and providing of the data from it follows the Personal Data Protection Act.

Practice of national authorities

In the period under scrutiny the Personal Data Protection Office has issued two binding opinions.

In the first binding opinion[38] the Office states that the collection of personal data concerning members of listed professional associations and their consecutive processing in regard to the extent, content and manner of processing and the use of processed data, is not consistent with the purpose of their processing. The Office in the reasoning of this opinion pointed out that the processing of birth certificates of members of professional associations, which also contain personal data of other persons (their parents), violates the right of persons concerning personal data protection as guaranteed by the Slovak Constitution and the Personal Data Protection Act.

[37] *Zákon č. 428/2002 Z. z. o ochrane osobných údajov* [Act no 428/2002 Coll. on personal data protection].
[38] *Záväzné stanovisko* 1/2003 z 10. januára 2003 [Binding opinion no. 1/2003 of 10 January 2003].

In the second binding opinion issued in 2003[39], the Office held that employers may process personal data of their employees indicating employees´ membership in the Trade Union organisations only on the condition that the employer has obtained a prior written consent from employees concerned.

Reasons for concern

Birth identification number:

According to the Personal Data Protection Act an identifier of general application[40] laid down by a separate law[41] - a birth identification number (*rodné číslo*) - may be used for the purposes of determination of the natural person in personal data processing only when its use is necessary for achieving the purpose of processing. Processing another identifier that contains characteristics of data subject or disclosing an identifier of general application is prohibited.

One of the most specific problems concerning personal data protection in Slovakia at present is that although the aforesaid provision of general nature laid down in the Personal Data Protection Act rules that an identifier of general application, such as a birth identification number, may be used for the purposes of determination of the natural person in personal data processing only when its use is necessary for achieving the purpose of processing, the current legislative practice has brought a lot of exceptions to the general restriction on the use and processing of birth identification numbers and thus it has considerably weakened the protection of personal data in this regard.

Blacklists:

It is well known, that various institutions operating in the Slovak Republic, e. g. banks or insurance companies, use to create a lists of "unreliable" persons (e.g. insolvent clients, debtors, etc.) which are a subject to mutual exchange. We are not aware of any initiatives that would have been taken by public authorities in order to eliminate, or at least to limit, the maintaining these "blacklists".

Article 9. Right to marry and right to found a family

National legislation, regulation and case law

Since 1964 the family law is regulated in the Family Act[42], which regulates personal relationships between parents and their child as well as the personal relationships of the spouses including the legal regulation of the right to marry. The proprietary relationships of spouses are regulated by the Civil Code.

Ministerstvo spravodlivosti [Ministry of Justice] has been preparing re-enactment of the Civil Code. According to the prepared re-enactment of the Civil Code, the Family Act should be incorporated into the Civil Code. The Civil Code's re-enactment does not deal with any proposals concerning transsexuals´ right to marry a person of their previous sex.

[39] *Záväzné stanovisko* 2/2003 z 15. apríla 2003 [Binding opinion no. 2/2003 of 15 April 2003].
[40] According to the Personal Data Protection Act, identifier of general application means a permanent identification personal data of the data subject that ensures uniqueness in the information systems.
[41] *Zákon Národnej rady Slovenskej republiky č. 301/1995 Z. z. o rodnom čísle* [Act of the National Council of the Slovak Republic no. 301/1995 Coll. on birth identification number].
[42] *Zákon č. 94/1963 Zb. o rodine v znení neskorších predpisov* [Act no. 94/1963 Coll. on family as amended].

During the period under consideration no significant initiatives affecting the recognition of same-sex partnerships, such as legal regulation of registered partnership, had been taken in the Slovak Republic.

Article 10. Freedom of thought, conscience and religion

National legislation, regulation and case law

The constitutional guarantees of the religious freedom are regulated in more detail in the Act on freedom of religious faith and on the position of churches and religious societies[43]. In addition to provision of guarantees respecting the freedom of conscience and religion, defining the status of churches and declaring their equality it also regulates certain conditions for the registration of churches. The Act on the registration of churches and religious societies[44] regulates further conditions of registration. The registering authority is the Ministry of Culture. There are sixteen registered churches and religious societies[45] in the Slovak Republic now.

The Act on freedom of religious faith and on the position of churches and religious societies does not define the term "sect" neither any criteria used for distinguishing between churches or religious societies and sects.

During the last 3 years there have been several significant events concerning the relationship between the state and churches. The Basic Treaty between the Slovak Republic and the Holy See, relating to the Roman and the Greek Catholic Churches, was ratified in December 2001. The Agreement between the Slovak Republic and Registered Churches and Religious Societies, which regulates the status of eleven non-Catholic churches, was approved in April 2002.

The Treaty between the Slovak Republic and the Holy See on the pastoral care and chaplaincy in the armed forces and police forces[46] came into force on 27 November 2002. Treaty between the Slovak Republic and the Holy See on the conscientious objection is currently being drafted.

In July 2003 the Slovak Government approved[47] the proposal to conclude the Treaty between the Slovak Republic and the Holy See on the Catholic Education and Formation[48]. The Treaty directly confers rights and imposes duties on natural persons and legal persons and it should has precedence over laws in accordance with the Constitution. The Treaty was submitted to the National Council for approval in August 2003.

[43] *Zákon č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností* [Act no. 308/1991 Coll. on freedom of religious faith and on the position of churches and religious societies as amended].
[44] *Zákon č. 192/1992 Zb. o registrácii cirkví a náboženských spoločností* [Act no. 192/1992 Coll. on the registration of churches and religious societies].
[45] Roman Catholic Church in Slovakia; Evangelical Church of the Augsburg Confession in Slovakia; Greek Catholic Church in Slovakia; Reformed Christian Church in Slovakia; Orthodox Church in Slovakia; Religious Society of Jehovah´s Witnesses; United Methodist Church, Slovak district; Church of the Seventh-day Edventists, Slovak Association; Baptist Union in Slovakia; Brethren Church in Slovakia; Apostolic Church in Slovakia; Central Union of Jewish Communities in Slovakia; Old Catholic Church in Slovakia; Christian Corps in Slovakia; Czechoslovak Hussite Church in Slovakia; New Apostolic Church in Slovakia.
[46] *Zmluva medzi Slovenskou republikou a Svätou stolicou o duchovnej službe katolíckym veriacim v ozbrojených silách a ozbrojených zboroch Slovenskej republiky.*
[47] *Uznesenie vlády č. 649/2003* [Governmental Resolution no. 649/2003].
[48] *Zmluva medzi Slovenskou republikou a Svätou stolicou o katolíckej výchove a vzdelávaní.*

In September 2002, the Government allocated finances for partial compensation to Holocaust victims by means of a special fund.[49] Consecutively the Agreement between the Slovak Government and the Central Union of Jewish Communities concerning the partial compensation of Jewish victims of the Holocaust in Slovakia was signed. According to the agreement a Council examining the issue of the compensation for Holocaust victims was established. Members of the Council were appointed on 16 January 2003[50].

Practice of national authorities

The Report on the activity of the *Slovenská informačná služba* (SIS) [Slovak Intelligence Service] for the year 2002 of May 2003 says that SIS continued in monitoring of the activities of extremist groups and religious sects, which systematically use demagogy and physical or psychical pressure in order to achieve their aims. Within the scope of its activities oriented on the elimination of actions of sects and psycho-cults, the SIS focused especially on the use of methods, which endanger people's health or life. It acquired the information about sects' infiltration to the schools and state administration bodies under the covering of various generally beneficial programmes. SIS considers the effort to intensify the influence of these sects on young people, who are easily manipulated as extremely grave. SIS informed e.g. about the efforts of one of the sects to organise lectures at schools. Another sect focused its activity not only on young people, but also on the institutions founded and financed by the state, such as children's care homes and students' dormitories. [51]

According to the statistical data of the Ministry of Justice, as far as the restriction of freedom of religion (Section 236 of the Criminal Code) is concerned, no offence was registered in the Slovak Republic during the period between January – November 2003.

Article 11. Freedom of expression and of information

International case law and concluding observation of international organs

The UN Human Rights Committee stated that it is concerned about the threat by governmental authorities of criminal prosecution of the authors of the publication "Body and Soul" under Section199 of the Criminal Code, for "spreading false rumours". While having been assured by the delegation that the Office of the Prosecutor General has dismissed the charges against the authors, the Committee is nevertheless concerned at the impact of the case on the exercise of the right to freedom of opinion and expression, particularly by human rights defenders. The Committee pointed out that the Slovak Republic should ensure that provisions of the criminal code are not used in such a way as to deter individuals from exercising their right to freedom of expression, and in particular for human rights defenders to carry out independent research and publish the results.[52]

National legislation, regulation and case law

Pluralism in the media:

The Slovak law does not contain either term or a legal definition of pluralism in the media. Pluralism in the media is basically realized through freedom of expression, the right to information and the right to express opinion guaranteed in the Article 26 of the Slovak Constitution and other laws regulating press publishing and broadcasting.

[49] *Uznesenie vlády č. 1027/2002 v znení uznesenia vlády č. 7797/2002* [Governmental Resolution no. 1027/2002 as amended by the Governmental Resolution no. 7797/2002]
[50] *Uznesenie vlády č. 655/2003* [Governmental Resolution no. 655/2003]
[51] The published part of the Report is available on web site www.sis.sk (in Slovak language only).
[52] CCPR/O/78/SVK, point 15.

Press publishing conditions are laid down in the Act on periodic press[53]. According to this law, a registration process carried out by the Ministry of Culture is required for press publishing. Only Slovak citizens and legal entities incorporated in the Slovak Republic (not foreigners) have the right to press publishing provided that they meet conditions laid down by law. The foreigners (both natural persons and legal entities), for the purpose of press publishing must apply for an approval to the competent state authority, which in its discretion may, but does not have to, grant an approval for press publishing.

The conditions for carrying business in the field of radio and television broadcasting are laid down in the Act on broadcasting and retransmission[54]. According to the provision of the Act on broadcasting and retransmission entrepreneurial activity in the field of radio and television broadcasting is subject to permission from the State. Every legal entity and natural person has the right to broadcast following the licence granted by the state authority.

In September 2003 the bills on Slovak Television and on Slovak Radio were submitted for approval to the National Council. The National Council should debate over the bills in the first half of the year 2004.

Right of access to documents :

On 10 July 2003 the National Council approved the Code of Civil Procedure Amendment,[55] which, *inter alia*, has specified in more detail the rules concerning inspection of documents by participants of proceedings. Participants of proceedings and their representatives have the right to inspect documents being in the judicial file and to make copies or to ask the court to make copies of the documents from the file, with the exception of the minutes on voting and documents containing confidential information or a data classified as secret by a special law.

The National Council has also approved new Act on Commercial Registry[56], which has significantly modified the rules concerning searching in the Commercial Registry. This new law, *inter alia*, strengthened the principle of publicity of the Commercial Registry. Pursuant to the Section 12 of the Act on Commercial Registry, the Commercial Registry and the Collection of Documents (documents classified by the Commercial Code[57]) are available to the public. Everyone, who has paid the court fee, has the right to search in the Commercial Registry as well as in the Collection of Documents, to make copies of documents or to ask the court for the copy of an entry or the copies of the documents therein.

Case law:

On 28 November 2002 a claimant took part in the public meeting of the *obecné zastupiteľstvo* [municipal assembly] in *Považská Bystrica* (central Slovakia town) and wonted to take pictures of deputies when they were going to vote on one of the items in their agenda. Some of the members of municipal assembly had considered the request of the claimant as annoying and disturbing for the meeting and therefore suggested that the municipal assembly ought to take a vote on this request. The members of municipal assembly finally took the vote on this

[53] *Zákon č. 81/1966 Zb. o periodickej tlači a ostatných hromadných informačných prostredkoch v znení neskorších predpisov* [Act no. 81/1966 Coll. on periodic press and on other mass media as amended].
[54] *Zákon č. 308/2000 o vysielaní a retransmisii v znení neskorších predpisov* [Act no. 308/2000 Coll. on broadcasting and retransmission as amended].
[55] *Zákon č. 353/2003 Z. Z, ktorým sa mení a dopĺňa zákon č. 99/1963 Občiansky súdny poriadok.* [Act no. 353/2003 Coll., which amended and supplemented the Act no. 99/1963 Coll. Code of Civil Procedure].
[56] *Zákon č. 530/2003 Z. z. o Obchodnom registri*. [Act no. 530/2003 Coll. on Commercial Registry]. This act came into force on 1 February 2004.
[57] *Zákon č. 513/1991 Zb. v znení neskorších predpisov Obchodný zákonník.* [Act no. 513/1991 Coll. Commercial Code as amended].

issue. The majority of deputies decided that the claimant was not allowed to take photographs of their voting.

The claimant thereafter filed a complaint to the Constitutional Court requiring the declaration that his fundamental right to information, including the right to seek, receive and disseminate information freely guaranteed by the Article 26 paragraphs 1 and 2 in connection with the Article 13 paragraph 2 of the Constitution and the Article 10 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms had been violated.

The Constitutional Court in its ruling (*nález*) ref. no. IV. ÚS 40/03 of 23 September 2003 decided that the municipal assembly in *Považská Bystrica* by disallowing the claimant to take pictures during the voting at the meeting of the municipal assembly violated his fundamental right guaranteed in the Article 26 paragraph 2[58] in connection with the Article 13 paragraph 2[59] of the Constitution and the right guaranteed in the Article 10 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

In the reasoning of this ruling the Constitutional Court, *inter alia*, pointed out that the court considered the right of the claimant to take photographs of the voting at the meeting as a component part of the right to information guaranteed by the Article 26 paragraph 2 of the Constitution. In the opinion of the court, the claimant had the right to be allowed to take photographs of voting of members of municipal assembly. Municipal assembly as a public authority body had a duty to stand the execution of this fundamental right and was not allowed to restrain this right or to subject the exercise of this right to the result of voting, although informal, of the members of the municipal assembly. The Constitutional Court stressed, that there are no legal rules which would allow such a restrain of this right (the principle of legality). Equally, in the opinion of the Constitutional Court, the Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms does not contain any grounds, which would justify either the action or the reason for restraining the right done by municipal assembly.

Practice of national authorities

In February 2003, the Governemt of the Slovak Republic approved the campaign designed to support the proposal of anti-discrimination law. This campaign was oficially launched in September 2003 and it should have the form of billboards, TV spots and broadcast discussions. The billboards presented the headline "We Need an Anti-discrimination Law" together with a picture of little Roma girl in the foreground and groups of people representing different minorities, which could be discriminated within the society, such as abused women, national minorities, disabled people, old people, homosexuals, etc., in the background. There was also a TV spot based on the same motive prepared for broadcasting. But following the initiative of one conservative party belonging to the governmental coalition, which reputedly considered the inclusion of homosexuals into potentially discriminated groups covered by the campaign as unacceptable, the Slovak Government decided to stop the media campaign, which actually had not even started.

The Slovak Television has broadcasted a spot advertising *"Vasárnap"* - the daily newspaper published in Hungarian language. The spot had been broadcasted in Hungarian language with the Slovak subtitles.

[58] Article 26 paragraph 2 of the Constitution states: *"Everyone has the right to express his or her opinion in words, writing, print, images or by other means and also to seek, receive and disseminate ideas and information freely, regardless of the state borders. No approval process shall be required for press publishing. Entrepreneurial activity in the field of radio and television broadcasting may be subject to permission from the State. The conditions shall be laid down by a law."*.

[59] Article 13 paragraph 2 of the Constitution states: *"Limitations of fundamental rights and freedoms shall be regulated only by a law and under he conditions set in this Constitution."*.

