

E. U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS
*RÉSEAU U.E. D'EXPERTS INDÉPENDANTS EN MATIÈRE DE DROITS
FONDAMENTAUX*

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS
IN THE SLOVAK REPUBLIC IN 2004

submitted to the Network by **Martin BUZINGER**

on 3 January 2005

Reference: CFR-CDF/SK/2004



The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon the request of the European Parliament. It monitors the situation of fundamental rights in the Member States and in the Union, on the basis of the Charter of Fundamental Rights. It issues reports on the situation of fundamental rights in the Member States and in the Union, as well as opinions on specific issues related to the protection of fundamental rights in the Union.

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Le Réseau UE d'Experts indépendants en matière de droits fondamentaux a été mis sur pied par la Commission européenne (DG Justice, liberté et sécurité), 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), M. Rick Lawson (Pays-Bas), Lauri Malksoo (Estonie), Arne Mavcic (Slovénie), Vital Moreira (Portugal), Jeremy McBride (Royaume-Uni), François Moyse (Luxembourg), 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), Pavel Sturma (Rép. tchèque), Ineta Ziemele (Lettonie). Le Réseau est coordonné par O. De Schutter, assisté par V. 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, Freedom and Security), 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), M. Rick Lawson (the Netherlands), Lauri Malksoo (Estonia), Arne Mavcic (Slovenia), Vital Moreira (Portugal), Jeremy McBride (United Kingdom), François Moyse (Luxembourg), 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), Pavel Sturma (Czech Republic), Ineta Ziemele (Latvia). The Network is coordinated by O. De Schutter, with the assistance of V. Verbruggen.

The documents of the Network may be consulted on :

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CHAPTER I : DIGNITY

Article 1. Human Dignity

Legislative initiatives, national case law and practices of national authorities

The *ministerstvo zdravotníctva* [Ministry of Health] has prepared a new legal regulation of burials¹. Up to now the problem of burials has been regulated by subordinate legislation from the years 1966 respectively 1985, though several aspects related to these problems have not been covered by law. The way of manipulation with human remains must be dignified but at the same time everything has to be done to avoid the endangerment of public health or public order. The draft deals also with the problems of embalming and conservation of human remains, which had not been regulated in the Slovak Republic till now.

With regard to the dignity of deceased person concerning performance of autopsy, please see also comments to the Article 4.

Article 2. Right to life

Euthanasia (active and passive, assisted suicide)

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there were no legislative changes related to the problem of euthanasia. This issue only marginally concerned public discussion.

An assisted suicide is henceforward considered as a crime according the *Trestný zákon* [Criminal Code]. The elements of crime of participation in an assisted suicide contained in Section 230 of the Criminal Code say: “*who actuates another to commit a suicide or who is aiding a suicide....*” An analogical regulation is included also in prepared recodification of Criminal Code.

Domestic violence (especially as exercised against women)

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there were a numerous of medialised cases of domestic violence exercised against women, as well as children and elderly people. The violence of children exercised against their parents has an increasing occurrence. That is also why the public and competent public authorities pay enhanced attention to this problem in the Slovak Republic at present.

On 16 November 2004 the *vláda Slovenskej republiky* [the Government of the Slovak Republic] approved the *Národná stratégia na prevenciu a elimináciu násilia páchaného na ženách a v rodinách* [National strategy for prevention and elimination of violence exercised against women and in families], which was drafted by the *ministerstvo práce, sociálnych vecí a rodiny* [Ministry of Labour, Social Affairs and Family].² The document contains also a proposal concerning the prevention and elimination of violence exercised against children, elderly and disabled people.

¹ *Návrh zákona o pohrebníctve* [Draft Act on burials].

² *Uznesenie vlády č. 1092/2004 zo 16. novembra 2004* [Governmental Resolution no. 1092/2004 of 16 November 2004].

According to the statistics contained in the national strategy document, the majority of crimes of violence against the individual had been exercised against women (during the last years more than 70% of victims were women, in the year 2003 it was 71,1%). In case of crimes of battering a person entrusted to one's care or a relative, 73,9% of victims were women, between the years 2002 and 2003 a sevenfold increase of such crimes was observed. An increase was acknowledged also in case of crimes against morals (rape, sexual abuse, procuring and soliciting prostitution, trafficking in human beings); women again markedly dominate as victims (97,4%). In case of crimes of rape and trading in human beings women were victims in 100% of cases. The women victims constituted 92,2% of crimes of sexual abuse exercised against dependent person and 85,3% victims of other maltreatment exercised against dependent person were juvenile girls.

Positive aspects

There were several significant changes in legislation oriented on elimination of domestic violence realized during the years 1999-2002. Consequently to these changes an amendment to the *zákon o Policajnom zbore* [Act on Police Corps] should be prepared. The amendment, as it is suggested in the national strategy document, will empower police to prohibit the entry to a flat or house, if there is justified fear that the life or health of person concerned is endangered because of violent conduct of an outrager.

The Act on social and legal protection of adults is expected to be adopted in a course of 2005.

Good practices

During the period under scrutiny, some members of police corps have taken a part in training focused on elimination of domestic violence.

Reasons for concern

In October 2004 a man physically attacked his wife during the court hearing concerning the determination of alimony. As media informed, he would probably continue attacking his wife if other participants of the proceeding would have not stopped him. The man has been consequently indicted for an offence after it came out that he had been harassing his wife already for about five years.

This medialised incident has raised public discussion about the role of judicial guard, who are only occasionally present in courtrooms during the hearings concerning civil matters. Their compulsory presence in courtrooms would be desirable in cases where similar incidents can be anticipated.

Other relevant developments

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Slovak Republic has still not ratified Protocol no. 13 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances.

Article 3. Right to the integrity of the person

Rights of the patients

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations³ is concerned about reports of cases of sterilization of Roma women without their full and informed consent. In this respect, the Committee welcomes the assurances given by the delegation that a draft law on health care, which would address shortcomings in the system by specifying the requirement of free and informed consent for medical procedures and guarantee patients' access to medical files, has been approved by the Government and should shortly be adopted by the Parliament.

The Committee strongly recommends the Slovak Republic to take all necessary measures to put an end to this regrettable practice, including the speedy adoption of the above-mentioned draft law on health care. The Slovak Republic should also ensure that just and effective remedies, including compensation and apology, are granted to the victims.

Legislative initiatives, national case law and practices of national authorities

In October 2004, the *Národná rada Slovenskej republiky* [National Council of the Slovak Republic, thereafter also referred to as "the Parliament"] approved the new *zákon o zdravotnej starostlivosti*⁴ [Health Care Act], which entered into force on 1 January 2005.

Positive aspects

The new Health Care Act regulates, *inter alia*, the conditions for performing sterilization procedures. The sterilization may be performed only on the condition of a written application and written informed consent. Sterilization operation may be performed not sooner than 30 days after the informed consent has been given.

The new Health Care Act also amends the *Trestný zákon* [Criminal Code] with the Section 246b regulating new elements of the crime entitled "unlawful sterilization". According to the Section 246b of the Criminal Code a person, who would sterilize a natural person contrary to the law, shall be sentenced to deprivation of liberty from 3 to 8 years (from 5 to 12 years if the crime is committed within an organized group, or if the offender obtains for himself/herself or for other person a profit) or to the suspension of activity or to pay a fine.

According to the Health Care Act patient has the right to refuse autopsy. Performing of autopsy is regulated by new *zákon o zdravotných poisťovniach, dohľade nad zdravotnou starostlivosťou* [Act on Health Insurance Companies and Healthcare Oversight]⁵.

An autopsy may be ordered only in cases determined by the law having regard not to decrease the dignity of deceased person. Autopsy may not be performed, if the person or his/her legal representative during the life (of deceased person) expressly refused the autopsy. The refusal

³ Concluding observations of the Committee on the Elimination of Racial Discrimination: Slovakia, 10 December 2004 (Sixty-fifth session: 2 – 20 August 2004), CERD/C/65/CO/7, point 12.

⁴ *Zákon č. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov* [Act no. 576/2004 Coll. on health care, services relating to provision of health care and on amendments and modifications of certain other laws].

⁵ *Zákon č. 581/2004 Z. z. o zdravotných poisťovniach, dohľade nad zdravotnou starostlivosťou a o zmene a doplnení niektorých zákonov* [Act no. 581/2004 Coll. on Health Insurance Companies and Healthcare Oversight and on amendments and modifications of certain other laws].

of autopsy must be in written form and it must contain information unambiguously identifying the person refusing the autopsy; his/her autograph and the date of execution of this document. Refusal of autopsy has to be delivered to the *Úrad pre dohľad nad zdravotnou starostlivosťou* [Office of Healthcare Oversight], which has to register and preserve it 10 years from the date of death of person concerned. The office keeps the list of persons, who have rejected the autopsy during their life.

An informed consent is required for provision of a health care services. The new Health Care Act regulates in detail the instruction and the informed consent. Patient or his/her legal representative has the right to receive an instruction about the purpose, nature, consequences and risks of provided healthcare, about alternative methods and about risks related to refusal of medical treatment. The instruction must be provided in comprehensible and considerate way, without compulsion, adequately to patient's mental forwardness and his/her health condition.

Informed consent is the documented consent of patient or of his/her legal representative with suggested medical treatment. Everyone, who has the right to give an informed consent, has also the right to cancel it freely at anytime. The law determines the conditions under which an informed consent is not required.

The donator of human organs, tissues and cells may be only a person, who gave written informed consent based on prior instruction. Organs, tissues or cells may be taken from donator after his/her death only if the concerned person had not declared during the life his/her unwillingness to undergo interference to his/her physical integrity.

The transplantation of organs, tissues and cells to the body of receiver may be performed only under the condition that the receiver gives written informed consent based on prior instruction.

Besides the new Health Care Act, the National Council has approved another five laws concerning the reform of health care in the Slovak Republic.

According to the newly adopted laws a patient has, in accordance with the European Charter of Patient's Rights, the following rights:

- right to the prevention,
- right to an equitable access to health care services (in accordance with the principle of equal treatment, everyone has the right to receive such health care as is appropriate to his or her health needs),
- right to information (e. g. information concerning healthcare services, their utilization and the available results of scientific research and technical innovation; right to informed consent; right to be informed about the state of health, right to have access to medical file and right to make a copy of the medical file, right to be informed about cheaper generic substitution for original medicine),
- right to express consent,
- right to free choice,
- right to respect one's privacy,
- right to respect for patients' time,
- right to quality,
- right to security,
- right to innovation,
- right to avoid unnecessary suffering and pain,
- right to respect for personal needs,
- right to complain,
- right to claim damages.

Reasons for concern

Already in the year 2003 the *Podpredseda vlády Slovenskej republiky pre európske záležitosti, ľudské práva a menšiny* [Deputy Prime Minister for European Affairs, Human Rights and Minorities] informed the public that the investigation of reputedly illegal sterilizations of Romani women had been closed because of insufficient evidence, and neither the court nor the investigators drew conclusions that illegal sterilizations have occurred in Slovakia.

However, during the period under scrutiny a several non-governmental organizations expressed their doubts as regards the accuracy of investigation, respectively required to re-open investigations as regards suspicions of illegal sterilizations of Romani women.

For instance, pursuant to the Amnesty International Report 2004 concerning the Slovak Republic, the investigation of illegal sterilizations of Romani women in Eastern Slovakia did not correspond with international standards. Amnesty International considers as the biggest shortcoming of investigation the fact, that the investigators did not verify whether the Romani women had freely requested sterilization, received appropriate instruction about its risks and irreversibility, understood the information provided, or were given appropriate time to consider the information. According to the Amnesty International, Romani women had been interrogated without previous notification and during questioning they had been threaten with a three-year prison sentence for false accusation if their complaint proved untrue.

According to the statement made by the European Council's Commissioner for Human Rights Mr. Alvaro Gil-Robles released in December 2004, he considers the cause of reputed sterilizations of Romani women in Slovakia as closed.

Protection of persons in medical research.*Legislative initiatives, national case law and practices of national authorities*

The *Legislatívna rada vlády Slovenskej republiky* [Legislative Council of the Government of the Slovak Republic] has discussed and recommended to the Government to approve the Additional Protocol to the Convention on Human Rights and Bio-medicine concerning Biomedical research.

The major part of the provisions of the Additional Protocol to the Convention on Human Rights and Bio-medicine concerning Biomedical research is included in the new Health Care Act.

Positive aspects

A new Health Care Act also newly regulates the conditions of performing biomedical research and the conditions of participation in biomedical research. Written informed consent based on prior instruction is required for participation in biomedical research. Written informed consent must contain the date, when it was granted and the signature of participant in the research or his/her legal representative. Biomedical research is performed freely, must respect the right on protection of dignity, with respect to physical and mental integrity.

Reasons for concern

The Slovak Republic still has not signed the Additional Protocol to the Convention on Human Rights and Biomedicine concerning Transplantation of Organs and Tissues of Human Origin.

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

Conditions of detention and external supervision of the places of detention

Institutions for the detention of persons with a mental disability

Positive aspects

On 6 October 2004 the *vláda Slovenskej republiky* [Government of the Slovak Republic] approved the *Národný program duševného zdravia* [National Program of Mental Health]⁶ drafted by the *ministerstvo zdravotníctva* [Ministry of Health]. The program, *inter alia*, suggests the creation of the *Národná rada duševného zdravia* [National Council of Mental Health], which would monitor, coordinate and analyse existing protection of mentally disabled people and which would provide for creation and realisation of proposed legislative regulations in the area of mental health. National Council of Mental Health shall be an advisory organ of the Government of the Slovak Republic. One of its activities should also concern monitoring of use of coercive methods in case of involuntary hospitalisation.

Reasons for concern

There is no consideration about the end of use of cage beds within healthcare facilities in Slovakia. During the period under scrutiny, this attitude of the Ministry of Health was presented several times in media. According to the Ministry of Health, the use of cage beds is legitimate in exceptional cases, because their use is in the best interest of patients concerned. According to the information provided by the Ministry of Health to the public in January 2004, there are about 250 cage beds from about 4700 existing beds within all psychiatric facilities.

The *Výbor Národnej rady Slovenskej republiky pre ľudské práva, národnosti a postavenie žien* [Committee for Human Rights, National Minorities and Status of Women of the National Council of the Slovak Republic] also dealt with problems concerning the use of cage beds. In January 2004 its chairman stated that the use of cage beds was for the sake of protection of patient's health as well as the protection of psychiatric personnel.

According to the opinion of persons interested in this problem presented in the media, any elimination of cage and net beds can hardly be expected in a near future, since such measures would be too expensive, e.g. it would substantially increase a number of necessary medical personnel in psychiatric facilities.

Centres for the detention of foreigners

Legislative initiatives, national case law and practices of national authorities

According to the amendment⁷ of the *zákon o azyle* [Act on Asylum], which will enter into force on 1 February 2005, an applicant for asylum may leave asylum facility only on the basis of a permit issued by the *ministerstvo vnútra* [Ministry of Interior]. The permit for temporary leave of asylum facility may be granted for a period of 7 days at maximum. The Ministry of Interior may refuse to issue the permit only on the ground of public order or if the personal presence of the applicant in the procedure concerning granting the asylum is inevitable. The

⁶ *Uznesenie vlády č. 947/2004 zo 6. októbra 2004* [Governmental Resolution no. 947/2007 of 6 October 2004].

⁷ *Zákon z 2. decembra 2004, ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act of 2 December 2004 which amends and supplements the Act no. 480/2002 Coll. on asylum and on amendments of certain other laws].

applicant who has left the asylum facility is not entitled to food or the subsistence grant for the period of his/her absence in the asylum facility.

According to the Act on Asylum Amendment, the relocation of an asylum seeker from one asylum facility to another may be accomplished only if it is inevitable.

Protection of the child against ill-treatments

Legislative initiatives, national case law and practices of national authorities

Please see the comments regarding the removal of a child from the family in the Article 7.

Behaviour of security forces (including during demonstrations)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations⁸ notes with satisfaction the efforts of the Slovak Republic in respect of the training of law enforcement officials, however it also expresses concern about allegations of discriminatory behaviour by the police towards members of minority groups, in particular Roma, including acts of ill-treatment and violence.

The Committee recommends the Slovak Republic to intensify its action to halt this phenomenon and set up an independent monitoring mechanism to carry out investigations into allegations of police misconduct.

Legislative initiatives, national case law and practices of national authorities

The proposal of an amendment to the *zákon o policajnom zbore* [Act on Police Corps]⁹ introduces new kinds of coercive means, such as belts for binding and straps for binding. Member of Police Corps will be authorised to use a belt for binding if there is a suspicion that the use of handcuffs may have been ineffective. Straps for binding may be used by the member of Police Corps if a person placed in custody does not control his/her conduct. All along the use of straps for binding, the person placed in a custody must be under the control of a policeman, who is obliged to see so as not to come to the interruption of blood circulation of person concerned.

Positive aspects

The proposal of an amendment to the Act on Police Corps regulates also the rules concerning catering of persons detained or arrested, or whose personal freedom was otherwise restricted. The proposal is the reaction to the Recommendation of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.¹⁰

Pursuant to the proposal, catering should be arranged according to local conditions, in appropriate time, should respect principles of proper nourishment and should also take into account the age, state of health and religion or faith of such person. The person, whose personal freedom has been restricted for longer than six hours, is entitled to be served a meal.

⁸ CERD/C/65/CO/7, point 7.

⁹ *Zákon č. 171/1993 Z. z. o Policajnom zbore v znení neskorších predpisov* [Act no. 171/1993 Coll. on Police Corps as amended].

¹⁰ Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 9 to 18 October 2000, CPT/Inf (2001) 29.

If the restriction of personal freedom lasts less than six hours, the meal is served only if it is required by the state of health of the person, his/her age or if there are other serious reasons that are known to competent police officer.

The person to whom the meal was served should reimburse all costs related to catering. The costs for catering are covered by the state if there are reasons due to financial situation of the person concerned.

Reasons for concern

The case of a Roma man (Karol Sendrei), who died in police station in Revúca in July 2001, has not been closed yet. A criminal action against several persons, including ex-policemen, has been brought. The prolongation of the case is caused by procedural mistakes of the authorities in charge of criminal proceedings. In July 2004 the *Najvyšší súd Slovenskej Republiky* [Supreme Court of the Slovak Republic] obliged the *Krajský súd v Banskej Bystrici* [Banská Bystrica Regional Court] to start proceeding.

In the beginning of 2004, strong police and military forces were disposed in connection with the Roma riots in the eastern part of Slovakia, which grew into mass robbery, burglary and criminal activities. Consequently, suspicions of illegal conduct of police towards the Roma had appeared. The complaints concerned e. g. the unreasonable use of coercive means, the examinations of Roma settlements without prior consent of the court or the surrounding of the Roma settlements by the police, which caused that Roma people living in those settlements were restrained from free movement. Several Roma people complained on flat police practice towards Roma community. According to the statement of the Police Corps, the use of force and means corresponded with the level of a breach of public order and commission of crimes by the Roma.

During the period under scrutiny, several cases of police interventions in the restaurants, clubs and pubs, which had been considered as brutal in the opinion of participants, were medialised. According to the statements of participants, vulgar behaviour of policemen, invectives, unreasonable beating and unreasonable use of coercive means were the part of the police interventions.

In the period from 28 May to 1 June 2004, the spring session of the NATO Parliamentary Assembly took place in historical centre of Bratislava. The event had required an extremely high security level, part of the security measures were restriction or constraint of the entry into the area, where the meeting was held. In the period of the session, only a few protest meetings of a small number of participants took place in Bratislava. In general, the course of the protests was peaceful, and there were no serious clashes between the police and the marchers.

Article 5. Prohibition of slavery and forced labour

Trafficking in human beings (in particular for sexual exploitation purposes)

Legislative initiatives, national case law and practices of national authorities

On 28 October 2003 the Parliament affirmed the United Nations Convention against Transnational Organized Crime. The President of the Slovak Republic ratified it on 20 November 2003. The Convention came into force within Slovak Republic on 2 January 2004.

On 13 May 2004 the National Council of the Slovak Republic affirmed the Protocol against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations

Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime. The President of the Slovak Republic ratified the both Protocols on 21 September 2004.

On 1 August 2004 an amendment¹¹ of the *Trestný zákon* [Criminal Code] came into force, which *inter alia*, amended the Section 246 concerning the crime of trafficking in human beings. The change of this provision derives from the application of Council Framework Decision of 19 July 2002 on combating trafficking in human beings along with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (supplementing the United Nations Convention against Transnational Organized Crime).

The crime of trafficking in human beings does not relate only to transnational trafficking, but also to the trafficking within the country. Eventual consent of victim does not affect criminal liability of offender.

Positive aspects

In June 2004 Police Corps uncovered international organized group with the headquarters in the Slovak Republic, which had been focused on trafficking in women for sexual purposes. The group was officially performing its business as modelling agency recruiting girls and young women mostly from Slovakia for modelling and hostess activities. The police released the information that shortly after their recruitment the perspective models become subject to various forms of undue influence and that were forced to provide prostitution to international clients of the agency all over the world. Several well-known photographers and stylists, both in Slovakia and in the Czech Republic, where the agency has its branch office, were reputedly among the members of the group. Police has already indicted over then twenty members of the organized group.

Good practices

In the course of 2004, the *Občianske združenie mladých Rómov na Slovensku* [Citizens' Association of Young Roma in the Slovak Republic] with the financial contribution of the *ministerstvo práce, sociálnych vecí a rodiny* [Ministry of Labour, Social Affairs and Family] had prepared a project on prevention of the trafficking in Roma women. The purpose of the project was to introduce the legal and social consequences of prostitution to Roma women. Target group of preventive 3-months' campaign should be, first of all, young unemployed Roma women.

Protection of the child (fight against child labour – especially with purposes of sexual exploitation or child pornography - and fight against the sexual tourism involving children)

Legislative initiatives, national case law and practices of national authorities

On 4 February 2004, the *Národná rada Slovenskej republiky* [the National Council of the Slovak Republic] by its Resolution no. 778 affirmed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. The President of the Slovak Republic ratified the Optional Protocol on 14 June 2004.

¹¹ *Zákon č. 403/2004 Z. z. o európskom zatýkacom rozkaze a o zmene a doplnení niektorých zákonov* [Act No. 403/2004 Coll. on the European Arrest Warrant, and on amendments and modifications of certain other laws].

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In case of *König v. Slovakia*¹² the European Court of Human Rights declared the violation of Article 5 paragraph 4 of the ECHR. The Eur. Ct. H. R. concluded that the Slovak court had failed to make a decision on the applicant's request for release from detention made prior to the delivery of the judgment sentencing the applicant to twelve and a half years' imprisonment, and thus his right under Article 5 paragraph 4 of the ECHR has been violated.

In case of *Pavletic v. Slovakia*¹³ the Eur. Ct. H. R. found the violation of Article 5 paragraphs 3, 4, and 5 of the ECHR due to conduct of Slovak authorities. The Eur. Ct. H. R. concluded, *inter alia*, that the detention of the applicant (the citizen of Croatia), particularly during the preliminary stage of criminal proceeding, was too excessive, his application for release from detention had not been decided upon speedily by the Slovak court, and the applicant did not have an enforceable right to appropriate compensation in respect of his complaints about the length of his detention and about the failure to decide on his application for release.

Legislative initiatives, national case law and practices of national authorities

In June 2004 the National Council of the Slovak Republic approved the *zákon o európskom zatýkacom rozkaze* [Act on European arrest warrant],¹⁴ which entered into force on 1 August 2004. According to the Act on European arrest warrant, Slovak authorities may issue European arrest warrant also in respect of the offences committed before this Act entered into force. The Act on European arrest warrant penetrates the principle of non-extradition of the state own citizens. The fact that the requested person is a citizen of the Slovak Republic may not be used as the ground for refusing execution of the European arrest warrant. The provision of the Act on European arrest warrant, which penetrates the principle of non-extradition of the state own citizens, seems not to be compatible with the Article 23 paragraph 4 of the Constitution of the Slovak Republic¹⁵ and therefore it is quite likely that sooner or later its constitutionality will be challenged at the *Ústavný súd Slovenskej republiky* [Constitutional Court of the Slovak Republic].¹⁶

The Constitutional Court in its *nález* [ruling] ref. no. I. ÚS 34/04 of 1 June 2004 concluded that Bratislava Regional Court had violated the right to speedy decision on lawfulness of detention and the right to be released from detention in accordance with Article 17 paragraphs

¹² Eur. Ct. H. R. (4th sect.), *König v. Slovakia* (Application no. 39753/98) judgement of 20 January 2004 (final).

¹³ Eur. Ct. H. R. (4th sect.), *Pavletic v. Slovakia* (Application no. 39359/98) judgment of 22 June 2004 (final).

¹⁴ *Zákon č. 403/2004 Z. z. o európskom zatýkacom rozkaze a o zmene a doplnení niektorých zákonov* [Act no. 403/2004 Coll. on European arrest warrant and on amendments and modifications of certain other laws].

¹⁵ Every citizen has the right of entry to the territory of the Slovak Republic freely. Every citizen must not be forced to leave or to be expelled from his or her homeland.

¹⁶ For instance, there has been ongoing discussion about an identical problem in the Czech Republic, and it has been already declared by the group of members of Czech Parliament that they are willing to challenge the controversial provision at the Czech Constitutional Court.

2 and 5 of the Slovak Constitution¹⁷. Competent authorities failed to conduct criminal proceeding with particular attention and speed, by which the applicant had been deprived of possibility to repeat his application for release.

The Constitutional Court in its *nález* [ruling] ref. no. I. ÚS 87/04 of 8 September 2004 held, that the Topoľčany District Court (*Okresný súd Topoľčany*) by its failure to make a decision on the application for release from detention, and on substitution of detention by a written promise respectively, violated the applicant's right to speedy decision on lawfulness of detention in accordance with Article 5 paragraph 4 of the ECHR and in accordance with Article 17 paragraph 2 of the Slovak Constitution.

