

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN **SLOVENIA**

IN 2005

Submitted to the Network by **Dr. Arne Marjan MAVCIC**

On 15 December 2005

Reference: CFR-CDF/SI/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.

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 **SLOVENIA**

IN 2005

Submitted to the Network by **Dr. Arne Marjan MAVCIC**

On 15 December 2005

Reference: CFR-CDF/SI/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.

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 Moysse (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 Moysse (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	8
ARTICLE 1. HUMAN DIGNITY	8
ARTICLE 2. RIGHT TO LIFE	8
Domestic violence	8
ARTICLE 3. RIGHT TO THE INTEGRITY OF THE PERSON	10
ARTICLE 4. PROHIBITION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	10
Conditions of detention and external supervision of the places of detention.....	10
<i>Penal institutions and institutions for the detention of persons with a mental disability.....</i>	<i>10</i>
Protection of the child against ill-treatments	13
Other relevant developments	13
ARTICLE 5. PROHIBITION OF SLAVERY AND FORCED LABOR	13
Trafficking in human beings.....	13
CHAPTER II. FREEDOMS.....	17
ARTICLE 6. RIGHT TO LIBERTY AND SECURITY	17
Pre-trial detention	17
Deprivation of liberty for foreigners.....	18
ARTICLE 7. RESPECT FOR PRIVATE AND FAMILY LIFE	18
ARTICLE 8. PROTECTION OF PERSONAL DATA.....	19
Protection of personal data	19
Protection of the private life of workers	20
ARTICLE 9. RIGHT TO MARRY AND RIGHT TO FOUND A FAMILY	21
Legal recognition of same-sex partnerships and recognition of the right to marry for transsexuals.....	21
ARTICLE 10. FREEDOM OF THOUGHT, CONSCIENCE AND RELIGION.....	22
Incentives and reasonable accommodations provided in order to ensure the freedom of religion, including the right to conscientious objection	22
ARTICLE 11. FREEDOM OF EXPRESSION AND OF INFORMATION.....	23
Freedom of expression and of information	23
Media pluralism and fair treatment of the information by the media	25
ARTICLE 12. FREEDOM OF ASSEMBLY AND OF ASSOCIATION	25
ARTICLE 13. FREEDOM OF THE ARTS AND SCIENCES	25
ARTICLE 14. RIGHT TO EDUCATION	25
ARTICLE 15. FREEDOM TO CHOOSE AN OCCUPATION AND RIGHT TO ENGAGE IN WORK	26
ARTICLE 16. FREEDOM TO CONDUCT A BUSINESS	26
ARTICLE 17. RIGHT TO PROPERTY	26
The right to property and the restrictions to this right	26
Other relevant developments	28
ARTICLE 18. RIGHT TO ASYLUM	29
Asylum proceedings	29
Recognition of the status of refugee	29
ARTICLE 19. PROTECTION IN THE EVENT OF REMOVAL, EXPULSION OR EXTRADITION	30
CHAPTER III. EQUALITY.....	31
ARTICLE 20. EQUALITY BEFORE THE LAW	31
Equality before the law.....	31
ARTICLE 21. NON-DISCRIMINATION	31
Protection against discrimination	31
Fight against incitement to racial, ethnic, national or religious discrimination	32
Protection of Gypsies / Roms	38
Other relevant developments	43
ARTICLE 22. CULTURAL, RELIGIOUS AND LINGUISTIC DIVERSITY	43
Protection of religious minorities	43
Protection of linguistic minorities	45
Other relevant developments	46
ARTICLE 23. EQUALITY BETWEEN MAN AND WOMEN	47
Gender discrimination in work and employment.....	47
ARTICLE 24. THE RIGHTS OF THE CHILD	47

6 E.U. NETWORK OF INDEPENDENT EXPERTS ON FUNDAMENTAL RIGHTS

Other relevant developments	47
ARTICLE 25. THE RIGHTS OF THE ELDERLY	48
Participation of the elderly to the public, social and cultural life	48
ARTICLE 26. INTEGRATION OF PERSONS WITH DISABILITIES	48
Professional integration of persons with disabilities: positive actions and employment quotas	48
Other relevant developments	48
CHAPTER IV. SOLIDARITY	49
ARTICLE 27. WORKER'S RIGHT TO INFORMATION AND CONSULTATION WITHIN THE UNDERTAKING	49
ARTICLE 28. RIGHT OF COLLECTIVE BARGAINING AND ACTION	49
ARTICLE 29. RIGHT OF ACCESS TO PLACEMENT SERVICES	49
ARTICLE 30. PROTECTION IN THE EVENT OF UNJUSTIFIED DISMISSAL	49
ARTICLE 31. FAIR AND JUST WORKING CONDITIONS	49
Sexual and moral harassment at work	49
Other relevant developments	49
ARTICLE 32. PROHIBITION OF CHILD LABOR AND PROTECTION OF YOUNG PEOPLE AT WORK	49
ARTICLE 33. FAMILY AND PROFESSIONAL LIFE	50
ARTICLE 34. SOCIAL SECURITY AND SOCIAL ASSISTANCE	50
Other relevant developments	50
ARTICLE 35. HEALTH CARE	50
Access to health care	50
ARTICLE 36. ACCESS TO SERVICES OF GENERAL ECONOMIC INTEREST	51
ARTICLE 37. ENVIRONMENTAL PROTECTION	51
The right to access to information in environmental matters	51
ARTICLE 38. CONSUMER PROTECTION	51
CHAPTER.V. CITIZENS' RIGHTS	53
ARTICLE 39. RIGHT TO VOTE AND TO STAND AS A CANDIDATE AT ELECTIONS TO THE EUROPEAN PARLIAMENT	53
ARTICLE 40. RIGHT TO VOTE AND TO STAND AS A CANDIDATE AT MUNICIPAL ELECTIONS	53
ARTICLE 41. RIGHT TO GOOD ADMINISTRATION	53
ARTICLE 42. RIGHT OF ACCESS TO DOCUMENTS	53
ARTICLE 43. OMBUDSMAN	53
ARTICLE 44. RIGHT TO PETITION	53
ARTICLE 45. FREEDOM OF MOVEMENT AND OF RESIDENCE	53
ARTICLE 46. DIPLOMATIC AND CONSULAR PROTECTION	53
CHAPTER VI. JUSTICE	54
ARTICLE 47. RIGHT TO AN EFFECTIVE REMEDY AND TO A FAIR TRIAL	54
Access to a court and, in particular, the right to legal aid / judicial assistance	54
Reasonable delay in judicial proceedings	55
ARTICLE 48. PRESUMPTION OF INNOCENCE AND RIGHT OF DEFENCE	58
ARTICLE 49. PRINCIPLES OF LEGALITY AND PROPORTIONALITY OF CRIMINAL OFFENCES AND PENALTIES	58
Legality of criminal offences and penalties	58
ARTICLE 50. RIGHT NOT TO BE TRIED OR PUNISHED TWICE IN CRIMINAL PROCEEDINGS FOR THE SAME CRIMINAL OFFENCE	59

GENERAL

Attending the 6th extraordinary session of the National Assembly of the Republic of Slovenia on 1 February 2005 deputies ratified the Treaty Establishing a Constitution for Europe and the Final Act (E.g. *Zakon o ratifikaciji Pogodbe o Ustavi za Evropo s Sklepno listino*, Act Ratifying the Treaty Establishing a Constitution for Europe and the Final Act, *Official Gazette* 2005, nr. 15, *Mednarodne pogodbe* (Treaties) 2005, nr. 1) by 79 yes and 4 no. The Act Ratifying the Treaty Establishing a Constitution for Europe and the Final Act was adopted by the National Assembly on 1 February 2005. The process of ratification was also accompanied by campaigns in Slovenia where the contents of the Treaty were presented to the citizens. In this way, simultaneously the process of approaching the European Union, its institutions and its activities to the citizens of the European Union followed what already started with the Irish and the Dutch support at the time of their presidency (Communicating Europe). The ratification of the Treaty was always among the Slovenian priority tasks. The Slovenian efforts were oriented to the enforcement of the Treaty. Therefore, in January 2005 the Slovenian Government filed a proposal for adoption of the Act Ratifying the Treaty Establishing a Constitution for Europe.

In Slovenia, the procedure of preliminary rulings is regulated by Article 11 of the State Attorney Act (E.g. *Zakon o državnem pravobranilstvu*, State Attorney Act, *Official Gazette* 1997, nr. 20 and 2002, nr. 56). The State Attorney shall represent the Republic of Slovenia before foreign and international courts. Irrespective of this provision, the Government of the Republic of Slovenia may give authority on the basis of the proposal of the General State Attorney or some other professionally qualified national or foreign person to act as a representative.

The UN Human Rights Committee convened in July to review Slovenia's second periodic report on the measures to implement the Covenant. The Committee praised the progress achieved by Slovene officials in the field of reforms since its independence in June 1991, notably the adoption of a democratic Constitution in December 1991 and its recent amendments to enhance protection of human rights and fundamental freedoms. The Committee also welcomed the fact that the provisions of the Covenant are directly enforceable as part of the domestic legal order and that they have been directly enforced by the Supreme and the Constitutional Courts, and praised several other advances in the area of law and institutional development undertaken by the Slovene government since it last reported to the Committee (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005).

CHAPTER I. DIGNITY**Article 1. Human dignity.****Article 2. Right to life**Domestic violence

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

Violence against women occurred and was underreported; however, awareness of spousal abuse and other violence against women increased. SOS Phone, a nongovernmental organization (NGO) that provided anonymous emergency counseling and services to domestic violence victims, received thousands of calls during the year. The Government partially funded 9 shelters for battered women, which operated at capacity (approximately 109 total beds) and turned away numerous women. When police received reports of spousal abuse or violence, they actively intervened and prosecuted offenders.

Rape, including spousal rape, is illegal but the latter was rarely reported. The NGO Amnesty International estimated that one in seven Slovenian women is raped during her lifetime but that only 5 percent seek assistance or counseling. The police actively investigated reports of rape and prosecuted offenders.

Prostitution is illegal but decriminalized. Anti-trafficking authorities and NGOs informally estimated that as many as 80 bars and clubs across the country could be engaged in prostitution. Trafficking in women for the purpose of sexual exploitation was a problem.

The law does not explicitly prohibit sexual harassment; however, it may be prosecuted under sections of the Criminal Code that prohibit sexual abuse. Sexual harassment and violence remained serious problems (State Department 2004 Human Rights Report, Slovenia HRR04).

On the high rate of domestic violence in Slovenia, the Committee regrets the lack of specific legal provisions and governmental programs to prevent combat and eliminate domestic violence and urged that the State party adopt and implement appropriate laws and policies to prevent and effectively combat violence against women, especially domestic violence, and programs to assist the victims. In order to raise public awareness, it should initiate the necessary media campaigns and educational programs (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005).

Legislative initiatives, national case law and practices of national authorities

The Government shall prepare a systemic law regulating issues of domestic violence and proposing the respective solutions (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93 0019/0041, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

For more than two years, the Human Rights Ombudsman calls for regulation of the domestic violence by a special law. Last year, a special report was issued with the title “Domestic violence – ways to solutions”, which contains papers of the professional meeting in November 2003 as well as summaries of common findings and proposals of experts directly dealing in their practice with issues of domestic violence and its consequences. The proposals strive for the cooperation among competent institutions, legislation, judicial procedural solutions, health care, activities of Centers for social work as well as activities of non-governmental organizations. It is expected that the respective Bill will be given into the parliamentary procedure even before the end of 2005.

Within the scope of systemic dealing with problems of domestic violence the Human Rights Ombudsman supports the possibility of explicit prohibition of ill-treatment of children. Slovenia was already warned by the Council of Europe (the European Commission for Social Rights) due to a current lack of national prohibition of any ill-treatment of children by law. Therefore, the Human Rights Ombudsman joined the Forum against Ill-Treatment of Children and in 2004 cooperated in activities for informing public on these issues (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

From 5 to 6 July 2005, Slovenia hosted two separate but similar events on violence and ill-treatment of children: The Regional UN Conference on ill-treatment of children for Europe and Central Asia with the title 'Let's stop ill-treatment of children: act now' and the Conference of the Council of Europe "The Yokohama Overview for Europe and Central Asia – Fight Against Sexual exploitation and Ill-Treatment of Children". These two events are an opportunity for our country to adopt efficient mechanisms for treatment of children – victims of violence and to prohibit corporal punishment of children. A special issue of the bulletin [The Human Rights Ombudsman-How to Protect One's Rights](#) was published in order to spread good practices of European Ombudsmen concerning prevention of ill-treatment of children. This contributed to the above mentioned events. The main purpose of both conferences was to suggest to those who take decisions to consider recommendations, the international documents and the good practices in prevention of ill-treatment of children. In this way they could establish efficient mechanisms for prevention of violence, sexual exploitation and ill-treatment of children. The Human Rights Ombudsman keeps pointing out to this issue for two years by summoning the competent ministries to prepare a law on domestic violence (Ustavimo nasilje nad otroki!, brezplačni bilten Varuha človekovih pravic Republike Slovenije: Varuh človekovih pravic – kako zavarovati svoje pravice, št. 5, junij 2005).

The National Assembly of the Republic of Slovenia, discussing a special report of the Human Rights Ombudsman „Domestic violence – prospective solutions at its session of 22 February 2005, adopted a special recommendation: Domestic violence reflects widespread social circumstances and, being a serious social problem, it could be comprehensively solved only on the national level. Therefore the National Assembly of the Republic of Slovenia summons the Government of the Republic of Slovenia to consider the statements laid down in a special Human Rights Ombudsman's report „Domestic violence – prospective solutions“ as well as to prepare as soon as possible the bill on prevention domestic violence and a harmonized program of prospective solutions. These issues shall be notified to the National Assembly (Državni zbor Republike Slovenije, številka: 542-08/92-2/21, Ljubljana, dne 22. februarja 2005-08-30 EPA 1508-III, Zbirke Državnega zbora RS – sprejeti akti).

The Social Activities Committee of the National Assembly supports the endeavoring of the Human Rights Ombudsman to establish in the Republic of Slovenia a system law that will regulate domestic violence and in particular protect children's rights. Unfortunately, as our society faces an increase in violent communication and violent behavior we should tend to change our behavior and our values already in the family as the basic unit of our society. Such negative situation in our society is largely stimulated by the media, in particular by the television. Furthermore, the Committee ascertains that the State can not transfer the task of solving domestic violence to the NGO's. Likewise, it cannot entrust the solution of this complex problem only to a specific field of activity (e.g. police, social welfare centers) but shall alone start tackling this unresolved problem systematically as soon as possible. Accordingly, the Government of the Republic of Slovenia along with the respective ministries shall, as soon as possible, amend the laws concerning domestic violence: Penal Code of the Republic of Slovenia (E.g. Kazenski zakonik Republike Slovenije, Penal Code of the Republic of Slovenia, *Official Gazette* 1994, nr. 94, 1999, nr. 23, 2004, nr. 40, 2004, nr. 95), Criminal Procedure Act (E.g. Zakon o kazenskem postopku, Criminal Procedure Act, *Official Gazette* 1994, nr. 63, 1998, nr. 49, 1998, nr. 72, 1999, nr. 6, 2000, nr. 66, 2001, nr. 111, 2003, nr. 56, 2003, nr. 116, 2004, nr. 43, 2004, nr. 96), Civil Procedure Act (E.g. Zakon o pravnem postopku, Civil Procedure Act, *Official Gazette* 1999, nr. 26, 2001, nr. 96, 2003, nr. 12, 2004, nr. 2, 2004, nr. 36), Police Act (E.g. Zakon o policiji, Police Act, *Official Gazette* 1998, nr. 49, 2001, nr. 93, 2002, nr. 56, 2003, nr. 26, 2003, nr. 79, 2003, nr. 110, 2004, nr. 43, 2004, nr. 50, 2004, nr. 102, 2005, nr. 53, 2005, nr. 70, 2005, nr. 98), Minor Offences Act (E.g. Zakon o prekrških, Minor Offences Act, *Official Gazette* 2003, nr. 7,

2004, nr. 45, 2004, nr. 86, 2005, nr. 44, 2005, nr. 23, 2005, nr. 55), Act on Criminal Offences Against Public Order and Peace (E.g. Zakon o prekrških zoper javni red in mir, Act on Criminal Offences Against Public Order and Peace, *Official Gazette* 2003, nr. 110), Non-litigious Civil Procedure Act (E.g. Zakon o nepravdnem postopku, Non-litigious Civil Procedure Act, *Official Gazette* 1986, nr. 30, 2002, nr. 87) and Marriage and Family Relations Act (E.g. Zakon o zakonski zvezi in družinskih razmerjih, Marriage and Family Relations Act, *Official Gazette*, 1976, nr. 15, 1986, nr. 30, 1989, nr. 1, 1989, nr. 14, 1994, nr. 13, 1994, nr. 82, 1995, nr. 29, 1999, nr. 26, 2000, nr. 70, 2004, nr. 16, 2004, nr. 69) and provide adequate funds for implementation of urgent family assistance projects (Komisija za družbene dejavnosti Državnega zbora Republike Slovenije, številka: 542-08/92-0002/0021 EPA 1508-III, Ljubljana, 17. 1. 2005-08-30, Poročilo o posebnem poročilu Varuha človekovih pravic Nasilje v družini – poti do rešitev).

The National Council of the Republic of Slovenia supports the Human Rights Ombudsman in his endeavoring for system law that will regulate domestic violence and in particular protect children in the Republic of Slovenia. The National Council believes that beside domestic violence other forms of violence in other environments and segments of Slovenian society should be eliminated. The National Council supports the Human Rights Ombudsman's attitude to the domestic violence and encourages the activities leading to new system legislation on domestic violence that will stress the importance of prevention of domestic violence and will propose appropriate measures to be taken by different governmental bodies and institutions (Sklepi Državnega sveta, številka: 542-08/92-0002/0021 EPA 1508-III, Ljubljana, 19 January 2005).

Slovenia has been strongly concerned about ill-treatment of children. In the last few years it made considerably progress in these endeavoring, not only regarding the change of attitudes to violence but also concerning the respective legislation. Changes have been adopted for alleviating the situation of children – victims in the pre-criminal and criminal proceedings and in order to protect children new provisions have been added to the criminal legislation. In Slovenia, good solutions should also be found in the public health. It provides satisfactory system of well organized regular and free of charge preventive health protection on the primary level, generally accessible to all children and youngsters till 19 years of age. In parallel to the widespread idea about the importance of the prevention of ill-treatment of children other concrete measures have been taken. Three priority tasks have been introduced on the normative level: adoption of the National development program for improvement of children's situation for the period 2005-2015 that will fill in the gap in the field of integration of the child, youngster and family as a whole. Thereby Slovenia would like to fulfill its obligations to the young generation, for it is well aware that the development of each citizen depends on its own childhood. The Government included into its program of 2005 the Act on Prevention of Domestic Violence; moreover, the Family Code is under preparation (Speech by Mr. Janez Janša, Slovenian Prime Minister, at the Regional UN Conference on Ill-Treatment of Children, Govor Predsednika Vlade Republike Slovenije Janeza Janše na Regionalnem posvetu Združenih narodov o nasilju nad otroki, Ljubljana, 5. julij 2005).

Article 3. Right to the integrity of the person

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

The Constitution prohibits such practices as torture and other cruel, inhuman or degrading treatment or punishment; however, in a few cases human rights observers alleged that police used excessive force such

as kicks, punches, and pushes during arrest (State Department 2004 Human Rights Report, Slovenia HRR04).

The Committee expressed concern about reported cases of ill-treatment by law enforcement officials and the lack of true investigations and adequate punishment of the responsible officials and non-payment of compensation to the victims. The Committee is also concerned that legal assistance may not be available from the beginning of detention for those who do not have the means to pay for it. On these matters, the Committee recommended that the Slovene government take appropriate measures to prevent and punish all forms of ill-treatment by law enforcement officials to ensure the provision of legal assistance to all from the beginning of detention and prompt, true, independent and impartial investigation into all allegations of violations of human rights. It should prosecute perpetrators of such acts and ensure that they are punished in a manner proportionate to the seriousness of the offences committed by them, and grant effective remedies, including compensation, to the victims (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005).

