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

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

IN 2005

submitted to the Network by **Martin BUZINGER**[*]

on 15 December 2005

Reference: CFR-CDF/ SV/2005

The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon 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.

---

[*] This report was prepared by Martin Buzinger with the contributions of Ms. Margaréta Lukačovičová, Ms. Lucia Macaláková, Ms. Daniela Bezáková and Ms. Jana Ilavská.

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

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

IN 2005

submitted to the Network by **Martin BUZINGER**[*]

on 15 December 2005

Reference: CFR-CDF/ SV/2005

The E.U. Network of Independent Experts on Fundamental Rights has been set up by the European Commission upon 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.

[*] This report was prepared by Martin Buzinger with the contributions of Ms. Margaréta Lukačovičová, Ms. Lucia Macaláková, Ms. Daniela Bezáková and Ms. Jana Ilavská.

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 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 (suppléant Birgitte Kofod-Olsen) (Danemark), Henri Labayle (France), 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), Ilvija Puce (Lettonie), Ian Refalo (Malte), Martin Scheinin (suppléant Tuomas Ojanen) (Finlande), Linos Alexandre Sicilianos (Grèce), Pavel Sturma (Rép. Tchèque), Edita Ziobiene (Lituanie). Le Réseau est coordonné par O. De Schutter, assisté par V. Van Goethem.
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 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 (substitute Birgitte Kofod-Olsen) (Denmark), Henri Labayle (France), 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), Ilvija Puce (Latvia), Ian Refalo (Malta), Martin Scheinin (substitute Tuomas Ojanen) (Finland), Linos Alexandre Sicilianos (Greece), Pavel Sturma (Czech Republic), and Edita Ziobiene (Lithuania). The Network is coordinated by O. De Schutter, with the assistance of V. Van Goethem.
The documents of the Network may be consulted on :
http://www.europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm

TABLE OF CONTENTS

CHAPTER I. DIGNITY

Article 1. Human dignity

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

No international institution or authority on protection of fundamental rights and freedoms has issued a negative observation or took a decision on the Slovak Republic as to the insufficient protection of human dignity.

Legislative initiatives, national case law and practices of national authorities

The *zákon o pohrebníctve* [Act on burials][1] which came into force on 1 November 2005 regulates the handling of human remains as well as performing the embalming and conservation of human remains, operation of funeral services, crematorium services and burying ground. Up to now the area of burials has not been regulated by law. The Act introduces the duty to bury all human remains. According to the Act as "other human remains" are considered also miscarried or aborted fetuses, as well as parts of human body or organs taken from live or dead persons and other material of human origin. If these other human remains are not used for scientific, medical, preventive or educational purposes, they should be buried or cremated in crematories of health care facilities, but only if there is no suspicion of crime. The Act on burials enables also burial of miscarried or aborted human fetus, if one of the parents asks for it.

The Amendment to the *zákon o Policajnom zbore* [Act on Police Corps][2] and the Amendment to the *zákon o Železničnej polícii* [Act on Railway Police Corps][3] regulate in their new provisions the right to use police dog for smell works. Both acts in this connection regulate the duty of policemen to act while using the police dog in such way, that any harm to health can be avoided and the human dignity would not be decreased and that the basic sanitary rules would be kept.

Reasons for concern

The *Rada pre vysielanie a retransmisiu* [Council for Broadcasting and Retransmission][4] imposed a stiff fines on two commercial televisions (TV *Markíza* and TV *JOJ*) and several warnings of violation of law by broadcasting of reality shows, which were in conflict with the *zákon o vysielaní a retransmisii* [Act on broadcasting and retransmission][5]. The televisions violated the provision of the Act, according to which neither program service nor any of its parts can infringe upon human dignity and fundamental rights and freedoms of others.

---

[1] *Zákon č. 470/2005 Z. z. o pohrebníctve a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov* [Act no. 470/2005 Coll. on burials, and amending and supplementing the Act no. 455/1991 Coll. Trade Act as amended].

[2] *Zákon č. 69/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 171/1993 Z. z. o Policajnom zbore v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 69/2005 Coll., amending and supplementing the Act no. 171/1993 Coll. on Police Corps as amended, and amending and supplementing certain other laws].

[3] *Zákon č. 142/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 57/1998 Z. z. o Železničnej polícii v znení neskorších predpisov* [Act no. 142/2005 Coll. amending and supplementing the Act no. 57/1998 Coll. on Railway Police Corps as amended].

[4] The Council for Broadcasting and Retransmission is a Regulatory Authority in the area of broadcasting. The main objective of the Council for Broadcasting and Retransmission is to enforce the interests of the public in the exercise of the rights to information and freedom of speech, and rights of access to cultural values and education, and to perform state regulation in the areas of broadcasting and retransmission. The outcomes of proceedings from the Council for Broadcasting and Retransmission sessions have been published on its website www.rada-rtv.sk.

[5] *Zákon č. 308/2000 Z. z. o vysielaní a retransmisii a o zmene zákona č. 195/2000 Z. z. o telekomunikáciách* [Act no. 308/2000 Coll. on broadcasting and retransmission, and amending the Act no. 195/2000 Coll. on telecommunications as amended].

Article 2. Right to life

Euthanasia

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

No international institution or authority on protection of fundamental rights and freedoms has issued a negative observation or took a decision on the Slovak Republic as to the insufficient protection of righ to life.

Legislative initiatives, national case law and practices of national authorities

According to the new *Trestný zákon* [Criminal Code][6] an assisted suicide is considered as a crime. The elements of crime of participation in an assisted suicide contained in Section 154 of the Criminal Code say: "who actuates another to commit a suicide or who is aiding a suicide, if reached at least towards attempted suicide, shall be liable to a term of imprisonment of six months up to three years".

Annex no. 4 to the *zákon o poskytovateľoch zdravotnej starostlivosti* [Act on health care providers][7], which regulates the „*Etický kódex zdravotníckeho pracovníka*" [Ethical Code of Health Care Professionals] states that health care professionals helps to decrease the pain, soothes suffering of incurably ill and dying people and respects human dignity and patients' wishes in compliance with the legal regulations. It is explicitly said, that euthanasia and assisted suicide are prohibited, in this code.

Domestic violence

Legislative initiatives, national case law and practices of national authorities

Positive aspects

The *Ministerstvo práce sociálnych vecí a rodiny Slovenskej republiky* [Ministry of Labour, Social Affairs and Family of the Slovak Republic] drafted the *Národný akčný plán pre prevenciu a elimináciu násilia páchaného na ženách na roky 2005 – 2008* [National Action Plan for the Prevention and Elimination of Violence Exercised against Women for the years 2005 – 2008]. The Slovak Government by its Resolution no. 635/2005 approved this document.

According to the National Action Plan for the Prevention and Elimination of Violence Exercised against Women, the activity of the *Expertná skupina pre elimináciu a prevenciu násilia voči ženám a v rodinách* [Group of Experts for the Elimination and Prevention of Violence against Women and within families] of the *Rada vlády Slovenskej republiky pre prevenciu kriminality* [Slovak Government's Council for Crime Prevention] should be renewed. The group of experts should provide for topical realization of coordination activities and for supporting of creation of other work groups and teams focused on the area of violence exercised against women.

Citizens' Association *Náruč – pomoc deťom* [Embrace – Help to Children], which focuses on help for abused, maltreated and neglected children, on 3 October 2005 opened in the city of Čadca a consulting and training centre for women, who became victims of domestic violence. The centre aims its effort to individual as well as group work endangered women.

---

[6] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].

[7] *Zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 578/2004 Coll. on health care providers, health employees and professional organizations in health service, and amending and supplementing certain other laws].

Reasons for concern

In 2005, the NGO named *Inštitút pre verejné otázky IVO* [Institute for Public Questions] published a study entitled *Násilie páchané na ženách ako problém verejnej politiky* [Violence Committed on Women as the Problem of Public Policy][8]. According to this study, every fourth Slovak adult woman lives in a violent partnership. In the opinion of authors of this study, the *Národná stratégia na prevenciu a odstránenie násilia páchaného na ženách a v rodinách* [National Strategy for Prevention and Elimination of Violence Exercised against Women and in Families], approved in 2004, is too general and it gets around the gender conditionality of violence against women. More detailed aims and measures should be included in the prepared *Akčný plán na prevenciu a elimináciu násilia na ženách* [Action Plan for the Prevention and Elimination of Violence against Women].

As allready mentioned in the Report on the situation on fundamental rights in the Slovak Republic in 2004, there were several significant changes in legislation oriented on elimination of domestic violence realized during the years 1999 – 2002. Consequently to these changes, 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 the 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. This Amendment should protect victim of the domestic violence unless the preliminary injunction restricting use and enjoyment of a flat by the violator is issued. The mentioned Act on Police Corps Amendment has not been adopted yet.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 21 June 2004, the *Národná rada Slovenskej republiky* [National Council of the Slovak Republic – Slovak Parliament] by its Resolution no. 1676 affirmed the 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. The President of the Slovak Republic ratified the Protocol on 20 July 2005. The Protocol came into force within the Slovak Republic on 1 December 2005.

Reasons for concern

The elements of crime of child abandonment shall be regulated by the Section 205 of the *Trestný zákon* [Criminal Code][9] with the effect from 1 January 2006[10]. Who abandons the child unable to help himself/herself of whom that person has custody on the place where there is no fear of life or health shall be sentenced to a term of imprisonment up to 2 years[11].

In connection with the new Criminal Code there were several public discussions on the matter, whether the performance of mothers who abandon their children in public accessible incubator (so-called "saving nest") could be considered as a crime of child abandonment. In October 2005 two female Parliament members in an effort to solve this problem submitted a new proposal of the Amendment to the Criminal Code to the Parliament. The proposal makes the elements of crime of child abandonment more specific in such way that protection from punishment for these mothers would be provided. The National Council decided not to continue in discussion on this Amendment and that the problem would be solved within amendments regarding legal regulations in the area of health care. Consequently the National Council of the Slovak Republic approved the Amendment to the Act on Health Care, which

[8] The study is available on the website http://www.ivo.sk/ftp_folder/produkt_4164.pdf (only in Slovak).
[9] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].
[10] New Criminal Code takes also over current elements of crime of child desertion, which differs from child abandonment in the fact that in this case the child is in life or health endangerment.
[11] For the comparison: basic term of sentence in the case of crime of child desertion (Section 206 of the Criminal Code) is from 1 up to 5 years.

will come into force on 1 January 2006[12]. According to this Amendment if health care facility carries out a department of neonatology, it should provide a public accessible incubator where the newborn infant could be put. According to this Amendment the act of putting the child into this public accessible incubator will not be considered as crime of child abandonment, because according to the Criminal Code this circumstance eliminates illegality of the act.

Article 3. Right to the integrity of the person

Breaches of the right to the integrity of the person

Legislative initiatives, national case law and practices of national authorities

In February 2005 *Ministerstvo vnútra Slovenskej republiky* [Ministry of Interior of the Slovak Republic] and *Generálna prokuratúra Slovenskej republiky* [General Prosecutor's Office] issued common standpoint to letters concerning the matter of rumoured forced sterilizations of Roma women in the Slovak Republic. This "Common Position of the Ministry of the Interior of the Slovak Republic and the General Prosecutor's Office of the Slovak Republic on alleged illegal sterilizations of Romany women in Slovakia" was signed by Minister of Interior and Prosecutor General and it is published on website of Ministry of Interior[13] in Slovak, English, French, German and Spanish languages[14]. It says:

> "The General Prosecutor's Office of the Slovak Republic as well as the Ministry of the Interior of the Slovak Republic daily receive dozens of letters from all around the world reacting to reports on alleged illegal sterilizations of Romany women in eastern Slovakia. Writers of the letters call for objective investigations of the reports and for appropriate consequences to be drawn against perpetrators. We highly appreciate confidence with which the letter-writers contact our institutions and intensive care and consideration they bestow on the issue.
>
> In reaction to these initiatives which in our opinion often seem to have risen as a result of insufficient background knowledge of the matter, let us give a brief and truthful explanation of the case details.
>
> First of all we would like to stress the fact that law-enforcement authorities are hostile to any racial or ethnic intolerance, xenophobe and other manifestations suppressing basic human rights regardless their national, political or ethnic ties. In our activities we develop the utmost efforts to suppress and in the final stage to diminish any demonstrations of intolerance. We followed these principles also during investigations of cases of alleged illegal sterilizations of Romany women in eastern Slovakia.
>
> Upon the complaint filed by the Deputy Prime Minister in January 2003 extensive investigations of a suspicion brought up by a non-governmental initiative were carried out. The non-governmental initiative had pointed to the fact that by sterilizations of Romany women in eastern Slovakia their rights to health protection had been broken and that sterilizations could have resulted in liquidation of this ethnic group in the region. Altogether 134 witnesses were interrogated during the investigations, large medical documentation was gathered on each

[12] *Zákon č. 538/2005 Z. z. o prírodných liečivých vodách, prírodných liečebných kúpeľoch, kúpeľných miestach a prírodných minerálnych vodách a o zmene a doplnení niektorých zákonov* [Act no. 538/2005 Coll. on natural healing waters, natural healing spas, spa places and natural mineral waters, and amending and supplementing certain other laws].

[13] http://www.minv.sk/steril/index.htm.

[14] It is quite unusual that the document was published, except the English language also in three other foreign languages. Public authority bodies rarely make their documents in more than one foreign language (mostly it is in English).

possibly disputable way of treatment and gynecology expert's reports from a reputable expert institute in Slovakia were obtained.

Outcomes of investigations did not prove raised suspicions. It was confirmed that in each particular case of sterilization doctors had fully respected valid regulations and that acts of sterilizations had been made only after women concerned had expressed their consent and if it had been in the interest of their health and life protection. Not a single case of illegal sterilization was traced. Just the contrary, substantial majority of women who were interrogated expressed their sincere gratitude to the doctors for having saved their lives and protected lives of their families by having carried out their sterilizations on highly professional level. The Romany women mentioned to the police a case of one Romany female patient who had not accepted doctors' recommendations to sterilization and as a result she and her unborn baby had died.

The investigations were carried out by a team of female investigators supervised by a female prosecutor with the aim to secure smooth development and objective results. Every single evidence needed for the final decision was verified. At that time and even today no more evidence collection and verification seems needed.

After outcomes of investigations had been summed up the female head investigator of the team issued a decision in October 2003 stating the criminal prosecution was stopped because commitment of the criminal act which had been investigated had not been proved. The decision is valid.

We find it very important to stress the fact that during the investigations as well as at the time when the issue of the final decision was being prepared we consulted and followed international agreements and conventions which regulate problems of human rights protection and particularly rights of patients. We paid special attention to the issue if the doctors involved in the matter followed the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine, Oviedo, 4/4/1997). We can assure you that the final decision was issued in harmony with the conventions, especially with Article 8 of the quoted Convention.

To complete the general view on the case it is important to say that the final decision on closing down criminal prosecution does not prevent the Romany women to file their possible civil claims in a civil judicial procedure.

At the end we would like to stress that the Slovak Republic is an advanced and civilized country with rich and deep humanist traditions in all spheres of life, health-service and basic human rights protection included. We respect the human life above all and we make our utmost efforts to secure and protect it. Therefore we feel hurt when somebody, maybe due to the lack of knowledge or even intentionally, tries to bring doubts to our efforts and traditions. We kindly ask you accept that also doctors from gynecology and delivery units in eastern Slovakia hospitals have their human rights and duties and without proving their failure beyond any doubts no criminal responsibility can be applied against them.

We assure you that also in further proceedings of law enforcement authorities of the Slovak Police Forces and Prosecution lawful regulations and principles of advanced and civilized society will be respected and that by the strength of law as well as by the strength of individual representatives of our society we will try to bring these principles into life of the unified Europe by all our efforts.

According to the statement of General Prosecutor's Office of the Slovak Republic of 29 September 2005, the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW) decided not to conduct investigation of rumoured unlawful sterilization of Roma women in Eastern

Slovakia. The Committee started to concern about unlawful sterilizations following the report of European Roma Rights Center of September 2004 and it asked the Slovak Republic to present a standpoint on it. General Prosecutor's Office in its official report[15] refers to the standpoint of the Slovak Government, according to which there is not, and it has never been such state policy which would incite anybody to make sterilization of groups of inhabitants in the Slovak Republic and there have never been any occurrences of systematic violation of human rights. The standpoint further states, that the nonexistence of the evidence about the commitment of a crime of genocide was affirmed by an independent parliament's investigation of Inter-European Parliamentary Forum on Population and Development (IEPFPD) and Ms. Christine McCafferty, First Vice-Chairperson of the Social, Health and Family Affairs Committee as well as by Mr. Alvaro Gil Robles, Commissioner for Human Rights of the Council of Europe. Pursuant to the statement of General Prosecutor's Office, the United Nations Committee on the Elimination of Discrimination Against Women decided not to conduct investigation according to the Article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

The *Ústavný súd Slovenskej republiky* [Constitutional Court of the Slovak Republic], in its *nález* [ruling] ref. no. III. ÚS 86/05 – 45 of 1 June 2005, decided on complaint of 3 Roma claimants, who in connection with alleged unlawful sterilization and its investigation by the authorities in charge of criminal proceedings filed a complaint to the Constitutional Court, in which they objected the violation of their fundamental rights guaranted by Article 12 paragraph 2 (non-discrimination principle), Article 16 paragraph 2 (right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment), Article 19 paragraph 2 (right to be free from unjustified interference in his or her private and family life) and the Article 41 paragraph 1 (protection of matrimony, parenthood, and family; special protection of children and minors) of the Constitution of the Slovak Republic and of the rights guaranted by the Article 3 paragraph 8, Article 13 and Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The Constitutional Court complied with the complaint only partially, the problem itself (the violation of fundamental rights according the Article 12 paragraph 2, Article 19 paragraph 2 and the Article 41 paragraph 1 of the Constitution of the Slovak Republic and the violation of rights according the Articles 8 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms) had not been decided. The Court declared, that the claimants' fundamental rights to effective instrument of remedy and redress according the Article 13 in connection with the Article 3 of the Convention and the Article 16 paragraph 2 of the Constitution had been violated by the decision of Košice Regional Prosecutor's Office. The reasoning to the Constitutional Court's ruling says that the violation of rights of the claimants lies in nonobservance of legal procedures, which could be remedied by further proceeding. The Constitutional Court abrogated the disputed decision of regional prosecutor's office and instructed the prosecutor's office to act in this matter.

The fact that the decision was abrogated caused the rejection of complaint of the claimants against the discontinuation of criminal proceeding. As the reason for the rejection, the regional prosecutor's office presented a fact, that the complaint had not been filed by authorized persons. The Constitutional Court states, that *regional prosecutor's office by its acting did not provide the procedure, which would lead to determination or that disputed proceeding could cause the violation of fundamental rights and freedoms. The case circumstances do not unambiguously and undoubtedly solve the disputed suspicion of such treatment of claimants, which could cause them notably irremediable consequences* and it caused the breach of the Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

[15] Statement of General Prosecutor's Office is available on its website: http://www.genpro.gov.sk/index/go.php?id=38&prm1=53

Rights of the patients

Legislative initiatives, national case law and practices of national authorities

According to the *zákon o zdravotných poisťovniach* [Health Insurance Companies Act],[16] the *Úrad pre dohľad nad zdravotnou starostlivosťou* [Office of Healthcare Oversight] supervises whether the health care is provided properly. The procedure of exercising the patient's right to complain is also regulated by the Act. If the person suspects, that he or she was not provided with health care properly, he/she has the rigth to ask the provider for rectification; the request should be made in writing. The provider is obliged to inform the requesting person in writing about the settlement of the request without delay. If the provider do not satisfy the request or does not inform the requester about the settlement of the request without delay, the person has the right to appeal to the Office of Healthcare Oversight for execution of supervision. Only requests dealing with the question of properness of health care provision fall under this provision. Steps of this procedure is available on the official web site of the Office of Health Care Oversight, too.

According to the Report on the Activities of the Office of Health Care Oversight covering the period from 24 November 2004 till 15 February 2005[17] the Office of Health Care Oversight received about 1300 written or telephone motions during this period. On the day of report production, 104 motions and complaints were in the stage of solving.

Reasons for concern

During the period under scrutiny a number of patients' complaints of the medicaments advertising emerged in the media. In the ambulance waiting-rooms, the doctors have installed the TV sets showing short programmes on first aid and health care. At the same time these programmes contain advertisements of medicaments and nourishing supplements available on the market without doctor's prescription. Patients have been complaining that it is not possible to switch the TV set off or lower the volume and so they cannot escape from watching the advertisements.

Other relevant developments

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

The European Monitoring Centre on Racism and Xenophobia in its Annual Report 2005 welcomes training programmes for physicians and other medical professionals, after the appearance of cases of alleged sterilisation of several Roma women.

Legislative initiatives, national case law and practices of national authorities

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.

On 9 February 2005 the National Council of the Slovak Republic by its Resolution no. 1493 affirmed the Additional Protocol to the Convention on Human Rights and Biomedicine, concerning Biomedical Research. The Slovak Republic ratified the Additional Protocol on 23 September 2005.

The new Criminal Code in the Section 159 regulates the elements of crime entitled "unauthorized taking of the organs, tissues and cells and unlawful sterilization". According to paragraphs 1 and 2 of this

[16] *Zákon č. 581/2004 Z. z. o zdravotných poisťovniach, dohľade nad zdravotnou starostlivosťou a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 581/2004 Coll. on Health Insurance Companies, of Healthcare Oversight, amending and supplementing certain other laws].
[17] http://www.udzs.sk/buxus/docs/sprava.doc.

Section "a person, who without authorization takes the organ, tissue or cell from the live human being or who without authorization secures for himself/herself or for another person such organ, tissue or cell or who performs sterilization of a natural person contrary to the law, may be sentenced to a term of imprisonment from two to eight years". According to the Section 160 of the new Criminal Code, a person who without authorization secures for himself/herself for another on an organ, tissue or cell from dead human being may be sentenced to a term of imprisonment from six months to three years". The Section 161 of the new Criminal Code stipulates the new elements of crime of unauthorized experiment on human being and cloning of human being. According to the paragraph 1 of this Section "a person who without authorization and under pretence of acquisition of knowledge, methods, for confirmation of hypothesis or for clinical tests of medicaments conducts verification of new medical information (a) despite of the fact that this activity directly endangers life or health of another person (providing that these activities were not necessary for saving his/her life) or (b) without medical indication and without consent of person concerned or he/she conducts it on persons, on whom the verification without medical indication is forbidden or he/she conducts it on human fetus or embryo or he/she conducts it in contradiction with other law conditions of verification of medical indication shall be sentenced to a term of imprisonment from one to five years. According to the paragraph 2 of the Section 161 of the new 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 8 years."

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

Conditions of detention and external supervision of the places of detention

Penal institutions and institutions for the detention of persons with a mental disability

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

A delegation of the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) carried out a visit to the Slovak Republic from 22 February to 3 March 2005. It was the Committee's third periodic visit to the Slovak Republic. During the visit, the CPT's delegation followed up a number of issues examined during previous visits, in particular the treatment of persons deprived of their liberty by the police, as well as the situation in prisons and social services homes. The delegation visited the following places: Police establishments (Regional Police Directorate in Bratislava, Dubravka District Police Directorate in Bratislava, Dubravka Sub-district Police Department in Bratislava, Stare Mesto-Východ District Police Directorate in Bratislava, Regional Police Directorate in Košice, District Police Directorate in Trebišov, Sub-District Police Department in Trebišov), prisons (Bratislava Prison, Ilava Prison, Košice Prison) and Social Services Homes (Vel'ký Biel home for disabled women). For the first time in the Slovak Republic, the CPT visited also psychiatric establishments - Sokolovce Psychiatric Healthcare Centre and Veľké Zálužie Psychiatric Hospital.

The 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 from 22 February to 3 March 1995 is not available as yet.

Legislative initiatives, national case law and practices of national authorities

The Amendment to the *zákon o Policajnom zbore* [Act on Police Corps][18], which came into force on 1 May 2005, in detail regulates the catering of person whose personal freedom was restricted. The

[18] *Zákon č. 69/2005 Z. z., ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 171/1993 Z. z. o Policajnom zbore v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 69/2005 Coll.

catering is provided according to local conditions, in appropriate time and in accordance with principles of proper nourishment. It should take into account the age, state of health and religious faith of such person. If such person rejects provision of meal, policeman draws an official report on it. Meal should be served to the detained person after the expiration of six hours from the restriction of his/her personal freedom. If the state of health, the age of the person or other serious reason known to competent police officer requires it, the meal can be served sooner. Costs for catering should be reimbursed by the detained person. If the current financial situation of detained person does not allow reimbursement of these costs, they are covered by state.

The Amendment to the Act on Police Corps embedded the same regulation of catering of person whose personal freedom was restricted also to the *zákon o pobyte cudzincov* [Act on residence of foreigners][19].

On 1 January 2006 the *zákon o výkone trestu odňatia slobody* [Act on execution of punishment of imprisonment][20] will enter into force. According to basic principles of execution of punishment of imprisonment, the human dignity of sentenced person has to be respected during the execution of punishment and any cruel, inhuman or derogative treatment or punishment is not allowed. In addition, the principle of equal treatment should be kept. During the execution of the punishment of imprisonment the sentenced person has not the right to strike; right to freely gather and associate in associations, organizations or other societies; right to establish labour unions; right to choose a doctor and health care facility. The sentenced person can not establish political parties and movements and he/she is not allowed to serve in elective office or to perform any other public service during the execution of the punishment. These civil rights could be limited during the execution of the punishment because their exercise would be in conflict with the purpose of execution of punishment or they can not be exercised regarding the execution of the punishment. Fundamental social rights are granted to each sentenced person. The accommodation space in cell or room is at least 3.5 m² for a sentenced man and 4 m² for a sentenced woman or adolescent (according to up to now legal regulation all sentenced persons were entitled to 3.5 m² of space). It is not allowed to put a non-smoker into a cell determined for smokers. Serving of meals observes the cultural and religious traditions of sentenced persons. A sentenced man has right for minimally 2 showers a week; women are allowed to shower daily. The right of the sentenced person to use the phone is a new one. In case of foreigner sentenced to the execution of punishment of imprisonment, in general it is allowed to accommodate the sentenced foreigners together in such way, that they could communicate in the same or similar language between each other. Foreigner should be informed about his/her rights, duties and conditions of the execution of punishment in a language he/she understands.

Centres for the detention of foreigners

Legislative initiatives, national case law and practices of national authorities

On 2 December 2004 the Parliament adopted the Amendment to the *zákon o azyle* [Act on asylum],[21] which entered into force on 1 February 2005. As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004, according to this Amendment 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

---

amending and supplementing the Act of National Council of the Slovak Republic no. 171/1993 Coll. on Police Corps as amended, and amending and supplementing certain other laws].

[19] *Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 48/2002 Coll. on residence of foreigners, and amending and supplementing certain other laws as amended].

[20] *Zákon č. 475/2005 Z. z. o výkone trestu odňatia slobody a o zmene a doplnení niektorých zákonov* [Act no. 475/2005 Coll. on execution of punishment of imprisonment, and amending and supplementing certain other laws].

[21] *Zákon č. 1/2005 Z. z., 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 no. 1/2005 Coll., which amends and supplements the Act no. 480/2002 Coll. on asylum and on amendments of certain other laws].

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 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. The relocation of an asylum seeker from one asylum facility to another may be accomplished only if it is inevitable.

Fight against the impunity of persons guilty of acts of torture

Legislative initiatives, national case law and practices of national authorities

The new Criminal Code in Section 420 regulates the criminal offence of torture and other inhuman or cruel treatment. The new legal regulation takes up to now wording of the elements of the offence in principle and in addition it appends the torture[22] there. In comparison with the current legal regulation durations of sentences for this crime were increased. The duration of sentence in case of base elements of crime is from two to six years of imprisonment (previously it was from six months to four years), in case of extremely serious crime of this nature there is a threat of imprisonment from twelve to twenty years (previously it was maximally from eight to fifteen years).

According to the Section 88 of the Criminal Code the punishability of the criminal offence of torture and other inhuman or cruel treatment does not vanish by the expiration of the period of limitation.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Slovak Republic has not signed the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

Reasons for concern

During the period under the scrutiny there is no consideration about the end of use of cage beds within healthcare facilities in Slovakia. The attitude of the Ministry of Health has not been changed. In our opinion, any elimination of cage beds and net beds can hardly be expected in the Slovak Republic in a near future.