Deprivation of liberty for persons with a mental disability

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In case of *Tám v. Slovakia*¹⁸ the European Court of Human Rights found the violation of Article 5 paragraphs 1 and 4 of the ECHR. The violations had been caused by several procedural mistakes of the Slovak court when examining the lawfulness of the applicant's detention in a mental hospital.

Other relevant developments

Reasons for concern

According to the released statement of the *ministerstvo spravodlivosti* [Ministry of Justice], one of the main reasons of delays in criminal proceedings is also an undisciplined behaviour of witnesses who fail to appear in hearings. Consequently, the Ministry of Justice in its proposal of new *Trestný poriadok* [Code of Criminal Procedure]¹⁹ suggests to enact the possibility to detain a witness for up to 48 hours to secure the witness' attendance at examination before the court. At the moment, the re-codification of the Code of Criminal Procedure is in legislative procedure, and apparently it shall come into force in 2006.

It is questionable, whether it is necessary to establish an institute in criminal procedure law, which uses preventive restraint of witness to ensure his/her attendance at trial. At present, if a witness does not excuse his/her absence at examination, he/she may be fined up to 50.000 SKK (app. 1300 EUR). In our opinion the more effective use of this sanction, respectively the adequate increase of it, would sufficiently ensure the witness' attendance at court, even without restriction of his/her personal freedom.

¹⁷ According to Article 17 paragraph 2 of the Slovak Constitution, 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. Paragraph 5 of this provision states, that pre-trial detention can be imposed only on the grounds and for the period provided by a law and determined by the court.

¹⁸ Eur. Ct. H. R. (4th sect.), *Tám v. Slovakia* (Appl. no. 50213/99) judgement of 22 June 2004 (final).

¹⁹ *Návrh Trestného poriadku* [Code of Criminal Procedure Draft], parliamentary press 720.

Article 7. Respect for private and family life

Private life

Criminal investigations and the use of special or particular methods of inquiry or research

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court of the Slovak Republic in its *nález* [ruling] ref. no. III. ÚS 204/02 of 22 January 2004 pointed out that the applicant's rights to integrity and privacy, personal freedom, and right against unjustified collection, disclosure and other misuse of her personal data had been violated by police action. The applicant was observing public march of anti-capitalists and anti-globalists, which had not been properly announced to the competent authority in advance as required by the law. She was detained and brought to the police station for questioning. Subsequently, she was subjected to a body inspection and forced to take her clothes off. Police officials kept her at the police station almost six hours and took her fingerprints and made photographs of her contrary to the law. The Constitutional Court concluded that the police action was abusive infringement of fundamental rights of the applicant.

Reasons for concern

During the period under scrutiny the media released information about the existence of photographs reputedly taken by municipal police of persons suspected of administrative offences. According to the statement of the head of municipal police in town Zvolen, the municipal police had been taking photographs and in co-operation with the state police the concerned photos have been used for documenting of the administrative offences and for the purpose of monitoring of the homeless people. However, according to the provisions of the *zákon o obecnej polícii* [Act on municipal police],²⁰ which determines powers of the municipal police, municipal police officers are not authorized to take photographs of such persons.

Controls imposed on potential candidates in employment (in particular security checks with regard to applicants for "sensitive positions")

Legislative initiatives, national case law and practices of national authorities

In March 2004 the National Council of the Slovak Republic approved the new *zákon o ochrane utajovaných skutočností* [Act on protection of classified information]²¹, which came into effect on 1 May 2004. Person who applies for position where he/she may come in touch with classified information must be first authorised by the *Národný bezpečnostný úrad* [National Security Authority]. Only after authorisation that person may be acquainted with classified information.

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

There have been no changes as regards the legal regulation of abortion during the period under review. As mentioned in the Report on the situation of fundamental rights in the Slovak

²⁰ *Zákon č. 564/1991 Zb. o obecnej polícii v znení neskorších predpisov* [Act no. 564/1991 Coll. on municipal police as amended].

²¹ *Zákon č. 215/2004 Z. z. o ochrane utajovaných skutočností a o zmene a doplnení niektorých zákonov* [Act no. 215/2004 Coll. on protection of classified information and on amendments and modifications of certain other laws].

Republic in 2003, in May 2001, a group of members of the Parliament launched a motion to the Constitutional Court demanding the commencement of action to review the conformity of certain provisions of the Act on abortion²² and of the Regulation on abortion²³ with the Constitution of the Slovak Republic.²⁴ The members of the Parliament were mainly arguing against unconformity of both the statutory and the regulatory provisions on abortion with Article 15 paragraphs 1 and 4 of the Constitution guaranteeing the right to life.²⁵ The Constitutional Court has not made the decision as yet.²⁶

Personal identity (including the right to gain access to the knowledge of one's origins)

Legislative initiatives, national case law and practices of national authorities

On 10 December 2004 the Parliament approved a new *zákon o rodine* [Act on Family], which after coming into force, will replace current Act on Family from the year 1963 (*zákon č. 94/1963 Zb. o rodine v znení neskorších predpisov* [Act no. 94/1963 Coll. on Family as amended]).

New Act on Family contains the regulation of determination of motherhood, which has not been regulated in current Act on Family. The Act defines the mother as a woman, who gave birth to a child. The Act determines that agreements and contracts, which are in conflict with this principle, shall be void. New Act on Family in accordance with the case law of the European Court of Human Rights extends the period for renunciation of fatherhood before the court from 6 months to 3 years from the date of its determination and, in comparison with the current legal regulation, it allows also a man to submit a motion for determination of parenthood to the court (currently this right is vested only to child and its mother).

New Health Care Act provides a legal base for so-called hidden respectively confidential births. A woman may apply in writing for confidentiality of her personal identity in connection with the birth. In such a case, the woman has the right to a special protection of her personal data.

In case of woman requiring a confidential childbirth, a special medical file is maintained and the law regulates special treatment concerning documentation contained in this file. The health care provider is obliged to maintain special medical file concerning maternity and childbirth. Personal data of woman inevitable for her identification, together with the application for confidential childbirth, are maintained separately. After the childbirth the special medical file is completed with personal data of woman, and the file is sealed as a whole. The health care provider must pass a special medical file to the Ministry of Health without undue delay, after expiration of 6 weeks' period from the date of birth, provided the woman did not cancel her requirement for confidentiality of her personal identity. The health

²² *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.].

²³ *Vyhláška 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.].

²⁴ Ref. no. PL. ÚS 12/01.

²⁵ Article 15 paragraph 1 of the Constitution states: „Everyone has the right to life. Human life is worth protection even before birth.“.

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.“.

²⁶ The Constitutional Court, which according to the Constitution consists of 13 judges, is not complete at the moment, because its two judges have become judges of European Court of Justice and Court of First Instance respectively, and Parliament has failed to elect new judges.

care provider is obliged to maintain special medical file of woman requiring a confidential childbirth and the personal data needed for identification of this woman separately from medical files of other people.

In case of woman who wishes to give birth confidentially, her identity data may not be specified in any standard records and reports, such as reception record or reports on mother and new-born.

Following the report of the doctor performing the birth, a record of new-born left in the medical centre after the birth, whose mother required for confidentiality of her personal identity, is made to the Registry of Births. This record includes only the date and place of birth and the sex of new-born. In case of adoption of such born child left in the medical centre, a biological mother's consent with adoption is not required.

Legal regulation of confidential childbirths does not include a method how the child can get to special medical file maintained about confidential birth, which is stored at the Ministry of Health and so to get the information about his/her actual identity. The law regulates neither the search in special medical files, nor the right of the child to inspect these files in future. New law only allows to everyone to apply for court's decision, if he/she thinks that the search in special medical files had been rejected to him/her unjustly. It is questionable, whether this new law is compatible with the provision of Article 7 paragraph 1 of the Convention on the Rights of the Child according to which the child has the right to know his/her parents.²⁷

Family life

Protection of family life (in general, developments in family law)

Legislative initiatives, national case law and practices of national authorities

The new *zákon o rodine* [Act on Family] regulates the area of matrimony (relations of married couple, termination of marriage including divorces), relations between parents, children and other relatives (including substitute care, guardianship and custodianship), subsistence allowance and determination of parenthood and adoption.

The President of the Slovak Republic has vetoed the new Act on Family and returned it back to the Parliament. In opinion of the President, the law violates the constitutional rights of parents, when a child may be placed by the authority of social and legal protection of children in a foster home without the consent of parents or a court order. According to the President, this breaches not only constitutional rights but also the Charter of Human Rights and the Convention on the Rights of a Child.

According to the new Act on Family, authority of social and legal protection of children may temporarily place a minor who is in the institutional care in the custody of such a person who wants to become a foster parent before the judgement granting the custody of a child to foster parents. The child who is not in the institutional care may be temporarily placed in the custody of foster parents only with the consent of his/her natural parents.

²⁷ Czechoslovakia, one of the successor states' of which is the Slovak Republic, had signed and ratified the Convention on the Rights of the Child with the following declaration in respect of the Article 7 (1): "In cases of irrevocable adoptions, which are based on the principle of anonymity of such adoptions, and of artificial fertilization, where the physician charged with the operation is required to ensure that the husband and wife on one hand and the donor on the other hand remain unknown to each other, the non-communication of a natural parent's name or natural parents' names to the child is not in contradiction with this provision.". This stipulation shall not relate to confidential childbirths according to the new legal regulation.

Removal of a child from the family

Legislative initiatives, national case law and practices of national authorities

The new Act on Family allows the court to take away a minor from personal care of parents (or persons, to whom a child was given to personal care) though against their will, if it is necessary and in the interest of minor, and disciplinary measures imposed before did not lead to improvement. The court may temporarily exempt the child, especially in case of improper behaviour of the child or if the parents violate or misappropriate their parental rights. In such cases the court would order stay in facilities defined by law for a period of no more than 6 months at longest. In case of re-socializing centre for drug addicts the law does not determine the time restriction.

If a parent maltreats, neglects, abuses or otherwise badly treats a minor or in serious way he/she neglects the execution of parental rights and duties, the court would suspend parental rights. If the court suspends the parental rights of both the father and the mother or of the only living parent, the court would appoint a guardian for the minor, which in practice means, that the child would be taken away from parents and would be given to care of somebody else.

According to the research organised by citizens' association *Úsmev ako dar* [Smile as a Gift], which supports abandoned children in Slovakia, in co-operation with offices of labour, social affairs and family, among the causes of children's exemption from their original families belong, except neglecting of care, lack of interest in child and educational problems, also economical problems and the loss of accommodation of family, at present.

Following to the results of the research, during the first eight months of the year 2004, there were 672 cases of immediate exemption of child from the family based on the precaution on grounds of endangerment of child's health or life. During the period mentioned above, the number of children exempted from the family in the age of 0-3 years increased to 361.

During the first eight months of 2004 there were 170 cases of children's exception from their original family and consequent placement to children's care home because of insufficient housing situation or property owned of the minor's parents. This number represents the increase of 7 % in comparison with the same period of last year.

According to the new Act on Family, the court may not take away a minor from personal care of parents and to order the institutional care only for reason of insufficient housing situation or property owned of the minor's parents.

The right to family reunification

Legislative initiatives, national case law and practices of national authorities

The Act on Asylum Amendment²⁸ introduces a temporary shelter provision for the purpose of a family consolidation for *de facto* refugee. The Ministry of Interior is empowered to grant a temporary shelter to: (i) *de facto* refugee'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 *de facto* refugee has already expressed in writing his/her consent with that, (ii) *de facto* refugee's unmarried children and unmarried children of *de facto* refugee's spouse who have not attained the age of

²⁸ Zákon č. 207/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov a o doplnení zákona č. 29/1984 Zb. o sústave základných a stredných škôl (školský zákon) [Act no. 207/2004 Coll., which amends and supplements the Act no. 480/2002 Coll. Act on asylum and on amendments and modifications of certain other laws and on modification of the Act no. 29/1984 Coll. School Act].

18 years yet, (iii) other next relatives, provided that they have lived with the *de facto* refugee in the common household and they have been wholly or partly dependent on *de facto* refugee.

The Act on residence of foreigners Amendment²⁹, introduced a new term a “privileged foreigner”. A privileged foreigner is a foreigner, who is not a citizen of European Economic Area but he/she is a family member (e. g. spouse, relative in straight line, who is dependent on him/her) of citizen of EEA with the permanent residence on the territory of the Slovak Republic. The Act determines, that the police department grants the permit for permanent residence to such privileged foreigner if he/she does not endanger the national security or the public order.

Article 8. Protection of personal data

Protection of personal data (in general, right of access to data, to have them rectified and right to a remedy)

Legislative initiatives, national case law and practices of national authorities

General law, which regulates the personal data protection, is the *zákon na ochranu osobných údajov* [Personal Data Protection Act].³⁰ During 2004 the *Úrad na ochranu osobných údajov* [Office for personal data protection] drafted a quite extensive proposal of amendment to this act, which should harmonised the current law on personal data protection with the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. The amendment was supposed to come into force as of the day of accession of the Slovak Republic to the European Union. Due to serious defects in the prepared proposal, an advisory body of the government (*Legislatívna rada vlády* [Legislative Council of the Government]) returned the amendment to the Office for redrafting. At last, the proposal of amendment to the Act on personal data protection was submitted to the parliament in the end of September 2004. Because the serious defects in the proposal were not remedied (e.g. illegal exceptions from respecting the right on protection of personal data, considerable inner split of the proposal, inconsistency with the directive), the parliamentary *Ústavnoprávny výbor* [Constitutional and Legal Committee] proposed to return the proposal for repeated redrafting.

The amendment proposes to specify in detail several terms and to introduce new terms corresponding with the content of the Directive 95/46/EC, to specify and make transparent of basic duties of operators while processing personal data, to limit the registration of information systems in the context of straightening the position of written accredited competent person, to establish special registration for some risky processing operations, to specify in detail the procedure of acting and receiving of the notifications of natural bodies, to strengthen the independence of the Office and to establish the competence of the Office to examine. It suggests an exact transposition of the provisions of the Directive 95/46/EC concerning transborder personal data flow to third countries and the transfer of personal data between member States of the European Union.

²⁹ *Zákon č. 606/2003 Z. z., ktorým sa mení a dopĺňa zákon č. 48/2002 Z. z. o pobyte cudzincov* [Act No. 606/2003 Coll., amending and supplementing the Act No. 48/2002 Coll. on residence of foreigners].

³⁰ *Zákon č. 428/2002 Z. z. o ochrane osobných údajov v znení neskorších predpisov* [Act no. 428/2002 Coll. on personal data protection as amended].

Protection of the private life in the processing of medical data

Legislative initiatives, national case law and practices of national authorities

The health care provider is obliged to process, provide and make accessible the data from medical files in accordance with the *zákon o zdravotnej starostlivosti* [Health Care Act] and with the *zákon o ochrane osobných údajov* [Personal Data Protection Act]. The consent of person for processing, providing and disclosing of the data from medical files is not required under the conditions determined in the Health Care Act. The health care provider is obliged to store and protect medical files in such way, that the medical files could not be damaged, lost, destroyed or misused even during the storing of the files for 20 years after the death of the person concerned. The health care provider is obliged to ensure the access to the special medical files so no one except performing physician and needful number of medical staff may access to it.

The appendix of new Health Care Act contains the list of personal data, which the health care providers are authorised to gain and process, the purpose of their processing and the conditions of acquiring of data and the range of persons concerned.

Intelligence and security services

Legislative initiatives, national case law and practices of national authorities

Pursuant to the current wording of the Act on Police Corps, the police is authorized to process personal data disclosing racial or ethnic origin, political opinion, religious belief or philosophic conviction, membership in political parties or movements, membership in labour unions as well as personal data about health or sexual life (i.e. the special categories of personal data) *only if it is necessary because of the nature of the crime*.

The proposal of the amendment of the Act on Police Corps enhances the power of the police to process special categories of personal data. The police shall be authorised to process also the special categories of personal data *concerning persons, who are the members of certain community, and who have committed a crime*, if there is a *mass occurrence* of crimes committed by the *members of this community*. The similar authorisation should be granted also to the Railway Police Corps.

In connection with the use of false identity cards by the police, the proposal of the amendment of the Act on Police Corps suggests to authorise the police to build the cover story also by exploring the possibility to record and select necessary data using also the information systems of other legal persons or natural persons performing entrepreneurial activities. Up to now this authorisation of the police related only to information systems of state organs, public institutions and the authorities of self-governments.

Video surveillance in public fora

Reasons for concern

According to Section 10 paragraph 7 of the Personal Data Protection Act, an area open to public may be monitored with video-recording or audio-recording purely for the purposes of public order and security, detection of crime or violation of state security and only when the area is clearly marked as the monitored area. No marking of monitored area shall be required when laid down so in a separate law. The recording made can be used for the purposes of criminal proceedings or administrative proceedings unless a separate law provides otherwise.

In May 2000 a municipality police in Bratislava introduced a video surveillance in public areas, mainly in the Bratislava city centre, in operation. According to the publicly available information³¹, there are 26 video cameras used by municipality police for permanent surveillance in public areas in Bratislava at present. However, a number of areas where these video cameras are located, are not marked as monitored area at all, or they are not marked clearly enough, and therefore using the video surveillance in public areas, in our opinion, is in conflict with the Personal Data Protection Act.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

According to the *zákon o vysokých školách* [Act on higher education institutions],³² higher education institutions maintain register of their students. The amendment of the Act on higher education institutions³³, which came into force on 1 January 2004, established the central register of students of higher education institutions, which is maintained by the Ministry of Education. This central register merges the registers of individual higher education institutions. Together, the range of data eligible for processing by the higher education institution was extended.

The registers, except the data directly concerning the study³⁴, contain also these information about the students: first name, surname, titles, birth personal identification number, date of birth in case of foreigners, place of birth, marital status, place of permanent residence, sex, permanent address in the Slovak Republic, nationality, citizenship and an identity card number or a passport number in case of foreigners.

The register of students of higher education institution and the central register of students serve for registration of students for statistical and budgetary purposes. Higher education institutions must ensure personal data protection in accordance with the Personal Data Protection Act. Higher education institutions may provide the information from their register only to the third persons determined by the Act on higher education institutions. The law also determines range of provided information.

Reasons for concern

Police officials, when they verifying an identity of suspect, victim, or witness in criminal proceeding, they usually use standard forms containing a question about an affiliation of a person examined with a nationality. It is quite likely, that the information about affiliation of the examined person with Roma minority are gathered by the police on the basis of a physical appearance of persons concerned, not on persons' free affiliation with Roma minority.

³¹ odkaz na web site www.bratislava.sk

³² *Zákon č. 131/2002 Coll. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov*. [Act no. 131/2002 Coll. on higher education institutions as amended].

³³ *Zákon č. 528/2003 Z. z.* [Act no. 528/2003 Coll.].

³⁴ It regards the data concerning the registration for study, previous study, study program, registration for study in a higher class or in other part of study, granting the accommodation in students dormitory, granting the social scholarship, passed state exams and granted academic title, interruption of study, the end of study.

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

Marriage

Legislative initiatives, national case law and practices of national authorities

The new *Zákon o rodine* [Act on Family]³⁵ regulates the formation of marriage, circumstances impeding a marriage, relations between married couple, termination of marriage by death or by declaration of one spouse's death and divorce.

Marriage is defined as a union of a man and a woman. Marriage is contracted either before the Registry Office (a civil marriage) or before a body of a church or a religious society (a church marriage). Citizen of the Slovak Republic may contract a marriage also in abroad before competent body of the Slovak Republic. In comparison with the current legal regulation, the new Act on Family introduces new legal regulation of diriment impediments of marriage on the grounds of mental disorder. The Act explicitly states, that a person deprived of legal capacity, not even with the permit of the court, may not enter into the marriage.

The Act unlike the current legal regulation explicitly mentions reasons causing that the marriage may not be contracted (e. g. declaration of contracting marriage was coerced by force or it was made by a person younger than 16 years old).

Control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

According to the *zákon č. 48/2002 Z. z. o pobyte cudzincov v znení neskorších predpisov* [Act no. 48/2002 Coll. on residence of foreigners as amended], police authority may dismiss a foreigner's application for temporary stay or permanent residence on the territory of the Slovak Republic, if there is a justified suspicion that foreign citizen entered into marriage for the purpose of obtaining a permit to temporary or permanent stay. Police authority may cancel the permit to temporary or permanent stay if it appears that the foreigner contracted marriage for the purpose of obtaining a permit to temporary or permanent stay. With the effect from 1 May 2004 the same sanctions are applied also against a privileged foreigner³⁶, who entered into marriage with the aim of obtaining a permanent residence permit on the territory of the Slovak Republic.

If foreigner contracted marriage with the aim of obtaining a residency permit on the territory of the Slovak Republic, police department may expel him from the territory and he/she may be forbidden entrance to the territory of the Slovak Republic for up to 10 years. This rule does not apply to privileged foreigner.

Article 10. Freedom of thought, conscience and religion

Fight against sects

Reasons for concern

The Slovak law still does not contain any definition of the term "sect". However, as mentioned in the annual Report on the activity for the year 2003 of May 2004, the *Slovenská informačná služba* (SIS) [Slovak Intelligence Service] continues in monitoring of the

³⁵ The Act was approved on 10 December 2004, however the President has used his power to veto legislation and returned the Act back to Parliament for next adoption.

³⁶ Please, see comments to Article 7 regarding the legal definition of the term "privileged foreigner".

activities of “destructive and radical sects”, and has oriented its activities on the elimination of actions of these sects.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In 2004 the *ministerstvo spravodlivosti* [Ministry of Justice] has proposed a draft of Agreement between the Slovak Republic and the Holy See concerning the right to exercise conscientious objection. According to the Draft, the right to exercise conscientious objection shall relate mainly to up-bringing and educational activities, provision of legal services, employment, medical activities (euthanasia, sterilization, cloning, artificial inseminations, abortion), activity in armed forces and armed corps and activity connected with torture, genocide, war cruelty, etc.

Reasons for concern

Anti-Semitic attacks have upward tendencies in the Slovak Republic and they are mostly demonstrated through damage and demolition of tombs at Jewish cemeteries. Several such vandal acts have occurred in Slovakia during the period under review.³⁷ Most of the offenders are of juvenile age (e. g. three juvenile offenders were convicted for damaging Jewish cemetery in April 2004).

Article 11. Freedom of expression and of information

Freedom of expression and information (in general)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In case of *Hrico v. Slovakia*³⁸ the European Court of Human Rights found the violation of Article 10 of the ECHR. Although the Eur. Ct. H. R. admitted that the concerned articles criticising the judge of the Supreme Court “were strong”, it recalled its constant case law to the effect not only that the protection of the Article 10 extends to opinion, which may shock or offend but that journalistic freedom covers possible recourse to a degree of exaggeration.

Legislative initiatives, national case law and practices of national authorities

Ústavný súd Slovenskej republiky [Constitutional Court of the Slovak Republic] in its *nález* [ruling] ref. no. III. ÚS 169/03 of 19 December 2003 declared violation of the fundamental right to receive and disseminate ideas and information freely by means of tape recorder guaranteed by the Article 26 paragraphs 1 and 2 of the Slovak Constitution³⁹ and by the Article 10 paragraph 1 of the ECHR. Judge of *okresný súd* [District Court] during the

³⁷ For instance, in June 2004 Jewish cemetery in town Zvolen have been repeatedly damaged; Jewish tombs were damaged also in other towns, namely Vranov nad Topľou and Púchov during the period under review.

³⁸ Eur. Ct. H. R. (4th sect.), *Hrico v. Slovakia* (Application no. 49418/99) judgement of 20 July 2004 (final).

³⁹ Pursuant to Article 26 paragraph 1 of the Slovak Constitution, freedom of expression and the right to information shall be guaranteed. The second paragraph of this article provides, that 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. A law shall lay down the conditions.

announcement of the judgement ordered the applicant, who was present at the hearing as a public, to switch off the tape recorder, respectively the judge conditioned the use of tape recorder at the hearing by his prior approval, and thus disabled the applicant to make records from the public announcement of the judgement.

The Constitutional Court, in its *nález* [ruling] ref. no. I. ÚS 59/04 of 24 June 2004, decided that the fundamental right of non-governmental organisation GREENPEACE Slovakia to receive information freely as guaranteed by the Article 26 paragraph 2 of the Slovak Constitution had been violated by the judgement of the *Najvyšší súd* [Supreme Court]. The GREENPEACE Slovakia requested the *Úrad jadrového dozoru Slovenskej republiky* [Office for oversight of nuclear power stations of the Slovak Republic] to provide information concerning nuclear power station in Jaslovské Bohunice. The Office provided only a part of requested information arguing that the rest was protected by the trade secret and therefore might not be released. The Constitutional Court pointed out, *inter alia*, that the Supreme Court had failed to ascertain number of facts in accordance with the *zákon o slobode informácií* [Freedom of Information Act]⁴⁰, and thus the judgment of Supreme Court must be considered arbitrary and inconsistent with the Article 46 paragraph 2 of the Slovak Constitution.⁴¹

Documentary film directed by Dušan Hudec entitled „*Miluj bližneho svojho*“ [„Love your neighbour“] concerning the slaughtering of Jewish people in Topoľčany⁴² in 1945, induced unprecedented reactions. The General Director of the public *Slovenská televízia* [Slovak Television] (STV) had denied broadcasting the film arguing that the film contained one authentic statement⁴³ pronounced by inhabitant of Topoľčany that might have been inconsistent with the *Zákon o vysielaní a retransmisii* [Act on broadcasting and retransmission]⁴⁴. The General Director of STV conditioned the broadcasting of the film by cutting out the controversial statement, what was however refused by the director of the film. Only after the strong public protests⁴⁵ against the method of censorship of STV management, the film was broadcasted finally, but not as a single evening movie, as it had been initially planned in the program, but as a part of the discussion debate focused on the content of the film.