Legislative initiatives, national case law and practices of national authorities

The Government should prepare as soon as possible adequate legislation that will comprehensively regulate the protection of persons with mental disability (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93 oo19/0041, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

The Government should prepare as soon as possible the Act on Ratification of the Facultative Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

The Human Rights Ombudsman keeps warning for many years that it is necessary to adopt an Act that will comprehensively regulate mental health, including the rights of persons with mental disability. The Constitutional Court (CC (Constitutional Court), nr.U-I-60/03, 4 December 2003, *Official Gazette* 2003, nr. 131) stated that the provisions of Articles 70 through of the Non-litigious Civil Procedure Act (E.g. Zakon o nepravdnem postopku, Non-litigious Civil Procedure Act, *Official Gazette* 1986, nr. 30, 2002, nr. 87) are contrary to the Constitution. Compulsory detention in closed wards of psychiatric hospitals is severe interference with human rights and fundamental freedoms of patients particularly with the right to personal liberty (Article 19 (1) of the Constitution ; E.g. Ustava Republike Slovenije, Constitution of the Republic of Slovenia, *Official Gazette* 1991, nr. 33, 1997, nr. 42, 2000, nr. 66, 2003, nr. 24, 2004, nr. 69), the right to protection of mental integrity (Article 35 of the Constitution) and the right to voluntary medical treatment (Article 51 (3) which guarantees not only the right to medical treatment but also the right to reject medical treatment). The purpose of a statutory regulation is to regulate compulsory detention of mental patients in closed wards of psychiatric hospitals in a manner such that the effective realization of a legitimate purpose which justifies such measure is guaranteed (i.e. averting danger which the patient due to mental illness causes either to others or to themselves, and suppressing reasons which cause such danger), and simultaneously to guarantee the respect for human rights and fundamental freedoms of patients in accordance with international standards of the protection of human rights and regarding the adequate solutions in comparable European legislations.

Compulsory detention in closed wards of psychiatric hospitals is a measure which should be used only in cases in which danger cannot be suppressed with other measures outside (of the closed ward) of a psychiatric hospital. As the legislature, beside the possibility of passing compulsory detention in a closed ward of a psychiatric hospital, did not provide courts with other measures, it thereby interfered contrary to Article 2 of the Constitution with personal liberty which is guaranteed by the provision of Article 19 (1) of the Constitution. A mental patient detained must be in a suitable manner regarding their health condition

explained reasons for which they are detained in a psychiatric hospital. Furthermore, they must be informed that they have the right to legal assistance of a legal representative of their own free choice.

One of the fundamental rights which must be guaranteed to every mental patient who is compulsorily detained is the right to judicial protection regarding the lawfulness of detention. According to the Constitutional Court, the legislature should, for proceedings of deciding on the lawfulness of detention in closed wards of psychiatric hospitals, determine short time-limits, because only prompt judicial supervision regarding the lawfulness of detention can ensure the effective protection of the patients' rights. A notice of detention shall contain data on the person detained, on their medical condition, and on the fact who had brought them to the health institution. The statute does not explicitly determine that the notice should also contain reasons leading to the compulsory detention of a patient. However, only on the basis of these reasons the court can judge whether in a particular case the compulsory detention was necessary (*ultimo ratio*). Regarding the above-stated, the Constitutional Court found that the challenged statutory regulation is inconsistent with the right to (effective) judicial protection which is guaranteed by the provision of Article 23 (1) of the Constitution.

A patient who is not capable of understanding and asserting his rights in proceedings shall be guaranteed adequate representation by which it will be provided for the effective protection of the patient's rights and interests in proceedings. As the challenged provisions of the Non-litigious Civil Procedure Act do not allow the above-mentioned they are inconsistent with the provisions of Articles 22 and 25 of the Constitution.

The measure of compulsory detention of patients in psychiatric hospitals is logically related to medical treatment (therefore it is carried out in hospitals). Its purpose is *inter alia* to suppress the reasons which caused passing the measure. Thus the detention of patients in psychiatric hospitals includes certain forms of medical treatment which ensue from the purpose and the nature of the measure. Naturally this cannot mean unrestricted authorization for carrying out any measures of medical treatment without adequate external supervision. The legislature should on one hand define which are the measures of medical treatment that ensue from the purpose and the nature of compulsory detention and that are logically connected therewith, and on the other hand determine the measures of medical treatment which exceed this framework and for which the explicit consent of the patient is needed. The Constitutional Court established that legal non-regulation of a position and the rights of a patient at the time of detention in a psychiatric hospital means an unconstitutional gap in the law which is inconsistent with the principle of legal certainty (Article 2 of the Constitution). Furthermore, the challenged statutory regulation is inconsistent with the provision of Article 51 (3) of the Constitution, which imposes on the legislature the duty to determine cases in which compulsory medical treatment is allowed.

For the protection of the patients' rights the legislature should clearly define cases and the conditions on which it is allowed to use measures of restraint and limitation. Furthermore, a certain method of supervision (supervision mechanisms) over the use of the above cited measures should be foreseen.

As the Constitutional Court established that the Non-litigious Civil Procedure Act does not regulate certain important issues regarding the compulsory detention of persons in closed wards of psychiatric hospitals, it established, in accordance with the provision of Article 48 of the Constitutional Court Act (E.g. *Zakon o Ustavnem sodišču*, Constitutional Court Act, *Official Gazette* 1994, nr. 15), the unconstitutionality of the provisions of Articles 70 to 81 of the Non-litigious Civil Procedure Act. The Constitutional Court required from the National Assembly to abolish the stated unconstitutional provisions within 6 months upon the publication of the decision in the *Official Gazette* of the Republic of Slovenia, i.e. by 24 June 2004. The Human Rights Ombudsman expected that after the warning even by the Constitutional Court the competent governmental bodies, including the Ministry of Health and the Ministry of Justice will nevertheless act adequately and that they will abolish the stated unconstitutionality by the specified deadline. Unfortunately, the expectations were again not fulfilled, because the Act that should comprehensively regulate mental health was not passed by the specified deadline. The same applies to the Amending Act that was supposed to abolish the respective unconstitutionality (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Slovenia has not yet ratified the Facultative Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. By ratifying the protocol, Slovenia would bind itself further to respecting international standards in the treatment of persons who have been deprived of their freedom. (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Protection of the child against ill-treatments

Legislative initiatives, national case law and practices of national authorities

The contents of initiatives accepted by the Human Rights Ombudsman referred to the adult's ill-treatment of children as well as to the violence among children themselves. Such events were even more frequent than a year before, which means that it is necessary to increase the violence prevention activities and efficient violence fighting measures. The Human Rights Ombudsman supports the endeavoring by the Ministry of School Affairs and Sports for prevention, discussing and mastering of violence in schools. The guidelines prepared by the competent committee analyzing violence in schools constitute a good basis for concrete elimination of such problems. Considering the fact that such ill-treatment is even more frequent beyond schools, it is necessary to start a general campaign focused on general accusation of violence and reduction of the existing excessive tolerance level to violent behavior (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Other relevant developments

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

Prison conditions generally met international standards, and the Government permitted visits by independent human rights observers. Male and female prisoners were held separately, juvenile offenders were held separately from adults, and convicted criminals were held separately from pretrial detainees (State Department 2004 Human Rights Report, Slovenia HRR04).

Article 5. Prohibition of slavery and forced labor

Trafficking in human beings

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

The Penal Code of the Republic of Slovenia (E.g. Kazenski zakonik Republike Slovenije, Penal Code of the Republic of Slovenia, *Official Gazette* 1994, nr. 94, 1999, nr. 23, 2004, nr. 40, 2004, nr. 95) was amended to specifically criminalize trafficking in persons; nevertheless, trafficking of women and girls through, to, and from the country remained a problem. Penalties for trafficking range from 1 to 10 years' imprisonment. Persons can also be prosecuted for rape, pimping, procurement of sexual acts, inducement to prostitution, sexual assault, and other related offenses. Regional police directorates had departments that investigated trafficking and organized crime. During the year, 12 persons were prosecuted for "forced slavery," and one was prosecuted for trafficking in human beings; all of the trials were ongoing at year's end.

The country was primarily a transit country and secondarily a destination country for women and teenage girls trafficked from Southeastern, Eastern, and Central Europe to Western Europe and North America. The country was also a country of origin for a small number of women and teenage girls trafficked to Western Europe. Victims were trafficked for purposes of sexual exploitation. A 2003 study by the International Organization for Migration reported that traffickers lured victims from Eastern Europe and

the Balkan countries through offers of employment without indicating that it would involve the sex industry, media advertisements promising high wages, offers of employment as entertainers and dancers, and offers of marriage. Harsh conditions in their home countries also contributed to the willingness of some women to enter into prostitution, not knowing they would become trafficking victims, subjected to severe conditions.

Traffickers reportedly subjected some trafficking victims to violence. There were no reports that government officials were involved in trafficking. Organized crime was responsible for some of the trafficking. In general, authorities did not treat trafficking victims as criminals; however, they usually were voluntarily returned to their home country either immediately upon detention or following their testimony in court.

The Government's National Coordinator for Trafficking in Persons and Interagency Working Group on Trafficking in Persons has put forward a long-term national strategy to combat trafficking. The working group, which includes representatives of different ministries, NGOs, international organizations, and the media, established standard operating procedures for first responders to ensure that victims receive information about the options and assistance available to them.

The domestic NGO Kljuc, which received some government funding in August, had a memorandum of understanding with the MOI that provided victims' immunity from prosecution and temporary legal status, including work permits and access to social services. In April, Kljuc signed another memorandum with the police, stipulating that police units would contact Kljuc during raids or investigations that potentially involved trafficking victims. Kljuc also worked to raise public awareness of trafficking, provide legal assistance, counseling, and other services to victims, and to train the police.

The MOI produced pamphlets and other informational materials for NGO-run awareness programs to sensitize potential target populations to the risks and to the approaches used by traffickers. The Ministry also worked with NGOs to provide specialized training to police and to assist the small number of victims with reintegration (State Department 2004 Human Rights Report, Slovenia HRR04).

Slovenia is a transit and, to a lesser extent, a source and destination country for women and girls trafficked to or through Slovenia mainly from Eastern and Southeastern Europe (Ukraine, Slovakia, Romania, Moldova, and Bulgaria) for the purpose of sexual exploitation. A small number of persons are trafficked from Slovenia to Western Europe, in particular to Italy and the Netherlands.

The Government of Slovenia does not fully comply with the minimum standards for the elimination of trafficking in persons; however, it is making significant efforts to do so. While the government adopted a detailed National Action Plan to Combat Trafficking in Human Beings, it has struggled to implement it due to budgetary pressures. Slovenian Government efforts to address trafficking have improved during the reporting period, but consistent budget support remains in flux. The government should continue to implement the National Action Plan and focus enforcement efforts on convicting traffickers under its new anti-trafficking legislation. Slovenian authorities should also continue to increase scrutiny of work permits and club licenses and conduct unannounced inspections of worksites where trafficking victims are believed present.

During the last year, Slovenia's law enforcement efforts to prosecute traffickers appeared modest. The new anti-trafficking legislation that came into effect in May 2004 allows the police to use methods of investigation, such as surveillance, due to the seriousness of the crime. Arresting officers had not been fully aware of the new law, but the Ministry of the Interior has begun working with the police to educate officers about the legislation. Slovenia's Penal Code (E.g. Kazenski zakonik Republike Slovenije, Penal Code of the Republic of Slovenia, *Official Gazette* 1994, nr. 94, 1999, nr. 23, 2004, nr. 40, 2004, nr. 95) specifically criminalizes trafficking for sexual exploitation and forced labor with sufficiently severe penalties. Slovenian authorities reported nine trafficking-related investigations, one ongoing prosecution and no convictions during the reporting period. In January 2005, prosecutors received a three-day training session on trafficking. Slovenia actively participated in the Stability Pact for South Eastern Europe, the

Southeastern European Cooperative Initiative (SECI), and Interpol efforts in fighting against trafficking in persons.

Slovenia improved its assistance to trafficking victims in 2004. Government funding sustained the Slovenia's only shelter run by an NGO. While the government planned to underwrite the shelter's operating costs in out years, budgetary constraints and the change of government have delayed future commitments. During 2004, the government-funded NGO assisted 25 trafficking victims, nine of whom received assistance at the shelter. Police referred trafficking victims rescued during raids or investigations to the shelter. Law enforcement did not treat victims as criminals, and the government provided victims protection from prosecution, temporary residency status, and social services. During the reporting period, Slovenia began a project to formalize mechanisms to provide information to those asylum-seekers in reception centers most at risk of falling prey to human traffickers. The project is jointly administered by the Ministry of Interior, local NGOs, and UNHCR; the Ministry of Foreign Affairs is working to expand and regionalize the project. During the reporting period, police drafted a law on witness protection, which is currently with the Ministry of Justice.

The Government of Slovenia's prevention efforts improved over the last year. The interdepartmental working group to combat trafficking continued to meet on a regular basis and adopted a detailed National Action Plan in July 2004. Government officials and activists collaborated in the working group on anti-trafficking policies and programs. The government issues a publicly available report detailing its anti-trafficking efforts annually. During the reporting period, the Ministry of Labor and the Slovenian Institute for Employment agreed on stricter criteria for issuing work permits to dancers and waitresses. The government funded the Slovenian translation of a comprehensive survey on trafficking in the country. The government partially funded preventative workshops by a local NGO in raising trafficking awareness in elementary and secondary schools. (State Department, 2005 Trafficking in Persons Report (<http://www.state.gov/g/tip/rls/tiprpt/2005/>); SLOVENIA (TIER 2).

Legislative initiatives, national case law and practices of national authorities

In accordance with the Activity Plan on Fighting against the Trafficking in Human Beings, Ključ NGO – Center for the Fight against the Trafficking in Human Beings should have received in 2005 a financial support of three competent ministries, but it has not received any funds in spite of many applications. Therefore it faces big financial problems and its operation is threatened. The former government adopted a decision on financing projects for fighting against trafficking in human beings, such as envisaged by the respective activity plan for the period from 2004 to 2006. In the opinion of the Ministry of Justice Ključ NGO was not entitled to the respective funds from the national budget. Such financing was supposed to breach the Prevention of Corruption Act (E.g. *Zakon o preprečevanju korupcije, Prevention of Corruption Act, Official Gazette 2004, nr. 2*), therefore Ključ should harmonize its activities with Article 30 of the mentioned Act. The latter specifies public procurements should not take place among family members (*Društvo Ključ na robu preživetja, STA; Financiranje pomoči žrtvam trgovine z ljudmi, Društvo Ključ že več kot pol leta brez denarja, Delo, 4/10-2005, str.2*).

The Ministry of Labor, Family and Social Affairs in cooperation with the Ministry of Foreign Affairs, Ministry of Justice and Ministry of Interior prepared a Bill of the Ratification of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography (E.g. *Izbirni protokol h Konvenciji o otrokovih pravicah glede prodaje otrok, otroške prostitucije in otroške pornografije, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography*) complementing Articles 1, 11, 21, 32, 33, 34, 35 and 36 of the Convention on the Rights of the Child (E.g. *Konvencija o otrokovih pravicah, Convention on the Rights of the Child*) which the Republic of Slovenia inherited under the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia (E.g. *Temeljna ustavna listina o samostojnosti in suverenosti Republike Slovenije, Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, Official Gazette 1991, nr. 1*) and under the Act Notifying Succession to Treaties of the United Nations and Treaties Adopted by the International Atomic Energy Organization (E.g. *Akt o o notifikaciji nasledstva glede konvencij OZN in konvencij,*

sprejetih v mednarodni organizaciji za atomsko energijo, Act Notifying Succession to Treaties of the United Nations and Treaties Adopted by the International Atomic Energy Organization, *Official Gazette* 1992, nr. 35) that grants some higher level of children's rights protection regarding children trafficking, children prostitution and children pornography, discussed and adopted by the National Assembly of the Republic of Slovenia on 15 July 2004 (Uradni list RS, št. 85/2004 - MP, št. 23/2004) (Poročilo o delu Medresorske delovne skupine za boj proti trgovini z ljudmi v letu 2004; <http://www.vlada.si/?grl=dloVld&gr2=vlaPro&gr3=dloSkp&gr4=&id=&lng=slo>).

Moreover, in December 2004 the Government of the Republic of Slovenia adopted the initiative for conclusion of the Memorandum of Cooperation between the Government of the Republic of Slovenia and the International Organization for Migration – IOM (E.g. Memorandum of Cooperation between the Government of the Republic of Slovenia and the International Organization for Migration – IOM=International Organization for Migration) in order to provide voluntary return of particular categories of migrants, i.e. the persons whereof the application for asylum was finally refused by the competent body; the persons illegally residing in the Republic of Slovenia; the applicants for asylum who wish to be included into the program already before the completion of the asylum proceedings; the persons with a status of a temporary shelter; victims of the trafficking in human beings and unaccompanied minors. With a help of the Delegation of the European Commission in Slovenia, the International Organization for Migration of Ljubljana, implemented the eight months project with a title: *"Education on Integration of Migrants and Refugees into the Slovenian Society"*. The main purpose of the Project was to encourage the representatives of the Slovenian Government to the development and implementation of comprehensive national integration politics and thereby to hasten the integration process of migrants, including victims of the trafficking in human beings and refugees into the Slovenian society. Additionally, there was published a brochure containing the basic information on integration, the statistical data and examples of good practices from abroad (Poročilo o delu Medresorske delovne skupine za boj proti trgovini z ljudmi v letu 2004; <http://www.vlada.si/?grl=dloVld&gr2=vlaPro&gr3=dloSkp&gr4=&id=&lng=slo>).

In 2004, Ključ NGO proceeded with particular preventive programs in elementary and secondary schools in Slovenia focused on avoidance of trafficking in human beings. The programs include lectures and a short film on trafficking in human beings. Moreover, Ključ NGO started implementing a new special program for prevention of children abuse, taken over from Prevention Activities Center. The project has been practiced in the Slovenian elementary schools already since 1994. In 2004, it covered 84 workshops for approximately 2,100 pupils.

Through adoption of the Action Plan for the Period of 2004 - 2006 the Slovenian Government entered into the organized fight against trafficking in human beings on all levels. Active participation of the Ministry of Labor, Family and Social Affairs and the received funds lead to the realization of the set goals. It is particularly worth while mentioning the progress in educations of experts dealing with the victims of trafficking in human beings, in particular relating to the activities of the State Prosecutor's Offices. The Slovenian positive experiences in prevention of trafficking in human beings are also transferred to the countries of South-East Europe (Poročilo o delu Medresorske delovne skupine za boj proti trgovini z ljudmi v letu 2004; <http://www.vlada.si/?grl=dloVld&gr2=vlaPro&gr3=dloSkp&gr4=&id=&lng=slo>).

CHAPTER II. FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention.

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

During the year, the independent Commission for the Prevention of Corruption received nine credible reports of police corruption, which were referred to the police for further investigation. There had been no prosecutions, trials, or dismissals based on the reports by year's end. Initially, police corruption and abuse are investigated internally. If there is evidence of wrongdoing, the officers involved may be referred to the MOI or the prosecutor's office, depending on the severity of the breach.

Detainees have the right to contact a legal counsel upon arrest, and authorities generally respected this right in practice. Authorities must advise detainees in writing within 24 hours of the reasons for the arrest.

Detention may last up to 6 months before charges are brought; once charges are brought, detention may be extended for a maximum of 2 years. Persons detained for more than 2 years while awaiting trial or while their trial is ongoing must be released pending conclusion of their trial. Lengthy pretrial detention was not a widespread problem, and defendants generally were released on bail, except in the most serious criminal cases. The law also provides safeguards against self-incrimination (State Department 2004 Human Rights Report, Slovenia HRR04).

Legislative initiatives, national case law and practices of national authorities

All bodies participating in the criminal proceedings should consistently consider all laws granting respect and protection of human rights, in particular in pre-criminal proceedings. It is necessary to take into account that detention should be as short as possible and in such circumstances that human privacy and dignity are duly respected (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

The Government should provide adequate conditions for the police to perform its tasks well, yet considering legal guarantees during the pre-criminal proceedings and/or during the police detention proceedings as well as in the criminal proceedings (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

In 2004, the Ministry of the Interior and the Police started new appeals resolving proceedings relating to the appeals concerned with police proceedings. Initially information confirm that fewer appeals were filed to the ministry or to the police based on the new method in accordance with Article 28 of the Police Act (E.g. Zakon o policiji, Police Act, *Official Gazette* 1998, nr. 49, 2001, nr. 93, 2002, nr. 56, 2003, nr. 26, 2003, nr. 79, 2003, nr. 110, 2004, nr. 43, 2004, nr. 50, 2004, nr. 102, 2005, nr. 53, 2005, nr. 70, 2005, nr. 98) and Rules on Resolving of Appeals (E.g. Pravilnik o reševanju pritožb, Rules on Resolving of Appeals, *Official Gazette* 2004, nr. 1). Although there is not much room for settlements by mutual agreement, these proceedings are nevertheless not irrelevant.