Article 5. Prohibition of slavery and forced labor

Trafficking in human beings

Legislative initiatives, national case law and practices of national authorities

On 13 May 2004 the National Council of the Slovak Republic by its Resolution no. 951 affirmed 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 Protocol on 25 August 2004. The Protocol came into force within the Slovak Republic on 21 October 2005[23].

[22] The criminal offence of torture and other inhuman or cruel treatment is committed by a person who in connection with the performance of his public authority causes physical or mental suffering to other person by means of ill-treatment, torture, or by other inhuman or cruel treatment.

[23] *Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 34/2005 Z. z. o podpísaní Protokolu o prevencii, potláčaní a trestaní obchodovania s ľuďmi, osobitne so ženami a deťmi, doplňujúceho Dohovor Organizácie Spojených národov proti nadnárodnému organizovanému zločinu* [Announcement of the Ministry of Foreign Affairs no. 34/2005 Coll. on completion of the Protocol to Prevent, Suppress and Punish Trafficking in

Up to now the Slovak Republic has not signed the new Convention on Action against Trafficking in Human Beings of Council of Europe (CETS no. 197).

The new *Trestný zákon* [Criminal Code],[24] which will come into force on 1 January 2006, regulates the trafficking in human beings by elements of crime of trafficking in human beings (Section 179) and by elements of crime of trafficking in children (Section 180). In comparison with the current legal regulation, the new Criminal Code contains increased terms of sentence for the offenders of such crimes. The offender of such crimes shall be sentenced to a term of imprisonment up to twenty-five years or the life imprisonment. The new Criminal Code also contains the elements of crime of procuring and soliciting prostitution.

Positive aspects

The Government of the Slovak Republic by its Resolution no. 668 of 7 September 2005 approved the *Správa o aktivitách vlády v roku 2005 zameraných na prevenciu a potláčanie obchodovania s ľuďmi* [Report on governments´ activities focused on the prevention and suppression of trafficking in human beings in 2005]. According to this report, the Group of experts for the prevention and aid to the victims of trafficking in human beings, which operates at the Slovak Government Council for Crime Prevention, has to work out a National Action Plan on fight against trafficking in human beings till 31 December 2005. According to the Report, in 2006 there should be an increase of the number of policemen specialized in fight against the trafficking in human beings about 14 policemen in comparison with the year 2005. A new function of the National coordinator for the fight against trafficking in human beings should be established with the aim of effective communication during the preparation and execution of the National action plan on fight against trafficking in human beings.

According to the statistics contained in the Report on governments´ activities focused on the prevention and suppression of trafficking in human beings in 2005, during the year 2003 the police has investigated 23 cases of trafficking in human beings, 17 cases of them had been solved. In year 2004 there were 27 investigated cases of trafficking in human beings, 18 cases of them were solved. Further following the Report, the women in the age from 18 to 25 years old dominate as victims of crime of trafficking in human beings, among frequent victims of this crime belong also children and minors.

Reasons for concern

In 2005 the U. S. State Department prepared a report related to the fight against trafficking in human beings. According to this report, the Slovak Republic was classed into subgroup of Group 2, so-called "Watch List", which represents those states which did not show any noticeable reinforcement of the fight against trafficking in human beings[25].

Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime].

[24] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].

[25] For comparison we would like to mention, that 2004 report of the U. S. State Department concerning the fight against trafficking in human beings used three-level scale for classification. The Slovak Republic was classed into the second group, i.e. among states which do not achieve minimal standards, but they made some steps to reinforce the fight against trafficking in human beings. But in general, these states do not pay adequate attention to this matter.

Protection of the child

Legislative initiatives, national case law and practices of national authorities

The new *Trestný zákon* [Criminal Code][26] contains elements of crime of manufacturing of child pornography, elements of crime of distribution of child pornography and elements of crime of possession of child pornography.

A person who committed the crime of manufacturing of child pornography shall be sentenced to a term of imprisonment from 4 to 10 years. A person who committed the crime of distribution of child pornography shall be sentenced to a term of imprisonment from 1 to 5 years. A person who committed the crime of possession of child pornography shall be sentenced to a term of imprisonment up to 2 years.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The new *Trestný zákon* [Criminal Code] in the Sections 54 and 55 introduces a new institute named "a punishment of compulsory labour" into the criminal law. The punishment of compulsory labour may be imposed to the offender only upon his/her consent. On 28 October 2005 the National Council of the Slovak Republic approved the *zákon o výkone trestu povinnej práce* [Act on execution of the punishment of compulsory labour][27], which will come into force on 1 January 2006. The Act on execution of the punishment of compulsory work respects the provisions of the Article 18 of the Constitution of the Slovak Republic[28] as well as provisions of the International Labour Organization Convention concerning forced or compulsory Labour no. 29. The punishment of compulsory labour is alternative to a term of imprisonment in case of commitment of less serious crimes. A convicted person is obliged to serve the sentence of compulsory labour personally during his/her leisure time and the extent of work should be minimally 20 hours per month. He/she has not the right to wages for the work performed. The convicted person can serve the sentence of compulsory labour for the benefit of state, municipality, municipal self-government bodies or other legal entities which operate in the area of culture, education, science development, protection of human rights, development of body culture, fire prevention, animal protection, social assistance, social services, health care, ecological activities, religious activities, humanitarian activities, charity or other public services under the condition that these activities are not of commercial character.

The Slovak Republic has decided to fully professionalize its army. Regarding this fact the National Council approved the new *zákon o brannej povinnosti* [Act on military duty][29], which will come into

[26] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].

[27] *Zákon č. 528/2005 Z. z. o výkone trestu povinnej práce a o doplnení zákona č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov v znení neskorších predpisov (zákon o výkone trestu povinnej práce)* [Act on execution of the punishment of compulsory labour and on amendments of the Act no. 5/2004 Coll. on employment services, amending and supplementing certain other laws].

[28] The Constitution of the Slovak Republic in its Article 18 states:

(1) No one shall be send to perform forced labour or forced services.
(2) Provisions of paragraph 1 of this Article shall not apply to:
   a) labour lawfully imposed on prisoners or on persons serving a sentence, which is replacing imprisonment,
   b) military service or other service performed instead of compulsory military service,
   c) service lawfully required in cases of natural disasters, accidents or other danger, which is threatening the lives, health or considerable property values,
   d) activity imposed by law for the protection of life, health or rights of other people,
   e) minor municipality services on the basis of a law.

[29] *Zákon č. 570/2005 Z. z. o brannej povinnosti a o zmene a doplnení niektorých zákonov* [Act no. 570/2005 Coll. on military duty and on amendments and supplements of certain other acts].

force on 1 January 2006. The new Act cancels compulsory basic military service, the alternative military service and the extensive military service. According to the new Act on military service, the military service includes an obligation of citizens to submit to military conscription and obligation to perform emergency or alternative duty. The emergency duty is a military service which must be performed by the citizen, to whom a military service has arisen during crisis situation.[30]

According to the provision of the Article 25 paragraph 2 of the Constitution of the Slovak Republic, no one shall be forced to perform military service if it is contrary to his or her conscience or religion. A law shall lay down the details.

On 8 November 2005 the National Council approved the *zákon o alternatívnej službe v čase vojny a vojnového stavu* [Act on alternative service in time of war and state of war][31], which will come into force on 1 January 2006. The Act regulates the conditions of performance of alternative service in time of war or state of war and of the citizen's refusal to perform military service. The alternative service replaces the military service if this is in contrary to citizen's conscience or religion. The alternative duty can by performed in the area of aid provision and rescue in the cases of natural disasters, accidents or other dangers threatening the lives, health or property, in the area of provision of health care and social assistance, in the area of civil protection, in the area of economic mobilization measures and in the area of provision of services supporting Armed Forces of the Slovak Republic. The priests and deacones of registered churches and religious societies may exercise their alternative service in these organizations within the area of their activity.[32]

On 1 January 2005 the new law[33] came into force, which regulates the provision of lump-sum contribution to persons who had been sent to the military labour camps during the period 1948 – 1954. In case that such beneficiaries do not live by now, a half of contribution belongs to their surviving spouses.

[30] According to the Article 1 paragraph 4 of the *ústavný zákon č. 227/2002 Z. z. o bezpečnosti štátu v čase vojny, vojnového stavu, výnimočného stavu a núdzového stavu* [Constitutional Act no. 227/2002 Coll. on national security in time of war, state of war, martial law and state of emergency] the term "crisis situation" means period of time, during which the national security is directly endangered or disturbed. Constitutional authorities can, after satisfying the conditions appointed by this act, solve the crisis by declaration of war, declare a state of war or emergency or martial law.

[31] *Zákon č. 569/2005 Z. z. o alternatívnej službe v čase vojny a vojnového stavu* [Act no. 569/2005 Coll. on alternative duty in time of war and state of war].

[32] According to the Article 18 paragraph 1 of the Constitution of the Slovak Republic, no one shall be sent to perform forced labour or forced services. According to the provision of the Article 18 paragraph 2 letter c) of the Slovak Constitution, the provisions of paragraph 1 of this Article shall not apply to military service or other service performed instead of compulsory military service.

[33] *Zákon č. 726/2004 Z. z. o poskytnutí jednorazového peňažného príspevku osobám zaradeným v rokoch 1948 až 1954 do vojenských táborov nútených prác a pozostalým manželkám po týchto osobách* [Act no. 726/2004 Coll. on provision of lump-sum contribution to persons who had been sent to the military labour camps during the period 1948 – 1954 and their surviving spouses].

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Detention following a criminal conviction

Legislative initiatives, national case law and practices of national authorities

The new *Trestný zákon* [Criminal Code][34] contains a new type of protective treatment measure named *detencia* [detention]. The court may order the detention (i) to an offender who has apparently fell ill with an incurable mental disease during the execution of imprisonment and whose stay at liberty might be dangerous for the society, or (ii) to an offender who denies to submit oneself to protective medical treatment after the termination of execution of imprisonment or the protective medical treatment is not effective and his/her stay at liberty may be dangerous for the society, or (iii) to an offender of a crime based on sexual motive or (iv) to an offender who has repeatedly committed a crime of an extreme gravity. In this case, the offender is placed in detention centre with the special therapeutic regime and is consistently separated from the society to prevent him/her further commission of crime. The court should examine the reasonableness of the detention of the offender in detention centre at least once a year and on the ground of experts' opinions should decide on further continuation of the detention. If necessary and justified, the detention may continue for life.

Deprivation of liberty for juvenile offenders

Legislative initiatives, national case law and practices of national authorities

According to the provisions of the *zákon o výkone trestu odňatia slobody* [Act on execution of punishment of imprisonment][35] which will come into force on 1 January 2006, the accommodation space in cell or room is at least 4 m² for a sentenced adolescent (according to current legal regulation all sentenced persons were entitled to 3.5 m² of space).

With regard to the reduction of the age for criminal liability of minors according to the provisions of the new Criminal Code, please see also comments to the Article 24.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The new *Trestný poriadok* [Code of Criminal Procedure][36] introduces a new legal institute named *zabezpečenie svedka* [securing of witness]. This legal institute regulates the right of the court to detain a witness for up to 72 hours to secure the witness' presence at the hearing before the court. According to the Section 88 of the new Code of Criminal Procedure, the witness may be detained upon a decision of the court provided that he/she has been properly called to the hearing before the court, the witness has not excused his/her absence at hearing before the court, bringing the witness before the court has not been successful and the presence of the witness at the hearing before the court cannot be provided otherwise. The witness may be detained only for the necessary period of time, maximum up to 72 hours. 24 hours is dedicated to bringing the witness before the court and within next 48 hours the hearing of the witness have to take place before the court, that ordered securing of the witness. The witness has the right to fulfil the complaint against such decision of the court, but complaint has not a suspensive effect. In our opinion, above mentioned preventive restraint of a witness with the aim to ensure his/her

[34] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].
[35] *Zákon č. 475/2005 Z. z. o výkone trestu odňatia slobody a o zmene a doplnení niektorých zákonov* [Act no. 475/2005 Coll. on execution of punishment of imprisonment, amending and supplementing certain other laws].
[36] *Zákon č. 301/2005 Z. z. Trestný poriadok* [Act no. 301/2005 Coll. Code of Criminal Procedure].

presence at trial is inadequate even in consideration of the provisions of the Article 17 paragraph 3 and 4 of the Constitution of the Slovak Republic. According to these provisions, only the person suspected of serious crime may be detained for up to 72 hours.

As mentioned in the Report on the Situation of fundamental rights in the Slovak Republic in 2004 it is questionable, whether it is necessary to establish such institute in criminal procedure law, which uses preventive restraint of witness to ensure his/her presence at trial. According to the provisions of the new Code of Criminal Procedure, 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.

The new *Trestný zákon* [Criminal Code] introduces the punishment of home arrest. According to the provisions of the new Criminal Code, the court may impose the term of home arrest of up to one year on the offender of less serious crime. The convicted person is obliged to stay within the territory of his/her residence, keep honest life, and stand a search or an examination if ordered. The convicted person may leave his/her residence only on the basis of preliminary consent of the probation and mediation officer on the ground of urgent reason and for the necessary period of time

As mentioned in the Report on the Situation of fundamental rights in the Slovak Republic in 2004, the National Council of the Slovak Republic approved the *zákon o európskom zatýkacom rozkaze* [Act on European arrest warrant][37], which entered into force on 1 August 2004. The provision of Section 14 paragraph 4 of the Act on European arrest warrant which breaches the principle of non-extradition of the state own citizens, seems not to be in compliance with the Article 23 paragraph 4 of the Slovak Constitution[38].

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 National Council of the Slovak Republic by its Resolution no. 1500 of 9 February 2005 established the *Výbor na kontrolu použitia informačno-technických prostriedkov* [Committee for oversight of use of information and technical means] the main task of which is to perform oversight activities resulting from the *zákon o ochrane pred odpočúvaním* [Act on protection against tapping][39]. On 29 June 2005 the National Council of the Slovak Republic adopted an Amendment to the Act on protection against taping[40]. The Amendment provides, *inter alia*, that the members of the parliamentary committee are

[37] *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, amending and supplementing certain other laws].

[38] The Article 23 paragraph 4 of the Slovak Constitution states that 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.

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

[40] *Zákon č. 311/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 166/2003 Z. z. o ochrane súkromia pred neoprávneným použitím informačno-technických prostriedkov a o zmene a doplnení niektorých zákonov (zákon o ochrane pred odpočúvaním) v znení zákona č. 757/2004 Z. z.* [Act no. 311/2005 Coll. amending and

entitled, accompanied by the member of a competent state authority, to enter the premises of state authorities empowered to use information and technical means.

The Committee of National Council of the Slovak Republic for oversight of use of information and technical means discussed and approved the Report on the state of the use of information and technical means in the year 2004[41]. The Committee detected shortcomings in connection with the absence of the methodology of registration and evaluation of the use of information and technical means in state competent authorities, including judges. The Report states that in the year 2004 there were 2604 applications for the use of information and technical means lodged to the competent court, and only 2 applications were dismissed. The Committee did not find any occurrence of unlawful use of information and technical means during the year 2004.

On 1 January 2006 the new *zákon o súkromnej bezpečnosti* [Act on private security][42] will enter into force. The new law regulates provision of services in the area of private security, i.e. security guard services, detective services, and professional training and counselling, and also specifies limitations of performance of detective services. Detective services may not be exercised in the way infringing rights of others protected by the law. Detective services may not be used for the purpose aiming to reveal political, trade union, or religious conviction, racial, ethnical, or national affiliation, state of health, sexual contacts and inclinations of the person concerned.

Voluntary termination of pregnancy

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there have been no changes as regards the legal regulation of voluntary termination of pregnancy. As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2003 and in 2004, on 7 May 2001 a group of members of the National Council of the Slovak Republic filed a motion to the Constitutional Court demanding the commencement of judicial review of compliance of certain provisions of the Act on abortion[43] and of the Regulation on abortion[44] with the Constitution of the Slovak Republic[45]. The members of the National Council were mainly arguing against unconformity of both the statutory and the regulatory provisions on abortion with the Article 15 paragraphs 1 and 4 of the Constitution guaranteeing the right to life[46]. The Constitutional Court has not made the decision on the merits of the case as yet.

---

supplementing the Act no. 166/2003 Coll. on protection of privacy against unauthorized use of information and technical means (Act on protection against tapping) amended by the Act no. 757/2004 Coll.].

[41] *Správa č. 1244 Výboru Národnej rady Slovenskej republiky na kontrolu použitia informačno-technických prostriedkov o stave použitia informačno-technických prostriedkov v roku 2004* [Report no. 1244 of the Committee of the National Council of the Slovak Republic for oversight of use of information and technical means in the year 2004].

[42] *Zákon č. 473/2005 Z. z. o poskytovaní služieb v oblasti súkromnej bezpečnosti a o zmene a doplnení niektorých zákonov (zákon o súkromnej bezpečnosti)* [Act no. 473/2005 Coll. on provision of services in the area of private security, amending and supplementing certain other laws (Act on private security)].

[43] *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.].

[44] V*yhláška ministerstva zdravotníctva č. 74/1986, ktorou sa vykonáva zákon Slovenskej národnej rady č. 73/1986 Zb. o umelom prerušení tehotenstva v znení zákona č. 98/1995 Z. z.* [Regulation of the Ministry of Health no. 74/1986 Coll. which regulates in more detail the Act on abortion as amended by the Act no. 98/1995 Coll.].

[45] The Constitutional Court has admitted the motion for further proceeding and assigned the motion with Ref. no. PL. ÚS 12/01.

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

Family life

Protection of family life

Legislative initiatives, national case law and practices of national authorities

The new *zákon o rodine* [Act on Family][47], which came into force on 1 April 2005, contains the regulation of determination of maternity, which had not been regulated in the former 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 (formerly this right was vested only to child and its mother).

The Government of the Slovak Republic approved the draft of Amendment to the *zákon o mene a priezvisku* [Act on first name and surname][48]. The draft entitles citizens of the Slovak Republic who are also citizens of another state(s) to modify their surnames in the form that is consistent with the law or tradition of the latter state(s). The proposal of the Amendment has been inspired by the judgement of the European Court of Justice, Case C-148/02 *Carlos Garcia Avello v. Belgian State* [2003] ECR I-11613 of 2 October 2003. The National Council of the Slovak Republic has not approved the draft amendment as yet.

Removal of child from the family

Legislative initiatives, national case law and practices of national authorities

In May 2005 the President of the Slovak Republic challenged the provision of the Section 49 paragraph 1 (first sentence) of the *zákon o rodine* [Act on Family][49] at the Constitutional Court arguing its incompatibility with the Constitution of the Slovak Republic, Charter of Fundamental Rights and Freedoms, and the Convention on the Rights of the Child. The challenged provision allows, though only a temporarily, to put a minor child held in an institutional care in a custody of a person who has expressed an interest to become a foster parent of the child without a prior decision of a court. According to the President of the Slovak Republic, the decision on a custody of a child, regardless whether the custody is temporal or not, should be taken by the court, and not by the administrative organ of social-legal protection of children as stated by the challenged provision at present. The President of the Slovak Republic raised objection as regards the compatibility of the mentioned provision of the Family Act with the Article 41 paragraph 4 (second sentence) of the Slovak Constitution and the Article 32 paragraph 4 (second sentence) of the Charter of Fundamental Rights and Freedoms[50], and with the Article 9 first point (first sentence) of the Convention on the Rights of the Child. The Constitutional Court has already admitted the motion for further proceeding (the motion is registered under the Ref. no. PL. ÚS 14/05) and at the same time the Court suspended applicability of the provision. The resolution of the Constitutional Court on suspension of applicability of the provision of the Family Act has been published in the Collections of Laws under no. 297/2005 on 2 July 2005.

---

[47] *Zákon č. 36/2005 o rodine a o zmene a doplnení niektorých zákonov* [Act no. 36/2005 Coll. on Family, amending and supplementing certain other laws].

[48] *Zákon č. 300/1993 Z. z. o mene a priezvisku v znení neskorších predpisov* [Act no. 300/1993 Coll. on name and surname as amended].

[49] *Zákon č. 36/2005 Z. z. o rodine a o zmene a doplnení niektorých zákonov. Zákon nadobudol účinnosť 1. apríla 2005.* [The Act no. 36/2005 Coll. on family, amending and supplementing certain other laws. The law came in force on 1 April 2005].

[50] Pursuant to the Article 41 paragraph 4 (second sentence) of the Slovak Constitution and the Article 32 paragraph 4 (second sentence) of the Charter of Fundamental Rights and Freedoms, "the rights of parents may be limited and minor children may be separated from their parents against the parents' will only by a court decision, based on the law.".

Right to family reunification

Legislative initiatives, national case law and practices of national authorities

On 1 April 2005 the *zákon o nelegálnej práci a nelegálnom zamestnávaní* [Act on illegal labour and illegal employment][51] came into force. The Act modified also the *zákon o službách zamestnanosti* [Act on employment services][52] and, *inter alia*, has facilitated the access of foreigners to the labour market, specifically that the foreigners who have been granted a temporary residence permit for the purpose of reunification of their families or foreigners granted temporary residence for the purpose of activity according special programs do not need an employment permit for entering employment relations any more.

Article 8. Protection of personal data

Independent control authority

Positive aspects

On 1 May 2005 the Amendment to the *zákon o ochrane osobných údajov* [Act on Personal Data Protection][53] came into effect. The Amendment reinforced the independence of the position of the *Úrad na ochranu osobných údajov* [Office for personal data protection] and regulates several investigatory powers of the Office. According to the new regulation, the chief inspector and other inspectors, as well as the President of the Office and the Vice-President of the Office are authorized to access information systems as the system administrator in the extent necessary for performing the verification and identity check of inspected persons and of natural persons acting of behalf of the inspected persons.

Reasons for concern

On 26 January 2005 an announcement of the Ministry of Foreign Affairs of the Slovak Republic had been published in the Collection of laws that on 8 November 2001 the Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data regarding supervisory authorities and transborder data flows (CETS No. 181) was adopted in Strasbourg. The National Council of the Slovak Republic affirmed the Additional Protocol by its Resolution no. 2136 of 17 May 2002 and decided that it came under the Article 7 paragraph 5 of the Constitution of the Slovak Republic, which means that it has precedence over the laws of the Slovak Republic. The President of the Slovak Republic ratified the Additional Protocol on 11 July 2002. The Additional Protocol came into force within the Slovak Republic on 1 July 2004.[54]

---

[51] *Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov* [Act no. 82/2005 Coll. on illegal labour and illegal employment, amending and supplementing certain other laws].

[52] *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, amending and supplementing certain other laws as amended].

[53] *Zákon č. 90/2005, ktorým sa mení a dopĺňa zákon č. 428/2002 Z. z. o ochrane osobných údajov v znení neskorších predpisov* [Act no. 90/2005 Coll. amending and supplementing the Act no. 428/2002 Coll. on personal data protection as amended].

[54] Unfortunately, the time delay of publishing of the mentioned Protocol is not sporadic at all in the practice of publishing of international treaties and conventions in the Collection of laws of the Slovak Republic. According to the Article 7 paragraph 5 of the Constitution of the Slovak Republic, the international treaties on human rights and fundamental freedoms, international treaties for which exercise a law is not necessary and international treaties which directly confer rights or impose duties on natural persons or legal persons, which were ratified, have precedence over laws of the Slovak Republic, but they have to be promulgated in the Collection of the laws. Later publication of international treaties in the Collection of laws halts the national application of them.

Protection of personal data

Legislative initiatives, national case law and practices of national authorities

The Amendment to the *zákon o ochrane osobných údajov* [Act on Personal Data Protection] introduces a new category of data, to which the Act is not applied and that are the data, which had been obtained coincidentally without prior determination of the purpose and means of processing and without the intention of their further processing and which are not systematically processed onward. Further, the Act refines on and makes clearer several duties of the system provider and explicitly specifies that personal data must be processed in accordance with good morals. The Act exactly specifies the ways how the provider manifests the consent of the person concerned with processing of his/her personal data and regulates other inevitable cases, when it is possible to process personal data without the consent of person concerned. The conditions of transmission of personal data to third country, which does not guarantee adequate level of protection of personal data, were tightened. As long as some of the conditions listed in the law is not fulfilled, such transmission can be realized only on the basis of the decision of the European Commission. The Act guarantees the free movement of personal data between the Slovak Republic and Member States of the European Union.

According to the Section 6 of the new *Trestný poriadok* [Code of Criminal Procedure], which will come into effect on 1 January 2006, the authorities in charge of criminal proceedings while providing the information to media are obliged to be particular about not releasing of protected personal data or facts of private character, especially concerning family life, residence or correspondence, which directly do not relate to criminal activity. Special attention is paid to the interests of juveniles, adolescents and aggrieved persons, whose personal data are not brought into open.

Reasons for concern

On 22 March 2005 the Office for personal data protection issued the standpoint to the question of making public of personal data (especially data concerning the date of birth) of persons occurred in the lists of volumes of former *Štátna bezpečnosť (ŠtB)* [State Security Authorities] on the website of *Ústav pamäti národa* [Nation's Memory Institute]. According to the opinion of the Office for Personal Data Protection by course of the *zákon o pamäti národa* [Nation's Memory Act][55] the Nation's Memory Institute is authorized to publish in printed media or via electronic media the transcription of registration records of protocols of State Security also with the date of birth. According to the Office of Personal Data Protection the Nation's Memory Act would lost its purpose if given data are published without the date of birth[56].

On 4 May 2005 the Office for personal data protection had been asked for the standpoint concerning publication of personal data of natural persons via websites in connection with the discussing the real estates transfers during sessions of municipal bodies and whether such performance could be considered as a breach of the *zákon o ochrane osobných údajov* [Act on personal data protection][57]. According to the opinion of the Office for personal data protection, this situation can be solved only via compromise according to which websites will not give publicity to these data: title, first name, surname and maiden name. Only the address and nature of real estate, price and perhaps even initials of first name and surname will be published.[58]

---

[55] *Zákon č. 553/2002 Z. z. o sprístupnení dokumentov o činnosti bezpečnostných zložiek štátu 1939 - 1989 a o založení Ústavu pamäti národa a o doplnení niektorých zákonov (zákon o pamäti národa) v znení neskorších predpisov* [Act no. 553/2002 Coll. on disclosure of documents regarding the activity of State Security Authorities in the period 1939 – 1989 and on founding of the Nation's Memory Institute and supplementing certain other laws (Nation's Memory Act) as amended.

[56] http://www.dataprotection.gov.sk/buxus/docs/odpoved_552_02.doc.

[57] *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].

[58] http://www.dataprotection.gov.sk/buxus/docs/Samosprava.pdf.

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

Marriage and control of marriages suspect of being simulated

Legislative initiatives, national case law and practices of national authorities

During the period under the scrutiny no relevant changes concerning simulated marriages have been adopted in the Slovak Republic.

On 1 April 2005 the new *zákon o rodine* [Act on Family][59] came into force. The new Act on Family has replaced the Act on Family of 1963[60]. The new 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 Act on Family regulates two forms of solemnization of marriage: civil form and religious form. The law expressly recognizes equal status of both forms of marriage. Marriage may be contracted either before the *matričný úrad* [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 (Embassy or Consular Office).

The 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 who has been deprived of legal capacity may not enter into the marriage.

In comparison with the legal regulation in force until 31 March 2005, the new Act on Family introduces new legal impediment for contracting a marriage, namely if the declaration of contracting a marriage was not done as willing, serious, definite and unequivocal. Such a marriage would be considered null and void *ex tunc*. The Act on Family also stipulates that the marriage would not come into existence if the declaration of contracting marriage was coerced by force.

Legal recognition of same-sex partnerships and recognition of the right to marry for transsexuals

Legislative initiatives, national case law and practices of national authorities

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

The *zákon o rodine* [Act on Family][61] defines marriage as a union of a man and a woman.

The Government of the Slovak Republic approved a draft of the Amendment to the *zákon o matrikách* [Act on Register of Births, Marriages and Deaths].[62] According to the approved Amendment, the solemnization of marriage may not be registered in the register of marriages, if the marriage was contracted contrary to the laws of the Slovak Republic. If registered, such a record of marriage would be considered null and void of the date of its entry to the register[63]. The Amendment has not been adopted by the Parliament yet.