The *Rada pre vysielanie a retransmisiu* [Council for Broadcasting and Retransmission][60] has published an opinion[61] that the broadcast advertisement on *"Vasárnap" in* Hungarian language followed by Slovak subtitles, did not violate the relevant statutory regulations (the Act on broadcasting and retransmission).

According to the binding opinion of the Council for Broadcasting and Retransmission the advertisement on *"Vasárnap"* constituted the execution of the right to disseminate and receive information in mother tongue under the Article 34 of the Slovak Constitution, which guarantees this right also to citizens belonging to Hungarian national minority.

The more information concerning the Body and Soul case please find in Article 1.

Reasons for concern

In our opinion, the provision of the Act on periodic press requiring foreigners to apply for an approval to the competent state authority concerning the press publishing, is in clear contradiction with Article 26 paragraph 2 of the Slovak Constitution guaranteeing that "everyone" (including foreign persons) has the right to express opinion in print and that no approval is required for press publishing.

Article 12. Freedom of assembly and of association

National legislation, regulation and case law

The Act on association in political parties and political movements[62] (Act on polical parties) regulates conditions under which the political party, which is accused of violating the principles of democracy or the rule of law or which is aiming at the destruction of the fundamental rights, may be subject to sanctions including dissolution or suspension of activity. According to the provision of the Act on political parties the activity of political party may be suspended only by the court judgment, if the activity violates the provisions of the Act on political parties (e. g., if political party restricts rights of its members, violates constitution, laws and principles of democracy or creates own armed corps). The political party may be dissolved by the dissolution court judgment if political party violates provisions of the Sections 1 to 5 and Section 14 paragraph 3 of the Act on political parties. Only the Prosecutor General has the competence to file a motion for dissolution of a political party or for suspension of the activity of political party. Supreme Court is competent to take decision on motion for dissolution of a political party or for suspension of its activity.

In August 2003, the Slovak Government approved[63] the proposal to abrogate the Act on limitation of spendings of political parties[64]. According to the reasoning to the proposal, the practical life has shown that the law was not helpful in creation of equal campaign conditions for all candidating political subjects and that the control of the promotional pre-election spending of political parties had been minimally effective.

[60] A state administration authority performing the state administration in the area of broadcasting and retransmission.
[61] *Uznesenie č. 03-14/41.546 z 26. augusta 2003* [Resolution no. 03-14/41.546 of 26 August 2003].
[62] *Zákon č. 424/1991 Zb. o združovaní v politických stranách a politických hnutiach v znení neskorších predpisov* [Act no. 424/1991 Coll. on association in political parties and political movements as amended].
[63] *Uznesenie vlády č. 808/2003 z 27. augusta 2003* [Governmental Resolution no. 808/2003 of 27 August 2003].
[64] *Zákon č. 239/1994 Z. z. o obmedzení výdavkov politických strán a hnutí na propagáciu pred voľbami do NR SR v znení zákona č. 115/2001 Z. z.* [Act on limitation of spendings of political parties and movements in connection with the elections to the National Council of the Slovak Republic].

The Ministry of Interior is preparing a bill concerning the political parties and movements. It should regulate the creation and liquidation of political parties, their funding and financial managing.

Practice of national authorities

In March 2003, the police investigator announced to the public that there was a criminal proceedings in the case of Zuzana P., the deputy leader of the *Košická krajská organizácia "Mládež SNS"* [Košice Regional Organisation of "SNS Youth"][65] and Rudolf S., who had been accused of accomplicity in a crime of support and propagation of movements aiming to repression of rights and freedoms of citizens. Both of them are reasonably suspected, that they designed Slovak versions of web sites, where they published various drawings and translations of neo-nacist materials by different foreign authors, which propagate the movements aiming to the violation of citizens' rights and freedoms and supporting racial and religious hatred. Although SNS oficially dissociated itself from fascism and nazism, some of its top representatives are known by their public statements propagating national intolerance, especially in relation towards Hungarian and Roma minorities.

According to the statistical data of the Ministry of Justice, as far as the crime of support and propagation of movements aiming to repression of rights and freedoms of citizens (Section 260 of the Criminal Code) is concerned, 4 offences were registered and 4 offenders were sentenced in the Slovak Republic during the period between January – November 2003.

According to the statistical data of the Ministry of Justice, as far as the crime of invasion to the freedom of association and of assembly (Section 238a of the Criminal Code) is concerned, no offence was registered in the Slovak Republic during the period between January – November 2003.

Article 13. Freedom of the arts and sciences

National legislation, regulation and case law

On 19 August 2002, the National Council approved the Act on memory of nation[66], which came into force on 28 September 2002, except the Article 19, which came into force on 28 September 2003. The Act on memory of nation made publicly available the state secret services documentation relating to the period of 1939 – 1989.

Pursuant to the Section 19 paragraph 1 of the Act on memory of nation, the *Inštitút pamäti národa* [Institute of the Memory of Nation] publishes, by the means of press and electronic media, records from the preserved or reconstructed protocols of the State Secret Service's files from the period of 1939 – 1989.

Reasons for concern

History is one of the last studies, within which, after the year 1989, the complete replacement of textbooks had not yet been realized. The controversial history textbook "The History of Slovakia and the Slovaks" by Milan Ďurica, which contains a lot of passages of anti-Semitic, anti-Czech, anti-Hungarian and even anti-lutheran character, was distributed to the primary schools in 1997 by the instruction of the Ministry of Education using of Phare financial resources. According available information, although this textbook on Slovak history was

[65] *Slovenská národná strana* (SNS) [Slovak National Party] – nationally oriented, right-wing political party, one of the governemental parties in recent past.
[66] *Zákon č. 553/2002 Z. z. o pamäti národa* [Act no. 553/2002 Coll. on memory of nation].

officially withdrew from the school system, it is still available in the number of public libraries.

Article 14. Right to education

International case law and concluding observation of international organs

The UN Human Rights Committee noted the introduction of programmes such as pre-school grades at elementary schools, the inclusion of Romani language education, and positions of teacher's assistants for Roma pupils. However, the Committee is concerned about the grossly disproportionate number of Roma children assigned to special schools designed for mentally disabled children, which causes a discriminatory effect, in contravention of article 26 of the Covenant. According to the conclusions, the Slovak Republic should take immediate and decisive steps to eradicate the segregation of Roma children in its educational system by ensuring that any differentiation within education is aimed at securing attendance in non-segregated schools and classes. Where needed, the Slovak Republic should also provide special training to Roma children to secure, through positive measures, their access to education without segregation.[67]

Pursuant to the conclusions of the Committee on Economic, Social and Cultural Rights, the Committee is alarmed about the low rate of primary school enrolment and the high drop out rates at secondary schools among Roma children.[68] The Committee urges the Slovak Republic to intensify its efforts to increase the school attendance of Roma children, especially at the primary level, and to address the problem of dropouts among secondary school pupils. The Committee also recommends the Slovak Republic to collect and develop data, disaggregated by gender and ethnic origin, as stated in the Committee's General Comment No. 13, paragraph 7, for inclusion in its next periodic report.[69] The Committee encourages the Slovak Republic to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among state officials and the judiciary.[70]

The European Committee of Social Rights concluded[71] that the situation in the Slovak Republic is not in conformity with the Article 10 § 4 of the European Social Charter because equal treatment for nationals of the other Contracting Parties lawfully resident or regularly working in Slovakia with respect to financial assistance for education and training is not guaranteed.

National legislation, regulation and case law

Education in language of national minorities:

The National Council has approved *Zákon č. 465/2003 Z. z. o zriadení Univerzity J. Selyeho v Komárne* [Act no. 465/2003 Coll., which establishes University of J. Selye in Komárno]. The University of J. Selye in Komárno, as a public university, consists of 3 faculties, namely the Faculty of Economy, the Pedagogical Faculty, and the Reformed Theological Faculty. The teaching languages are Hungarian language at first, but also Slovak language and other ones. The law has entered into force on 1 January 2004.

[67] CCPR/O/78/SVK, point 18.
[68] E/C.12/1/Add.81., point 18.
[69] E/C.12/1/Add.81., point 33.
[70] E/C.12/1/Add.81., point 34.
[71] Conclusions XI-2 [2003].

A Commission for codification of Romani language has been recently set up under the Office of the Plenipotentiary of the Slovak Government for Roma Communities. The codification should improve the preservation and the further development of Romani culture and it also could be helpful in the realisation of Roma-assistants project at primary schools.

University education fees:

At present, the education at universities is free of charge. *Ministerstvo školstva Slovenskej republiky* [The Ministry of Education of the Slovak Republic] has prepared the bill, which introduces the fees for university education (higher education institutions in accordance with the Act on higher education institutions[72]). Education fees should come into force in September 2004.

Practice of national authorities

According to the "National Program for Raising and Education in the Slovak Republic for the period of next 15-20 years" which had been approved by the Slovak Government already in 2001, the main aim of the curicular transformation is the gradual reducing of information burden and stress of pupils as well as of their teachers and creating a space for school's curiculum (learning materials content together with teaching and learning methods) for approximation of the school and life, for increasing pupils´ motivation to learn, for teacher's creativity and for more effective ethical and esthetical education. One of the first steps of curicular transformation was the establishment of the Curicular Council by the Minister of Education, the Statute of which was signed on 31 January 2003.

Reasons for concern

The quality of education in the Slovak Republic is not increasing since 1989. There is too much stress on memorising and consecutive interpreting of knowledge from limited number of textbooks by chosen authors. One mother from small village in Eastern Slovakia solved this problem very specifically - she refused to send her children to school, reasoning that there are a lot of bullying, victimisation and stress in our schools and that the teachers are overloading the children with unmanageable and useless information. Because she has pedagogical education herself, she has been teaching her children at home already for two years. According to her opinion, a large amount of data to learn is the violation of the Convention on Rights of the Child. According to this convention, children have the right to relax and free time, but the current school system does not grant it. The presentation of these arguments is one of the reasons, why she is still successful in keeping aloof from criminal prosecution for endangering the moral education of her children because of breach of the compulsory school attendance according to the Section 214 of the Criminal Code.

Article 15. Freedom to choose an occupation and right to engage in work

National legislation, regulation and case law

The Section 32 of the Employment Act[73] regulates the right of a person "*appropriate occupation mediation*". The Employment Act defines the appropriate occupation as an employment, which corresponds to the health condition, age, education, experience, the duration of unemployment, daily commuting distance to/from work, and accommodation

[72] *Zákon č. 131/2002 Z. z. o vysokých školách v znení neskorších predpisov* [Act no. 131/2002 Coll. on higher education institutions as amended].
[73] *Zákon č. 387/1996 Z. z. o zamestnanosti v znení neskorších predpisov* [Act no. 387/1996 Coll. on employment as amended].

opportunities. As far as the criterion of educational qualification is concerned, the appropriate occupation requires the level of education identical with the level attained by the unemployed person during the first three months of registration in the Registry of unemployed people. If unemployed person remains in the Registry of unemployed people for longer than three months, the appropriate occupation is considered as an employment that requires an education, which is one level under the educational qualification actually attained.

The unemployed person has the right to file a written application for appropriate occupation mediation to the *Úrad práce sociálnych vecí a rodiny* [Office of labour, social affairs and family] ("the Labour Office"). The Labour Office will then register the applicant in the Registry of unemployed people. The registered unemployed person is obliged to (i) co-operate with the Labour Office, (ii) search for the appropriate occupation actively, (iii) appear in person in the Labour Office, at least once every 14 days, for the purpose of co-operation, (iv) report to the Labour Office, at least once every 14 days, for the purposes of co-operation or demonstration that he/she seeks for a job.

The *Ústredie práce, sociálnych vecí a rodiny* [Centre of Labour, Social Affairs and Family] determines the way in which the unemployed person demonstrates his/her search for employment.

According to the Section 41 paragraph 2 of the Employment Act the registered unemployed person will be deleted from the Registry of unemployed people provided that he/she fails in co-operation with the Labour Office without any serious personal or family reasons. The previously registered unemployed person may be registered in the Registry of unemployed people once again after expiration of the period of six months from the date the unemployed person was deleted from it. The Section 41 paragraph 4 of the Employment Act defines the failure in co-operation with the Labour Office as (i) refusal to take up an appropriate occupation, (ii) refusal to participate in counselling, measures of the active labour market policy, programmes, projects and other activities within further measures of active labour market policy, (iii) failure to appear in person at the Labour Office, (iv) failure to prove the search for the occupation.

Pursuant to the provisions of the Social Insurance Act[74] the entitlement to unemployment benefits expires when the unemployed person is deleted from the Registry of unemployed people.

It means that the right to unemployment benefits depends on the co-operation with the Labour Office and the acceptance of the offered employment or training courses. The jobseeker´s failure to satisfy aforesaid requirements, may result into the loss of unemployment benefits.[75]

Reasons for concern

With regard to the duty of unemployed person to prove his/her search for the occupation to the Labour Office, some media informed that some employers in the Slovak Republic request payments for their written confirmation that the unemployed person has visited their premises and asked for a job.

[74] *Zákon č. 461/2003 Z. z. o sociálnom poistení* [Act no. 461/2003 Coll. on social insurance].
[75] With respect to the United Kingdom, the European Committee on Social Rights has already concluded that the loss of unemployment benefits for refusal to take up employment (even for a short period) which does not correspond to their educational qualifications is not in conformity with the Article 1 paragraph 2 of the European Social Charter [Concl. XVI-1 (2002), p. 11.].

Article 16. Freedom to conduct a business

National legislation, regulation and case law

The Commercial Registry was until recently regulated by the Commercial Code[76] and Code of Civil Procedure[77]. The legal regulation of the Commercial Registry procedure brought several problems, e. g.: it did not state any time-limit for taking decisions on the motion concerning data registration in the Commercial Registry, contained ambiguous terms concerning requirements for filing the motion into the Commercial Registry and problematic determination of the date of an entry into the Commercial Registry, and ambiguous provisions concerning legal effects of some recorded data (constitutive or declaratory nature of legal effects).

In October 2003 the National Council approved the Act on Commercial Registry[78], which came into force on 1 February 2004. The Act on Commercial Registry regulates new system of Commercial Registry administration. It is expected that this law will eliminate the aforesaid problems.

The Act on Commercial Registry has introduced a new element of law entitled as registration. The registration is an action concerning the entering of data records to the Commercial Registry, the modifications of the entries in the Commercial Registry and the deletion of recorded data from the Commercial Registry. The registration has not a character of the civil procedure. This fact shifts the decision activity concerning the registration process from judges to the higher court's clerks. The judge becomes a part of the process of registration in the case of the dispute, when deciding about remedial measures against dismissal of the motion to enter a record into the Commercial Registry, against dismissal of the motion to enter the changes of the entry into the Commercial Registry and against dismissal of the motion to enter the deletion of recorded data from the Commercial Registry. Decision on remedial measures has a character of the civil procedure under the Code of Civil Procedure.

The Act on Commercial Registry implements motions forms for entering a record into the Commercial Registry and also specifies list of the appendixes required by law to the motion to enter a record into the Commercial Registry.

Pursuant to the Article 8 of the Act on Commercial Registry, the commercial court must enter a record into the Commercial Registry within 5 working days from the date of filing motion.

Article 17. Right to property

International case law and concluding observation of international organs

In the period under scrutiny the European Court of Human Rights has delivered judgement concerning the violation of applicant's right to property under the Article 1 of the Protocol no. 1 to the Convention for Human Rights and Fundamental Freedoms.[79] The applicant alleged, in particular, that his right to the peaceful enjoyment of his possessions had been violated as a result of the dismissal of the claim for restitution of his late father's property. The applicant contended that he had a "legitimate expectation" to obtain effective enjoyment of the property

[76] *Zákon č. 513/1991 Zb. Obchodný zákonník v znení neskorších predpisov* [Act no. 513/1991 Coll. Commercial Code as amended]
[77] *Zákon č. 99/1963 Zb. Občiansky súdny poriadok v znení neskorších predpisov* [Act no. 99/1963 Coll. Code of Civil Procedure as amended]
[78] *Zákon č. 530/2003 Z. z. o Obchodnom registri a o zmene a doplnení niektorých zákonov* [Act no. 530/2003 Coll. on Commercial Registry and amendments of some other acts].
[79] European Court of Human Rights, *Kopecky v. Slovakia* judgment of 7 January 2003.