In 2004, too, most appeals referred to the abuse of the policemen's powers. Again, most cases related to unlawful and incorrect use of forced measures, most frequently physical force. At the same time, efficiency of police measures is a matter of permanent stress. The Human Rights Ombudsman keeps emphasizing that necessary police measures should never be omitted, because in case of the contrary

safety of citizens could be threatened (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The Human Rights Ombudsman proposed to the police at the frontier to use forms in the principal world languages and/or the languages of the persons who crossed the border most frequently and not only in the Slovenian language. Considering the legislation in force, the police could use foreign languages in its contacts with foreigners. All forms used by the police for such purpose may, of course, be in the Slovenian language, yet completed with the translation into foreign languages (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

In 2001, the Human Rights Ombudsman filed the request for review of constitutionality of Article 49 (4) of the Penal Code of the Republic of Slovenia (E.g. Kazenski zakonik Republike Slovenije, Penal Code of the Republic of Slovenia, *Official Gazette* 1994, nr. 94, 1999, nr. 23, 2004, nr. 40, 2004, nr. 95). He proposed the review of interpretation in the way the penalty day of house detention is treated equally as a day of ordinary detention and/or the day of arrest. At the same time it was proposed that the Constitutional Court should decide that the Penal Code of the Republic of Slovenia is contrary to the Constitution because it does not include the day of house detention into the penalty of imprisonment, juvenile imprisonment and into the fine. In parallel, the National Assembly should eliminate the stated unconstitutionality by the specified deadline. The Constitutional Court rejected (CC (Constitutional Court), nr. U-I-131/01, 11 March 2004, no published) the Human Rights Ombudsman request for the review of constitutionality. Although the Human Rights Ombudsman could have legitimately filed its request on the basis of his human rights protective function (with reference to the broad interpretation of this institute) there should be, in accordance with Article 23 (1) (6) of the Constitutional Court Act (E.g. Zakon o Ustavnem sodišču, Constitutional Court Act, *Official Gazette* 1994, nr. 15), a certain relationship between the filed request and the particular case treated by the Human Rights Ombudsman. However, discussing the concrete case the Constitutional Court established the absence of such relationship. Accordingly, the respective procedural condition for the legitimate request of the Human Rights Ombudsman was not fulfilled. In this case the Constitutional Court decided for the narrow interpretation of the Human Rights Ombudsman's competence. Such attitude limits the Human Rights Ombudsman's self-initiative to file requests to the Constitutional Court (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Deprivation of liberty for foreigners

Legislative initiatives, national case law and practices of national authorities

The Police Act (E.g. Zakon o policiji, Police Act, *Official Gazette* 1998, nr. 49, 2001, nr. 93, 2002, nr. 56, 2003, nr. 26, 2003, nr. 79, 2003, nr. 110, 2004, nr. 43, 2004, nr. 50, 2004, nr. 102, 2005, nr. 53, 2005, nr. 70, 2005, nr. 98) specifies in Article 59 that the police also keeps and maintains records of persons. In November 2004, there were published the Rules on the Keeping of Police Records (E.g. Pravilnik o načinu vodenja policijskih evidenc, Rules on the Keeping of Police Records, *Official Gazette* 2000, nr. 121) containing the provisions on such records. Since 1 January 2005 only computer-aided records have been kept. The Human Rights Ombudsman agrees with such unification of records (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Article 7. Respect for private and family life

Article 8. Protection of personal data

Protection of personal data

Legislative initiatives, national case law and practices of national authorities

The Constitutional Court held that the established unconstitutionality of certain provisions of Section 2 of Chapter II of the Referendum and Public Initiative Act (hereinafter: the Act) (E.g. *Zakon o referendumu in ljudski iniciativi*, Referendum and Public Initiative Act, *Official Gazette* 1994, nr. 15, 1996, nr. 38, 1996, nr. 57, 2001, nr. 59, 2005, nr. 24, 2005, nr. 83), in the part relating to a preliminary procedure, in particular Article 13 (3) and Article 13 (5) and Article 18, caused inconsistency of the entire regulation of a preliminary procedure such that the annulment of only certain provisions or merely the establishment of unconstitutionality of gaps in the law was not possible but the derogation of the whole section of the Act, which regulates the preliminary referendum, was necessary.

The Constitutional Court established that Article 13 (3) of the Act did not precisely and clearly enough regulate the powers of the President of the National Assembly, the legal position of an initiator, and judicial protection against decisions of the President of the National Assembly. Filling the gap in the law by *mutatis mutandis* application of the Rules of Procedure of the National Assembly does not on its own suffice. The issues concerning the powers of the President of the National Assembly regarding the filing of an initiative, and concerning judicial protection against their decisions, would still be insufficiently regulated, which calls for the adoption of a special regulation.

The Act is inconsistent with Article 38 of the Constitution (E.g. *Ustava Republike Slovenije*, Constitution of the Republic of Slovenia, *Official Gazette* 1991, nr. 33, 1997, nr. 42, 2000, nr. 66, 2003, nr. 24, 2004, nr. 69) (protection of personal data), as the personal data of voters who supported an initiative to lodge a request for calling a referendum should not be part of documents used in the subsequent referendum procedure, or personal data protection should be ensured in some other manner.

The Constitutional Court did not find a constitutionally admissible, i.e. legitimate, aim in the statutory regulation which would provide that voters who personally cannot come to an administrative division due to their illness, medical treatment or disability cannot support a request for calling a referendum. The manner in which voters give support to a request for calling a referendum should be determined more precisely and should not in every case depend on instructions and directions given by the competent authority or the minister.

The Constitutional Court established an inconsistency of the challenged regulation with Article 44 (participation in the management of public affairs) in conjunction with Article 90 (3) (legislative referendum) of the Constitution, since the Constitutional Court did not find any substantiated reason for limiting the constitutional right, due to which the Act could not envisage the possibility of giving support to a request for calling a referendum also for those voters who do not permanently reside in the Republic of Slovenia, and are entered in the voting right register of citizens who do not permanently reside in the Republic of Slovenia.

Also regarding citizens, who only temporarily reside abroad, or who are abroad during the time of collecting signatures to support a request for calling a referendum, and who for that reason cannot give their personal support before the competent authority which is in charge of the voting right register, the Constitutional Court did not find a sound reason to defend the regulation determining that the mentioned citizens of the Republic of Slovenia cannot exercise their right to a referendum already in a preliminary procedure, due to the fact that they are not in the Republic of Slovenia at the time of collecting signatures. Thus, the Constitutional Court holds that the challenged regulation was inconsistent with Article 44, in conjunction with Article 90 (3) of the Constitution.

In accordance with the requirement that the statutory regulation of a referendum must ensure an effective exercise of the right to a referendum, the Constitutional Court held that the regulation of Article 18 of the Act was incomplete and thus inconsistent with the principle of determinacy of legal norms, as one of the principles of a state governed by the rule of law determined in Article 2 of the Constitution. The Act should have contained at least the crucial rules concerning the manner of submitting referendum questions, in particular in those cases in which a referendum question proposes the method how a certain issue must be regulated.

The Act should contain provisions which could prevent the calling of a referendum where repeated initiatives would make it possible to establish the existence of unconstitutional intentions by those who submitted such (CC (Constitutional Court), nr.U-I-217/02, 17 February 2005, *Official Gazette* 2005, nr. 24).

A new Personal Data Protection Act (E.g. Zakon o varstvu osebnih podatkov, Personal Data Protection Act, *Official Gazette* 2004, nr. 86) was adopted in 2004. It was prepared also due to the criticism by the European Union that the respective Slovenian legislation is not harmonized with the Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data (E.g. Direktiva 95/46/ES o varstvu posameznikov pri obdelavi osebnih podatkov in o prostem pretoku teh podatkov, Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data, *Official Journal* nr. L 281 of 23/11/1995, p. 0031-0050). Nevertheless, this new Act did not bring any significant changes of the existing system, but only reduced the toughness of the existing regulation. In particular in private sector, the new Act allows for the interventions into personal data in establishment of records without personal consent. Without such personal consent in writing there is more possibility for processing of sensitive personal data, such as data on racial, national origin, confession, health condition, sexual life, preliminary punishment and biometric characteristics.

Such flexibility of establishing personal data records, however require more efficient supervisory mechanisms. In Slovenia, such supervision as required by the corresponding EU Directive has always been a weak point. The new Act introduces a new supervisory governmental body for personal data protection which will start its activities as late as 1 January 2006. Until then the situation will remain more or less unchanged, although the Human Rights Ombudsman has lost his special role of independent supervisor based on the amendments of the former Act in 2001 (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The Payment Transactions Act with amendments, enforced on 1 October 2004 (*Zakon o spremembah in dopolnitvah Zakona o plačilnem prometu*, Act on Changes and Amendments of the Payment Transactions Act, *Official Gazette* 2004, and nr. 37) specifies in Article 29 (2) that the data on the transaction account are public and accessible on the website of the Bank of Slovenia. The Act even imposes on the Bank of Slovenia to publish on the website even the data on natural person's transaction accounts. In spite of the foreseen changes and amendments of the Payment Transactions Act provided for the public character of the data on transaction accounts of those account holders who are legal entities and/or individuals, the above mentioned solution was adopted and enforced. On the basis of the available parliamentary materials it is hard to presume weighing of different constitutional rights. Therefore it is also not possible to determine the reasons for such rough interference with the constitutional right to personal data protection (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Protection of the private life of workers

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

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

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

We, as members of the European Parliament, are disturbed and worried by the derogative tones of speech used in the National Assembly of the Republic of Slovenia during the debate on the Bill of Registration of Same-sex Partnerships on June the 17th. We would like to encourage the Presidency of the Parliament to conduct its sessions in a fair and equal manner. Homophobic and otherwise insulting remarks are not of good taste nor should be allowed in any parliamentary debate or discussion. We hope for an appropriate and balanced discussion today, on the 22nd of June, in which all opinions and arguments be regarded with the same respect and treated in accordance with good parliamentary etiquette (Open letter to the President of the Slovenian Parliament Mr. France Cukjati, 22 June 2005, by Michael Cashman, Sophie Int'Veld, Alexander Stubb, Raúl Romeva, Ewa Hedkvist-Petersen, Mojca Drnar Murko, Anna Hedh, Asa Westlund, David Hammerstein-Mintz, Monica Frassoni, Sarah Ludford, Holger Krahmer, John Bowis, Helene Flautere, Ieke van der Burg, Luis Yanez-Barnuevo Garcia; Supporters of the Letter: Jan Andersson, Inger Segelstöm, Thijs Berman, Roselyne Bachelot, Adeline Hazan, Piia-Noora Kauppi).

Legislative initiatives, national case law and practices of national authorities

In 1997, the Ministry of Labor, Family and Social Affairs started the process of adopting the bill on same-sex partnerships under the liberal government. The Ministry named the expert commission, after their own request the representatives of the lesbian group ŠKUC-LL and gay group Magnus, were allowed to take an active part in the process of drafting the bill. On 22 June 2005, the National Assembly of the Republic of Slovenia where the conservative parties now have majority, adopted the amended Registration of Same-Sex Partnership Act (E.g. Zakon o registraciji istospolne partnerske skupnosti, Registration of Same-Sex Partnership Act, *Official Gazette* 2005, nr. 65). Of the 47 deputies present in the 90-seat chamber, 44 ruling coalition deputies voted for the government-proposed bill, which allows same-sex couples to register their relationship although not officially married. Three lawmakers, from a nationalist party, were against it. The Act was enforced by 23 July 2005; however its application starts one year after its enforcement.

The Act sets down the conditions and the procedure for the registration of same-sex unions, as well as the legal consequences resulting therefrom, the termination of such a union and the relations between the partners after the termination of the union. Article 2 defines the notion of registered same-sex union. According to it the registered same-sex union is a legally established union of two women or two men who register their union before the competent authority in a manner, determined by the Act. The main legal consequences are determined in Articles 8 to 24. There are provisions concerning the rights and obligations of the partners in union, the property of each individual partner and the joint property and earnings of the couple, the provisions on management of their property, the responsibility for the assumed obligations, the division of the property, the amount of shares in joint property, conclusion of contracts between the partners, there is also the right of one partner to be sustained by another, the right to housing protection, certain partner's rights in case of illness of another partner (acquiring information on the health condition of the partner who is ill and the right to visits in health institutions) and two clauses on inheritance, limited to joint property, acquired through the work accomplished throughout the duration of the union. There are also provisions concerning the procedure of termination of the union and certain legal consequences resulting from it. Registration of the Same-Sex Partnership Act does not deal with the relations between the partners and the children of either of them. NGOs were said to be involved in preparing the bill and could make their proposals. From the rights they proposed, the right to inheritance of common property was included in the Act, but most of the others were firmly rejected by the government.

The government plans to draw up changes to other laws within the next six months. Legislation dealing with criminal proceedings, lawsuits and other proceedings will be amended to include the rights resulting from the registration of same-sex unions.

After the adoption of the Act, most NGOs protested that their proposals were not considered. The Society for the Integration of Homosexuality, the Peace Institute and Lingisium, Group for Same-Sex Oriented Youth believe that the adoption of the Act was a positive step since it somewhat regulates the previously unregulated field, however, after the change of the government the Ministry of Labor, Family and Social Affairs did not wish to enter into a dialogue with them and they were able to submit their comments and proposals only on one occasion. In their opinion, the main deficiency of the Act is that it does not provide for a status of a "relative" for the same-sex partner and thus the partner will not be able to exercise his rights (e.g. health and pension insurance, social security, procedural rights) which are provided for the "relatives". As, therefore, certain rights are consciously excluded from the Act, they deem the Act discriminatory and have filed a petition for the review of constitutionality to the Constitutional Court. The NGOs ŠKUC-LL and ŠKUC-Magnus also state that the Act is introducing a differentiated treatment and is thus inconsistent with the principle of equality of all citizens and the principle of equal opportunities. They also condemned the level of discussion in the National Assembly during the proceedings of adoption of the Act.

The bill was also opposed by some rightist deputies, who charged that it went too far by attempting to give equal rights to homosexual couples. A deputy from the rightist Slovene National Party said he voted against the bill because he didn't "want my children, or any other children" being encouraged to register their homosexual relation. Additionally, a deputy from the ruling Slovene Democratic Party, said after the vote he was "proud" to see that the government "gathered strength to solve the problem that existed for a long time."

In the opinion of the petitioner the same-sex partnerships are not legally regulated. The Constitutional Court stated that by the adoption of the Registration of the Same-Sex Partnership Act (E.g. *Zakon o registraciji istospolne partnerske skupnosti, Registration of Same-Sex Partnership Act, Official Gazette* 2005, nr. 65) the same-sex partnerships were legally regulated. Therefore the petitioner does not have any legal interest to initiate the proceedings for the constitutional review of the Marriage and Family Relations Act (E.g. *Zakon o zakonski zvezi in družinskih razmerjih, Marriage and Family Relations Act, Official Gazette*, 1976, nr. 15, 1986, nr. 30, 1989, nr. 1, 1989, nr. 14, 1994, nr. 13, 1994, nr. 82, 1995, nr. 29, 1999, nr. 26, 2000, nr. 70, 2004, nr. 16, 2004, nr. 69) (CC (Constitutional Court), nr. U-I-421/02, 22 September 2005).

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

The Constitution provides for freedom of religion, and the Government generally respected this right in practice. There were no formal requirements for recognition as a religion by the Government. Religious communities must register with the Government's Office for Religious Communities if they wish to be legal entities, and registration entitles such groups to value added tax rebates. In response to complaints from several groups that the office had failed to act on their registration applications, the Secretary General of the Government in June clarified registration procedures and instructed the office to process outstanding applications. During the year, the office had approved four out of six applications; two applications were still pending at year's end.

The Constitution states that parents are entitled to give their children "a moral and religious upbringing." Only the schools supported by religious bodies taught religion.

Societal attitudes toward the minority Muslim and Serbian Orthodox communities were generally tolerant; however, some persons feared the possible emergence of Muslim fundamentalism, and representatives of several opposition political parties spread this fear. According to the 2002 census, 2.4 percent of the population of the country is Muslim. While there are no governmental restrictions on the Muslim community's freedom of worship, services commonly were held in private homes under cramped conditions. In December 2003, 34 years after the project was originally proposed, the Ljubljana Municipal Council approved zoning changes that would permit construction of a mosque. In February, opponents of the mosque's construction gathered enough signatures to call a referendum on whether to permit required zoning changes. On 8 July 2004, the Constitutional Court blocked the referendum ((CC (Constitutional Court), nr.U-I-111/04, 8 July 2004, *Official Gazette* 2004, nr. 77) on the grounds that it would violate the constitutional provision providing for freedom of religion. At year's end, the Islamic community had selected a plot of land for the mosque and was moving ahead with construction plans (State Department 2004 Human Rights Report, Slovenia HRR04).

Article 11. Freedom of expression and of information

Freedom of expression and of information

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

The law provides for free public access to all information controlled by state or local institutions and their agents. The Government provided such access for both citizens and non-citizens alike, including foreign media. The Government may deny access to public information only if information is classified; it contains personal data protected by privacy laws, and in certain other narrowly defined exceptions (State Department 2004 Human Rights Report, Slovenia HRR04).

Legislative initiatives, national case law and practices of national authorities

The Human Rights Ombudsman does not agree with the proceedings of adoption of the Radio and Television of Slovenia Act (E.g. *Zakon o Radioteleviziji Slovenija*, Radio and Television of Slovenia Act, *Official Gazette* 2005, nr. 96). It was a case when other opinions and remarks of different experts were not considered. Such proceedings were contrary with the basic principles of democracy. (<http://www.referendum-rtv.si/sl/>).

The Radio and Television of Slovenia Act was enforced on 12 November 2005 after the adoption by the Slovenian citizens on the subsequent legislative referendum on 25 September 2005.

The Government of the Republic of Slovenia proposed a new law setting out the obligations and governance of Slovenia's public service broadcaster, Radio and television of Slovenia (RTV Slovenija). The Law has been considered with regard to compliance with the European Convention on Transfrontier Television (CETS 132) (E.g. *Evropska konvencija o čezmejni televiziji*, European Convention on Transfrontier Television, *Official Gazette* 1999, nr. 57, Treaties 1999, nr. 18) and the European Convention on Human Rights (CETS 005) (E.g. *Evropska konvencija o varstvu človekovih pravic in temeljnih svoboščin*, European Convention on Human Rights and Fundamental Freedoms, *Official Gazette* 1994, nr. 33, Treaties 1994, nr. 7) both of which the Republic of Slovenia is a signatory. In addition, the Law has been analyzed with regard to international good practice, and in particular the Council of Europe Recommendation R (96) 10 on the Guarantee of Independence of Public Service Broadcasting. The experts recommended that, in order to comply with Council of Europe standards, the Law needs to be

reviewed and amended with particular attention given to the appointments to the Programming Council and the Supervisory Board, and to the funding arrangements for Radio and television of Slovenia.

The Council of Europe Recommendation (96) 10 (E.g. Priporočilo Sveta Evrope (96)10 o zagotavljanju neodvisnosti za javne službe obveščanja) underlines that member states should include in their domestic law provisions guaranteeing the independence of public service broadcasting organizations, and that the legal framework governing these organizations should clearly stipulate their editorial independence and institutional autonomy. The Radio and television of Slovenia Act establishes three governing bodies of the Radio and television of Slovenia: The Programming Council, The Director General and The Supervisory Board. The Programming Council decides the broadcasting standards, the program profile and plans and appoints and dismisses the Director General. The Director General is the combined supreme editor-in-chief and top manager. The Supervisory Board ensures that everything is done according to rules and regulations. However, the division of powers amongst the three bodies should be clarified, and the law should be adjusted in order to ensure the independence of Radio and television of Slovenia, especially from undue political influence. Regarding the independence of Radio and television of Slovenia, the proposed Law is insufficient to guarantee independence from political influence and interference. Both the Programming Council and the Supervisory Board are in reality appointed by Parliament/Government; and it is the Programming Council which appoints the Director General. In a situation where a political party has a majority in Parliament and forms the government, the potential for strong political influence is evident. There are no safeguards for the independence of the Radio and television of Slovenia in such a situation.

It is strongly advised that these portions of the Act are reconsidered, in full consultation with interested parties and experts, to devise a means of appointment and procedures for the Programming Council and the Supervisory Board which safeguards Radio and television of Slovenia's independence and freedom from any potential political interference.

A vital component to maintaining the independence of the public service broadcaster is to ensure its financial viability and to safeguard it from political interference through the funding process. Ideally, the funding mechanism should be agreed every few years (on the basis of projected budgets and corporate plans) to provide a degree of autonomy and enable forward planning. This Act does not contain sufficient detail on this very important point, and thus leaves Radio and television of Slovenia open to political pressure. The on-going ability of the public service broadcaster to perform its remit and to maintain its independence depends on the on-going certainty of its funding. The actual funding process plays a big part in this, as discussed above, but so too does the manner in which license fees are collected and paid. The Council of Europe recommends, "ill-conceived collection and payment methods or irregular or delayed payment may endanger the continuity of public service broadcasting activities. In the specific case of the license fee, close attention should be paid to the possible repercussions of exemption from payment for certain categories on the resources of the public service broadcasters and hence on the fulfillment of their missions."