[59] *Zákon č. 36/2005 Z. z. o rodine a o zmene a doplnení niektorých zákonov* [Act no. 36/2005 Coll. on Family, amending and supplementing certain other laws].
[60] *Zákon č. 94/1963 Zb. o rodine v znení neskorších predpisov* [Act no. 94/1963 Coll. on Family as amended].
[61] *Zákon č. 36/2005 Z. z. o rodine a o zmene a doplnení niektorých zákonov* [Act no. 36/2005 Coll. on Family, and amending and supplementing certain other laws].
[62] *Zákon č. 154/1994 Z. z. o matrikách v znení neskorších predpisov* [Act no. 300/1993 Coll. on Register of Births, Marriages and Deaths as amended].
[63] It concerns for example the marriages of persons of the same sex or transsexuals.

Article 10. Freedom of thought, conscience and religion

Incentives and reasonable accommodations provided in order to ensure the freedom of religion, including the right to conscientious objection

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

During the period under scrutiny neither the UN Human Rights Committee, the Committee on the Rights of the Child nor the European Court on Human Rights published any opinions or decisions regarding breaches of the freedom of thought, conscience and religion.

Legislative initiatives, national case law and practices of national authorities

On 28 April 2005 the Slovak Republic has signed the Agreement on execution of pastoral care for the believers in the Armed Forces[64] with eleven registered churches and religious societies.

On 8 November 2005 the *Národná rada Slovenskej republiky* [National Council of the Slovak Republic – the Parliament] approved the *zákon o alternatívnej službe v čase vojny a vojnového stavu* [Act on alternative service in time of war and state of war][65], which will come into force on 1 January 2006[66]. The act regulates the conditions of performing of alternative service in time of war or state of war and the refusal of exercising the military service by citizens. The alternative service replaces the military service if it is in contrary to citizen's conscience or religion[67].

Positive aspects

The Amendment to the *zákon o Policajnom zbore* [Act on Police Corps][68], which came into force on 1 May 2005 in detail regulates the catering of person whose personal freedom was restricted. The providing of catering also takes into account the religious faith of such person. The Act on Police Corps Amendment embedded the same regulation of catering of person whose personal freedom was restricted also to the Act on residence of foreigners[69].

In comparison with the current *Trestný poriadok* [Code of Criminal Procedure], the new Code of Criminal Procedure[70], which will come into force on 1 January 2006, in its provision of the Section 130 paragraph 2 also guarantees to witness the right to refuse testimony in such case that the testimony may breach of confessional secret or secret of information which was orally or in writing confided to the

[64] *Dohoda medzi Slovenskou republikou a registrovanými cirkvami a náboženskými spoločnosťami o výkone pastoračnej služby ich veriacim v ozbrojených silách a ozbrojených zboroch Slovenskej republiky č. 270/2005 Z. z.* [Agreement on execution of pastoral care for the believers in the Armed Forces between the Slovak Republic and registered churches and religious societies no. 270/2005 Coll.].

[65] *Zákon č. 569/2005 Z. z. o alternatívnej službe v čase vojny a vojnového stavu* [Act no. 569/2005 Coll. on alternative service in time of war and state of war].

[66] With force until 31 December 2005 the execution of alternative service is regulated in the *zákon č. 207/1995 o civilnej službe v znení neskorších predpisov* [Act no. 207/1995 Coll. on civil service as amended].

[67] According to the Article 25 paragraph 2 of the Constitution of the Slovak Republic, no one shall be forced to perform military service if it is contrary to his or her conscience or religion. A law shall lay down the details.

[68] *Zákon č. 69/2005 Z. z., ktorým sa mení a dopĺňa zákon Národnej rady Slovenskej republiky č. 171/1993 Z. z. o Policajnom zbore v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 69/2005 Coll. which amends and supplements the Act no. 171/1993 Coll. on Police Corps as amended, amending and supplementing certain other laws].

[69] *Zákon č. 48/2002 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 48/2002 Coll. on residence of foreigners, amending and supplementing certain other laws as amended].

[70] *Zákon č. 301/2005 Z. z. Trestný poriadok* [Act no. 301/2005 Coll. Code of Criminal Procedure].

witness under the condition of maintaining confidentiality in the position of the person in charge of pastoral care.

Reasons for concern

The Ministry of Justice of the Slovak Republic has drafted the proposal of an agreement that is to be concluded between the Slovak Republic and the Holy See on the right to objection of conscience (hereinafter referred to as the "Draft Treaty") which conclusion is envisaged in the Article 7 of the Basic Treaty between the Slovak Republic and the Holy See signed in the Vatican on 24 November 2000. A number of individuals and institutions have expressed their disagreement with the content of the Draft Treaty[71] in particular as regards its potential impact on a right to have access to counselling and to health care in area of reproductive health, including in particular abortion and contraception. Since these medical services disproportionately affect women, the Draft Treaty may also be seen as discriminatory on gender.

The EU Network of Independent Experts on Fundamental Rights drafted an opinion on the right to conscientious objection and the conclusion by the EU member states of concordats with Holy See on the request of the European Commission (DG Justice, Freedom and Security) which followed from the request of the European Parliament.[72] This initiative has been directly influenced by the preparation of the Draft Treaty in the Slovak Republic and primarily by a number of questions which have been raised about its potential incompatibility with fundamental rights and the law of the European Union.

In our opinion, the Draft Treaty, even though there have been made a number of improvements to the text since its first versions were presented to public, still contains several provisions that raising serious doubts about their compatibility with the Constitution of the Slovak Republic and international human rights standards.

First of all, the Draft Treaty, in our view, does not respect the secular character of the Slovak Republic as guaranteed in the Article 1 paragraph 1 of the Constitution of the Slovak Republic.[73] Furthermore, the Draft Treaty recognizes a privileged position to the Catholic faith in the exercise of the right to exercise objection of conscience since according to the Draft Treaty the right to exercise objection of conscience may be exercised only in conformity with the principles of the teaching and morals proclaimed in the Magisterium of the Catholic Church (Article 3 paragraph 1 and 2 of the Draft Treaty).

Ministry of Justice of the Slovak Republic has also drafted an Agreement between the Slovak Republic and the Registered Churches and Religious Societies on the right to objection of conscience (hereinafter referred to as the "Draft Agreement") which content is essentially identical to that of the Draft Treaty. It is envisaged that the Draft Agreement is to be concluded with the eleven churches registered under the Act no. 308/1991 Coll. on freedom of religious belief and on the status of churches and religious societies as amended [*zákon č. 308/1991 o slobode náboženskej viery a postavení cirkví a náboženských spoločností v znení neskorších predpisov*][74]. However, the Draft Agreement, in contradiction to the

[71] The NGO named Pro Choice Slovakia *Možnosť voľby – za dodržiavanie ľudských práv žien a detí* has particularly been active in opposing the Draft Treaty. These reservations and objections which have, *inter alia*, already been expressed to the Committee of Women Rights and Gender Equality in the European Parliament in January 2005, are available also in English version on NGO's web site http://www.moznostvolby.sk or http://www.prochoice.sk.

[72] Opinion no. 4 – 2005: The right to conscientious objection and the conclusion by the EU member states of concordats with Holy See.

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

[74] As mentioned in our Report of Fundamental Rights 2004, in our opinion, the conditions under which churches and religious societies are registered might be considered discriminative. According to the Act no. 192/1992 Coll. on registration of churches and religious societies [*zákon č. 192/1992 Zb. o registrácii cirkví a náboženských spoločností*], 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

Draft Treaty, will of course not gain the status of an international human rights treaty and therefore will not take precedence over laws of the Slovak Republic.[75]

Therefore, the conclusion of the Draft Agreement, although almost identical in content to the Draft Treaty, would create a state of inequality between the different religious faiths in particular as regards the right to exercise objection of conscience. Apart from this fact, it is obvious that there is still a large group of people whose conscience or moral principles are not governed by the official principles of teaching of faith and morals of either Catholic Church or of any other church or religious society registered in the Slovak Republic. These people, respectively their right to objection of conscience is, of course, covered neither by the Draft Treaty, nor the Draft Agreement. It can be therefore concluded, that both the Draft Treaty as well as Draft Agreement, if come into force, would create clearly discriminatory environment in the exercise of the right to conscientious objection which is as such unacceptable in a democratic society governed by the rule of law.

Other relevant developments

Reasons for concern

According to the Annual report of the European Monitoring Centre on Racism and Xenophobia[76], anti-Semitic attacks on people or property were recorded also in the Slovak Republic. As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004, the Anti–Semitic attacks are mostly demonstrated through damage and demolition of tombs at Jewish cemeteries. Such vandal acts have occurred in the Slovak Republic also during the period under the scrutiny. For instance, from 21 June to 13 July 2005, the six tombs in the Jewish cemetery in town of Michalovce (Eastern Slovakia) had been damaged.

territory of the Slovak Republic. On the basis of the Act no. 308/1991 Coll. on the freedom of religious belief and on the status of churches and religious societies as amended, 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. In July 2004 the Prosecutor General challenged the compatibility of several provisions of mentioned laws with the Slovak Constitution and the European Convention of Human Rights (Article 9) at the Constitutional Court, arguing essentially that the State by prescribing the census for registration of churches and religious societies discriminates citizens who are affiliated with churches and religious societies which have not been registered. The Constitutional Court has already admitted the motion for further proceeding and assigned the motion with ref. no. PL. ÚS 7/05. The Constitutional Court has not made a decision on that motion as yet.

[75] The Draft Treaty, if concluded and ratified, would automatically gained the status of an international human rights treaty in accordance with the Article 7 paragraph 5 of the Slovak Constitution which states that "international treaties on human rights and fundamental freedoms and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.".

[76] Racism and Xenophobia in the EU Member States – trends, developments and good practice, EUMC – Annual Report 2005, Part 2.

Article 11. Freedom of expression and of information

Freedom of expression and of information

Legislative initiatives, national case law and practices of national authorities

The new *Trestný poriadok* [Code of Criminal Procedure] in Section 6 regulates releasing of information regarding to criminal proceeding. Authorities in charge of criminal proceedings, including courts should inform public about criminal proceedings through mass media. When providing information concerning classified information, trade secrets, bank secrets, mailing secrets and telecommunication secrets they must secure protection of the information. Public authorities in charge of criminal proceedings have the right[77] to keep in secret the facts capable to destroy or obstruct the explanation and investigation of the case. Besides they are obliged to respect the presumption of innocence. At the court hearing an extent of released information is determined by the principle of publicity. Participants are entitled to take notes or to make drawings during the court hearing provided they do not cause disturbance of the hearing by these activities. According to the new legal regulation of the trial in the new Code of Criminal Procedure, the natural persons are allowed to make audio recordings from the trial and with allowance of the presiding judge also audio transmissions. It is not allowed to make audio recordings and audio transmissions during the interrogation of an agent or if classified information is being in charge. The Code of Criminal Procedure explicitly lists the situations, when presiding judge may forbid making of audio recordings in the court room. Video recording and audiovisual recording in the court room are not allowed under the Code of Criminal Procedure. New Criminal Code implements new elements of the offence of "Infringement of confidentiality of verbal communication and other communications of private nature". According to the Section 377 of the Criminal Code the offence is committed by the person who infringes a confidentiality of the words uttered in private or confidentiality of any other private communications by unjustified recording and subsequent making available of the records for the third person or disposing of them in such way, that the serious harm to rights is caused. The offender can be sentenced to a term of imprisonment up to two years.

Reasons for concern

The Slovak Republic has been listed among the top eight countries with the greatest press freedom in the fourth annual worldwide index of press freedom announced by Reporters without the borders for the year 2005[78]. The Slovak Republic has the index rate 0.75.

The offence of Infringement of confidentiality of verbal communication and other communications of private nature was implemented into the new *Trestný zákon* [Criminal Code][79] following the MP's proposal. Shortly after the adoption of the elements of this offence, there were views expressed in the media that enactment of these new elements of crime causes unreasonable impediments for the exercise of the work of investigative journalists. The Ministry of Justice of the Slovak Republic prepared a proposal amending the Criminal Code proposing to abrogate or to amend this provision in the Criminal Code. According to the legislative proposal listed groups of persons would be excluded from the application of this provision. Firstly the journalists and secondly the individuals, who disclose unjustifiedly recorded private communications in order to report a crime or in order to prevent commission of a crime. National Council of the Slovak Republic has refused to adopt the legislative proposal initiated by the Ministry of Justice.

[77] We are of the opinion that the public authorities in charge of criminal proceedings should not have the "right" to keep in secret the facts capable to destroy or obstruct the explanation and investigation of the case but rather the "duty".
[78] http://www.rsf.org/rubrique.php3?id_rubrique=554.
[79] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].

It is worth mentioning that during the last year a number of reportages recorded by hidden cameras were broadcasted on TV. The reporters focused on unlawful and unethical acting of certain individuals including public officials.

Media pluralism and fair treatment of the information by the media

Reasons for concern

Rada pre vysielanie a retransmisiu [Council for Broadcasting and Retransmission][80] has imposed a sanction on the commercial television *Markíza* for providing unbalanced news[81]. During the main daily news program *Televízne noviny* the television was obliged to broadcast 10 minutes lasting announcement, that it had broken the *zákon o vysielaní a retransmisii* [Act on Broadcasting and Retransmission][82] and that it had not provided for neutrality and balance of the concerned report. According to the Section 16 paragraph 1 (a) of the Act on Broadcasting and Retransmission a broadcasting provider is obliged to provide for neutrality and balance of news and publicist programmes; the opinions and evaluating comments must be separated from the news. The television was sanctioned for the report broadcasted on 4 September 2005 concerning the meeting of the Board of the political party *ANO* as a part of the main news program. The Council for Broadcasting and Retransmission reasoned, that there was a big disproportion between the duration of the statements of particular political opponents and that one statement was broadcasted live while the other only as a record. It was for the first time, when the Council for Broadcasting and Retransmission had imposed such kind of sanction. The representatives of the Council for the Broadcasting and Retransmission said for media, that they had been even considering imposing the strictest possible sanction – the suspension of broadcasting of the news *Televízne noviny*.

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004, 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. Press publishing conditions are laid down in the Act on periodic press of 1966[83], which is evidently out-of-date and stipulates limits of the press freedom in rather general and unintelligible terms. During the period under the scrutiny the *Ministerstvo kultúry Slovenskej republiky* [the Ministry of Culture of the Slovak Republic] had prepared a draft of new press act. The draft of new press act is still in comment procedure and it has not been submitted to the Government for its approval as yet.

Other relevant developments

Reasons for concern

Please see also comments concerning the Article 13 on denial of broadcasting the documentary film *Životy Ježiša* [Lives of Jesus] by the Slovak Television (STV).

[80] Pursuant to the Section 4 of the Act no. 308/2000 Coll. on broadcasting and retransmission as amended, the Council for Broadcasting and Retransmission supervises the observance of law regulating the broadcasting and retransmission and exercises the state administration of the broadcasting and retransmission. The Council takes care of keeping the plurality of information on news programs of the broadcasting providers, who broadcast on the legal basis or on license basis.

[81] The resolution of the Council no. 05-19/76.722 from 8 November 2005. The resolution is available on the website of the Council for Broadcasting and Retransmission http://www.rada-rtv.sk/a7585039-38fa-42b4-91aa-46ae041bbb05/c19081105W.doc.

[82] *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].

[83] *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].

Article 12. Freedom of assembly and of association

Freedom of peaceful assembly

Reasons for concern

Several meetings of the political party named *Slovenská pospolitosť – národná strana* [Slovak fellowship – national party] took place in number of Slovak towns on 29 and 30 October 2005. In the town of Modra the meeting was scattered by the police[84]. According to the police spokeswoman the program had diverted from that what was announced by distributing leaflets containing "The People's Program" of the political party by the participants at the meeting. In the opinion of the police the elements of crime of "Support for and propagation of movements leading to the suppression of civil rights and freedoms" have been accomplished by this program. It presumably related to spreading of anti-Semitic and xenophobic tendencies, the refusing of the parliamentary democracy and calling in question fundamental constitutional rights for certain groups of citizens. The municipal police or state police respectively interfered at the meetings of this political party in some other towns (e.g. Hlohovec, Černová, Prešov) too.

Following the initiative of the public prosecutor, the mayor of the *Bratislava - Staré mesto* (municipal part of Bratislava) prohibited the meeting of *Slovenská pospolitosť - národná strana* [Slovak fellowship – national party] planned on 17 November 2005[85] in the centre of Bratislava. According to the General Prosecutor of the Slovak Republic, there was a real danger that the meeting might explore into infringements of rights of others because of their nationality, gender, race or origin. A number of civic associations protested against holding the meeting in Bratislava. In this regard, there were also views expressed in media that the municipal office by its decision about the prohibition of the meeting infringed the *zákon o zhromažďovacom práve* [Act on the Right to Assembly][86], since according to the Section 11 paragraph 1 of this law the municipality had to take a decision about prohibiting the assembly not later than on the third day from the moment when it received the valid announcement about the meeting. The municipal office of the *Bratislava - Staré mesto* however, registered the announcement on 7 November 2005 and the prohibition of the meeting was issued only on 15 November 2005.

Freedom of association

Legislative initiatives, national case law and practices of national authorities

On 1 June 2005 the new *zákon o politických stranách a politických hnutiach* [Act on Political Parties and Political Movements][87] came into force. Like the former legal regulation, also the new law states that only the citizens of the Slovak Republic have the right to vote and to stand as candidates to the bodies of a political party or political movement. The requirement of Slovak citizenship applies also to the exercise of the right to found political parties and movements as well as the right to associate in political parties and movements. In comparison with the former regulation, the new law tightens conditions required for registration of new political party/movement, namely it requires to present a petition signed by at least 10,000 of citizens of the Slovak Republic, who agree with establishment of the party together with the application for registration. Formerly the law required submission of a petition signed by only 1,000 citizens, i.e. ten-times less than the current law in force.

[84] The meeting took place on the occasion of celebrating the Deceased Remembrance Day at the grave of Ľudovít Štúr – one of the leaders of the Slovak national revival in the 19th century. Ultra-national organizations used to refer to Slovak national revivalists especially at memorial events.
[85] This day is a national holiday - "Fight for a Freedom and Democracy Day" in the Slovak Republic.
[86] *Zákon č. 84/1990 Zb. o zhromažďovacom práve v znení neskorších predpisov* [Act no. 84/1990 Coll. on the right of assembly as amended]
[87] *Zákon č. 85/2005 Z. z. o politických stranách a politických hnutiach* [Act no. 85/2005 Coll. on Political Parties and Political Movements].

The new law on political parties and movements stipulates, *inter alia*, that all existing and registered political parties/movements must deliver to the Ministry of Interior statement containing place of their seat and personal data of their statutory representatives. Those political parties/movements which have omitted this statutory duty within the term prescribed by the law (i. e. 30 September 2005), have automatically (*ex lege*) commenced the process of their dissolution and as of 1 October 2005 they are permitted to perform only activities leading to their liquidation. According to the updated specifications from the register of political parties/movements at the Ministry of Interior, as of 30 September 2005 only 42 political parties and political movements have delivered the required information which means that 86 political parties/movements have been in the process of liquidation.

Positive aspects

On 31 October 2005 the Prosecutor General of the Slovak Republic filed a motion to the Supreme Court of the Slovak Republic asking dissolution of political party named *Slovenská pospolitosť – národná strana* [Slovak fellowship – national party]. According to the *zákon o politických stranách a politických hnutiach* [Act on Political Parties and Political Movements][88], Supreme Court is entitled to dissolve a political party/movement on the motion of Prosecutor General if the political party/movement contravenes the Constitution of the Slovak Republic, constitutional laws, laws or international treaties by its statute, program or activities. The *Slovenská pospolitosť – národná strana* was registered by the Ministry of Interior as a political party only in January 2005. Since its registration, it has organized a lot of public meetings. The Prosecutor General argues that it is evident from the program and activities of this political party that it aims at the destruction of fundamental rights and freedoms or pursuing certain goals incompatible with the democratic constitutional order.

The program and the statements manifested at the above-mentioned meetings led a number of NGOs to initiate dissolution of this party. NGOs named *Liga pre ľudské práva* [League for Human Rights] and *Parlament Rómov SR* [Roma Parliament of SR] even lodged a complaint against *Slovenská pospolitosť – národná strana* trying to commence a criminal proceedings against representatives and members of this political party arguing that they committed an offence of incitement to racial and national hatred by their activities. Also the Ministry of Interior made a public statement that elements of the crime of "Support for and propagation of movements leading to the suppression of civil rights and freedoms" might have been accomplished by the program of the party.

Reasons for concern

On 26 October 2005 the Minister of Interior of the Slovak Republic Mr. Vladimír Palko discharged the chairperson of the Police Trade Union Mr. Miroslav Litva from his office (he was a Head of scientific and technical development department at the Ministry of Interior). His discharge from position had been preceded by protest meeting of policemen against low income and for improving their working conditions. The minister argued, *inter alia*, that he had been entitled to discharge any appointed official subordinated to him without giving any reason for that.

The action of the Minister of Interior has been objected by the *Rada predsedov základných organizácií Odborového zväzu polície* [The Council of chairpersons of the basic unites of the Police Trade Union] as well as by the President of European Confederation of Police (EuroCOP) Mr. Heinz Kiefer, and it was considered as an inappropriate interference to the legitimate right of the police trade unions to demand better working conditions for the policemen in the Slovak Republic. On 2 December 2005 the meeting between Mr. Heinz Kiefer and the Minister Vladimír Palko took place in Bratislava. Next day after this meeting an Extraordinary EuroCOP Conference on this occasion was organised. As the Minister of Interior stated, October meeting of policemen led by Mr. Litva kept the political features and

[88] *Zákon č. 85/2005 Z. z. o politických stranách a politických hnutiach* [Act no. 85/2005 Coll. On Political Parties and Political Movements].

therefore was not in conformity with the Ethics Code of the policemen according to which policemen are obliged to perform their activities without prejudice and modestly.

Other relevant developments

Reasons for concern

At the beginning of August 2005 supporters of the techno music organized the "SlovTek" dancing party. This event was connected with special police arrangements. The fear of the possible outcomes of this event was caused by the scattering of similar event in the Czech Republic, where tens of people had been injured. Finally, the event in Slovakia proceeded peacefully, only monitoring activities and safety searches were exercised by the police. Similar police arrangements were used also during the music festival *Bažant – Pohoda* in July 2005 in the city of Trenčín.

At the end of April 2005 there was a broad public discussion about the limits of the state to intervene into the exercise of the freedom of assembly in public, since the police prohibited several hundreds of people to take a part in a funeral. The deceased person was murdered and police considered him to be a boss of local group of organised crime. Hundreds of policemen were embattled to the action, the police had monitored the area of the cemetery by helicopter and water canon was used as a warning against participants of the funeral. The relatives of the decedent postponed the funeral for two days. Even the postponed funeral was monitored by the police and the participants had to pass through the police search. The Ministry of Interior stated that the police safety measures were fully justified by the preventive protection of other people and public order.

Article 13. Freedom of the arts and sciences

Freedom of the arts

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

UN Human Rights Committee, Committee on Economic, Social and Cultural Rights or European Court on Human Rights did not issue any standpoints or decisions regarding breaches of the freedom of arts.

Legislative initiatives, national case law and practices of national authorities

Up to now, the Slovak Republic has not signed the Framework Convention on the Value of Cultural Heritage for Society of the Council of Europe.

Reasons for concern

In December 2004, after the protest of representatives of Catholic Church, the *Slovenská televízia* [Slovak Television][89] withdrew the documentary film in four parts named "Lives of Jesus" made in 1996 in coproduction of British TV BBC and German TV Das Erste from its Christmas program. According to the spokesman of the *Konferencia biskupov Slovenska* [Slovak Bishops' Conference] this film is derogative and inaccurate from the catholic believers' point of view. The film tries to document the life of Jesus only on the ground of rational facts and so its conclusions are unacceptable from the point of view of religious faith. Several weeks ago, in October 2004, the representatives of Catholic Church asked Slovak Television to withdraw also the film named "Secret Inquisition". This film was broadcasted by the Slovak Television.

[89] Slovak Television is a public – service institution.

The *Katolícke hnutie žien Slovenska* [Slovak Catholic Women's Movement] and *Network Slovakia – Spoločenstvo mladých katolíkov aktívnych v médiách* [Network Slovakia – Association of young Catholics active in media] asked commercial television "JOJ" to cancel prepared reality show named "*VyVolení*" [The Selected] which had to start on 5 September 2005. These organizations even prepared a petition against this reality show. On 2 September 2005, the commercial television following the protest extraordinarily included a discussion program named "Cancel the Selected" into its broadcasting. Representatives of organizers of petition action and representatives of Catholic Church were among the participants of this discussion. On 8 November 2005, the Slovak Bishops' Conference issued a statement to television broadcasting of given reality show[90] in which it deprecates this kind of programs. It considers them as propagators of moral and cultural decadence and it fully supports all initiatives of associations and individuals, which protest against reality shows like this.

Group of Members of the Parliament have prepared a draft of the Amendment[91] to the *zákon o autorskom práve* [Copyright Act][92] in which they suggest not to apply the copyright to state, municipality and higher territorial units' symbols. They want to allow municipalities and higher territoriality units to dispose of theirs symbols without any restrictions from authors. The National Council of the Slovak Republic (the Parliament) has not approved this Amendment yet.

Freedom of research and academic freedom

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

UN Human Rights Committee, Committee on Economic, Social and Cultural Rights or European Court on Human Rights did not issue any standpoints or decisions regarding breaches of the freedom of the scientific research or academic freedom.

Legislative initiatives, national case law and practices of national authorities

On 1 July 2005 the *zákon o organizácii štátnej podpory výskumu a vývoja* [Act on organization of state support of research and development][93] came into force. Basic principles of this legal regulation are autonomy and freedom of scientific research. Support of research was radically regulated on the behalf of higher effectivity of usage of financial support of research and development. The Act established the *Rada pre vedu a techniku* [Council for Science and Technology] as governmental advisory body. The Council has key role in formulating the objectives and aims of state scientific and technical policy. The Act specifies the position and activity of the *Agentúra na podporu výskumu a vývoja* [Agency for the support of science and development], which should be responsible for bigger financial support of research from state budget.

The law of the Slovak Republic prohibits both reproductive cloning as well as therapeutic cloning. The prohibition of cloning is covered by the new *Trestný zákon* [Criminal Code] in the Section 161 - Unauthorized experiment on human being and cloning of human being. According to the Section 161 paragraph 2 of the new 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 8 years.".

[90] http://www.tkkbs.sk/view.php?cisloclanku=20051109006.
[91] Parliamentary Press no. 1268.
[92] *Zákon č. 618/2003 Z. z. o autorskom práve a právach súvisiacich s autorským právom (autorský zákon)* [Act no. 618/2003 Coll. on copyright and rights related to copyright (the Copyright Act)].
[93] *Zákon č. 172/2005 Z. z. o organizácii štátnej podpory výskumu a vývoja a o doplnení zákona č. 575/2001 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov* [Act no. 172/2005 Coll. on organisation of the state support of research and development, amending the Act no. 575/2001 Coll. on organisation of governmental activities and organisation of central state administration as amended].

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 European Monitoring Centre on Racism and Xenophobia in its Annual Report[94] remarks that there are frequent news about the segregation of Roma children within the education system in Slovakia. Many non-Roma parents enrol their children in schools with lower concentration of Roma children. In particular, in the vicinity of segregated Roma settlements, this leads to homogeneous Roma classes or schools. According to the Annual Report, two principal ways of eliminating the segregation of Roma children are being attempted in the Slovak Republic. One uses motivational means, while the other applies coercive means. Motivational means are represented by financial grants to projects aimed at instructing teachers how to educate Roma children, publishing textbooks, etc. Coercive means include possible legal actions against school directors who are formally responsible for transferring children into special schools. The regulation of the Ministry of Education[95] stipulates the exact mechanisms that must be observed before making a decision about placing or transferring children into special schools. A thorough supervision of these mechanisms might prevent unjustified transfers. According to the Annual Report, the Centre welcomes a new policy for Roma in primary education in the Slovak Republic, which introduces the post of Roma assistant teacher, creates auxiliary education programs, reduces the number of pupils in a class, and supports teaching of Roma language.