Reasons for concern

The Slovak Republic has been listed among the top eight countries⁴⁶ with the greatest press freedom in the third annual worldwide index of press freedom announced by the Reporters

⁴⁰ *Zákon č. 211/2000 Z. z. o slobodnom prístupe k informáciám Act on free access to information (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 (Freedom of Information Act)]

⁴¹ Article 46 paragraph 2 of the Slovak Constitution provides, that any person who claims his or her rights to have been denied by a decision of a body of public administration may come to court to have the legality of the decision reviewed, save otherwise provided by a law. The review of decisions in matters regarding the fundamental rights and freedoms however shall not be excluded from the jurisdiction of courts.

⁴² Town located in a western part of the Slovak Republic.

⁴³ The controversial statement was the following: “*Jews, Gipsies, that is the worst ragtag under the Sun, remember, there will not be an order in the world, until they would exist.*”.

⁴⁴ *Zákon č. 308/2000 o vysielaní a retransmisii v znení neskorších predpisov* [Act no. 308/2000 Coll. on broadcasting and retransmission as amended].

⁴⁵ The Central Union of Jewish Religious Communities in the Slovak Republic (*Ústredný zväz židovských náboženských obcí v Slovenskej republike*) had also officially protested against the prohibition of broadcasting the documentary movie.

⁴⁶ The other seven countries on the top of the list with the same index rates 0.50 as the Slovak Republic are Denmark, Finland, Iceland, Ireland, Netherlands, Norway, and Switzerland.

without Borders for the year 2004.⁴⁷ Freedom of media and of information is quite well respected by public authorities in the Slovak Republic during the last couple of years.

However, since the Slovak Republic is still in the process of building the rule of law⁴⁸, it seems that media is easily abusing the freedom of expression and of information for commercial and other individual or group interests. The media, both printed and electronic ones, have often been used with the aim to damage someone's character and reputation in a broad public, and *the law in practice* in the Slovak Republic provides almost no effective means for protection of libelled person. Therefore it is recommended to the Slovak Republic to adopt a new law on periodic press and other mass media, which would, *inter alia*, expressly and clearly lay down limits of the press (media) freedom and sanctions for infringements of these limits as well as rules concerning professional and ethical conduct of journalists. In our view, unlimited, or rather vaguely limited freedom of the press (media), especially in the era of information society, represents at least the same danger to the democratic society as the lack of press (media) freedom, and it is inconsistent with the rule of law.

Media pluralism and fair treatment of the information by the media

Legislative initiatives, national case law and practices of national authorities

The *Rada pre rozhlasové a televízne vysielanie* [Council for Broadcasting and Retransmission]⁴⁹ imposed a sanction on several broadcasting providers for breach of law in form of "warning on breach of law" regarding the broadcasting during the election campaign before the elections to the European Parliament.⁵⁰ The providers concerned during the period of the election campaign (23 May – 10 June 2004) did not provide for neutrality and balance of news and publicist programmes as determined by the *zákon o voľbách do Európskeho parlamentu* [Act no. 331/2003 Coll. on Elections to the European Parliament]⁵¹.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

According to the Act no. 178/2004 Coll.⁵² which amends the *zákon o Slovenskej informačnej službe* [Act on Slovak Information Service]⁵³ and *zákon o Vojenskom spravodajstve* [Act on

⁴⁷ http://www.rsrf.org/article.php3?id_article=11715

⁴⁸ For instance, press publishing conditions are laid down in the Act on periodic press of 1966 (*Zákon č. 81/1966 Zb. o periodickej tlači a ostatných hromadných informačných prostriedkoch v znení neskorších predpisov* [Act no. 81/1966 Coll. on periodic press and on other mass media as amended]) which is evidently out-of-date and stipulates limits of the press freedom in rather general and unintelligible terms. In our opinion, there is lack of enforceable legal as well as ethical rules, which would govern professional conduct of journalists in the media, mainly the printed ones.

⁴⁹ The Council for Broadcasting and Retransmission is pursuant to the *zákon č. 308/2000 Z. z. o vysielaní a retransmisii v znení neskorších predpisov* [Act no. 308/2000 Coll. on broadcasting and retransmission as amended] the state administrative organ in the area of broadcasting and retransmission.

⁵⁰ *Zápisnica č. 21/2004 zo zasadnutia Rady pre vysielanie a retransmisii zo 7. decembra 2004* [Proceedings no. 21/2004 of the Council for Broadcasting and Retransmission session of 7 December 2004].

⁵¹ *Zákon č. 331/2003 Z. z. o voľbách do Európskeho parlamentu* [Act no. 331/2003 Coll. on Elections to the European Parliament].

⁵² *Zákon č. 178/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 46/1993 Z. z. o Slovenskej informačnej službe v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 178/2004 Coll. on amendments and modifications of Act no. 46/1993 Coll. on Slovak Intelligence Service as amended and on amendments and modifications of certain other laws].

⁵³ *Zákon č. 46/1993 Z. z. o Slovenskej informačnej službe v znení neskorších predpisov* [Act no. 46/1993 Coll. on Slovak Intelligence Service as amended].

Military Intelligence]⁵⁴, which came into force on 1 May 2004, a member of armed security force⁵⁵, publisher of the periodic press, operator of another mass media, general editor, editor, moderator, employee or contributor of the periodic press or another mass media may not act for the benefit of Slovak Intelligence Service and Military Intelligence. The head of the *Bezpečnostná rada Slovenskej republiky* [Security Council of the Slovak Republic] - the prime minister - may decide on exemption from this rule on behalf of the protection of the constitutional establishment, domestic order and state security or intelligence security of the Slovak Republic.

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

Legislative initiatives, national case law and practices of national authorities

The *Ústavný súd Slovenskej republiky* [Constitutional Court of Slovak Republic] in its *nález* [ruling] ref. no. I. ÚS 193/03 of 30 April 2004 ruled that the right of the concerned association to peaceful assembly guaranteed by the Article 28 of the Slovak Constitution and by the Article 11 of ECHR had been violated. The applicant had organized a cycling march in the city centre of Bratislava and participants of this march had been blocking public streets for a while. The applicant was subsequently fined for an administrative (minor) offence for the use of public streets without prior permit granted by the competent authority in accordance with the *Cestný zákon* [Traffic Act (Act no. 135/1961 Coll. as amended)]. The Constitutional Court pointed out, *inter alia*, that since the Slovak Constitution explicitly provides that a peaceful assembly may not be subject to a permission of a body of public administration, the applicant's right to peaceful assembly should not be subject to permission and subsequently the applicant should not be sanctioned for applying the constitutional right.

Freedom of political association

Legislative initiatives, national case law and practices of national authorities

The Government of the Slovak Republic worked out a proposal of a new *Zákon o politických stranách a politických hnutiach* [Act on political parties and political movements] (hereinafter referred to as the "new Act on political parties") and has submitted it to the Parliament for adoption. According to the explanatory report to the new Act on political parties, the impulse for preparation of the draft law was Parliamentary Resolution no. 213 of 6 March 2003 adopted as a reaction to the proposal of the group of members of the Parliament concerning serious suspicions about existence of corruption in the political system of the Slovak Republic. The new Act on political parties shall abrogate and replace current *o združovaní v politických stranách a v politických hnutiach* [on association within political parties and political movements]⁵⁶ and *zákon o obmedzení výdavkov politických strán a hnutí na propagáciu pred voľbami do Národnej rady Slovenskej republiky* [Act on limitation of expenses of political parties and political movements for their promotion before election to the National Council of the Slovak Republic]⁵⁷.

⁵⁴ Zákon č. 198/1994 Z. z. o Vojenskom spravodajstve v znení neskorších predpisov [Act on Military Intelligence as amended].

⁵⁵ Police Corps, Corps of Judicial and Prison Guard, Railway Police.

⁵⁶ Zákon č. 424/1991 Zb. o združovaní v politických stranách a v politických hnutiach v znení neskorších predpisov [Act no. 424/1991 Coll. on association within political parties and political movements as amended].

⁵⁷ Zákon č. 239/1994 Z. z. o obmedzení výdavkov politických strán a hnutí na propagáciu pred voľbami do Národnej rady Slovenskej republiky [Act no. 239/1994 Coll. on limitation of expenses of political

The proposal of new law shall regulate the following two main areas: i) establishment, registration, and dissolution of political parties and movements as legal entities, registry of political parties and movements, rights and duties of political parties and movements in connection with their establishment, registration, and dissolution, as well as sanctions for failure to meet statutory duties; ii) financing and management of property, contributions from state budget, rights and obligations concerning management of property and financing of political parties and movements, with the accent on transparency and legality of their incomes and expenses, as well as sanctions for failure to meet statutory duties.

One of the main changes concerning promotion of political parties and political movements before election to the Parliament is that the new Act on political parties, unlike the Act on limitation of expenses of political parties and political movements for their promotion before election to the National Council of the Slovak Republic, makes no restrictions as regards financial means that may be used by political parties or movements for their promotion before the elections.⁵⁸

Freedom of association for trade unions

Legislative initiatives, national case law and practices of national authorities

According to the Labour Code Amendment⁵⁹, which came into force on 1 July 2004, employer is obliged to treat with employees in employment relationships in accordance with the principle of equal treatment. Similarly, in accordance with this principle, any discrimination on the ground of involvement in trade union activities is prohibited too.

Article 13. Freedom of the arts and sciences

Freedom of the arts

Reasons for concern

As already mentioned in comments concerning the Article 11, documentary film directed by Dušan Hudec entitled "Miluj bližneho svojho" ["Love your neighbour"] concerning the slaughtering of Jewish people in Topoľčany⁶⁰ in 1945, induced unprecedented reactions. The General Director of the public Slovak Television (STV) had denied broadcasting the film arguing that the film contained one authentic statement⁶¹ pronounced by inhabitant of Topoľčany that might have been inconsistent with the *Zákon o vysielaní a retransmisii* [Act on broadcasting and retransmission]⁶². The General Director of STV conditioned the broadcasting of the film by cutting out the controversial statement, what was however refused

parties and political movements for their promotion before election to the National Council of the Slovak Republic as amended].

⁵⁸ Pursuant to the Section 3 of the Act no. 239/1994 Coll. on limitation of expenses of political parties and political movements for their promotion before election to the National Council of the Slovak Republic as amended, each political party and/or movement may spend for its promotion before election to the National Council not more than 12 million SKK, including VAT (app. 312 000 EUR).

⁵⁹ *Zákon č. 365/2004 Z. z. rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)* [Act no. 365/2004 Coll. on Equal treatment in Certain Areas and Protection against Discrimination and on amendments and modifications of certain other laws (Anti-discrimination Act)].

⁶⁰ Town located in a western part of the Slovak Republic.

⁶¹ The controversial statement was the following: "Jews, Gipsies, that is the worst ragtag under the Sun, remember, there will not be an order in the world, until they would exist."

⁶² *Zákon č. 308/2000 o vysielaní a retransmisii v znení neskorších predpisov* [Act no. 308/2000 Coll. on broadcasting and retransmission as amended].

by the director of the film. Only after the strong public protests⁶³ against the method of censorship of STV management, the film was broadcasted finally, but not as a single evening movie, as it had been initially planned in the program, but as a part of the discussion debate focused on the content of the film.

Freedom of research

Legislative initiatives, national case law and practices of national authorities

The law of the Slovak Republic prohibits both reproductive cloning as well as therapeutic cloning. Prohibition of cloning was originally covered also in the *zákon o zdravotnej starostlivosti* [Health Care Act], but the respective provision has been for its duplicity abrogated and the prohibition of cloning is currently covered only by the Criminal Code.⁶⁴

Academic freedom

Positive aspects

A new amendment to the *Zákon o vysokých školách* [Act on higher education institutions]⁶⁵, which entered into force on 1 January 2004, specifies in detail the academic freedom concerning free expressions of ideas and opinions. While the previous regulation had guaranteed only “*the right to study besides respecting free expression of opinions during education*”, the current wording of the Act on higher education institutions expressly provides the right to express and disseminate ideas and opinions freely as an individual academic right.

Article 14. Right to education

Access to education

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations⁶⁶ welcomes the extensive measures adopted by the Slovak Republic in the field of education aimed at improving the situation of Roma children, including the “Roma assistants” project, however it continues to express concern at *de facto* segregation of Roma children in special schools, including special remedial classes for mentally disabled children.

The Committee recommends the Slovak Republic to prevent and avoid the segregation of Roma children, while keeping open the possibility of bilingual or mother tongue education. The Committee further recommends the Slovak Republic to intensify its efforts to raise the level of achievement in school by Roma children, recruit additional school personnel from among members of Roma communities and promote intercultural education.

⁶³ The Central Union of Jewish Religious Communities in the Slovak Republic (*Ústredný zväz židovských náboženských obcí v Slovenskej republike*) had also officially protested against the prohibition of broadcasting the documentary movie.

⁶⁴ According to the Section 246a of the *Trestný zákon* [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*”.

⁶⁵ *Zákon č. 528/2003, ktorým sa mení a dopĺňa zákon č. 131/2002 Coll. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov*. [Act no. 528/2003 Coll., which amends Act no. 131/2002 Coll. on higher education institutions as amended].

⁶⁶ CERD/C/65/CO/7, point 8.

The European Monitoring Centre on Racism and Xenophobia in its Annual Report⁶⁷ notes that although the European Charter for Regional and Minority Languages, to which the Slovak Republic acceded in 2001, covers the Romany language, the right to education in Romany is still not exercised. The issue of placing Roma children in special schools in many cases leads to segregated “Roma schools” or “Roma classes”, which negatively affects their further education. The European Monitoring Centre on Racism and Xenophobia notes that the Roma children often enter into compulsory schooling badly prepared. Pre-school education is a way how to prepare Roma children for schooling, but since it is not compulsory, their attendance is rapidly decreasing.

According to the Annual Report of the European Monitoring Centre on Racism and Xenophobia, the most important measures adopted by the Slovak Government in 2003 in the field of minority education were aimed at enhancing equality of Roma children’s education and ensuring an equal access to education for all children. Roma assistant teachers act as mediators between the local Roma communities and the schools in order to equalize the chances of Roma pupils.

The European Monitoring Centre on Racism and Xenophobia in its Annual Report welcomes the project “Education and Assistance to Teachers in Areas of Cultural Ethnic Diversity”, which brings together schools and the state Pedagogical Institute in order to address educational problems of children from various ethnic groups. The Centre also welcomes that the Slovak Republic has adopted anti-discrimination legislation.

Legislative initiatives, national case law and practices of national authorities

On 13 May 2004 the Slovak Republic has signed the Agreement on Catholic Education with the Holy See. The Parliament by its Resolution no. 719 of 20 January 2004 affirmed the Agreement and at the same time decided that, the Agreement should be considered as an international agreement, which according to the Article 7 paragraph 5 of the Slovak Constitution has priority over the laws of the Slovak Republic. On 4 June 2004 the President of the Slovak Republic ratified the Agreement and it came into force on 9 June 2004⁶⁸.

On 13 May 2004 the Slovak Republic concluded the Agreement on Religious Education⁶⁹ with eleven registered churches and religious societies. The Agreement is open for the accession of other churches and religious societies registered in accordance with the law of the Slovak Republic.

Registered churches and religious societies may establish and administer all types of schools and educational institutions in accordance with the conditions set out in the Slovak law. The state provides church schools with financial support in the same extent as any schools of other type. The education obtained in church schools and private schools is equivalent to that obtained at public schools. The subject entitled “religious education” is among compulsory optional subjects at primary and secondary schools in the Slovak Republic. It means, that pupils at primary and secondary schools have the possibility to choose either class on religious education or class on ethics, as the alternative.

⁶⁷ Racism and Xenophobia in the EU Member States trends, developments and good practice, EUMC-Annual Report 2003/2004, Part 2.

⁶⁸ *Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 394/2004 Z. z. o uzavretí Zmluvy medzi Slovenskou republikou a Svätou stolicou o katolíckej výchove a vzdelávaní*. [Announcement of the Ministry of Foreign Affairs no. 394/2004 Coll. on conclusion of the Agreement on Catholic Education between the Slovak Republic and the Holy See].

⁶⁹ *Dohoda medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami o náboženskej výchove a vzdelávaní č. 395/2004 Z. z.* [Agreement on Religious Education between the Slovak Republic and registered churches and religious societies no. 395/2004 Coll.].

The Anti-discrimination Act has amended the *školský zákon* [School Act]⁷⁰. With the effect from 1 July 2004, the rights guaranteed by the School Act are equally ensured to all pupils in accordance with the principle of equal treatment in education. The amendment enhanced the opportunities of pupils with special educational needs to access to education by introducing the forms of school integration of pupils with special learning and educational needs⁷¹ in primary and secondary schools.

School integration is an education of pupils with special up-bringing and educational needs in all types of schools specified by the School Act (e. g. primary schools, secondary schools, interest education schools) apart from the special schools. The Act establishes two forms of school integration: integration in special classrooms (pupils with special educational needs learn in special classrooms) and individual integration (pupils with special educational needs are integrated in the classroom with other pupils). The curriculum of the education of such integrated pupils is based on teaching schemes for special schools for pupils with mental disabilities. Each integrated pupil must to have individual educational program, which is prepared and continuously added by the master teacher of his/her classroom. The decision about pupil's admittance to school integration in primary or secondary school makes the director of the school. Prior to admittance, the director should, according to the law, create conditions for integrated education of this pupil, provide for arrangement of classroom and school including equipment with compensating aids and ensure the access to these compensating aids and the appropriate rooms for storing them.

According to the School Act, a pupil with special educational needs has the right to individual approach in education in accordance with his/her abilities and state of health, the right to education performed by teacher with knowing and pedagogical qualification, the right to education in safe and healthy environment, the right to respect for his/her person, and the right to protection against physical and mental violence.

The *zákon č. 597/2003 Z. z. o financovaní základných škôl, stredných škôl a školských zariadení* [Act on funding of the basic schools, secondary schools and school institutions]⁷² with the effect from 1 January 2004 introduced education vouchers. The education voucher is a special annual contribution of state to interest education of pupil of primary or secondary school. Education vouchers are issued to pupils by primary and secondary schools. Pupils can choose which out of school activity centre they want to attend and consequently they will deliver the voucher there. In 2004 the voucher cost was 75 SKK (app. 2 EUR) per month.

On 20 April 2004 the Ministry of Labour, Social Affairs and Family issued the Decree no. 1757/04-II/1, which, *inter alia*, regulates the subsidies on food and school aids for children in material distress. The decree came into force on 1 May 2004. Among the tools supporting the access to education for children from low-income families belongs also social scholarships for students of secondary and special schools whose parents are on benefit.

Since January 2004 the parents of primary school pupils have the right for reimbursement of travel costs of those pupils, who must travel to school in another village of common school

⁷⁰ *Zákon č. 29/1984 Zb. o sústave základných a stredných škôl (školský zákon) v znení neskorších predpisov* [Act no. 29/1984 Coll. on system of the basic school and secondary schools (school act) as amended].

⁷¹ According to the School Act a term "pupil with special up-bringing and educational needs" involves pupil with mental or physical disability, hearing or visual impairment, ill pupil or pupil with weak health, pupil with communication impairment, pupil with autism, pupil with learning or behavioural defects or pupil with a serious mental disability placed in social care home.

⁷² *Zákon č. 597/2003 Z. z. o financovaní základných škôl, stredných škôl a školských zariadení* [Act no. 597/2003 Coll. on funding of the basic schools, secondary schools and school institutions].

district because there is no school in the place of their permanent residence. Pupil's travel costs to school are paid in height of price for public transport if the transport of pupils is not supplied otherwise.⁷³

The Government of the Slovak Republic approved⁷⁴ the *Koncepcia integrovaného vzdelávania rómskych detí a mládeže, vrátane rozvoja stredoškolského a vysokoškolského vzdelávania* [Conception of Roma Children and Young People Integrated Education Including Secondary and University Education Development]. The conception focuses on human development with the emphasis on Roma community in these basic levels: (i) preparation of teacher, teacher's assistant, tutor etc. (ii) creation of textbooks, methodical handbooks for teachers, provision of teaching aids and other material necessary for up-bringing and educational process and parent awareness, and (iii) curriculum transformation providing the change of one-way orientation towards material education aimed at transmission of the largest amount of curriculum, towards formal education that is aimed at integrated development of a pupil's personality, while accepting their individual particularities and needs, with orientation to development of basic competencies.

In 2003 the *ministerstvo školstva* [Ministry of Education] had prepared a draft of amendment to the Act on higher education institutions⁷⁵ introducing tuition fees for students of higher education institutions. The Parliament has refused to adopt the proposal and therefore education at higher education institutions, including universities, is still free of charge in the Slovak Republic.

Reasons for concern

Last official statistics on gender and on the highest degree of the schooling relating to the inhabitants* living on the territory of the Slovak Republic carried out in 2001⁷⁶:

Highest degree of schooling	Women	Men	Altogether
Primary	416 682	716 313	1 132 995
Vocational (without graduation)	660 235	400 619	1 060 854
Secondary professional (without graduation)	108 561	94 729	203 290
Complete secondary vocational (with graduation)	159 203	92 789	251 992
Complete secondary professional (with graduation)	332 471	513 558	846 029
Complete secondary - general	89 399	164 009	253 408
Higher	13 363	13 285	26 648
Bachelor	8 239	9 678	17 917
Magister, engineer, doctor	206 220	175 793	382 013
Postgradual	14 460	8 934	23 394
Academic education together	228 919	194 405	423 324
Others not presenting the degree of schooling	43 452	42 081	85 533
Others without schooling	7 055	8 474	15 529

* Total number of inhabitants of the Slovak Republic as of census 2001 was 5 379 455 (51,4% of which were women).

⁷³ Zákon č. 596/2003 Z. z. o štátnej správe v školstve a školskej samospráve a o zmene a doplnení niektorých zákonov [Act no. 596/2003 Coll. on school state service and school self-administration and on amendments and modifications of certain other laws].

⁷⁴ Uznesenie vlády č. 498/2004 z 26. mája 2004 [Governmental Resolution no. 498/2004 from 26 May 2004].

⁷⁵ Zákon č. 131/2002 Z. z. o vysokých školách v znení neskorších predpisov [Act no. 131/2002 Coll. on higher education institutions as amended].

⁷⁶ The census was carried out under the zákon 165/1998 Z. z. o sčítaní obyvateľov, domov a bytov v roku 2001 [Act no. 165/1998 Coll. of Laws on census of inhabitants, houses, and apartments in the year 2001].

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

The right for nationals from other member States to seek an employment, to establish himself or to provide services

Legislative initiatives, national case law and practices of national authorities

In December 2003, the Parliament adopted the *zákon o službách zamestnanosti* [Act on employment services]⁷⁷. According to this Act, the citizen of the Slovak Republic has the right to choose employment on the whole territory of the Slovak Republic, or he/she may secure employment abroad. A national from other member State of the European Union and his/her relatives have the same legal status under the Act on employment services as a national of the Slovak Republic. The same applies to non-EU nationals provided that he/she has been granted temporary residence and employment permits. Pursuant to the Act on employment services, an employer, which has its residence on the territory of the Slovak Republic, may employ a third country national provided that he/she has been granted a temporary residence and employment permits by the competent authority.

Reasons for concern

The Slovak Republic has not signed the European Convention of Legal status of Migrant Workers.

Pursuant to the statistical overview worked out by the *Ústredie práce, sociálnych vecí a rodiny* [Centre of Labour, Social Affairs and Family], there are (period from 1 January 2004 up to the end of September 2004) the following statistics regarding the employment rate of foreigners and stateless persons in the Slovak Republic:

- number of foreigners and stateless persons applying for employment permit: 1634,
- number of foreigners and stateless persons who acquired the employment permit: 1522,
- number of valid employment permits issued for foreigners and stateless persons: 2094,
- number of employment permits issued for employment by Slovak employer: 1745,
- number of employment permits issued for employment by foreign employer: 349.

Professional prohibitions and the conditions of access to certain professions

Legislative initiatives, national case law and practices of national authorities

The Government of the Slovak Republic approved⁷⁸ the principles of amendments of the acts regulating professional associations. The principles also relate to the regulation of access to professions. According to these principles, the professional associations may not restrict the freedom to conduct a business and business competition and to restrain the access of new subjects to certain professions. The *numerus clausus* principle is inadmissible.

The Ministry of Justice has prepared the *Notársky poriadok* [Notarial Code]⁷⁹ Amendment, which abolishes the *numerus clausus* principle-limited number of the notary's offices. The Parliament has not approved it. Therefore the Minister of Justice has increased the number of notary's offices about 222 new notary's offices.

⁷⁷ *Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov* [Act no. 5/2004 Coll. on employment services and on amendments and modifications of certain other laws].

⁷⁸ *Uznesenie vlády č. 830/2003 z 3. septembra 2003* [Governmental Resolution no. 830/2003 of 3. September 2003].

⁷⁹ *Zákon č. 323/1992 Zb. o notároch a notárskej činnosti (Notársky poriadok)* [Act no. 323/1992 Coll. on Notaries and Notary Activities (Notarial Code)].

According to the *zákon o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justičnej stráže Slovenskej republiky a Železničnej polície* [Act on state service of members of the Police Corps, Slovak Information Service, Corps of Judicial and Prison Guard and Railway Police]⁸⁰ Amendment⁸¹, which came into force on 1 May 2004, member of Police Corps, Slovak Intelligence Service, National Security Authority, Corps of Judicial and Prison Guard, Railway Police who works under secrecy may not, at the same time, being engaged in the other service office or become a member of the Military Intelligence under the Act on Military Intelligence.

The prohibition of any form of discrimination in the access to employment

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations⁸² recognizes the efforts made in the field of employment – including the recent adoption of the amended Labour Code, which prohibits discrimination in its section 13 – however the Committee is alarmed by *de facto* discrimination against Roma as well as by the very high rate of unemployment among members of the Roma community.