The European Convention on Human Rights provides for the right to privacy. The collection of unnecessary personal data can be construed as an invasion of privacy. In any event, collecting information that is not strictly needed for the purpose under consideration is burdensome, both on the collectors, and on individuals from whom the information is requested. In the case of this Law, it is not at all clear why Radio and television of Slovenia would require tax references or employment details from license fee payers. Seeking this information may be unnecessarily bureaucratic and intrusive.

The European Convention on Human Rights provides for a right of appeal. Where penalties can be applied against Radio and television of Slovenia or license fee payers, the Law does not state whether there is an appeal mechanism, or who exercises the right of appeal. Such a right must exist, and ought to be referred to in the Law (Analysis of the Law on Radio and Television of the Republic of Slovenia (RTV Slovenija), by Sigve Gramstad and Eve Salomon, ATCM(2005)013 (English only), Strasbourg, 19 September 2005).

Under the Official Gazette of the Republic of Slovenia Act (*Zakon o Uradnem listu Republike Slovenije, Official Gazette of the Republic of Slovenia Act, Official Gazette 1996, nr. 57, 2005, nr. 90.*) the Governmental Service for Legislation is obliged to issue a new register of all regulations that were published in the Official Gazette. However, in practice only a register of the State regulations has been issued but not a register of regulations of local communities that were published in the Official Gazette. Moreover, the Governmental Service for Legislation does not fulfill one of the tasks imposed by the Official Gazette of the Republic of Slovenia Act. Additionally, any local community shall provide for the access to all its local regulations through its own website. Beside this it is also a duty of the Governmental Service for Legislation (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Media pluralism and fair treatment of the information by the media

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

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice and did not restrict academic freedom; however, there were reports that indirect political and economic pressures continued to influence the media, resulting in occasional self-censorship.

There were credible reports that advertisers pressured media outlets to manipulate their presentation of public issues.

The press was active and independent; however, major media did not represent a broad range of political or ethnic interests. The major print media were supported through private investment and advertising, and the Government owned substantial stock in many of the companies that were shareholders in the major media houses. Three of the six national television channels were part of the government-subsidized Radio and Television of Slovenia network. The cultural publications and book publishing received governmental subsidies.

All major towns had radio stations and cable television. A newspaper was published for the ethnic Italian minority living on the Adriatic coast. Bosnian refugees and the Albanian community had newsletters in their own languages. Numerous foreign broadcasts were accessible via satellite and cable, and foreign newspapers, magazines, and journals were widely available. Minority language television and radio broadcasts were available.

The law requires the media to offer free space and broadcasting time to political parties at election time. Television networks routinely provided public figures and opinion makers from across the political spectrum access to a broad range of programming and advertising opportunities.

Last year, the Maribor District Prosecutor filed five indictments in connection with the 2001 beating of investigative journalist Miro Petek, and a trial commenced in the middle of the same year. Later, a special National Assembly commission looking into the Government's role in the police investigation of the beating and trial stated that a determination of political interference could not be made. The trial was not concluded at the last year's end (State Department 2004 Human Rights Report, Slovenia HRR04).

Article 12. Freedom of assembly and of association

Article 13. Freedom of the arts and sciences

Article 14. Right to education

Article 15. Freedom to choose an occupation and right to engage in work**Article 16. Freedom to conduct a business****Article 17. Right to property**The right to property and the restrictions to this right*International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up*

Eligibility to file a claim for denationalization of property depends on the citizenship of the claimant at the time the property was nationalized; however, current citizenship is not a factor in how the claims are processed. The Government did not track the claims of non-citizens separately from those of citizens. Claims filed by individuals who were not resident in the country took longer to resolve because they commonly did not have local legal representation actively engaged in monitoring their cases and because it took longer for them to gather and submit required supporting documentation. Court backlogs also contributed to delays in resolving claims for denationalization of property (State Department 2004 Human Rights Report, Slovenia HRR04).

The Roman Catholic Church was a major property holder in the Kingdom of Yugoslavia before World War II. After the war, much church property was confiscated and nationalized by the Socialist Federal Republic of Yugoslavia. Despite the Catholic Church's numerical predominance, restitution of its property remains a politically unpopular issue. In 2001, the Ministry of Agriculture issued a decree returning approximately 20,396 acres of forest in Triglav National Park to the Catholic Church; however, in 2002, the Ljubljana Administrative Court annulled this decree in response to multiple legal challenges. The Catholic Church challenged the annulment in the Supreme Court, and a portion of the forest lands was returned in late 2003. In March 2005, property located in eastern Slovenia was returned to the Catholic Church (International Religious Report 2005, released on 8/11-2005 by the USA State Department, Bureau of Democracy, Human Rights, and Labor, <http://www.state.gov/g/drl/rls/irf2005/51581.htm>).

Legislative initiatives, national case law and practices of national authorities

By taking additional efficient measures and through additional activities, the Government and the competent ministries shall provide for the soonest termination of all unresolved denationalization cases (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

Compared with the previous year, the number of initiatives submitted to the Human Rights Ombudsman concerning unresolved denationalization cases was lower in 2004. Such situation could be a sign of improvement resulting from the completion of the proceedings under the Denationalization Act (E.g. Zakon o denacionalizaciji, Denationalization Act, *Official Gazette* 1991, nr. 27, 1992, nr. 56, 1993, nr. 13, 1993, nr. 31, 1995, nr. 24, 1995, nr. 29, 1995, nr. 74, 1997, nr. 20, 1997, nr. 23, 1997, nr. 41, 1997, nr. 49, 1997, nr. 87, 1998, nr. 65, 1998, nr. 67, 1998, nr. 83, 1999, nr. 11, 1999, nr. 31, 1999, nr. 60, 2000, nr. 1, 2000, nr. 66, 2002, nr. 54, 2004, nr. 54, 2004, nr. 56, 2004, nr. 62, 2004, nr. 63). However, there are still unresolved cases where the competent bodies did not begin the respective proceedings. Additionally, such situation has been confirmed by periodical reports of the Ministry of Justice that observes the implementation of denationalization. In accordance with the time-table, adopted by the Government of the Republic of Slovenia on 23 January 2003 the outstanding cases shall be resolved by the end of 2004 (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The mere fact that the property was transferred from private to state ownership on two legal bases does not by itself indicate that the legislature had a sound reason which would justify a different regulation regarding taking into account the damages, awarded at the nationalization. Moreover, the legislature did not have any other sound reason which would justify a different regulation of the legal position of persons whose property was nationalized on the basis of the Expropriation Act of 1957 (E.g. *Zakon o razlastitvi, Expropriation Act, Official Gazette FLRJ* 1957, nr. 12) in comparison to persons whose property was nationalized on the basis of a regulation, determined in Article 3 of the Denationalization Act (E.g. *Zakon o denacionalizaciji, Denationalization Act, Official Gazette* 1991, nr. 27, 1992, nr. 56, 1993, nr. 13, 1993, nr. 31, 1995, nr. 24, 1995, nr. 29, 1995, nr. 74, 1997, nr. 20, 1997, nr. 23, 1997, nr. 41, 1997, nr. 49, 1997, nr. 87, 1998, nr. 65, 1998, nr. 67, 1998, nr. 83, 1999, nr. 11, 1999, nr. 31, 1999, nr. 60, 2000, nr. 1, 2000, nr. 66, 2002, nr. 54, 2004, nr. 54, 2004, nr. 56, 2004, nr. 62, 2004, nr. 63). Therefore, a regulation which excludes persons whose property was nationalized on the basis of the Expropriation Act of 1957 from the circle of persons entitled to denationalization is inconsistent with Article 14 (2) of the Constitution. Such a regulation follows from the requirement of gratuity, determined in Article 4 of the Denationalization Act. Therefore, the Constitutional Court annulled the above stated requirement, insofar as it applies to property which was nationalized on the basis of the Expropriation Act of 1957 (CC (Constitutional Court), nr.U-I-58/04, 10 February 2005, *Official Gazette* 2005, nr. 18).

The challenged regulation does not provide for judicial protection of land owners even in the case where it is disputable whether a certain piece of land is actually a constituent part of a public railway infrastructure according to Article 10 of the Railway Transport Act (E.g. *Zakon o železniškem prometu, Railway Transport Act, Official Gazette* 1999, nr. 92, 2001, nr. 11, 2001, nr. 33, 2002, nr. 110, 2003, nr. 14, 2003, nr. 56, 2003, nr. 83, 2005, nr. 26). If the regulation does not provide accordingly, it interferes with the right to judicial protection as determined by Article 23 as well as Article 15 (4) of the Constitution. In cases, in which a piece of land could be considered public railway infrastructure according to the Railway Transport Act, the challenged provision deprives the individual or the legal entity of the ownership right. The Constitution determines in Article 69 that expropriation (revocation or limitation of ownership rights in the public interest) is possible. However, Article 69 of the Constitution does not allow for a statute to have direct expropriation effects. Therefore, every *ex lege* statutory expropriation would be contrary to Article 69 of the Constitution alone, irrespective of the fact that the legislature might have explicitly determined such deprivation of ownership rights by statute. Therefore, the challenged regulation of the Railway Transport Act is inconsistent with Articles 2, 23, 33, and 69 of the Constitution (CC (Constitutional Court), nr.U-I-316/04, 3 March 2005, *Official Gazette* 2005, nr. 29).

Irrespective of the special protection of agrarian communities, the legislature explicitly determined a special regime of inheritance of returned property only for property rights, returned according to the Act on Reestablishment of Agricultural Communities and Restitution of Their Property and Rights (E.g. *Zakon o ponovni vzpostavitvi agrarnih skupnosti ter vrnitvi njihovega premoženja in pravic, Act on Reestablishment of Agricultural Communities and Restitution of Their Property and Rights, Official Gazette* 1994, nr. 5, 1994, nr. 38, 1995, nr. 69, 1997, nr. 22, 1999, nr. 56, 2000, nr. 72) and not for property, taken from former agrarian communities and returned according to the Denationalization Act. The challenged judicial decisions which are based on the interpretation of Article 8 (2) of the Act on Reestablishment of Agricultural Communities and Restitution of Their Property and Rights that the complainants' rights to ownership on the returned property is retroactively revoked, are manifestly erroneous and therefore inconsistent with the right to equal protection of rights, determined in Article 22 of the Constitution (CC (Constitutional Court), nr.Up-217/03, 24 March 2005, *Official Gazette* 2005, nr. 37).

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

The provision of the Taxation Procedure Act (E.g. Zakon o davčnem postopku, Taxation Procedure Act, *Official Gazette* 2004, nr. 54, 2004, nr. 57, 2004, nr. 139, 2005, nr. 25, 2005, nr. 96) on the basis of which the suspension of compulsory collection does not stay the calculation of default interests since it causes internal inconsistency within the legal order, as notwithstanding the justified application of the mitigating provision, the final position of the affected subject is not changed, is inconsistent with the principles of a State governed by the rule of law. The provision of the Taxation Procedure Act according to which tax authorities may suspend a compulsory collection until the decision on the appeal if they evaluated that the appeal could be substantiated, is not inconsistent with the Constitution. Thereby, the right to an effective judicial protection is ensured notwithstanding the fact that the Act did not provide that the collection is suspended during the time in which the tax authority decides on the motion for the suspension of the collection, as re-establishing the situation as it was prior to the compulsory collection proceedings is not impossible nor disproportionately difficult (CC (Constitutional Court), nr.U-I-233/01, 5 February 2004, *Official Gazette* 2004, nr. 16).

The provision of the Taxation Procedure Act (E.g. Zakon o davčnem postopku, Taxation Procedure Act, *Official Gazette* 2004, nr. 54, 2004, nr. 57, 2004, nr. 139, 2005, nr. 25, 2005, nr. 96) which regulates different interest rates from the viewpoint of the run of default interests so that individual persons liable to tax are in unequal positions, is inconsistent with the constitutional principle of equality. There is no sound reason for their unequal treatment, which would ensue from the nature of things, as it is necessary from the viewpoint of interest bearing to treat equal factual conditions equally and to implement an equal manner of the calculation of default interest. (CC (Constitutional Court), nr.U-I-329/02, 8 April 2004, *Official Gazette* 2004, nr. 42).

The regulation regarding the run of default interest as determined in the Taxation Procedure Act (E.g. Zakon o davčnem postopku, Taxation Procedure Act, *Official Gazette* 2004, nr. 54, 2004, nr. 57, 2004, nr. 139, 2005, nr. 25, 2005, nr. 96), according to which the burden of default interest for persons liable to tax also depends on the point within the period of the limitation at which a tax authority establishes that a person liable to tax has not fulfilled their tax obligation, entails that the competent tax authority is in fact the one who manages the scope of a financial burden of a person liable to tax. Persons liable to tax namely cannot henceforth determine or foresee their position in cases in which they were by a tax decision imposed a fulfillment of their tax obligation which should already be fulfilled owing to the unlimited run of default interest which also runs during the period in which their tax obligation has not yet been established. Therefore, they are in a legally uncertain position and consequently it is the case of the violation of the constitutional principle of legal certainty (CC (Constitutional Court), nr.U-I-356/02, 23 September 2004, *Official Gazette* 2005, nr. 109).

The provision of the Taxation Procedure Act (E.g. Zakon o davčnem postopku, Taxation Procedure Act, *Official Gazette* 2004, nr. 54, 2004, nr. 57, 2004, nr. 139, 2005, nr. 25, 2005, nr. 96) which by determining share of assets which may be seized at execution, does not consider the requirement to retain a minimal social security of the debtor (existential minimum) and does not determine the criteria, the limitations or the amount, which must therefore be exempt from enforcement, is contrary to the constitutionally guaranteed right to social security and the right to personal dignity (CC (Constitutional Court), nr.U-I-166/03, 11 November 2004, *Official Gazette* 2004, nr. 128).

Article 43 (1) of the Customs Act (E.g. Carinski zakon, Customs Act, *Official Gazette* 1995, nr. 1, 1995, nr. 28, 1999, nr. 32, 2002, nr. 59, 2002, nr. 110, 2004, nr. 25) was not inconsistent with the Constitution if it was interpreted in a manner such that a customs authority could on its basis adopt measures which were necessary for establishing the lawful state, only against persons who were by law customs debtors. Article 43 (2) of the Customs Act was not inconsistent with the Constitution if it was interpreted in a manner such that on its basis the goods which were a subject of a violation of the obligation, could warranty the payment of the customs debt, arising in connection with these goods, only in cases they were owned by a

customs debtor or a person, who could have become a customs debtor regarding these goods (CC (Constitutional Court), nr.U-I-90/03, 18 November 2004, *Official Gazette* 2004, nr. 131).

Article 18. Right to asylum

Asylum proceedings

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

The Constitution provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, and the Government has established a system for providing protection to refugees. In practice, the Government provided protection against the return of persons to a country where they feared persecution. The Government granted refugee status or asylum. The Government cooperated with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees and asylum seekers (State Department 2004 Human Rights Report, Slovenia HRR04).

Legislative initiatives, national case law and practices of national authorities

A group of NGOs is seriously concerned with the more and more repressive politics of the Ministry of the Interior regarding the asylum proceedings. A measure of limitation of free exit against persons before their application for asylum was introduced by 31 March 2005. Under the argumentation of the competent bodies, the adoption of such measure is based on the obligation of the applicants for asylum to be available at any time – probably for order-keeping reasons. Actually, such measure does not have any legal basis in Slovenia; moreover, such situation *de facto* means an illegal limitation of freedom of movement. In principle, any measure whereby the State limits and/or deprives individuals of the (constitutional) right can be disputed and/or to charge by an appeal, which has already been guaranteed by the Constitution of the Republic of Slovenia. However, as such persons do not receive any formal decision, despite of the interference with their right to the freedom of movement they can not dispute such measures before the competent body (Amnesty International Slovenije • Fundacija GEA 2000 • Jezuitska služba za begunce • Mirovni inštitut • Društvo Mozaik • Pravno-informacijski center nevladnih organizacij – PIC • Slovenska filantropija); Konzorcij Živa, Novinarska konferenca, 18. 05. 2005 ob 11. uri v KUD France Prešeren na temo: Represivna politika Ministrstva za notranje zadeve na področju azila).

Recognition of the status of refugee

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

Since most potential refugees viewed the country as a transit point rather than a destination, few stayed long enough to be processed as refugees. During the year, the country granted refugee status to 39 persons and humanitarian refugee status to an additional 74 persons. The issue of the provision of temporary protection did not arise during the year (State Department 2004 Human Rights Report, Slovenia HRR04).

Legislative initiatives, national case law and practices of national authorities

The integration process of refugees in Slovenia has been rather insufficient and unclear. The respective activities of the competent ministries are not harmonized. Therefore several fields of integration (especially accommodation, employment, health and social protection) determined by the Decree on the Rights and Duties of Refugees in the Republic of Slovenia (E.g. Uredba o pravicah in dolžnostih beguncev v Republiki Sloveniji, Decree on the Rights and Duties of Refugees in the Republic of Slovenia, *Official Gazette* 2004, nr. 33, 2004, nr. 129) are unsettled, and for that very reason the process of integration of

refugees into the Slovenian society is extremely hard. Moreover, the inclusion of intergovernmental organizations and NGOs into the constructive decision-making proceedings is deficient. There are some funds transferred to the NGOs for implementation of such integration programs. But at the same time, the State is not open to the NGO's initiatives concerning legislative changes; additionally, the State is not flexible in implementation of activities on the basis of legislation in force. NGOs can not contribute with their programs to comprehensive resolving of problems relating to the refugees because the State does not provide sufficient funds that could promote the implementation of programs that are of long-term importance for the refugees (Amnesty International Slovenije • Fundacija GEA 2000 • Jezuitska služba za begunce • Mirovni inštitut • Društvo Mozaik • Pravno-informacijski center nevladnih organizacij – PIC • Slovenska filantropija); Konzorcij Živa, Novinarska konferenca, 18. 05. 2005 ob 11. uri v KUD France Prešeren na temo: Integracija beguncev, Izpostavljeni problemi na področju integracije beguncev v Republiki Sloveniji, Slovenska filantropija).

The NGOs are anxious about the lack of competent governmental support relating to the remuneration of lawyers – counselors for refugees who represent the applicant for asylum. This in turn lowers the standard of legal safety of the applicants for asylum in the Republic of Slovenia. Upon the adoption of the new Rules on Criteria for Determining Remunerations and Reimbursement of Expenses to Refugee Counselors (E.G. Pravilnik o nagrajevanju in povračilu stroškov svetovalcem za begunce, Rules on Criteria for Determining Remunerations and Reimbursement of Expenses to Refugee Counselors, Official Gazette 2004, nr. 103) the competency for the respective remuneration was transferred from the Ministry of Justice to the Ministry of the Interior. Thereby all payments to the counselors for refugees discontinued illegally (Amnesty International Slovenije • Fundacija GEA 2000 • Jezuitska služba za begunce • Mirovni inštitut • Društvo Mozaik • Pravno-informacijski center nevladnih organizacij – PIC • Slovenska filantropija); Konzorcij Živa, Novinarska konferenca, 18. 05. 2005 ob 11. uri v KUD France Prešeren na temo: Neurejena pristojnost med ministrstvi in posledično neplačevanje stroškov odvetnikom, svetovalcem za begunce).

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

CHAPTER III. EQUALITY

Article 20. Equality before the law

Equality before the law

Legislative initiatives, national case law and practices of national authorities

Courts which denied the complainants the right to redundancy money due to the fact that they agreed to the classification as permanently surplus workers, thus unfoundedly differentiated between the complainants and other permanently surplus workers. The challenged judgments which are based on such standpoint are therefore inconsistent with the principle of equality before the law determined in Article 14 (2) of the Constitution (C.C. (Constitutional Court), nr.Up-744/03, 17 March 2005, *Official Gazette* 2005, nr. 34).

Article 21. Non-discrimination

Protection against discrimination

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

The Constitution prohibits discrimination based on sexual orientation; however, there was societal discrimination against homosexuals. According to a poll of members of the gay and lesbian community conducted in 2001 by the domestic NGO Student Cultural Artistic Center, 49 percent of respondents had experienced some form of violence or harassment based on their sexual orientation, more than 20 percent reported discrimination in the workplace, and 7 percent reported discrimination in health care and in matters relating to tenancy (State Department 2004 Human Rights Report, Slovenia HRR04).