According to the Preliminary Report on the human rights situation of the Roma, Sinti and Travellers in Europe prepared by the Commissioner for Human Rights of the Council of Europe Mr. Alvaro Gil-Robles, in some regions of the Slovak Republic 80% of Roma children were placed in specialized institutions, only 3% reached as far as secondary school and only 8% enrolled in secondary technical school.

Reasons for concern

According to the publication of the *Výskumné demografické centrum informatiky a štatistiky – INFOSTAT* [Demographic Research Centre of the Institute of Informatics and Statistics – INFOSTAT] named *Obyvateľstvo Slovenska podľa výsledkov SODB* [Population of Slovakia according to Census 2001][96] from January 2005, the educational rank of population is partly linked with the nationality. According to this document, the lowest attained level of education can bee seen in the regions with the higher concentration of Roma population.

[94] Racism and Xenophobia in the EU Member States – trends, developments and good practice, EUMC – Annual Report 2005, Part 2.

[95] *Vyhláška Ministerstva školstva Slovenskej republiky č. 49/2004 Z. z., ktorou sa mení vyhláška Ministerstva školstva Slovenskej republiky č. 212/1991 Zb. o špeciálnych školách v znení neskorších predpisov* [Order of the Ministry of Education no. 49/2004 Coll. which amends the Order of the Ministry of education no. 212/1991 Coll. on special schools as amended].

[96] The publication goes out from the data of census of inhabitants, houses, and apartments in the year 1970, 1980, 1991 and 2001. The publication is published on website of the Demographic Research Centre of the Institute of Informatics and statistics: http://www.infostat.sk/vdc/sk/index.html (only in Slovak).

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Amendment to the *zákon o vysokých školách* [Act on higher education institutions][97] introduces the motivational scholarships for students. The higher education institution shall award the motivational scholarship to student for excellent performance of his/her educational activities. The motivational scholarships are reimbursed from the state budget.

Positive aspects

In February 2005 the *Ministerstvo školstva Slovenskej republiky* [Ministry of Education of the Slovak Republic] approved the *Národný plán výchovy k ľudským právam na roky 2005 – 2014* [National plan for human rights education for the period of years 2005 - 2014][98]. The Report on current situation of human rights exercising in the area of education during the period of years 1995 – 2004 and the analytical material named "*Efektívny monitorovací a hodnotiaci systém rozsahu a kvality výučby k ľudským právam*" [Effective monitoring and evaluating system of the scope and quality of human rights education] belong also to component parts of the National plan for human rights education. According to the Ministry of Education statement, the amount of 30 million SKK (app. 750.000 EUR) should be reserved for the realization of National plan. The National plan for human rights education emphasizes a mutual understanding as one of the most important concepts in the area of human rights. The National plan also insists the importance of the human rights education for pedagogic employees. The National plan especially pays the attention to the education of national minorities, namely to Roma minority and to the right of parents to freely choose the education for their children.

Good practices

The National Plan for human rights education for the period of years 2005 – 2014 suggests the experimental verification of Slovak language course for migrants' children and its subsequent realization at primary schools with the aim to break language barriers. The National plan proposes to perform activities oriented on support of mother tongue and original culture of children, on creation of multicultural guidebooks for teachers appropriate for the work with children.

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

The right to engage in work and the right for nationals from other member States to seek an employement, to establish themselves or to provide services

Legislative initiatives, national case law and practices of national authorities

On 1 April 2005 the *zákon o nelegálnej práci a nelegálnom zamestnávaní* [Act on illegal labour and illegal employment][99] came into force. The Act has modified the *zákon o službách zamestnanosti* [Act on employment services][100], and by this Amendment the seeking of employment on the territory of the

[97] *Zákon č. 332/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 131/2002 Z. z. o vysokých školách a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 332/2005 Coll., amending and supplementing the Act no. 131/2002 Coll. on higher education institutions as amended].
[98] The National plan for human rights education for the period of years 2005 – 2014 is published on website of the Ministry of Education of the Slovak Republic: http://www.minedu.sk/MIN/KaP/kap.htm (only in Slovak).
[99] *Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov* [Act no. 82/2005 Coll. on illegal labour and illegal employment, amending and supplementing certain other laws].
[100] *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, amending and supplementing certain other laws as amended].

Slovak Republic became easier for foreigners. The Amendment extended the cases when the foreigner does not need to have the employment permit, specifically when the foreigner has been granted temporary residence for the purpose of unification of family and may enter employment relations according to the law concerning the residence of foreigners, and also when he/she has been granted temporary residence for the purpose of performance activities based on special programs.

The prohibition of any form of discrimination in access to employment

Legislative initiatives, national case law and practices of national authorities

As mentioned in the Report on the situation of fundamental rights and freedoms in the Slovak Republic in 2004, according to the *zákon o službách zamestnanosti* [Act on employment services], 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 not in conformity with good morals, and personal data not required for fulfilling employers´ duties, as specified by special legislation.
During the period under the scrutiny no relevant changes concerning the prohibition of discrimination in access to employment has been adopted.

Reasons for concern

According to the Annual Report 2005 of the European Monitoring Centre on Racism and Xenophobia[101], the authors of the National report Slovakia, 2004 acknowledge that "racism, discrimination and prejudice on the part of employers" against the Roma remains there, but it has been illegal to collect statistical data relating to ethnicity since 2000 and the Slovak National Centre for Human Rights has only recently started to be legally allowed to monitor discrimination.

Access to employment for asylum seekers

Legislative initiatives, national case law and practices of national authorities

The current regulation allows asylum seeker to enter employment relations even before the decision on granting asylum comes into effect provided that 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 current regulation does not allow applicant to carry out business until the decision on granting asylum comes into effect. This regulation came into effect on 1 February 2005[102].

[101] Racism and Xenophobia in the EU Member States – trends, developments and good practice, EUMC – Annual Report 2005, Part 2.
[102] *Zákon č. 1/2005 Z. z, ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 1/2005 Coll., amending and supplementing the Act no. 480/2002 Coll. Act on asylum, amending and supplementing certain other laws].

Access to employment in public administrations

Legislative initiatives, national case law and practices of national authorities

According to the provisions of the *zákon o štátnej službe* [Act on state service][103], only citizen of the Slovak Republic has the right to perform state service on the ground of just competitive hearing procedure. Citizens have the right to be informed on every free working place in area of state service. During the period under the scrutiny no relevant changes concerning access to employment in state service has been adopted.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

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

Article 16. Freedom to conduct a business

Freedom to conduct a business

Legislative initiatives, national case law and practices of national authorities

On 1 September 2005 an Amendment to the *živnostenský zákon* [Trade Act][104] came into force. The Amendment states, *inter alia*, that performance of healing is not considered as a trade. According to the explanatory report concerning this Amendment, performance of healing means a deliberate interference of one person with the physical and mental integrity of another one with an intention to heal, but such healer is not professionally trained to exercise medical profession under the *zákon o poskytovateľoch zdravotnej starostlivosti* [Act on Health Care Providers][105].

On 1 August 2005 an Amendment to the *Obchodný zákonník* [Commercial Code][106] came into force. The Amendment regulates, *inter alia*, conditions of termination of an authorisation to run business by foreign persons, including their branch offices on the territory of the Slovak Republic. Such regulation was missing in the Slovak law till then.

[103] *Zákon č. 312/2001 Z. z. o štátnej službe o štátnej službe a o zmene a doplnení niektorých zákonov* [Act no. 312/2001 Coll. on state service, amending and supplementing certain other laws].
[104] *Zákon č. 351/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [The Act no. 351/2005 Coll., amending and supplementing the Act no. 578/2004 Coll. on health care providers, health care employees, and professional organisations in health care services, amending and supplementing certain other laws as amended].
[105] *Zákon č. 578/2004 Z. z. o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch, stavovských organizáciách v zdravotníctve a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 578/2004 Coll. on health care providers, health care employees, and professional organisations in health care services, amending and supplementing certain other laws as amended].
[106] *Zákon č. 315/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 513/1991 Zb. Obchodný zákonník* [Act no. 315/2005 Coll., amending and supplementing the Act no. 513/1991 Coll. Commercial Code as amended].

Imposition of certain standards, for instance standards restricting the awardance of public contracts

Legislative initiatives, national case law and practices of national authorities

In connection with the new *zákon o nelegálnej práci a nelegálnom zamestnávaní* [Act on illegal labour and illegal employment][107] a number of other laws had been amended, for instance the *zákon o štátnej pomoci* [Act on State Assistance][108] that will come in force on 1 February 2006. According to this Amendment, if an entrepreneur breaches the statutory prohibition of illegal employment, he or she would loose the right for state assistance for the period of five years.

The Act on illegal labour and illegal employment has also amended the *zákon o verejnom obstarávaní* [Act on Public Procurement][109] according to which a person applying for participation in a public procurement must not have breached the prohibition of illegal employment for the period of at least five years preceded to his/her participation in a public procurement.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 1 January 2006 the new *zákon č. 8/2005 Z. z. o konkurze a reštrukturalizácii* [Act on Bankruptcy and Restructuring] will come into force.[110] New legal regulation reflects particularities of the Slovak legal, economic and trade environment and deals with problematical issues within this area. The pro-creditor approach prevails in the new regulation, but still the act provides necessary protection to a debtor. Provided that the bankruptcy is cancelled, a debtor - natural person is entitled to demand for a discharging at the court. An opportunity to carry out the restructuring of the bankrupt is also regulated in the new law. New legal regulation aims to avoid a property loss of the bankrupt just prior to the commencement of the proceedings and during the proceedings itself as well as to ensure promptness of the proceedings and admitting arrangements that stimulate the parties to act promptly and proactively. The act allows collective satisfaction of creditors, namely by selling the debtor's assets or by any other arrangements that would satisfy creditors' justified interests.

On 1 July 2005 the *zákon o správcoch* [Act on Administrators in Bankruptcy][111] came into force. The act sets strongly formal model of regulation of performance of administrators' duties. Administrators perform their duties in the bankruptcy proceedings, restructuring proceeding and in discharging proceedings. The Ministry of Justice of the Slovak Republic supervises upon regulation for exercising of administrators' duties and maintains the register of the administrators. The act follows the new legal regulation established by the Act on Bankruptcy and Restructuring. Among the main duties of the administrator belongs administration of the bankrupt's estate, realization of assets and satisfaction of creditors. During restructuring administrator is obliged to supervise debtor's business activities. In the case of discharging, the administrator is appointed by the court and the court defines, which debtor's actions are subjected to administrator's written approval.

---

[107] *Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov* [Act no. 82/2005 Coll. on Illegal Labour and Illegal Employment, amending and supplementing certain other laws].

[108] *Zákon č. 231/1999 Z. z. o štátnej pomoci v znení neskorších predpisov* [Act no. 231/199 Coll. on State Assistance as amended].

[109] *Zákon č. 523/2003 Z. z. o verejnom obstarávaní a o zmene zákona č. 575/2004 Z. z. o organizácii činnosti vlády a organizácii ústrednej štátnej správy v znení neskorších predpisov* [Act no. 523/2003 Coll. on Public Tender, amending and supplementing the Act no. 575/2004 Coll. on organization of governmental activities and organization of the central state administration as amended].

[110] *Zákon č. 8/2005 Z. z. o konkurze a reštrukturalizácii a o zmene a doplnení niektorých zákonov* [Act no. 8/2005 Coll. on the Bankruptcy and Restructuring, amending and supplementing certain other laws].

[111] *Zákon č. 8/2005 Z. z. o správcoch a o zmene a doplnení niektorých zákonov* [Act no. 8/2005 Coll. on Administrators, amending and supplementing certain other laws].

Article 17. Right to property

The right to property and the restrictions to this right

Reasons for concern

The Constitutional Court of the Slovak Republic by its ruling Ref. no. PL. ÚS 11/05 of 4 May 2005 has suspended the applicability of the Section 1 paragraph 15 of the *zákon o niektorých opatreniach na usporiadanie vlastníctva k pozemkom* [Act no. 180/1995 Coll. on some measures regarding arrangement of landownership as amended][112] which compatibility with a number of provisions of the Constitution of the Slovak Republic and with the European Convention on Human Rights and Fundamental Freedoms (Article 6 paragraph 1, and Articles 13 and 14) and Protocol 1 (Article 1) to the European Convention on Human Rights and Fundamental Freedoms has been challenged by the Prosecutor General. According to the challenged provision, the lands of so called unknown owners had been supposed to be transferred *ex lege* to the ownership of the State on 1 September 2005 and subsequently, within one year of the acquisition of ownership of the lands by the State, the ownership of the lands has been supposed to be transferred from the State to the appropriate municipalities. The Prosecutor General argues, *inter alia*, that the large group of so called unknown owners consists also of persons whose identity is known to public authorities, but due to several land registration reforms adopted since the year 1950, the residence or the seat of these persons has not been registered. The Prosecutor General also argues that the lands may not be considered as "derelicted" in the sense of Section 135 paragraphs 1 and 3 of the *Občiansky zákonník* [Civil Code][113] because the lands under question were simply not wilfully and knowingly abandoned by their owners (as required for a dereliction of the thing by the Civil Code), but the owners have become "unknown" essentially due to the legislative reforms concerning the registration of lands. According to the Prosecutor General, the challenged provision does not respect the constitutional conditions for expropriation of property stated in the Article 20 paragraph 4 of the Constitution of the Slovak Republic, i.e. that expropriation or restrictions of right in property may be imposed only to the necessary extent and in public interest, based on the law and for a valuable consideration. Expropriation or restriction of the right in property, as already proclaimed by the Constitutional Court in former decisions (e. g. in its ruling Ref. no. PL. ÚS 16/95), may not be accomplished by the generally binding law adopted by the National Council of the Slovak Republic (Slovak Parliament) but only by the individual administrative decision taken by competent administrative organ. The challenged provision therefore does not respect the essence and the meaning of the fundamental right to own property and also the principle of legal certainty as one of the main fundamentals of the Rule of Law principle. The Constitutional Court has not made a decision on merits of the case as yet.

Article 18. Right to asylum

Asylum proceedings

Legislative initiatives, national case law and practices of national authorities

On 1 February 2005 the Amendment to the *zákon o azyle* [Act on asylum][114] came into force. Pursuant to the provisions of this Amendment, the asylum seeker must be instructed of his/her rights and

[112] *Zákon č. 180/1995 Z. z. o niektorých opatreniach na usporiadanie vlastníctva k pozemkom v znení neskorších predpisov* [Act no. 180/1995 Coll. on some measures regarding arrangement of landownership as amended].
[113] Pursuant to this provision, *inter alia*, lost or hidden things whose owner is not known, and derelicted things, shall become the property of the State after one year they had been found.
[114] *Zákon č. 1/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 1/2005 Coll., amending and supplementing the Act no. 480/2002 Coll. on asylum, amending and supplementing certain other laws].

obligations during the asylum procedure within 15 days from the date of commencement of the asylum granting procedure. The asylum seeker is obliged to attend a Slovak language course in the integration centre with the aim of his/her better integration into the society. According to this Amendment, the Ministry of Interior is authorized to send the asylum seeker to a medical examination for the purpose of determination of the asylum seeker's age, if the asylum seeker declares that he/she is a juvenile and the Ministry of Interior has doubts about this information. If the asylum seeker refuses to subject himself/herself to a medical examination, he/she will considered and treated as being adult for he purpose of asylum proceeding.

Reasons for concern

The number of applications for granting asylum registered in the Slovak Republic has markedly decreased in 2005 in comparison with the year 2004. Pursuant to the statistical overview worked out by the *Migračný úrad* [Migration Office], there are (up-to-date as of 30 November 2005) the following statistics[115]:

- 3235 applications for granting asylum registered,
- asylum was granted to 11 applicants (in 2004, asylum was granted to 15 applicants),
- asylum was not granted to 698 applicants (in 2004, asylum was not granted to 1592 applicants),
- 2663 applications for granting asylum were dismissed,
- 1545 applications still pending.

During the period from 1 January 2005 to 30 November 2005 the citizenship of the Slovak Republic was granted only to 2 asylum seekers.

For better illustration of above mentioned facts, see following table containing figures concerning asylum procedure in the Slovak Republic during the period of 1992 – 2005.

Asylum seekers in the Slovak Republic 1992 – 2005[116]

Year	Asylum seekers	Asylum granted	Asylum not granted	Dismissed Applications	Pending	Citizenship granted
1992	87	56	0	0	31	0
1993	96	39	20	25	43	0
1994	140	55	32	65	31	0
1995	359	68	57	190	75	0
1996	415	129	62	193	106	4
1997	645	65	84	539	63	14
1998	506	49	36	224	260	22
1999	1320	27	176	1034	343	2
2000	1556	11	123	1366	400	0
2001	8151	18	130	5247	3156	11
2002	9743	20	309	8053	4516	59
2003	10358	11	531	10656	3675	42
2004	11395	15	1592	11782	1681	18
11/2005	3235	11	698	2663	1545	2
All	**48006**	**574**	**3850**	**42037**	**1545**	**174**

[115] The statistics are available on the website: http://www.minv.sk/mumvsr/index.htm.
[116] The tables are taken over from the website of the *Migračný úrad Ministerstva vnútra Slovenskej republiky* [Migration Office of the Ministry of Interior of the Slovak Republic]: http://www.minv.sk/mumvsr/STAT/statistika.htm.

Ten most frequent nationalities of asylum seekers
in the period of 1 January 2005 – 30 November 2005

Nationality	Number of asylum seekers
Chechen	856
Moldavian	294
Punjabi	270
Georgian	210
Chinese	199
Bangladesh	181
Indian	171
Pakistani	133
Russian	126
Vietnamese	96

Recognition of the status of refugee

Legislative initiatives, national case law and practices of national authorities

On 15 December 2004 the National Council by its Resolution no. 1417 affirmed the European agreement on the abolition of visas for refugees. The Parliament decided that this convention came under the Article 7 paragraph 5 of the Constitution of the Slovak Republic, which means that it has precedence over the laws of the Slovak Republic. The President ratified it on 18 January 2005. The European agreement entered into force within the Slovak Republic on 28 February 2005[117].

Reasons for concern

According to the research results regarding relationship of citizens of the Slovak Republic to refugees realized by the non-governmental Agency *Focus* on demand of the UNHCR Representation in the Slovak Republic in the period 4 - 10 May 2005, 74% of the citizens are convinced that the Slovak Republic should accept refugees and help them and 51% of the respondents agree with the statement that the refugees contribute to criminality increase on the territory of the Slovak Republic.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Government of the Slovak Republic by its Resolution no. 11 of 12 January 2005 approved the *Koncepcia migračnej politiky Slovenskej republiky* [Migration Policy Conception of the Slovak Republic]. According to the approved Conception, the *Imigračný a naturalizačný úrad* [Immigration and Naturalization Office] should be established till 2010 on the base of current offices dealing with the problem of foreigners, migration and asylum. The Conception also presupposes the extension of accommodation capacity for the asylum seekers and illegal migrants and the establishment of the information centre as national contact point for the European Migration Network.

According to the approved Migration Policy Conception of the Slovak Republic, in July 2005 the Ministry of education developed the *Koncepcia migračnej politiky Slovenskej republiky na podmienky rezortu školstva* [Migration Policy Conception of the Slovak Republic for the resort of education][118].

[117] *Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 188/2005 Z. z. o uzavretí Európskej dohody o zrušení víz pre utečencov* [Announcement of the Ministry of Foreign Affairs no. 188/2005 Coll. on conclusion of the European agreement on the abolition of visas for refugees].

[118] The Migration Policy Conception of the Slovak Republic for the resort of education is published on the website of the Ministry of Education of the Slovak Republic (only in Slovak): http://www.minedu.sk/RS/OVaVRK/DOC/2005/20050830_koncepcia_migracnej_politiky.doc.

Positive aspects

The Amendment to the *zákon o štátnom občianstve* [Act on Citizenship of the Slovak Republic][119], which entered into force on 1 September 2005, makes acquirement of citizenship easier for some categories of applicants, including persons granted asylum. A person granted asylum can acquire the citizenship regardless of the fulfilment of conditions of ability to speak Slovak language and of continuous permanent residence on the territory of the Slovak Republic for a minimum of 5 years immediately preceding submission of the application.

Also the foreigner, who lives on the territory of the Slovak Republic in the common household with a spouse who is a Slovak citizen at least three years, does not need to fulfil the statutory conditions for acquirement of Slovak citizenship.

Good practices

Ministry of Education of the Slovak Republic drafted *Národný plán výchovy k ľudským právam na roky 2005 – 2014* [National plan for human rights education for the period of years 2005 - 2014].[120] The National plan states, *inter alia*, that it is necessary to prepare inhabitants of the Slovak Republic for multicultural society since public opinion researches show that there is a common lack of interest, fear and intolerance of Slovaks towards foreigners.

One of the aims introduced by the National plan for human rights education for the period of years 2005 – 2014 is the integration of migrants' and asylum seekers' children to the educational system, but at the same time it is important to promote their original culture. The children of foreigners have the possibility to attend a Slovak language course for the purpose of their better integration into the society.

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

Subsidiary protection and prohibition of removals of foreigners to countries were they face a real and serious risk of being killed or being subjected to torture or to other cruel, inhuman and degrading treatments

Legislative initiatives, national case law and practices of national authorities

New *Trestný zákon* [Criminal Code][121] which will enter into force on 1 January 2006 includes new legal regulation of the sentence of expulsion. According to the Section 65 paragraph 1 of new Criminal Code, court may impose a sentence of expulsion from the territory of the Slovak Republic on an offender, who is neither a citizen of the Slovak Republic or a citizen of other EU Member State or a citizen of contracting state of the EEA Agreement nor he/she is not a person granted asylum, if required by safety and security of other people or of property or by other public concern. The Section 65 paragraph 2 of new Criminal Code determines the cases, when it is not allowed to impose a sentence of expulsion. A sentence of expulsion to the territory of the country where a life or freedom of person would be threatened on account of his/her race, colour of skin, ethnic origin, religion, nationality, membership of a particular social group or political opinion may be imposed on an offender, provided that such a person can be reasonably regarded as a danger to the safety and security of the Slovak Republic or who

[119] *Zákon č. 265/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 40/1993 Z. z. o štátnom občianstve Slovenskej republiky v znení neskorších predpisov* [Act no. 265/2005 Coll., amending and supplementing the Act no. 40/1993 Coll. on citizenship of the Slovak Republic as amended].
[120] The National plan for human rights education for the period of years 2005 – 2014 is published on the website of the Ministry of Education of the Slovak Republic (only in Slovak): http://www.minedu.sk/MIN/KaP/kap.htm.
[121] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].

has been convicted by a final judgement or a particularly serious crime. This provision, in our opinion, is inconsistent with the Article 19 paragraph 2 of the Charter of Fundamental Rights.

According to the Section 65 paragraph 2 (c) of the new Criminal Code, it is not allowed to impose a sentence of expulsion to the territory of the country where the person concerned might be subject to torture. Unlike current Criminal Code, the new Criminal Code does not list such cases among reasons of inadmissibility of extradition of a person from the territory of the Slovak Republic, when state asking extradition of a person can impose a death penalty upon him/her for a crime for which the extradition is required or when demanding state asks extradition to perform execution of death penalty. A court has to decide on inadmissibility of extradition. The reasons of inadmissibility of extradition specifically listed in the law are the only ones which can be used in case of appeal from a decision on admissibility of extradition. Criminal Code regulates the reasons under which the Minister of Justice can but does not need to decide on not permitting the extradition even in case when the court decided to permit extradition. Among these reasons are listed all above mentioned reasons concerning death penalty and persecution on account of origin, race, religion, membership in an ethnic group, citizenship or political opinion. In our opinion these reasons should be explicitly listed among reasons of inadmissibility of extradition of a person from the territory of the Slovak Republic. In our view, it should not be left on discretion of the Minister of Justice whether the extradition will or will not be permitted.

Reasons for concern

The *zákon o azyle* [Act on Asylum][122] still provides only relative prohibition of expulsion. As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004 and also 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. During the period under the scrutiny there have been no legislative changes related to this problem.

[122] *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, amending and supplementing certain other laws as amended].

CHAPTER III. EQUALITY

Article 20. Equality before the law

Article 21. Non-discrimination

Protection against discrimination

Legislative initiatives, national case law and practices of national authorities

The Government of the Slovak Republic by its Resolution no. 446 of 13 May 2004 adopted the *Akčný plán predchádzania všetkým formám diskriminácie, rasizmu, xenofóbie, antisemitizmu a ostatným prejavom intolerancie na obdobie rokov 2004 – 2005* [Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and other Expressions of Intolerance for the period of years 2004 – 2005]. It is already the third Action Plan focused on the prevention of discrimination, racism, xenophobia, anti – Semitism and other expressions of intolerance in the Slovak Republic (the Government of the Slovak Republic had approved similar documents for the period of years 2000 – 2001 and 2002 – 2003). The purpose of this plan is to carry out systematic education of such professional groups that might influence and improve the prevention of all forms of intolerance when performing their professions.

The Government of the Slovak Republic by its Resolution no. 705 of 14 September 2005 approved the *Priebežná správu o plnení Akčného plánu predchádzania všetkým formám diskriminácie, rasizmu, xenofóbie, antisemitizmu a ostatným prejavom intolerancie na obdobie rokov 2004 – 2005* [Intermediate Report on implementation of the Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and other Expressions of Intolerance for the period of years 2004 – 2005]. By the Resolution no. 704 of the same date the Slovak Government approved the Amendment to the mentioned Action Plan. The Government also approved in its Resolution no. 689 of 14 September 2005 the financial means in the sum of app. 3,5 mil. SKK for additional activities envisaged in the Amendment to the Action Plan.

Reasons for concern

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004, the Slovak Government in October 2004 challenged the compliance of the provision of the *antidiskriminačný zákon* [Anti-discrimination Act][123] regarding the positive action principle (Section 8 paragraph 8 of the Anti-discrimination Act[124]) which had been implemented from the Council Directive 2000/43/CE of 29 June 2000 concerning the equal treatment between persons irrespective of racial or ethnic origin, with the several provisions of the Slovak Constitution at the Constitutional Court.

The motion had been initiated by the Minister of Justice arguing mainly, that the challenged provision of positive action constitutes a positive discrimination, which is forbidden by the Slovak Constitution.[125]

---

[123] *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, amending and supplementing certain other laws (Anti-discrimination Act)].

[124] The mentioned provision of Anti-discrimination Act states: *"With a view to ensuring full equality in practice and compliance with the principle of equal treatment, specific positive actions to prevent disadvantages linked to racial or ethnic origin may be adopted"*.

[125] 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."*.

The situation was a bit curious since the same Government, which had challenged the constitutionality of principle of positive action as such, in its resolution of April 2003[126] and resolution of November 2003[127], i.e. only a couple of month before it filed the motion with the Constitutional Court, had adopted specific measures containing also programs of positive actions towards and in favour of Roma population.

On 18 October 2005 the Constitutional Court delivered a final ruling on the merits of the case declaring incompatibility of Section 8 paragraph 8 of the Anti-discrimination Act with the Article 1 paragraph 1 (Rule of Law principle), the first sentence of Article 12 paragraph 1 (principle of equality), and Article 12 paragraph 2 (non-discrimination principle) of the Constitution of the Slovak Republic. Constitutional Court dismissed the rest of the motion. The decision had been taken by the minimum majority of the plenum of the Court, four judges of the total number of eleven judges which were present in the plenary session of the Constitutional Court presented their dissenting opinions, one judge presented his concurring opinion disagreeing only with the reasoning of the ruling. The ruling has been published in the Collections of Laws under no. 539/2005 on 7 December 2005. Since that day the Section 8 paragraph 8 of the Anti-discrimination Act has lost its applicability.

From the reasoning of the decision it is quite clear, that the Constitutional Court declared the incompatibility of the positive (affirmative) action as such, i. e. in its principle, with the Slovak Constitution. The Court has argued, *inter alia*, that *"it is obvious from the Article 12 paragraph 2 of the Slovak Constitution as well as from its standing interpretation of the Court which must be stand to, that the Constitution prohibits both positive and negative discrimination for the reasons stated in this provision, i. e. having regard to 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. For all that, adoption of specific compensatory measures, although generally recognized legislative techniques for the prevention of disadvantages pertinent to racial or ethnic origin, is incompatible with the Article 12 paragraph 2 of the Constitution, and therefore also with the Article 12 paragraph 1 of the Constitution."*.