The Committee recommends that the legislation prohibiting discrimination in employment and all discriminatory practices in the labour market should be fully implemented in practice and that further measures should be taken, in particular by focusing on professional training, to reduce unemployment among the Roma community.

Positive aspects

According to the *zákon o službách zamestnanosti* [Act on employment services]⁸³, the employer must not advertise job offers which would contain any restrictions and discrimination based on race, colour of skin, gender, age, language, belief and religion, disability, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage, marital status and family status. While selecting employees, the employer must not request information related to nationality, racial or ethnic origin, political conviction, trade union membership, religion, sexual orientation, information that is in disagreement with good morals, and personal data not required for fulfilling employers' duties, as specified by special legislation.

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

The Act on employment services determines certain groups of foreigners for which the issuance of work permit is not required, like foreigners granted asylum and foreigners granted

⁸⁰ *Zákon č. 73/1998 Z. z. o štátnej službe príslušníkov Policajného zboru, Slovenskej informačnej služby, Zboru väzenskej a justičnej stráže Slovenskej republiky a Železničnej polície v znení neskorších predpisov* [Act no. 312/2001 Coll. Act on state service of members of the Police Corps, Slovak Information Service, Corps of Judicial and Prison Guard and Railway Police as amended].

⁸¹ *Zákon č. 178/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 46/1993 Z. z. o Slovenskej informačnej službe v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 178/2004 Coll. on amendments and modifications of Act no. 46/1993 Coll. on Slovak Intelligence Service as amended and on amendments and modifications of certain other laws].

⁸² CERD/C/65/CO/7, point 9.

⁸³ *Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov* [Act no. 5/2004 Coll. on employment services and on amendments and modifications of certain other laws].

temporary shelter. Competent authority may not issue a work permit to the foreigner who applies for asylum.

The current regulation does not allow asylum-seeker to work or to carry out business until the decision on granting asylum comes into effect. The new Act on Asylum Amendment, which will come into force on 1 February 2005, allows asylum-seeker to enter employment 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, excepting the case that the application on granting asylum has been rejected as inadmissible or as evident unfounded. However, the Act on Asylum Amendment does not allow the applicant to carry out business in any way until the decision on granting asylum comes into effect.

Freedom to choose an occupation

Legislative initiatives, national case law and practices of national authorities

According to the *zákon o službách zamestnanosti* [Act on employment services]⁸⁴, which entered into force on 1 February 2004, a job seeker who is registered in the Registry of unemployed persons is obliged, *inter alia*, to search for the appropriate occupation actively and be able to demonstrate that he/she seeks for a job. Job seeker is also obliged to appear in person in the *úrad práce* [Labour Office] regularly (at least once every 7 or 14 days or once a month, depending on the length of unemployment of individual job seeker) for the purpose of co-operation and demonstration that he/she is seeking for a job. The law stipulates that the registered unemployed person will be deleted from the Registry of unemployed persons provided, that he/she fails in co-operation with the Labour Office without any serious personal or family reasons. The failing to co-operate includes, for example, refusal to accept appropriate job offer⁸⁵, non-appearance in person in the Labour Office regularly, inability to demonstrate regular seeking for a job. Pursuant to the provisions of the *zákon o sociálnom poistení* [Social Insurance Act],⁸⁶ the entitlement to unemployment benefits expires when the unemployed person is deleted from the Registry of unemployed persons. The previously registered unemployed person may be registered in the Registry of unemployed persons once again after expiration of the period of six months from the date the unemployed person was deleted from it.

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2003, the duty to demonstrate regular seeking for a job causes considerable problems to unemployed job seekers in practice, since 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.

⁸⁴ *Zákon č. 5/2004 Z. z. o službách zamestnanosti* [Act no. 5/2004 Coll. on employment services].

⁸⁵ According to the paragraph 15 section 1 of the Act on employment services, appropriate job offer is an employment that takes in account the state of health, qualification and professional skills of the citizen, and considers the nature of recently performed work.

⁸⁶ *Zákon č. 461/2003 Z. z. o sociálnom poistení* [Act no. 461/2003 Coll. on social insurance].

Article 16. Freedom to conduct a business

Freedom to conduct a business

Positive aspects

The *zákon o obchodnom registri* [Act on Commercial Registry]⁸⁷, which came into force on 1 February 2004, regulates new system of Commercial Registry administration. The Act simplifies and accelerates the process of entering a record of the undertaking into the Commercial Registry. The Act implements motions forms for entering a record of the company 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. The court must enter a record into the Commercial Registry within 5 working days from the date of filing motion. These changes substantially accelerated and simplified the process of registration.

Article 17. Right to property

The right to property and the restrictions to this right

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The Eur. Ct. H. R. delivered its judgment in the case of *Kopecký v. Slovakia*⁸⁸, in which it found (holding by four votes to three) the violation of the Article 1 of Protocol no. 1 to the ECHR.

On 4 April 2003 the Government of the Slovak Republic requested the Eur. Ct. H. R. that the case to be referred to the Grand Chamber in accordance with the Article 43 of the ECHR and the Rule 73 of the Rules of the ECHR, for in the Government's view the case brought about serious questions regarding the interpretation and application of the ECHR and the Protocols thereto and at the same time it also raised material questions of general meaning. The Panel of the Grand Chamber accepted this request on 21 May 2003.

The Grand Chamber of the Eur. Ct. H. R. in its judgement of 28 September 2004 holding by thirteen votes to four reversed the judgement of 7 January 2003 and declared non-violation of Article 1 of Protocol no. 1 to the ECHR. The Grand Chamber reiterated that the ECHR imposes no specific obligation on the Contracting States to provide redress for wrongs or damage caused prior to their ratification of the Convention. Similarly, Article 1 of Protocol no. 1 cannot be interpreted as restricting the freedom of the Contracting States to choose the conditions under which they agree to return property, which had been transferred to them before they ratified the Convention. The fact that the scope of restitution under the Extra-Judicial Rehabilitations Act 1991 is limited and that restitution of property is subject to a number of conditions does not therefore, as such, infringe the applicant's rights under the Article 1 of Protocol no. 1. The Grand Chamber concluded, that the applicant had no "possessions" within the meaning of the first sentence of Article 1 of Protocol no. 1 to the ECHR.

In case of *Valová, Slezák, and Slezák v. Slovakia*⁸⁹ the Eur. Ct. H. R. found the violation of Article 1 of Protocol no. 1 of the ECHR. The Court concluded, that the decision of Slovak

⁸⁷ *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 certain other laws].

⁸⁸ Eur. Ct. H. R. (4th sect.), *Kopecký v. Slovakia* (Application no. 44912/98) judgement of 7 January 2003 (referred to the Grand Chamber of the Eur. Ct. H. R.).

authorities to reopen original restitution proceedings could not be regarded as having been “subject to the conditions provided by law”, and therefore there had been a violation of Article 1 of Protocol no. 1 of the ECHR.

Legislative initiatives, national case law and practices of national authorities

In October 2003 the Parliament approved the *zákon o navrátení vlastnictva k pozemkom* [Act on restitution of the ownership of lands]⁹⁰, which came into force on 1 January 2004. This Act regulates the restitution of the ownership of lands, which had not been restituted in accordance with the *zákon o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku* [Act on regulation of the ownership of agricultural land and other agricultural property]⁹¹. The Act on restitution of the ownership of lands relates only to lands, which constitute the agricultural lands, and forest lands. According to this law, the beneficiaries had to assert their claims for the restitution by the end of the year 2004 otherwise their right for the restitution was to be extinguished.

In September 2004 the Parliament approved the *zákon o navrátení vlastnictva k niektorému nehnuteľnému majetku cirkvám a náboženským spoločnostiam* [Act on restitution of the ownership of some real estates to the churches and religious societies]. The Act regulates the restitution of the ownership of real estates, which has not been restituted to the churches and religious societies according to the special law in the past. The immovable properties that are restituted under this law include agricultural lands, forests lands, and commercial buildings. According to this law, right to restitution of the ownership of real estates is granted to persons who had been deprived of concerned property in the period between 8 May 1945, respectively 2 November 1938 (in case of Jewish religious communities), and 1 January 1990. The President of the Slovak Republic has vetoed this Act and returned it back to the Parliament for repeated deliberation and approval.

The Constitutional Court of the Slovak Republic, in its *nález* [ruling] ref. no. III. ÚS 60/04 of 19 May 2004 held the violation of the Article 20 of the Slovak Constitution and the Article 1 of the Protocol no. 1 to the ECHR as regards the right to property and violation of the Article 46 paragraph 1 of the Slovak Constitution and the Article 6 paragraph 1 of the ECHR as regards the violation of the right to judicial protection and the right to a fair trial. The violations of fundamental rights of the applicant had been caused by proceeding and the resolution of the Zvolen District Court concerning the execution of the court's enforceable judgement. In a view of the Constitutional Court, the Zvolen District Court had failed to enable the applicant (authorized claimant in the execution proceeding) to be present at the hearing regarding the motion of the other side (obligor) who was requesting the court to suspend the enforcement of the judgement. The Zvolen District Court had also failed to test proportionality between the suspension of the judgement enforcement on the one hand, and the legitimate aim (legal certainty) and protection of the applicant's enforceable rights on the other hand. Therefore, the Zvolen District Court did not provide the applicant with the same level of protection of his proprietary rights (legitimate expectation) to the object of the execution (financial means deposited on the account of the obligor) in comparison with the same right of the obligor.

⁸⁹ Eur. Ct. H. R. (4th sect.), *Valová, Slezák, and Slezák v. Slovakia* (Application no. 44925/98) judgment of 1 June 2004 (final).

⁹⁰ *Zákon č. 503/2003 Z. z. o navrátení vlastnictva k pozemkom o zmene a doplnení zákona Národnej rady Slovenskej republiky č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastnictva k pozemkom v znení neskorších predpisov* [Act no. 503/2003 Coll. on restitution of the ownership of lands and on amendments and modifications of Act no. 180/1995 Z. z. on some orders on the ownership of lands arrangement as amended].

⁹¹ *Zákon č. 229/1991 Zb. o úprave vlastníckych vzťahov k pôde a inému poľnohospodárskemu majetku v znení neskorších predpisov* [Act no. 229/1991 Coll. on regulation of the ownership of agricultural land and other agricultural property as amended].

Reasons for concern

During the period under scrutiny there were several cases reported in media, when the keepers of burial grounds by the score liquidated, respectively meant to liquidate gravesites, which had not been settled. Keepers usually inform the survivors about the fact that it was not paid for the burial site by a label stuck on the headstone as well as by sending a letter. The burial sites have to be leased for 10 years at least. According to the current legal regulation, after expiration of this period the keepers of burial grounds may destroy graves, which were not paid for.

The *návrh zákona o pohrebníctve* [draft of a new law on burials] gives a period of one year starting from the omission to pay fees for the grave space during which entitled persons can to pay for the grave space. Failing to pay would cause that all grave accessories (mainly headstone) become possession of municipality and the grave may be destroyed. Proposed one-year period seems to be very short. Besides the fact, that the dignity of deceased persons is in question, we can consider this process as deprivation of property *ex lege* without providing for adequate compensation.

Public expropriations and compensation*Legislative initiatives, national case law and practices of national authorities*

Pursuant to the *stavebný zákon* [Construction Act]⁹², if the compensation for expropriated real estate is provided by means of pecuniary 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.

During the period under scrutiny, the Korean automobile factory Hyundai/KIA has proclaimed its investment plan in the Slovak Republic. The Government of the Slovak Republic has decided⁹³ that the investment plan of Hyundai/KIA is considered as an investment in public interest. Up to these days, several lands under the new prospective automobile factory have not been settled. Some of the owners have refused to sell their lands for the price ascertained by the Ministry of Economy. Even though the lands have not been settled, the construction works started against the will of the owners. Since the Government of the Slovak Republic has decided, that the new prospective automobile factory is considered as investment in public interest, the lands under the automobile factory may be expropriated. It is generally expected, that some of the owners will challenge infringements to their property rights at the Constitutional Court.

Article 18. Right to asylumAsylum proceedings*Legislative initiatives, national case law and practices of national authorities*

The Act on Asylum designates courts as independent authorities of the second instance. The venue of the courts with specialized asylum agenda is set forth in the Act on Courts. Pursuant

⁹² Zákon č. 50/1976 Zb. o územnom plánovaní a stavebnom poriadku (stavebný zákon) v znení neskorších predpisov [Act no. 50/1976 Coll. on regional planning and construction system (Construction Act) as amended].

⁹³ Uznesenie vlády Slovenskej republiky č. 426/2004 zo 14. júla 2004 [Governmental Resolution no. 426/2004 of 14 July 2004].

to the provisions of this Act, the Bratislava Regional Court and the Košice Regional Court are competent to hear appeals to decisions issued in the asylum proceeding.

In March 2004 the Parliament approved the Act on Asylum Amendment⁹⁴, which entered into force on 1 May 2004. This Act on Asylum Amendment has implemented the Council Directive 2001/55/EC of 20 July 2001 into the Slovak law. Pursuant to the provisions of this Amendment, filing the appeal to a court against decisions rejecting an application for asylum as inadmissible⁹⁵ does not have a suspensive effect unless the court decides otherwise. Also filing an appeal to the court to decisions rejecting an application for asylum as evident unfounded has not a suspensive effect unless the court shall in case otherwise decide.

On 2 December 2004 the Parliament approved the new Act on Asylum Amendment, which will come into force on 1 February 2005. According to the statement provided by the *ministerstvo vnútra* [Ministry of Interior], this Amendment is to prevent from abusing the asylum system in Slovakia. Pursuant to the provisions of this Amendment, the asylum seekers shall be instructed of his/her rights and obligations during the asylum procedure within 15 days after initiating the asylum granting procedure. The asylum seekers shall be obliged to attend a Slovak language course in the integration centre for the purpose of his/her facilitation of integration into the society. This Amendment also authorizes the Ministry of Interior to submit the asylum seeker to a medical examination for the purpose to determine asylum seeker's real age, if the asylum seeker declares that he/she is a juvenile and the Ministry of Interior has doubts about the asylum seeker's age. If the asylum seeker refuses to subject himself/herself to a medical examination, he/she will be deemed and treated as being adult for the purpose of asylum proceeding.

On 11 March 2004 the Parliament by its Resolution no. 861 affirmed the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (97/C 254/01). The Parliament decided that this convention came under the Article 7 paragraph 5 of the Constitution, which means that it has precedence over the laws of the Slovak Republic. The Convention entered into force within the Slovak Republic on 1 September 2004.

Reasons for concern

According to the UNHCR in Slovakia, the Slovak Republic still remains the country with the lowest refugee status granted even though the number of asylum seekers has markedly accrued. The Slovak Republic belongs to the states with the lowest willingness to accept persons 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.

Pursuant to the statistical overview worked out by the Migration Office, there are (up-to-date as of November 2004) the following statistics:

- 10763 applications for granting asylum registered,
- asylum was granted to 7 applicants (in 2003, asylum was granted to 11 applicants),
- asylum was not granted to 1234 applicants (in 2003, asylum was not granted to 421 applicants),

⁹⁴ *Zákon č. 207/2004 Z. z., ktorým sa mení a doplňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov a o doplnení zákona č. 29/1984 Zb. o sústave základných a stredných škôl (školský zákon)* [Act no. 207/2004 Coll., which amends and supplements the Act no. 480/2002 Coll. Act on asylum and on amendments and modifications of certain other laws and on modification of the Act no. 29/1984 Coll. School Act].

⁹⁵ The Ministry of Interior would reject an application as inadmissible when the applicant comes from a country considered by the Slovak Republic as a safe third country; this is not applicable when the applicant in his/her case the country concerned cannot be considered as such safe third country or when the applicant cannot be effectively returned to a safe third country.

- 10967 applications for granting asylum were dismissed,
- 3182 applications have been still reviewed.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

During the period from 1 January 2004 to November 2004 the citizenship of the Slovak Republic was granted to 11 asylum seekers.

The Ministry of Interior has prepared a draft of an amendment of the *zákon o štátnom občianstve* [Act on Citizenship]. The proposal makes easier the acquirement of citizenship for some categories of applicants, e.g. for a person granted asylum. These groups of applicants can acquire the citizenship according to the proposal regardless of the fulfilment of conditions of ability to speak the Slovak language and of continuous permanent residence in the territory of the Slovak Republic for a minimum of 5 years immediately preceding submission of the application.

Positive aspects

In May 2004, the Migration Office opened the new asylum facility with capacity of 150 - 200 beds at Vlachy pri Ružomberku. The Migration Office expects that this asylum facility will have the capacity of 600 beds after its complex reconstruction.

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

Prohibition of removals of foreigners to countries where they face a real and serious risk of being killed or being subjected to torture or to cruel, inhuman and degrading treatments.

Reasons for concern

The Act on Asylum⁹⁶ still provides only relative prohibition of expulsion. As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2003, the Section 47 paragraph 1 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. This provision seems to be inconsistent with the Article 19 paragraph 2 of the Charter of Fundamental Rights.

⁹⁶ *Zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 480/2002 Coll. on Asylum and amendments of certain other laws as amended].

Legal remedies and procedural guarantees regarding the removal of foreigners*Legislative initiatives, national case law and practices of national authorities*

The information concerning the suspensive effect of appeals in asylum proceeding please find in comments concerning the Article 18.

Other relevant developments*Legislative initiatives, national case law and practices of national authorities*

Agreement between the governments of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, on the one hand, and the Government of the Slovak Republic, on the other hand, on the readmission of persons who have entered the territory unauthorised or reside without authorization, entered into force on 1 May 2004.

According to the Act no. 606/2003 Coll. that amended the *zákon o pobyte cudzincov* [Act on residence of foreigners]⁹⁷, which entered into force on 1 May 2004, the citizen of EEA and the privileged foreigner (i.e. foreigner, who is a citizen of EEA with the permanent residence on the territory of the Slovak Republic) may be expelled from the territory of the Slovak Republic only if he/she endangers security of the state or its public order.

⁹⁷ *Zákon č. 48/2002 Z. z. o pobyte cudzincov v znení neskorších predpisov* [Act. no. 48/2002 Coll. on residence of foreigners as amended].

CHAPTER III : EQUALITY

Article 20. Equality before the law

During the period under scrutiny there were no significant actions.

Article 21. Non-discrimination

Protection against discrimination

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations⁹⁸ notes with appreciation that the Hungarian minority - the largest national minority in Slovakia - is well integrated in mainstream society and that it is adequately represented, including among high-level civil servants and politicians.

While the Committee notes with appreciation the continuous efforts undertaken to combat racial discrimination and related violence, including the setting up of a commission to deal with racially motivated violence and of the Racism and Xenophobia Monitoring Centre, it remains concerned about the occurrence of racially motivated crimes and incidents in the country.

The Committee encourages the Slovak Republic to continue monitoring all tendencies that may give rise to racist and xenophobic behaviour and to combat the negative consequences of such tendencies. The Committee also recommends that the Slovak Republic intensify its efforts to ensure to everyone within its jurisdiction effective protection against any act of racial discrimination, as well as the right to seek just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination. In this respect, the Slovak Republic should ensure that victims of racist crimes are afforded wider access to free legal assistance.⁹⁹

The Committee also welcomes the Act no. 253/2001 and Act no. 421/2004, amending the Criminal Code by, respectively, adding membership of an ethnic group to the elements of racially motivated crimes and criminalizing offences committed through the Internet.¹⁰⁰

Legislative initiatives, national case law and practices of national authorities

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

In May 2004 the Parliament approved the Act no. 346/2004 Coll., which has abrogated with the effect from 12 June 2004 the *zákon č. 74/1958 Zb. o trvalom usídlení kočujúcich osôb* [Act no. 74/1958 Coll. on permanent settlement of nomadic persons].¹⁰¹

⁹⁸ CERD/C/65/CO/7, point 3.

⁹⁹ CERD/C/65/CO/7, point 5.

¹⁰⁰ CERD/C/65/CO/7, point 4.

¹⁰¹ More details about this law find, please, in the Report on the situation of fundamental rights in the Slovak Republic in 2003.

Positive aspects

On 13 May 2004 the Government of the Slovak Republic by its Resolution no. 446 adopted the Action Plan for the prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance for the Period 2004-2005. The Action Plan is focused on various areas of social and cultural life.

Transposition of Directives 2000/43/EC and 2000/78/EC has been accomplished through the *antidiskriminačný zákon* [Anti-discrimination Act]¹⁰². Several other laws have been amended directly by the Anti-discrimination Act in connection with the prohibition of discrimination: Act on establishment of the Slovak National Centre for Human Rights, Labour Code, Act on employment services, Act on State Service, Act on performance of the jobs (works) in the public interest, Act on State Service of the custom officers, Act on Military Service, Act on Fire and Rescue Brigade, Act on State Service of the members of Police Corps, Slovak Intelligence Service, Corps of Judicial and Prison Guard and Railway Police, Act on prosecutors, Trade Act, School Act, Act on higher education institutions, Act on additional education, Consumer Protection Act, Health Care Act, Health Insurance Act, Act on social assistance, Social Insurance Act, Social Security Act, and Act on social security of the police officers and soldiers.

The purpose of the Anti-discrimination Act is to provide the protection against any form of discrimination and to guarantee the victims a possibility to claim for an adequate and efficient protection by the court, including compensation of damages and non-pecuniary loss.

The Anti-discrimination Act differentiates the two main spheres of social relationships, whereas the discrimination is prohibited for different reasons. It prohibits discrimination in the sphere of the social protection, healthcare and supply of goods, services and education on the one hand, and in employment relationships on the other hand. Besides the field of employment and occupation, the Anti-discrimination Act expressly prohibits the discrimination on the basis of religion also in the areas of education and health care.

The Anti-discrimination Act changes the status of the Slovak National Centre for Human Rights, which has acquired a new position of national institution responsible for promotion of equal treatment. Under the new law, the Centre has to ensure a legal protection to victims of discrimination. The task of the Centre is also the monitoring and assessment of the observance of human rights and of the principle of equal treatment as well as data collection and providing of information on racism, xenophobia and anti-Semitism in the Slovak Republic.

Reasons for concern

The Slovak Government has recently challenged the compatibility of the provision of the new Anti-discrimination Act concerning the positive action with the Slovak Constitution at the Constitutional Court. The Constitutional Court has admitted the motion for further proceeding.

¹⁰² *Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)* [Act no. 365/2004 Coll. on Equal treatment in Certain Areas and Protection against Discrimination and on amendments and modifications of certain other laws (Anti-discrimination Act)].

The motion had been initiated by the Minister of Justice arguing, that the provision of positive action (Section 8 paragraph 8 of the Anti-discrimination Act¹⁰³), constitutes a positive discrimination, which is as such forbidden by the Slovak Constitution.¹⁰⁴

The situation is a bit curious at present since the same Government, which has challenged the constitutionality of principle of positive action as such, in its resolution of April 2003 adopted specific measures containing also programs of positive action towards Roma population.

The outcome of the challenge of positive (affirmative) action provision contained in the Anti-discrimination Act by the Slovak Government at the Constitutional Court will undoubtedly form the further ways of protection against discrimination in the Slovak Republic. It is obvious, that *de facto* discrimination against Roma minority is not possible to reduce or eliminate without a reasonable use of positive action. Therefore, the outcome of the Constitutional Court in this regard may be extremely significant for the future development of Roma communities in the Slovak Republic.

Remedies available to the victims of discrimination

Legislative initiatives, national case law and practices of national authorities

Anti-discrimination Act regulates legal protection and proceeding in cases of breach of the principle of equal treatment. A person who considers himself/herself aggrieved by breach of the principle of equal treatment may claim his/her rights before the court, including right to waive any unlawful interference, right to remedy of the unlawful status, right to reasonable satisfaction and right to appropriate monetary compensation for non-pecuniary damages.

The proceeding in cases of breach of the principle of equal treatment is initiated by person who considers himself/herself aggrieved because the principle of equal treatment has not been applied to him/her. If such person establishes before court facts from which it may be presumed that the principle of equal treatment has been violated the burden of proof shall be on respondent to prove that he/she has not violated the principle of equal treatment.

Protection of Gypsies / Roms

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination (CERD) in its concluding observations¹⁰⁵ shares the delegation's concern that discriminatory attitudes and feelings of hostility towards members of the Roma community are deep-rooted and widespread throughout the country.

The Committee recommends that the Slovak Republic continue to endeavour, by encouraging a genuine dialogue, to improve relations between Roma communities and non-Roma communities with a view to promoting tolerance and overcoming prejudices and negative stereotypes. The Committee also invites the Slovak Republic to take more effectively into

¹⁰³ With a view to ensuring full equality in practice and adherence of the principle of equal treatment, adoption of specific measures for prevention and compensation of disadvantages linked to racial or ethnic origin may be adopted.

¹⁰⁴ Article 12 paragraph 2 of the Slovak 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.*".

¹⁰⁵ CERD/C/65/CO/7, point 6.

account, in all programmes and projects planned and implemented and in all measures adopted, the situation of Roma women, who are often victims of double discrimination.

See also the concluding observations of CERD concerning

- sterilization of Roma women in the comments concerning the Article 3,
- behaviour by the police towards members of minority groups, in particular Roma in the comments concerning the Article 4,
- segregation of Roma children in special schools in the comments concerning the Article 14,
- discrimination against Roma in the field of employment in the comments concerning the Article 15,
- segregation of Roma communities in housing in the comments concerning the Article 34,
- health situations of Roma communities in the comments concerning the Article 35,
- poor living conditions of Roma communities in the comments concerning the Article 36.

Legislative initiatives, national case law and practices of national authorities

Ministry of Justice has published at its web site the statistical data concerning the ratio of convicted Roma offenders on the crimes committed in the Slovak Republic during the period of 1999 – 2003. The statistics does not contain ratio of convicted offenders affiliated with national minorities and ethnic groups other than Roma minority. In our opinion, there is no legitimate reason that would justify this practice of the Ministry of Justice.