(131 gold coins and 2,151 silver coins of numismatic value) which had been confiscated from his father in 1958. He pointed out, in particular, that he had complied with the requirements of the Section 5 paragraph 1 of the *Zákon o mimosúdnych rehabilitáciách* [Extra-Judicial Rehabilitations Act] of 1991 in which he had presented documentary evidence indicating that the coins had been deposited in the premises of the Regional Administration of the Ministry of the Interior on 12 December 1958. The applicant declared that he couldn't be reasonably expected to indicate the exact location of the coins in the relevant time, as he had no practical possibility of tracing the coins within the Ministry of the Interior.

Although the District Court granted the action and ordered the Ministry of Interior to restitute the coins to the applicant, the Regional Court, as appellate court, dismissed the applicant's action, as did the Supreme Court with the applicant's appeal, both arguing that the applicant failed to provide an evidence that the defendant (the Ministry of Interior) had been in possession of the coins as required by the Section 5 paragraph 1 of the Extra-Judicial Rehabilitations Act of 1991.

The European Court of Human Rights was of different opinion. The Court has admitted that the conclusion the appellate court and the Supreme Court reached in the applicant's case was not in the contrary to the provisions of the relevant national law. However, the European Court of Human Rights attached particular importance to the fact that the evidence submitted by the applicant comprised a detailed inventory of the coins and the official record indicating when they had been deposited with the Ministry of Interior. The representatives of the latter failed to provide any plausible explanation as to why the coins were no longer in the possession of the Ministry. Thus the applicant was unable, for reasons imputable to public authorities, to trace the property of his late father after it had been deposited with the Ministry of Interior. As a result, he was deprived of any possibility of complying with the requirements laid down in the Extra-Judicial Rehabilitations Act of 1991. Therefore, in the view of the European Court of Human Rights the applicant met the relevant requirements for restitution of his father's property and his claim amounted to a legitimate expectation sufficient to constitute a "possession". As the European Court of Human Rights pointed out in its reasoning, the reaching of a different conclusion on the ground that the applicant had failed to show the precise location of the coins would be too formalistic and would render the protection of the rights under the Convention and its protocols ineffective and illusory. The European Court of Human Rights therefore found that the applicant had a "legitimate expectation" of having his claim satisfied which justifies considering it as a possession within the meaning of the Article 1 of Protocol no. 1 to the Convention for Human Rights and Fundamental Freedoms.

National legislation, regulation and case law

Law on Expropriation:

On 17 September 2003 the National Council adopted the Construction Act Amendment[80], which substantially changed the rules concerning provision of compensation for expropriation of a real property. The Construction Act Amendment has made the statutory regulation of expropriation consistent with the Article 20 paragraph 4 of the Slovak Constitution in respect to the compensation for the expropriation.[81]

Pursuant to the Section 111 paragraph 2 of the Construction Act Amendment, if the compensation for expropriated real estate is provided by means of pecuniary consideration,

[80] *Zákon č. 417/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 50/1976 Zb. o územnom plánovaní a stavebnom poriadku (stavebný zákon) v znení neskorších predpisov* [Act no. 417/2003 Coll. which amends and supplements the Act no. 50/1976 Coll. on regional planning and constraction system (Constraction Act) as amended].

[81] Article 20 paragraph 4 of the Constitution states: *„Expropriation or restrictions of right in property may be imposed only to the necessary extent and in public interest, based on the law and for a reasonable consideration.".*

the consideration must be reasonable, i.e. in accordance with the market value determined by the expert's opinion. For the purposes of this law, the market value of a real property means the price of the same or comparable real estate at the same place, in the same time, and in comparable quality.

Lands near the Border:

According to the Border Protection Act[82] the Police Corps is empowered to place and use technical means, which detect, record or prevent the illegal border crossing. The Police Corps must respect the rights of owner of the estate regarding the placement of technical means. The owner of the estate is entitled to receive a compensation for the use of his/her estate.[83]

Article 18. Right to asylum

National legislation, regulation and case law

The right to asylum is regulated by two laws: the Act on Stay of Aliens[84] and the Act on Asylum[85].

According to the Act on Asylum, alien granted refugee status under previous asylum legislation of 1995 means the person granted asylum under the Act on Asylum and the legal term "refugee" has been replaced by the term "person granted asylum" in the generally binding regulations. The Act on Asylum defines the term "asylum" as a protection from persecution on grounds stipulated in international agreements or separate regulation.

The Act on Asylum sets forth also new legal definition of "safe country of origin" as a stable country with the rule of law and democratic order, the alien is a national of or in the case of stateless person, it means the country of her/his residence. The Act on Asylum regulates asylum procedure, including the procedure for granting a temporary shelter for the purpose of protection from impacts of humanitarian disaster or permanent or mass violation of human rights, constitutes the rights and obligations of asylum seekers, persons granted asylum, aliens seeking temporary shelter, and *de facto* refugees, establishes the powers of public bodies in the area of asylum and temporary shelter, regulates the integration of persons granted asylum in the society, etc.

Granting of asylum :

An alien who declares that he/she seeks asylum on the territory of the Slovak Republic at a Police department upon his/her arrival on the territory of the Slovak Republic is recognized as an asylum-seeker.

The Ministry of Interior is the competent authority granting asylum. The Ministry may grant asylum provided that the asylum-seeker has a fear of being persecuted on the grounds of race, ethnic origin or religion, or for his/her political opinions or his/her affiliation to a certain social group, and for these reasons he/she cannot or does not want to return to the country of his/her nationality or origin. The Ministry has discretion to grant asylum on humanitarian grounds.

[82] *Zákon č. 477/2003 Z. z. o ochrane štátnej hranice* [Act no. 477/2003 Coll. on the Protection Border].
[83] See also comments concerning the Article 2.
[84] *Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov* [Act no. 48/2002 Coll. of Laws on Stay of Aliens and amendments of some other acts]
[85] *Zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov* [Act no. 480/2002 Coll. of Laws on Asylum and amendments of some other acts]

Examination of the substance of the claim to asylum:

The Act on Asylum designates courts as the independent authorities of the second instance. The venue of the courts with specialized asylum agenda is set forth in the Act on courts[86]. Pursuant to the provisions of this Act, the Bratislava Regional Court[87] and the Košice Regional Court[88] are competent to hear appeals to decisions issued in the asylum procedure. Filing the petition to the competent court has a suspensive effect. It means that rejected asylum seeker are protected from being sent back to the country of their nationality or origin.

Rights and responsibilities of asylum-seekers and persons granted asylum:

The asylum-seeker has the right to stay on the territory of the Slovak Republic during the asylum procedure, the right to accommodation, catering or payment for board and basic health care free of charge during his/her stay in an asylum facility. He/she also has the right to receive pocket money. The asylum-seeker may stay outside the accommodation centre only when the Ministry of Interior, based upon a written request, allows that. The asylum-seeker may attend a Slovak language course during his/her stay in an accommodation centre for the purpose of their integration into society. The asylum-seeker is, for instance, obliged to stand photographing of his/her person and not to leave the asylum facility without prior permission.

Person granted asylum has the right to permanent residence on the territory of the Slovak Republic and gets a document issued by the Ministry of Interior proving the permission for permanent stay. Person granted asylum is obliged to protect permanent residence permission document, to co-operate with the Ministry of Interior and competent bodies concerning his/her integration into society, etc. The person granted asylum has also right to employment, to share the compulsory school attendance and to social assistance benefits.

The Act on Asylum indirectly regulates the conditions concerning the restrictions of personal freedom of asylum seekers upon their arrival on the national territory in connection with the asylum procedure or the procedure for granting the temporary shelter.

The asylum seeker may be searched by the police officer only in the case of suspicion that he/she is hiding travel document or another documents needed for reliable determination of his/her status or he/she is hiding an item presenting threat to life and/or health to other persons. Only a police officer of the same sex may search an asylum seeker. The asylum seeker is transferred to the reception centre and he/she may be accompanied by a police officer.

The Act on Asylum also modifies conditions of the integration of person granted asylum in the society, in particular, the acquisition of appropriate accommodation and employment. The Ministry of Interior usually places the person granted asylum in an integration centre and after expiration of the stay in the integration centre, the Ministry of the Interior makes the person granted asylum a one-time offer for accommodation. This also applies to a person granted asylum who was not placed in an integration centre. Person granted asylum has also the right to attend a Slovak language course in the integration centre for the purpose of his/her facilitation of integration into the society.

[86] *Zákon č. 481/2002 Z. z., ktorým sa dopĺňa zákon Národnej rady Slovenskej republiky č. 328/1996 Z. z., ktorým sa ustanovujú nové sídla a obvody súdov, a o zmene a doplnení niektorých zákonov* [Act no 481/2002 Coll. which amends Act of the National Council of the Slovak Republic no. 328/1996 Coll., which constitutes new residences and districts of courts, and on modifications and amendment of some other acts].
[87] *Krajský súd v Bratislave.*
[88] *Krajský súd v Košiciach.*

Preparation of new statutory regulation on asylum:

The Ministry of Interior has drafted a bill, which should, if approved by the National Council, amend the current Act on Asylum (Asylum Bill). The Slovak Government approved the Asylum Bill on 17 December 2003. The main purpose for the adoption of the Asylum Bill is to implement the Council Directive 2001/55/EC of 20 July 2001 into the Slovak law.

The Asylum Bill, in comparison with the current statutory regulation, improves delivering of documents addressed to asylum-seekers or to their representatives. Any decision concerning an asylum-seeker must be made available to asylum-seeker concerned and to his/her representatives in the language they understand. It also proposes to cut the period after the lapse of which an asylum proceeding would be discontinued if the asylum-seeker stays outside the asylum centre without permission from 30 to only 7 days.

The Asylum Bill strikes off the suspensive effect of an appeal against decision dismissing the application for granting asylum, provided that the application has already been dismissed as unjustifiable (i.e., when the applicant has tried repeatedly to lodge a new application for granting asylum but has failed to state new facts or reasons).

Under current statutory regulations, an asylum-seeker is entitled to the "basic health care" in accordance with the Health Care Act[89]. The Asylum Bill states that an asylum-seeker is entitled to "necessary health care". The term "necessary health care" should be defined in the new Health Care Act, which has not been adopted yet. Therefore, it is not possible at this moment to make conclusions on whether the rights of asylum-seekers regarding their health care statutory guarantees will be reinforced, weaken, or stay untouched after adoption of the Asylum Bill.

The Asylum Bill states that asylum-seeker who is 14 years old or older, must withstand taking of his/her fingerprints.

Under the Asylum Bill, an asylum-seeker would have also to withstand a verification of his/her financial and property situation. The Ministry of Interior should be empowered to bind asylum-seeker to cover all or part of the costs related to his/her stay in asylum centre or provided health care based on the financial or property situation of individual asylum-seeker. Asylum-seeker will have the right to appeal against such a decision. However, it would be the Ministry of Interior again, which will decide about the appeal. Filing the appeal to the Ministry of Interior will not have a suspensive effect.

The current regulation does not allow asylum-seeker to work or to carry business until the decision on granting asylum comes into effect. The Asylum Bill allows asylum-seeker to enter employment or similar labour relations even before the decision on granting asylum comes into effect, provided that the Ministry of Interior has not decided about the application on granting asylum within one year. However, the Asylum Bill does not restrict in any way the applicant's right to carry business.

The Asylum Bill extends the number of persons who may be granted asylum on the grounds of family consolidation. The bill covers, besides applicant's unmarried children also unmarried children of applicant's spouse who have not attained the age of 18 years yet.

Pursuant to the current Act on Asylum, a temporary shelter shall be granted for the purpose of protecting aliens from war conflicts, impacts of a humanitarian disaster or permanent or mass violation of human rights in the country of alien's nationality or, in case of a stateless person,

[89] *Zákon č. 277/1994 Z. z. o zdravotnej starostlivosti v znení neskorších predpisov.*

in the country of his/her residence. The Asylum Bill proposes to extend grounds for provision of a temporary shelter for endemic violence.

According to the current Act on Asylum, the Ministry of Interior decides on granting temporary shelter to an alien not later than 15 days from filing the application. Pursuant to the Asylum Bill, this period may be extended at the discretion of senior officer who is superior to the officer handling the application.

The Asylum Bill brings important change as regards a temporary shelter provision for the purpose of a family consolidation. According to the proposal, the Ministry of Interior will be empowered to grant a temporary shelter to (i) alien's spouse, provided that the marriage still lasts in the state the alien has left on the grounds stated in the Act on Asylum, and the alien has already expressed in writing his/her consent with that, (ii) alien's unmarried children and unmarried children of alien's spouse who have not attained the age of 18 years yet, (iii) other relatives, provided that they have lived with the alien in the common household and they have been wholly or partly dependent on the alien.

The Personal Data Protection Act[90] is applied for the purpose of protection of data gathered under the Act on Asylum. The Asylum Bill extends the data protection for persons granted asylum, aliens applying for granting temporary shelter, and *de facto* refugees, besides applicants applying for granting asylum.

Statistics:

Pursuant to the statistical overview worked out by the *Migračný úrad* [Migration Office] of the Ministry of Interior, there are (up-to-date as of 31 November 2003) the following statistics:

- 8991 applications for granting asylum registered,
- asylum was granted to 7 applicants (in 2002, asylum was granted to 20 applicants),
- asylum was not granted to 353 applicants (in 2002, asylum was not granted to 309 applicants),
- 8951 applications for granting asylum were dismissed,
- 4196 applications have been still reviewed.

Article 19. Protection in the event of removal, expulsion or extradition

National legislation, regulation and case law

Prohibition of collective expulsions:

The Article 19 paragraph 1 of the Charter of Fundamental Rights prohibits collective expulsions.

The prohibition of collective expulsions is also included in the Act on Asylum and the Act on Stay of Aliens[91]. However, none of these acts defines the term "collective expulsion", i.e. none of them specifies, whether the term "collective" means 2 or 3 or more individuals.

[90] Act no. 428/2002 Coll. on Data Protection (*zákon č. 428/2002 Z. z. o ochrane osobných údajov*).
[91] *Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov* [Act no. 48/2002 Coll. on Stay of Aliens and amendments of some other acts].

Protection from expulsion:

According to the Section 47 paragraph 1 of the Act on Asylum[92], *no asylum-seeker, person granted asylum, alien applying for temporary shelter or de facto refugee can be expelled in any way or returned to the borders of the territory of the country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion; this provision, however, shall not apply to a person that can be reasonably regarded as a danger to the security of the Slovak Republic or who has been convicted by a final judgement of a particularly serious crime constituting a danger to the society.*

The same Section 47 in paragraph 2 sets forth that no asylum seeker, person granted asylum, alien applying for temporary shelter or de facto refugee can be expelled in any way or returned to the borders of the territory of the country where he/she would by tortured or exposed to cruel, inhuman or degrading treatment or punishment without any exception from conditions set forth herein.