It seems from the reasoning that the Slovak Constitutional Court declared also the doctrine of material equality, on which the provision of Anti-discrimination Act implementing the positive action principle is based on, unconstitutional as such, because of its inconsistence with the prohibition of positive discrimination contained in Article 12 paragraph 2 of the Slovak Constitution.

This conclusion is rather surprising since the Constitutional Court has already several times in the past declared "positive discrimination" as an instrument of material *(de facto)* equality being consistent with the Slovak Constitution. For instance, in its ruling Ref. no. PL. ÚS 10/02 of 11 December 2003 the Constitutional Court said that *"preferential treatment of some group of natural persons for their specific, often disadvantageous attributes, as compared with other natural persons, by adoption of special legal regulations, is not a discrimination of other natural persons but on the contrary, it must be understood as a security of the constitutional principle which is inherent in Article 12 paragraph 2 of the Constitution."*.[128]

---

[126] *Uznesenie vlády č. 278/2003 z 23. apríla 2003* [Governmental Resolution no. 278/2003 of 23 April 2003].

[127] *Uznesenie vlády č. 1117/2003 z 26.novembra 2003* [Governmental Resolution no. 1117/2003 of 26 November 2003].

[128] In this case the Constitutional Court put under judicial review the provisions of Labour Code allowing the students, and only the students, to conclude special agreements on brigade-work with employers. The Court decided that although the challenged provisions constitute "positive discrimination" of students in comparison with other natural persons, the aim of these special agreements is legitimate (these special agreements on student brigade-work were considered by the Constitutional Court as instruments which might enhance the access of students to labour market and thus improve their social-economic situation while studying) and consistent with the principle of equality and principle of non-discrimination.

The principle of positive action is a standard instrument of international human rights law and is contained in a number of international treaties by which the Slovak Republic is bound of. For instance, International Convention on the Elimination of All Forms of Racial Discrimination (1965) in its Article 1 paragraph 4 provides that *"special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."*.

Similarly, the Framework Convention for the Protection of National Minorities (1995) in its Article 4 paragraph 2 and 3 states that *"the Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities. The measures adopted in accordance with paragraph 2 shall not be considered to be an act of discrimination."*.

In the view of European Court of Human Rights, Article 14 of the European Convention on Human Rights and Fundamental Freedoms *protects* individuals placed in similar situations from discrimination in their enjoyment of their rights under the Convention and its Protocols. However, a difference in the treatment of one of these individuals will only be discriminatory if it "has no objective and reasonable justification", that is if it does not pursue a "legitimate aim" and if there is no "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see, amongst other authorities, *Lithgow and others v. United Kingdom*, *Inze v. Austria*, *Darby v. Sweden*).

Material protection of the principle of equality and the principle of non-discrimination is generally considered as a standard approach also in the EU law. The forms of "positive action" contained in Council Directive 2000/43/EC (Article 5) and Council Directive 2000/78/EC (Article 7) are not considered discriminatory provided they are reasonably and objectively justified by the need to remedy discrimination, and remain proportionate to the discrimination to be addressed, and they are temporary, i. e. do not lead to the maintenance of separate rights for different groups.

In the view of the EU Network of Independent Experts on Fundamental Rights presented in the Thematic Comment no. 3 concerning the protection of minorities in the European Union, *"because of the specific situation of Roma minority in the Union, positive action measures should be adopted in order to ensure their integration in the fields of employment, education and housing. This is the only adequate answer which may be given to the situation of structural discrimination - and, in many cases, segregation - which this minority is currently facing."*

The ruling of the Slovak Constitutional Court declaring non-compliance of the positive action principle contained in Anti-discrimination Act with the Slovak Constitution will, in our opinion, have far-reaching consequences on the further protection of minorities in the Slovak Republic in general, but in particular on the Roma minority. As we already emphasized in our annual Report 2004, it is obvious, that the widespread *de facto* discrimination of Roma minority is not possible to reduce or eliminate without a reasonable use of positive action. Therefore, the decision of the Slovak Constitutional Court will, in our opinion, considerably influence the situation of Roma population in the Slovak Republic, and in fact, it might lead to serious aftermath which would concern the whole population, not only the Roma minority.

Fight against incitement to racial, ethnic, national or religious 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 during its sixty – sixth session on the meeting on 7 March 2005 adopted the Opinion in the case of the Communication no. 31/2003 of the petitioners Ms. L. R. and 26 other Slovak citizens of Roma ethnicity residing in Dobšiná in the Slovak Republic[129]. The Committee found that the Slovak Republic has violated three provisions of the International Convention on the Elimination of All Forms of Racial Discrimination in a housing discrimination case: obligation under Article 2 paragraph 1 (a) to engage in no act of racial discrimination and to ensure that all public authorities act in conformity with this obligation, obligation under Article 5 paragraph d (iii) to guarantee the right of everyone to equality before the law in the enjoyment of the right to housing and obligation under Article 6 of the Convention.

Legislative initiatives, national case law and practices of national authorities

The Ministry of Interior of the Slovak Republic drafted on the basis of the Resolution no. 1970/2005 of the National Council of the Slovak Republic the *Správa o boji proti prejavom násilia, intolerancie a extrémizmu v Slovenskej republike* [Report on the fight against demonstrations of violence, intolerance, and extremism in the Slovak Republic]. The Report states that as of 31 October 2005 there were 69 crimes with racial motive registered in the Slovak Republic, none of them was a murder. In comparison with previous years, there were 76 racially motivated crimes registered in 2004, 117 racially motivated crimes registered in 2003, and 102 crimes with racial motive registered in 2002. The Ministry of Interior in the Report calls attention also to the recently registered political party named *Slovenská pospolitosť – Národná strana* [Slovak Fellowship – National Party] and the civic association named *Nové Slobodné Slovensko* [New Free Slovakia] which members are mainly comprised of former or still active members of right-wing oriented groups. According to the Report, the safety situation as regards the extremism in the Slovak Republic in 2005 has been characterised by the radicalisation of right-wing extremist groups and their efforts to increase the number of their members.

The new *Trestný zákon* [Criminal Code][130], which will come in force on 1 January 2006, contains elements of racially motivated crimes, specifically the crime of defamation of a nation, race or conviction (Section 423), the crime of incitement of national, racial and ethnic hatred (Section 424), the crime of support for and propagation of movements leading to the suppression of civil rights and freedoms (Sections 421 a 422), the crime of genocide (Section 418), and the crime of violence against a group of citizens or an individual (Section 359).

Protection of Gypsies / Roms

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

According to the Annual Report 2005 of the European Monitoring Centre on Racism and Xenophobia[131], Roma minority is mentioned as a group that is most likely to suffer from discrimination in the Slovak Republic. The European Monitoring Centre on Racism and Xenophobia in its Annual Report among good practice initiatives specifically set out to tackle the problem of police relations with and responses to the Roma community welcomes in Slovak Republic, that the Ministry of Interior, together with several partners, initiated a programme to select and train police specialists to work more effectively with the Roma community. The Centre also welcomes a training programme for judges, prosecutors, teachers and labour office employees and training programmes for the police operating in

[129] Communication no. 31/2003: Slovakia. 10/03/2005.CERD/C/66/D/31/2003.
[130] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].
[131] Available on the web site: http://eumc.eu.int/eumc/material/pub/ar05/AR05_p2_EN.pdf.

areas with a significant Roma population. According to the Annual Report of the Centre, the program of developing social flats implemented by the Ministry of Construction and Regional Development in the Slovak Republic serves a good example of tackling the housing problems of marginalised population groups. The Centre welcomes another initiative by the government named "Long-term Conception of Housing for Marginalised Groups of Citizens and Model of its Financing", which is intended to create a framework for addressing the problem of housing of marginalised groups, especially the Roma.

Pursuant to the Preliminary Report prepared by Commissioner for Human Rights of the Council of Europe Mr. Alvaro Gil-Robles on the human rights situation of the Roma, Sinti and Travellers in Europe[132], during a follow-up visit to Slovakia in September 2003, a team of the Commissioner's Office visited a Roma settlement near village named Zborov, in the eastern part of the country where people lived mainly in shacks made of recycled materials with no access to basic infrastructure such as running water, electricity or transportation. According to interviews conducted in the settlement, people have been living there for more than a hundred years and, despite appeals to successive municipal councils, very little had been done to assist them to move out from this settlement.

The Commissioner for Human Rights in his preliminary report further notes that during his visit to Slovak Republic in 2001, he received many reports regarding inappropriate or excessive action by the police against the Roma community. During a follow-up visit to Slovakia in 2003, it became evident that the issue of police behaviour and racially-motivated violence continued to be of grave concern. Concerns remained also about police harassment and ill-treatment during police investigations, particularly of the Roma community, and there were reports about abusive raids on Roma settlements and the use of excessive force against Roma suspects. Measures have, however, been taken to address more effectively cases of ill-treatment by the police. For instance, the Ministry of the Interior established a commission at the end of 2001 to fight against racially-motivated violence through monitoring cases which demonstrate obvious racial discrimination from the police. Another line of action taken by the Slovak authorities aimed at suppressing racially motivated violence is regular specialised training for members of the police. The Commissioner welcomes the establishment of special units to examine racially-motivated violence by the police and regular training for the police as in the Slovak Republic.

Legislative initiatives, national case law and practices of national authorities

The Slovak Government by its Resolution no. 28 of 12 January 2005 adopted the *Národný akčný plán Dekády začleňovania rómskej populácie 2005 – 2015* [National Action Plan of the Decade of Roma Integration in 2005 – 2015]. The Project "Decade of Roma Integration" is a joint initiative of Bulgaria, Croatia, the Czech Republic, Hungary, Macedonia, Romania, Serbia and Monte Negro, and the Slovak Republic in cooperation with the World Bank and the Open Society Institute designed for the period of 2005 -2015. The objective of the National Action Plan is to extend and accelerate the social integration of Roma population including improvement of their social status. The National Action Plan focuses on four priority areas: education, employment, health, housing, and on three related themes: poverty, discrimination, and gender equality.

The Government of the Slovak Republic by its Resolution no. 363 of 10 May 2005 took a knowledge of evaluation of the *Základné tézy koncepcie politiky vlády SR v integrácii rómskych komunít za rok 2004 a Priority vlády SR v integrácii rómskych komunít za rok 2004* [Basic theses of the Conception of the Slovak Government's policy concerning the integration of Roma communities in 2004 and Priorities of the Slovak Government regarding the integration of Roma communities in 2004]. According to the evaluation, the project of Roma school assistants and field social workers has been successful. During the year 2004 the number of field social workers increased from 28 to 76, and it is envisaged that the

[132] It is a preliminary report, drawing together the main findings on the situation of the Roma made by the Commissioner as a result of the country visits conducted so far and his contacts with Roma communities and individuals in the context of his other activities. The Commissioner will subsequently issue a consolidated version of this report in the light of the comments submitted by Governments, associations and civil society.

total number of the field social workers will increase up to 600 by the end of the year 2005. The evaluation also mentions that the envisaged new law on financing of cultures of minorities has still not been adopted. The Government put an obligation on the Minister of Health to elaborate a system of health care accessibility for marginalised Roma communities, a system of field works of health care assistants in Roma settlements, and a model of mobile health care units operating in remote segregated localities.

The Government of the Slovak Republic by its Resolution no. 63 of 19 January 2005 approved the proposal of the *Dlhodobá koncepcia bývania pre marginalizované skupiny obyvateľstva a model jej financovania* [Long-term Conception of Housing for Marginalised Groups of Citizens and Model of its Financing]. The Conception follows the socio-graphic mapping of Roma settlements in the Slovak Republic carried out in 2004 which was initiated by the Office of Plenipotentiary of the Slovak Government for Roma minority. According to the results of this research, only 39% of Roma settlements are connected to water-supply network, 13% of settlements are connected to sewerage system; gas is accessible in 15% and electricity in 89% of Roma settlements. The research identified 46 Roma settlements lacking any access to infrastructure such as water-supply network, sewerage system, gas, and asphalt roads, 12 Roma settlements do not even have an access to electricity. Almost one third of Roma settlements have been considered as illegal constructions.

Positive aspects

On 4 March 2005 the Minister of Education of the Slovak Republic and the Plenipotentiary of the Slovak Government for Roma minority accredited 25 new teachers of Roma language and literature. These professionals have already started to operate in some primary and secondary schools and also at universities as teachers and assistants. Roma language has become an optional subject at some secondary schools and universities. A dictionary of Roma language based on a dialect of Roma settled mainly in the eastern part of Slovakia has been in the process of preparation.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

Please see the comments concerning the Article 10 on the Agreement on execution of pastoral care for the believers in the Armed Forced between the Slovak Republic and registered churches and religious societies.

Reasons for concern

During the period under scrutiny no significant changes regarding the conditions under which churches and religious societies are registered have been adopted.

As we already mentioned in the Report on the situation of fundamental rights and freedoms in the Slovak Republic in 2004, 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][133], 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 *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

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

societies],[134] 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. In July 2004 the Prosecutor General challenged the compatibility of several provisions of mentioned laws with the Constitution of the Slovak Republic and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Article 9) at the Constitutional Court, arguing essentially that the State by prescribing the census for registration of churches and religious societies discriminates citizens who are affiliated with churches and religious societies which have not been registered. The Constitutional Court has already admitted the motion for further proceeding and assigned the motion with ref. no. PL. ÚS 7/05. The Constitutional Court has not made a decision on that motion yet.

Other relevant developments

Reasons for concern

As mentioned already in our Report on the situation of fundamental rights and freedoms in the Slovak Republic in 2004, 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 constitutional 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][135], 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 above mentioned decree, though adoption of that decree is necessary for exercise and enjoyment of rights guaranteed by the Constitution of the Slovak Republic 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. This situation has remained unmodified during the period under scrutiny.

[134] *Zákon č. 308/1991 Zb. o slobode náboženskej viery a postavení cirkví a náboženských spoločností* [Act no. 308/1991 Coll. on the freedom of religious belief and on the status of churches and religious societies as amended].
[135] *Zákon č. 184/1999 Z. z. o používaní jazykov národnostných menšín* [Act no. 184/1999 Coll. on the use of languages of national minorities].

Article 23. Equality between man and women

Gender discrimination in work and employment

Legislative initiatives, national case law and practices of national authorities

On 6 July 2005 the Government of the Slovak Republic discussed the *Informácia o priebehu a realizácii Národného akčného plánu pre ženy v SR v roku 2004* [Information on the process and realisation of the National Action Plan for Women in the Slovak Republic in 2004]. The National Action Plan for Women was approved by the governmental resolution in 1997 and is regarded as principle governmental document aiming to improve the status of women in the Slovak Republic within the period of 10 years. According to the mentioned document the Slovak Republic should create administrative capacities and train relevant staff to start with application of the strategy of gender mainstreaming together with application of specific measures aimed at support of women. This means inclusion of gender view point in state policies, decisions and measures, which are adopting during decision processes on each level of governing the society. According to the document the equality in salaries between men and women had not been reached in 2004, women's salaries represented approximately 71% of men's salaries. In feminized branches the wages reached either the level of average salary or were even lower. Equal level of education between men and women does not ensure equal wage for work. Pursuant to the document in 2005 neither monitoring or gender analysis nor studies concerning activities performed in behalf of elimination of possible gender discrimination have been done for the year 2004.

Remedies available to the victim of gender discrimination

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there were no significant developments. 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 the *antidiskriminačný zákon* [Anti-discrimination Act][136].

According to the provisions of Anti-discrimination Act, 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

Participation of women in political life

Reasons for concern

The participation of women in political life is still not proportionate. On 17 October 2005 the President of the Slovak Republic appointed a new Minister of Labour, Social Affairs and Family (Mrs. Iveta Radičová) – the first and the only woman in the Slovak Government at present. There is still only one woman among 18 members of the *Súdna rada Slovenskej republiky* [Judiciary Council of the Slovak Republic] and only one woman among 11 members of the Constitutional Court of the Slovak Republic.

[136] *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, amending and supplementing certain other laws (Anti-discrimination Act)].

During the period under the scrutiny the number of women among 150 members of Parliament increased from 25 to 26.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The *Odbor rodinnej a rodovej politiky* [Section of Family and Gender Policy] of the Ministry of Labour, Social Affairs and Family in cooperation with French and German partners prepared a twining project named *Posilňovanie administratívnych kapacít v oblasti gender mainstreamingu* [Strengthening of the administrative capacities in the area of gender mainstreaming]. The project is focused on support of gender equality in the Slovak Republic. The general aim is to achieve the application of gender equality principle within the frame of all activities and policies of state administration bodies as well as municipal ones. Project should last one year and it deals with the training of specialists, especially civil servants from particular resorts. So-called "focal points", key persons and employees in charge should be established within particular institutions, which will be responsible for the area of gender equality.

Reasons for concern

The Slovak Republic asked the European Union for possibility to become place of seat of the European Institution for Gender Equality. This effort of the Slovak Government was supported also by the *Ženská loby Slovenska* [Slovak Women´s Lobby] that associates 27 women's NGOs and according to which, in comparison with other EU Member States, the Slovak Republic has the worst level of securing of the gender equality.

According to the executive summary for the Slovak Republic introduced in the Report of the Open Society Institute Network Women's program named "Equal opportunities for women and men - monitoring law and practice in new member states and accession countries of the European Union"[137] from April 2005, gender equality policies are not backed by sufficient institutional mechanisms that would be supported by appropriate expertise of the actors involved and by sufficient budgetary resources. There is no body that would inter-sectoraly deal with equality of women and men at the executive level. Moreover, neither ministries nor any other bodies partially responsible for implementing gender equality policies have units that would act in these institutions as coordinating and interdepartmental bodies with appropriate expertise (possibly apart from the Ministry of Employment, Social Affairs and Family which has the Department for Equal Opportunities and Anti-Discrimination – but nevertheless this Ministry has not adopted any mainstreaming strategy and the gender view point is not present within the departments of the Ministry). Similarly, most of these bodies are centrally-oriented and do not have any regional units. There is no comprehensive gender equality strategy in Slovakia. There are two main policy documents concerning gender equality – the National Action Plan for Women and the Conception of Equal Opportunities for Men and Women. The policies still lack a fully-integrative (mainstreaming) approach that would take into consideration all areas of life and which would be supported by appropriate institutional mechanisms. Basic policy documents have also been drafted without the corresponding financial support to achieve the stated aims. The formulations of the priorities and tasks in the policy documents are often very general and abstract. Also, in some cases they omit important issues that should be dealt with at policy levels; for example, educational environments and gender stereotypes, and sexual harassment. In the implementation process, many of the aims and tasks are not further transformed into appropriate programmes. Frequently a task is considered to be fulfilled by making a legislative change which, although it is a prerequisite for changing the situation in a particular field, is only a start point for making structural changes (for example, in the case of flexible working arrangements). So far, no campaigns have taken place on gender equality or the prohibition of discrimination on the basis of sex and gender, on the gender salary gap, family reconciliation or sexual harassment (or harassment in general). The only gender-related campaigns that have taken place in

[137] http://www.soros.org/initiatives/women/articles_publications/publications/equal_20050502/a_equal_20050502.pdf.

Slovakia were oriented towards violence against women, reproductive rights and trafficking. All campaigns were organized by NGOs without state support.

Article 24. The rights of the child

Possibility for the child to be heard, to act and to be represented in judicial proceedings

Legislative initiatives, national case law and practices of national authorities

In accordance with the *Občiansky súdny poriadok* [Code of Civil Procedure][138], if the participant of civil proceeding is the minor, the court takes into account his/her opinion under the condition that the minor is able regarding his/her age and mental powers to express his/her own opinion independently. The court can find out the opinion of the minor either via his/her legal representative or via appropriate body of social and legal protection of children or by means of examination even without the presence of parents or other persons responsible for education of the minor.

According to the Code of Civil Procedure, the court, while deciding on matters of suitability and effectiveness of proposed measures, can examine the child if it is appropriate. In case of pre-adoption proceeding and adoption proceeding, the child can be examined by a court, only if he/she is able to understand the meaning of adoption and the examination is not in the conflict with his/her interests.

The new *zákon o rodine* [Act on Family][139] which entered into effect on 1 April 2005 and which amended and supplemented also the Code of Civil Procedure, in case of adoption proceeding acknowledges a capacity to sue to a minor parent, who reached the age of 16 years even if he/she is not a legal representative of the child (Section 180a paragraph 2 of Code of Civil Procedure).

According to the Section 127 paragraph 1 of the new *Trestný poriadok* [Code of Criminal Procedure][140], which will come into effect on 1 January 2006, everyone is obliged to appear if summoned by authorities in charge of criminal proceeding and to testify about his or her knowledge of the facts of crime, of the offender, or of any circumstances that might be relevant for a criminal proceeding.

The Section 135 of the Code of Criminal Procedure regulates conditions under which a minor under the age of 15 years of age can be examined as a witness. If the examination concerns matters whose recollection might negatively influenced mental and moral development of such witness, the examination should be conducted with utmost consideration and care, so later it had not to be repeated. If possible, an education specialist or a person with experience in juvenile education will be invited for the examination to contribute to the proper conduct of examination with regard to the subject of examination and the degree of mental development of the interrogated person. If his/her presence could contribute to the proper conduct of the examination, the legal representative of the child witness may also be invited.

According to the Section 135 paragraph 2 of the new Code of Criminal Procedure, in further criminal proceedings, person under fifteen years of age may be examined only if absolutely necessary. In proceedings before a court, the court may decide to adduce the evidence by reading the records.

According to the Section 135 paragraph 3 of the new Code of Criminal Procedure, if the person examined as a witness is under 15 years of age and the examination concerns the crime committed against close person or person entrusted to one's care or in case of reasoned assumption that the

[138] *Zákon č. 99/1963 Zb. Občiansky súdny poriadok v znení neskorších predpisov* [Act no. 99/1963 Code of Civil Procedure as amended].
[139] *Zákon č. 36/2005 Z. z. rodine a o zmene a doplnení niektorých zákonov* [Act no. 36/2005 Coll. on Family, amending and supplementing certain other laws].
[140] *Zákon č. 301/2005 Z. z. Trestný poriadok* [Act no. 301/2005 Coll. Code of Criminal Procedure].

witness's testimony could be affected or that the examination could influence mental and moral development of the witness, the examination should be exercised via technologies used for the transmission of sound and picture so the interrogated person would be examined only exceptionally.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The *Národná rada Slovenskej republiky* [National Council of the Slovak Republic] by its Resolution no. 778/2004 of 4 February 2004 expressed a consent with the conclusion of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts. The Optional Protocol was signed on 30 November 2001, but it has not been ratified by the President yet. The information on fulfillment of National Action Plan for Children for the period 2002-2004, which was discussed by the Government of the Slovak Republic on 17 August 2005 says that the Optional Protocol had not been ratified because of "technical reasons".

The new *Trestný zákon* [Criminal Code][141], which will come into force on 1 January 2006, reduces the minimal age of criminal liability of minors from 15 to 14 years with the exception of the crime of sexual abuse. In case of proceedings against minors, the new Criminal Code states as obligatory to examine the mental level of the minor offender in the age from 14 to 15 years, i.e. whether he/she has been capable to understand wrongfullness of the act and whether he/she had been capable to take control of his/her own actions

Positive aspects

The National Council of the Slovak Republic by its Resolution no. 1658/2005 asked the Government of the Slovak Republic to establish the Office of Slovak Government Plenipotentiary for Children and Youth. The Minister of Labour, Social Affairs and Family proposed not to agree with the proposal of establishment of this new office and rather pay attention to the proposal of the Act on the defender of children's rights. The Government put the Minister of Labour, Social Affairs and Family under the obligation of presentation of the Analysis of increasing of effectiveness of protection of children's rights on the session of the Government.

The Ministry of Labour, Social Affairs and Family of the Slovak Republic assesses institutional provision of protection of the rights of children in the Slovak Republic, position of current advisory bodies, which deals with children's matters within the frame of state policy as well as other specialized institutions focused on protection of human rights. The analysis shows the recommendations of UN Committee on the Rights of the Child, which have not been satisfied yet. Among the recommendations were e.g. the establishment of independent institution focused on the rights of children and creation of control mechanism concerning observance of the rights provided to children by European Convention on the Exercise of Children's Rights and establishing a national body in accordance with this Convention. The analysis includes especially a proposal of possible solutions of constituting of the office, which will deal with the protection of children's rights in particular. According to the analysis the Ministry of Labour, Social Affairs and Family recommends neither to establish the office of plenipotentiary for children's right, respectively other advisory office of the Government of the Slovak Republic nor to extend the sphere of action of the *Slovenské národné stredisko pre ľudské práva* [Slovak National Centre for Human Rights] or *Verejný ochranca práv* [Public Defender of Rights]. The Ministry of Labour, Social Affairs and Family recommends either the establishing of the institution focusing on protection of children's rights by means of special law or legal regulation of rights and duties of some already existing special institution oriented on protections of children's rights on the grounds of public tender.

[141] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].

The Government of the Slovak Republic by its Resolution no. 963 of 7 December 2005 approved the Analysis of increasing of effectiveness of protection of children's rights[142] and establishment of institution specialized on the protection of children's rights.
The Ministry of Labour, Social Affairs and Family of the Slovak Republic adopted the Action Plan to ensure protection of vulnerable children for the period of 2005-2006, which contains set of aims as well as measures for their achievement. One of the aims is to provide for trouble-free implementation of new legal regulation of social and legal protection of children and social guardianship.

Reasons for concern

On 22 June 1998 the Slovak Republic signed European Convention on the Exercise of Children's Rights, but it has not been ratified as yet.

The tasks of the *Slovenské národné stredisko pre ľudské práva* [Slovak National Centre for Human Rights] were widened about monitoring and measurement of progress of implementation of European Convention on the Exercise of Children's Rights. However, at the time being there is no institution focusing especially on children's rights in the Slovak Republic.

During the period under scrutiny, the Slovak National Centre for Human Rights issued a report named *Práva detí v rómskych komunitách* [The rights of children in Roma communities] as final report resulted from the project entitled *Terénny výskum dodržiavania práv detí z rómskych osád so zohľadnením ich diskriminácie a špecifických problémov* [Field research into the observance of the rights of children from Roma settlements with regard to the protection of human rights and implementation of the principle of equal treatment][143]. According to the report, among most serious problems within the area of observance of the rights of Roma children belong: decreased family functionality and obvious worsening of the social and economic situation of Roma families. Following the report, there is more than 100.000 Roma children in the Slovak Republic. More than 10% of them live in insufficient accommodation conditions. There are several localities with missing supply of drinking water. Considering the Article 27 of the Convention on the Exercise of Children's Rights this state is very unsatisfactory. The Slovak National Centre for Human Rights further states that quite large number of Roma children live in dwellings without sewerage system and that fulfilling of the Articles 24 and 27 of the Convention on the Exercise of Children's Rights is not satisfactory.

In connection with criminal liability for abandoning the child in the *saving nest*, please see comments concerning the Article 2.

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

On 1 January 2005, the Amendment to the *zákon o sociálnom poistení* [Act on Social Assistance][144] came into force. The Amendment enables employed disabled elderly citizens at the age over 65 to receive the attendance allowance. According to the conclusions mentioned in the *Súhrnná správa*

[142] The analysis is available on the website of the Government of the Slovak Republic: http://www.rokovania.sk/appl/material.nsf/0/1761A0A888C1518CC12570CA0039ED32/$FILE/Zdroj.html.
[143] The Report is available on the website of the Slovak National Centre for Human Rights: http://www.snslp.sk/rs/snslp_rs.nsf/0/20B948AD2FA605C3C1256FF0003150A8?OpenDocument.
[144] *Zákon č. 721/2004 Z. z. ktorým sa mení a dopĺňa zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 721/2004 Coll. which amends and supplements the Act no. 461/2003 Coll. on Social Insurance as amended, amending and supplementing certain other laws].

o realizácii Národného programu ochrany starších ľudí za rok 2004 [Summary report on realization of the National Program on the protection of elderly people in year 2004], the Amendment to the Act on Social Assistance was adopted in order to facilitate the elderly people to remain in employment relationship.

Positive aspects

The Government of the Slovak Republic by its Resolution no. 248 of 6 April 2005[145] took knowledge of the *Súhrnná správa o realizácii Národného programu ochrany starších ľudí za rok 2004* [Summary report on realization of the National Program on the protection of elderly people in year 2004]. The report assesses the situation of elderly people in the areas of public life, social safety, employment and family policy, health care, transport, posts and telecommunications and other fields in the year 2004.