Citizens' Association MEMO 98 with financial support of the Government Office of the Slovak Republic has prepared a project entitled „*Lepšie správy o Rómoch*“ [“Better news about the Roma“]. The purpose of the project is the application of the recommendations for radio and television broadcasting adopted by the Council of Europe. The aim of the cycle of seminars is to contribute to increase of quality of information and information dissemination about the groups of population of the Slovak Republic constituted by separate nationalities and ethnical groups with specific focusing in Roma ethnic group, and to raising the tolerance of majority population toward the Roma. Particular seminars should provide a feed back to journalists and to the public regarding how the Roma people are presented in the media. It should help to create more unprejudiced presentation of the Roma in media and to providing of larger amount of information concerning the activities of Roma national minority, its history, culture, traditions and current life. The organiser's ambition is, *inter alia*, to make up a proposal of concept of medial presentation of minorities in Slovak media.

The *Poradňa pre občianske a ľudské práva* [Centre for Civil and Human Rights] – an NGO with the base in Košice, Eastern Slovakia, in cooperation with Dutch foundations Mama Cash and Stichting DOEN [DOEN Foundation] have been working on the Roma Women Reproductive Rights Project. The project is to be implemented in a period of October 2003 to December 2005 and is focused on defending reproductive rights, expanding access to comprehensive reproductive health care and protecting the rights of Romani women. The Project will further its goals through community empowerment, litigation, research and advocacy in collaboration with international health experts and other organizations.

The Centre for Civil and Human Rights in cooperation with Open Society Institute New York and Human Rights Advocacy Budapest has also been working on the ‘Roma Health Project’ which aims to advocate for the improvement of the Roma strategy at national level (identifying, monitoring and documenting problems in Roma access to health care, proposing strategic solutions, building a coalition of Roma and non-Roma organizations to ask the government to ensure equal access to health care services for Romani patients), to litigate discrimination of Roma in health care at courts and formulate proposals for legislative

amendments and suggestions for improvement in implementation of the law, to empower the Roma and non-Roma human rights community working on health care issues, by creating a flexible network of experts and activists, a Roma access to health data basis and providing specialized training on health rights.

The project of the police specialists for working with Roma communities should be carried out in the course of 2004-2007.

Reasons for concern

The last official statistics relating also to the affiliation of inhabitants living on the territory of the Slovak Republic with a nationality, native language, and religion come from census of inhabitants, houses, and apartments carried out in 2001¹⁰⁶. According to this official census, there are 89 920 Roma living in the Slovak Republic.

With regard to the unofficial statistics, the Office of Plenipotentiary of the Slovak Government for Roma minority in the co-operation with the Institute for Public Affairs (NGO) has recently carried out the research concerned with the socio-graphic mapping of Roma communities living in the Slovak Republic. The final results of this research were not available at the date of this Report. However, the Office of Plenipotentiary of the Slovak Government for Roma minority has already released the information based on the research, that there are over 320 thousand Roma living in the Slovak Republic. The number of inhabitants affiliated with Roma minority derived from the research is therefore more than three times larger than the one uncovered by the official statistics based on the census of 2001.

This discrepancy has apparently been caused by the different methods used for determination of affiliation with the Roma nationality in the census realized in 2001 and the research carried out in 2004. While in the census people could freely decide, *inter alia*, about their affiliation with the nationality, the methods for determination of the number of Roma population living on the territory of the Slovak Republic used in the research have been based on anthropological signs, cultural affiliation, and a way of living (e.g., style of life, living-space). In the research, the Roma Community has been defined as a group of people, which has been affiliated with Roma nationality by majority population on the basis of mentioned external and noticeable criteria.

Article 42 of the Constitution of the Slovak Republic guarantees everyone the right to education. In accordance with the Article 12 paragraph 2 of the Slovak Constitution, everyone has the right to education 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. Therefore, the Roma people have *de iure* equal access to educational establishments.

However, in many Slovak schools for the mentally disabled, more than half of the students are Roma. In some schools for the mentally disabled, every single pupil is a Roma. There is apparent inequality of Roma children in their *de facto* access to the educational system on all levels. This inequality is caused by number of factors, e. g. low social and economic status of Roma in society (including extremely low standard of living), insufficient pre-school education, the lack of positive models oriented on education, insufficient knowledge of Slovak language, etc. In practise there is a disproportional high representation of Roma children in special (mentally disabled) schools. The high representation of Roma children in

¹⁰⁶ The census was carried out under the Act no. 165/1998 Coll. of Laws on census of inhabitants, houses, and apartments in the year 2001.

special schools is caused by *de facto* unequal opportunities to participate in the educational system from the early age.

It is generally known, that Roma minority has, for a long time, the lowest percentage of university graduates and people with full basic and secondary education in comparison with other nationalities and ethnic groups.

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2003, the Slovak Republic has introduced programmes focusing on improving the quality of living of the Roma in Slovakia including the area of education such as pre-school grades at elementary schools, the inclusion of Romany language education, the preparation classes in elementary schools and positions of teacher's assistants for Roma pupils.

The realisation of positive action measures may, in our opinion, improve the situation of Roma children in their *de facto* access to education on all levels.

A large number of Roma in the Slovak Republic have no or very limited access to basic public services. For example, in November 2003 the Slovak Government approved the material on the state in drinking water supply in Roma settlements. 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).

Many Roma live in extremely substandard, racially segregated slum settlements. Most such slum settlements are characterised by substandard or extremely substandard housing, a prevalence of environmental hazards including toxic waste, rubbish tips, intermingling of waste and drinking water, etc. In general, Romani slums are partially or completely lacking in formal infrastructure such as paved roads, electricity, heating, sewage removal and the provision of adequate drinking water, and are frequently excluded from other public services, such as bus or postal services.

The overarching concern permeating housing concerns with respect to Roma in Slovakia is racial segregation. Discrimination in the allocation of social and other public housing has been frequently reported in the Slovak Republic.

The Roma in the Slovak Republic frequently report being blocked by vigilante local action, sometimes carried out with the active or passive complicity of local authorities, when trying to rent or purchase property outside segregated settlements.

The annual Report on the activity of the *Slovenská informačná služba* (SIS) [Slovak Intelligence Service] for the year 2003 of May 2004 says, *inter alia*, that SIS continued in monitoring of the migration activities and their criminal background (mainly the usury) in Roma communities. SIS had repeatedly provided warning information to competent authorities in connection with the increase of social instability in Roma communities related to criminal background, notably to massively spread of usury.

According to the SIS' Report, an increasing amount of funds, both from EU funds (Phare) and from the budget of the Slovak Government, has been invested to deal with the Roma issue every year. The lack of co-ordination of projects, lack of transparency in activities of entities involved, vague objectives of the projects and especially insufficient control resulted in an ineffective spending of the funds and in frequent misuse of these funds.

Slovak media reported several cases of police abuse of persons belonging to certain ethnic or cultural minorities, especially toward Roma. From reported cases regarding discriminatory

behaviour of police force towards Roma it follows that Roma are often victims of racist attacks, without receiving adequate protection from law enforcement officers and racially motivated violence, including serious acts of police brutality continues due to an insufficient application of the law. The incidents of police mistreatment and violence against members of the Roma minority continue to occur.

Other relevant developments

Reasons for concern

According to the data provided by the Statistical Office gathered in the census of inhabitants realised in 2001, the numbers of municipalities in which members of national minority represent at least 20% of its total population have changed in comparison with the census carried out in 1991. While the number of municipalities in which 20% or over of its total population is composed of Hungarian minority has declined from 512 to 501, the number of “Ruthenian’s municipalities” has increased from 68 to 91. Although the Government has drafted proposal of a decree containing the updated list of municipalities in which members of national minority represent at least 20% of its total population, it has not adopted it yet. Therefore, the new “Ruthenian’s municipalities” (i.e. members of Ruthenian minority living in these municipalities) may not exercise their right to use their minority language in official communication with public authorities in accordance with the *zákon o používaní jazykov národnostných menšín* [Act on the use of languages of national minorities]¹⁰⁷, and may not, besides the official Slovak language, use also their native language for marking the names of the municipalities as well as the road signs used on the territory of these municipalities.

This passive attitude of the Slovak Government towards the adoption of the mentioned decree, though adoption of that decree is necessary for exercise and enjoyment of rights guaranteed by the Constitution and respective laws, may be seen discriminative against Ruthenian minority. One might think that the reason behind that attitude is the decline of number of “Hungarian municipalities” in census of inhabitants realised in 2001. The results of census of 2001 should cause that 11 of these municipalities ought to be deleted from the list of municipalities in which members of national minority represent at least 20% of its total population and therefore the Hungarian minority would lose its above mentioned privileges in these municipalities.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

In May 2004, the Slovak Republic concluded the Agreement on Catholic Education with the Holy See, and Agreement on religious education with Registered Churches and Religious Societies.

Registered churches and religious societies may establish and administer all types of schools and educational institutions in accordance with the conditions set out in the law of the Slovak Republic. The state provides church schools with financial support in the same extent as any schools of other type. The education obtained in church schools and private schools is equivalent to that obtained at public schools.

¹⁰⁷ *Zákon č. 184/1999 Z. z. o používaní jazykov národnostných menšín* [Act no. 184/1999 Coll. on the use of languages of national minorities].

The subject entitled “religious education” is among compulsory optional subjects at primary and secondary schools in the Slovak Republic. It means, that pupils at primary and secondary schools have the possibility to choose either class on religious education or class on ethics, as the alternative.

Reasons for concern

According to the *zákon o slobode náboženskej viery a postavení cirkví a náboženských spoločností* [Act on the freedom of religious belief and on the status of churches and religious societies]¹⁰⁸, only registered churches are recognised. It means, that the rights and privileges of churches and religious societies, including provision of state subsidies, have been granted only to those churches and religious societies, which are officially registered in the *ministerstvo kultúry* [Ministry of Culture].

In our opinion, the conditions under which churches and religious societies are registered might be considered discriminative. According to the *zákon o registrácii cirkví a náboženských spoločností* [Act on registration of churches and religious societies]¹⁰⁹, the church or religious society may submit proposal on registration to the Ministry of Culture only if it proves that it has a support of at least twenty thousand adult people who have permanent residence on the territory of the Slovak Republic.

On the basis of the Act on the freedom of religious belief and on the status of churches and religious societies, 14 churches which had existed and been recognised at the time of adoption of this law, were registered *ex lege* and they did not have to meet the threshold of twenty thousand supporters.

In fact, under the census of 2001, ten of fifteen churches and religious societies registered at that time were supported by less than 10,000 of inhabitants (including minors), and seven of them even did not reach support of more than 5,000 of fellows.

Since the adoption of the mentioned law in 1992, only Religious Society of Jehovah's Witnesses has been registered in the Slovak Republic (in 1993).

In September 2001 the Ministry of Culture additionally registered the New Apostolic Church in Slovakia, since it had proved that it had existed already before the year 1991 (i. e. it did not have to meet the threshold of twenty thousand supporters).

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 12 December 2003, the Government of the Slovak Republic and the Government of Hungary concluded the Agreement on mutual support of national minorities in the area of education and culture. This agreement follows the general agreement on good neighbourhood and friendly co-operation concluded in Paris in 1995. The parties agreed upon, *inter alia*, that they have a mutual right to support, financially or otherwise, a development of education and protection of national and linguistic identity of their respective minorities in both countries. The agreement came into force on 13 February 2004.

¹⁰⁸ *Zákon č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností v znení neskorších predpisov* [Act no. 308/1991 Coll. on the freedom of religion faith and on the status of churches and religious societies as amended].

¹⁰⁹ *Zákon 192/1992 Zb. o registrácii cirkví a náboženských spoločností* [Act no. 192/1992 Coll. on registration of churches and religious societies].

The draft of general law on national minorities has been in the process of preparation in co-operation between the *Úrad podpredsedu vlády Slovenskej republiky pre európske záležitosti, ľudské práva a menšiny* [Office of the Deputy Prime Minister for European Affairs, Human Rights and Minorities] and the Ministry of Culture.

Reasons for concern

The Roma minority, although it is already considered as a national minority in the Slovak Republic, because of the traditional way of life persons belonging to this community should be also qualified as a cultural minority. This would strengthen the legal status of Roma, because unlike their affiliation with a national minority, which is based on their free choice in accordance with the Article 12 paragraph 3 of the Slovak Constitution¹¹⁰, affiliation with cultural minority, in our opinion, may be also based on other criteria, such as shared history, cultural affiliation and values, way of life, language, customs and traditions.

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

According to the Labour Code Amendment¹¹¹, which came into force on 1 July 2004, an employer is obliged to treat with employees in employment relationships in accordance with the principle of equal treatment. Similarly, in accordance with the principle of equal treatment, any discrimination on the ground of gender in the employment relationships is prohibited.

According to the Act on employment services Amendment¹¹², which came into force on 1 July 2004, in accordance with the principle of equal treatment, any discrimination on the ground of gender in the access to work is prohibited. The *zákon o službách zamestnanosti* [Act on employment services] prohibits the employer to advertise job offers, which would contain any restrictions and discrimination based on gender.

Remedies available to the victim of gender discrimination (burden of the proof, level of penalties, standing of organisations to file suits)

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

According to the Report on Gender Equality Bodies prepared by the Network of legal experts on the application of Community law on equal treatment between women and men from 15 October 2004, at present there is no special body in the Slovak Republic designated for the promotion of equal treatment of all persons without discrimination on the grounds of sex. The Anti-discrimination Act has enabled the *Slovenské národné stredisko pre ľudské práva*

¹¹⁰ It is generally known, that many Roma people in census affiliate themselves either with Slovak majority or Hungarian minority.

¹¹¹ *Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)* [Act no. 365/2004 Coll. on Equal treatment in Certain Areas and Protection against Discrimination and on amendments and modifications of certain other laws (Anti-discrimination Act)].

¹¹² *Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)* [Act no. 365/2004 Coll. on Equal treatment in Certain Areas and Protection against Discrimination and on amendments and modifications of certain other laws (Anti-discrimination Act)].

[Slovak National Centre for Human Rights] to take on a new position of national institution responsible for promotion of the equal treatment. The *ministerstvo práce, sociálnych vecí a rodiny* [Ministry of Labour, Social Affairs and Family] considers adopting amendment under which the competencies of the Slovak National Centre for Human Rights as the equality body under Directive 20002/73/EC will be broaden.

Positive aspects

A person considering himself/herself aggrieved by discrimination on the ground of gender may claim legal protection before the court in accordance with the provisions of Anti-discrimination Act. For more information concerning legal protection and proceeding in cases of breach of the principle of equal treatment, please see the comments concerning the Article 21.

Participation of women in political life

Legislative initiatives, national case law and practices of national authorities

The parliamentary *výbor pre ľudské práva, národnosti a postavenie žien* [Committee for Human Rights, Minorities and the Position of Women] proposed to establish quotas for women candidates on slates of political parties in the new Act on election to the National Council of the Slovak Republic.¹¹³ The Committee recommended to draw up a slate of candidates so, that every second or third candidate would be of opposite sex than the previous one or two candidates. The parliamentary *ústavnoprávny výbor* [Constitutional and Legal Committee] did not recommend to approve this scheme and the proposal was not adopted within the scope of the new Act on election to the National Council of the Slovak Republic at last.

Minister of Justice has declared that, should the quota proposal pass in parliament, he would turn to the Constitutional Court and challenge it as an unconstitutional discriminatory measure. In opinion of the Minister of Justice, *“the belonging to male or female sex should not be the criterion for qualification or disqualification for access to public office”*.

The *Súdna rada Slovenskej republiky* [Judiciary Council of the Slovak Republic], during its proceeding on 10 February 2004, approved three candidates for a judge of the European Court of Human Rights with respect of the Slovak Republic. The approved list of candidates was all male. The Parliamentary Assembly of the Council of Europe turned down the candidate list for the post of Eur. Ct. H. R. judge because it had not contained candidates of both genders which was in conflict with the recommendations of the Parliamentary Assembly of the Council of Europe on the principles of publicity and transparency of candidate selection process [Recommendation 1429 (1999) – national procedures for nominating candidates for election to the European Court of Human Rights]. According to the Article 3 of the Resolution no. 1366 (2004) of Parliamentary Assembly, the Assembly decides not to consider lists of candidates where the list does not include at least one male and at least one female candidate.

The Judiciary Council of the Slovak Republic in June 2004 nominated new three candidates for Slovak judge of the European Court of Human Rights. Among the candidates were two men and one woman. In October 2004, the Parliamentary Assembly of the Council of Europe appointed as Slovak judge of Eur. Ct. H. R. a man.

¹¹³ *Zákon č. 333/2004 Z. z. o voľbách do Národnej rady Slovenskej republiky* [Act no. 333/2004 Coll. on election to the National Council of the Slovak Republic].

Reasons for concern

No substantial progress has been achieved as regards the broader representation of women in the politics and in professional leading positions. For instance, there are 25 women among 150 members of the Parliament, one woman among 18 members of Judicial Council, one woman among 11 members of the Constitutional Court¹¹⁴ and there is no woman represented in the Government of the Slovak Republic.

Other relevant developments*Legislative initiatives, national case law and practices of national authorities*

On 7 July 2004 the Government of the Slovak Republic discussed the Report on Course and Realisation of the National Action Plan for Women in the Slovak Republic in 2003.

The National Action Plan for Women was approved by the governmental resolution¹¹⁵ and is regarded as a principle governmental document with the view to improvement the status of women in the Slovak Republic within the period of 10 years. This document contains priorities, strategic goals and measures, which shall be realised by the government.

The principle goal of the Action Plan for Women is the attainment of equal status of men and women *de facto* with the relatively satisfactory equal status of men and women *de iure*. According to the Report on Course and Realisation of the National Action Plan for Women in 2003, it is necessary to carry out the measures relating to the elimination of the gender stereotypes, violence against women and unreasonable differences in the salaries.

Article 24. The rights of the childAlternatives to the removal from the family*Legislative initiatives, national case law and practices of national authorities*

A new Act on Family contains a new legal regulation of all forms of alternative care, which have not been regulated in a single law up to now. The alternative care is defined as tied and mutually conditioned measures that compensate personal care and education of minors in cases when parents are not able or are not willing to safeguard them. Alternative care may arise only on the basis of the court decision.

The new Act on Family distinguishes the following forms of alternative care, the purpose of which is to secure personal care of minors: (i) entrustment of a minor to a personal care of natural person other than parents (preferably to minor's other relatives), (ii) foster-parent care, and (iii) resident care.

Alternative personal child care or foster care are preferred over institutional care. Every time, before issuing the order of institutional care, the court is obliged to examine whether it is possible to place a minor to alternative personal child care or foster care.

The new Act on Family also regulates a guardianship in cases when both parents of minor died, or when performance of parents' rights and duties have been discharged or suspended,

¹¹⁴ The Constitutional Court, which according to the Constitution consists of 13 judges, is not complete at the moment, because its two judges have become judges of European Court of Justice and Court of First Instance respectively, and Parliament has failed to elect new judges.

¹¹⁵ *Uznesenie vlády č. 650/1997 z 16. septembra 1997* [Governmental Resolution no. 650/1997 of 16 September 1997].

or when parents' legal capacity has been restricted or terminated. The guardian appointed by the court is obliged, although not in person, to secure an education for a minor, to represent him/her in all legal matters, and to administer minor's assets.

The new Act on Family contains also regulation of custody of a child. The extent of rights of person given custody of a child depends on the purpose for which that person had been given custody of a child.

This law also comprehensively regulates the adoption of minors, i.e. the statutory process by which a natural parent's legal rights and duties in respect of an unmarried minor are transferred to another person or persons (adoptive parents). Unlike the current Act on Family, the new law does not distinguish between revocable and non-revocable adoption of a minor.

Juvenile offenders

Legislative initiatives, national case law and practices of national authorities

A reduction of criminal liability of minors from 15 to 14 years of age is considered in the proposal of recodification of the Criminal Code. The proposal of new Criminal Code is in legislative process and it is assumed, that it will enter into force in 2006.¹¹⁶

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

According to the provision of the Code of Civil Procedure Amendment,¹¹⁷ which entered into force on 1 October 2004, if the court orders a preliminary injunction for the purpose of protection of a child under legal age, the decision on the preliminary injunction is delivered to the parties only with the judicial execution of such decision.

In June 2004 the Parliament approved the Act on Alimony Substitution¹¹⁸, which came into force on 1 January 2005. The Act regulates the conditions under which alimony substitution is provided in case when the obligor fails to pay the alimony contrary to the court decision or alimony agreement provided, that the payment of alimony cannot be achieved by the execution of judgment.

The Criminal Code Amendment¹¹⁹, which came into force on 1 January 2005, has introduced new elements of the crime of failure to pay compulsory alimony. A person, who fails to meet his/her statutory duty to provide alimony to other person for at least three months within the period of two years, may be sentenced to a term of imprisonment of up to 5 years.

The *ministerstvo práce, sociálnych vecí a rodiny* [Ministry of Labour, Social affairs and Family] has drafted a proposal of the *zákon o sociálnoprávnej ochrane detí a o sociálnej prevencii* [Act on social-legal protection of children and on social guardianship]. The main purpose of this law is to create legal bases for comprehensive and consistent protection of rights and interests of minors, effective, intensive, and systematic assistance and support for

¹¹⁶ Criminal Code Draft Act, parliamentary press 656.

¹¹⁷ *Zákon č. 428/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 99/1963 Občiansky súdny poriadok v znení neskorších predpisov a dopĺňajú sa niektoré ďalšie zákony* [Act no. 428/2004 Coll., which amends and supplements the Act no. 99/1963 Coll. Code of Civil Procedure and on modifications of certain other laws].

¹¹⁸ *Zákon č. 452/2004 Z. z. o náhradnom výživnom* [Act no. 452/2004 Coll. on alimony substitution].

¹¹⁹ *Zákon č. 613/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 140/1961 Zb. Trestný zákon v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 613/2004 Coll. which amends and supplements the Criminal Code and on amendments and modifications of certain other laws].

children and families as well as for safeguarding equivalent alternative environment for children in cases when they are not raised in natural families. The proposal of this law has not been submitted to the Government for its approval as yet.

Please see also comments concerning the Article 7 on new legal regulation of so-called confidential births.

Article 25. The rights of the elderly

Participation of the elderly to the public, social and cultural life

Legislative initiatives, national case law and practices of national authorities

The Government of the Slovak Republic approved¹²⁰ the *Správa o plnení Národného programu ochrany starších ľudí* [Report on realization of the National Program on the protection of elderly people] and the *Správa o plnení Národného programu podpory zdravia* [Report on realization of the National program on the health support]. The purpose of the Report on realization of the National Program on the protection of elderly people is to inform about the risks and impacts of ongoing reforms on the quality of the living standard of elderly people. The Report contains the realization of the National Program on the protection of elderly people in the following areas: social welfare and family policy, health services, taxes and impositions, education, economy, security, culture, housing, environment, transport, posts and telecommunications.

The Government approved the *Rámcová koncepcia dlhodobého riešenia postavenia a životnej úrovne starších ľudí v Slovenskej republike* [Framework conception on long term solving of status and living standard of elderly people in the Slovak Republic].¹²¹ The Framework conception will be submitted to the Parliament for approval. The Framework conception contains aims, which are necessary to meet for the improvement of status and living standard of elderly people. The conception also contains the list of measures that shall be taken and determines the institutions and bodies responsible for their realization. The mentioned measures relate to the elimination of discrimination of elderly people, material welfare in the old age, health care of elderly people, possibilities to live in the home environment, support of the employment of elderly people, creation of the system of the complex social services, creation of conditions for dignified housing of elderly people, support of the lifelong education, support of the participation of elderly people in the public, social, cultural and political life of the community.

Specific measures of protection for the elderly (ill-treatment and isolation)

Legislative initiatives, national case law and practices of national authorities

The *ministerstvo zdravotníctva* [Ministry of Health] and the *ministerstvo práce, sociálnych vecí a rodiny* [Ministry of Labour, Social Affairs and Family] participate on the project entitled “*Zavedenie a rozvoj komunitných služieb v Slovenskej republike*” [“Establishment and Development of community services in the Slovak Republic”] - an international project of Canada and the Slovak Republic focused on establishment and support of development of community services in the Slovak Republic.

¹²⁰ *Uznesenie vlády č. 534/2004 z 2. júna 2004* [Governmental Resolution no. 534/2004 of 2 June 2004].

¹²¹ *Uznesenie vlády č. 811/2004 z 18. augusta 2004* [Governmental Resolution no. 811/2004 of 18 August 2004].

The Government of the Slovak Republic approved the *Koncepcia sociálnej a dlhodobej starostlivosti* [Concept of social and long-term care]¹²². The concept brings proposals of new systems of long-term care and new definitions of social services, which should solve the problems of overlapping, interconnection and coordination of social and health services. At present there is still lack of integrated social services and health services provided especially at home and in the community. A new legislation is being prepared, the system principle of which should be the domination of care at home and in the community over the institutional care.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In April 2003 the Government of the Slovak Republic approved a new Pension System Reform Concept, which was followed by a number of laws adopted during the years 2003 and 2004.

On 30 October 2003, the Parliament approved the *zákon o sociálnom poistení* [Act on Social Insurance]¹²³, which came into force on 1 January 2004 and on 1 May 2004 respectively. The Act on social insurance, for example, extends the retirement age and establishes the same pensionable age for both, women and men, to 62 years of age. By course of law on social insurance an old-age benefit calculation takes into account the length of the insurance period (length of employment) and the average earnings of the insured person during his/her working life. The new law also provides for adjustment of pension benefits – payments will increase annually (on 1 July of particular calendar year), to take account of consumer prices and average wages. The new legal regulation of pensions changes the income security system to pension insurance system as the part of the social insurance system.