Reasons for concern

Aforesaid provisions are in evident contradiction in terms. While the paragraph 2 of Section 47 of the Act on Asylum does not allow to expel a person to an unsafe territory in any way, and constitutes the absolute prohibition of expulsion in the case of "*torture, cruel, inhuman or degrading treatment or punishment*", the paragraph 1 of Section 47 of the Act on Asylum allows expelling a person to "*the territory of the country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion*", provided that such a person "*can be reasonably regarded as a danger to the security of the Slovak Republic or who has been convicted by a final judgement of a particularly serious crime constituting a danger to the society.".* It means, that this provision of the law provides only relative prohibition of expulsion, and, in our opinion, it is inconsistent with the Article 19 paragraph 2 of the Charter of Fundamental Rights.

CHAPTER III : EQUALITY

Article 20. Equality before the law

See comments concerning the Article 21.

Reasons for concern

The Health Care Bill[93] contains a definition of assisted reproduction. According to the bill, it is possible to perform assisted reproduction only in case of married couple (so not in the case of heterosexual couple, who live together indeed but who didn't get married). In our opinion, there are no reasonably or objectively justified grounds why unmarried couples should not be granted the right to perform assisted reproduction.

[92] *Zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov* [Act no. 480/2002 Coll. on Asylum and amendments of some other acts].
[93] See also the comments concerning the Article 3.

Article 21. Non-discrimination

International case law and concluding observation of international organs

The UN Human Rights Committee observes that the proposed draft of equal treatment law has not been adopted. While noting the information provided by the delegation that existing anti-discrimination laws enable the addressing of possible instances of discrimination, the Committee regrets that the delegation did not provide any statistics on the number of complaints launched, the grounds for the complaints, as well as the outcomes. According to the Committee conclusions, the Slovak Republic should continue with further measures to ensure the effectiveness of legislation against discrimination. It should also adopt further legislation in fields not covered by the current legislation in order to ensure full compliance with the Articles 2, 3 and 26 of the Covenant[94]. The Committee urges the Slovak Republic to establish adequate monitoring and redress mechanisms, which provide ready access to individuals, in particular from vulnerable groups.[95]

While welcoming the creation of the institution of Ombudsman and the election of an Ombudsman, the Committee regrets that it has received insufficient information on the nature of the complaints submitted to and processed by the Ombudsman, so as to assess the scope and effectiveness of the activities of this new institution. According to the Committee, the Slovak Republic should ensure the effectiveness of the Ombudsman, as an independent monitoring mechanism for the implementation of Covenant rights, particularly in the area of discrimination.[96]

The Committee on Economic, Social and Cultural Rights in its concluding observations held that it was deeply concerned about discrimination against Roma people in the fields of employment, housing, health care and education. Although the Slovak Republic acknowledges this fact, the legislative and administrative measures undertaken by the Slovak Republic to improve the socio-economic conditions of the Roma people are still insufficient to address the problem. The Committee is also concerned about the absence of a comprehensive anti-discrimination law.[97]

The Committee urges the Slovak Republic to take concrete measures, including the adoption of a comprehensive anti-discrimination law, in accordance with the Article 2 paragraph 2, of the Covenant[98], to combat and eliminate discrimination against minority groups, in particular against Roma people.[99]

National legislation, regulation and case law

In 2003 no significant regulation on non-discrimination was adopted in the Slovak Republic. Eagerly expected single and comprehensive piece of legislation on non-discrimination has not been adopted, although the Slovak government in close co-operation NGOs has prepared a bill on equal treatment (the so-called *„antidiskriminačný zákon"* ["anti-discrimination act"]), which develops, in more detail, the provisions concerning equality and non-discrimination laid down in the Constitution. The bill has not been submitted to the National Council as yet due to different opinions of political parties within the governmental coalition concerning the question whether there is a need to adopt a single comprehensive statute on anti-discrimination or rather to amend individual laws instead. Hence, by reason of the lack of

[94] International Covenant on Civil and Political Rights (1966).
[95] CCPR/O/78/SVK, point 8.
[96] CCPR/O/78/SVK, point 7.
[97] E/C.12/1/Add.81., point 9.
[98] International Covenant on Economic, Social and Cultural Rights (1966).
[99] E/C.12/1/Add.81., point 22.

political will, the adoption of the anti-discrimination act has resulted in a stalemate situation in 2003.

In 2003 the amendment to the Labour Code[100] was adopted. This amendment, *inter alia*, has strenghtened and suplemented the rules on non-discrimination in labour relations. The new wording of Labour Code in Section 13 has prohibited any form of direct of indirect discrimination in labour relations. Pursuant to this provision, employees are entitled to rights resulting from labour-law relations without any type of restriction and direct or indirect discrimination on grounds of sex, marital and family status, race, colour of skin, language, age, health condition, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage or other status, with the exception of case established by law, or in the case of tangible reason for the performance of the work consisting in preconditions or requirements and the nature of work which the employee is to perform.

The amendment to the Labour Code has specified the prohibition of discrimination on the ground of sexual orientation. According to the Section 13 paragraph 2 of the Labour Code, an employer may not detect the sexual orientation of an employee. However, the Labour Code does not explicitelly state the prohibition of discrimination based on sexual orientation.

An employee who feels aggrieved by failure of compliance with the conditions stated in Labour Code may claim his/her rights before the court, including appropriate compensation for non-property detriment in money. If an employee considering himself/herself aggrieved by failure of non-maintenance of the principle of equal treatment proves in court the facts, which lead to the conclusion that direct or indirect discrimination occurred, it shall be the obligation of an employer to demonstrate that there was no violation of the principle of equal treatment.

The Slovak Republic has not signed either Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, or Convention on Cybercrime.

Practice of national authorities

According to the statistical data of the Ministry of Justice, as far as the crime of defamation of nation, race, and faith (Section 198 of the Criminal Code) is concerned, 5 offences were registered and 4 offenders were sentenced in the Slovak Republic during the period between January – November 2003. As far as the crime of incitement to national, racial and ethnic hatred (Section 198a of the Criminal Code) is concerned, 2 offences were registered and 2 offenders were sentenced in the Slovak Republic during the period between January – November 2003.

Article 22. Cultural, religious and linguistic diversity

International case law and concluding observation of international organs

According to the conclusions of the UN Human Rights Committee, the Committee is concerned about discrimination against the Roma. The Committee notes that the delegation acknowledged the problem and has stated that the situation of the Roma is a short term and long term priority of the Government. The Committee takes note of the measures aimed at

[100] *Zákon č. 210/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov* [Act no 210/2003 Coll. which amends and supplements the Act no. 311/2001 Coll. Labour Code as amended].

ameliorating the situation of Roma in various areas such as employment, health care, housing and education. The Committee also welcomes educational campaigns to reduce stereotypes amongst the general public. However, the steps taken by the Slovak Republic to improve the socio-economic condition of the Roma and to change attitudes of society vis-à-vis the Roma do not appear to be sufficient to address the situation, and de facto discrimination persists. The Slovak Republic should take all necessary measures to eliminate discrimination against the Roma, and to enhance the practical enjoyment of their rights under the Covenant. The Slovak Republic should also make greater efforts to provide opportunities for Roma to use their language in official communications, to provide readily accessible social services, to provide training to Roma in order to equip them for employment, and to create job opportunities for them. The Committee would like to receive full details on policies adopted and their results in practice.[101]

The Committee reiterates the concern expressed in its previous concluding observations, about reports that Roma are often victims of racist attacks, without receiving adequate protection from law enforcement officers. It further notes continued reports of statements by prominent politicians reflecting discriminatory attitudes vis-à-vis the Roma (arts. 2, 20, 26). The Slovak Republic should take all necessary measures to combat racial violence and incitement, provide proper protection to Roma, and establish adequate mechanisms to receive complaints from victims and ensure adequate investigation and prosecution of cases of racial violence and incitement to racial hatred.[102]

The Committee has taken note of the position of the delegation as to the reasons for the lack of statistical data with regard to the situation of Roma. However, the Committee emphasizes the importance of data to assess the situation in the Slovak Republic and to address possible inequalities and patterns of discrimination. Furthermore, the Committee is concerned at the large discrepancy between official census figures and data provided by NGOs as to the size of the Roma population in the Slovak Republic. Such underreporting may have a significant impact on the position of Roma in public life, including the exercise of certain rights, for instance under the Minority Language Law. While appreciating the complex nature of gathering such data, the Committee urges the Slovak Republic to take steps to gather, through methods compatible with principles of data protection, statistical data reflecting the current size of the Roma population, as well as the position of minorities and women in society, including in the workplace, both in the public and the private sector.[103]

National legislation, regulation and case law

According to the Resolution of the Government of the Slovak Republic No. 278 of 23 April 2003, the Ministry of Defence, the Ministry of Justice, the Ministry of Interior, the Ministry of Labour, Social Affairs, and Family, and the Ministry of Health should work out and supply financial means for the permanently sustainable plan concerning the systematic education of selected professional groups oriented on the prevention of all forms of discrimination, racism, xenophobia, anti-Semitism, and other demonstrations of intolerance, in the period of 2004 – 2010.

The government has also bound the Minister of Justice to prepare a pilot project of Roma assistants for probation and mediation services. The Plenipotentiary of the Government for Roma communities, together with the Slovak National Centre for Human Rights should carry out the project into practice.

[101] CCPR/O/78/SVK, point 16.
[102] CCPR/O/78/SVK, point 17.
[103] CCPR/O/78/SVK, point 19.

The Minister of Interior has been bound to elaborate analytical material on the office of the specialist for working with Roma communities. He is also bound to set up regional offices of the Commission for the solution of the problems concerning racially motivated violence.

The Minister of Economy is bound to support a development of small and medium enterprises within the Roma communities through the centres of first contact and orient them on unemployed Roma citizens.

The Minister of Health is bound to develop a system of health care availability for the marginal Roma community with a financial coverage, a system of the fieldwork of the Roma health care assistants in Roma settlements and to work out a system of intensive education of the health care assistants, elaborate a complex program of systematic education on human rights for the health care employees and students preparing for the profession, work out and submit to the Government the National program for the protection of reproductive health.

The Minister of Culture is bound to submit to the government the bill on the national minorities in accordance with the European Charter for Regional or Minority languages.

The Prosecutor General is bound, during the year 2003, to carry out educational courses for prosecutors and trainee-prosecutors oriented on the Slovak and relevant international legal rules concerning discrimination. The Prosecutor General is also bound to publish all resolved cases with the aim to secure prevention of racially motivated crimes.

There is a material entitled "Institutional arrangement of solution of Roma communities matters and establishment of the Office for integration of Roma communities", which has been discussed among the ministries of the Slovak Government these days. The proposed material assumes personal reinforcement of existing secretariat of the Plenipotentiary of the Slovak Government for Roma minority and establishment of the Office for the integration of Roma communities. It was expected, that the office will start to operate in January 2004 and will employ 10 people in Bratislava, and other 15 people in five regional offices located in Košice, Prešov, Spišská Nová Ves, Rimavská Sobota and Banská Bystrica.

The Government of the Slovak Republic, in connection with realisation of the "Complex program for development of Roma settlements", in October and December 2002 provided financial support (SKK 3.750.000,00) to those communities, in which the program has been implemented.

Case law:

The Prosecutor General has lodged an application to the Constitutional Court demanding the commencement of action to review the conformity of the *zákon o trvalom usídlení kočujúcich osôb*[104] with the Article 1 paragraph 1[105], the Article 12 paragraph 2[106], the Article 23 paragraph 1[107] and 3[108] of the Constitution, and with the Article 2 paragraph 1 and 3 of the

[104] *Zákon č. 74/1958 Zb. o trvalom usídlení kočujúcich osôb v znení neskorších predpisov* [Act no. 74/1958 Coll. on permanent settlement of nomadic persons as amended].

[105] Article 1 paragraph 1 of the Constitution states: *„The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion."*.

[106] Article 12 paragraph 12 of the Constitution states: *„Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds."*.

[107] Article 23 paragraph 1 of the Constitution states: *„Freedom of movement and residence shall be guaranteed."*.

[108] Article 23 paragraph 3 of the Constitution states: *„Freedoms defined in paragraphs 1 and 2 may be restricted by a law if it is necessary for national security, maintenance of public order, for the health protection or the protection of the rights and freedoms of others, and in the interest of the environment protection in specified territories."*.

Protocol no. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms.[109]

The Act on permanent settlement of nomadic persons contained only four sections. The Section 3, according to which a person following a nomadic way of life even though he/she has been provided an aid to obtain a permanent residence, shall be prosecuted for the criminal offence and sentenced to a term of imprisonment of 6 months up to 3 years, was abrogated in 1990.

However, the remaining 3 paragraphs of the Act on permanent settlement of nomadic persons, in the view of the Prosecutor General, are not consistent with the Constitution and Protocol no. 4.

Pursuant to the Section 2 of the Act on permanent settlement of nomadic persons, a person follows a nomadic way of life if "he or she individually or in groups wanders from place to place avoiding honest work or obtains food in an unscrupulous manner, and this remains the case even if he/she stays in some places as an official permanent resident.". It is generally understood, that this law has been focused on the Roma people, and therefore it was creating the grounds for discrimination of this national minority living on the territory of the Slovak Republic..

Reasons for concern

Big differences between official statistical data and the data provided by NGOs concerning the size of the Roma population in the Slovak Republic can be caused by the fact, that many members of Roma minority declare themselves as members of another nationalities, namely Slovak and Hungarian, because nationality reference is a matter of free choice in the Slovak Republic.

Article 23. Equality between man and women

International case law and concluding observation of international organs

According to the UN Human Rights Committee conclusions, the Committee has taken note of the position of the delegation as to the reasons for the lack of statistical data with regard to the situation of women. However, the Committee emphasizes the importance of data to assess the situation in the Slovak Republic and to address possible inequalities and patterns of discrimination. While appreciating the complex nature of gathering such data, the Committee urges the Slovak Republic to take steps to gather, through methods compatible with principles of data protection, statistical data reflecting the current size of women in society, including in the workplace, both in the public and the private sector.[110]

While the Committee on Economic, Social and Cultural Rights in its concluding observations appreciates the efforts of the Slovak Republic in seeking to ensure equal rights for men and women, it notes with concern the inadequate representation of women in the decision-making bodies of the Slovak Republic and the persistence of patriarchal attitudes in Slovak society.[111]

[109] Ref. no. PL. ÚS 45/03.
[110] CCPR/O/78/SVK, point 19.
[111] E/C.12/1/Add.81., point 10.

The Committee is concerned that a large disparity remains between the wages of men and women, and that, according to the Slovak Statistical Office, women's wages in general are 25% lower than those of men.[112]

The Committee urges the Slovak Republic to effectively implement measures recently adopted to ensure equal payment for work of equal value, as provided for in the Covenant, and to reduce the wage gap between men and women.[113]

National legislation, regulation and case law

As it was already mentioned[114], the Slovak Government in close co-operation with NGOs has prepared a bill on equal treatment (anti-discrimination act), which develops, in more detail, the provisions concerning equality and non-discrimination laid down in the Slovak Constitution.

On 3 April 2002 the National Council by its Resolution no. 1990 affirmed the Workers with Family Responsibilities Convention (ILO no. 156, 1981). The National Council decided that this convention came under the Article 7 paragraph 5 of the Constitution[115], which means that it has precedence over the laws of the Slovak Republic. The President of the Slovak Republic ratified the Convention on 24 April 2002 and the Convention entered into force in the Slovak Republic on 14 June 2003.

The Labour Code Amendment[116] has abrogated the provision in the Labour Code prohibiting formation of employment relationship between spouses. The Labour Code Amendment entered into force on 1 July 2003.