Other relevant developments

Positive aspects

From 1 January 2004 the principle „pension or earnings" has been dropped because the *zákon o sociálnom poistení* [Social Insurance Act][146] allows disbursing of old age pension during performance of gainful activity in unlimited extent.

The *Slovenský červený kríž* [Slovak Red Cross], the *Slovenská humanitná rada* [Slovak Humanitarian Council], which associates 175 of NGOs, citizens' associations and foundations, and the *Jednota dôchodcov Slovenska* [Union of Slovak Pensioners] actively perform activities focusing on improving the position of elderly people within society.

In the area of transport the low-floor cars are gradually put into public transport. The information system for persons with hearing impairment had been implemented in public mass transport. Elderly people were entitled to 50% discount in long distance bus line. The transport via suburb transportation was provided free of charge to persons over 70 years of age.

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

During the period under scrutiny there were no significant developments concerning protection of the persons with disabilities against discrimination. 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[147].

[145] *Uznesenie vlády č. 248 zo 6. apríla 2005* [Governmental Resolution no. 248 of 6 April 2005].

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

[147] *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 amending and supplementing of certain other laws (Anti-discrimination Act)].

Positive aspects

Until 30 July 2005, emergency (S.O.S.) lines of the integrated safety system provided through the telephone no. 112 were available only as vocal calls, and so they were not accessible to deaf persons. Since the mentioned date deaf persons can use the service of *Úrad civilnej ochrany* [Civil Protection Office] and ask for help in crisis situations trough internet or cell phones equipped with WAP or GPRS systems. The Civil Protection Office aims to improve the possibilities of emergency calls for disabled persons in cooperation with institutions defending their interests. A handbook named "What is necessary to know in crisis situations" was translated into the Brail characters.

Reasons for concern

The Government of the Slovak Republic by its Resolution no. 692 of 14 September 2005 approved the *Správa o realizácii Národného programu rozvoja životných podmienok občanov so zdravotným postihnutím vo všetkých oblastiach života za rok 2004 vrátane opatrení na rok 2005 a ďalšie obdobie* [Report on realization of National program for development of living conditions of disabled people in all areas of life in 2004, including measures for the year 2005 and next period]. The second part of the report contains proposal of measures for the year 2005 and next periods. Representatives of disabled persons in their standpoints to fulfillment of this nation plan states, that although there is some progress in several areas of life of disabled people, in the areas of cardinal impact on the life of disabled people the improvement goes ahead slowly, e.g. there is a lack of barrierless buildings or barrierless means of public transport, etc. The lack of information in form accessible for deaf people decreases the consciousness of this group of people. Even the basic information broadcasted via public TV, such as New Year's speech of the President, election shots, etc., are still not available in gesture language. At the same time the representatives of disabled people presented an opinion that a lot of gestors (e.g. Ministries) still have been approaching to the fulfillment of the measures of this national plan in shallow manner and they did not pay proper attention to it.

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

Reasons for concern

During the period under scrutiny no significant developments have been adopted. Henceforward, according to the *zákon o službách zamestnanosti* [Act on employment services][148] the employer is still obliged to employ disabled citizens corresponding to 3.2% of the total number of his/her employees, when he/she employs at least 20 employees.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The *zákon o sociálnej pomocii* [Act on Social assistance][149] regulates the area of compensation due to social consequences of serious health impairment with no regard to the age of the citizen following individual consideration. The Amendment to the Act on Social Assistance,[150] which came into effect on

[148] *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, amending and supplementing certain other laws as amended].
[149] *Zákon č. 195/1998 Z. z. o sociálnej pomoci v znení neskorších predpisov* [Act no. 195/1998 Coll. on Social assistance as amended].
[150] *Zákon č. 711/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 711/2004 Coll. amending and supplementing the Act no. 461/2003 Coll. on social insurance as amended, amending and supplementing certain other laws].

1 January 2005, increased the financial contribution for acquisition of personal motor car with automatic gearbox to seriously handicapped citizen, if he/she is dependent on the car.

On 29 June 2005 the Government of the Slovak Republic approved the legislative intention of the *zákon o dlhodobej starostlivosti a podpore integrácie osôb so zdravotným postihnutím* [Act on long-term care taking and support of the integration of disabled persons] and imposed a duty to the Minister of Health to submit the proposal of the act prepared according to the approved legislative intention on the session of the Government till 30 September 2005. The Ministry of Health is still working on the proposal of the Act. According to the information published on the websites of the Ministry of Health and of the Office of the Government, the proposal of the act has not been submitted yet.

The Ministry of Health prepared the proposal of the *zákon o dlhodobej starostlivosti a dlhodobej podpore integrácie osôb s funkčným obmedzením* [Act on long-term care taking and long-term support of the integration of people with functional limitation]. The Act is in the comment proceedings at the time being.

CHAPTER IV. SOLIDARITY

Article 27. Worker's 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

During the period under scrutiny there were no significant developments regarding the worker's right to information on the economic and financial situation of the undertaking.

According to the Article 4 of fundamental principles of the *Zákonník práce* [Labour Code][151], employees or the representatives of employees have the right to information on the economic and financial situation of the employer and on presumed development of its activity, in an understandable manner and within a suitable time. Employees should be able to express themselves and submit their suggestions with regard to such projected decisions of the employer, which may influence their status within the labour-law relationships. The Section 229 paragraph 2 of the Labour Code states that employees have the right to information on the economic and financial situation of the employer and on the presumed development of its activities, in an understandable manner and within a suitable time. Employees have the right to express their comments concerning such information and they may submit their suggestions to projected decisions of employer. Provisions of the Section 238 paragraph 1 of the Labour Code regulate the right to information as following: "Information is the provision of data by the employer to the employees' representatives, with the aim of acquainting them with the contents of the information." According to the Section 238 paragraph 2 of the Labour Code, the employer shall inform in an understandable manner and within an appropriate time the employees' representatives on its economic and financial situation and on the presumed development of its activities. Pursuant to the Section 238 paragraph 3 of the Labour Code, an employer may refuse to provide information that is capable to cause damage to him/her or may require that the provided information should be considered as confidential.

According to the *zákon o sociálnom poistení* [Social insurance Act][152], employers, preliminary administrator of assets in bankruptcy or administrator of assets in bankruptcy are obliged to inform in writing representatives of employees, and if the representatives are not appointed, the employees themselves, about the bankruptcy (insolvency) of an employer within five days from its origin.

Article 28. Right of collective bargaining and action

The right of collective actions (right to strike) and the freedom of the enterprise or the right to property and the issue of the intervention of the judiciary into collective actions

Legislative initiatives, national case law and practices of national authorities

According to the Section 20 paragraph 1 (g) of the *zákon o kolektívnom vyjednávaní* [Act on collective bargaining][153], a strike of employees of health care facilities or social care facilities that might endanger life or health of citizens would be considered unlawful. Regional court decides whether the strike was unlawful or not.

[151] *Zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov.* [Act. no. 311/2001 Coll. Labour Code as amended].
[152] *Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov* [Act no. 461/2003 Coll. on social insurance as amended].
[153] *Zákon č. 2/1991 Zb. o kolektívnom vyjednávaní v znení neskorších predpisov* [Act no. 2/1991 Coll. on collective bargaining as amended].

However, the *zákon o poskytovateľoch zdravotnej starostlivosti, zdravotníckych pracovníkoch a stavovských organizáciách v zdravotníctve* [Act on health care providers, health care employees and professional organisations in health service][154] in its Section 29 stipulates that if there is imminent threat that the strike of health care employees might endanger life or health of people, the Government of the Slovak Republic is entitled to decide about termination of the strike.

Because of the contradiction between both cited laws, a group of members of the National Council of the Slovak Republic (the Slovak Parliament) prepared an amendment to the Act on health care providers, health care employees and professional organisations in health service[155] according to which it would be the competence of an independent court, and not of the Government, to determine on the motion of the Ministry of Health whether the strike was unlawful, or not. Since the National Council refused to adopt the proposed Amendment, determination of lawfulness of the strike of health care employees has remained in hands of the Slovak Government.

Reasons for concern

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004, 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 the 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 still not in conformity with Article 6 paragraph 4 of the European Social Charter[156].

Article 29. Right of access to placement services

Access to placement services

Legislative initiatives, national case law and practices of national authorities

During period under scrutiny there were no significant developments regarding the access to placement services.

According to the *zákon o službách zamestnanosti* [Act on employment services][157], the employment services are provided by the *Ústredie práce, sociálnych vecí a rodiny* [Centre of Labour, Social Affairs and Family] and the *úrady práce, sociálnych vecí a rodiny* [Offices of labour, social affairs and family], legal entities or natural persons which procuring 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 entities or natural persons procuring employment for reimbursement, temporary employment agencies and supported employment agency. On the territory of the Slovak Republic, the procurement of employment is provided free of charge by the Centre of Labour, Social Affairs and Family, the offices of labour, social affairs and family and by other departments established by the office of labour.

[154] *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 care employees and professional organisations in health service, amending and supplementing certain other laws].
[155] Parliamentary press no. 1358.
[156] Conclusions XI-2 [2003].
[157] *Zákon č. 5/2004 Z. z. o službách zamestnanosti a o zmene a doplnení niektorých zákonov* [Act no. 5/2004 Coll. on employment services, amending and supplementing certain other laws].

The procurement of employment is further provided by legal entities and natural persons, which procure the employment for reimbursement or based on the concluded written agreement with the office of labour. A citizen goes up for procurement of employment at the office situated on the territory where he/she has permanent residence. The citizen, who seeks an employment, can ask whichever office for information about employment options. The foreigner granted asylum or the foreigner granted temporary shelter goes up for procurement of employment at the office situated on the territory of his/her residence. The offices of labour, social affairs and family performs procurement of employment free of charge and fairly, they are respecting citizen's choice of offered working positions and employer's voluntariness at selection of aspirants for job.

Article 30. Protection in the event of unjustified dismissal

Reasons for dismissals

Legislative initiatives, national case law and practices of national authorities

According to the *Zákonník práce* [Labour Code][158] an employment relationship may be terminated by agreement, by notice, by immediate termination, by termination within a probationary period. An employment relationship concluded for a fixed period shall terminate upon expiry of the agreed period. An employer may only give notice to an employee for reasons expressly stipulated in the Labour Code. The reason for giving notice must be defined in the notice in terms of fact such that it may not be confused with a different reason, or the notice shall otherwise be deemed invalid. An employer may not give a notice to an employee within a protected period, that means particularly within a period, when the employee is acknowledged temporarily incapable for work due to disease or accident, within the period of an employee's pregnancy, or when an employee is on maternity leave or a female or a male employee is on parental leave. If an employee receives a notice prior to commencement of a protected period in such a way that the period of notice should expire within this period, the employment relationship shall terminate upon expiry of the final day of the protected period. The employer may terminate an employment relationship with immediate effect in cases when the employee was lawfully sentenced for committing a wilful offence or was in serious breach of labour discipline.

The Labour Code defines the term of „Collective redundancies", which means to terminate an employment relationship by giving notice or to terminate employment relationship by agreement with at least 20 employees over a period of 90 days for reason determined in the Labour Code. Firstly, the employer or part thereof, is wound-up or relocated or secondly an employee becomes redundant by virtue of the employer or competent body issuing a written resolution on change in duties, technical equipment, reduction in the number of employees with the aim of increasing work efficiency, or on other organizational changes. With a view to reaching an agreement, the employer shall be obliged, at least one month prior to commencement of collective redundancies, to negotiate with the employees' representatives about measures enabling avoidance of collective redundancies of employees, or reduction thereof, mainly negotiate the possibility of placing them in appropriate employment at the employer's other workplaces, also subsequent to preceding preparation, and measures for mitigating the adverse consequences of collective redundancies of employees. To this end, the employer shall be obliged to provide the employees´ representatives with all necessary information. If an employer breaches these obligations an employee subject to termination of an employment relationship within the scope of collective redundancies shall be entitled to wage compensation at the minimal amount of a twofold of his/her average monthly earnings.

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

As mentioned in our Report on the Situation of Fundamental Rights in the Slovak Republic in 2003, European Committee of Social Rights concludes that the situation in the Slovak Republic is not in conformity with the Article 8 paragraph 2 of the European Social Charter because the relocation of the employer as well as the transfer of all or part of its business activities can be regarded as going out of business and can justify the dismissal of the employee during the absence on maternity leave or at such time that the notice would expire during such absence[159]. The Labour Code has remained unmodified in this regard and therefore might be still considered as inconsistent with the Article 8 paragraph 2 of the European Social Charter.

Remedies against the decision of dismissal and compensation due in the event of an unjustified dismissal

Legislative initiatives, national case law and practices of national authorities

Both an employee and an employer are entitled to claim at court the invalidity of termination of an employment relationship by notice, immediate termination, termination within a probationary period or by agreement, at latest within a period of two months from the due date of employment relationship termination. If an employer gave invalid notice to an employee, or terminated the employment relationship in an invalid manner with the employee immediately or within a probationary period, and if the employee informed the employer that he/she insists on keeping employment with the employer, his/her employment relationship would not terminate, with the exception of a court decision that it cannot be justly required of the employer to further employ the employee. The employer is obliged to provide wage compensation for the employee. The employee is entitled to such compensation in the amount of average earnings from the day he/she announced to the employer that he/she insists on keeping employment, to such time for which the employer enables him/her to keep working, or until a court rules on termination of the employment relationship. If the entire time for which an employee should be granted wage compensation exceeds nine months, the court may, on the request of an employer, appropriately reduce his/her wage compensation obligation for the time exceeding nine months, or not award the wage compensation for the employee; at taking decision the court should primarily consider the fact whether the employee was in the meantime employed by another employer, what work he/she performed there, and what earnings he/she received or for what reason he/she did not work. In case of an invalid agreement on termination of employment relationship, the procedure in assessing the employee's claims to compensation for lost wages should be similar to that of invalid notice given to the employee by the employer.

The compensation for the employees in case of insolvent employer is regulated by the *zákon o sociálnom poistení* [Social insurance Act][160].

Article 31. Fair and just working conditions

Health and safety at work

Legislative initiatives, national case law and practices of national authorities

The employees' participation in decision-making process concerning working conditions is set out in the Section 229 paragraph 1 of the *Zákonník práce* [Labour Code][161]. According to this provision and, with regard to fair and satisfactory working conditions, employees have the right to participate in

[159] Conclusions XI-2 [2003].
[160] *Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov* [Act no. 461/2003 Coll. on social insurance as amended].

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

decision-making process of the employer concerning their economic and social interests, either directly or by means of competent trade union body, works council or works trustee; the representatives employees should closely cooperate between each other. According to the Section 229 paragraph 4 of the Labour Code, employees participate, by means of competent trade union body, works council or the works trustee, on the creation of just and satisfactory working conditions by joint decision-making, negotiation, right to information and inspection activities.

The Government of the Slovak Republic by its Resolution no. 774 of 5 October 2005 approved the proposal of the new *zákon o bezpečnosti a ochrane zdravia pri práci* [Act on safety and protection of health at work]. The National Council has not adopted the legislative proposal as yet. The draft law should replace the current Act on health and safety protection at work of 1996.[162] The proposal of the Act stipulates general principles of prevention and basic conditions necessary for ensuring of health and safety protection at work and for elimination of risks and factors underlying occurrence of working accidents, occupational diseases and other impairments of health because of work.

The Government of the Slovak Republic by its Resolution no. 775 of 5 October 2005 approved the draft of new *zákon o inšpekcii práce* [Act on work inspection]. The National Council has not adopted the proposal as yet. The proposal should replace the current Act on work inspection[163] from year 2000. The proposal of new Act on work inspection regulates the work inspection, through which the protection of employees at work and performance of state administration in the area of work inspection are enforced, further it specifies competence of state administration bodies in the are of work inspection and theirs competence during the performance of oversight according special regulation and stipulates rights and duties of inspector of work and of natural persons and legal persons.

According to the Section 192 paragraph 2 (e) of the new *Trestný zákon* [Criminal Code][164], which will come into force on 1 January 2006, a person who commits the crime of coercion[165] by denial of the right to protection of safety and health at work, of the right to paid vacation or of the right to the provision of special working conditions for women and minor employees guaranteed by law to employee in employment relations, shall be sentenced to the term of imprisonment from 1 to 5 years.

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there were no significant developments in legislation as regards sexual and moral harassment at work.

According to the *antidiskriminačný zákon* [Anti-discrimination Act][166], harassment is deemed to be a form of discrimination. The harassment is defined as a treatment of person that might 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.

---

[162] *Zákon č. 330/1996 Z. z. o bezpečnosti a ochrane zdravia pri práci v znení neskorších predpisov* [Act no. 330/1996 Coll. on safety and protection of health at work as amended].
[163] *Zákon č. 95/2000 Z. z. o inšpekcii práce a o zmene a doplnení niektorých zákonov v znení neskorších predpisov* [Act no. 95/2000 Coll. on labour inspection, amending and supplementing certain other laws as amended].
[164] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].
[165] According to the Section 192 paragraph 1 of the new Criminal Code, who forces another to make, omit or suffer something by abusing his/her material distress or urgent nonmaterial need or duress caused by his/her unfavourable personal situation, shall be sentenced to a term of imprisonment of up to three years.
[166] *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 amending and supplementing of certain other laws (Anti-discrimination Act)].

According to the Section 13 paragraph 5 of the *Zákonník práce* [Labour Code][167], 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.

Working time

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there were no significant developments regarding working time.

According to the provisions of the Section 85 of the *Zákonník práce* [Labour Code][168], working time in the course of 24 hours may not exceed eight hours, unless the Labour Code stipulates otherwise. The maximum weekly working time of an employee shall be 40 hours. Maximum weekly working time of an employee, including overtime, shall be 48 hours. The maximum weekly working time of an adolescent employee younger than 16 years shall be 30 hours per week, even when he/she is working for several employers. Maximum weekly working time of adolescent employee over 16 years of age shall be 37 and ½ hours even when he/she is working for several employers. The working time of the adolescent employee may not exceed 8 hours in the course of 24 hours.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 1 April 2005, the *zákon o nelegálnej práci a nelegálnom zamestnávaní* [Act on illegal labour and illegal employment][169] came into force. The Act determines the terms of illegal labour and illegal employment, constitutes the prohibition of the performance of illegal labour and illegal employment, provides for the control activities in the area of illegal labour and illegal employment and specifies the sanctions. The main purpose of the act is to protect natural persons against social insecurity that may be caused by the illegal labour.

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

Protection of minors at work and monitoring of the protection

Legislative initiatives, national case law and practices of national authorities

During the period under scrutiny there were no significant developments related to the protection of minors at work and monitoring of such protection.

According to the Section 11 paragraph 2 of the *Zákonník práce* [Labour Code][170], capacity of a natural person to rights and obligations pursuant to labour-law relations as an employee arises on the day the natural person reaches 15 years of age; however, the employer must not agree on date of taking up the employment by a natural person prior to the day of completion of compulsory school attendance. According to the Section 11 paragraph 5 of the Labour Code, a natural person who has not reached 15 years of age may be allowed to perform easy tasks by the competent labour inspectorate upon agreement

[167] *Zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov* [Act no. 311/2001 Coll. Labour Code as amended].
[168] *Zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov* [Act no. 311/2001 Coll. Labour Code as amended].
[169] *Zákon č. 82/2005 Z. z. o nelegálnej práci a nelegálnom zamestnávaní a o zmene a doplnení niektorých zákonov* [Act no. 82/2005 Coll. on illegal labour and illegal employment, amending and supplementing certain other laws].
[170] *Zákon č. 311/2001 Z. z. Zákonník práce v znení neskorších predpisov* [Act. no. 311/2001 Coll. Labour Code as amended].

with a health protection authority. The authorisation shall contain determination of the number of hours and conditions for performance of easy works. According to the Section 171 paragraph 1 of the Labour Code, an employer is obliged to create favourable conditions for the overall development of the physical and mental aptitudes of juvenile employees also by specific arrangement of their working conditions. Upon resolving significant matters pursuant to adolescents, an employer should closely co-operate with the legal representatives of the juvenile employees.

In 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][171]. The Decree came into force on 1 May 2004.

The new *Trestný zákon* [Criminal Code][172], which will come into force on 1 January 2006, in its Section 211 regulates the elements of crime of corrupting the morals of youth. According to the provisions of Section 211 paragraph 2 of the new Criminal Code, a person who in contrary to the law employs a child younger than fifteen years, whereby impedes him/her from compulsory school attendance, shall be sentenced to a term of imprisonment of up to 2 years.

Article 33. Family and professional life

Parental leaves and initiatives to facilitate the conciliation of family and professional life

Positive aspects

Following the Amendment to the *zákon o rodičovskom príspevku* [Act on parental allowance Amendment][173], which came into effect on 1 July 2005, the personal care taking of the child by parent is not required as necessary condition for providing of parental allowance. The allowance is provided to the parent in both cases, when he/she takes care of the child in person or when he/she ensures the care taking of the child by other natural or legal person while he/she is performing gainful activities. The parental allowance is a social benefit through which the State contributes for providing proper care taking of the child. The parental allowance is provided for a child till his/her 3 years of age, for a child with long-term bad state of health till his/her 6 years of age or for a child who is under custodianship of foster parents. In case of foster care the longest period of providing of the allowance is 3 years from the date of judgment of fosterage. Provision of the parental allowance is not dependent on the level of parent's earnings.

Other relevant developments

Good practices

During the period under scrutiny the *Ministerstvo práce, sociálnych vecí a rodiny Slovenskej republiky* [Ministry of Labour, Social Affairs and Family of the Slovak Republic] continued in the competition *"Zamestnávateľ ústretový k rodine"* [Employer friendly to family], the aim of which is to motivate employers to create working conditions with regard to family duties of theirs employees. On 24 May 2005 the Ministry announced results of 4th year of competition, which took place in 2004. There were

[171] *Nariadenie vlády č. 286/2004 Z. z.* [Governmental Decree no. 286/2004 Coll.].
[172] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].
[173] Zákon č. 244/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 280/2002 Z. z. o rodičovskom príspevku v znení neskorších predpisov a o zmene a doplnení niektorých zákonov [Act no. 244/2005 Coll. amending and supplementing the Act no. 280/2002 Coll. on parental allowance as amended, amending and supplementing certain other laws].

54 organizations registered in the 4th year of competition. In comparison with the year 2003, the number of organizations, which pay systematic attention to harmonization of working and family life of their employees, increased.

Article 34. Social security and social assistance

Social assistance and fight against social exclusion

Legislative initiatives, national case law and practices of national authorities

On 8 July 2005 a group of Slovak Parliament members filed a motion with the Constitutional Court of the Slovak Republic to start proceeding on compliance of several provisions of the *zákon o sociálnom poistení* [Act on social insurance][174] with the Constitution of the Slovak Republic. The motion *inter alia* disputes, that the Act is retroactive, because it modifies and abrogates legal relations, which were originated under effective laws even before the Act had come into effect. In the opinion of the group of parliament members the new legal regulation has negative impact especially on persons who had been, according to the former provisions, socially advantaged (e.g. people working in extremely difficult conditions or seriously handicapped people).

The Amendment to the *zákon o rodičovskom príspevku* [Act on parental allowance][175] with the effect from 1 July 2005 allows parent to choose or change the form of the care of the child within first three years of his/her life, respectively within six years in the case of child with long-term bad state of health, so it meets the current needs of the child or of the parent, especially if the parent wants to perform gainful activities. At the same time it gives the opportunity of establishing more flexible services focusing on the care of the child in his/her home environment or outside. It is up to the parent's decision how he/she will use the parental allowance provided to him/her – whether he/she will take care of the child himself/herself or whether he/she will ensure the care taking of the child by other natural or legal person.

Reasons for concern

According to the *zákon o službách zamestnanosti* [Act on employment services][176], a job seeker who is registered in the Registry of unemployed persons is obliged, *inter alia*, to seek an appropriate occupation actively and to be able to demonstrate that he/she seeks 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 a job. The Act on employment services 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 failure of co-operation includes, for example, refusal to accept appropriate job offer, non-appearance in person in the Labour Office regularly, inability to demonstrate regular seeking a job. Pursuant to the provisions of the *zákon o sociálnom poistení* [Social Insurance Act][177], the entitlement to unemployment benefits expires when the unemployed person is deleted from the Registry of

[174] *Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov* [Act no. 461/2003 Coll. on social insurance as amended].
[175] Zákon č. 244/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 280/2002 Z.z. o rodičovskom príspevku v znení neskorších predpisov a o zmene a doplnení niektorých zákonov [Act no. 244/2005 Coll., amending and supplementing the Act no. 280/2002 Coll. on parental allowance as amended, and amending and supplementing certain other laws].
[176] *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, amending and supplementing certain other laws as amended].
[177] *Zákon č. 461/2003 Z. z. o sociálnom poistení v znení neskorších predpisov* [Act no. 461/2003 Coll. on social insurance as amended].

unemployed persons. The previously registered unemployed person may be registered in the Registry of unemployed people once again after expiration of the period of six months from the date the unemployed person was deleted from it. The duty to demonstrate regular seeking a job may cause problems to unemployed job seekers in practice, because the employers are not obliged to issue a written confirmation that the unemployed person has visited their premises and asked for a job. During the period under scrutiny no significant developments had been adopted in this area.

There is no legal regulation ensuring special protection of homeless people in the Slovak Republic. Municipal self-administration or the State pay almost none or only minimal attention to the problem of homeless people. The aid to homeless people is provided especially by subjects operating in the area of charity, such as churches and citizens' associations, but it is not sufficient. There is not a sufficient number of hostels for homeless people in the Slovak Republic, the situation is critical especially during the winter. Consequently, there is quite high number of homeless people who are dying in big cities because of cold weather every winter. According to the information provided to the media by the Police in the middle of December 2005, already 16 homeless people had died because of overcooling during this winter in Bratislava, the capital city of the Slovak Republic. Quite frequent are also the cases when casualty wards reject to provide accommodation to homeless people because they are intoxicated by alcohol.

According to the data in the Eurostat Yearbook 2005, in 2001 (the latest year for which the aggregate of social transfers is available), the at-risk-of-poverty rate after social transfers was highest (21 %) in Ireland (2001 data) and Slovakia (2003 data)[178].

Social assistance for undocumented foreigners and asylum seekers

Legislative initiatives, national case law and practices of national authorities

According to the Amendment to the *zákon o azyle* [Act on Asylum][179], which came 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 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.

[178] To measure the share of people that are at risk of poverty, a threshold is set at 60 % of the median income in a country. The Eurostat yearbook 2005 is available on the website: http://epp.eurostat.cec.eu.int/portal/page?_pageid=1334,49092079,1334_49092702&_dad=portal&_schema=PORTAL.

[179] *Zákon č. 1/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 1/2005 Coll. amending and supplementing the Act no. 480/2002 Coll. on asylum, amending and supplementing certain other laws].

Article 35. Health care

Access to health care

Legislative initiatives, national case law and practices of national authorities

On 23 September 2005 the National Council of the Slovak Republic adopted the Amendment to the *zákon o ochrane nefajčiarov* [Act on Non-smokers Protection][180]. The Amendment ensures better consumer awareness of damaging effects of smoking by enlarging of the space dedicated to warning labeling on the consumer pack of tobacco product. The Act extends the number of places, where selling of tobacco products is prohibited to kiosks and canteens and other selling places within health care facilities or social service facilities. The Amendment dropped from the list of places where the smoking is tolerated staff smoking-rooms in health care facilities, colleges, universities and students' dormitories, cultural amenities and closed sports facilities. The Amendment extended the prohibition of smoking also to the places where adolescents used to dwell because of custody or execution of imprisonment. Operators of facilities to which the prohibition of smoking relates are obliged to put the information on prohibition of smoking in a visible place.

On 1 January 2006 the *zákon o prírodných vodách, prírodných liečebných kúpeľoch, kúpeľných miestach a prírodných minerálnych vodách* [Act on natural healing waters, natural healing spas, spa places and natural mineral waters][181] will come into effect. There are created prerequisites for development of natural healing spas as centers of subsequent health care in conditions, when the owners of particular spa facilities are private entrepreneurial subjects. Spa treatment can be performed only in natural healing spas and spa medical institutions.