On 20 January 2004, the Parliament adopted the *zákon o starobnom dôchodkovom sporení* [Act on Pension Saving]¹²⁴, which entered into force on 1 January 2005 excepting those paragraphs, which came into force on 1 February 2004. The Act regulates an extent of pension saving, financing of pension saving, legal relations in execution of pension saving, organisation of pension saving and supervision over its execution. The new system of old-age pension saving is defined-contribution system financed through contributions to individual retirement accounts, which shall be opened and managed by pension administration companies. Citizens have the possibility to individually choose one of the several pension administration companies, which create pension funds and administer pension resources of citizens. This system represents so-called second pillar of pension system in the Slovak Republic.

On 26 October 2004 the Parliament adopted the *zákon o doplnkovom dôchodkovom sporení* [Act on Additional Pension Saving]¹²⁵, which came into force on 1 January 2005. The Act regulates the additional pension system, organisation, financing and execution of additional pension saving and supervision over the execution of additional pension saving. It is the system of voluntary pension saving based either on the employer-employee principle or on

¹²² *Uznesenie vlády č. 161/2004 z 25. februára 2004* [Governmental Resolution no. 161/2004 of 25 February 2004].

¹²³ *Zákon č. 461/2003 Z. z. o sociálnom poistení* [Act no. 461/2003 Coll. on Social Insurance].

¹²⁴ *Zákon č. 43/2004 Z. z. o starobnom dôchodkovom sporení a o zmene a doplnení niektorých zákonov* [Act no. 43/2004 Coll. on Pension Saving and on amendments and modifications of certain other laws].

¹²⁵ *Zákon č. 650/2004 Z. z. o doplnkovom dôchodkovom sporení a o zmene a doplnení niektorých zákonov* [Act no. 650/2004 Coll. on Additional Pension Saving and on amendments and modifications of certain other laws].

the individual principle. This system represents so-called third pillar of pension system in the Slovak Republic.

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiatives, national case law and practices of national authorities

The Anti-discrimination Act¹²⁶ differentiates the two main spheres of social relationships, whereas the discrimination is prohibited for different reasons. It prohibits discrimination in the sphere of social protection, healthcare and supply of goods, services and education on the one hand, and in employment relationships on the other hand. The Anti-discrimination Act expressly prohibits the discrimination on the basis of disability only in the areas of employment and occupation in accordance with the Directive 2000/78/EC.

Provided that the nature of a specific employment or activities requires so, the different treatment of perspective employees based on their health capability, is not deemed as discrimination on the basis of disability.

According to the Anti-discrimination Act, the discrimination on the basis of disability means also discrimination on the basis of previous disability or discrimination of a person if, on the basis of external appearances, may be assumed that the person is disabled. Indirect discrimination on the basis of disability covers also refusal or omission of employer to adopt measures which would enable a person with a disability to have access to, participate in, or advance in employment, or to undergo vocational training or education unless such measures would impose a disproportionate burden on the employer.

A citizen who has been discriminated on the basis of disability has the right to submit a complaint to the *Úrad práce, sociálnych vecí a rodiny* [Office of Labour, Social Affairs, and Family]. The Office is obliged to respond to such complaint, without undue delay, perform retrieval, abstain from such conduct and eliminate the consequences thereof.

A citizen who feels aggrieved by discrimination on the basis of disability, i. e. considers himself/herself aggrieved by failure of non-maintenance of the principle of equal treatment, may claim his/her rights before the court, including appropriate compensation for non-pecuniary damages. The burden of proof is on the side of defendant who is required to demonstrate that no violation of the principle of equal treatment occurred.

Professional integration of persons with disabilities: positive actions and employment quotas

Positive aspects

The *zákon o službách zamestnanosti* [Act on employment services]¹²⁷ regulates, *inter alia*, employment assistance for persons with disabilities. The assistance includes contribution for establishing, maintaining and operating of the protected workshop and protected workplace, contribution for operating or performing self-employment to disabled citizens, and

¹²⁶ *Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)* [Act no. 365/2004 Coll. on Equal treatment in Certain Areas and Protection against Discrimination and on amendments and modifications of certain other laws (Anti-discrimination Act)].

¹²⁷ *Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 5/2004 Coll. on employment services and on amendments and modifications of certain other laws as amended].

contribution to cover employees' transport costs. The Act also introduces a new active measure, namely contribution for activities of the assistant at work. Assistant at work is defined as an employee who provides the assistance to disabled employee or employees in their execution of employment and personal needs during working time.

The Act on employment services stipulates strict obligations on employers. The employer must not publish job offers containing any restrictions and discrimination by race, colour of skin, gender, age, language, belief and religion, disability, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage, marital status and family status. While selecting employees, the employer must not request information related to nationality, racial or ethnic origin, political conviction, trade union membership, religion, sexual orientation; information which is in disagreement with good morals, and personal data not required for fulfilling employers' duties, as specified by special legislation. By request of the citizen, the employer must prove the necessity of the requirements for personal data. The criteria used in the selection of employees must guarantee equality of opportunities to all citizens.

When the employer is employing disabled citizen, he is obliged to (i) provide for suitable working conditions of disabled citizens in his/her employment, (ii) execute training and preparation for work of disabled citizens, and give special attention to increasing of their qualification while in his/her employment, (iii) keep and maintain records of disabled citizens in accordance with the law, (iv) employ disabled citizens in numbers corresponding to 3.2 % of the total number of his/her employees, when he/she employs at least 20 employees, and when there are disabled citizens on file in the Office of Labour, Social Affairs and Family's register of job seekers.

The employer may also fulfil the obligation to employ disabled citizens (3,2%) by placing orders suitable for the employing of such citizens. The equivalent, for accounting of one disabled citizen is the placement of an order in the scope of 1 400 working hours per calendar year, or 120 working hours per calendar month. If the employer does not respect this obligation, the employer is obliged to pay to the *Úrad práce, sociálnych vecí a rodiny* [Office of labour, social affairs and family] the penalty in the approximate amount 20.000 SKK (app. 520 EUR) for every disabled citizen.

The Act on employment services introduces the *Agentúra podporovaného zamestnávania* [Agency for Supported Employing], which is defined as a legal person or natural person providing disabled citizens, long-term unemployed citizens and employers with service facilitating the acquisition or retention of an employment, or facilitating recruitment of employees from among disabled citizens and long-term unemployed citizens.

Reasonable accommodations

Legislative initiatives, national case law and practices of national authorities

On 22 April 2004, the *Telekomunikačný úrad Slovenskej republiky* [Telecommunication Office of the Slovak Republic] issued an order¹²⁸, which stipulates details of providing public telephone machines and services for disabled users. For instance, with the effect from 1 May 2004, a company operating public telephone machines must provide a free of charge access to information services on telephone numbers to visually impaired people, and with the effect

¹²⁸ *Opatrenie telekomunikačného úradu Slovenskej republiky z 22. apríla 2004 č. O-4/2004, ktorým sa ustanovujú podrobnosti poskytovania verejných telefónnych automatov a služieb pre zdravotne postihnutých užívateľov* [Decree of the Telecommunication Office of the Slovak Republic no. O-4/2004 of 22 April 2004, which stipulates details of providing public telephone machines and services for disabled users].

from 1 January 2006 such company is obliged to secure a non-barrier access to at least 25% of all public telephone machines.

Other relevant developments

Positive aspects

On 6 October 2004 the Government of the Slovak Republic approved the *Národný program duševného zdravia* [National Program for Mental Health]¹²⁹. This material is aimed to be a comprehensive program for mental health care in Slovakia. The program is designed for a period of ten years.

Reasons for concern

In February 2004 the *Združenie na pomoc ľuďom s mentálnym postihnutím v Slovenskej republike* [Association for assistance to mentally disabled people in the Slovak Republic]¹³⁰ has introduced the *Národná správa o dodržiavaní ľudských práv ľudí s mentálnym postihnutím* [National Report on the Situation of Human Rights of Mentally Disabled People]. The Association alleges that even though the situation of mentally disabled people has improved for the last decades, the discrimination of mentally disabled people is still tolerated. Particularly, the rights for private and family life, housing and correspondence have often been violated. Problematic also seems the process of termination and limitation of legal capacity of mentally disabled people for which, according to the Association, only one expert opinion of mind doctor is required. Appointments of guardians by courts to mentally disabled people often take about a year. During this period there is legal uncertainty about who is entitled to act on behalf of the mentally disabled person, receive his/her disability pension, etc.

¹²⁹ Uznesenie vlády SR č. 947/2004 [Governmental Resolution of the Slovak Republic no. 947/2004].

¹³⁰ Non-governmental organization, which has about ten thousand of members.

CHAPTER IV : SOLIDARITY

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

Workers' information on the economic and financial situation of the undertaking

Legislative initiatives, national case law and practices of national authorities

According to the *zákon o sociálnom poistení* [Act on social insurance]¹³¹, which came into force on 1 January 2004, employers, and preliminary administrator of assets in bankruptcy or administrator of assets in bankruptcy respectively, are obliged to inform in writing representatives of employees, and if they are not appointed, the employees themselves, about the bankruptcy (insolvency) of an employer within five days from its origin.

Pursuant to Section 238 paragraph 3 of the Labour Code¹³², an employer may refuse to provide information that is capable to cause damage to him or may require that the provided information be dealt with as confidential.

Article 28. Right of collective bargaining and action

Social dialogue

Legislative initiatives, national case law and practices of national authorities

With the effect from 1 December 2004 the *zákon o hospodárskom a sociálnom partnerstve* [Act on the economic and social partnership (Tripartite Act)]¹³³, which regulated the relations of economic partnership and social partnership between the state, employers and employees, had been abrogated.¹³⁴ The *Rada hospodárskeho a sociálneho partnerstva Slovenskej republiky* [Council of Economic and Social Partnership of the Slovak Republic] – a negotiating authority of economic and social partnership at national level – became the permanent advisory body of the Government of the Slovak Republic.

With the effect from 1 December 2004 the *zákon o kolektívnom vyjednávaní* [Act on collective bargaining]¹³⁵ had been amended. The amendment regulates in detail the way of concluding of collective agreements. The amendment also enables that a collective agreement of higher degree is binding also on the employer, which is not a member of corresponding employers' association that concluded this agreement provided the employer concerned has agreed with it.

¹³¹ *Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov* [Act no. 461/2003 Coll. on social insurance as amended].

¹³² *Zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov* [Act. no. 311/2001 Coll. Labour Code as amended]

¹³³ *Zákon č. 106/1999 Z. z. o hospodárskom a sociálnom partnerstve (zákon o tripartite)* [Act no. 106/1999 Coll. on the economic and social partnership (Tripartite Act)].

¹³⁴ The Tripartite Act had been abrogated by the *zákon č. 585/2004 Z. z., ktorým sa dopĺňa zákon č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 585/2004 Coll., which supplements the Act no. 575/2001 Coll. on organization of the government's activity and organization of the central state administration as amended and on amendments and modifications of certain other laws].

¹³⁵ *Zákon č. 2/1991 Zb. o kolektívnom vyjednávaní v znení neskorších predpisov* [Act no. 2/1991 Coll. on the collective bargaining as amended].

The right of collective action (right to strike) and the freedom of enterprise or the right to property

Reasons for concern

The legislative measures concerning the right to strike are too restrictive because strikes are not permitted if they are not related to the negotiation of collective agreement. During the period under scrutiny, the situation as regards the right to strike has not changed. Therefore, as concluded by the European Committee of Social Rights, the situation in the Slovak Republic is not in conformity with Article 6 paragraph 4 of the European Social Charter¹³⁶.

Article 29. Right of access to placement services

Access to placement services

Legislative initiatives, national case law and practices of national authorities

On 4 December 2003 the Parliament adopted the *zákon o službách zamestnanosti* [Act on employment services]¹³⁷, which came into force on 1 February 2004. The Act on employment services regulates the legal relationships in the provision of employment services.

According to the Act on employment services, the employment services are provided by the *Ústredie práce, sociálnych vecí a rodiny* [Centre of Labour, Social Affairs and Family] and the *úradý práce, sociálnych vecí a rodiny* [offices of labour, social affairs and family], legal entity or natural person which procure employment, provide expert advisory services and apply active measures at labour market based on the concluded written agreement with competent office or based on the concluded written agreement within the framework of partnership, legal entity or natural person which procure employment for reimbursement, temporary employment agency and supported employment agency.

The Act on employment services defines new institute in the area of employment services – partnership. Partnership is the interest association of legal persons established with the aim to realise concrete projects and programmes for support of employment. Partnership can be established mainly by the office of labour, social affairs and family, district authority, municipality, self-governing region, NGO, business entity, bank and charitable organisation.

The Act on employment services contains a number of different types of contributions for active measures in labour market, projects and programmes for supporting the participation in labour market, which are focused mainly on disadvantaged job seekers (e. g. citizens older than 50 years, long-term unemployed citizens, etc.). The Act introduces a number of active measures supporting disadvantaged job seekers, for instance: mediation of employment, systematic vocational preparation, professional consultancy, education and preparation for the labour market.

¹³⁶ Conclusions XI-2 [2003].

¹³⁷ *Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov* [Act no. 5/2004 Coll. on employment services and on amendments and modifications of certain other laws].

Article 30. Protection in the event of unjustified dismissal

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The *zákon o sociálnom poistení* [Act on social insurance]¹³⁸, which came into force on 1 January 2004, regulates the compensation for the employees in case of insolvent employer.

The employee is entitled to guarantee insurance benefit, if his/her employer becomes insolvent¹³⁹, and so is unable to settle employees' claims from employment relationship listed in detail in the Act on social insurance (i. e. claim for wage and compensation for periods of working standby; claim for wage and wage compensation for public holiday and in cases of obstacles to work; claim to wage compensation upon immediate termination of employment relationship, etc.). The employee is not entitled to claim guarantee insurance benefits, if he/she has concluded a contract of employment after occurrence of insolvency of the employer and he/she has been notified of the employer's insolvency in writing.

Guarantee insurance benefit may be granted for not more than three months from the last 18 months of the employment relationship preceding the onset of the employer's insolvency, or on the day of termination of employment relationship on grounds of insolvency of the employer. The claim to benefit arises from the day of fulfilment of conditions laid down in the Act. The claim to guarantee insurance benefit does not require the performance of the employer's duty to pay and to transfer guarantee insurance premiums. The employee has to submit an application for benefit in accordance with the Act to assert a claim to guarantee insurance benefit.

Guarantee insurance benefit shall be granted in the relevant amount of the claim, minus contributions to sickness insurance and pension security, health insurance, unemployment insurance contributions which the employee pays pursuant to special regulation, and income tax advances from dependent activities and functional emoluments pursuant to a special regulation, calculated according to conditions valid for the relevant calendar month for which the above claims of the employee are ascertained.

As mentioned in the comments concerning the Article 27, an employer, preliminary administrator of assets in bankruptcy or administrator of assets in bankruptcy is obliged to inform the employees' representatives, and if no employees' representatives operate at the employer, the employees directly in writing on his/her state of insolvency within five days from its onset.

¹³⁸ *Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov* [Act no. 461/2003 Coll. on social insurance as amended].

¹³⁹ For the purposes of settling employees' claims arising from employment relationship in cases of insolvency (entitlement to guarantee insurance benefit), the employer is considered as insolvent where a bankruptcy petition was presented, the court has adjudged a declaration of bankruptcy or the court has rejected the bankruptcy petition on grounds of lack of assets. The day of issue of the court's decision on the declaration of bankruptcy, or the day of issue of the court's decision on rejection of bankruptcy petition on grounds of lack of assets is deemed the day of onset of insolvency.

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

In April 2004, the Government of the Slovak Republic approved the *nariadenie, ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané tehotným ženám, matkám do konca deviateho mesiaca po pôrode a dojčiacim ženám, zoznam prác a pracovísk spojených so špecifickým rizikom pre tehotné ženy, matky do konca deviateho mesiaca po pôrode a pre dojčiace ženy, a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní týchto žien* [Decree which provides a list of activities and places of work, which are forbidden to pregnant women, mothers till the end of the ninth month after childbirth and nursing mothers and list of activities and places of work representing specific risk for pregnant women, mothers till the end of the ninth month after childbirth and nursing mothers and which regulates the duties of employer employing those women]¹⁴⁰. The Decree came into effect on 1 May 2004. Transposition of Directive 92/85/EHS of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding has been accomplished by the mentioned Decree.

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

According to the Anti-discrimination Act¹⁴¹, harassment is deemed to be a form of discrimination. The harassment is defined as such treatment with person that this treatment can be considered by person concerned as disagreeable, unseasonable and offensive and with the intention or effect of violating the dignity of a person or creating hostile, degrading or intimidating environment or if the sufferance of such treatment may be considered as a condition of the decision or exercise of rights and duties raised from legal relationship.

According to the Labour Code Amendment, which came into force on 1 July 2004, an employee who considers himself/herself aggrieved by harassment (including moral and sexual harassment) may claim legal protection before the court in accordance with the provisions of Anti-discrimination Act.¹⁴²

Working time

Legislative initiatives, national case law and practices of national authorities

In February 2004 the Parliament approved the *zákon o pracovnom čase a dobe odpočinku v doprave* [Act on working time and repose period in the area of transportation].¹⁴³ Maximum time of driving a motor vehicle may not exceed nine hours per day. This time may be

¹⁴⁰ *Nariadenie vlády č. 272/2004 Z. z.* [Governmental Decree no. 272/2004 Coll.].

¹⁴¹ *Zákon č. 365/2004 Z. z. o rovnakom zaobchádzaní v niektorých oblastiach a o ochrane pred diskrimináciou a o zmene a doplnení niektorých zákonov (antidiskriminačný zákon)* [Act no. 365/2004 Coll. on Equal treatment in Certain Areas and Protection against Discrimination and on amendments and modifications of certain other laws (Anti-discrimination Act)].

¹⁴² For more information concerning legal protection of the victims of discrimination according to the Anti-discrimination Act, please see the comments concerning the Article 21.

¹⁴³ *Zákon č. 121/2004 Z. z. o pracovnom čase a dobe odpočinku v doprave a o zmene a doplnení niektorých zákonov* [Act no. 121/2004 Coll. on working time and repose period in the area of transportation and on amendments and modifications of certain other laws].

extended to ten hours two times per week for the purpose to end the ride. The time for driving motor vehicle may not exceed 90 hours in the period of two consecutive weeks.

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

Protection of minors at work

Legislative initiatives, national case law and practices of national authorities

In April 2004 the Government of the Slovak Republic approved the *nariadenie, ktorým sa ustanovuje zoznam prác a pracovísk, ktoré sú zakázané mladistvým zamestnancom, a ktorým sa ustanovujú niektoré povinnosti zamestnávateľom pri zamestnávaní mladistvých zamestnancov* [Decree enacting a list of works and workplaces which are forbidden to juvenile employees, and which also regulates some duties of employers concerning employment of juvenile employees]¹⁴⁴. The Decree came into effect on 1 May 2004. Transposition of the Directive 94/33/ES on of 22 June 1994 on the protection of young people at work has been accomplished by the mentioned Decree.

Article 33. Family and professional life

Employers' initiatives to facilitate the conciliation of family and professional life

Legislative initiatives, national case law and practices of national authorities

In 2004 the Government of the Slovak Republic approved¹⁴⁵ an update of the family state policy conception for the period of years 2004-2006. The approved update relates also to the conciliation of family and professional life. According to the approved update, the *zákon o rodičovskom príspevku* [Act on parental allowance]¹⁴⁶ supports the individual child care up to the age of three or six years respectively.

According to the approved update, the insufficient network and capacity of preschool institutions represent barrier for the conciliation of family and professional life. The priorities of the family state policy in the field of the conciliation of family and professional life include the increase of labour market flexibility, support of the willingness of employers to help employed parents, and also the financial support of the network of child care services and the unification of the tax and conscriptional bonus.

The *ministerstvo práce, sociálnych vecí a rodiny* [Ministry of Labour, Social Affairs and Family] organises the competition "*Zamestnávateľ ústretový k rodine*" ["Employer friendly to family"]. The aim of this competition is to extend the sensitiveness to the problems of the conciliation of family life and professional life in society and to motivate employers to introduce initiatives to facilitate the conciliation of family and professional life, to extend the use of new corporative culture modules, and to deepen the equality between men and women. One of the considered criteria of the mentioned competition is the principle of non-discrimination on the ground of the age.

¹⁴⁴ *Nariadenie vlády č. 286/2004 Z. z.* [Governmental Decree no. 286/2004 Coll.].

¹⁴⁵ *Uznesenie vlády č. 1091/2004 zo 16. novembra 2004* [Governmental Resolution no. 1091/2004 of 16 November 2004].

¹⁴⁶ *Zákon č. 280/2002 Z. z. o rodičovskom príspevku v znení neskorších predpisov* [Act no. 280/2002 Coll. on parental allowance as amended].

Article 34. Social security and social assistance

Social assistance and fight against social exclusion (in general)

Legislative initiatives, national case law and practices of national authorities

In July 2004, the Government of the Slovak Republic by its Resolution no. 774 approved the *Národný akčný plán sociálnej inklúzie 2004-2006* [National Action Plan on Social Inclusion 2004-2006]. The purpose of this plan is to combat poverty and to define the most vulnerable groups of population. According to the action plan among the most vulnerable groups of population of the Slovak Republic belong unemployed people, families with children (especially families with 3 and more children), Roma communities, disabled people, migrants and homeless people.

In November 2003, the Parliament approved the *zákon o pomoci v hmotnej núdzi* [Act on support in material distress]¹⁴⁷, which came into force on 1 January 2004. The Act regulates provision of benefits and contributions for people in material distress and low-income people.

In November 2003, the Parliament approved the new *zákon o prídavku na dieťa* [Act on child benefit]¹⁴⁸, which came into effect on 1 January 2004. The new legal regulation concerning children allowances, unlike the previous regulation, where granting of children allowances was conditioned by a certain maximal level of child's parents income (i.e. solidarity principle was applied), stipulates that children allowances are granted in the same amount to each child, regardless of the level of income of its parents (i.e. egalitarian principle is applied at present).

In October 2003, the National Council approved the new *zákon o životnom minime* [Act on minimum wage for living]¹⁴⁹, which came into effect on 1 January 2004.

Social assistance for undocumented foreigners and asylum seekers

Legislative initiatives, national case law and practices of national authorities

According to the Asylum Act Amendment, which will come into force on 1 February 2005, the applicant for asylum is in the course of the procedure of granting asylum granted with accommodation, food or food allowance, basic sanitary material and other things necessary for survival. During the stay in asylum facility or integration centre, the applicant for asylum is also provided with spending money. According to the Asylum Act Amendment the spending money is not provided, for example, to the applicant who attempted of unauthorised entry to the territory of other state or who voluntarily left the territory of the Slovak Republic and was returned back by the authorities of neighbouring state or in the case of repeated application when the previous asylum granting procedure was discontinued because of reasons listed in the law.

¹⁴⁷ *Zákon č. 599/2003 Z. z. o pomoci v hmotnej núdzi a o zmene a doplnení niektorých zákonov* [Act no. 599/2003 Coll. on support in material destitution and on amendments and modifications of certain other laws].

¹⁴⁸ *Zákon č. 600/2003 Z. z. o prídavku na dieťa a o zmene a doplnení zákona č. 461/2003 Z. z. o sociálnom poistení* [Act no. 600/2003 Coll. on child benefit and on amendments and modifications of Act no. 461/2003 Coll. on Social Insurance].

¹⁴⁹ *Zákon č. 601/2003 Z. z. o životnom minime a o zmene a doplnení niektorých zákonov* [Act no. 601/2003 Coll. on living wage and on amendments and modifications of certain other laws].

Measures promoting the right to housing

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations¹⁵⁰ notes the “comprehensive Roma settlements development programme”, as well as the “programme of support for the construction of communal rental housing of a different standard”, it expresses concern about the isolation of the Roma community in ghetto-like neighbourhoods and their critical situation in respect of housing conditions, especially in the eastern part of the country, where most of the Roma community is concentrated.

The Committee recommends that the Slovak Republic effectively implement policies and projects aimed at avoiding segregation of Roma communities in housing and involve Roma communities and associations as partners in housing construction, rehabilitation and maintenance projects. Furthermore, the Committee encourages the Slovak Republic to take all possible measures to further improve housing conditions for Roma, taking also into account that for families, and particularly children, living in a proper environment is an essential prerequisite for access to education and employment on an equal footing.

Legislative initiatives, national case law and practices of national authorities

In June 2004, the Parliament approved the amendment¹⁵¹ to the *zákon o hlásení pobytu občanov Slovenskej republiky a registri obyvateľov Slovenskej republiky* [Act on the Notification of the Place of Residence by Citizens of the Slovak Republic and the Register of Inhabitants of the Slovak Republic]¹⁵², which came into force on 1 October 2004 apart from selected provisions, which came into force on 1 September 2004. From 1 October 2004 the registration of the citizen to permanent residence does not give any right concerning the building, its part or its owner, and it has the pure registering character. The amendment allows citizens to register themselves to permanent residence in the place where they actually live regardless whether they lease or own flat or house there.

But the amendment allows to register the permanent residence only in building or its part officially registered, and according to the *stavebný zákon* [Construction Act] dedicated to housing, accommodation or recreation. In case of citizen, who cannot register himself/herself to permanent residence with exact address, only the name of municipality will be noticed as permanent residence of such citizen

In November 2003, the Parliament approved the *zákon o štátnom fonde rozvoja bývania* [Act on State Housing Development Fund]¹⁵³, which came into force on 1 January 2004. The Act on State Housing Development Fund regulates conditions of providing the state support for housing development mainly for citizens with low incomes. The Act recognizes the state support in a form of credit or non-repayable contribution.

According to opinion of group of experts from non-government organisations, which had been established within the European Community Action Programme to combat racial

¹⁵⁰ CERD/C/65/CO/7, point 10.

¹⁵¹ *Zákon č. 454/2004 Z. z.* [Act no. 454/2004].

¹⁵² *Zákon č. 253/1998 Z. z. o hlásení pobytu občanov Slovenskej republiky a registri obyvateľov Slovenskej republiky v znení neskorších predpisov* [Act no. 253/1998 Coll. on the Notification of the Place of Residence by Citizens of the Slovak Republic and the Register of Inhabitants of the Slovak Republic as amended].