Practice of national authorities

The equal opportunity policy is implemented in the Slovak Republic through the national institutional mechanism consisting of *Koordinačný výbor pre problematiku žien na Ministerstve práce, sociálnych vecí a rodiny SR* [Co-ordination Committee on Women's Issues at the Ministry of Labour, Social Affairs and Family of the Slovak Republic], *Koordinačný výbor pre otázky zdravotne postihnutých občanov SR na Ministerstve práce, sociálnych vecí a rodiny SR* [Equal Opportunity and Anti-Discrimination Department at the Ministry of Labour, Social Affairs and Family of the Slovak Republic] and *Komisia pre rovnosť príležitostí a postavenie žien v spoločnosti v rámci Výboru Národnej rady Slovenskej republiky pre ľudské práva, národnosti a postavenie žien* [Commission on Equal Opportunities and the Status of Women in the Society within the Committee of National Council for Human Rights, National Minorities and the Status of Women in the society].

In 2003, the *Odbor rovnosti príležitostí a antidiskriminácie* [Equal Opportunity and Anti-Discrimination Department] *(existing as of 1999)* was incorporated into the *Odbor sociálnej inklúzie Ministerstva práce, sociálnych vecí a rodiny* [Social Inclusion Section of the Ministry of Labour, Social Affairs and Family], and the scope of its agenda was extened on non-discrimination issues. The Equal Opportunity and Anti-Discrimination Department performs the tasks of a central state administrative authority in the area of equal opportunities,

[112] E/C.12/1/Add.81., point 13.
[113] E/C.12/1/Add.81., point 26.
[114] See aforesaid comments concerning the Article 21.
[115] Article 7 paragraph 5 of the Constitution states: „International treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.“.
[116] *Zákon č. 210/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov* [Act no 210/2003 Coll. which amends and supplements the Act no. 311/2001 Coll. Labour Code as amended].

prevention and elimination of violence against women, and prevention of discrimination against marginalized national minorities and ethnic groups.

A Commission on Equal Opportunities and the Status of Women in the Society was set up within the Slovak Parliament Committee on Human Rights, National Minorities and the Status of Women after the 2002 elections.

No substantial progress has been achieved as regards the broader representation of women in the politics and in leading positions. Balanced participation of men and women can be found in such areas as Slovak judiciary. The following statistical data can be given as of 30 June 2003:

- out of a total of 1,301 persons actively performing judicial office in the Slovak Republic, 763 are women;
- approximately 10 % of all women judges hold the office of court presidents or vice-presidents;
- out of a total number of judicial candidates in the Slovak Republic, which currently stands at 41, 25 are women.

Although the proportions of men and women in the judiciary are relatively equal, this situation is not analogical in the supreme judicial self-administration body, the Judicial Council of the Slovak Republic. There is only one woman among its 18 members provided for in the Constitution.

The similar situation can be found at the Constitutional Court. There is also only one woman among its 13 members of present.

Nowadays, there are 29 women among the 150 members of the National Council (The participation of woman has increased by 5,3% in comparison with the previous term – from 14% to 19,3%).

Article 24. The rights of the child

National legislation, regulation and case law

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict were signed on 30 November 2001 and in December 2003 they were submitted to the National Council for approval prior theirs ratification.

Pursuant to the Section 46 of the *zákon o rodine*[117] [Act on Family], which was abrogated and of no further force and effect after 1 April 2002, the District Administrative Office (*okresný úrad*) was empowered to issue a preliminary injunction in urgent situations, e.g. decisions on immediate placement of child concerned into the custody until the court reached final decision on that matter. Such court decision was issued within administrative proceeding and thus the decision was final and parties concerned were not allowed to appeal from a decision. Since the rights of child and correspondent rights of parents as fundamental rights guaranteed by the Slovak Constitution and respective international instruments might not have been restricted by means of decision taken by administrative authority, but only by the court, it was necessary to abrogate the aforesaid provision.

[117] *Zákon č. 94/1963 Zb. o rodine v znení neskorších predpisov* [Act no. 94/1963 Coll. on Family as amended].

In 2003 the National Council adopted the Code of Civil Procedure Amendment. According to amended provision of Section 75a of the Code of Civil Procedure, if a child under legal age is found without any care, or if minor's life, health or favourable development is seriously endangered, a court on the motion of authorised authority must, within 24 hours, decide whether it will issue a preliminary injunction or dismiss the motion. If the court issues injunction, it also orders that the minor child shall be temporarily put in custody of children and designates custodian (natural person or legal entity). The preliminary injunction remains in effect at least three months from the time of its execution.

The National Council adopted the amendment to the Act on establishment of the Slovak National Centre for Human Rights[118]. The amendment came into force on 1 June 2003. It broadens the scope of activities of the *Slovenské národné stredisko pre ľudské práva* [Slovak National Centre for Human Rights] on monitoring of observance of the rights of child.

Case law:

The Constitutional Court in its ruling (*nález*) ref. no. I. ÚS 4/02 of 9 July 2003 concerning the proceeding on constitutional complaint held that the Košice I District Court (*Okresný súd Košice I*) and Košice Regional Court (*Krajský súd v Košiciach*) had violated the right of minors not to be subject to inhuman and degrading treatment guaranteed by Article 16 paragraph 2[119] of the Slovak Constitution, the right of home inviolability guaranteed by the Article 21 paragraph 1[120] and 3[121] of the Slovak Constitution and the correspondent right under the Article 19 of the Convention on protection of the rights of child because they failed to undertake appropriate measures for the protection of minors against grievous treatment from the side of their father although the relevant law, including the Convention on protection of the rights of child, prescribed them to be active *ex officio* when the rights of minors are endangered.

Reasons for concern

The Slovak National Centre for Human Rights, at least in the last few years, has not performed any significant activities that would be worth to mention in this Report. A new director of the Slovak National Centre for Human Rights has been recently elected and it is greatly expected that this institution would improve its performance under the new administration.

[118] *Zákon č. 136/2003, ktorým sa mení a dopĺňa zákon č. 308/1993 Z. z. o zriadení Slovenského národného strediska pre ľudské práva* [Act no. 136/2003 Coll., which amends and supplements the Act no. 308/1993 on establishment of the Slovak National Centre for Human Rights].

[119] Article 16 paragraph 2 of the Constitution states: *"No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."*.

[120] Article 21 paragraph 1 of the Constitution states: *"The home shall be inviolable. Entrance without consent of the person residing therein is not permitted."*.

[121] Article 21 paragraph 3 of the Constitution states: *„Other infringements of the inviolability of the home shall be legally justified only if it is necessary in a democratic society to protect life, health, or property, to protect rights and freedoms of others, or to avert a serious threat to public order. If the home is used for entrepreneuring or other economic activities, such infringements may be allowed by the law also for the purposes of fulfilling the tasks of public administration."*.

Article 25. The rights of the elderly

National legislation, regulation and case law

Pension reform

As for pension, the Slovak Republic largely depends on a traditional Central European pay as you go system. The current pension fund system in the Slovak Republic has been criticised for unfairness, a lack of transparency, not creating a sufficient relation between contributions and benefits.

After the Parliamentary elections held in the autumn 2002, the Government of the Slovak Republic decided to move from pay-as-you-go system to funded system as soon as possible. The government, in its Policy Statement, has declared, *inter alia*, that it will set up framework for gradual creation of safe and fair pension system, based on three main pillars that will be universal for all productive citizens. The main goals of the reform are to stop the demographically contingent growth of the internal debt of non-funded pension system and to mobilize individual effort on everyone's living standard in retirement age.

The government has undertaken to set up legislative and financial preconditions for necessary formation of a mandatory funded pension system pillar. Savings on the Personal Retirement Accounts ought to allow every individual to personal choice of his/her own retirement age. Assets Management should be carried out by the private sector in a competitive environment. Companies existing within this system should be supervised and regulated by an independent institution, with stress put mainly on the funds safety.

In December 2003, the National Council of the Slovak Republic approved the law[122] introducing, *inter alia*, the "second pillar" of the new pension system concerning the regulation of mandatory savings on the individual retirement accounts. However, the President of the Slovak Republic has applied his power to veto the law and he returned the approved law back to the National Council. This returned law had not been re-debated by the National Council at the time of writing this Report as yet.

Article 26. Integration of persons with disabilities

National legislation, regulation and case law

In the period under scrutiny no substantial legislative initiatives concerning the persons with disabilities had been introduced or approved in the Slovak Republic. However, there were some activities in connection with the designation of the year 2003 as the European Year of People with Disabilities.

In the regard of disabled people it is worth to mention the Labour Code Amendment[123]. Pursuant to its Section 68 paragraph 3 an employer besides other cannot immediately terminate the employment relationship with an employee personally caring for a close person suffering from severe disability.

[122] *Zákon o starobnom dôchodkovom sporení a o zmene a doplnení niektorých* zákonov [Act on retirement savings and on amendments to certain acts].
[123] *Zákon č. 210/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov* [Act no 210/2003 Coll. which amends and supplements the Act no. 311/2001 Coll. Labour Code as amended].

Another change could be noticed in connection with the Amendment to the Act on higher education[124], which states the creation of different financial funds, e.g. reserve fund, fund of reproduction, scholarship fund, etc. among which is also a fund for the support of the study of students with disabilities.

CHAPTER IV : SOLIDARITY

Article 27. Worker's right to information and consultation within the undertaking

National legislation, regulation and case law

The new wording of provisions of Article 4 of fundamental principles of Labour Code and the Section 229 of Labour Code introduced by the Amendment to the Labour Code[125] in accordance with the Council Directive No 2002/14/EC and the Article 2 of the Additional Protocol to the European Social Charter regulates in more detail the worker´s right to information and consultation concerning the economic and financial situation of employer.

According to the Article 4 of fundamental principles of Labour Code, employees or the representatives of employees have the right to the information on the economic and financial situation of the employer and on the assumptions of the development of its activity, and this in an understandable manner and within a suitable time. Employees should be able to express themselves and submit their suggestions with regard to such projected decisions of the employer, which may influence their status within the labour-law relationships.

The new wording of Section 229 paragraph 2 of Labour Code states that employees have the right to the information on the economic and financial situation of the employer and on the presumed development of its activities, and this in an understandable manner and in a suitable time. Employees have the right to express their comments on such information and to projected decisions, to which they may submit their suggestions.

The new wording of Section 238 of Labour Code regulates the right to information as following: *"Information is the provision of data by the employer to the employees' representatives, in the goal of acquainting them with the contents of the information. The employer shall inform in an understandable manner and in an appropriate time the employees' representatives on its economic and financial situation and on the presumed development of its activities. The employer may refuse to provide information, which could harm the employer, or may require that this information should be regarded as confidential.".*

Article 28. Right of collective bargaining and action

International case law and concluding observation of international organs

The Committee on Economic, Social and Cultural Rights in its conclusions notes, with concern that the legislative measures in place concerning the right to strike are too restrictive, given that no strikes have actually been staged.[126] The Committee recommends the Slovak

[124] *Zákon č. 528/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 131/2002 Z. z. o vysokých školách v znení neskorších predpisov* [Act no. 528/2003 Coll., which amends and supplements the Act no. 131/2002 on higher education as amended].
[125] *Zákon č. 210/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov.* [The Act no. 210/2003 Coll. which amends and supplements the Act no. 311/2001 Coll. Labour Code as amended].
[126] E/C.12/1/Add.81., point 14.

Republic to revise its legislation on the right to strike, in line with Article 8 of the Covenant[127] and the relevant Conventions of the International Labour Organization.[128]

European Committee of Social Rights concludes[129] that the situation in the Slovak Republic is not in conformity with Article 6 § 4 of the European Social Charter because strikes are not permitted if they are not related to the negotiation of a collective agreement or the amendment of an existing agreement, provided that this latter possibility is explicitly stated in the agreement itself; and groups of workers have no right to call a strike.

National legislation, regulation and case law

The Labour Code Amendment, which came into force on 1 July 2003, has introduced, *inter alia*, new forms of voluntary employees´ representation in addition to the Trade Union organisations and conditions under which they may operate. They are the following: works council and works trustee.

Unlike the previous regulation stipulated in the Labour Code, all the forms of workers´ representations, including the trade union organisations, may operate besides each other within the same employer but in accordance with the rules stipulated by the Labour Code or other laws.

Works council is a body, which represents all the employees of an employer. Works council may act at an employer, which employs at least 50 employees. At an employer, which employs less than 50 employees, but more than five employees, may operate a works trustee. The rights and responsibilities of a works trustee are equal to the rights and responsibilities of a works council. A works council or a works trustee have the right to negotiate in the form of an agreement or in the form of granting previous consent pursuant to the Labour Act only if the working conditions or conditions of employment by which negotiations with the works council or a works trustee are not arranged by a collective agreement.

An activity of the employees' representatives, which is in direct relation with the performance of tasks of employer, would be considered as the performance of work for which the employee is entitled to wages. An employer must provide time off from work for execution of the position of employees' representatives or for their participation in education.

Employees' representatives may not be, in the fulfilment of tasks resulting from their position, disadvantaged or otherwise sanctioned by the employer. Employees' representatives, during their term in office and for six months after its termination, are protected against measures, which could damage them, including the termination of the employment relationship.

The Amendment to the Labour Code has also specified in more detail the right to collective bargaining, the right of employees to strike, and the right of employers to lockout.

According to the Article 10 of the fundamental principles of the Labour Code, employees and employers have the right to collective bargaining; in the case of conflict in their interests, employees have the right to strike, and employers have the right to lockout. Trade union bodies may participate in matters of labour-law relations, including collective bargaining. Works council or works trustee may participate in labour-law relations, subject to conditions as stipulated by law. The employer is obliged to enable a trade union body, works council or works trustee to operate at workplaces.

[127] International Covenant on Economic, Social and Cultural Rights (1966).
[128] E/C.12/1/Add.81., point 27.
[129] Conclusions XI-2 [2003].

Practice of national authorities

According to the Article 37 paragraph 4 of the Slovak Constitution, the right to strike is guaranteed. A law shall lay down the terms thereof. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of Fire and Rescue Squads do not have this right. Pursuant to the Article 51 paragraph 1 of the Constitution, the rights defined in the Articles 35, 36, 37 paragraph 4 (i.e. the right to strike), the Articles 38 to 42 and 44 to 46 of this Constitution may be claimed only within the restrictions of the laws implementing these provisions. The National Council adopted only the law, which states that the employees can strike in case that the employers do not come into agreement with labour unions during collective bargaining[130]. Up to this day no law, constituting general conditions for performing the right to strike, had been passed.

When in January 2003, the railwaymen called an unlimited strike, the *Železnice SR* [Railways of the Slovak Republic] controlled by the State immediately brought an action to the court that the strike was illegal because it was not a strike allowed by the law. Railways of the Slovak Republic were reasoning also by big damages for economics, which could the strike caused. In February 2003, the *Okresný súd Bratislava I* [District Court Bratislava I] issued a preliminary injunction to stop the strike of railwaymen, while it will decide on the eventual lawlessness of this strike. Only in October 2003, the Regional Court in Bratislava cancelled the preliminary injunction for the reason that it was in conflict with procedural rules. Up to this day, there was any final decision, neither supporting nor contradicting the legality of the strike of railwaymen.

According to the last sentence of the Article 54 of the Constitution the right to strike may be limited by a law for those, who work in professions directly involved in the protection of life and health. The Ministry of Health recently announced that it prepares a bill, which should limit the performance of the right to strike for physicians and other medical professionals as well as for pharmacy owners and their employees.

Article 29. Right of access to placement services

International case law and concluding observation of international organs

According to its conclusions, the Committee on Economic, Social and Cultural Rights is alarmed about the high rate of unemployment and, in particular, the large disparities in employment between the different regions of the country, as well as between urban and rural areas. The Committee is also concerned that unemployment among Roma people is steadily increasing and, in some cases, has risen above 80%.[131] The Committee calls upon the Slovak Republic to take effective measures, including increasing the resources allocated to reducing the unemployment rate, in particular among women, Roma people and other disadvantaged and marginalized groups, especially in rural areas.[132]

[130] *Zákon č. 2/1991 Zb. o kolektívnom vyjednávaní v znení neskorších predpisov* [Act no. 2/1991 Coll. on collective bargaining as amended].