Legislative initiatives, national case law and practices of national authorities

Concerning implementation of the issues of erased persons the repeatedly stated unconstitutionality and unlawfulness should be abolished as soon as possible and in a such manner that could stand not only repeated review by the Constitutional Court, but also a review before the European Court of Human Rights. Everybody should be aware that somebody who has not asked for the Slovenian nationality can not be punished when arranging for his residence. The same applies to the action or even opinion of such person, except if specified by law and determined as a reason for exclusion according to the prescribed proceedings. Citizenship should be not confounded with the arrangement for residence. Both affected parties lay to much stress on the issues of compensation. The Human Rights Ombudsman finds it absolutely important to finally settle the status of erased persons whom the Constitutional Court recognized under its decision (C.C. (Constitutional Court), nr.U-I-246/02, 3 April 2003, *Official Gazette* 2003, nr. 36) continuous permanent residence. These people are closely connected to Slovenia, such as also proved by the fact that they persisted in Slovenia even when they were officially considered erased. They will remain Slovenia in spite of any objections whatsoever. It would be unconstitutional, inadmissible and harmful for the good reputation of Slovenia if due to the problems about their status their relations with the majority population became troubled (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

This year, the Human Rights Ombudsman intends to establish a special department specialized in discrimination issues, which was in principle approved by the National Assembly already on discussing the report on 2003. In addition to handling individual initiatives this department will deal with broader

issues. Moreover, it will be focused on education and promotion of non-discrimination. The Human Rights Ombudsman has prepared a project outline that would enable, in cooperation with European partners, the transfer of necessary skills, experiences and methods of work in the respective area. This project is not intended for the Human Rights Ombudsman but also for training of other experts. Thus the Human Rights Ombudsman could help establishing an operative and successful system in the fight against discrimination and against other forms intolerance (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

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

Amnesty International Slovenia remains deeply concerned especially regarding the 'erased' permanent residents of Slovenia, who were legally residing in Slovenia as citizens of ex-Yugoslavia, and many of whom have after the unlawful "erasure" still not yet been able to regularize their status," stated General Secretary of Amnesty International Slovenia. "We urge the government to devote its attention to the issue of 'erased' immediately and to explicitly and publicly recognize the discriminatory nature of the removal from the population registry of the individuals concerned and to ensure that their status of permanent residents is retroactively restored (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005).

On the issue of arbitrary deprivation of durable status in Slovenia to persons who should otherwise have access to it by dint of acknowledging their real and effective ties to Slovenia, an issue of particular concern to a number of categories of persons including Roma in Slovenia, the Committee stated, the Committee remains concerned about the situation of those persons who have not yet been able to regularize their situation in the State party and recommended that the State party should seek to resolve the legal status of all the citizens of the successor States that formed part of the former Socialist Federal Republic of Yugoslavia who are presently living in Slovenia, and should facilitate the acquisition of Slovenian citizenship by all such persons who wish to become citizens of the Republic of Slovenia (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005) .

Regularization of status for non-Slovenian former Yugoslav citizens remained an issue. The MOI reported that, at year's end, it had 3,026 pending applications for citizenship. During the year, it positively adjudicated 3,096 applications for citizenship and denied 477 applications. The MOI also reported that, at year's end, it had 985 pending applications for permanent residency. During the year, it positively adjudicated 3,976 applications for permanent residency and denied 254 applications. Some Yugoslavs residing in the country at the time of independence did not apply for citizenship in 1991-92 and subsequently found their records were "erased" from the population register. The deletion of these records from the population register has been characterized by some as an administrative decision and by others as an ethnically motivated act. The Constitutional Court (C.C. (Constitutional Court), nr.U-I-246/02, 3 April 2003, *Official Gazette* 2003, nr. 36) ruled unconstitutional portions of a law governing the legal status of former Yugoslav citizens because it does not recognize the full period in which these "erased" persons resided in the country, nor does it provide them the opportunity to apply for permanent residency. There were approximately 18,305 persons in the country that had their records erased. At year's end, the Government had not completed legislation to resolve the Court's concerns (State Department 2004 Human Rights Report, Slovenia HRR04).

On the issue of arbitrary deprivation of durable status in Slovenia to persons who should otherwise have access to it by dint of acknowledging their real and effective ties to Slovenia, an issue of particular concern to a number of categories of persons including Roma in Slovenia, the Advisory Committee on the Supervision of the Implementation of the Framework Convention for the Protection of National Minorities stated, "the Committee remains concerned about the situation of those persons who have not yet been able

to regularize their situation in the State party" and recommended that "the State party should seek to resolve the legal status of all the citizens of the successor States that formed part of the former Socialist Federal Republic of Yugoslavia who are presently living in Slovenia, and should facilitate the acquisition of Slovenian citizenship by all such persons who wish to become citizens of the Republic of Slovenia (Published at the visit of the Council of Europe Advisory Committee on the Supervision of the Implementation of the Framework Convention for the Protection of National Minorities in Slovenia, 4-8 April 2005, Mnenje Svetovalnega odbora Sveta Evrope o uresničevanju Okvirne konvencije za zaščito narodnih manjšin s strani RS, sprejeto 12. septembra 2002; Svetovalni odbor je Mnenje sprejel po prejemu Začetnega državnega poročila o izvajanju Okvirne konvencije v Sloveniji leta 2000).

Legislative initiatives, national case law and practices of national authorities

Article 63 of the Constitution prohibits "any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance." Article 300 of the Penal Code of the Republic of Slovenia (E.g. Kazenski zakonik Republike Slovenije, Penal Code of the Republic of Slovenia, *Official Gazette* 1994, nr. 63, 1999, nr. 23, 2004, nr. 40) determines as follows:

"Stirring Up Ethnic, Racial or Religious Hatred, Strife or Intolerance

Article 300

(1) Whoever provokes or stirs up ethnic, racial or religious hatred, strife or intolerance or disseminates ideas on the supremacy of one race over another or provides for any kind of aid for racist activity, or denies, trivializes, condones or advocates genocide, shall be sentenced to imprisonment for not more than two years.

(2) If the offence under the preceding paragraph has been committed by coercion, maltreatment, endangering of security, desecration of national, ethnic or religious symbols, damaging of the movable property of another, desecration of monuments or memorial stones or graves, the perpetrator shall be sentenced to imprisonment for not more than five years.

(3) The material or objects, carrying the messages under the first paragraph of this article as well as instruments intended for their manufacture, distribution and dissemination are confiscated or is their use correspondingly disabled."

The Media Act (E.g. Zakon o medijih, Media Act, *Official Gazette* 2001, nr. 35) determines in Article 8 that "the dissemination of programming that encourages ethnic, racial, religious, sexual or any other inequality, or violence and war, or incites ethnic, racial, religious, sexual or any other hatred and intolerance shall be prohibited." Article 47 of the same Act prohibits advertising which would "incite racial, sexual or ethnic discrimination, religious or political intolerance." The Media penalty in the amount of at least 2,500.000 SIT follows in a case of a violation of any of these two provisions.

The Personal Data Protection Act (E.g. Zakon o varstvu osebnih podatkov, Personal Data protection Act, *Official Gazette* 2004, nr. 86) places the data concerning racial, national or ethnical background, political, religious or philosophical affiliation and sexual life among the "sensitive personal data".

According to the Societies Act (E.g. Zakon o društvih, Societies Act, *Official Gazette* 1995, nr. 60, 1999, nr. 89), a society ceases to exist by law in case it incites to ethnic, racial, religious or other inequality or inflames ethnic, racial, religious or other hatred and intolerance.

The Aliens Act (E.g. Zakon o tujcih, Aliens Act, *Official Gazette* 1999, nr. 61, 2002, nr. 87) imposes in Article 82/3 an obligation that "within their overall operations, national and other authorities, organizations and associations must ensure protection against any type of discrimination against aliens based on racial, religious, national, ethnic or any other type of differentiation." In the Resolution on the Immigration Policy of the Republic of Slovenia (E.g. Resolucija o imigracijski politiki Republike

Slovenije, Resolution on the Immigration Policy of the Republic of Slovenia, *Official Gazette* 1999, nr. 40) it is explicitly stated in the preamble to the chapter "Foundations of the Immigration Policy" that at the creation of the Policy it was considered that the State must respect the fundamental human rights and avoid any ethnic, racial, religious or sexual discrimination. The Resolution on the Migration Policy of the Republic of Slovenia (E.g. Resolucija o migracijski politiki Republike Slovenije, Resolution on the Migration Policy of the Republic of Slovenia, *Official Gazette* 2002, nr. 106) acknowledges among the principles of Slovenian migration policy the Conclusions of the Tampere European Council

The Republic of Slovenia is a State Party to the International Convention for the Elimination of All Forms of Racial Discrimination (E.g. Konvencija o odpravi vseh oblik rasne diskriminacije, International Convention for the Elimination of All Forms of Racial Discrimination, *Official Gazette SFRJ* 1967, nr. 31; Akt o o notifikaciji nasledstva glede konvencij OZN in konvencij, sprejetih v mednarodni organizaciji za atomsko energijo, Act Notifying Succession to Treaties of the United Nations and Treaties Adopted by the International Atomic Energy Organization, *Official Gazette* 1992, nr. 35). In 2001, the Government of the Republic of Slovenia issued a Statement (foreseen by Article 14 of the Convention) that "The Republic of Slovenia recognizes to the Committee on the Elimination of Racial Discrimination competence to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by the Republic of Slovenia of any of the rights set forth in the Convention, with the reservation that the Committee shall not consider any communications unless it has ascertained that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement."

The Implementation of the Principle of Equal Treatment Act (E.g. Zakon o uresničevanju načela enakega obravnavanja, Implementation of the Principle of Equal Treatment Act, *Official Gazette* 2004, nr. 50) is a general act aimed to determine common grounds for the assurance of equal rights of everyone at the exercise of their rights and duties and at the exercise of their fundamental freedoms in any field of social life, in particular in the fields of employment, employment relations, affiliation with unions and interest societies, upbringing and education, social security, access to goods and services and provision of them regardless of their personal circumstances, including the racial or ethnic background and religious or other belief. This act is based on the Directive No. 2000/43/EC and the Directive No. 2000/78/EC.

The Dictionary of Standard Slovenian defines racism (*rasizem*) as a "mentality or conduct based on racial discrimination, particularly with regard to social value and rights." There is no definition of the term "racism" in Slovenian legislation. The term can be found in the above-mentioned provision of the Penal Code as well as in Article 11 of the European Arrest Warrant Act.

The term xenophobia (*ksenofobija*) is defined by the above-mentioned Dictionary as "hatred, disinclination towards foreigners and everything foreign." The term "xenophobia" can in Slovenian legislation only be found in Article 11 of the European Arrest Warrant Act.

The Penal Code does not contain a definition of racism, identical to the definition determined by Article 4 of the International Convention for the Elimination of All Forms of Racial Discrimination. Therefore, the acts, described by the aforementioned Convention, must be found in different incriminations contained in the Penal Code. Besides the obvious incrimination, contained in Article 300 of the Penal Code, the incrimination contained in Article 141 ("Violation of the Right to Equality) must also be considered. (Source: Bulletin of the National Assembly of the Republic of Slovenia, No. 93/2003).

Violation of Right to Equality

Article 141

(1) Whoever, due to differences in respect of nationality, race, color of skin, religion, ethnic roots, gender, language, political or other beliefs, birth status, education, social position or any other circumstance, deprives or restrains another person of any human right or liberty recognized by the international community or laid down by the Constitution or the statute, or grants another person a special privilege or

advantage on the basis of such discrimination shall be punished by a fine or sentenced to imprisonment for not more than one year.

(2) Whoever prosecutes an individual or an organization due to his or its advocacy of the equality of people shall be punished under the provision of the preceding paragraph.

(3) In the event of the offence under the first or the second paragraph of the present article being committed by an official through the abuse of office or of official authority, such an official shall be sentenced to imprisonment for not more than three years.

The Principle of equal Treatment Act determines the "common foundations and grounds for the assurance of equal treatment of everyone at the exercise of their rights and duties and at the exercise of their fundamental freedoms in any field of social life, in particular in the fields of employment, employment relations, affiliation with unions and interest societies, upbringing and education, social security, access to goods and services and provision of them regardless of their personal circumstances such as nationality, racial or ethnic background, gender, health condition, disability, language, religious or other belief, age, sexual orientation, education, material standing, social status or other personal circumstances.

The Principle of Equal Treatment Act also provides for the consideration by the Advocate of the Principle of Equality of informal complaints linked with anti-discrimination rules. The Advocate of the Principle of Equality is a body that investigates complaints regarding alleged breaches of the principle of equal treatment and determines the circumstances in which the Advocate shall transmit a case to the competent inspection service (Government of the Republic of Slovenia, Office for Equal Opportunities, National report of Slovenia, July 2004).

Article 300 of the Penal Code was amended in 2004 in order to meet the requirements, determined in the Convention on Cyber crime (signed in Budapest on 23 November 2001) and the Additional Protocol to the Convention on Cyber crime, concerning the Criminalization of Acts of Racist and Xenophobic Nature Committed through Computer Systems (E.g. Zakon o ratifikaciji Konvencije o kibernetiski kriminaliteti in Dodatnega protokola h Konvenciji o kibernetiski kriminaliteti, ki obravnava inkriminacijo rasističnih in ksenofobičnih dejanj, storjenih v informacijskih sistemih, Act Ratifying the Convention on Cyber crime and Additional Protocol to the Convention on Cyber crime, concerning the Criminalisation of Acts of Racist and Xenophobic Nature Committed through Computer Systems, *Official Gazette* 2004, nr. 17). Thus, denial, gross minimization, approval or justification of genocide or crimes against humanity was added to the elements of crime, and Paragraph 3 was amended since confiscation is almost impossible in an information system.

The conduct described in the second indent could also be punishable under the cited provisions of the Media Act, in case the public dissemination or distribution would have been carried out by the media.

Instigating, aiding or abetting to such conduct could be punishable according to Articles 26 to 29 of the Penal Code.

"Criminal Solicitation
Article 26

(1) Anybody who intentionally solicits another person to commit a criminal offence shall be punished as if he himself had committed it.

(2) Anybody who intentionally solicits another person to commit a criminal offence for which the sentence of three years' imprisonment or a heavier sentence may be imposed under the statute, shall be punished for the criminal attempt even if the committing of such an offence had never been attempted.

Criminal Support
Article 27

(1) Any person who intentionally supports another person in the committing of a criminal offence shall be punished as if he himself had committed it or his sentence shall be reduced, as the case may be.

(2) Support in the committing of a criminal offence shall be deemed to be constituted, in the main, by the following: counseling or instructing the perpetrator on how to carry out the offence; providing the perpetrator with instruments of crime; the removal of obstacles for the committing of crime; a priori promises to conceal the crime or any traces thereof; concealment of the perpetrator, instruments of crime or objects gained through the committing of crime.

Punishability of Those Soliciting or Supporting a Criminal Attempt
Article 28

If the perpetration of a criminal offence falls short of the intended consequence, those soliciting or supporting the criminal attempt shall be punished according to the prescriptions that apply to the criminal attempt.

Limits of Criminal Liability and Punishability of Accomplices
Article 29

(1) The accomplice in crime shall be liable within the limits of his intent or negligence, as the case maybe, while those soliciting and supporting are liable within the limits of their respective intents.

(2) If the accomplice, the person soliciting or the person supporting the criminal attempt has voluntarily prevented the intended criminal offence from being accomplished, his sentence may be withdrawn.

(3) Personal relations, attributes and circumstances on the basis of which criminal liability is excluded or sentence is withdrawn, reduced or extended, shall be taken into consideration only with respect to the accomplice, the person soliciting or the person supporting the criminal attempt in whom such relations, attributes and circumstances inhere."

In case the crime was committed by means of the media, the following provisions of the Penal Code could also apply:

Punishability of Editor-in-Chief
Article 30

(1) If a criminal offence has been committed through a newspaper or another periodical printed publication, or through radio, television or newsreel, the editor-in-chief or a person acting as his deputy at the time of the release of information shall be punished:

- 1) if the author of such information has remained unknown until the end of the main trial;
- 2) if such information was released without the author's approval;
- 3) if factual or legal obstacles for the prosecution, which existed at the time of the release of information, have not ceased to exist.

(2) The editor-in-chief or a person who acted as his deputy shall not be punished if he had justified reasons for not knowing either about some of the circumstances stated in the first paragraph of the present article or about the released information by means of which the offence in question was committed.

Punishability of Publisher, Printer and Manufacturer
Article 31

(1) Under conditions set forth in the preceding article:

1) *The publisher shall be punished for a criminal offence committed through a non-periodical printed publication. In his absence, or in the case of factual or legal obstacles barring his prosecution, the printer shall be punished for the same offence, provided that he was aware of the existence of such an offence.*

2) *for a criminal offence committed via gramophone record, magnetic tape, film intended for public or private presentation or through slides, photo grams and other video and audio devices intended for a greater number of persons and through similar mass media, the manufacturer shall be punished.*

(2) *If the publisher, printer or manufacturer constitutes a legal person or a state body, the person responsible for the publishing, printing or manufacturing activities of such a legal person or state body shall be punished.*

(3) *The provisions of the second and third paragraphs of the preceding article shall apply to the publisher, printer and manufacturer as well.*

*Application of General Provisions on Criminal Liability
Article 32*

The provisions on the punishability of persons under Articles 30 and 31 of the present Code shall be applied, unless such persons are liable under the general provisions on criminal liability of the present Code.

This issue is regulated in Article 22 of the Implementation of the Principle of Equal Treatment Act, which reads as follows:

*"Article 22
(Legal Protection and the Burden of Proof)*

(1) In cases of a violation of the prohibition of discrimination, determined in Article 3 of this act, the discriminated persons can request for a review of the violation in judicial and administrative proceedings under the conditions and in the manner, determined by law, and have the right to compensation according to the general rules of civil law.

(2) When in cases, described in the previous paragraph, the discriminated person states facts which substantiate a presumption that the prohibition of discrimination was violated, the assumed violator must prove that they did not violate the principle of equal treatment or the prohibition of discrimination in the case at issue."

Article 15 (3) of the Constitution determines that human rights and fundamental freedoms shall be limited only by the rights of others and in such cases as are provided by the Constitution. With regard to the principle of proportionality, the freedom of expression may be limited by the prohibition of incitement to discrimination and Intolerance and the prohibition of incitement to violence and war, determined by Article 63 of the Constitution. Human rights can also be limited on the basis of Article 10 (2) of the European Convention on Human Rights, that reads as follows: *"The exercise of [the freedom of expression], since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. "* With regard to the "protection of the reputation or the rights of others", the state may prohibit the dissemination of racist and xenophobic ideas, whereby the state and judiciary act according to the principle of proportionality.

In Slovenia, there is no particular legislation regarding the racist symbols. Such conduct is incriminated in the abovementioned provisions of the Penal Code, the Media Act and others.

The Government and the Ministry of Interior should as soon as possible draft the Constitutional Act on the Regulation on Position of Erased Persons (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

The Minister of Interior emphasized among the ten key goals of the Ministry that the Constitutional Act on erased persons is expected to be ready by June and that the former Minister of Interior stopped issuing decisions on permanent residence to the erased persons after 31 July 2004 (Delo.si, 28. 2. 2005-05-23, Junija ustavni zakon o izbrisanih?).

Protection of Gypsies / Roms

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

The Committee's findings bring much-needed light on a number of unresolved issues in Slovenia, particularly as they relate to Roma, said ERRC Program Director. The government has not yet managed to tackle very high levels of racial antipathy in Slovenia. This results in a number of systemic abuses, including the deprivation of Slovene citizenship to Roma who should have access to it, arbitrary expulsion from the country, racially segregated schooling arrangements, and a number of extremely substandard slum settlements (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005).

With respect particularly to Roma in Slovenia, the Committee addressed the following specific areas of concern: The Committee is concerned about the difference in the status between the so-called 'autochthonous' (indigenous) and 'non autochthonous' (new) Roma communities in the State party.... The State party should consider eliminating discrimination on the basis of status within the Roma minority and provide to the whole Roma community a status free of discrimination, and improve its living conditions and enhance its participation in public life. While nothing measures undertaken to improve the living conditions of the Roma community, the Committee is concerned that the Roma community continues to suffer prejudice and discrimination, in particular with regard to access to health services, education and employment, which has a negative impact on the full enjoyment of their rights under the Covenant... The State party should take all necessary measures to ensure the practical enjoyment by the Roma of their rights under the Covenant by implementing and reinforcing effective measures to prevent and address discrimination and the serious social and economic situation of the Roma. AIS and ERRC urge Slovene authorities to implement the Human Rights Committee's recommendations in full (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005).

Twenty distinct Romani communities, each designated autochthonous at the local level, are entitled to a seat on their local municipal councils. At year's end, one municipality (Grosuplje) was not in compliance with this law (State Department 2004 Human Rights Report, Slovenia HRR04).