¹⁵³ *Zákon č. 607/2003 Z. z. o štátnom fonde rozvoja bývania* [Act no. 607/2003 Coll. on State Housing Development Fund].

discrimination and which focused on the status in the field of Roma rights to housing, the Slovak Republic must pay more attention to housing of economically disadvantaged groups of people. According to the conclusions of this group of July 2004, right to housing is still inaccessible to certain groups of population. It is caused, *inter alia*, by high costs of accommodation, insufficient attention of the state and self-governments paid to the problems of housing of economically most disadvantaged groups of population. The group of experts considers as necessary to introduce definitions of terms such as, above all, “social accommodation” and “social apartments” into the Slovak law; to assert the anti-segregation strategies while constructing new social houses and to legally enable the registration of permanent residence without relation to property in certain locality. The importance of permanent residence consists in the fact that exercising of numerous political and social rights is conditioned by the place of permanent residence.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 22 December 2003 the *ministerstvo výstavby a regionálneho rozvoja* [Ministry of Construction and Regional Development] issued the *výnos č. V-1/2003 o regulácii cien nájmu bytov* [Decree no. V-1/2003 on the regulation of housing rental prices]. The Decree became effective on 10 January 2004. It determines maximal prices for apartments, constitutes the increase of rental prices for basic operating equipment of apartment as well as other furniture and equipment of the apartment and specifies apartments on which this decree does not relate to.

Article 35. Health care

Access to health care

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations¹⁵⁴ is alarmed at the critical health situation of some Roma communities, which is largely a consequence of their poor living conditions.

The Committee recommends the Slovak Republic to continue in implementation of programmes and projects in the field of health for Roma, bearing in mind their disadvantaged situation resulting from extreme poverty and low level of education.

Legislative initiatives, national case law and practices of national authorities

In 2004 the Government of the Slovak Republic approved¹⁵⁵ the *Koncepcia sociálnej a dlhodobej starostlivosti* [Concept of social and long-term care], which is a component part of Health Care Reform and which supplements the standard health and social care.

In 2004 the Parliament approved a number of new reform acts regarding the health care, namely the *zákon o zdravotnej starostlivosti* [Health Care Act]¹⁵⁶, *zákon o rozsahu zdravotnej*

¹⁵⁴CERD/C/65/CO/7, point 11.

¹⁵⁵ *Uznesenie vlády č. 161/2004 z 25. februára 2004* [Governmental Resolution no. 161/2004 of 25 February 2004].

¹⁵⁶ *Zákon č. 576/2004 Z. z. o zdravotnej starostlivosti, službách súvisiacich s poskytovaním zdravotnej starostlivosti a o zmene a doplnení niektorých zákonov* [Act no. 576/2004 Coll. on health care, services relating to provision of health care and on amendments and modifications of certain other laws].

starostlivosti uhrádzanej na základe verejného zdravotného poistenia a o úhradách za služby súvisiace s poskytovaním zdravotnej starostlivosti [Act on scope of the health care provisioned on the ground of the public health insurance and on the fees for services related to provision of the health care]¹⁵⁷, *zákon o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch a stavovských organizáciách v zdravotníctve* [Act on health care providers, health employers and professional organisations in health service]¹⁵⁸, *zákon o záchrannej zdravotnej službe* [Act on Health Rescue Service]¹⁵⁹, *zákon o zdravotnom poistení* [Act on Health Insurance]¹⁶⁰ and *zákon o zdravotných poisťovniach a dohlade nad zdravotnou starostlivosťou* [Act on Health Insurance Companies and Health Care Oversight]¹⁶¹.

The Act on Health Insurance Companies and Health Care oversight has introduced the *Úrad pre dohľad nad zdravotnou starostlivosťou* [Healthcare Oversight Office]. The Healthcare Oversight Office supervises the public health insurance and provision of the health care in the Slovak Republic.

Positive aspects

According to the Act on Asylum Amendment, which will come into force on 1 February 2005, the asylum seeker is provided with urgent health care and in the certain cases also with other health care services according to the state of health of the individual asylum seeker's health. New legal regulation of health care provided to asylum seekers includes appropriate health care to minor asylum seekers in the case when they are victims of malpractices, exploitation, neglect, torture, and inhuman and degrading treatment or when suffered of consequences of the armed conflict.

Drugs (regulation, decriminalisation, substitutive treatments)

Legislative initiatives, national case law and practices of national authorities

The Government of the Slovak Republic approved¹⁶² the *Národný program boja proti drogám na roky 2004-2008* [National Program on combat against drugs for the period of years 2004 - 2008].

From 15 November 2004 to 21 November 2004, the *Výbor ministrov pre drogovú závislosť a kontrolu drog* [Ministers' Committee for drug addictions and control of the drugs], which is

¹⁵⁷ *Zákon č. 577/2004 Z. z. o rozsahu zdravotnej starostlivosti uhrádzanej na základe verejného zdravotného poistenia a o úhradách za služby súvisiace s poskytovaním zdravotnej starostlivosti* [Act no. 577/2004 Coll. on scope of the health care provisioned on the ground of the public health insurance and on the fees for services related to provision of the health care].

¹⁵⁸ *Zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov* [Act no. 578/2004 Coll. on health care providers, health employers and professional organisations in health service and on amendments and modifications of certain other laws].

¹⁵⁹ *Zákon č. 579/2004 Z. z. o záchrannej zdravotnej službe a o zmene a doplnení niektorých zákonov* [Act no. 579/2004 Coll. on Health Rescue Service and on amendments and modifications of certain other laws].

¹⁶⁰ *Zákon č. 580/2004 Z. z. o zdravotnom poistení a o zmene a doplnení zákona č. 95/2002 Z. z. o poisťovníctve a o zmene a doplnení niektorých zákonov* [Act no. 580/2004 Coll. on Health Insurance and on amendments and modifications of the Act no. 95/2002 Coll. on Insurance Industry and on amendments and modifications of certain other laws].

¹⁶¹ *Zákon č. 581/2004 Z. z. o zdravotných poisťovniach, dohlade nad zdravotnou starostlivosťou a o zmene a doplnení niektorých zákonov* [Act no. 581/2004 Coll. on Health Insurance Companies, on HealthCare oversight and on amendments and modifications of certain other laws].

¹⁶² *Uznesenie vlády č. 289/2004 z 15. apríla 2004* [The Governmental Resolution no. 289/2004 of 15 April 2004].

an advisory body of the Government of the Slovak Republic, has organized the project ‘*Týždeň boja proti drogám*’ [“Week on combat against drugs”].

Reasons for concern

According to the results of the “2003 European School Survey Project on Alcohol and Other Drugs”, published on 14 December 2004, the Slovak Republic is on 10th place in the Europe in consumption of cannabis by young people.

Other relevant developments

Positive aspects

In May 2004 the Parliament adopted the *zákon o ochrane nefajčiarov* [Act on non-smokers protection]¹⁶³, which entered into force on 1 July 2004. The new Act on non-smokers protection regulates the conditions for protection of people’s health against the nicotine addiction and against the unhealthy impact of smoking resulting in endangerment to health of smokers as well as non-smokers. The new Act on non-smokers protection also regulates the conditions of sale, production, markings and placing of the tobacco products on the market.

The new Act on non-smokers protection regulates the places where the smoking is prohibited. Every consumer package of the tobacco product, except of the tobacco product which is not designated for smoking, must contain general warning and additional warning. The consumer cigarettes package must contain also the information about the contents of ill-substances.

In February 2004 the Parliament adopted the *zákon o spotrebnej dani z tabakových výrobkov* [Act on excise duty on tobacco products]¹⁶⁴, which came into force on 1 March 2004 apart from selected provisions, which came into force on 1 May 2004. The new Act on excise duty on tobacco products 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.

In 2004 the Ministry of Health and Chief Sanitarian of the Slovak Republic have started to perform the National programme of the HIV/AIDS prevention in the Slovak Republic for the period of years 2004-2007.

Article 36. Access to services of general economic interest

Access to services of general economic interest in the economy of networks: transports, posts and telecommunications, water-gas-electricity

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

The United Nations Committee on the Elimination of Racial Discrimination in its concluding observations¹⁶⁵ pointed out that it is alarmed at the critical health situation of some Roma communities, which is largely a consequence of their poor living conditions.

¹⁶³ *Zákon č. 377/2004 Z. z. o ochrane nefajčiarov a o zmene a doplnení niektorých zákonov* [Act no. 377/2004 Coll. on non-smokers protection and on amendments and modifications of certain other laws].

¹⁶⁴ *Zákon č. 50/2004 Z. z. o spotrebnej dani z tabakových výrobkov* [Act no. 50/2004 Coll. on excise duty on tobacco products].

¹⁶⁵ CERD/C/65/CO/7, point 11.

The Committee encourages the Slovak Republic to take further measures to address the issues of drinking water supplies and sewage disposal systems in Roma settlements.

Legislative initiatives, national case law and practices of national authorities

The provision of postal services is regulated by the *zákon o poštových službách* [Act on Postal Services]¹⁶⁶. The *Poštový regulačný úrad* [Postal Regulatory Office] has been established as the state administration body to perform state regulation of postal services. The Postal Regulatory Office has found out that the *Slovenská pošta, š. p.* [Slovak Post Office, national enterprise] had not observed the postal terms and conditions. The non-compliance with the postal terms and conditions led to unavailability of postal services and problem of placement of the postal boxes.

According to the provisions of the *zákon o dráhach* [Railway Act]¹⁶⁷, the State is responsible for the performance of services concerning the railways in the public interest. In 2004, the Government of the Slovak Republic approved¹⁶⁸ the Draft of Agreement on performance of services related to provision of personal transport in the public interest. According to the draft, the volume of services performed has been reduced in comparison with 2003 about 1,93%.

Other services of general interest

Reasons for concern

According to the *zákon o koncesionárskych poplatkoch* [Act on radio and TV broadcast receiver charges]¹⁶⁹ every natural person and legal person who owns the television receiver is obliged to pay TV broadcast receiver charges even though the signal of the public *Slovenská televízia* [Slovak television] does not cover the whole territory of the Slovak Republic.¹⁷⁰

Article 37. Environmental protection

The right to access to information in environmental matters

Legislative initiatives, national case law and practices of national authorities

The *zákon o zhromažďovaní, uchovávaní a šírení informácií o životnom prostredí* [Act on collecting, storing and disseminating of environmental information]¹⁷¹ which entered into force on 1 July 2004 regulates the conditions and the process of collection, storing and

¹⁶⁶ *Zákon č. 507/2001 Z. z. o poštových službách v znení neskorších predpisov* [Act No. 507/2001 Coll. on Postal Services as amended].

¹⁶⁷ *Zákon č. 164/1996 Z. z. o dráhach a o zmene zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov* [Act no. 164/1996 Coll. on railways and on amendment of the Act no. 455/1991 Coll. Trade Act as amended].

¹⁶⁸ *Uznesenie vlády č. 11/2004 zo 14. januára 2004* [Governmental Resolution no. 11/2004 of 14 January 2004].

¹⁶⁹ *Zákon č. 212/1995 Z. z. o koncesionárskych poplatkoch v znení neskorších predpisov* [Act no. 212/1995 Coll. on radio and TV broadcast receiver charges as amended].

¹⁷⁰ According to the Report on broadcasting in the Slovak Republic and on activities of the Council for Broadcasting and Retransmission in the year 2003, the television signal coverage of the public Slovak television (STV) regarding the territory of the Slovak Republic and its inhabitants is as following: STV Channel 1 – covers 97,3% of the territory and 95,8% of inhabitants, STV Channel 2 – covers 89,4% of the territory and 88,7% of inhabitants of the Slovak Republic.

¹⁷¹ *Zákon č. 205/2004 Z. z. o zhromažďovaní, uchovávaní a šírení informácií o životnom prostredí a o zmene a doplnení niektorých zákonov* [Act no. 205/2004 Coll. on collection, saving and dissemination of environmental information and on amendments and modifications of certain other laws].

dissemination of environmental information by public authority bodies and other legal persons and natural persons set in this Act (obligated persons). The Act on collection, storing and dissemination of environmental information stipulates the range of information which the persons obliged have to disseminate and introduces the *Národný register znečistenia* [National Register of Pollution] containing the data concerning pollution release. The Register is publicly accessible in electronic form. But when the access to information is required on a basis of application, the access is regulated according the *zákon o slobode informácií*¹⁷² [Freedom of Information Act].

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The *zákon o Enviromentálnom fonde* [Act on Environmental fund]¹⁷³, which will enter into force on 1 January 2005 establishes Environmental fund with the view of performing state support for environment conservation.

On 2 December 2004 the Parliament approved the *zákon o ochrane voľne žijúcich živočíchov a voľne rastúcich rastlín reguláciou obchodu s nimi* [Act on protection of free-living fauna and free-growing flora and regulation of trading with them]. This Act regulates mainly conditions under which selected free-living fauna and free-growing flora is protected, rights and duties of natural persons and legal persons concerning protection of selected free-living fauna and free-growing flora, and the rules on trading with seal products.

Article 38. Consumer protection

Protection of the consumer in contract law

Legislative initiatives, national case law and practices of national authorities

On March 2004 the Parliament approved the Civil Code Amendment¹⁷⁴, which came into force on 1 April 2004. The Amendment contains provisions concerning consumer contract and the timesharing contract as a special types of contracts in the area of consumer protection. In accordance with the Council Directive 93/13/EEC on unfair terms in consumer contracts and Directive 94/47/EC of the European Parliament and the Council 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. The Civil Code Amendment specifies in detail 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, 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 of the European Parliament and of the Council 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.

¹⁷² *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 (Freedom of Information Act)].

¹⁷³ *Zákon č. 587/2004 Z. z. o Enviromentálnom fonde a o zmene a doplnení niektorých zákonov* [Act no. 587/2004 Coll. on Environmental fund and on amendments and modifications of certain other laws].

¹⁷⁴ *Zákon č. 150/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 40/1964 Zb. Občiansky zákonník v znení neskorších predpisov* [Act no. 150/2004 Coll., which amends and supplements the Act no. 40/1964 Coll. Civil Code as amended].

Protection of the consumer in the law of civil procedure

Positive aspects

According to the *zákon o ochrane spotrebiteľa* [Consumer Protection Act]¹⁷⁵, the consumer may, against the violation of the rights and duties constituted by the Act on Consumer Protection and of rights and duties constituted by several other laws (e. g. Civil Code; Act on Consumer Credits; Act on Collective Tours, Business Conditions for the Travel Offices and Agencies; Act on Consumer Protection in Door-to-Door and Distance Selling; Act on Advertising), seek against the violator judicial refrain from performing business activities and removal of defects. The same right may be exercised also by an association.

According to the Act on Consumer Protection, the consumer, who assumes that his/her rights or interests protected by law were affected because of non-observance of the principle of equal treatment, may seek judicial protection in accordance with the Anti-Discrimination Act (see the comments in Article 21).

Information of the consumer

Positive aspects

With the effect from 1 September 2004, several changes concerning especially the definition of the term “safe product” and the duties concerning the placement of products on the market were realised by the amendment¹⁷⁶ of the Act on Consumer Protection made out in connection with the transposition of the Directive 2001/95/EC of the European Parliament and of the Council of December 2001 on general product safety. The amendment also specifies in detail and adds the information duties of providers, importers and sellers as for the risks and safety of products. Product must be visibly, intelligibly and in appropriate form marked with information, which allow to consider risks connected with the use of this product, and with other information relating to the safety of the product. The product must be marked with the information necessary for identification of provider and importer of the product and for identification of products’ series, if needed. The product must be accompanied with the documentation necessary for receipt of the product and its use.

Further, the Act on Consumer Protection allows to communicate the information dedicated for consumer, besides the state language, also in other languages. Other labelling may be used paralelly, especially the graphical symbols and pictograms.

In accordance with the Act on Consumer Protection, competent authorities acting in the field of supervision and control over consumer protection are authorised to publish decisions issued on the grounds of the Act on Consumer Protection. Publication of decisions shall help to increase of legal awareness of consumers and of legal certainty of entrepreneurs, who obtain legally relevant information about application of legal regulations by state administration authorities in this way.

¹⁷⁵ *Zákon č. 634/1992 Zb. o ochrane spotrebiteľa v znení neskorších predpisov* [Act no. 634/1992 Coll. on Consumer Protection as amended].

¹⁷⁶ *Zákon č. 451/2004 Z. z.* [Act no. 451/2004 Coll.]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

According to the Act on Consumer Protection, the associations of consumers and of other legal persons established for the purpose of consumer protection have the right to participate in legislative process concerning the consumer protection.

However, as it is obvious from the minutes of notice and comment proceedings of several proposals of laws concerning consumer protection¹⁷⁷, these associations of consumers have not been *de facto* involved in legislative process since the competent ministries had failed to submit proposals of relevant draft laws to these associations for their comments.

¹⁷⁷ E. g. the proposals of amendment of Consumer Protection Act or the amendment of Act on E-Commerce.

CHAPTER V : CITIZEN'S RIGHTS

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

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

Legislative initiatives, national case law and practices of national authorities

According to the information provided by the Ministry of Interior¹⁷⁸, 593 citizens of other member States of the European Union intended to take a part in the election to the European Parliament in the Slovak Republic. Most of them were the Polish - 260, following by the Czechs – 164 and the Hungarians – 147. Most of the foreigners were interested in taking part in election in the Nitra Region – 116 and in the Bratislava Region – 111. There are no exact statistics how many foreigners, who showed an interest to vote in the Slovak Republic, really took a part in the election.

The Ministry of Interior sent to the citizens of other member State of the European Union with the permanent residence on the territory of the Slovak Republic¹⁷⁹ a bilingual Slovak and English instruction that they are eligible to take a part in the election to the European Parliament in the Slovak Republic, so they might register themselves in the Slovak Republic and might be deleted from the list of electors in their mother country. The Ministry of Interior published the information including the instructions for non-national residents who decided to vote in the Slovak Republic also on its web site in English and French languages.

There were 1212 Slovak citizens who decided to vote in other member State. Most of the Slovaks (608) wanted to elect in Germany, in Hungary it was 316 and in Italy 162 Slovak citizens.

Reasons for concern

Please see also comments concerning the Article 40, specifically the Report of ODIHR regarding a multiplicity of election laws in the Slovak Republic.

In connection with breaches of pre-electional campaign, please see comments concerning the Article 11.

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

Participation of foreigners in public life at local level

Legislative initiatives, national case law and practices of national authorities

On 22 September 2004, the Parliament approved the accession of the Slovak Republic to the Convention on the Participation of Foreigners in Public Life at Local Level. At the same time it decided that the Convention comes under the status of international agreements according to Article 7 paragraph 5 of the Slovak Constitution, i. e. it has precedence over the laws of the Slovak Republic.

¹⁷⁸ Press conference of General Director of Public Administration Department of Ministry of Interior of dated 7 June 2004.

¹⁷⁹ According to the information provided by the Immigration Police, at that time there were 6871 of non-nationals EU citizens with permanent residence on the territory of the Slovak Republic.

Right to vote and to stand as a candidate for EU citizens non nationals of the member State

Legislative initiatives, national case law and practices of national authorities

See comments stated in paragraph below.

Right to vote and to stand as a candidate at municipal elections for third country nationals

Legislative initiatives, national case law and practices of national authorities

Pursuant to the Article 30 paragraph 1 of the Slovak Constitution, foreigners with permanent residence on the territory of the Slovak Republic 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 right to vote in the election to the municipal and regional self-government bodies and the right to stand as a candidate in these elections is granted also to EU citizens non nationals as well as to third country nationals. Neither the Act on election to the municipal self-government bodies¹⁸⁰, nor the Act on election to the bodies of self-government regions¹⁸¹ differentiates between these two categories of foreigners. All foreigners with permanent residence on the territory of the Slovak Republic have the same legal status as regards the right to vote and to stand as a candidate in these elections on local level as citizens of the Slovak Republic.

Lists of voters are made out on the basis of so-called “abiding register of voters”, i. e. the list of voters, which has been made for the purpose of parliamentary election. Municipalities are in charge to put on the local list of voters the foreigners who meet the same conditions as voters who are nationals.

The Act on election to the bodies of self-government regions stipulates reasons that establish the obstacle to the performance of the rights to vote and to stand as a candidate in the elections, namely restriction of personal freedom for the reasons stated by the law, execution of compulsory military service or alternative service, if it is necessary for fulfilment of tasks in accordance with particular regulations, and the *lost of legal capacity*.

According to the Act on election to the municipal self-government bodies, the reason establishing an obstacle to the performance of the rights to vote and to stand as a candidate in the election is *also the restriction of legal capacity*.

The document containing the list of candidates must be accompanied with signed affirmation provided by the candidate declaring that he/she agrees with candidacy, has not given a consent to be listed in another list of candidates, and that he/she is not aware of any obstacles to his eligibility for standing as a candidate in the election.

¹⁸⁰ *Zákon Slovenskej národnej rady č. 346/1990 Zb. o voľbách do orgánov samosprávy obcí v znení neskorších predpisov* [Act no. 346/1990 Coll. on election to the municipal self-government bodies as amended].

¹⁸¹ *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].

Other relevant developments

Reasons for concern

According to the Report of Office for Democratic Institutions and Human Rights (OSCE – ODIHR)¹⁸² Slovakia has a multiplicity of election laws for various types of elections¹⁸³. The overall legislative framework provides a sound basis for democratic elections. However, the rules and procedures for various types of elections differ, both in the details of voting procedures and in substantial matters such as the length of the campaigns and who has right to vote. Harmonizing or consolidating the various laws would remove such inconsistencies.

Article 41. Right to good administration

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 42. Right of access to documents

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 43. Ombudsman

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 44. Right to petition

This provision of the Charter will only be analysed in the Report dealing with the law and practices of the institutions of the Union.

Article 45. Freedom of movement and of residence

Right to social assistance for the persons who have exercised their freedom of movement

Legislative initiatives, national case law and practices of national authorities

According to the *zákon o pomoci v hmotnej núdzi* [Act on support in material distress]¹⁸⁴, the foreigner, stateless person, person granted asylum, person granted temporary shelter has the same legal status as a national of the Slovak Republic regarding provision of basic living conditions and support in material distress if the support is not provided to him/her according to special laws (e. g. Act on Asylum or Act on Residence of Foreigners) or international treaties by which the Slovak Republic is bound.

¹⁸² OSCE/ODIHR Election Assessment Report on the Presidential Election in the Slovak Republic on 3 April 2004 (9 June 2004).

¹⁸³ The legislative framework includes a separate act for each type of election (presidential, parliamentary, regional, municipal, European Parliament and referendum), as well as a range of other laws relevant to the elections.

¹⁸⁴ *Zákon č. 599/2003 Z. z. o pomoci v hmotnej núdzi a o zmene a doplnení niektorých zákonov* [Act no. 599/2003 Coll. on support in material distress and on amendments and modifications of certain other laws].

The Act on support in material distress amended the *zákon o sociálnej pomoci* [Act on Social Assistance]¹⁸⁵. According to this amendment, the foreigner, stateless person, person granted asylum, person granted temporary shelter is also subject of rendition of the social assistance if the social assistance is not provided to him/her according to special laws (e. g. Act on Asylum or Act on Residence of Foreigners) or international treaties by which the Slovak Republic is bound.

Prohibition to enter certain zones or portions of the national territory during particular events

Legislative initiatives, national case law and practices of national authorities

In the period from 28 May to 1 June 2004 the spring session of the NATO Parliamentary Assembly took place in historical centre of Bratislava. The event had required an extremely high security level, part of the security measures were restriction or constraint of the entry into the area, where the meeting was held.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

According to the amendment¹⁸⁶ of the *zákon o hlásení pobytu* [Act on the Notification of the Place of Residence]¹⁸⁷, the registration of the citizen to permanent residence does not give any right concerning the building or its part or concerning its owner and it has the pure registering character. The Act simplifies the registration procedure for citizens who have not or who cannot get permanent accommodation. In case of citizen, who cannot register himself/herself to permanent residence with the exact address, only the name of municipality will be noticed as permanent residence of such citizen.

In accordance with the requirement concerning the transposition of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, the amendment¹⁸⁸ of the *zákon o cestovných dokladoch* [Act on travel documents]¹⁸⁹, which came into force on 1 May 2004, anchored a possibility for the citizens of the Slovak Republic to travel to the member State of the European Union or to the other member State of the European Economic Area by using the identity card, if it had been accepted as a travel document by this state.

¹⁸⁵ *Zákon č. 195/1998 Z. z. o sociálnej pomoci v znení neskorších predpisov* [Act no. 195/1998 Coll. on Social assistance as amended].

¹⁸⁶ *Zákon č. 454/2004 Z. z.* [Act no. 454/2004 Coll.]

¹⁸⁷ *Zákon č. 253/1998 Z. z. o hlásení pobytu občanov Slovenskej republiky a registri obyvateľov Slovenskej republiky v znení neskorších predpisov* [Act no. 253/1998 Coll. on the Notification of the Place of Residence by Citizens of the Slovak Republic and the Register of Inhabitants of the Slovak Republic as amended].

¹⁸⁸ *Zákon č. 174/2004 Z. z., ktorým sa menia a dopĺňajú zákony súvisiace s presunom niektorých pôsobností z Policajného zboru* [Act no. 174/2004 Coll., which amends and supplements certain laws concerning transferring of certain competencies from the Police Corps].

¹⁸⁹ *Zákon č. 381/1997 Z. z. o cestovných dokladoch v znení neskorších predpisov* [Act no. 381/1997 Coll. on travel documents as amended].

Article 46. Diplomatic and consular protectionDecision 96/409/CFSP of 25 June 1996 on the establishment of an emergency travel document*Positive aspects*

The Decision 96/409/CFSP was transposed with effect from 1 May 2004 by the amendment¹⁹⁰ of the *zákon o cestovných dokladoch* [Act on travel documents]¹⁹¹. The Act determines that an emergency travel document is issued by the embassy of the Slovak Republic on the request of European Union citizen.