[131] E/C.12/1/Add.81., point 11.
[132] E/C.12/1/Add.81., point 24.

National legislation, regulation and case law

The National Council approved the Act on state administration organs of social affairs, family and employment services[133], which entered into force on 1 January 2004. This act has derogated the National Labour Office (*Národný úrad práce*), the regional labour offices and the district labour offices as executive bodies of the National Labour Office. It has established new administration organs of social affairs and employment services: the Centre of Labour, Social Affairs and Family (*Ústredie práce, sociálnych vecí a rodiny*), and 45 offices of labour, social affairs and family operating within territorial unit of one or more districts. Offices of labour, social affairs and family are responsible e.g. for the development of new job opportunities, performance of consulting services for unemployed people, education and training of unemployed people.

Article 30. Protection in the event of unjustified dismissal

International case law and concluding observation of international organs

European Committee of Social Rights concludes that the situation in the Slovak Republic is not in conformity with Article 8 § 2 of the European Social Charter because the relocation of the employer as well as the transfer of all or part of its business activities can be regarded as going out of business and can justify the dismissal of the employee during the absence on maternity leave or at such time that the notice would expire during such absence.[134]

National legislation, regulation and case law

Unjustified dismissal

The Labour Code Amendment[135], which came into force on 1 July 2003, has partially amended legal regulation of the employees´ claims in the event of unjustified dismissal.

Pursuant to the Section 77 of the Labour Code, an employee and an employer may claim in court the invalidity of termination of an employment relationship by notice, immediate termination, termination within a probationary period or by agreement within a period of two months from the due day of employment relationship termination at the latest.

Pursuant to the new wording of the Section 79 paragraph 1 of the Labour Code, if the employer gave an invalid notice to the employee, or terminated the employment relationship with the employee in an invalid manner, immediately or within a probationary period, and if the employee informed the employer that he/she insists on keeping employment with the employer, his/her employment relationship shall not terminate, with the exception of a court decision that it cannot be justly required of the employer to further employ the employee. The employer shall be obliged to provide the employee with wage compensation. The employee shall be entitled to such compensation in the amount of average earnings from the day he/she announced to the employer that he/she insists on keeping employment, to such time within which the employer enables him/her to work, or until a court will rule on termination of the employment relationship.

[133] *Zákon č. 453/2003 Z. z. o orgánoch štátnej správy v oblasti sociálnych vecí, rodiny a služieb zamestnanosti a o zmene a doplnení niektorých zákonov* [Act no. 453/2003 Coll. on state administration organs of social affairs, family and employment services and on changes and supplements to some laws].
[134] Conclusions XI-2 [2003]
[135] *Zákon č. 210/2003 Z. z., ktorým sa mení a dopĺňa Zákonník práce* [The Act no. 210/2003 Coll. which amends and supplements the Labour Code].

The Labour Code Amendment has also reduced the entire time within which an employee should be granted wage compensation according to the Section 79 paragraph 1 of the Labour Code from 12 to 9 months. If the entire period within which an employee should be granted wage compensation exceeds nine months, the court may, on the request of an employer, appropriately reduce his/her wage compensation obligation for the time exceeding 9 months, or not award the wage compensation for the employee at all; at taking decision the court shall primarily take account of the fact whether the employee was in the meantime employed by another employer, what work he/she performed there, and what earnings he/she received or for what reason he/she did not work.

Article 31. Fair and just working conditions

International case law and concluding observation of international organs

The European Committee of Social Rights concludes that the situation in the Slovak Republic is not in conformity with Article 2 §1 of the European Social Charter as legislation permits daily working time of up to 16 hours.[136]

National legislation, regulation and case law

Pursuant to the Article 36 of the Slovak Constitution, employees have the right to fair and satisfactory working conditions. The law ensures, in particular:

a) the right to wages for the work performed, sufficient to secure a dignified life standard, the protection from arbitrary dismissal and discrimination at work,
b) the protection of safety and health at work,
c) the setting of maximum working hours,
d) the appropriate rest time after work,
e) the minimum admissible length of paid vacation,
f) the right to collective bargaining.

Pursuant to the Article 38 paragraph 1 of the Slovak Constitution, women, minors and disabled persons shall enjoy more extensive health protection at work and special working conditions.

The National Council affirmed the abrogation of the International Labour Organization Convention on night work of women working in the industry no. 89/1948. The effect of the Convention in the Slovak Republic lasted till 11 February 2003. The National Council affirmed the International Labour Organization Convention on night work no. 171/1990. President of the Slovak Republic ratified the Convention on 30 January 2002. The Convention came into effect on 11 February 2003.

Fair and just working conditions

Labour Code Amendment[137], which came into force on 1 July 2003, has specified in more detail forms of employees´ participation in addition to their fair and just working conditions. According to the previous legislation stipulated in the Labour Code, employees participate in decision-making process of the employer concerning their fair and satisfactory working conditions, either directly or by means of the competent trade union body.

The employees´ participation in decision-making process concerning working conditions is set in the Section 229 of the Labour Code. According to the Labour Code Amendment, with

[136] Conclusions XI-2 [2003].
[137] *Zákon č. 210/2003 Z. z., ktorým sa maní a dopĺňa Zákonník práce* [The Act no. 210/2003 Coll., which amends and supplements the Labour Code].

the view of fair and satisfactory working conditions, employees have the right to participate in decision-making process of the employer concerning their economic and social interests, either directly or by means of competent trade union body, of the works council or the works trustee; employees‘ representatives should closely cooperate between each other.

Employees participate, by means of competent trade union body, works council or the works trustee, on the creation of just and satisfactory working conditions by joint decision-making, negotiation, right to information and inspection activities (the Labour Code Amendment has cancelled collective bargaining as a form of employees´ participation in addition to the decision-making concerning their working conditions). Employees´ representatives have the right to submit suggestions concerning improvement of their working conditions to the employer.

Article 32. Prohibition of child labour and protection of young people at work

National legislation, regulation and case law

In 1998 the Slovak Republic ratified the European Social Charter and it considers itself bound by the Article 7 (including all its paragraphs) of the Charter.

In the period under scrutiny no substantial changes has been taken in the area of prohibition of child labour.

Practice of national authorities

According to the statistical data of the Ministry of Justice, as far as the crime of illegal employment of children (Section 217a of the Criminal Code) is concerned, 5 offences were registered and 5 offenders were sentenced in the Slovak Republic during the period between January – November 2003.

Article 33. Family and professional life

International case law and concluding observation of international organs

The European Committee of Social Rights concludes[138] that the situation in the Slovak Republic is not in conformity with Article 16 of the European Social Charter as the conditions attached to receipt of family benefits are such to restrict the scheme to an insufficient number of persons.

National legislation, regulation and case law

The Labour Code Amendment[139], which came into force on 1 July 2003, has specified in more detail the protection of the employees with family responsibilities in the employment relationships.

Pursuant to the Section 64 paragraph 1 of the Labour Code, an employer may not give a notice to an employee within the period of an employee's pregnancy, or when an employee is on maternity or on parental leave.

[138] Conclusions XI-2 [2003].
[139] Act no. 210/2003 Coll. which amends and supplements the Labour Code

Pursuant to the Section 68 paragraph 3 of the Labour Code, an employer cannot immediately terminate the employment relationship with a pregnant employee, a female employee on maternity leave, or an employee on parental leave, with a solitary female or male employee caring for a child younger than three years old, or with an employee personally caring for a close person suffering from severe disability. An employer may however, terminate an employment relationship with them by giving them a notice, except for an female employee on maternity leave and male employee on parental leave in cases when they were lawfully sentenced for committing a wilful offence or they seriously breached the labour discipline.

Pursuant to the Section 87 paragraph 3 of the Labour Code, the employer may arrange working time unevenly for a disabled employee, a pregnant woman, a woman or man permanently caring for a child younger than three years of age, a solitary employee permanently caring for a child younger than 15 years of age, only upon an agreement with them.

The Labour Code Amendment derogates the employer's obligation to grant a paid holiday that would immediately follow the termination of maternity or parental leave on the basis of employee's request.

Pursuant to the Section 163 of the Labour Code, an employer may terminate an employment relationship with a pregnant employee or with an employee who is on maternity or parental leave or with a solitary employee caring for a child younger than three years of age by giving them a notice only exceptionally, namely in cases when the employer or part thereof is wound-up or relocated or in cases mentioned in Section 68 of the Labour Code (immediate termination of the employment relationship).

Pursuant to the Section 164 paragraph 3 of the Labour Code, a pregnant woman, a woman or man continuously caring for a child younger than three years old, a solitary man or woman continuously caring for a child younger than fifteen years old may be employed for overtime or standby work only with their agreement. Pursuant to the Section 166 paragraph 2 of the Labour Code in order to deepen the care of a child, an employer is obliged to provide for an employee, on their request, the parental leave till the child reaches three years of age. If a long-term seriously disabled child requiring exceptional care is concerned, the employer is obliged to provide for an employee, on their request, the parental leave till the child reaches six years of age. Such leave shall be provided to the extent requested by the parent; in general it is always for a period of one month at least.

Pursuant to the Section 169 paragraph 2 of the Labour Code, maternity or parental leave for a period of 22 weeks is provided for an employee starting from the day the child was taken over, and in case that the woman or man takes over two or more children or a solitary woman or man is concerned for a period of 31 weeks, however maximally until the day the child reaches eight months of age. Parental leave shall be provided until the day the child reaches three years of age and, in case of long-term seriously disabled child requiring exceptional care, till the child reaches six years of age.

Article 34. Social security and social assistance

International case law and concluding observation of international organs

The European Committee of Social Rights concludes that the situation in the Slovak Republic is not in conformity with Article 12 § 4 of the European Social Charter on the ground that, in the absence of any bilateral agreements, nationals of Contracting Parties to the Social Charter of 1961 or States Parties to the Revised Social Charter suffer an indirect discrimination with regard to the granting of family benefits. The Committee concludes that the situation in the

Slovak Republic is not in conformity with Article 13 § 1 of the European Social Charter because:
– of the minimum length of residence required in order for non nationals to benefit from social assistance;
– on the basis of the information contained in the report, it is not yet able to conclude that there is an individual right to social assistance.[140]

National legislation, regulation and case law

The Asylum Bill modifies the rights and duties of asylum-seekers. It extends his/her allowances (e.g., accommodation, catering services, per diem allowance) for basic hygienic needs and other things, which would be necessary for survival. The Ministry of Interior may withdraw away per diem allowance for violating the obligations under the Asylum Act. The Ministry is empowered to regulate timetable for food delivery the way and extent of health care provisions and timetable for disbursement of per diem allowance. For more details see comments on Article 19.

Article 35. Health care

International case law and concluding observation of international organs

The Committee on Economic, Social and Cultural Rights is deeply concerned about the high rate of tobacco smoking as well as the high level of alcohol consumption among adults.[141] The Committee calls upon the Slovak Republic to adopt effective measures, including public awareness campaigns, to reduce tobacco smoking and alcohol consumption.[142]

National legislation, regulation and case law

The Ministry of Health has prepared large-scale healthcare reform. The reform introduces new definition of health care, co-payments for healthcare providers and new initiatives in medicinal products policy as stabilisation steps in the health care sector. The National Council has approved first part of the reform.

The Health Care Act Amendment[143] defines the health care and health care related services provided during the institutional, pharmacy and ambulant healthcare such as accommodation, transport or food. The Health Care Act Amendment has also introduced co-payments for providing of healthcare related services into the Act on the Rules of Medical Treatment[144].

Pursuant to the Health Care Act co-payments are paid for providing health care services in accordance with the provisions of the Act on the Rules of Medical Treatment.[145] People belonged to vulnerable groups (e. g. people in material need, comatic patients, children younger than 6 years, etc.) are exempted of co-payments.

[140] Conclusions XI-2 [2003].
[141] E/C.12/1/Add.81., point 17.
[142] E/C.12/1/Add.81., point 31.
[143] *Zákon č. 138/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 277/1994 Z. z. o zdravotnej starostlivosti v znení neskorších predpisov* [Act no. 138/2003 Coll. which amends and supplements the Act no. 277/1994 Coll. on health care as amended].
[144] Zákon č. 98/1995 Z. z. o Liečebnom poriadku v znení neskorších predpisov [Act no. 98/1995 Coll. on the rules of medical treatment as amended].
[145] According to the Act on the Rules of Medical Treatment, the following co-payments are paid: Primary care: 20 Sk, Secondary care: 20 Sk, Accommodation and food in case of institutional care: 50 Sk a day (maximum for 21 days), Transport: 2 Sk/km, Prescription fee: 20 Sk.

The Ministry of Health worked out a proposal of new Health Care Act which is nowadays submitted to a notice and comment proceeding and which should replace current Health Care Act. The Health Care Bill newly defines the term "health care" in connection with diagnoses. Health care is the complex of medical procedures and provision of medicaments, medical aids and dietary food products for special medical purposes to natural person with the aim of protection, preservation or restoration of his/her health. Health care is provided in close relation to diagnoses assigned by the physician or the dentist according to the International Classification of Diseases and in the relation to diagnoses assigned by nurse or another medical professional according other international classifications.

Health care is provided by a health care services provider in healthcare centre, in home environment of ill person, in the centre of social services or in another place, where a need for healthcare provision arose. A part of healthcare is also biomedical research and the demand for blood for transfusion and for preparation of transfusion medicaments and blood donation.

Health care is provided as ambulant healthcare, institutional healthcare and pharmacy healthcare. Ambulant healthcare is provided to a person, whose health condition does not require remain in bed for more than 24 hours. Institutional healthcare is provided to a person, whose health condition requires continual remain in bed for more than 24 hours. Pharmacy healthcare includes provision, preparation, control, preservation and delivery of medicaments and medical aids following the prescription of physician or dentist, providing special information about the medicaments and medical aids and consultations concerning the determination and monitoring of cure advancement.

The Ministry of Health worked out a bill on non-smokers protection, which is nowadays submitted to a notice and comment proceeding and which should replace the current Act on non-smokers protection[146]. The new law should regulate the conditions for protection of people's health against the nicotine addiction and against the unhealthy impact of smoking resulting in the endangerment to health of smokers as well as non-smokers.

In September 2003 the Slovak Government approved[147] the proposal for a conclusion of the Framework Convention on Tobacco Control (*Rámcový dohovor o kontrole tabaku*).

In November 2003 the Slovak Government approved[148] the Bill on excise duty on tobacco products (*návrh zákona o spotrebnej dani z tabakových výrobkov*). The proposed bill implements respective EU directives concerning the area of the taxation of tobacco products, with the exception of the rate of excise duty applied to the cigarettes, within which the transitional periods are applied to the Slovak Republic.

A group of members of the National Council launched a motion to the *Ústavný súd Slovenskej republiky* (Constitutional Court of the Slovak Republic) demanding the commencement of action to review the conformity of the Section 2a paragraphs 2 and 4 of the *zákon č. 277/1994 Zb. o zdravotnej starostlivosti v znení neskorších predpisov* [Act no. 277/1994 Coll. on health care as amended], the Section 3a paragraphs 1, 5, 6, 7, 9 and the Section 10 paragraph 2 *zákona č. 98/1995 o liečebnom poriadku v znení neskorších predpisov* [Act no. 98/1995 Coll. on the rules of medical treatment as amended] with the Article 40 of the Constitution of the Slovak Republic.[149] Deputies claim that the statutory provisions concerning the co-payments

[146] *Zákon Národnej rady Slovenskej republiky č. 67/1997 Z. z. o ochrane nefajčiarov v znení neskoších predpisov* [Act of the National Council of the Slovak Republic no. 67/1997 Coll. on non-smokers protection as amended].
[147] *Uznesenie vlády č. 896/2003 z 24. septembra 2003* [Government Regulation 2003 no. 896/2003 of 24 September 2003].
[148] *Uznesenie vlády č. 1060/2003 z 13. novembra 2003* [Government Regulation 2003 no. 1060/2003 of 13 November 2003].
[149] The case has been assigned the ref. no. PL. ÚS 38/03.

for providing health care services are not in compliance with the aforesaid Articles of the Constitution guaranteeing the right to free health care and medical equipment.