The Romani minority does not have comparable special rights and protections. The Constitution provides that "the status and special rights of Gypsy communities living in Slovenia shall be such as are determined by statute." By year's end, Parliament had not enacted laws to establish such rights for the Romani community. A study funded by the European Community estimated that 40 percent of Roma in the country were autochthonous. On May 16, an outbreak of societal violence between the Romani community living near Krka and the local inhabitants reportedly resulted in the injury of several persons.

Many Roma lived in settlements apart from other communities that lacked basic utilities such as electricity, running water, sanitation, and access to transportation. Romani representatives reported that some local authorities developed segregated substandard housing facilities to which Romani communities were forcibly relocated. Romani representatives also reported that Romani children often attend

segregated classes and were selected by authorities in disproportional numbers to attend classes for students with special needs. In July, the Government provided funding for a program to desegregate and expand Romani education by training Romani educational facilitators and create special enrichment programs in public kindergartens. The Government has not developed a bilingual curriculum for Roma on the grounds that there is not a standardized Romani language. However, the Government has funded research into codification of the language. Romani representatives also reported discrimination in employment, which complicated their housing situation, and that Roma were disproportional subject to poverty and unemployment. A 2003 report funded by the European Commission noted that the unemployment rate among Roma was 87 percent.

The law provides Romani political representatives with a seat in 20 municipal councils based on their autochthonous status in those communities. At year's end, only the municipality of Grosuplje had not complied with this law. In a June 2003 report, the CERD expressed concern that discriminatory attitudes and practices against the Roma persisted and that the distinction between "indigenous" Roma and "new" Roma could give rise to new discrimination (State Department 2004 Human Rights Report, Slovenia HRR04).

The Committee highlighted the problems of the Roma. It has pointed out to the fact that the Slovenian Constitution does not mention any "autochthonous character" of the Roma community and that the autochthonous character is also not mentioned in the statement by the Republic of Slovenia on the occasion of depositing the ratification deed that in Slovenia the Framework Convention for the Protection of the national minorities (E.g. Okvirna konvencija za zaščito narodnih manjšin, Framework Convention for the Protection of the national Minorities) shall also apply to the Roma community. Due to the legal and practical ambiguities about the "autochthonous character" and to the risks of arbitrary exclusion, the Committee believes that the Slovenian governmental bodies should check its adequacy and identify its justification. A large number of the Roma who were residents of Slovenia in 1991 are probably still facing the unnecessary troubles when applying for the Slovenian citizenship or permission for permanent residence. Accordingly, the Committee believes that Slovenian governmental bodies should provide for fair and non-discriminatory implementation of the legislation on the issues of citizenship and permanent residence for all applicants, in particular those originating from the former Yugoslavia where requisition of personal documents is very difficult.

Regarding the Roma the Committee notes that at the moment they are not allowed to use their mother tongue before Slovenian administrative bodies. The Committee believes that Slovenian governmental bodies should determine the respective Roma's needs in cooperation with themselves as well as to consider them. The position of the Roma in the educational system is a serious concern and it differs strongly from the position of other minorities as well as of the majority population. Although the position of the Roma in Prekmurje is much better than anywhere in the country, in Slovenia this minority still has not been granted equal possibilities for the access to education. The Committee has been deeply concerned with the persuasive information that a large percentage of Romani children still attend special schools intended for children with special needs. It seems that a lot of these children are kept in these institutions due to their bad command of the Slovenian language on entering school or due to actual or subjectively noted cultural differences. The Committee finds such practice contrary to the Framework Convention for the Protection of the National minorities. The Committee emphasized that children should attend such institutions only if it is absolutely necessary and always on the basis of consistent, objective and comprehensive tests..

In connection with the Roma the Committee stressed as follows: On the issue of arbitrary deprivation of durable status in Slovenia to persons who should otherwise have access to it by dint of acknowledging their real and effective ties to Slovenia, an issue of particular concern to a number of categories of persons including Roma in Slovenia, the Committee stated, "the Committee remains concerned about the situation of those persons who have not yet been able to regularize their situation in the State party" and recommended that "the State party should seek to resolve the legal status of all the citizens of the successor States that formed part of the former Socialist Federal Republic of Yugoslavia who are presently living in Slovenia, and should facilitate the acquisition of Slovenian citizenship by all such persons who

wish to become citizens of the Republic of Slovenia (Mnenje Svetovalnega odbora Sveta Evrope o uresničevanju Okvirne konvencije za zaščito narodnih manjšin s strani RS, sprejeto 12. septembra 2002; Svetovalni odbor je Mnenje sprejel po prejemu Začetnega državnega poročila o izvajanju Okvirne konvencije v Sloveniji leta 2000).

In December 2004, a Romani activist from the town of Novo Mesto in Slovenia's Dolenjska region informed the ERRC that at least three Romani families in Novo Mesto had been served eviction orders. According to the eviction orders, by December 30 2004, two families were to demolish their homes at their own expense and leave the plot of land on which their homes were located. The families had been living lived at the location for about three years. The eviction orders allegedly stated that the families had built their houses without authorization from the municipality and without observing construction regulations. According to the information received by the ERRC, the families faced homeless in the middle of winter as the municipality had not offered alternative accommodation. According to the information received by the ERRC, about ten other Romani families were threatened with forced evictions by municipal authorities. Romani families from the settlements in Senkienci and Skocijan also faced forced eviction from the municipally owned land they occupied with-out proper authorization; reportedly, municipal authorities had not offered alternative accommodation to the families. On 8 December 2004, the ERRC sent a letter to the Slovene Minister of Labor, Family and Social Affairs, the Minister of Environment and Spatial Planning and the Mayor of Novo Mesto requesting that Slovene authorities stop the impending evictions and consult with the affected Romani families to reach a durable solution. On 26 January 26 2005, the ERRC was informed that the evictions had not yet been executed and that the families were seeking a legal solution to their housing situation. During an ERRC field mission at the beginning of February 2005 it was revealed that the evictions had been postponed (EERC, Budapest, see ERRC's Internet website at http://www.errc.org/Archivum_index.php, "Slovenia").

Amnesty International would like, once again, to draw your attention to a problematic human rights situation in a Member State of the European Union. In Slovenia, thousands of people, many of them of Roma origin, are still being denied their basic human rights, after they were unlawfully removed ("erased") from the country's registry of permanent residence in 1992. As the UN Committee on Economic, Social and Cultural rights (CESCR) has just concluded: "this situation entails violations of these persons' economic and social rights to work, social security, health care and education". In the report Amnesty International had submitted to the CESCR, it found that the practice of "erasing" individuals has disproportionately affected Roma and in general non-ethnic Slovenes, as well as other marginalized people. This constitutes a violation of the principle of non-discrimination enshrined in international and European law, and in particular of Article 21 of the Charter of Fundamental Rights of the European Union. "Erased" members of Romani communities, by virtue of their condition of minority without a "kin-state", were placed in an even more disadvantaged position than "erased" belonging to other ethnic groups, as they have faced greater difficulties in regulating their status elsewhere in the former Yugoslavia.

Amnesty International acknowledges the decisions by the Slovenia Constitutional Court (C.C. (Constitutional Court), nr.U-I-295/99, 18 May 2000, *Official Gazette* 2000, nr. 54; nr.U-I-246/02, 3 April 2003, *Official Gazette* 2003, nr. 36; nr.U-II-3/03, 12 December 2003, unpublished; nr.U-II-1/04, 26 February 2004, *Official Gazette* 2004, nr. 25; U-II-3/04, 20 April 2004, *Official Gazette* 2004, nr. 44; nr.U-II-4/04, 17 June 2004, *Official Gazette* 2004, nr. 72; nr. -II-5/04, 8 July 2004, *Official Gazette* 2004, nr. 82; nr.U-I-2/04, 16 June 2005, unpublished) to redress this situation, which it considered in breach of the Constitution and of international standards. Disappointingly, the measures adopted by the authorities did not include all the "erased" and they failed to provide other forms of reparation, including compensation, for the human rights violations suffered by the individuals concerned.

Many of the "erased" lost their jobs and could no longer be employed legally as a consequence of their status as foreigners without a permanent residence permit. The loss of employment often meant losing years of pension contributions and even entitlement to a pension. The removal of the individuals concerned from the registry of permanent residents has therefore had serious negative effects on the individuals' right to work and social rights, as enshrined in particular in Articles 15 and 34 of the Charter of Fundamental Rights of the European Union.

As a result of their “erasure”, the individuals concerned were also deprived of or given limited access to comprehensive healthcare after 1992, in some cases with serious consequences for their health. The ex officio removal from the registry of permanent residents thus resulted in inequality in the ability to access healthcare, contrary to article 35 of the Charter of Fundamental Rights of the European Union.

Furthermore, some children removed from the registry of permanent residents in 1992, or whose parents were removed from the registry, lost access to secondary education. While Amnesty International notes that no such recent cases have been reported, concerns remain about the ongoing effects of the lost years of education for some of the “erased” and of the delays in the completion of their studies. This situation has therefore had serious negative effects on the individuals’ right to education, as enshrined in Article 14 of the Charter of Fundamental Rights of the European Union.

Thousands of people are still without a legally regulated status. Many of those who were “erased” in 1992, and who subsequently had their status regulated, are still suffering from the consequences of their “erasure” and have not been granted full reparation. Others were forced to leave the country and among those, some find themselves in limbo, being expelled from one country to another.

Amnesty International believes that it is incumbent upon the European Commission to take concrete steps to ensure the implementation of the EU standards and *acquis* by Slovenia. Therefore, we specifically call on the Commission:

- To take Amnesty International's findings into consideration while monitoring Slovenia’s implementation of EU standards in relation to non-discrimination and the rights of minorities and long-term residents.
- To urge the Slovenian authorities to ensure that all legislative and other measures are promptly adopted to retroactively restore the permanent resident status of all individuals “erased” in 1992, in accordance with the relevant Slovenian Constitutional Court decisions and to grant them full reparation, including compensation to all individuals concerned (Amnesty International’s Briefing to the UN Committee on Economic, Social and Cultural Rights", 35th Session, November 2005; Amnesty International's EU Office's letter to the President of the European Commission, No. b509, 28 November 2005).

Legislative initiatives, national case law and practices of national authorities

The Government should discuss possibilities for adoption of a law regulating special rights of the Roma community and the politics in the fields such as education, housing, social protection and employment (priporočila Državnega zbora Republike Slovenije, št. 700-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

The National Council supports the Human Rights Ombudsman’s initiatives for urgent comprehensive regulation of status and special rights of the Roma community in the Republic of Slovenia in accordance with Article 65 of the Constitution of the Republic of Slovenia through system law. Beside such normative regulation it is necessary that the State provide for the sufficient funds for implementation of all adopted and necessary measures. Implementing the already taken measures of positive discrimination on the basis of several special laws and the governmental programs as well as strategies, the competent governmental bodies and local bodies should also consider - beside the Roma’s needs – wishes and needs of the majority population, due to its direct involvement into the Roma issues. In this way potential conflicts between majority population and the Roma would be avoided and the mutual understanding would be established (Državni svet Republike Slovenije, mnenje k Desetemu rednemu poročilu Varuha človekovih pravic za leto 2004, št. 700-01/93-0019/0042, EPA 293-IV, sprejeto na 37. seji, dne 19. 10. 2005).

Despite numerous warnings from the Human Rights Ombudsman and decisions by the National Assembly, there is still no coordinated policy with regard to solving Roma issues. Last year, the Government adopted a plan for providing education for the Roma, which we welcome, but it is still only a partial solution, since

there is still no law which would regulate the arrangement of the special rights of the Roma community in a comprehensive and systematic way, nor coordinated policies in all areas: education, residence problems, employment and social security. Many people and all too often politicians as well, see increased police surveillance as the only solution to Roma issues. Owing to years of avoiding the taking of a comprehensive approach, and especially the transferring of the solution of Roma issues to the municipalities where the Roma live, as well as agitation by various politicians, in the last year we have seen increased and more high-profile disputes and the overt expression of intolerance towards the Roma (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The Charter of Beltinci Municipality (E.g. Statut Občine Beltinci, Charter of Beltinci Municipality, *Official Gazette* 2000, nr. 46, 2000, nr. 118 and 2001, nr. 67), the Charter of Grosuplje Municipality (E.g. Statut Občine Grosuplje, Charter of Grosuplje Municipality, *Official Gazette* 1999, nr. 42 and 2002, nr. 36), the Charter of Krško Municipality (E.g. Statut Občine Krško, Charter of Krško Municipality, *Official Gazette* 2000, nr. 98), the Charter of Semič Municipality (E.g. Statut Občine Semič, Charter of Semič Municipality, *Official Gazette* 1999, nr. 37, 2001, nr. 67 and 2002, nr. 23), the Charter of Šentjernej Municipality (E.g. Statut Občine Šentjernej, Charter of Šentjernej Municipality, *Official Gazette* 2001, nr. 4), and the Charter of Trebnje Municipality (E.g. Statut Občine Trebnje, Charter of Trebnje Municipality, *Official Gazette* 1995, nr. 50 and 1998, 80) are inconsistent with the Local Self-Government Act (E.g. Zakon o lokalni samoupravi, Local Self-Government Act, *Official Gazette* 1993, nr. 72, 1994, nr. 57, 1995, nr. 14, 1995, nr. 63, 1997, nr. 26, 1997, nr. 70, 1998, nr. 10, 1998, nr. 74, 2000, nr. 70 and 2002, nr. 51), as they do not determine that also Roma community representatives are members of municipal councils. The municipalities are obliged to remedy the illegality established in the previous item of the disposition in a time limit of forty-five days from the first session of the newly elected municipal councils. The municipal councils of the municipalities determined in Item 1 of the disposition must call the election of members of municipal councils, the representatives of the Roma community, if for the 2002 regular elections they did not ensure the election of the representatives determined by the charters, pursuant to the provisions of the Local Self-Government Act (E.g. Zakon o lokalni samoupravi, Local Self-Government Act, *Official Gazette* 1993, nr. 72, 1994, nr. 57, 1995, nr. 14, 1995, nr. 63, 1997, nr. 26, 1997, nr. 70, 1998, nr. 10, 1998, nr. 74, 2000, nr. 70 and 2002, nr. 51) that apply to premature elections, in a time limit of thirty days after the promulgation of the charters in the *Official Gazette* of the Republic of Slovenia. (E.g. C.C.(Constitutional Court), nr.U-I-345/02, 14 November 2002, *Official Gazette* 2002, nr.105). Response of affected municipalities: Changes of the Charter of Krško Municipality (E.g. Spremembe Statuta Občine Krško, Changes of the Charter of Krško Municipality, *Official Gazette* 2003, nr. 5) that determined one post in the Municipal Council for a member of the Roma Community. Changes and Amendments of the Charter of Beltinci Municipality (E.g. Spremembe in dopolnitve Statuta Občine Beltinci, Changes and Amendments of the Charter of Beltinci Municipality, *Official Gazette* 2003, nr. 11) that determined one post in the Municipal Council for a member of the Roma Community. The Charter of Semič Municipality (E.g. Statut Občine Semič, Charter of Semič Municipality, *Official Gazette* 2003, nr. 24) that determines one post in the Municipal Council for a member of the Roma Community. The Changes and Amendments of the Charter of Šentjernej Municipality (E.g. Spremembe in dopolnitve Statuta Občine Šentjernej, Changes and Amendments of the Charter of Šentjernej Municipality, *Official Gazette of Šentjernej Municipality* 2003, nr. 2) that determined one post in the Municipal Council for one member of the Roma Community. The Šentjernej Municipality also realized the subsequent elections. The Trebnje Municipality already has a Roma representative in the Municipal Council, the respective changes of the Municipal Charter is under preparation. The Grosuplje Municipality did not response.

The Bill on the Roman Community proposed by the Deputy Group of the Slovenian National Party was based on Article 65 of the Constitution of the Republic of Slovenia (E.g. Ustava Republike Slovenije, Constitution of the Republic of Slovenia, *Official Gazette* 1991, nr. 33, 1997, nr. 42, 2000, nr. 66, 2003, nr. 24, 2004, nr. 69) which imposes that the position and rights of the Roma community living in Slovenia shall be regulated by law. The Bill was intended to fill in the legal gape. The Bill determines that the Roma community in the Republic of Slovenia shall not have any special rights and any special position. Thereby the proponent invokes Article 14 of the Constitution of the Republic of Slovenia on equality of

anyone before law as well as particular comparable laws of several European countries. Additionally, the proponent believes that it is wrong to use a term Roma in the Republic of Slovenia without considering the basic division to Roma and Sinti. Both groups are treated separately by several European countries. Therefore the proponent of the Bill believes that the wording of Article 65 of the Constitution of the Republic of Slovenia is not appropriate. It uses the term “the Roma” without mentioning “the Sinti”. It is however evident that with reference to the their settlement in the Republic of Slovenia the Roma can not be autochthonous citizens because they live on the Slovenian territory for at maximum 50 years (Predlog Zakona o romski skupnosti, vložila ga je Poslanska skupina Slovenske nacionalne stranke 3. decembra 2004; Državni zbor predloga ni sprejel).

The Constitution imposes on the legislator to provide to the Roma special rights based on the recognition of their particular situation. Unfortunately, the Human Rights Ombudsman ascertains that there was no evident progress achieved in terms of the regulation of the Roma’s collective rights. Accordingly, the Human Rights Ombudsman again points out to the fact that such omission of normative regulation and/or such unclear position of the Roma constitutes one of the key system reasons for the tensions, disputes or even ever growing evident expression of intolerance to the Roma. According to the existing partial regulation the local communities should provide for the specific Roma’s rights of particular Roma’s rights. As the State does not sufficient funds for this purpose, local communities are dissatisfied with such situation. They believe that the provision of the specific Roma’s rights constitutes an additional financial burden affecting other local projects. Such situation, however, arouses a negative attitude to the Roma’s special rights and to their community itself. Yet, the settlement of the Roma problems does not mean that negative reactions of individual member of this community should be neglected. The Human Rights Ombudsman, too, does not support such reactions. On the contrary, the Human Rights Ombudsman believes that legislation should be exercised on equal footing for everybody alike. Moreover, the Municipality of Grosuplje had not yet introduced changes of then Municipality Statute nor the election of the Roma councilor, although this is imposed by the Local Self-Government Act (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Other relevant developments

Legislative initiatives, national case law and practices of national authorities

Under the Rules on Renting Non-profit Apartments (E.g. Pravilnik o dodeljevanju neprofitnih stanovanj v najem, Rules on Renting Non-profit Apartments, *Official Gazette*, nr. 14/04 in 34/04) in Article 3 (2) at the public competition there may also apply for the non-profit apartment women and women with babies who are victims of domestic violence and are temporary accommodated in the institutions for victims of domestic violence or centers for protection of victims of criminal offences. Under executive regulations, women and women with babies, victims of domestic violence are classified as preferential category of applicants. However, these provisions are not completely clear in definition of such category of applicants. Therefore the Human Rights Ombudsman proposed to the Ministry of the Environment and Spatial Planning to amend appropriately the contents of the Rules on Renting Non-profit Apartments as well as the respective Form (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

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

The appropriate role for religious instruction in schools continued to be an issue of debate. Last year, several political parties proposed that religious instruction be made compulsory; however, the Ministry of Education rejected the initiative on the basis of existing legislation. The Constitution states that parents

are entitled to give their children "a moral and religious upbringing." Only those schools supported by religious bodies taught religion.

Interfaith relations were generally amicable, although there was little warmth between the majority Catholic Church and foreign missionary groups that were viewed as aggressive proselytizers. Societal attitudes toward the minority Jewish, Muslim and Serb Orthodox communities generally were tolerant; however, some persons feared the possible emergence of Muslim fundamentalism. While there are no governmental restrictions on the Muslim community's freedom of worship, services commonly are held in private homes under cramped conditions. There are no mosques in the capital of Ljubljana. The lack of a mosque has been due, in part, to a lack of Muslim community organization and to complex legislation and bureaucracy in construction and land regulations. The Muslim community has conceptual plans to build a new facility in Ljubljana. In 2001, the Ljubljana Municipality Council selected one of five potential sites that the city previously had identified for the facility and tasked the city's planning department to begin preparing the materials necessary to move ahead with the project. At the beginning of 2003, Ljubljana city officials expressed support for the Mosque and the location on which it was to be built. Plans for building the mosque were stalled in part because of discovery that part of the land the city identified as for sale to the Muslim community was subject to a denationalization claim by the Catholic Church. The Church has agreed to forgo its claim if the city will compensate it with another piece of property. At the end of the period covered by this report, negotiations were ongoing.