¹⁹⁰ Zákon č. 174/2004 Z. z., ktorým sa menia a dopĺňajú zákony súvisiace s presunom niektorých pôsobností z Policajného zboru [Act no. 174/2004 Coll., which amends and supplements certain laws concerning transferring of certain competencies from the Police Corps].

¹⁹¹ Zákon č. 381/1997 Z. z. o cestovných dokladoch v znení neskorších predpisov [Act no. 381/1997 Coll. on travel documents as amended].

CHAPTER VI : JUSTICE

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

Liability of public authorities and immunities of jurisdiction or execution

Positive aspects

According to the *zákon o zodpovednosti štátu za škodu* [Act on State liability for damage]¹⁹², which came into force on 1 July 2004, the State is liable for damage caused by 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 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, undue delays in the proceeding or other unlawful infringement of the rights and lawfully protected interests of natural persons and legal persons.

Legal aid / judicial assistance

Positive aspects

The Ministry of Justice has been drafting a new law on legal assistance. At present, there is only a general intention of the future legal regulation available, which presupposes formation of public defenders specializing in criminal procedural law and establishing of Centres for Legal Assistance as state institutions providing legal assistance to indigent people free of charge or for reduced fees.

With regard to the provision of free or fee-reduced legal services in Slovakia at present, the court may exempt a person from a court fee, the Ministry of Justice provides free legal advice in civil matters, attorneys-at-law are allowed to exercise their legal services free or for reduced fee. Attorneys-at-law represent clients *ex offio* free of charge in criminal proceeding in cases where the Code of Criminal Procedure requires a compulsory defence. Also some non-government organisations provide free legal services in civil matters.

In June 2004, the Parliament approved the *zákon o mediácii* [Act on mediation]¹⁹³, which entered into force on 1 September 2004. The Act on mediation enables to use mediation in civil matters as a form of out of court settlement between parties participating in mediation and whose agreement is necessary to resolve the dispute. The mediation means a process in which a mediator facilitates communication between parties to assist them in reaching a voluntary agreement regarding their dispute raised from the privity of contract or legal relationship. Mediator, who conducts mediation, has to be registered in the Mediator Registry.

¹⁹² *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].

¹⁹³ *Zákon č. 420/2004 Z. z. o mediácii a o doplnení niektorých zákonov* [Act no. 420/2004 Coll. on mediation and on modifications of certain other laws].

The *zákon o probačných a mediačných úradníkoch* [Act on probation and mediation officers]¹⁹⁴, which entered into force on 1 January 2004 enables to use a 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, speed up criminal proceedings and compensation of damages, both pecuniary and non-pecuniary, 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 may provide individual assistance to probationers with the aim 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 adopted the new *vyhláška o odmenách a náhradách advokátov za poskytovanie právnych služieb* [Order of the Ministry of Justice on attorney's fees and reimbursements for provision of legal services]¹⁹⁵, which came into force on 1 January 2005. The Order, *inter alia*, introduces new tariff-fees for legal assistance, which are basically lower than tariff-fees in former regulation, and therefore, it is expected that this new regulation of attorneys' fees may improve access of indigent people to legal services provided by counsels.

Independence and impartiality

Reasons for concern

Authorities of the Slovak Republic, especially general courts, interpret the principle of „impartiality“, which is a precondition to a fair trial, in a very restrictive way. For instance, if a participant of a civil or criminal proceeding or his counsel raises objection of impartiality against a particular judge, and argues that there are ascertainable facts, which may raise doubts as to judge's impartiality, such objection, even though it establishes a legitimate reason to fear that a particular judge lacks impartiality, is usually dismissed by superior (appeal) court. This practice seems to be inconsistent with Article 6 paragraph 1 of ECHR within the meaning of jurisdiction of Eur. Ct. H. R. according to which the existence of impartiality for the purposes of Article 6 paragraph 1 of ECHR must be determined not only according to a subjective test, that is on the basis of the personal conviction and behaviour of a particular judge in a given case, but also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect.¹⁹⁶

It even happens that both participant of the proceeding as well as concerned judge himself object, respectively admit lack of impartiality of the judge, but superior court dismisses these objections and rules, that the judge should continue the proceeding and make decision.

¹⁹⁴ *Zákon č. 550/2003 Z. z. o probačných a mediačných úradníkoch* [Act no. 550/2003 Coll. on probation and mediation officers].

¹⁹⁵ *Vyhláška Ministerstva spravodlivosti Slovenskej republiky o odmenách a náhradách advokátov za poskytovanie právnych služieb č. 655/2004 Z. z.* [Order of the Ministry of Justice no. 655/2004 Coll. on attorney's fees and reimbursements for provision of legal services].

¹⁹⁶ See, among other authorities, the Hauschildt v. Denmark judgment of 24 May 1989, Series A no. 154, p. 21, para. 46, Thomann v. Switzerland judgment of 10 June 1996, Reports of Judgments and Decisions 1996-III, p. 815, para. 30, Ferrantelli and Santangelo v. Italy of 7 August 1996, p. 11, para. 56, and Sigurdsson v. Iceland of 10 April 2004, p. 8, para. 37

Publicity of the hearings and of the pronouncement of the decision

Positive aspects

According to the Section 156 paragraph 3 of the Code of Civil Procedure Amendment¹⁹⁷, which came into force on 1 October 2004, in cases, which are decided in its merits by the court without ordering an oral hearing, the court must publish information regarding the place and date of the public award of the judgment on the court's official table within at least 5 days before the award of the judgment.

Reasons for concern

The Amendment¹⁹⁸ of the *zákon o Zbore väzenskej a justičnej stráže* [Act on Corps of Prison and Judicial Guard],¹⁹⁹ which entered into force on 1 January 2005, regulates a power of a member of the Prison and Judicial Guard to take an audiovisual mean, except the device recording only the sound, away from a person in a courtroom. The temporary confiscation of the thing must be accomplished upon a prior decision of a judge and the device must be returned to person concerned by leaving the courtroom.

Reasonable delay in judicial proceedings

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up

In case of *E.O. and V.P. v. Slovakia*²⁰⁰ the Eur. Ct. H. R. declared the violation of Article 6 paragraph 1 and Article 13 of the ECHR. The Court stated that the competent court did not proceed the case concerning the child's education efficiently and caused undue and unjustified delays in the proceeding. The Court concluded that in a view of what was at stake the length of the proceedings was excessive and that the remedy on which the Government relied did not offer reasonable prospects of success to the applicants.

In case of *Čanády v. Slovakia*²⁰¹ the Eur. Ct. H. R. held that decisions in questions were taken by administrative authorities which did not meet the requirements of an independent and impartial tribunal within the meaning of Article 6 paragraph 1 of the ECHR, and therefore the applicant's right to a hearing by a tribunal had not been respected.

In case of *Zuzčák and Zuzčáková v. Slovakia*²⁰² the Eur. Ct. H. R. found the violation of Article 6 paragraph 1 of the ECHR (the right to hearing within a reasonable time). The Court pointed out, *inter alia*, that a claim under State Liability Act for compensation for non-pecuniary damage resulting from the length of proceedings does not offer reasonable prospects of success and that such a remedy need not be exhausted for the purposes of Article 35 paragraph 1 of the ECHR.

¹⁹⁷ *Zákon č. 428/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 99/1963 Občiansky súdny poriadok v znení neskorších predpisov a dopĺňajú sa niektoré ďalšie zákony* [Act no. 428/2004 Coll., which amends and supplements the Act no. 99/1963 Coll. Code of Civil Procedure and on modifications of certain other laws].

¹⁹⁸ *Zákon č. 537/2004 Z. z.* [Act no. 537/2004 Coll.].

¹⁹⁹ *Zákon č. 4/2001 Z. z. o Zbore väzenskej a justičnej stráže v znení neskorších predpisov* [Act no. 4/2001 Coll. on Corps of Prison and Judicial Guard as amended].

²⁰⁰ Eur. Ct. H. R. (4th sect.), *E.O. and V.P.* (Application no. 56193/00 and 57581/00) judgement of 27 April 2004 (final).

²⁰¹ Eur. Ct. H. R. (4th sect.), *Čanády v. Slovakia* (Application no. 53371/99) judgement of 16 November 2004 (not final as yet).

²⁰² Eur. Ct. H. R. (4th sect.), *Zuzčák and Zuzčáková v. Slovakia* (Application no. 48814/99) judgement of 13 July 2004 (not final as yet).

In case of *Tomková v. Slovakia*²⁰³ the Eur. Ct. H. R. declared the violation of Article 6 paragraph 1 of the ECHR (the right to hearing within a reasonable time). The Court pointed out, *inter alia*, that although the applicant herself contributed to the overall length of the proceedings to some extent, the foregoing considerations and, in particular, the importance of the subject-matter of the proceedings (applicant's dismissal from work) for the applicant are sufficient to enable the Court to conclude that her case was not heard within a reasonable time.

In case of *Csepyová v. Slovakia*²⁰⁴ the Eur. Ct. H. R. held that the length of the restitution proceedings had exceeded a "reasonable time" and therefore there had been a violation of Article 6 paragraph 1 of the ECHR.

In case of *Sabol and Sabolová v. Slovakia*²⁰⁵ the Eur. Ct. H. R. found the violation of Article 6 paragraph 1 of the ECHR. The Court held, that the length of proceedings had been incompatible with the "reasonable time" requirement, laid down in Article 6 paragraph 1 of the ECHR.

In case of *Záborský and Šmáriková v. Slovakia*²⁰⁶ the Eur. Ct. H. R. declared the violation of Article 6 paragraph 1 of the ECHR. The Court pointed out, that although the case was difficult to determine due to both relatively complex character of the subject-matter and the considerable number of plaintiffs, nevertheless the length of restitution proceedings had been incompatible with the "reasonable time" requirement, provided in Article 6 paragraph 1 of the ECHR.

In case of *Trenčiansky v. Slovakia*²⁰⁷ the Eur. Ct. H. R. held that the length of the proceedings (eight years less eight days) had been incompatible with the "reasonable time" requirement. There had accordingly been a violation of Article 6 paragraph 1 of the ECHR.

Legislative initiatives, national case law and practices of national authorities

On 24 June 2004, the Parliament approved the Code of Civil Procedure Amendment²⁰⁸, which entered into force on 1 October 2004. One of the main purposes of this law is to introduce some elements regarding the acceleration of civil law proceedings with the aim to reduce undue delays in court proceedings, e. g. a court is bound to prepare trial so that is able to decide on the merits generally at only one hearing, it should order a first hearing within the nine months of the filing a motion to court.

Among the major problems relating to the judicial protection in the Slovak Republic belong undue delays in court proceeding and contradictory decisions in similar judicial cases. The Ministry of Justice prepared the project "Optimalization of judiciary system". The project

²⁰³ Eur. Ct. H. R. (4th sect.), *Tomková v. Slovakia* (Application no. 51649/99) judgement of 13 July 2004 (final).

²⁰⁴ Eur. Ct. H. R. (4th sect.), *Csepyová v. Slovakia* (Application no. 67/199/01) judgement of 24 February 2004 (final).

²⁰⁵ Eur. Ct. H. R. (4th sect.), *Sabol and Sabolová v. Slovakia* (Application no. 54809/00) judgement of 27 April 2004 (final).

²⁰⁶ Eur. Ct. H. R. (4th sect.), *Záborský and Šmáriková v. Slovakia* (Application no. 5812/00) judgement of 16 December 2003 (final).

²⁰⁷ Eur. Ct. H. R. (4th sect.), *Trenčiansky v. Slovakia* (Application no. 62175/00) judgement of 2 December 2003 (final).

²⁰⁸ *Zákon č. 428/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 99/1963 Občiansky súdny poriadok v znení neskorších predpisov a dopĺňajú sa niektoré ďalšie zákony* [Act no. 428/2004 Coll., which amends and supplements the Act no. 99/1963 Coll. Code of Civil Procedure and on amendments of certain other laws].

supposes, *inter alia*, merging of some courts, integration of courts' jurisdiction, and creation of conditions for the specialization of courts and judges.

On 27 May 2004, the Parliament approved the new *zákon o sídlach a obvodoch súdov Slovenskej republiky* [Act on residences and districts of the courts in the Slovak Republic]²⁰⁹, which came into force on 1 January 2005. The new Act has reduced the number of district courts from 55 to 45. The agenda and judges of the ten abolished courts have been relocated to the existing courts.

Reasons for concern

The fundamental right to have his or her case tried without undue delay as guaranteed by Article 48 paragraph 2 of the Slovak Constitution, and right to a fair hearing within a reasonable time as guaranteed by Article 6 paragraph 1 of the ECHR are the most frequently violated rights in the Slovak Republic. More than 95% from the total number of decisions of the Constitutional Court of the Slovak Republic reached on the basis of constitutional complaints of individual applicants concern violation of these rights. Similarly, most of the judgements of Eur. Ct. H. R. against Slovakia relate to violation of the right to a fair hearing within a reasonable time. This alarming situation in judiciary lasts for years in Slovakia, and, in our opinion, the Government of the Slovak Republic should make more efforts in order to improve the situation.

Right to the enforcement of judicial decisions

Reasons for concern

Law enforcement as such, represents a cardinal problem in the Slovak Republic and significantly limits the exercise of the right to a fair trial and, of course, the exercise of other rights as well. Widespread corruption in public sector, but also the lack of respectable, skilled, and experienced public officers belong among main reasons of this negative situation. For instance, to reach an enforceable decision in civil proceeding takes usually several years during which the other side (obligor) has usually enough time to transfer its assets to other person(s) or goes bankrupt, and thus the enforceable judgement becomes *de facto* unenforceable. This scenario happens quite often and leads to the situations when entitled claimants rather give up of their claims and do not go to court at all, or find ways how to speed up the proceeding and reach desired judgement within a reasonable time (see paragraph concerning corruption in judiciary).

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

In October 2003, the National Council approved the *zákon o Justičnej akadémii* [Act on Judicial Academy]²¹⁰, which entered into force on 1 January 2004. The Judicial Academy is an educational institution with a nationwide operation that is responsible for organizing and 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.

²⁰⁹ *Zákon č. 371/2004 Z. z. o sídlach a obvodoch súdov Slovenskej republiky* [Act no. 371/2004 Coll. on residences and districts of the courts in the Slovak Republic].

²¹⁰ *Zákon č. 548/2003 Z. z. o Justičnej akadémii* [Act no. 548/2003 Coll. on Judicial Academy].

The *zákon o súdnych úradníkoch* [Act on court officers]²¹¹, which entered into force on 1 January 2004, regulates status of court officers and acts of the court officers in the judicial proceeding. Court officers have been granted authority to make decisions in less difficult cases, which, as expected, might relieve judges of minor matters and make court proceedings more effective.

Reasons for concern

One of the major problems as regards the right to a fair trial, is widespread corruption at all levels of social life in the Slovak Republic, including the judicial system. During the period under review, the media informed about several cases in which lawyers were indicted by police or prosecution for asking bribe for particular judges.

In the interview recently published by one Slovak daily paper, the president of the Banská Bystrica Regional Court pointed out, that he sees major reasons of this massive corruption among lawyers in different income as regards those lawyers working in private sector – namely attorneys – on the one hand, and those working in public sector – namely judges, prosecutors, and investigators on the other hand. This unbalanced situation has produced a deep-rooted mechanism in which money are “streaming” from private sector into public sector for consideration of “desired” decisions taken by public authorities. As he also pointed out, attorneys have enough money, but they are dependent on decisions of public officials. That situation apparently generates mechanisms when attorneys willingly pay for speeding up the court proceedings or reaching favourable decisions for their clients. In his opinion, this situation is related to the fact that the development of market economy in Slovakia is still at the beginning. “It is historical inevitability”, he concluded.²¹²

Minister of Justice has also pointed out several times, that the situation, as regards the corruption in judiciary, is alarming. Revealing corruption in judiciary is extremely difficult, in his opinion, since judiciary is a closed system in which participants – judges, attorneys, and prosecutors – know and trust each other, therefore corruption system among them is also closed and latent.

Article 48. Presumption of innocence and rights of defence

Accelerated criminal procedures

Reasons for concern

The status and the rights of defence in accelerated criminal proceeding according to the Code of Criminal Procedure is evidently disadvantaged in comparison with the status and the rights of defence in “standard” criminal proceeding. For instance, unlike the “standard” criminal proceedings, the defence lawyer is not allowed to take part in examination of a witness in accelerated criminal proceedings. There are no legitimate grounds that would justify disparity in status and rights of persons concerned. Therefore, in our opinion, the regulation of accelerated proceeding in the Code of Criminal Procedure is incompatible with the principle of legal equality, the right to a fair trial, and the rights of defence guaranteed in the Article 47 and 48 of the Charter.

²¹¹ *Zákon č. 549/2003 Z. z. o súdnych úradníkoch* [Act no. 549/2003 Coll. on court officers].

²¹² *Denník SME* z 30. decembra 2004 [daily paper SME of 30 December 2004]

Other relevant developments

Reasons for concern

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2003, according to the Code of Criminal Procedure, a person indicted for having committed certain offences may be afforded a time-limit of only three days to file a complaint against that decision, even when the person concerned has just been notified of the criminal proceeding. The time limit for filing complaint against decision issued in criminal proceeding is unreasonably short, and therefore incompatible with the right to a fair trial and the rights of defence guaranteed in the Articles 47 and 48 of the Charter.

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

Proportionality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny the police presented a number of criminal cases which participants were suspected of being members of groups involved in „organized“ criminality.

The Criminal Code provides definitions of terms “organized group”, “criminal group”, and “terrorist group”.

"Organized group" means an association of at least three persons for the purpose of committing a criminal offence, which is characterised by a certain division of tasks among individual members of the group, their planning and co-ordination.

"Criminal group" means an association of at least three persons, which lasts for a longer time, for the purpose of committing criminal activities with a view to gaining profit and infiltrating into public authorities or business or non-business entities, and thus controlling them or exercising its influence, in order to cover up or legalise its criminal activities or the proceeds. Such a group should be characterised by a high level of the division of tasks among individual members of the criminal group within its organisational structure. Anyone who has established or contrived a criminal group, who is its member, acts for the benefit of it or supports it, shall be liable to a term of imprisonment of three to ten years or to forfeiture of property sentence.

“Terrorist group” means an association of at least three persons, which has been set up for a definite period of time for the purpose of committing crime of terror or terrorism.

We assume, that the vagueness of these terms, especially the term “criminal group”, may cause problems in practice.

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

Right not to be tried or punished twice

Reasons for concern

According to the Article 50 paragraph 5 of the Slovak Constitution, no person may be prosecuted with respect to conduct for which the person has been convicted or acquitted. This principle does not preclude the use of extraordinary remedies, according to the law.

According to the Section 22 of the Criminal Code, if the offender had been detained or penalized by the authority of foreign state, the time spent in detention or in prison, or other penalty imposed by the authority of foreign state, shall be included in the penalty imposed by the Slovak court provided, that such inclusion, considering the type of penalty, is possible. However, if inclusion of detention or penalty imposed in the foreign state is not possible, mainly because the type of penalty imposed by an authority of foreign state is partly or as a whole unknown to the Slovak Criminal Code, the Slovak court “*have to take into account*” this fact when deciding about a type of penalty and its assessment respectively.

The cited wording of the Criminal Code retains discretion to judges to impose a penalty to the person for a conduct for which that person had already been penalized in a foreign state, and therefore application of this provision of the Criminal Code in certain cases may lead to breaches of the *ne bis in idem* principle.

APPENDIX: CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION (O.J. C-364 OF 18.12.2000)

CHAPTER I: DIGNITY

Article 1: Human dignity

Human dignity is inviolable. It must be respected and protected.

Article 2: Right to life

1. Everyone has the right to life.
2. No one shall be condemned to the death penalty, or executed.

Article 3: Right to the integrity of the person

1. Everyone has the right to respect for his or her physical and mental integrity.
2. In the fields of medicine and biology, the following must be respected in particular:
 - a) the free and informed consent of the person concerned, according to the procedures laid down by law,
 - b) the prohibition of eugenic practices, in particular those aiming at the selection of persons,
 - c) the prohibition on making the human body and its parts as such a source of financial gain,
 - d) the prohibition of the reproductive cloning of human beings.

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

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Article 5: Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.
2. No one shall be required to perform forced or compulsory labour.
3. Trafficking in human beings is prohibited.

CHAPTER II: FREEDOMS

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications.

Article 8: Protection of personal data

1. Everyone has the right to the protection of personal data concerning him or her.
2. Such data must be processed fairly for specified purposes and on the basis of the consent of the person concerned or some other legitimate basis laid down by law. Everyone has the right of access to data which has been collected concerning him or her, and the right to have it rectified.
3. Compliance with these rules shall be subject to control by an independent authority.

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

The right to marry and the right to found a family shall be guaranteed in accordance with the national laws governing the exercise of these rights.

Article 10: Freedom of thought, conscience and religion

1. Everyone has the right to freedom of thought, conscience and religion. This right includes freedom to change religion or belief and freedom, either alone or in community with others and in public or in private, to manifest religion or belief, in worship, teaching, practice and observance.
2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Article 11: Freedom of expression and information

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.
2. The freedom and pluralism of the media shall be respected.

Article 12: Freedom of assembly and of association

1. Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.
2. Political parties at Union level contribute to expressing the political will of the citizens of the Union.

Article 13: Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Article 14: Right to education

1. Everyone has the right to education and to have access to vocational and continuing training.
2. This right includes the possibility to receive free compulsory education.
3. The freedom to found educational establishments with due respect for democratic principles and the right of parents to ensure the education and teaching of their children in conformity with their religious, philosophical and pedagogical convictions shall be respected, in accordance with the national laws governing the exercise of such freedom and right.

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

1. Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation.
2. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State.
3. Nationals of third countries who are authorised to work in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.

Article 16: Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Article 17: Right to property

1. Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions. No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss. The use of property may be regulated by law in so far as is necessary for the general interest.
2. Intellectual property shall be protected.

Article 18: Right to asylum

The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.

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

1. Collective expulsions are prohibited.
2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

CHAPTER III: EQUALITY**Article 20: Equality before the law**

Everyone is equal before the law.

Article 21: Non-discrimination

1. Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.
2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

Equality between men and women must be ensured in all areas, including employment, work and pay. The principle of equality shall not prevent the maintenance or adoption of measures providing for specific advantages in favour of the under-represented sex.

Article 24: The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views

freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.

3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

The Union recognises and respects the rights of the elderly to lead a life of dignity and independence and to participate in social and cultural life.

Article 26: Integration of persons with disabilities

The Union recognises and respects the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community.

CHAPTER IV : SOLIDARITY

Article 27: Workers' right to information and consultation within the undertaking

Workers or their representatives must, at the appropriate levels, be guaranteed information and consultation in good time in the cases and under the conditions provided for by Community law and national laws and practices.

Article 28: Right of collective bargaining and action

Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 29: Right of access to placement services

Everyone has the right of access to a free placement service.

Article 30: Protection in the event of unjustified dismissal

Every worker has the right to protection against unjustified dismissal, in accordance with Community law and national laws and practices.

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.

2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

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

The employment of children is prohibited. The minimum age of admission to employment may not be lower than the minimum school-leaving age, without prejudice to such rules as may be more favourable to young people and except for limited derogations. Young people admitted to work must have working conditions appropriate to their age and be protected against economic exploitation and any work likely to harm their safety, health or physical, mental, moral or social development or to interfere with their education.

Article 33: Family and professional life

1. The family shall enjoy legal, economic and social protection.

2. To reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity and the right to paid maternity leave and to parental leave following the birth or adoption of a child.

Article 34: Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.

2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient

resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35: Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.

Article 36: Access to services of general economic interest

The Union recognises and respects access to services of general economic interest as provided for in national laws and practices, in accordance with the Treaty establishing the European Community, in order to promote the social and territorial cohesion of the Union.

Article 37: Environmental protection

A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.

Article 38: Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V: CITIZENS' RIGHTS

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.

2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

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

Every citizen of the Union has the right to vote and to stand as a candidate at municipal elections in the Member State in which he or she resides under the same conditions as nationals of that State.

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.

2. This right includes:

a) the right of every person to be heard, before any individual measure which would affect him or her

adversely is taken;

b) the right of every person to have access to his or her file, while respecting the legitimate interests of

confidentiality and of professional and business secrecy;

c) the obligation of the administration to give reasons for its decisions.

3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.

4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42: Right of access to documents

Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to European Parliament, Council and Commission documents.

Article 43: Ombudsman

Any citizen of the Union and any natural or legal person residing or having its registered office in a Member State has the right to refer to the Ombudsman of the Union cases of maladministration in the activities of the Community institutions or bodies, with the exception of the Court of Justice and the Court of First Instance acting in their judicial role.

Article 44: Right to petition

Any citizen of the Union and any natural or legal person residing or having its registered

office in a Member State has the right to petition the European Parliament.

Article 45

Freedom of movement and of residence

1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.

2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he or she is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that Member State.

CHAPTER VI : JUSTICE

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

Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented. Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice.

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

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

1. 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 law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission

which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.

3. The severity of penalties must not be disproportionate to the criminal offence.

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

No one shall be liable to be tried or punished again in criminal proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law.

CHAPTER VII: GENERAL PROVISIONS

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.

2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52: Scope of guaranteed rights

1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

2. Rights recognised by this Charter which are based on the Community Treaties or the Treaty on European Union shall be exercised under

the conditions and within the limits defined by those Treaties.

Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

Article 53: Level of protection

Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in their respective fields of application, by Union law and international law and by international agreements to which the Union, the

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Community or all the Member States are party, including the European Convention for the Protection of Human Rights and Fundamental Freedoms, and by the Member States' constitutions.

Article 54: Prohibition of abuse of rights

Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greater extent than is provided for herein.