On 1 January 2005 the Amendment to the *novela zákona o zdravotnom poistení* [Act on Health Insurance Amendment][182] came into effect. The Amendment decreased the insurance rates for disabled persons by half.

According to the Amendment to the *zákon o azyle* [Act on asylum][183], which came into force on 1 February 2005, the Ministry of Interior is obliged to provide an appropriate health care to minor asylum seekers in the case when they are victims of malpractices, exploiting, neglecting, torture, inhuman and degrading treatment or when suffered of consequences of the armed conflict.

Reasons for concern

In April 2005, several media brought news that during the evening hours a 38 years old homeless man had died on the bench in the complex of the Faculty Hospital in Bratislava. Directly before the death the man had been treated at surgical ambulance, where he was transported by ambulance car. During the treatment, he was requiring further examination and hospitalization, but examining doctor did not consider it as necessary, reportedly. The police investigate the case and act in the matter of suspicion of

[180] *Zákon č. 465/2005 Z. z. ktorým sa mení a dopĺňa zákon č. 377/2004 Z.z. o ochrane nefajčiarov a o zmene a doplnení niektorých zákonov* [Act no.465/2005 Coll. amending and supplementing the Act no. 377/2004 Coll. on Non-smokers Protection, amending and supplementing certain other laws].
[181] *Zákon č. 538/2005 Z. z. o prírodných liečivých vodách, prírodných liečebných kúpeľoch, kúpeľných miestach a prírodných minerálnych vodách a o zmene a doplnení niektorých zákonov* [Act no. 538/2005 Coll. on natural healing waters, natural healing spas, spa places and natural mineral waters, amending and supplementing certain other laws].
[182] *Zákon č. 718/2004 Z. z., ktorým sa mení a dopĺňa 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. 718/2004 Coll. amending and supplementing the Act no. 580/2004 Coll. on health insurance, and amending and supplementing Act no. 95/2002 Coll. on insurance, amending and supplementing certain other laws].
[183] *Zákon č. 1/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 1/2005 Coll. amending and supplementing the Act no. 480/2002 Coll. on asylum, amending and supplementing certain other laws].

commission of crime of negligent deadly injury. The *Úrad pre dohľad nad zdravotnou starostlivosťou* [Office of Healthcare Oversight] also started the examination of the matter. There were several similar cases of deaths of homeless people, whom health care facilities rejected to hospitalize during last years.

Drugs

Legislative initiatives, national case law and practices of national authorities

Even after the adoption of the new *Trestný zákon* [Criminal Code][184] the Slovak Republic persists on zero tolerance toward cannabis and THC. The new Criminal Code in its Sections 171-173 regulates the elements of crime of illicit manufacturing of narcotics, drugs, poisons and precursors, theirs possession and dealing with them. The new Criminal Code differentiates the legal liability of the person, who illicitly produces, imports, exports or transports, buys, sells, barters or otherwise obtains or resets drug for other person, respectively who mediates this activity compared to the person, who obtains or resets it only for his/her own need. Criminal sanction against drug manufacturers and dealers becomes tightened. The sanction should be more merciful in case of consumers of drugs; the stress is laid on imposing of protective medical treatment on such persons.

According to the new *Trestný poriadok* [Code of Criminal Procedure][185], which will enter into effect on 1 January 2006, the prosecutor or judge can conditionally discontinue the criminal prosecution in case of drug reset for personal need (Section 135 of the new Criminal Code).

On 23 June 2005 the National Council approved the *zákon o orgánoch štátnej správy vo veciach drogových prekurzorov* [Act on state administration authorities in the affairs of drug precursors][186], which came into force on 18 August 2005. The aim of the Act is to prevent abuse of chemical agents and chemical preparations for producing of narcotics and drugs and to open the control of narcotics and drugs dealing.

Positive aspects

On 4 May 2005 the Government of the Slovak Republic discussed the *Správa o realizácii protidrogovej politiky Vlády Slovenskej republiky za rok 2004 a o činnosti Generálneho sekretariátu Výboru ministrov pre drogové závislosti a kontrolu drog* [Report on realization of anti-drug policy of the Government of the Slovak Republic in 2004 and on activities of the General Secretariat of Ministers' Committee for drug addictions and control of the drugs].

The Government of the Slovak Republic by its Resolution no. 498 of 29 June 2005 approved the *akčné plány realizácie plnenia zámerov Národného programu boja proti drogám na obdobie 2005 – 2008* [Action plans on realization of fulfilling the intentions of National program for the fight against drugs for the period 2005-2008].

On 21 July 2003 the Slovak Republic signed the Additional Protocol to the Anti-Doping Convention. The President of the Slovak Republic ratified the Additional Protocol on 11 January 2005. The Additional Protocol came into force within Slovak Republic on 1 May 2005.

[184] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].
[185] *Zákon č. 301/2005 Z. z. Trestný poriadok* [Act no. 301/2005 Coll. Code of Criminal Procedure].
[186] *Zákon č. 331/2005 Z. z. o orgánoch štátnej správy vo veciach drogových prekurzorov a o zmene a doplnení niektorých zákonov* [Act no. 331/2005 Coll. on state administration authorities in the affairs of drug precursors, amending and supplementing certain other laws].

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

Legislative initiatives, national case law and practices of national authorities

According to the statistics of the *Ministerstvo dopravy, pôšt a telekomunikácií Slovenskej republiky* [Ministry of transport, posts and telecommunications of the Slovak Republic][187] the number of inhabitants per one post office did not radically change during the period from 1994 to 2004 (it is approximately 3,300 – 3,400 inhabitants per post office). Similarly, neither the number of inhabitants per one postbox (750 inhabitants per postbox) did change. In general, the total number of post offices was mildly reduced.

On 10 May 2005, the Government of the Slovak Republic adopted the proposal of Conception of road and railway passenger transport[188]. The proposal takes account of developing of narrow cooperation of participating types of public passenger transport. During the process of determination of requirements of transport lines, the specific features of individual municipalities and towns lying on the route of given transport line, among which belong namely: number of inhabitants of municipality, their social status and assumed salary and other incomes, structure of inhabitants (with regard to age and employment), possibility of employment within the municipality, whether the municipality have health care, education and other facilities and number of automobiles in the municipality.

Other services of general interest

Legislative initiatives, national case law and practices of national authorities

According to the *zákon o koncesionárskych poplatkoch* [Act on radio and TV broadcast receiver charges][189] every person owning radio or TV broadcast receiver must pay a monthly fee in the amount of 40 SKK (app. 1 EUR) for using of radio receiver and 100 SKK (app. 2.5 EUR) for using of TV set. The act imposes very high fines for late payment – 5,000 SKK (app. 130 EUR) for natural person and 15,000 SKK (app. 400 EUR) for legal person for every started month of delay. The sanctions are generally considered as obviously inadequate. The *Slovenský rozhlas* [Slovak radio] as well as the *Slovenská televízia* [Slovak Television] have already started with exaction of back payments including sanctions from both natural persons and legal persons.

Article 37. Environmental protection

Right to a healthy environment

Legislative initiatives, national case law and practices of national authorities

On 1 February 2005 the *zákon o posudzovaní a kontrole hluku vo vonkajšom prostredí* [Act on assessment and management of environmental noise][190] came into force. The Act deals with ensuring of

[187] The statistics are available on the website of the Ministry of transport, posts and telecommunications: http://www.telecom.gov.sk/externe/posta/statistika/index.htm.

[188] The document is available on the website of the Office of the Government of the Slovak Republic: http://www.rokovania.sk/appl/material.nsf/0/922EA4786570DA2AC1256FE4003A7294?OpenDocument.

[189] *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].

[190] *Zákon č. 2/2005 Z. z. o posudzovaní a kontrole hluku vo vonkajšom prostredí a o zmene zákona Národnej rady Slovenskej republiky č. 272/2004 Z. z. o ochrane zdravia ľudí v znení neskorších predpisov* [Act no. 2/2005 Coll. on assessment and management of environmental noise as amended].

gradual reduction of noise emmisions in outside environment, especially in settled areas and public parks. At the same time the Act regulate some functions of the State administration bodies, municipalities and operators of noice sources in the area of assessment and management of environmental noise.

On 20 March 2002 the National Council of the Slovak Republic by its Resolution no. 1966 affirmed the Kyoto Protocol to the United Nations Framework Convention on climate change. The President of the Slovak Republic ratified the Protocol on 14 may 2002. The Protocol came into force within the Slovak Republic on 16 February 2005.[191]

Good practices

From 15 July 2005, there is a new information system on living environment accessible via internet – http://www.enviroportal.sk. The portal is run by the *Slovenská agentúra životného prostredia* [Slovak Agency for the Environment], which was set up by the Ministry of Environment of the Slovak Republic. The information portal serves for providing authorized and verified information on living environment and its state in the Slovak Republic. Its role is to increase environmental awareness of inhabitants and to support environmental education.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 1 April 2005 the *zákon o ochrane druhov 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][192] came into force. This Act regulates mainly the conditions under which selected free-living fauna and free-growing flora are 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.

On 1 September 2005 the new *zákon o lesoch* [Act on forests][193] came into force. The main purpose of this Act is preservation, development and protection of forest as well as of other parts of environment and natural resources of the country. The Act also regulates the ownership of forest lands and forest utilization with the aim to harmonize the society interests and the interests of forest owners.

Article 38. Consumer protection

Protection of the consumer in contract law and information of the consumer

Legislative initiatives, national case law and practices of national authorities

The Amendment to the *zákon o elektronickom obchode* [Act on electronic commerce][194], introduces a general obligation of service providers to restrain from providing services that might infringe rights and

[191] *Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 139/2005 Z. z. o uzavretí Kjótskeho protokolu k Rámcovému dohovoru Organizácie Spojených národov o zmene klímy* [Announcement of the Ministry of Foreign Affairs no. 139/2005 Coll. on concluding of the Kyoto Protocol to the United Nations Framework Convention on climate change].

[192] *Zákon č. 15/2005 Z. z. o ochrane druhov voľne žijúcich živočíchov a voľne rastúcich rastlín reguláciou obchodu s nimi a o zmene a doplnení niektorých zákonov* [Act no. 15/2005 Coll. on protection of free-living fauna and free-growing flora and regulation of trading with them, amending and supplementing certain other laws].

[193] *Zákon č. 326/2005 Z. z. o lesoch* [Act no. 326/2005 Coll. on forests].

[194] *Zákon č. 160/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 22/2004 Z. z. o elektronickom obchode a o zmene a doplnení zákona č. 128/2002 Z. z. o štátnej kontrole vnútorného trhu vo veciach ochrany spotrebiteľa a o zmene a doplnení niektorých zákonov v znení zákona č. 284/2002 Z. z.* [Act no. 160/2005 Coll. amending and

obligations set out in legal regulations concerning the protection of consumers. The Amendment also changes and supplements provisions relating to the restrictions of the freedom to provide services in the sake of protecting security, public order, environment, life and health of people and consumers, and modifies the procedure to be taken by state authorities which are in contact with the European Commission and the relevant authorities of European Union Member States. In the area of so-called regulated professions, the Amendment extends the obligations of service providers, who are members of chambers or other self-governing professional organisations established by the law, to include adherence to the rules of professional conduct set out by these chambers despite these rules have not a generally binding character.

On 16 March 2005 the National Council of the Slovak Republic adopted the *zákon o ochrane spotrebiteľa pri finančných službách na diaľku* [Act on protection of consumer in distance financial services][195] implementing Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC. The new law regulates protection of consumers in financial services provided on the basis of contract concluded by means of phone or computer.

The Ministry of Economy of the Slovak Republic has drafted an amendment to the *zákon o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji* [Act on protection of consumer in door-to-door sale and mail-order sale][196]. This amendment implements Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, and Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts. The National Council of the Slovak Republic has not adopted the amendment yet.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The Amendment to the *zákon o reklame* [Act on Advertising][197] prohibits the advertising of tobacco products by means of sponsoring (with the effect from 15 December 2005) and by showing of trade-mark, badge, name or other expressive attribute of tobacco product with the exception of their showing on places authorized for selling tobacco products (this will come into effect on 1 March 2006).

On 1 November 2005 the Amendment to the *zákon o ochrane nefajčiarov* [Act on the Protection of Non-Smokers][198] came into force. New legal regulation extends the protection of non-smokers in several ways, e.g. better consumer awareness of damaging effects of smoking is provided by enlarging of the space dedicated to warning labeling on the consumer pack of tobacco product. The Amendment dropped from the list of places where the smoking is tolerated staff smoking rooms in health care facilities, colleges, universities and students' dormitories, cultural amenities and closed sports facilities.

---

supplementing Act No. 22/2004 Coll. on electronic commerce, amending and supplementing the of Act no. 128/2002 Coll. on state surveillance of the internal market in consumer protection matters, amending and supplementing certain other laws, as amended by Act no. 284/2002 Coll.].

[195] *Zákon č. 266/2005 Z. z. o ochrane spotrebiteľa pri finančných službách na diaľku a o zmene a doplnení niektorých zákonov* [Act no. 266/2005 Coll. on protection of consumer in distance financial services, amending and supplementing certain other laws].

[196] *Zákon č. 108/2000 Z. z. o ochrane spotrebiteľa pri podomovom predaji a zásielkovom predaji v znení zákona č. 266/2005 Z. z.* [Act no. 108/2000 Coll. on protection of consumer in door-to-door sale and mail-order sale as amended by the Act no. 266/2005 Coll.]

[197] *Zákon 525/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 147/2001 Z. z. o reklame v znení neskorších predpisov* [Act no. 525/2005 Coll., amending and supplementing the Act no. 147/2001 Coll. on Advertising as amended]

[198] *Zákon č. 465/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 377/2004 Z. z. o ochrane nefajčiarov a o zmene a doplnení niektorých zákonov* [Act no. 465/2005 Coll. amending and supplementing Act No. 377/2004 Coll. on the Protection of Non-Smokers, amending and supplementing certain other laws].

The Amendment extended the prohibition of smoking also to the places where adolescents used to dwell because of custody or execution of imprisonment. Operators of facilities to which the prohibition of smoking relates are obliged to put the information on prohibition of smoking in a visible place.

CHAPTER.V. CITIZENS' 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

On 1 January 2006 an Amendment to the *zákon o voľbách do Európskeho parlamentu* [Act on elections to the European Parliament][199] will come into force. The Amendment brings the following changes:

- expressly introduces the duty to keep secret any personal information about voters, which are processed. As for the proving of voter's identity to the election commission, it is added that in case that the voter will not provide some proof of his/her identity, he/she will not be allowed to vote;
- voter can, by encircling the serial number before the name of maximally two candidates listed on election ballot, mark the candidates he/she prefers. Thus, the number of possible preferred candidates was increased from one to two. The purpose of this change is to emphasize the democratic principle of elections and to strengthen the influence of inhabitants themselves on candidates' positions independently of their place on election ballot;
- the Act stipulates that defrayed caution money of political parties and coalitions should be returned even in the case that election ballot of given political party or coalition has not been registered (and not only in case that the party received 2% of votes).

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

According to the Amendment to the *zákon o voľbách do Európskeho parlamentu* [Act on elections to the European Parliament], the polling day of the elections to the European Parliament was changed from Sunday to Saturday.

Final results of the elections to the European Parliament will be announced only after completion of elections in all member States of the European Union (so results from one country would not influence voters in another one where polls were still open). Provision of Section 35 of this Act provides the compliance with the Council Decision of 25 June 2002 and 23 September 2002 amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage, annexed to Decision 76/78/ECSC, EEC, Euratom (2002/772/EC, Euratom).

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

Up to now, the Slovak Republic has not signed the Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144) as yet.

---

[199] *Zákon č. 464/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 333/2004 Z. z. o voľbách do Národnej rady Slovenskej republiky a zákon č. 331/2003 Z. z. o voľbách do Európskeho parlamentu v znení neskorších predpisov* [Act no. 464/2005 Coll., amending and supplementing the Act no. 333/2004 Coll. on Elections to the National Council of the Slovak Republic and the Act no. 331/2003 Coll. on Elections to the European Parliament as amended].

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

Positive aspects

Pursuant to the Article 30 paragraph 1 of the Constitution of the Slovak Republic, foreigners with permanent residence on the territory of the Slovak Republic have the right to vote and to be elected to self-government bodies of municipalities and to self-government 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 *zákon o voľbách do orgánov samosprávy obcí* [Act on election to the municipal self-government bodies][200] nor the *zákon o voľbách do orgánov samosprávnych krajov* [Act on election to the bodies of self-government regions][201] differentiate 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.

Other relevant developments

Reasons for concern

During the period under scrutiny, there were no nation-wide municipal elections in the Slovak Republic. Although "new elections" (additional elections to municipal representations and elections of mayors) took place in several municipalities.

The Office for Democratic Institutions and Human Rights (ODIHR), as an institution responsible for elections monitoring within the Organization for Security and Co-operation in Europe, stated in its report of 2004[202], that the Slovak Republic had a multiplicity of election laws for various types of elections. 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.

Nothing has changed in the area of harmonization of legal regulations of laws concerning the elections up to now. The inconsistency of these laws still persists. Particular election laws were not harmonized in such way, that there would be the same rules for all types of elections.

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.

[200] *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].
[201] *Zákon č. 303/2001 Z. z. o voľbách do orgánov samosprávnych krajov a o doplnení Občianskeho súdneho poriadku* [Act no. 303/2001 Coll. on election to the bodies of self-government regions and supplementing the Code of Civil Procedure].
[202] OSCE/ODIHR Election Assessment Report on the Presidential Election in the Slovak Republic on 3 April 2004 (9 June 2004).

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

On 1 September 2005, the *zákon o sociálnoprávnej ochrane detí a sociálnej kuratele* [Act on social and legal protection of children and on social guardianship][203] came into force. Measures of social and legal protection and social guardianship are carried out for each child, who has regular residence[204] on the territory of the Slovak Republic or who dwells here without an attendance[205] (and also for a child who is a citizen of the Slovak Republic and who is dwelling without an attendance on the territory of foreign country). The measures of social and legal protection and of social guardianship are carried out also for adult natural persons, who regularly reside on the territory of the Slovak Republic (to get more information about social and legal protection of children and social guardianship see also Article 24).

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 accordance with the *zákon o Policajnom zbore* [Act on Police Corps][206] the Police are authorized to forbid entry into a designated place, or order to remain at a designated place. Section 27 of this Act stipulates that if required for the national security, maintenance of public order, the protection of health or the protection of rights and freedoms of other persons, a police officer is authorized to order anybody (i) not to unnecessarily enter a designated place or remain there, and (ii) to remain at a designated place for inevitably necessary time.

---

[203] *Zákon č. 305/2005 Z. z. o sociálnoprávnej ochrane detí a sociálnej kuratele a o zmene a doplnení niektorých zákonov* [Act no. 305/2005 Coll. on social and legal protection of children and social guardianship, amending and supplementing certain other laws].

[204] According the Section 2 letter a) point 1 of the Act on social and legal protection of children and social guardianship, the term "regular residence" includes permanent residence, temporary stay, permit to permanent or temporary stay or permit for a tolerated stay on the territory of the Slovak Republic.

[205] According the Section 2 letter b) of the Act on social and legal protection of children and social guardianship, the term "a child without an attendance" means a child without attendance of parents or other adult person, to whom the child could be given into personal custody.

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

According to the Section 28 of the Act on Police Corps the police are authorized to close places open to public. The provision says that:

1. While searching perpetrators of deliberate criminal acts, wanted persons, weapons, ammunition, narcotic and psychotropic substances and poisons, or things originated in criminal activity or connected with a criminal act, police officers are authorized to close the places open to public and carry out searches in order to see whether the aforementioned persons or things are present there.
2. A police officer is authorized to check if the person being present at a public place, which has been closed pursuant to Subsection 1, is in possession of a weapon, and to take it away. If the public place is open again, and legal reasons prevent return of the weapon, the police officer shall give the person a receipt confirming seizure of the weapon.

The changes of the Act on Police Corps did not relate to above mentioned provisions during the period under scrutiny.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 1 January 2005 an Amendment to the *zákon o cestovných dokladoch* [Act on travel documents][207] came into force. The law stipulates that the entry into the territory of the Slovak Republic must not be denied to the citizen of the European Union to whom the travel document was issued if during his/her stay in abroad the validity of his/her travel document expired or if he/she is not able to provide the travel document by reason of its loss or theft in abroad. The citizen of the Slovak Republic can be a holder of maximally two valid travel documents of the same type. The Act establishes also the impediments to issue a travel document, among which belongs also the situation when the Police are authorized not to allow the citizen to travel abroad if the issuing of travel document was denied to him/her or the travel document was taken away of him.

Reasons for concern

The *ministerstvo vnútra Slovenskej republiky* [Ministry of the Interior of the Slovak Republic] has drafted an Amendment to the *zákon o priestupkoch* [Act on Minor Offences][208], which reflects the changes in the new criminal codes adopted in 2005. Originally the Ministry of Interior had proposed to classify "the causing of public nuisance by sleeping at areas open to public" as minor offence. A number of NGOs as well as individuals had opposed this ministerial proposal clearly aimed against homeless people. A petition against this proposal was signed by about one thousand of people. In the end, the ministry as well as the Slovak Government accepted the objections and they excluded the "sleeping in public areas" from final legislative proposal.

Article 46. Diplomatic and consular protection

[207] *Zákon č. 653/2004 Z. z., ktorým sa mení a dopĺňa zákon č. 381/1997 Z. z. o cestovných dokladoch v znení neskorších predpisov* [Act no. 653/2004 Coll., amending and supplementing the Act no. 381/1997 Coll. on travel documents as amended].
[208] *Zákon č. 372/1990 Z. z. o priestupkoch v znení neskorších predpisov* [Act no. 372/1990 Coll. on minor offences as amended].

CHAPTER VI. JUSTICE

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

Access to a court and, in particular, the right to legal aid / judicial assistance

Legislative initiatives, national case law and practices of national authorities

The Amendment to the *Občiansky súdny poriadok* [Code of Civil Procedure][209], which came into force on 1 September 2005, introduces, *inter alia, a* new reason of admissibility of renewal of proceedings as extraordinary remedial measure – if the European Court for Human Rights decided, that by Slovak court's decision or by the activity that preceded it, fundamental human rights and freedoms of participant of proceedings had been violated and serious consequences of this violation had not been properly remedied by award of proper financial compensation.

The *zákon o poskytovaní právnej pomoci osobám v materiálnej núdzi* [Act on provision of legal assistance to persons in material need][210] will come into effect on 1 January 2006. The main aim of the Act is to make the access to court easier for socially disadvantaged persons by providing of legal assistance free of charge. Free legal assistance will be provided to indigent people before, during and after the judicial proceeding. The Act stipulates the criteria for consideration of applicants for free legal assistance to avoid its abuse by persons who do not meet the statutory criteria for indigency. The decision on refusal of free legal assistance will be reviewable by court. Free legal assistance will be provided by the *Centrum právnej pomoci* [Centre of Legal Aid] and by assigned attorneys (in proceedings before the court).

Positive aspects

On 14 December 2004 the National Council of the Slovak Republic by its Resolution no. 1411 affirmed the Protocol no. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention. The President of the Slovak Republic ratified the Protocol no. 14 on 16 May 2005. The Protocol no. 14 did not come into force within Slovak Republic as yet.

Independence and impartiality

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

In case of *Indra v. Slovakia*[211] the Eur. Ct. H. R. declared the violation of the Article 6 paragraph 1 of the ECHR on the ground of the lack of an impartial tribunal. According to the view presented by the Court in the reasoning of the judgement, the violation of the applicant's right to impartial tribunal was caused by the fact that the Supreme Court Chamber deciding as appellate court on points of law in rehabilitation proceeding on the motion of the applicant included a judge who had been a member of the

[209] *Zákon č. 341/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 99/1963 Zb. Občiansky súdny poriadok v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 341/2005 Coll. amending and supplementing Act no. 99/1963 Coll. Code of Civil Procedure as amended, amending and supplementing certain other laws].

[210] *Zákon č. 327/2005 Z. z. o poskytovaní právnej pomoci osobám v materiálnej núdzi a o zmene a doplnení zákona č. 586/2003 Z. z. o advokácii a o zmene a doplnení zákona č. 455/1991 Zb. o živnostenskom podnikaní (živnostenský zákon) v znení neskorších predpisov v znení zákona č. 8/2005 Z. z.* [Act no. 327/2005 Coll. On\rovision of legal assistance to persons in material destitution, amending and supplementing the Act no. 586/2003 Coll. on advocacy, amending and supplementing the Act no. 455/1991 Coll. on Trade as amended, amended by the Act no. 8/2005 Coll.].

[211] Eur. Ct. H. R. (4th sect.), *Indra v. Slovakia* (Application no. 46845/99) judgement of 1 February 2005 (final).

three-judge Chamber of the City Court that, in the past had rejected the applicant's appeal in the proceeding regarding his dismissal from the work. The Court stated that although the subject matter of the original proceedings of the 1980s was different from that of the rehabilitation proceedings, nevertheless the Court had to consider that both the original proceedings and the rehabilitation proceedings referred to the same set of facts and that the examination of the dismissal of 1982 according to the criteria of the Extra Judicial Rehabilitations Act could entail in some way reconsideration of the judicial decisions taken in the original proceedings. In the opinion of the Court, this consideration is even reinforced by the political context of the rehabilitation under the Extra Judicial Rehabilitations Act as expressed in its Section 1. It could, in the Court's opinion, have raised legitimate fears in the applicant that the judge concerned would not approach his case with the requisite impartiality.

Reasonable delay in judical proceedings

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

In case of *Poláčik v. Slovakia*[212] the Eur. Ct. H. R. declared the violation of the Article 6 paragraph 1 of the ECHR as a result of the length of the execution proceedings. The Court pointed out, *inter alia*, that the delays caused by several public organs of the Slovak Republic in the execution proceedings, if taken together, were incompatible with the reasonable time requirement in the particular circumstances of the case.

In case *Kopecká v. Slovakia*[213] the Eur. Ct. H. R. considered the length of the court proceeding (12 years) concerning applicant's claim for injury at work as result of which she has been handicapped excessive and failing to meet the "reasonable time" requirement.

In case of *Heger v. Slovakia*[214] the Eur. Ct. H. R. considered the length of the proceedings in issue was excessive and failed to meet the "reasonable time" requirement. Accordingly there had been breaches of the Article 6 paragraph 1 of the ECHR as results of the length of the proceedings concerning the lease of a flat and of the enforcement proceedings.

In case of *Cibulková v. Slovakia*[215] the Eur. Ct. H. R. held that the length of the proceedings (8 years 9 months) had been incompatible with the "reasonable time" requirement. Accordingly there had been a violation of the Article 6 paragraph 1 of the ECHR.

In case of *Bíro v. Slovakia*[216] the Eur. Ct. H. R. found the violation of the Article 6 paragraph 1 of the ECHR (the right to hearing within a reasonable time).

In case of *Široký v. Slovakia*[217] the Eur. Ct. H. R. considered that in this case the length of the two sets of proceedings complained of was excessive and failed to meet the "reasonable time" requirement. Accordingly there had been a breach of the Article 6 paragraph 1 of the ECHR.

In case of *Adriana Šimková v Slovakia*[218] the Eur. Ct. H. R. declared a breach of the Article 6 paragraph 1 of the ECHR. The Court found that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

---

[212] Eur. Ct. H. R. (4th sect.), *Poláčik v. Slovakia* (Application no. 58707/00) judgement of 1 November 2005.
[213] Eur. Ct. H. R. (4th sect.), *Kopecká v. Slovakia* (Application no. 69012/01) judgement of 31 May 2005 (final).
[214] Eur. Ct. H. R (4th sect.), *Heger v. Slovakia* (Application no. 62194/00) judgement of 12 October 2005 (final)
[215] Eur. Ct. H. R. (4th sect.), *Cibulková v. Slovakia* (Application no. 38144/02) judgement of 11 October 2005 (not final as yet)
[216] Eur. Ct. H. R. (4th sect.) *Bíro v. Slovakia* (Application no. 46844/99) judgement of 8 November 2005 (not final as yet)
[217] Eur. Ct. H. R. (4th sect.) *Široký v. Slovakia* (Application no. 69955/01) judgement of 18 October 2005 (not final as yet)

In case of *Soňa Šimková v. Slovakia*[219] the Eur. Ct. H. R. considered that in this case the length of the two sets of proceedings complained of was excessive and failed to meet the "reasonable time" requirement. Accordingly there has been a breach of the Article 6 paragraph 1 of the ECHR.