The Government promotes anti-bias and tolerance education through its programs in primary and secondary schools, with the Holocaust as an obligatory topic in the contemporary history curriculum. However, teachers have a great deal of latitude in deciding how much time to devote to it. The country formally joined in the Council of Europe's 2004 proclamation of May 9, as Holocaust Memorial Day. Schools carried out various activities to remember the Holocaust on May 9, for example, watching documentaries, writing assignments and holding discussions on the topic (International Religious Report 2005, released on 8/11-2005 by the USA State Department, Bureau of Democracy, Human Rights, and Labor, <http://www.state.gov/g/drl/rls/irf2005/51581.htm>).

Jewish community representatives reported widespread prejudice, ignorance, and false stereotypes being spread within society. Reportedly, negative images of Jews were common in private commentary and citizens generally did not consider Jews to be a native population, despite their uninterrupted presence in the country for many centuries. While prejudice existed beneath the surface, there were no reports of overt verbal or physical harassment (Report on Global Anti-Semitism, July 1, 2003 – December 15, 2004, submitted by the Department of State to the Committee on Foreign Relations and the Committee on International Relations in accordance with Section 4 of PL 108-332, December 30, 2004, Released by the Bureau of Democracy, Human Rights, and Labor, January 5, 2005, Executive Summary).

Legislative initiatives, national case law and practices of national authorities

The Government should discuss possibility of supervision concerning granting of State funds to the religious communities in the Republic of Slovenia (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

In the area of religious freedom, the most high-profile cases last year were the opposition to the construction of the Islamic religious and cultural centre and the Jehovah's Witnesses' educational centre. We could describe the activities which occurred around these events as the sum of all the intolerance which the individual actors attempted to conceal behind other (technical and administrative) reasons. Here we also have to mention the poor work of the Government's Office for Religious Communities, which despite years of demands by the Human Rights Ombudsman has not prepared criteria for giving state assistance to religious communities (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Protection of linguistic minorities

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

There were 2 members of minorities in the 90-seat National Assembly and none in the 40-seat National Council. The Constitution provides the "autochthonous" (indigenous) Italian and Hungarian minorities the right, as a community, to have at least one representative in the Parliament. However, the Constitution and law do not provide any other minority group, autochthonous or otherwise, the right to be represented as a community in Parliament. In June 2003, the U.N. Committee on the Elimination of Racial Discrimination (CERD) issued a report recommending that the Government take further measures to ensure that all groups of minorities are represented in Parliament (State Department 2004 Human Rights Report, Slovenia HRR04).

Ethnic Serbs, Croats, Bosnians, Kosovo Albanians, and Roma from Kosovo and Albania were considered "new" minorities; they were not protected by the special constitutional provisions for autochthonous minorities and faced some governmental and societal discrimination (State Department 2004 Human Rights Report, Slovenia HRR04).

According to the 2002 census, minorities made up approximately 17 percent of the population and included 35,642 Croats, 38,964 Serbs, 21,542 Bosnians (Bosnian Muslims), 10,467 Muslims, 6,243 Hungarians, 6,186 Albanians, 3,246 Roma, and 2,258 Italians.

The Constitution provides special rights and protections to autochthonous Italian and Hungarian minorities, including the right to use their own national symbols and have bilingual education and the right for each to be represented as a community in Parliament (State Department 2004 Human Rights Report, Slovenia HRR04).

Concerning the position of other national groups as well as of the German speaking minority and groups of Non-Slovenians from the former Yugoslavia, the Advisory Committee believes that it would also be possible to include into the implementation of the Framework Convention for the Protection of National Minorities such groups (including non-citizens when appropriate). The Advisory Committee believes that the Slovenian Government should discuss this issue with all concerned groups (Published at the visit of the Council of Europe Advisory Committee on the Supervision of the Implementation of the Framework Convention for the Protection of National Minorities in Slovenia, 4-8 April 2005, Mnenje Svetovalnega odbora Sveta Evrope o uresničevanju Okvirne konvencije za zaščito narodnih manjšin s strani RS, sprejeto 12. septembra 2002; Svetovalni odbor je Mnenje sprejel po prejemu Začetnega državnega poročila o izvajanju Okvirne konvencije v Sloveniji leta 2000).

Pursuant to Article 4 of the Framework Convention for the Protection of National Minorities (E.g. Zakon o ratifikaciji Okvirne konvencije za varstvo narodnih manjšin, Act Ratifying the Framework Convention for the Protection of National Minorities, *Official Gazette-Treaties* 1998, nr. 4) that grants to minority members the right to equality before law and the equal legal protection, the Advisory Committee encourages the judicial authorities to introduce more efficient legal remedies (especially considering a low number of tried cases by the courts) in order to guarantee compensation for the victims of discrimination (Published at the visit of the Council of Europe Advisory Committee on the Supervision of the Implementation of the Framework Convention for the Protection of National Minorities in Slovenia, 4-8 April 2005, Mnenje Svetovalnega odbora Sveta Evrope o uresničevanju Okvirne konvencije za zaščito narodnih manjšin s strani RS, sprejeto 12. septembra 2002; Svetovalni odbor je Mnenje sprejel po prejemu Začetnega državnega poročila o izvajanju Okvirne konvencije v Sloveniji leta 2000).

Legislative initiatives, national case law and practices of national authorities

The Government should apply appropriate measures for efficient exercising of the constitutionally and legally determined special rights of the officially recognized national communities in the practice and/or in everyday life (Priporočila Državnega zbora Republike Slovenije, št. 700-01/93-0019/0042, EPA 293-IV, sprejeta na 10. redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

When meeting with representatives of the Italian and Hungarian minorities, the main issue expressed was concern due to the decreasing membership of both minorities between the two censuses. In addition, there is still a problem with the actual possibilities for using the languages of both minorities when dealing with state bodies, mainly due to the employment of civil servants who do not speak the minority languages. This illustrates a problem which is also common in other areas, where rights which are guaranteed by the Constitution or by law can not be exercised in full due to discrepancies between what is declared and what actually exists. Therefore we must again emphasize that it is not enough for the state only to formally guarantee the special rights of both of the constitutionally recognized minorities, but also that it is their duty to enable them to be exercised effectively in everyday life as well (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Also, the protection of the collective rights of national minorities not specially defined in the Constitution is not sufficiently regulated. The Ministry of Culture provides financial assistance to various associations, but this is insufficient. The lack of clarity surrounding the definition of the concept of autochthony and the poorly defined competencies of the Government Office for Nationalities further contributes to the lack of arrangement of the status of these minorities. With regard to the fact that some of these minorities in Slovenia are made up of fairly large groups of people, the Government must propose solutions in discussions with representatives of these minorities as soon as possible which will guarantee their continued existence as cultures and nationalities in Slovenia. Last year, the problem of the ethics of public speech became especially pronounced, frequently underscoring the helplessness of individuals when the media, especially the commercial media, make unjustifiable intrusions into their privacy, disclosed their identity or issued false information. We have also seen that legal remedies are often ineffective. The fact that politicians are often the first in line to express intolerance towards various minorities is also especially worrisome (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

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

The Public Use of the Slovenian Language Act (E.g. Zakon o javni rabi slovenščine, Public Use of the Slovenian Language Act, *Official Gazette* 2004, nr. 86) regulates in detail the obligatory usage of the official language that used to be regulated only by provisions of several procedural regulations. The Act determines the obligatory usage of oral and written communication in the official language in all fields of public life. The Human Rights Ombudsman believes that due to its still unclear effect, the Public Use of the Slovenian Language Act could produce several tensions because it is very difficult to draw a line between "public" and "private" in everyday life. Accordingly, the Human Rights Ombudsman refers to the usage of language in the activities of societies (associations) - which is considered as public under the Societies Act (E.g. Zakon o društvih, Societies Act, *Official Gazette* 1995, nr. 60, 1999, nr. 89, 2004, nr. 80) – or to the usage of language at the religious funeral. Moreover, referring to several statements of the Constitutional Court (E.g. CC (Constitutional Court), nr.U-I-299/94, 13 April 2005, *Official Gazette* 2005, nr. 28) the Human Rights Ombudsman believes that the use of foreign language at a public place is not as decisive as the purpose and/or the nature of the usage of language. The Human Rights Ombudsman believes that anyone is entitled to use any (own) language in private law relations (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The standpoint of the court that a defendant who uses a certain language in the proceedings, must also file their submissions to the court in this same language notwithstanding the fact that they have been deprived of liberty for the whole duration of the proceedings, is according to the review of the Constitutional Court inconsistent with the right to use one's language and script, determined in Article 62 of the Constitution. As the complainant was thus incapable of written communication with the court in the language which he otherwise used for oral communication in the proceedings, only respecting his right to use his language and script (Article 62 of the Constitution) enables him to exercise the right to equal protection of rights (Article 22 of the Constitution) or the right to a fair trial. By means of such regulation it is ensured that none of the parties has any advantage over another, and thereby the constitutionally required equality of arms is supported to the greatest possible extent. The requirement for fair trial applies to the proceedings as a whole and not only to the oral trial or hearing. With regard to the above stated, the Constitutional Court assesses that the complainant's right to equal protection of rights, determined in Article 22 of the Constitution, was violated (CC (Constitutional Court), nr.Up-599/04, 24 March 2005, *Official Gazette* 2005, nr. 37).

Article 23. Equality between man and women

Gender discrimination in work and employment

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

Government policy provides for equal rights for women, and there was no official discrimination against women or minorities in housing, jobs, or education. In rural areas, women, even those employed outside the home, bore a disproportionate share of household work and family care because of a generally conservative social tradition. However, women frequently were active in business and in government executive departments. Although both sexes had the same average period of unemployment, women frequently held lower paying jobs. On average, women's earnings were 90 percent of those of men. The Government's Office of Equal Opportunities (introduced by the Equal Opportunities for Women and Men Act (E.g. Zakon o enakih možnostih žensk in moških, Equal Opportunities for Women and Men Act, *Official Gazette* 2002, nr. 59) promotes nondiscrimination between women and men (State Department 2004 Human Rights Report, Slovenia HRR04).

Article 24. The rights of the child

Other relevant developments

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

The Committee expressed concern "at the reported neglect of unaccompanied minors seeking asylum or illegally residing in the territory of the State party. The Committee, while recognizing that registration is distinct from conferral of nationality, is also concerned that some children are registered at birth without a nationality". In this vein, the Committee recommended that "the State party should develop specific procedures to address the needs of unaccompanied children and to ensure their best interests in the course of any immigration and related proceedings. The State party should also ensure the right of every child to acquire a nationality (European Roma Rights Centre and Amnesty International Slovenia Urge Slovene Government to Act on Key Concerns Identified by the Human Rights Committee, Budapest, Ljubljana, 6 September 2005).

Child abuse was a problem; however, there was no societal pattern of abuse of children. The law provides special protection for children from exploitation and mistreatment. Social workers visited schools

regularly to monitor any incidents of mistreatment or abuse of children (State Department 2004 Human Rights Report, Slovenia HRR04).

Trafficking in girls for the purpose of sexual exploitation was a problem (State Department 2004 Human Rights Report, Slovenia HRR04).

Article 25. The rights of the elderly

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

Legislative initiatives, national case law and practices of national authorities

The Human Rights Ombudsman believes that the elderly should be more included into the social life and to be more informed on their own rights and the respective possibilities of their enforcement. The Human Rights Ombudsman calls the attention to the fact that there are still not enough old people nurseries, especially in the littoral and Ljubljana regions. It is necessary to extend programs for help at home and programs of social service; additionally, it is necessary to unify the terms of payment for these services. The same should apply to the payment for health care and nursing covered by the health insurance that means for the elderly accommodated in the old people nurseries as well as for the elderly living at home. The Human Rights Ombudsman believes that the elderly should have more opportunities for protection of their self-independence and autonomy. Therefore the society should promote the rights of the elderly in general (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Article 26. Integration of persons with disabilities

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

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

There was generally no discrimination against persons with disabilities in employment, education, access to health care, or in the provision of other government services. The law mandates access to buildings for persons with disabilities, and the Government generally enforced these provisions in practice. Modifications of public and private structures to ease access by persons with disabilities continued, although at a slow pace. The Ministry of Labor, Family and Social Affairs has primary responsibility for protecting the rights of persons with disabilities (State Department 2004 Human Rights Report, Slovenia HRR04).

Other relevant developments

CHAPTER IV. SOLIDARITY

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

Article 28. Right of collective bargaining and action

Article 29. Right of access to placement services

Article 30. Protection in the event of unjustified dismissal

Article 31. Fair and just working conditions

Sexual and moral harassment at work

Legislative initiatives, national case law and practices of national authorities

The National Council calls the attention to the increasingly higher number of violation of employee's rights as well as on increase of psychical pressure at work – the so called mobbing. The Human Rights Ombudsman may exercise its competences only in the public sector; however, it is still possible to notify such events to the Labor Inspection or to some other competent body, irrespective of the location of such events. Additionally, the National Council supports the Human Rights Ombudsman's endeavoring concerning elimination of such violation in the private sector as well (Državni svet Republike Slovenije, mnenje k Desetemu rednemu poročilu Varuha človekovih pravic za leto 2004, št. 700-01/93-0019/0042, EPA 293-IV, sprejeto na 37. seji, dne 19.10.2005).

Other relevant developments

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

The national monthly minimum wage of approximately \$622 (111,484 Slovenian tolar) provided a decent standard of living for a worker and family. The law limits the workweek to 40 hours and provides for minimum annual leave of 20 days. The Ministry of Labor is responsible for monitoring labor practices and has inspection authority; police are responsible for investigating any violation of the law. The law was enforced effectively. Special commissions under the Ministries of Health and Labor set and enforced standards for occupational health and safety. Workers had the right to remove themselves from dangerous work situations without jeopardy to their continued employment; however, it was not clear to what extent they could do so in practice. Legally employed workers enjoyed the same rights and working conditions as citizens; however, since foreign workers were more likely to be engaged in illegal work than citizens, they generally had poorer rights and working conditions in practice (State Department 2004 Human Rights Report, Slovenia HRR04).

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

Article 33. Family and professional life**Article 34. Social security and social assistance**Other relevant developments*Legislative initiatives, national case law and practices of national authorities*

Under the Pension and Disability Insurance Act (E.g. Zakon o pokojninskem in invalidskem zavarovanju, Pension and Disability Insurance Act, *Official Gazette* 1999, nr. 106, 2000, nr. 71, 2000, nr. 81, 2000, nr. 124, 2001, nr. 109, 2002, nr. 108, 2002, nr. 110, 2003, nr. 26, 2003, nr. 63, 2003, nr. 135, 2004, nr. 2, 2004, nr. 20, 2004, nr. 54, 2004, nr. 63, 2005, nr. 72) enforced on 1 January 2000, the periods of insurance may be included into the total insurance period only on condition that all prescribed insurance contributions were paid for the respective periods (Article 191 (1)). It is understandable and in accordance with the rule of law governed State that this provision can be applied only from 1 January 2000 onwards, unless it may have retroactive effect. Additionally, Article 448 of the Pension and Disability Insurance Act also imposed the establishment of records of paid contributions. The records should be established by the Pension and Disability Insurance Institute in cooperation with the Tax Administration of the Republic of Slovenia on the basis of data recorded by the same Administration at the latest three years after enforcement of the mentioned Act. The Human Rights Ombudsman states that Article 448 of the Pension and Disability Act has not yet been implemented. Therefore, further Human Rights Ombudsman's endeavoring will be oriented to the limitation or abolishment of possible negative consequences for the affected individuals (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Article 35. Health careAccess to health care*Legislative initiatives, national case law and practices of national authorities*

The Human Rights Ombudsman agrees with the criticism about lack of enforceability of the Health Care and Health Insurance Act (E.g. Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, Health Care and Health Insurance Act, *Official Gazette* 1992, nr. 9, 1993, nr. 13, 1996, nr. 9, 1998, nr. 29, 1999, nr. 6, 1999, nr. 56, 2001, nr. 99, 2002, nr. 42, 2002, nr. 60, 2003, nr. 126, 2004, nr. 20, 2005, nr. 76). He believes that the Act passed already in 1992 has not been harmonized with the current regulation of family relations that was enforced especially by the last amendment of the Marriage and Family Relations Act in 2004 (E.g. Zakon o spremembah in dopolnitvah Zakona o zakonski zvezi in družinskih razmerjih, Act on Changes and Amendments of the Marriage and family Relations Act, *Official Gazette* 2004, nr. 16). The Act still stipulates a common household as a condition for the family member nursing allowance. It would be more appropriate to relate such allowance to the upbringing of children (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Article 34 of the Health Care and Health Insurance Act (E.g. Zakon o zdravstvenem varstvu in zdravstvenem zavarovanju, Health Care and Health Insurance Act, *Official Gazette* 1992, nr. 9, 1993, nr. 13, 1996, nr. 9, 1998, nr. 29, 1999, nr. 6, 1999, nr. 56, 2001, nr. 99, 2002, nr. 42, 2002, nr. 60, 2003, nr. 126, 2004, nr. 20, 2005, nr. 76) provides for temporary use of health insurance rights upon termination of the legal basis for compulsory health insurance only to those subscribers who used to be employed but not to self-employed subscribers although they also pay identical contributions. Accordingly there is no reason for legal distinction of beneficiaries regarding sick allowance. Therefore, Article 34 (2) should be amended in the way to include self-employed people into the same skin (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Article 36. Access to services of general economic interest**Article 37. Environmental protection**The right to access to information in environmental matters*Legislative initiatives, national case law and practices of national authorities*

For many years, the Human Rights Ombudsman has been calling the attention to the lack of understanding of its competences in the inspection proceedings. Under the Human Rights Ombudsman Act (E.g. Zakon o varuhu človekovih pravic, Human Rights Ombudsman Act, *Official Gazette* 1993, nr. 71, 1994, nr. 15, 2002, nr. 56) the Human Rights Ombudsman performing his function shall act according to the provisions of the Constitution and international legal acts on human rights and fundamental freedoms. While intervening he may invoke the principles of equity and good administration (Article 3). The Human Rights Ombudsman may make suggestions and give recommendations, opinions and critiques to the bodies which are bound to consider them and respond within the deadline specified by the Human Rights Ombudsman (Article 7). Additionally, the Human Rights Ombudsman may communicate to each body his opinion, from the aspect of protection of human rights and fundamental freedoms, about the case he is investigating, irrespective of the type or stage of proceedings which are being conducted by the respective body. Moreover, beside violation of human rights and fundamental freedoms, the Human Rights Ombudsman may call the attention also to other incorrectness (Articles 30 and 39). Therefore it would be necessary to consider the Human Rights Ombudsman's interventions also by the Inspectorate of the Republic of Slovenia of the Environment and Spatial Planning. Due to the Inspectorate's rejection of cooperation the number of unexecuted supervisory decisions increased (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Article 38. Consumer protection*Legislative initiatives, national case law and practices of national authorities*

The statutory regulation of the prohibition of opening hours of shops on Sundays and statutorily determined holidays does not excessively interfere with the constitutionally guaranteed free enterprise and therefore is not inconsistent with the Constitution.

The concept of "indispensable consumer goods" is an indefinite legal concept. However, the challenged provision is due to this fact not by itself inconsistent with the Constitution. What to consider indispensable consumer goods depends on various circumstances which influence and/or shape living and consuming habits of individuals. Therefore, such may vary between individuals, areas as well as time-frames. Thus, the definition of this concept is legitimately wide and open. As such, it provides the Minister not only with a sufficient substantive legal basis, but also a sufficient openness (wideness) for the determining of indispensable consumer goods.

By determination of indispensable consumer goods it is possible to use the type as well as the quantity, which will also depend on the variety of indispensable consumer goods that will be in the assortment of an individual shop. The use of either of the criteria is not inconsistent with the Constitution.

The allegation on the indefiniteness of Article 17 (3) of the Trade Act (E.g. Zakon o trgovini, Trade Act, *Official Gazette* 1993, nr. 18, 2000, nr. 36, 2002, nr. 96, 2003, nr. 7, 2004, nr. 22, 2004, nr. 69) is unfounded. The Trade Act provides that the shops on special locations and with a limited sales area may be open on all Sundays throughout the year, regardless of the products they sell. Such meaning already follows from the linguistic interpretation and is fully justified by the teleological interpretation. The purpose of the Act is to limit the operation of shops on Sundays and statutorily determined holidays.

The categorization of traders into different positions regarding the possibility of determining opening hours of shops on Sundays and statutorily determined holidays originates in the purpose (goal) which the whole regulation of the opening hours of shops is following. This purpose is legitimate and justified in the public interest. At issue is the search for an appropriate balance between the interests of the employees in trade and the interests of consumers. The legislature estimates that in certain cases, the interests of consumers must be considered to a greater extent as the interests of the employees in trade. Such cases are the supply with indispensable consumer goods or the supply on certain special locations, however in both cases to a limited extent (in terms of time or space), thereby the interest of the employees in trade is also taken into consideration. The reasons for the differentiation cannot be alleged to be unreasonable.