Article 36. Access to services of general economic interest

Practice of national authorities

Pursuant to the Resolution of the Government of the Slovak Republic no. 278/2003 of 23 April 2003[150], the Minister of Agriculture was bound to cooperate with the Minister of Environment to elaborate an outline of the situation concerning the drinking water supply in marginal Roma settlements including a proposal of temporary measures. The Minister of Agriculture is also bound to secure and legalise ownership relationships to lands in Roma settlements and existing constructions lying there.

The material on the state in drinking water supply has been already approved by the Slovak Government.[151] The material in detail analyses the state in drinking water supply in Roma settlements. It says, for example, that there are 50 settlements without any supply of drinking water in Slovakia, the largest number is in the regions of Prešov (18 settlements), Banská Bystrica (17 settlements) and Košice (7 settlements). The import of drinking water in cisterns is the only immediate solution within proposed temporary measures. The project solving the drinking water supply for the population of Roma settlements including the quantification of financial means needed for its realization should be work out till 30 September 2004 in cooperation of the chairpersons of the Self-government Regions of Banská Bystrica, Košice and Prešov and the Plenipotentiary of the Slovak Government for Roma Communities.

Article 37. Environmental protection

National legislation, regulation and case law

Right to access to information in environmental matters:

The Ministry of Environment has been drafting the bill on collection, storing a access to information concerning the environment. The bill is being in the process of legislative preparation. The main purpose of the bill is to implement the Directive 90/313/EC of 7 June 1990 on the freedom of access to information concerning the environment, and the principles and obligations contained in Aarhus Convention[152], into the Slovak law. Access to information in general is currently governed by the Act on the freedom of information[153], which however, does not meet specific requirements concerning the information on the environment and the way of its collection, storing and dissemination.

Protection of the environment by criminal law:

The Criminal Code states the following environmental crimes :

- Endangering the environment (Section 181a, 181b of the Criminal Code),
- Contravention of the provision concerning flora and fauna protection (Section 181c of the Criminal Code),

[150] *Uznesenie vlády č. 273/2003 z 23. apríla 2003.*
[151] *Uznesenie vlády č. 1117/2003 z 26. novembra 2003* [Governmental Resolution no. 1117/2003 of 26 November 2003].
[152] Convention on access to information, public participation in the decision-taking process and access to justice in environmental matters of 25 June 1998.
[153] *Zákon č 211/2000 Z. z. o slobodnom prístupe k informáciám a o zmene a doplnení niektorých zákonov (zákon o slobode informácií)* [Act no. 211/2000 Coll. on Free Access to Information and on Amendment and Supplementation of Certain Laws (Act on freedom of information)].

- Poaching (Section 181d of the Criminal Code),
- Unauthorised import, export and shipment of waste (Section 181e of the Criminal Code),
- Unauthorised waste disposal (Section 181f of the Criminal Code),
- Contravention of the provision concerning water protection (Section 181g of the Criminal Code).

In the period under scrutiny no substantial changes has been taken in the area of the protection of the environment by criminal law.

Article 38. Consumer protection

National legislation, regulation and case law

The current legal regulation of civil relationships in the Slovak Republic does not contain provisions concerning consumer contract, nor the timesharing contract. The Government of the Slovak Republic has recently approved the bill, which amends the Civil Code. Provided that the Civil Code Amendment will be also approved by the National Council, these two new types of contracts will become a special type of contracts in the area of consumer protection in accordance with the Directive 93/13/EEC on unfair terms in consumer contracts and Directive 94/47/EC on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis.

Consumer Protection Act[154] contains provisions on so called „standard contract" as a special type of contract which aims to protect consumer in relations with producer or seller of products or services. The Civil Code Amendment will abrogate this standard contract in the Consumer Protection Act and will replace it with the consumer contract. The Civil Code Amendment specifies in more detail the general rules concerning the terms and conditions of consumer contracts, and expressly constitutes that provisions contained in the contract which cause unbalance between rights and obligations to the consumer detriment would be considered as null and void. The Civil Code Amendment also contains a timesharing contract, i.e. a special type of civil contract which regulates the purchase of the right to use immovable properties on a timeshare basis.

The Civil Code Amendment, with respect to the general requirement of increasing the quality of products and the orientation of consumption towards the goods of long-run use, in accordance with the Directive 1999/44/EC on certain aspects of the sale of consumer goods and associated guarantees), extends the current 6 months guarantee period for the purchased goods to 2 years.

[154] Zákon č. 634/1992 Zb. o ochrane spotrebiteľa v znení neskorších predpisov [The Consumer Protection Act no. 634/1992 Coll. as amended].

CHAPTER V : CITIZEN'S RIGHTS

Article 39. Right to vote and to stand as a candidate at elections to the European Parliament

National legislation, regulation and case law

Zákon o voľbách do Európskeho parlamentu [Act on Elections to the European Parliament][155] transposing Council Directive 93/109/EC into national legislation was adopted by the National Council on 10 July 2003.

Pursuant to the Section 1 of the Act on Election to the European Parliament, elections to the European Parliament in the territory of the Slovak Republic shall be held on the basis of universal, equal and direct suffrage by secret ballot regarding the principle of proportional representation. The members of the European Parliament shall be elected for a term of 5 years, which shall commence on the day of first meeting of the European Parliament after the elections had been carried out.

The Section 2 paragraph 1 of the Act on election to the European Parliament states that the right to vote in elections to the European Parliament in the territory of the Slovak Republic shall be given to those citizens of the Slovak Republic who have attained the age of 18 years on the day of the elections, have permanent residence in the territory of the Slovak Republic, and the citizens of other member states of the European Union who have attained the age of 18 years on the day of the elections and have been granted permanent residence permission in the territory of the Slovak Republic.

According to the Section 2 paragraph 2 and 3 of the Act on election to the European Parliament, citizens of the Slovak Republic who have attained the age of 18 on the day of elections and do not have a permanent residence either in the territory of the Slovak Republic or in the territory of a member state of the European Union, have the right to vote, provided that they are present in the territory of the Slovak Republic on the day of elections. Obstacles to the performance of the right to vote shall be (i) a limitation of personal freedom, as governed by law, for the purposes of protection of a person's health; (ii) the serving of a term of imprisonment; (iii) abeyance of legal capacity.

The right to vote shall not be given to citizen of member state of the European Union who has been deprived of the right to vote in a member state of the European Union of which he/she is a national. The right to vote in elections to the European Parliament may be exercised only in one member state of the European Union in the same elections.

Pursuant to the Section 3 of the Act on election to the European Parliament, any citizen of the Slovak Republic who has attained the age of 21 years on the day of the elections and has permanent residence in the territory of the Slovak Republic and any of the obstacles to the performance of the right to vote has not occurred may be elected as a member of the European Parliament. A national of a member state of the European Union who has attained the age of 21 years on the day of the elections, has been granted a permanent residence permission in the territory of the Slovak Republic, has not been deprived of this right in a member state of the European Union of which he/she is a national, and any of the obstacles to the performance of the right to vote have not occurred may stand as a candidate in elections to the European Parliament. The right to stand as a candidate in elections to the European

[155] *Zákon č. 331/2003 Z. z. o voľbách do Európskeho parlamentu* [Act no. 331/2003 Coll. on Elections to the European Parliament].

Parliament may be exercised only in one member state of the European Union in the same elections.

Article 40. Right to vote and to stand as a candidate at municipal elections

National legislation, regulation and case law

The Slovak Republic is not party to Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144) as yet. It is expected, according to the information provided by the Ministry of Interior, that the Slovak Republic will sign the Convention during the first half of 2004.

Pursuant to the Article 30 paragraph 1 of the Slovak Constitution, citizens have the right to participate in the administration of public affairs directly or through freely elected representatives. Aliens with permanent residence on the territory of the Slovak Republic shall have the right to vote and to be elected to self-administration bodies of municipalities and to self-administration bodies of higher territorial units.

The amendment of the Act on election to the municipal self-government bodies[156], which came into effect on 1 March 2002, has stated the right to vote in the election to municipal self-administration bodies (the Municipal Council and the Municipality Mayor) for inhabitants (including the aliens), who are 18 years of age or older on election day and who permanently reside in the municipality.

The inhabitants (including the aliens) having the right to vote in the election to the municipal self-government bodies have also the right to stand as a candidate in these elections.

Pursuant to the Act on election to the bodies of self-government regions[157], which came into effect on 27 July 2001, the citizens of the Slovak Republic and the aliens who are at least 18 years of age on the day of the elections and who are permanent residents of the municipality within the territory of the self-government region have the right to vote in the elections to the bodies of self-government regions (the Self-government Region Council and the Head of Self-government Region).

The citizens of the Slovak Republic and the aliens having the right to vote in the elections to the bodies of self-government regions have the right to stand as a candidate in the elections to the bodies of self-government regions.

Membership in a political party is not required to stand as a candidate in the elections to the municipal self-government bodies or in the elections to the bodies of self-government regions.

Pursuant to the Section 16 paragraph 1 and the Section 21 paragraphs 1, 2 of the Act on election to the municipal self-government bodies, the nomination papers for the elections may be filed by political parties as well as by independent candidates.

Pursuant to the Section 14 paragraph 1 and the Section 19 paragraph 1 of the Act on election to the bodies of self-government regions, the nomination papers for the elections may be filed by political parties as well as by independent candidates.

[156] *Zákon č. 346/1990 Zb. o voľbách do orgánov samosprávy obcí v znení neskorších predpisov* [Act no. 346/1990 Coll. on elections to the municipal self-government bodies as amended].
[157] *Zákon č. 303/2001 Z. z. o voľbách do orgánov samosprávnych krajov* [Act no. 303/2001 Coll. on election to the bodies of self-government regions].

The President of the National Council announced the elections to the municipal self-government bodies by the Decree no. 508/2002 Coll. He stipulated the dates of the elections on Friday, 6 December 2002 and Saturday, 7 December 2002. The aliens (permanent residents of municipality) were allowed, to vote and stand as a candidate in the elections.[158]

Article 41. Right to good administration

This provision has not been analysed in this Report.

Article 42. Right of access to documents

This provision has not been analysed in this Report.

Article 43. Ombudsman

This provision has not been analysed in this Report.

Article 44. Right to petition

This provision has not been analysed in this Report.

Article 45. Freedom of movement and of residence

National legislation, regulation and case law

The Constitutional Court in its ruling (*nález*) of 30 April 2003[159] held that the mayor of municipality by not-registering the permanent residence of 24 claimants infringed their rights guaranteed by the Article 23 paragraph 1 of the Slovak Constitution (*Freedom of movement and residence*). The Constitutional Court also pointed out that because of mayor's failure to register permanent residence of claimants they were also prevented from taking part in the local elections, and therefore their right to participate in the administration of public affairs guaranteed by the Article 30 paragraph 1 of the Constitution[160] was violated.

The freedom of movement is also concerned in the motion filed by the Prosecutor General to the Constitutional Court described in comments concerning the Article 22

[158] The aliens might apply their right to vote and to be elected to self-administrative bodies of higher territorial units (regions) already in the elections held in 2001.
[159] Constitutional Court of the Slovak Republic, ruling ref. no. I. ÚS 36/02-60 of 30 April 2003
[160] The Article 30 paragraph 1 of the Constitution states: "*Citizens shall have the right to participate in the administration of public affairs directly or through freely elected representatives. Aliens with permanent residence on the territory of the Slovak Republic shall have the right to vote and to be elected to self-administration bodies of municipalities and to self-administration bodies of higher territorial units.*".

Article 46. Diplomatic and consular protection

National legislation, regulation and case law

In the period under scrutiny no substantial changes has been taken in this area. The Slovak Republic has not implemented the Decision 95/553/EC as yet. According to the information provided by the Ministry of Foreign Affairs, the Slovak Republic will implement the Decision by 1 May 2004.

CHAPTER VI : JUSTICE

Article 47. Right to an effective remedy and to a fair trial

International case law and concluding observation of international organs

The UN Human Rights Committee reiterates its concern, expressed in its previous concluding observations, over the fact that civilians may be tried by military courts, albeit in fewer situations than earlier. The Slovak Republic should continue to revise its laws to the effect of excluding military courts' jurisdiction over civilians.[161]

In the period under scrutiny the European Court of Human Rights has delivered 13 judgements[162] against the Slovak Republic concerning the violation of the Article 6 paragraph 1 of the Convention for Human Rights and Fundamental Freedoms in respect of the undue length of the proceedings.

National legislation, regulation and case law

On 9 April 2003 the National Council by its Resolution no. 232 affirmed the Civil Law Convention on Corruption (ETS no. 174). The President of the Slovak Republic ratified the Convention on 5 May 2003 and the Convention.

The National Council approved the Act on State liability for damage[163] which will come into force on 1 July 2004**.** According to the conditions laid down in this Act, the State is liable for damage caused by the public authority bodies incurred due to the execution of public authority except the liability of the territorial self-administration incurred due to the execution of self-government. The State is liable for the damage caused by unlawful decision, unlawful arrest, detention or deprivation of personal liberty, decision on custody and punishment, decision on protective supervision and maladministration of the public authority bodies as a results of the execution of their public authority. The Section 9 paragraph 1 of the Act on State liability for damage defines maladministration as breach of the duty of public authority body to take an action or to issue a decision within the time prescribed by the law, idleness of the public authority body during the exercise of the public authority, unreasonable delays in the proceeding or other unlawful infringement of the rights and lawfully protected interests of natural persons and legal entities.

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[161] point 14

[162] European Court of Human Rights, *Ziacik v. Slovakia* judgment of 7 January 2003, *A.B. v. Slovakia* judgment of 4 March 2003, *Molnarova and Kochanova v. Slovakia* judgment of 4 March 2003, *Slovak v. Slovakia* judgment of 8 April 2003, *D.K. v. Slovakia* judgment of 6 May 2003, *Piskura v. Slovakia* judgment of 27 May 2003, *Benackova v. Slovakia* judgment of 17 June 2003, *Chovancik v. Slovakia* judgment of 17 June 2003, *Klimek v. Slovakia* judgment of 17 June 2003, *Bona v. Slovakia* judgment of 17 June 2003, *Sika v. Slovakia* judgment of 24 June 2003, *Jamriska v. Slovakia* judgment of 14 October 2003, *Ciz v. Slovakia* judgment of 14 October 2003.

[163] *Zákon č. 514/2003 Z. z. o zodpovednosti štátu za škodu spôsobenú pri výkone verejnej moci a o zmene niektorých zákonov* [Act no. 514/2003 on liability for damage incurred due to the execution of public authority].

According to the new wording of the Section 116 paragraph 2 sub paragraph g) of the Act on judges and lay judges[164], the negligence action of the judge, which results in the unreasonable delay in judicial proceeding is considered as a serious disciplinary offence.

In October 2003 the National Council adopted the *zákon o probačných a mediačných úradníkoch* [Act on probation and mediation officers][165], which entered into force on 1 January 2004. The Act on probation and mediation officers enables to use of mediation as a form of out of court settlement between aggrieved party and offender in a criminal proceeding, which might, as it is generally expected, accelerate criminal proceedings and compensation of a damage, both proprietary and non-proprietary, caused by offenders. The mediation as a mean of alternative dispute resolution in a criminal matter may be used only if both parties and the authority concerned agree on that. Probation officers will provide individual assistance to probationers with a view to help them to meet all conditions prescribed to them either by the prosecutor or by the court in criminal proceedings, including their integration into social relations.