In case of *Mažgútová v. Slovakia*[220] the Eur. Ct. H. R. Court considers that in this case the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. Accordingly there has been a breach of the Article 6 paragraph 1 of the ECHR.

In case of *Z. M. v. Slovakia*[221] applicant had complained *inter alia* that they had no effective remedy at their disposal in respect of their complaint under the Article 6 paragraph 1 of the ECHR about the length of the proceedings concerning the care and education of the second applicant. Accordingly, the Eur. Ct. H. R. considered that in the case there had been a violation of the Article 13 of the Convention on account of the lack of an effective remedy in respect of the applicant's complaint under the Article 6 paragraph 1 of the EHCR about the length of the proceedings.

In case of *Palgutová v. Slovakia*[222] irrespective of the fact that the overall length of the proceedings can partly be attributed to the applicant's or her lawyer's conduct, the Eur. Ct. H. R. considered that in the case the length of the proceedings had been excessive and failed to meet the "reasonable time" requirement. There had accordingly been a breach of the Article 6 paragraph 1 of the EHCR.

In case of *Krumpel And Krumpelová v. Slovakia*[223] the Eur. Ct. H. R. declared violation of the Article 6 paragraph 1 of the ECHR. The court stated that the length of the criminal proceedings in the context of which the applicants´ claim is to be determined had been partly due to the complexity of the case resulting from both the scope of offences imputed to the accused and the number of injured persons. The court held that this alone did not account for the overall length of the proceedings and there was no indication that the applicants by their conduct contributed to the length of the proceedings. The Court pointed out that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement.

In case of *Bzdúšek v. Slovakia*[224] the Eur. Ct. H. R. declared violation of the Article 6 paragraph 1 and the Article 13 of the ECHR. The court stated that the length of the proceedings was excessive and failed to meet the "reasonable time" requirement. The Court pointed out, that at the relevant time no effective remedy existed in the Slovak Republic capable of effectively redressing alleged violations of the right to a hearing within a reasonable time.

In case of *Horváthová v. Slovakia*[225] the Eur. Ct. H. R. held that with regard to what was at stake for the applicant and to its case-law on the subject, the length of the proceedings had exceeded and failed to meet "reasonable time" requirement and therefore there had been a violation of the Article 6 paragraph 1 of the ECHR.

---

[218] Eur. Ct. H. R. (4th sect.) *Adriana Šimková v. Slovakia* (Application no. 77708/01) judgement of 27 September 2005 (not final as yet)
[219] Eur. Ct. H. R. (4th sect.) *Soňa Šimková v. Slovakia* (Application no. 77706/01) judgement of 27 September 2005 (not final as yet)
[220] Eur. Ct. H. R. (4th sect.) *Mažgútová v. Slovakia* (Application no. 65998/01) judgement of 17 August 2005 (final)
[221] Eur. Ct. H. R. (4th sect.) *Z.M. and K.P. v Slovakia* (Application no. 50232/99) judgement of 17 May 2005 (final)
[222] Eur. Ct. H. R. (4th sect.) *Palgutová v. Slovakia* (Application no. 9818/02) judgement of 17 May 2005 (final)
[223] Eur. Ct. H. R. (4th sect.), *Krumpel And Krumpelová v. Slovakia* (Application no. 56195/00) judgement of 5 July 2005.
[224] Eur. Ct. H. R. (4th sect.), *Bzdúšek v. Slovakia* (Application no. 48817/99) judgement of 21 June 2005 (final).
[225] Eur. Ct. H. R. (4th sect.), *Horváthová v. Slovakia* (Application no. 74456/01) judgement of 17 May 2005 (final).

In case *Hefková v. Slovakia*[226] the Eur. Ct. H. R. found the violation of the Article 6 paragraph 1 of the ECHR. The Court held that the determination whether the defendant is the father of the applicant's child, calls for special diligence. The Court noted that at the initial stage the Slovak courts involved failed to display appropriate diligence when proceed with the case. The Court stated that the applicant's right to a hearing within a "reasonable time" had not been respected.

In case *Vargová v. Slovakia*[227] the Eur. Ct. H. R. declared violation of the Article 6 paragraph 1 of the ECHR in the proceedings in issue over the existence of the applicant's civil right to claim restitution of property. The Court concluded that the case was of a certain complexity and that the proceedings were to a certain extent prolonged by the conduct of the parties, but in the particular circumstances of the case their overall length had been incompatible with the "reasonable time" requirement.

In case *Švolík v. Slovakia*[228] the Eur. Ct. H. R. found the violation of the Article 6 paragraph 1 of the ECHR. The Court held, that the length of the proceedings was excessive.

In case *Fabišík v. Slovakia*[229] the Eur. Ct. H. R. declared the violation of the Article 6 paragraph 1 of the ECHR as a result of the length of the proceedings concerning the parental rights and obligations. The court did not find the breach of the Article 6 paragraph 1 of the ECHR as a result of the length of the divorce proceedings.

In case *Macková v. Slovakia*[230] the Eur. Ct. H. R. found the violation of the Article 6 paragraph 1 and the Article 13 of the ECHR. The Court declared that in the case there had been a violation of the Article 13 of the Convention on account of the lack of an effective remedy in respect of the applicant's complaint under the Article 6 paragraph 1 about the length of the proceedings. The Court pointed out, *inter alia*, that neither a petition under the Article 130 paragraph 3 of the Constitution of the Slovak Republic, as in force at the relevant time, nor a claim for damages under the State Liability Act of 1969 were capable of effectively redressing alleged violations of the right to a hearing within a reasonable time

Right to the enforcement of judicial decisions

Reasons for concern

The Amendment to the *Občiansky súdny poriadok* [Code of Civil Procedure][231] that came into force on 1 September 2005 repealed all forms of execution of court judgements, with the exception of execution of judgement on upbringing of minors and execution of judgement concerning salary deductions and/or order of a claim. Practically all forms of executions of judgements have been relocated from courts to the exclusive competence of judicial distrainors whose practice is regulated by the *Exekučný poriadok* [Rules of Distraint Procedures][232]. Consequently, entitled persons (creditors) have lost an option to choose between the court execution of judgement regulated until then by the Code of Civil Procedure

[226] Eur. Ct. H. R. (4th sect.), *Hefková v. Slovakia* (Application no. 57237/00) judgement of 31 May 2005 (final).
[227] Eur. Ct. H. R. (4th sect.), *Vargová v. Slovakia* (Application no. 52555/99) judgement of 15 February 2005 (final).
[228] Eur. Ct. H. R. (4th sect.), *Švolík v. Slovakia* (Application no. 51545/99)) judgement of 15 February 2005 (final).
[229] Eur. Ct. H. R. (4th sect.), *Fabišík v. Slovakia* (Application no. 51204/99)) judgement of 22 March 2005 (final).
[230] Eur. Ct. H. R. (4th sect.), *Macková v. Slovakia* (Application no. 51543/99) judgement of 29 March 2005 (final).

[231] *Zákon č. 341/2005 Z. z., ktorým sa mení a dopĺňa zákon č. 99/1963 Zb. Občiansky súdny poriadok v znení neskorších predpisov a o zmene a doplnení niektorých zákonov* [Act no. 341/2005 Coll. amending and supplementing the Act no. 99/1963 Coll. Code of Civil Procedure, as amended, and amending and supplementing certain other laws].
[232] *Zákon č. 233/1995 Z. z. o súdnych exekútoroch a exekučnej činnosti (Exekučný poriadok) a o zmene a doplnení ďalších zákonov v znení neskorších predpisov* [Act no. 233/1995 Coll. on Judicial Distrainors and Distraint (Rules of Distraint Procedures) and amending certain other laws, as amended].

and a distraint performed by a judicial destrainor governed by the Rules of Distraint Procedures, and therefore, with the effect from 1 September 2005, they may enforce the judgements only by means of a distraint performed by a judicial destrainor.

Within the context of the mentioned Amendment to the Code of Civil Procedure, it seems to us rather problematic the provision of the ministerial order implementing in detail several provisions of the Rules of Distraint Procedures,[233] which, *inter alia*, regulates fees for issuing copies from the file kept by judicial destrainor. According to the Section 21 (a) of the ministerial order, the fee for issuing a copy or an affirmation of the fact from the file charged by judicial destrainor is 100 SKK (app. 2.5 EUR) for each page issued from the file which is about fifty-times more that is charged for the same service at courts pursuant to the Section 44 paragraph 1 of the Code of Civil Procedure[234]. Therefore, charging fee of 100 SKK for each copy issued from the file kept by judicial destrainor must be seen unreasonable, unproportional, and irrational, and it may result in *de facto* impediment to the exercise of the right to access of justice for some participants of distraint proceedings.[235]

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

On 1 April 2005 the new *zákon o súdoch* [Act on Courts][236] came into force, which stipulates basic principles of courts' operation, framework, competence and internal organization of courts, management and administration of courts, judicial self-administration and participation of courts in creation of courts' budgets.

The Government of the Slovak Republic by its Resolution no. 894/2005 of 16 November 2005 adopted the proposal of the new *zákon o odškodňovaní osôb poškodených násilnými trestnými činmi* [Act on compensation to persons aggrieved by violent crimes]. The proposal realizes transposition of the Directive 2004/80/EC of 29 April 2004 on compensation to victims of criminal activity into the legal order of the Slovak Republic. The aim is to improve the access to the option of obtaining the compensation for damage caused by willful violent crime committed on the territory of other EU member state than is the state on the territory of which the injured has permanent residence. The proposal has not been adopted by the National Council of the Slovak Republic yet.

---

[233] *Vyhláška Ministerstva spravodlivosti Slovenskej republiky č. 288/1995 Z. z. o odmenách a náhradách súdnych exekútorov* [The Order of the Ministry of Justice of the Slovak Republic no. 288/1995 Coll. on fees and remuneration of judicial distrainors].

[234] Pursuant to the Section 44 paragraph 1 of the Code of Civil Procedure, participants of the court proceeding and their representatives have the right to inspect documents in the court file and make notes, duplicates and photocopies from the court file or ask the court to make photocopies for the refund of material costs which at present are about 2 SKK (app. 0.05 EUR) for issuing one page of duplicate or photocopy from the court file.

[235] In *Kreuz v. Poland* judgement of 19 June 2001 (Application no. 28249/95) Eur. Ct. H. R. sitting as a Chamber held that although the requirement to pay fees to civil courts in connection with claims they were asked to determine could not be regarded as a restriction on the right of access to a court that was incompatible per se with the Article 6 paragraph 1, the amount of the fees assessed in the light of the particular circumstances of a given case, including the applicant's ability to pay them and the phase of the proceedings at which that restriction had been imposed, were important factors in determining whether a person's right to access to a court had been breached. In this case the Court considered that the judicial authorities had failed to secure a proper balance between, on the one hand, the interest of the State in collecting court fees for dealing with claims and, on the other hand, the interest of the applicant in vindicating his claim through the courts. The fee required from the applicant for proceeding with his action was excessive and resulted in his desisting from his claim and not being heard by a court, which, in the Court's opinion, impaired the very essence of his right of access to a court. The Court therefore found that there had been a breach of the Article 6 paragraph 1 of the EHCR.

[236] *Zákon č. 757/2004 Z. z. o súdoch a o zmene a doplnení niektorých zákonov* [Act no. 757/2004 Coll. on courts, amending and supplementing certain other laws].

Reasons for concern

As we mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004, one of the major problems concerning the right to a fair trial, is widespread corruption at all levels of social life in the Slovak Republic, including the judicial system. The situation in this regard has not improved during the period under scrutiny.

The Constitutional Court of the Slovak Republic, which according to the Constitution consists of 13 judges, is still not complete since its two judges had become judges of the European Court of Justice and the Court of First Instance respectively. The Parliament has repeatedly failed to elect new judges.

Article 48. Presumption of innocence and right of defence

Presumption of innocence

Legislative initiatives, national case law and practices of national authorities

The new *Trestný poriadok* [Code of Criminal Procedure][237], which will come into force on 1 January 2006, in Section 2 paragraph 4 guarantees the principle of presumption of innocence as one of the basic principles of the criminal procedure. As for phrasing, the provision reproduces the Article 50 paragraph 2 of the Constitution of the Slovak Republic[238].

According to Section 6 paragraph 2 of the new Code of Criminal Procedure, the authorities in charge of criminal proceedings and the court are obliged to preserve with care the principle of presumption of innocence provided that they inform the mass media on facts relating to the criminal proceedings. This obligation is substantially taken from the present legal regulation.

The rules governing the evidence in criminal matters

Legislative initiatives, national case law and practices of national authorities

The new Code of Criminal Procedure regulates the evidence takings in criminal proceedings in the provisions of the Sections 119 to 161.

The subject of evidence taking in criminal proceedings includes all facts substantial for the adoption of decision on merits. For the purpose of imposition of punishment, determination of consequence and damage of crime and identification of incomes resulting from criminal activities it is needed to prove whether the act has been committed, whether the act contains the elements of crime, who has committed the act, seriousness of crime and personal situation of offender. The subject of evidence taking in criminal proceeding also covers the circumstances influencing the degree and nature of the liability of the accused, namely facts relating to the reasons and conditions which facilitate the commission of crime, time, place and manner of commission of crime, the causal connection and harmfulness of crime, all circumstances that could characterize the personality of the offender, his/her motivation and the form of fault. Further the subject of evidence taking in criminal proceedings includes all the facts substantial in term of the criminal procedure law.

According to the Section 119 paragraph 2 of the new Code of Criminal Procedure, the means of evidence are: the examination of the accused person, witnesses, experts, expert opinions and expertises, recognition, reconstruction, inspection of an object and documents substantial for criminal proceedings,

[237] *Zákon č. 301/2005 Z. z. Trestný poriadok* [Act no. 301/2005 Coll. Code of Criminal Procedure].
[238] According to Article 50 paragraph 2 of the Constitution of the Slovak Republic, everyone, who is being prosecuted, shall be presumed innocent until proved guilty by a final judgement of the court.

information resulting from the information, technical and intelligence means. The evidence must be obtained in compliance with the law (Section 2 paragraph 12 of the new Code of Criminal Procedure).

The characteristic feature of the criminal proceedings regulated by the new Code of Criminal Procedure is increasing of adversary system of criminal justice. According to the basic rules of criminal proceedings regulated in Section 2 of the new Code of Criminal Procedure, parties to criminal proceedings have the right to collect evidence. The parties to criminal proceedings have the right to secure the proposed evidence. According to the Section 119 paragraph 3 of the new Code of Criminal Procedure, the parties to criminal proceedings may collect evidence also on theirs own expense. In case that the judgment of acquittal is declared by the court, the state shall reimburse the costs to the defendant.

According to the Section 119 paragraph 4 of the new Code of Criminal Procedure, the evidence acquired by means of illegal duress or by threat of such an illegal duress, may not be used in the criminal proceedings except the case when such evidence is used against person who had used illegal duress or threat of an illegal duress himself/herself. The provision of the Section 119 paragraph 4 of the new Code of Criminal Procedure has been taken from the current legal regulation.

Reasons for concern

The new Code of Criminal Procedure introduces a new legal institute named *zabezpečenie svedka* [securing of witness]. This legal institute regulates the right of the court to detain a witness for up to 72 hours to secure the witness' presence at the hearing before the court. According to the Section 88 of the new Code of Criminal Procedure, the witness may be detained upon a decision of the court provided that he/she has been properly called to the hearing before the court, the witness has not excused his/her absence at hearing before the court, bringing the witness before the court has not been successful and the presence of the witness at the hearing before the court cannot be provided otherwise. The witness may be detained only for the necessary period of time, maximum up to 72 hours. 24 hours is dedicated to bringing the witness before the court and within next 48 hours the hearing of the witness have to take place before the court, that ordered securing of the witness. The witness has the right to fulfil the complaint against such decision of the court, but complaint has not a suspensive effect.

The above-mentioned preventive restraint of a witness with the aim to ensure his/her presence at trial seems to be inadequate even in consideration of the provisions of the Article 17 paragraph 3[239] and 4[240] of the Constituion of the Slovak Republic. According to these provisions, only the person suspected of serious crime may be detained for up to 72 hours.

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2004 it is questionable, whether it is necessary to establish such institute in criminal procedure law, which uses preventive restraint of witness to ensure his/her presence at trial. According to the provisions of the new Code of Criminal Procedure, 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.

---

[239] According to Section 17 paragraph 3 of the Constitution of the Slovak Republic, a person charged with or suspected of a criminal offence may be detained only in cases provided by a law. A detained person must be immediately informed of the grounds thereof, and after interrogation at the latest within 48 hours must be either released or brought before a court. A judge must within 48 hours and, for especially serious criminal offences within 72 hours from bringing the detained person before him or her, hear the person and decide on his or her detention or release.

[240] According to Section 17 paragraph 4 of the Constitution of the Slovak Republic, a person charged with a criminal offence may be arrested only upon a written order issued by a judge. An arrested person must be brought before a court within 24 hours. A judge must, within 48 hours and, for especially serious offences within 72 hours from bringing before court, hear the arrested person and decide on his or her detention or release.

We are not convinced that such measures are necessary in a democratic society, and if there is a legitimate aim to restrict personal freedom of a witness, whether the 72 hours' period of the maximal restriction of witness' personal freedom, which is basically the same as that one applying to persons charged with or suspected of serious criminal offence, is proportionate to the legitimate aim. The institution of preventive restrain of witness may be easily abused by public authorities and its application may lead to unreasonable restrictions of personal freedom of any person assigned with the status of witness. In this regard it should be noted, that the legal fiction of delivery of summons applies also to a witness, which means in practice that anybody who has been assigned with the status of witness without even knowing this fact, may be *de facto* detained upon arrival at home from a long term holiday or business trip and be escorted to the police station or to a court.

During the period under the scrutiny, the *Inšpekcia Ministerstva vnútra Slovenskej republiky* [Inspection of the Ministry of Interior of the Slovak Republic] informed about the case in which a police officer had forced the witness to give testimony although the witness did not want to do that. In connection with this, the criminal proceeding on suspicion of abuse of authority is held.

The right to freely choose one's defence counsel and the right to an interpreter

Legislative initiatives, national case law and practices of national authorities

According to the Section 2 paragraph 9 of the new Code of Criminal Procedure, every person charged with a criminal offence shall have the right to defence. Only attorney-at-law may perform the position of defence counsel. The Section 37 of the new Code of Criminal Procedure contains a complete definition of reasons for the compulsory defence. The accused person shall have the right to choose his/her defence counsel. If the accused person does not choose the defence council in the case of the compulsory defence, the defence counsel must be appointed to him/her without unreasonable delays. The appointed defence counsel *ex officio* is obliged to assume the defence of the accused person without unreasonable delays, too.

According to the Section 40 paragraph 2 of the new Code of Criminal Procedure, if the current financial situation of accused person does not allow his/her defence in the criminal proceedings, the defence counsel must be appointed *ex officio* to him/her even in the case that there are no reasons for compulsory defence. The accused person is obliged to prove his/her poor current financial situation.

According to the current legal regulation, everyone has the right to use his mother tongue before authorities in charge of in criminal proceedings. According to the Section 2 paragraph 20 of the new Code of Criminal Procedure, if the accused person, statutory representative of the accused person, person aggrieved, party concerned or witness declares that he/she does not understand the language of the criminal proceedings, such person has the right to interpreter services.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The new Code of Criminal Procedure introduces the fiction of delivery of written communication in the criminal proceedings. In comparison with the current legal regulation the fiction of delivery shall be exercised also in the case when the accused person is being served the notice of appearance at the main hearing or open court hearing, indictment, or a judgment liable for appeal. The new Code of Criminal Procedure maintains the legal regulation that the fiction of delivery shall not be exercised if the accused person is being served the penal order[241].

[241] The penal order may be issued by a single judge without hearing the case at a main hearing provided that the facts are established with the acquired evidence beyond doubt. A penal order shall have the nature of sentencing judgement. The Code of Criminal Procedure regulates the punishments that could be imposed by penal order. The penal order shall not be issued in proceedings against a juvenile who did not complete eighteen years of age at the

Reasons for concern

According to the Section 309 paragraph 1 of the new *Trestný poriadok* [Code of Criminal Procedure][242], an appeal shall be filed with the court within fifteen days from the notice of the judgment (in comparison with previous situation, the period has been extended from 8 to 15 days). Under the term "notice of the judgment" is considered the announcement of judgment in the presence of person, whom the judgment has to be delivered or in case of absence of such person the delivery of judgment. An appeal shall have a suspensive effect.

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2003 and also in 2004, 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 if the person concerned has just been notified of the criminal proceeding. The time-limit for filing a complaint against decision issued in criminal proceeding is in our opinion unreasonably short, and therefore it is not compatible with the right to a fair trial and the right to defence guaranteed in the Articles 47 and 48 of the Charter.

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

Legality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

The new *Trestný zákon* [Criminal Code][243] defines the terms "organized group", "criminal group" and "terrorist group". The new Criminal Code also includes the term "dangerous group", which covers both mentioned forms of groups. The new Criminal Code introduces also other new terms into criminal law like "activity for the criminal group or terrorist group" and "supporting of a criminal group or 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 coordination, that increases a probability of successful committing a criminal offence.
- Under the term "criminal group" shall be understood a structured association of at least three persons, which lasts for a certain period of time and acts in mutual coordination for the purpose of committing one or more serious crimes, such as a crime of the legalisation of incomes resulting from criminal activities or any criminal offence of corruption for the purpose of acquirement of a direct or indirect financial or other benefits.
- Under the term "terrorist group" shall be understood a structured association of at least three persons, which has been set up for a certain period of time for the purpose of committing crime of terror or terrorism.
- The term "activity for criminal group or terrorist group" means a wilful participation in such a group or other wilful action for the purpose of preservation of existence of such group or for the purpose of committing criminal offences introduced in the Section 129 paragraphs 3 and 4[244] by such group.

---

time of its issuing and in proceedings against a person deprived of legal capacity or with restricted legal capacity. The accused persons authorized to file an appeal in his/her favour and the prosecutor may file a refusal of the penal order. The fulfilment of the refusal of the penal order causes that the penal order is derogated and the court shall order the main hearing.

[242] *Zákon č. 301/2005 Z. z. Trestný poriadok* [Act no. 301/2005 Coll. Code of Criminal Procedure].

[243] *Zákon č. 300/2005 Z. z. Trestný zákon* [Act no. 300/2005 Coll. Criminal Code].

[244] Serious crimes, a crime of legalisation of incomes resulting from criminal activities according to the Section 233 of the new Criminal Code or any criminal offence from the criminal offences of corruption for the purpose of acquirement of a direct or indirect financial or other benefits, a crime of terror or terrorism.

- The term "supporting of a criminal group or terrorist group" means a wilful action of providing the tools, services, cooperation or of creating other conditions with the aim of establishment or preservation of existence of such group or for the purpose of committing criminal offences introduced in Section 129 paragraphs 3 and 4 by such group.

According to the Section 296 of the new Criminal Code, anyone who has established or contrived a criminal group, who is its member, acts for the benefit of the group or supports such group, shall be liable to a term of imprisonment from 5 to 10 years.

According to the Section 297 of the new Criminal Code, anyone who has established or contrived a terrorist group, who is its member, acts for the benefit of the group or supports such group shall be liable to a term of imprisonment from 8 to 15 years.

The original wording of the draft of the new Criminal Code did not provide definitions of the terms "activity for criminal group or terrorist group" and "supporting criminal group or terrorist group" although such activities were considered as criminal activities. There were several public discussions and parliamentary debates related to the vagueness of these terms, which had potential to provide an extensive interpretation and gave possibility to be abused in practise. Therefore the members of the National Council asked for the exemption of criminality of an activity for criminal group or terrorist group and supporting of a criminal group or terrorist group from the text of new Criminal Code. Consequently, the new definitions of the terms "activity for criminal group or terrorist group" and "supporting criminal group or terrorist group" were involved into the draft of new Criminal Code prepared by the Ministry of Justice.

On 16 March 2005 the National Council of the Slovak Republic by its Resolution no. 1530 affirmed the Additional Protocol to the Criminal Law Convention on Corruption. The President of the Slovak Republic ratified the Additional Protocol on 7 April 2005. The Additional Protocol came into force within the Slovak Republic on 1 August 2005.

Reasons for concern

The Slovak Republic has not up to now signed the new Council of Europe Convention on the Prevention of Terrorism, CETS No. 196 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism CETS no. 198.

On 7 April 2005 the Slovak Republic signed the Protocol amending the European Convention on the Suppression of Terrorism. The President of the Slovak Republic ratified the Protocol on 7 December 2005. The Protocol did not come into force within the Slovak Republic yet.

Proportionality of criminal offences and penalties

Legislative initiatives, national case law and practices of national authorities

The new Criminal Code, which will come into force on 1 January 2006, recognizes the elements of crime of murder and the elements of crime of premeditated murder. It incorporates into the criminal law a legal principle named *"Dvakrát a dosť"* ["twice and enough"], which is applied in connection with the commission of premeditated murder. The new principle „two strikes and you're out" means that in case the offender has committed the crime of premeditated murder second time, the court must sentence the offender to a life imprisonment. The court must also sentence the offender to a life imprisonment in case when offender has committed a crime of premeditated murder as a member of dangerous group[245] or during the crisis situation[246].

[245] The Section 141 of the new Criminal Code defines the dangerous group as a criminal group or terrorist group.
[246] The Section 134 paragraph 2 of the new Criminal Code defines a crisis situation as a state of emergency, exceptional state, state of war and war.

The new Criminal Code takes over from the current Criminal Code a legal principle named *"Trikrát a dost'"* ["Three strikes law"]. The principle „three strikes and you're out" means that in case the court is sentencing the offender for some serious crime listed in the Section 47 paragraph 2 of the new Criminal Code, and the offender has already been convicted by the court for any of the crimes listed in the Section 43 of the Criminal Code at least twice in the past, the court must sentence the offender to a life imprisonment.

Reasons for concern

As mentioned in the Report on the situation of fundamental rights in the Slovak Republic in 2003, on the ground of the conviction based on the principle „three strikes and you're out", in our opinion, the offender would have been de facto punished twice for the same criminal offence, since the heavier penalty would have been imposed on the ground of criminal offences for which the offender had already been tried and punished in the past and therefore in our view the "three strikes law" contradicts the *ne bis in idem* principle.

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

The new Code of Criminal Procedure[247] allows the prosecutor and the defence to conclude a plea agreement on the guilt and punishment of the accused. The court accepts an agreement when is convinced that accused understands and voluntarily accepts the terms of the agreement on which the guilty plea is based and that also he/she accepts imposed punishment. The court should also verify whether the accused understands that the agreement may not be challenged by the remedial measures. The agreement is approved by the judgment, which comes into force upon its announcement. The remedial measures against such a judgment are not admissible.

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

Legislative initiatives, national case law and practices of national authorities

New Code of Criminal Procedure[248], which will come into force on 1 January 2006, formally respects the *ne bis in idem* principle. The right not to be tried or punished twice in criminal proceedings for the same criminal offence is one of the basic principles of the criminal procedure which are regulated in the provisions of the Section 2 of the new Code of Criminal Procedure. According to the Section 2 paragraph 8 of the new Code of Criminal Procedure, no person may be prosecuted with the 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[249].

The *ne bis in idem* principle is included also in the provision of the Section 529 paragraph 4 of the new Code of Criminal Procedure in case of the committal of a criminal proceeding to a foreign jurisdiction. According to this provision if the requested state agrees to take over the criminal proceeding, the criminal proceeding of the person accused of committing the offence for which the criminal proceedings has been committed to a foreign jurisdiction, cannot continue on the territory of the Slovak Republic.

[247] *Zákon č. 301/2005 Z. z. Trestný poriadok* [Act no. 301/2005 Coll. Code of Criminal Procedure].

[248]

[249] The provision of the Section 2 paragraph 8 of the new Code of Criminal Procedure is identical to that one of the Article 50 paragraph 5 of the Constitution of the Slovak Republic.

Also the execution of punishment imposed with the respect to conduct for which the criminal proceedings has been committed to a foreign jurisdiction, cannot be ordered.

Reasons for concern

Please see the comments on “three strikes law” and its potential conflict with *ne bis in idem* principle in Article 49.