The Ministry of Justice has been drafting the bill on mediation in civil matters. Together with experts on mediation from United Kingdom, the Ministry of Justice was organising seminars focused on informing the public about what the mediation is and what are its advantages for effective out of court settlements. It is expected that the National Council will pass the law on mediation in 2004.

In October 2003 the National Council approved the *zákon o Justičnej akadémii* [Act on Judicial Academy].[166] The Judicial Academy is educational institution with a nationwide operation that will be organizing a providing professional education for trainees of judges, prosecutors and court clerks. The main purpose of the Act on Judicial Academy is to provide adequate education and improve professional training of trainees waiting to be elected or appointed for the position of a judge, prosecutor or court clerk.

On 10 July 2003 the National Council approved the Code of Civil Procedure Amendment,[167] which entered into force on 1 September 2003. One of its main purposes is to introduce some elements of adversary system regarding the acceleration of civil law proceedings.

The Code of Civil Procedure Amendment, has also introduced a number of safeguards for indigent people, e. g. an exemption from the duty to pay a court fee, or an appointment of a legal counsel. The court is obliged to inform participants of the proceeding about their right to make a request to the court in this regard. If the conditions for exemption from the duty to pay a court fee, or appointment of a legal counsel are met, the court or the authorized court clerk is obliged to do so.

The Code of Civil Procedure Amendment has broadened the responsibilities of a court so that the court is obliged not only to make a judgement in written form within the 30 days from its rendition (as it was before the Code of Civil Procedure Amendment had come into a force), but also to send the judgement to the parties of the proceeding within this period. In matters concerning minors, a period of 7 days is applying.

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[164] *Zákon č. 426/2003, ktorým sa mení a dopĺňa zákon č. 385/2000Z. z. o sudcoch a prísediacich v znení neskorších predpisov* [Act no. 426/2003, which amends and supplements the Act no. 358/2000 Coll. on judges and lay judges as amended].

[165] *Zákon č. 550/2003 Z. z. o probačných a mediačných úradníkoch* [Act no. 550/2003 Coll. on probation and mediation officers].

[166] *Zákon č. 548/2003 Z. z. o Justičnej akadémii* [Act no. 548/2003 Coll. on Judicial Academy].

[167] *Zákon č. 353/2003 Z. Z, ktorým sa mení a dopĺňa zákon č. 99/1963 Občiansky súdny poriadok.* [Act no. 353/2003 Coll., which amended and supplemented the Act no. 99/1963 Coll. Code of Civil Procedure].

The Code of Civil Procedure Amendment, mainly for the purpose of acceleration and simplification of court proceedings, has enabled the parties to file a motion by means of a standard form of a motion. Standard forms of motions shall be determined by the generally binding regulation issued by the Ministry of Justice. The standard forms of motions, either in printed form or via Internet, shall be easily available for the public. It is anticipated that in some judicial agendas, such as motions concerning of Commercial Registry, these standard forms of motion will gradually but markedly accelerate issuing court decisions.

The Code of Criminal Procedure Amendment[168], which came into force on 1 December 2003, has extended a possibility of remedial measure in case of a prolongation of custody order. According to the Section 74 paragraph 1 of the Code of Criminal Procedure Amendment, a complaint against the custody order including prolongation of custody order is admissible to be lodged.

The Code of Criminal Procedure Amendment has explicitly stipulated that the investigative, prosecuting and adjudicating bodies are obliged to act quickly and with priority in the custodial cases.

Case law:

Right to have the case heard without unreasonable delays:

The Constitutional Court in the period between 1 December 2002 and 1 December 2003 had been handling over 200 cases concerning the violation of the fundamental right to have the case heard without unreasonable delays expressed in the Article 48 paragraph 2 of the Constitution and in the Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court has ruled on the violation of the mentioned right almost in all cases. Actually, the undue delays in court proceeding represent the most significant problem concerning the right to judicial protection in the Slovak Republic. The situation in this regard is even getting worse[169], and there are not many grounds for anticipation of any significant progress in near future.

Public rendition of judgment:

The Constitutional Court in its ruling (*nález*) ref. no. II. ÚS 85/02 of 12 March 2003 in the proceeding of constitutional complaint has declared, that the right of the claimant to public rendition of judgment concerning judicial protection according to the Article 6 paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms and Article 14 paragraph 1 of the International Covenant on Civil and Political Rights in connection with the Article 1 paragraph 1 and the Article 142 paragraph 3 of the Constitution had been violated in the course of appellate review proceeding by the senate of the Supreme Court.

In the reasoning to this ruling, the Constitutional Court, *inter alia*, pointed out that the Article 142 paragraph 3 of the Constitution, which contains the principle of public rendition of a judgement, had a nature of constitutional order addressed to courts to pronounce judgements publicly. As the Constitutional Court emphasises in this ruling, regardless of the character of the proceeding, including the appellate review proceedings on which courts, in accordance

[168] *Zákon č. 457/2003 Z. z., ktorým sa mení a doplňa Trestný poriadok v znení nekorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 457/2003 Coll. which amends and supplements the Code of Criminal Procedure as amended and on amendments on some other acts].

[169] The President of the Constitutional Court has already several times pointed out in the public media that a number of courts do not respect the rulings of the Constitutional Court ordering them to proceed cases without unreasonable delays. The Constitutional Court, as he said, has no legal instruments to enforce the courts to obey its ruling and thus the claimant's only chance to enforce his/her rights is to file a complaint to the European Court of Human Rights.

with the provisions of the Code of Civil Procedure, are not obliged to proceed the matter and to take the decision at a public hearing, nevertheless the courts are obliged on the grounds of the Article 142 paragraph 3 of the Constitution to render every judgment in public. The Constitutional Court further stressed that the public rendition of judgement was one of the components of the rule of law guaranteed by the Constitution. The court, including the Supreme Court acting as an appellate review court, must inform the public about the place and time of judgement rendition following the standard mode (e.g., put the information on a court board available to public, or on an official web site of the court). The participants of the proceeding, both plaintiff as well as defendant, must be duly called by the court and informed about the place and time of the judgement rendition.

The Constitutional Court has come to an analogical result in its ruling (*nález*) ref. no. IV. ÚS 110/03 of 10 September 2003.

Reasons for concern

An adequate financial satisfaction:

According to the Article 127 paragraph 3 of the Constitution, the Constitutional Court may award an adequate financial satisfaction to a person whose rights were infringed.

There are several problems concerning award of an adequate financial satisfaction by the Constitutional Court. One of these problems is of legislative nature, specifically that pursuant to the Section 56 paragraph 4 of the *zákon o ústavnom súde* [Constitutional Court Act][170] an adequate financial satisfaction includes only non-monetary compensation incurred and therefore the institute of adequate financial satisfaction does not correspond to the institute of *just satisfaction* guaranteed by the Article 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms which includes both pecuniary as well as non-pecuniary compensations.

The second problem relating to the adequate financial satisfaction is that the amounts, awarded by the Constitutional Court as adequate financial satisfactions, are considerably lower than those awarded by the European Court of Human Right as just satisfactions. One might say that the term “symbolic” in relation to financial satisfaction would be more accurate than the term “adequate”. Therefore, in our opinion, the financial compensations awarded by the Constitutional Court in number of its rulings can hardly be considered as effective remedies as understood by the European Court of Human Rights.

The third major problem relating to the award of an adequate financial satisfaction concernes enforceability of rulings of the Constitutional Court in general. There is a large number of cases when courts do not respect the ruling of the Constitutional Court in part of fulfilling their obligation to pay claimants financial compensation awarded by the Constitutional Court arguing that they do not have enough financial means in their budgets, which would cover these payments. So claimants are forced to file their complaints to the European Court of Human Rights and to request awards of a just satisfaction (for pecuniary or/and non-pecuniary damage incurred).

[170] *Zákon č. 38/1993 Z. z. o organizácii Ústavného súdu Slovenskej republiky, o konaní pred ním a o postavení jeho sudcov v znení neskorších predpisov* [Act no. 38/1993 Coll. on organisation of the Constitutional Court, on proceedings before it, and on status of its judges as amended].

Article 48. Presumption of innocence and right of defence

National legislation, regulation and case law

The Code of Criminal Procedure Amendment has constituted the new legal institute concerning the cooperation of target witness in the criminal procedure. According to the Section 162a, the Section 172 paragraph 2, and the Section 173 of the Code of Criminal Procedure Amendment the offender who chooses volunteer cooperation with the justice bodies in the cases of the serious crimes or the most serious crimes like the corruption or the establishment of the terrorist group may be discharged from the accusation for the committed offence or his/her sentence may be reduced.

Case law:

The Constitutional Court in its ruling (*nález*) of 3 December 2002[171] held that the *Svidník* District Court (*Okresný súd vo Svidníku*) in the criminal proceeding against a fugitive (*konanie proti ušlému*) violated the right of accused person guaranteed by the Article 17 paragraph 2 (the right to liberty)[172], the Article 48 paragraph 2 (the right to a fair trial)[173] and the Article 50 paragraph 3 (the right of defence)[174] of the Slovak Constitution and the Article 6 paragraphs 1 and 3 sub paragraph b) and sub paragraph c) of the Convention for Human Rights and Fundamental Freedoms. In the reasoning to this ruling, the Constitutional Court pointed out, *inter alia*, that criminal proceedings against fugitives may be constitutionally accepted as compliant with the Article 17 paragraph 2 of the Constitution only when they are registered for the reason and in the way stipulated in the Criminal Procedure Code. According to the Constitutional Court, the *Svidník* District Court infringed the rights of the accused person because, despite the fact that it did not ascertain facts of the case in adequate way (the court ran the proceeding against a fugitive although the accused person should not have the status of a fugitive), it proceeded and decided the case against the accused person in absentia.

In other ruling (*nález*)[175] the Constitutional Court held that the *Najvyšší súd Slovenskej republiky* [Supreme Court of the Slovak Republic] by proceeding the case and taking its decision in closed session, without allowing the accused person and his counsel to be present at the hearing, infringed the rights of the accused person guaranteed by the Article 47 paragraph 3 (equality of parties to proceedings)[176], the Article 48 paragraph 2 (the right to a fair trial), and the Article 50 paragraph 3 (the right of defence) of the Constitution.

Reasons for concern

According to the Section 143 paragraph 1 of the Code of Criminal Procedure, a person concerned, including a person who has just been notified that the criminal proceeding, of which he was not aware until now, has resulted into his/her formal indictment for commitment of some specific offence, has only 3 days from noticing this decision for filing

[171] Constitutional Court of the Slovak Republic, ruling (*nález*) ref. no. III. ÚS 133/02-67 of 3 December 2002.
[172] Article 17 paragraph 2 of the Constitution states: *"No one shall be prosecuted or deprived of liberty save for reasons and by means laid down by a law. No one shall be deprived of liberty merely for his or her inability to fulfil a contractual obligation."*.
[173] Article 48 paragraph 2 of the Constitution states: *"Everyone has the right to have his or her case tried publicly without undue delay, to be present at the proceedings and to comment on any evidences given therein. The public may be excluded only in cases laid down by a law."*.
[174] Article 50 paragraph 3 of the Constitution states: *"Everyone charged with a criminal offence shall be entitled to have time and facilities for the preparation of his or her defence and to defend himself or herself in person or through legal assistance."*.
[175] Constitutional Court of the Slovak Republic, ruling (*nález*) ref. no. III. ÚS 186/02-56 of 21 March 2003.
[176] Article 47 paragraph 3 of the Constitution states: *"All parties to any legal proceedings under paragraph 2* (i. e. proceedings before courts, other public authorities or bodies of public administration)*, shall be treated equally."*.

complaint (the form of appeal in this stage of criminal procedure) against that decision. It means, that such person, provided that he/she is not by chance a qualified criminal law defence lawyer, should within 3 days find a qualified legal assistance, together with a hired defence lawyer go through and carefully analyse the grounds of indictment contained in the criminal file and prepare and file a qualified complaint against the decision. It is generally considered, that the term for filing complaint against decision issued in criminal proceeding stated in aforesaid provision of the Code of Criminal Procedure is not reasonable, and it seems inconsistent with the right to a fair trial and the rights of defence guaranteed in the Articles 47 and 48 of the European Union Charter of fundamental Rights.

Article 49. Principles of legality and proportionality of criminal offences and penalties

National legislation, regulation and case law

The Criminal Code Amendment[177], which came into force on 1 September 2003, has incorporated into the Criminal Law a new legal institute named *"Trikrát a dosť"* ["Three strikes law"].

The new principle „three strikes and you're out" means that in case the court is sentencing the offender for some serious crime listed in the Section 43 of the Criminal Code, and the offender has already been convicted by the court for any of the crimes listed in the Section 43 of the Criminal Code at least twice in the past (thus it covers also offences committed before this Criminal Code Amendment came into force), the court must sentence the offender to a life imprisonment, otherwise the court should sentence such offender to a minimum of 20 (mostly of 25) years in prison.

Reasons for concern

In our opinion, the principle „*three strikes and you're out*", which has been applied in criminal law in several states of the United States of America[178] and is totally unknown to any country applying a civil law system, is basically in a contradiction with the general principle of non-retroactivity in criminal matters. According to the Article 50 paragraph 6 of the Slovak Constitution, "*the punishability of any criminal conduct shall be determined and the punishment imposed under the law effective at the time of the commitment of the offence. A law adopted after the commitment of the criminal offence applies if it is more beneficial to the offender.*" Similarly, the Article 7 paragraph 1 of the Convention for the protection of Human Rights and Fundamental Freedoms ensures that "*no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed*." Although, in the sense of strict legal formalism, the conviction based on the „*three strikes and you're out*" principle would be determined under "*the law effective at the time of the commitment of the offence*", nevertheless, in our opinion, the offender would have been *de facto* punished twice for the same criminal offence, since the heavier penalty would have been imposed on the ground of criminal offences for which the offender had already been tried and punished in the past, including offences committed before this Criminal Code Amendment came into force.

[177] *Zákon č. 171/2003 Z. z., ktorým sa mení a dopĺňa Trestný zákon* [Act no. 171/2003 Coll. which amends and supplements the Criminal Code].
[178] One might say that this criminal law principle has been derived from a similar basse-ball rule.

Article 50. Right not to be tried or punished twice in criminal proceedings for the same criminal offence

Please, see the comments concerning the Article 49.

ERRATA TO THE REPORT ON THE SLOVAK REPUBLIC

Article 10. Freedom of thought, conscience and religion

At p. 25 of the report, under the heading National legislation, regulation and case law, the paragraph "Subsequently, a proposal of the Agreement between the Slovak Republic and registered churches and religious communities on religious education and formation was prepared. This proposal is based on the Treaty between the Slovak Republic and the Holy See on the Catholic Education and Formation. The adopting of this agreement should eliminate an unequal position of other registered churches and religious communities, which arose after the approval of the Treaty between the Slovak Republic and the Holy See on the Catholic Education and Formation." should be read between 5th and 6th paragraphs

Article 47. Right to an effective remedy and to a fair trial

At p. 66 of the report, under the heading Reasons for concern (An adequate financial satisfaction), a new paragraph should be read at the end of the 2nd paragraph: "However, at the end of 2003, the National Council amended the Section 56 paragraph 4 of the Constitutional Court Act and left out the words that the adequate financial satisfaction included only non-monetary compensation. This amendment will enter into force on 1 July 2004. From this day the Constitutional Court of the Slovak Republic will be empowered to grant both pecuniary and/or non-pecuniary compensations."