The limitation of the sales area of shops on special locations is necessary not only in order to prevent abuse and fraudulence regarding the purpose of the Act, but also to secure the general principle of equality and fair competition.

The principle of definiteness and clarity of a regulation as one of the principles of a state governed by the rule of law (Article 2 of the Constitution) requires that the regulations be clear and definite. The concept of "total sales area of a shop" is not definite enough and it is not clear to which areas such apply.

Since the legislature regulated the area of shops on special locations arbitrarily, this regulation is inconsistent with the principles of a state governed by the rule of law, determined in Article 2 of the Constitution (CC (Constitutional Court), nr.U-I-131/04, 21 April 2005, *Official Gazette* 2004, nr. 77 and *Official Gazette* 2005, nr. 50).

CHAPTER.V. CITIZENS' RIGHTS**Article 39. Right to vote and to stand as a candidate at elections to the European Parliament**

No significant developments to be reported.

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

No significant developments to be reported.

Article 41. Right to good administration

No significant developments to be reported.

Article 42. Right of access to documents

No significant developments to be reported.

Article 43. Ombudsman

No significant developments to be reported.

Article 44. Right to petition

No significant developments to be reported.

Article 45. Freedom of movement and of residence

No significant developments to be reported.

Article 46. Diplomatic and consular protection

No significant developments to be reported.

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 Government should promote the proceedings and decision making on the requests under the Redressing of Injustices Act (E.g. Zakon o popravi krivic, Redressing of Injustices Act, *Official Gazette* 1996, nr. 59, 2001, nr. 11, 2001, nr. 87, 2003, nr. 34, 2003, nr. 47, 2005, nr. 53, 2005, nr. 70). Moreover, the Government should finally decide on issues concerning compensation to the impaired persons, prisoners of war and to the persons mobilized by force into the German Army (Priporočila Državnega zbora Republike Slovenije, št. 700-01/03-0019/0042, EPA 293-IV sprejeta na 10 redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004 obj. Poročevalec DZ, št. 83/05)

The number of initiatives filed to the Human Rights Ombudsman confirms the more and more important role of the free legal aid that is constantly increasing even to the extent that some difficulties concerning regularly payments appeared. Such situation was also confirmed by the Report on Implementation of the Free Legal Aid Act (E.g. Zakon o brezplačni pravni pomoči, Free Legal Aid Act, *Official Gazette* 2001, nr. 48, 2004, nr. 50, 2004, nr. 96) prepared by the Supreme Court. In 2004 the Free Legal Aid Act was amended for the first time (E.g. Zakon o spremembah in dopolnitvah Zakona o brezplačni pravni pomoči, Act on Changes and Amendments of the Free Legal Aid Act, *Official Gazette* 2004, nr. 96) and it regulated the transfrontier free legal aid, which is connected with the Slovenian accession to the European Union. Additionally, under the amended Act the applicant filing his application for the free legal aid may also propose a lawyer who should deal with the concrete free legal aid case (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

Under the Redressing of Injustices Act (E.g. Zakon o popravi krivic, Redressing of Injustices Act, *Official Gazette* 1996, nr. 59, 1998, nr. 68, 1999, nr. 61, 2001, nr. 11, 2001, nr. 29, 2001, nr. 87, 2002, nr. 47, 2003, nr. 34) on 31 December 2004 a term expired for filing of written requests for acknowledgement of status of the former political prisoner, status of person killed after the war and/or a relative of such person as well as acknowledgement of the respective rights that include compensation of damage and the rights out of pension and disability insurance. (Zahteve za status po Zakonu o popravi krivic še do konca leta, Delo, 13. November 2004, page 2)

The Constitutional Court established that the Act on the Transformation of the Succession Fund of the Republic of Slovenia and for Establishing the Public Agency of the Republic of Slovenia for Succession Act (E.g. Zakon o preoblikovanju Sklada RS za sukcesijo in ustanovitvi Javne agencije RS za nasledstvo, Act on the Transformation of the Succession Fund of the Republic of Slovenia and for Establishing the Public Agency of the Republic of Slovenia for Succession Act, *Official Gazette* 2004, nr. 86) is inconsistent with Article 23 (1) of the Constitution, since it does not determine the continuation of civil and execution proceedings which were discontinued or suspended on the basis of the Succession Fund of the Republic of Slovenia Act. (CC (Constitutional Court), nr.Up-76/03 and U-I-288/04, 17 March 2005, *Official Gazette* 2005, nr. 34).

The Judicial Service Act (E.g. Zakon o sodniški službi, Judicial Service Act, *Official Gazette* 1994, nr. 19, 1996, nr. 8, 1998, nr. 24, 2001, nr. 48, 2002, nr. 67, 2004, nr. 2, 2004, nr. 71, 2005, nr. 23) interferes with the constitutional right to efficient judicial protection, determined in Article 23(1) of the Constitution, insofar as it does not determine that the Judicial Council must send to non-selected candidates a proposal

for election along with the notification that they were not proposed to be elected. Due to the fact that for the resent regulation it is cannot be established whether it follows any constitutionally admissible reason which would justify an interference with the constitutional right to judicial protection, already the first condition that the Constitution requires for the limitation of human rights (Article 15 (3)) is not fulfilled. Therefore, the challenged statute is inconsistent with the Constitution due to this reason alone (CC (Constitutional Court), nr.U-I-198/03, 14 April 2005, *Official Gazette* 2005, nr. 47).

Reasonable delay in judicial proceedings

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

The Constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right; however, the judicial system was overburdened and, as a result, the judicial process frequently was protracted. In some cases, criminal trials have lasted from 2 to 5 years (State Department 2004 Human Rights Report, Slovenia HRR04).

The applicant alleged under Article 6 (1) of the Convention (E.g. Zakon ratifikaciji Konvencije o varstvu človekovih pravic in temeljnih svoboščin, Act Ratifying the Convention on Human Rights and Fundamental Freedoms, *Official Gazette - Treaties* 1994, nr. 7) that the length of the proceedings before the domestic courts to which he was party was excessive. In substance, he also complained about the lack of an effective domestic remedy in respect of the excessive length of the proceedings (Article 13 of the Convention). In the Court's view, the overall length of the proceedings in the instant case was excessive and failed to meet the "reasonable-time" requirement. In particular, the duration of the proceedings before the first-instance court, which exceeded four years, is not compatible with the standards set by the Court's case-law (E.g., *A.P. v. Italy* [GC], no. 35265/97, 28 July 1999). Here has accordingly been a breach of Article 6 (1) of the Convention. The applicant complained that the remedies available in Slovenia in length-of-proceedings cases were ineffective. In substance, he relied on Article 13 of the Convention. The Court reiterates that the standards of Article 13 require from a party to the Convention to guarantee a domestic remedy allowing the competent domestic authority to address the substance of the relevant convention complaint and to award appropriate relief, although Contracting States are afforded some discretion as to the manner in which they conform to their obligations under this provision. In the present case, the Government has failed to establish that an administrative action, a tort claim, a request for supervision or a constitutional appeal can be regarded as effective remedies. For example, when an individual lodges an administrative action alleging a violation of his or her right to a trial within a reasonable time while the proceedings in question are still pending, he or she can reasonably expect the administrative court to deal with the substance of the complaint. However, if the main proceedings end before it has had time to do so, it will dismiss the action. Finally, the Court also concluded that the aggregate of legal remedies in the circumstances of these cases is not an effective remedy. Accordingly, there has been a violation of Article 13 of the Convention (Eur. Ct. H.R., *Lukenda v. Slovenia* judgment of October 2005, *Application no. 23032/02*).

Legislative initiatives, national case law and practices of national authorities

Within their competences, the Government, the courts and other judicial bodies should take additional measures to provide for the enforcement of the right to the trial in the reasonable time, laying great stress on the quality and efficiency of judicial proceedings on all levels of judicial decision making (Priporočila Državnega zbora Republike Slovenije, št 700-01/93-0019/0042, EPA 293-IV, sprejeta na 10 redni seji dne 27/10-2005 ob obravnavi Desetega rednega letnega poročila Varuha človekovih pravic za leto 2004, obj. Poročevalec DZ, št. 83/05).

Repeated complaints about violations of the right to adjudication within a reasonable time frame is an annual constant, and there is nothing new to report this year, although there is constant talk of

improvement. Very few courts respect the statutory deadline for scheduling trials in criminal matters. Unfortunately, it is the opinion of the Supreme Court that the two-month statutory deadline pursuant to Article 286 of the Criminal Procedure Act (E.g. *Zakon o kazenskem postopku*, Criminal Procedure Act, *Official Gazette* 1994, nr. 63, 1998, nr. 49, 1998, nr. 72, 1999, nr. 6, 2000, nr. 66, 2001, nr. 111, 2003, nr. 56, 2003, nr. 116, 2004, nr. 43, 2004, nr. 96) "is not a true statutory deadline, but is a so-called instructional or monitory deadline, which is intended to provide procedural discipline...!?" Frequently there are also violations of the statutory deadlines for drawing up court rulings in civil and criminal procedure. Even though the law binds judges to draw up a judgment in writing within 30 days, and within 15 days in detention cases, we observed cases where the defendant waited for adjudication for up to as much as half a year. It is difficult to accept the assertion that statutory provisions do not apply to judges, since it is the judges above all others who must stand as examples to other citizens by obeying the laws. In addition, the majority of complaints lodged with the European Court of Human Rights from Slovenia refer to adjudication within a reasonable time frame, which confirms our findings. Any delay of a court ruling has serious consequences, and this is especially true for social and labor disputes, which further increase the already serious existential problems of the complainant (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

During the last period, the applicants challenged the delay of judicial proceedings, making the point of the particular stages of proceedings (e.g. waiting for oral hearings, waiting for the written copy of the judgment, waiting for the respective decision on their appeal etc.). Due to such difficulties, by the Act on Changes and Amendments of the Court Act (E.g. *Zakon o spremembah in dopolnitvah zakona o sodiščih*, Act on Changes and Amendments of the Court Act, *Official Gazette* 2004, nr. 73) enforced in 2004, the legislator explicitly determined that judges should decide on the rights and duties as well as on charges without unreasonable delay, independently and impartially.

Moreover, in 2004 continued the State endeavoring for changes and amendments in particular organizing and procedural legislation that may contribute to the efficient judicial system. Therefore also Article 72 of the Court Act was changed and amended again by the Act on Changes and Amendments of the Courts Act (E.g. *Zakon o spremembah in dopolnitvah zakona o sodiščih*, Act on Changes and Amendments of the Courts Act, *Official Gazette* 2004, nr.3) regulating the supervisory appeal. On the basis of the new regulation, the mentioned appeal became an "arm of the party" who challenges the court's violation of his/her right to the trial in the reasonable time. Under the new regulation, the filing of a supervisory appeal may be founded in case of violation of rules on priority order in resolving cases and /or in case of violation of legally binding deadlines for hearings and issue of judgments (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The number of unresolved cases and delays indicates that most Slovenian courts are overloaded. The Human Rights Ombudsman has been permanently calling the attention to the State's duty to provide for the enforcement of the right to the trial in reasonable time in the judicial proceedings before ordinary courts as well as before specialized courts. The Human Rights Ombudsman has been also calling the attention to the duty of judges to respect all competences of their judicial function. Only in this way it is possible to provide for the efficient, impartial and fair judicial proceedings. It is worth mentioning that the two thirds of appeals filed to the European Court for Human Rights refer to the violation of the right to the trial in the reasonable time. Such situation should not be overlooked by the judicial branch of power (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The new Labor and Social Courts Act (E.g. *Zakon o delovnih in socialnih sodiščih*, Labor and Social Courts Act, *Official Gazette* 2004, nr. 2, 2004, nr. 10) enforced on 1 January 2005 introduced some new procedural rules to accelerate the proceedings in labor and social disputes. Among others, the new Act promotes settlements as the most efficient way for resolving cases. More discipline on the part of the parties to the proceedings and a higher level of responsibility in judicial decision making were introduced too (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The Human Rights Ombudsman is aware of endeavoring of several ordinary courts to promote the efficiency of judicial decision making in order to reduce the number of unresolved cases. The settlement

was promoted as an alternative method of resolving cases. Additionally, in this way the parties to the proceedings gained higher responsibility. It is also necessary to point out to the project of so called "accelerated civil proceedings" that introduced the principle of the concentrated hearing. Moreover, this project determines more clear and efficient tasks of all parties to the proceedings. However, until the respective legal regulation is changed and amended, the cooperation of parties during the proceedings can be implemented under the Civil Procedure Act in force. Out of legally binding procedural provisions, the parties to the proceedings may be bound during the proceedings only on the basis of their consensus. Among current endeavoring for more efficient proceedings there is worth mentioning the establishment of the so called Family Department for decision making on cases that under the Act on Changes and Amendments of the Marriage and Family Relations Act (E.g. Zakon o spremembah in dopolnitvah Zakona o zakonski zvezi in družinskih razmerjih, Act on Changes and Amendments of the Marriage and Family Relations Act, *Official Gazette* 2004, nr. 16) fall under the competency of county (regional) courts. Such specialized County Court's Family Department should promote the quality and speed of the judicial decision making (Human Rights Ombudsman, Annual Report 2004, Ljubljana, May 2005).

The Constitutional Court (CC (Constitutional Court), nr.U-I-65/05, 22 September 2005, *Official Gazette* 2005, nr. 92) decided on the constitutionality of the Administrative Dispute Act (E.g. Zakon o upravnem sporu, Administrative Dispute Act, *Official Gazette* 1997, nr. 50, 1997, nr. 65, 2000, nr. 70). The Constitutional Court discussed the issue if the affected persons have an efficient judicial protection of their right to the trial in the reasonable time (based on Article 23 (1) of the Constitution) in the situation of already terminated proceedings where this right was presumably violated. The Constitutional Court decided that the Administrative Dispute Act is not in conformity with the Constitution.

Under the so far existing Constitutional Court's statement, taking into account the legislation in force, the affected person may file an appeal for compensation (based on Article 26 of the Constitution) whenever the proceedings was finally terminated if the person's right to the trial in the reasonable time was presumably violated. It means that such appeal should be judged by the ordinary court in the civil proceedings applying general rules of the compensation law established by the Code of Obligation (Obligacijski zakonik, Code of Obligations, *Official Gazette* 2001, nr. 83, 2004, nr. 32). On these grounds, the competent court may award to the affected person only a compensation for the pecuniary and non-pecuniary damage, provided that the conditions for the liability for damages are fulfilled. Irrespective of the above position, the Constitutional Court decided that - taking into account the case law of the European Court for Human Rights – it is necessary (in the spirit of the European Convention for Protection of Human Rights and Fundamental Freedoms) to interpret Article 15 (4) of the Constitution of the Republic of Slovenia, that guarantees the judicial protection of human rights and the right to eliminate consequences of their violation, in the way that this provision provides for the request to ensure (Within the scope of the judicial protection of the right to the trial in the reasonable time) the possibility of enforcement of equitable compensation even when the violation over. Accordingly, the criteria established by the European Court for Human Rights shall be applied for evaluation if the reasonable duration of the trial was exceeded.

Because the Administrative Dispute Act, referring to Article 157 (2) of the Constitution and providing for the judicial protection of the right to the trial in the reasonable time, does not contain any special provisions, adapted to the nature of the discussed right that would also provide for the claiming of a just compensation if the violation of the discussed right is over, the Constitutional Court decided that the Act is not in conformity with Article 15 (4) of the Constitution (in connection with Article 23 (1) of the Constitution).

The Constitutional Court decided only on the issue if the legislation in force provides for the efficient judicial protection of the right to the trial in the reasonable time if the violation is over. However, the Court calls the attention that - in reference to the case-law of the European Court for Human Rights - the reasonable question is also raised about the efficiency of the judicial protection of the discussed right if the proceeding is still in course. As the Constitutional Court stated, in the process of adoption of future legal regulation that will eliminate the unconstitutional provisions declared by the Court's decision, there is also necessary to provide for the appropriate protection of the discussed right if the proceedings is still in

course. Additionally, it is necessary to harmonize these issues with the standards adopted by the European Court for Human Rights. Moreover, the basic concern of the State and/or of the all three branches of power is to provide for the efficient enforcement of the judiciary function (CC (Constitutional Court), nr.U-I-65/05, 22 September 2005, *Official Gazette* 2005, nr. 92).

Article 48. Presumption of innocence and right of defence

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

(CC (Constitutional Court), nr U-I-335/02, 24 March 2005, *Official Gazette* 2005, nr. 37). Protection from arbitrary and unlawful interferences in criminal substantive law is manifested foremost by the principle of legality. This principle sets out several conditions for the use of criminal law repression, namely:

- The prohibition of determining criminal offences and penalties by executive regulations or by customary law (*nullum crimen, nulla poena sine lege scripta*);
- The prohibition of analogy at establishing existence of criminal offences and at imposing of penalties (*nullum crimen, nulla poena sine lege stricta*);
- The prohibition of determining criminal offences and penalties by means of void, undefined, or unclear concepts (*nullum crimen, nulla poena sine lege certa*);
- The prohibition of retroactive application of regulations which determine criminal offences and respective penalties (*nullum crimen, nulla poena sine lege praevia*).

The provision which is used for understanding of a certain sign in a "blanket" disposition can be another statute, executive regulation, individual legal act (predominantly in cases of criminal omissions, when it is a source of dutiful conduct) or even a non-legal rule, e.g. the rules of medical science and profession in cases of criminal offences of negligent medical treatment, determined in Article 190 of the Penal Code of the Republic of Slovenia (E.g. Kazenski zakonik Republike Slovenije, Penal Code of the Republic of Slovenia, *Official Gazette* 1994, nr. 94, 1999, nr. 23, 2004, nr. 40, 2004, nr. 95). However, this does not mean that due to the "blanket" legislative technique the principle of legality and in its framework the principle of determination of criminal offence by statute (*nullum crimen sine lege*) are violated. Namely, in case of a "blanket" norm, all the elements of a criminal offence are contained already in the norm of the statute which incriminated certain conduct (in our case, criminal offences determined in Articles 196 and 197 of the Penal Code of the Republic of Slovenia are at issue). However, in such a case one of the elements is not by itself comprehensible enough – direction to another regulation is thus an interpretative rule, which enables an addressee and an applicator of the Penal Code of the Republic of Slovenia to understand the elements of a criminal offence. Thereby, the other regulation to which the "blanket" norm directs must remain in the framework of the direction, in order for the interpretation to be restrictive and as such consistent with the principles of criminal law. On the contrary, if the other regulation would extend the field of criminality, as it was fundamentally outlined by the penal statute, an inadmissible extensive interpretation would be at issue. If this is satisfactory, then from the viewpoint of the *nullum crimen sine lege* requirement the nature of the regulation which is used on the basis of the "blanket" disposition is not essential, since all the elements of a criminal offence are already contained in the (criminal) statute.

Articles 196 and 197 of the Penal Code of the Republic of Slovenia refer to narcotic drugs or substances and preparations, which are denounced to be narcotic drugs, and Article 126 of the Penal Code of the Republic of Slovenia provides that illicit drugs, which are determined by another statute and enlisted in the

Illicit Drugs List are considered narcotic drugs. Article 2 (1) of the Manufacture and Trafficking of Illicit Drugs Act (E.g. *Zakon o proizvodnji in prometu s prepovedanimi drogami*, Manufacture and trafficking of Illicit Drugs Act, *Official Gazette* 1999, nr. 108, 2000, nr. 44, 2004, nr. 2, 2004, nr. 47) substantially defines the concept of illicit drugs and states that individual illicit drugs are listed and categorized by the List, which a legal act adopted by the Government. In the Group I of the List under the order number 32, cannabis is indicated as an illicit drug by a Slovenian name and a Latin title together with an explicit definition which parts and products are illicit (the plant, the resin, the extracts, the tinctures). The List is published in the Official Gazette of the Republic of Slovenia. The addressees of the norms determined by Articles 196 and 197 of the Penal Code of the Republic of Slovenia can thus clearly establish what conduct falls within the field of criminality. Thus, the requirement of definiteness of criminal regulations is also met. The provision of the List, which is applied on the basis of the challenged provisions of the Penal Code of the Republic of Slovenia, does not allow the applicators of provisions of criminal law (state prosecutors and judges) for extensive interpretation of Articles 196 and 197 of the Penal Code of the Republic of Slovenia, on the contrary, it has a restrictive effect on the challenged provisions of the Penal Code of the Republic of Slovenia, since it limits the field of criminality which could be otherwise possibly too wide and too indefinite. Therefore, Articles 196, 197, and 126 (14) of the Penal Code of the Republic of Slovenia are not inconsistent with the principle of legality determined in Article 28 (1) of the Constitution, although they do not define the contents of the concept of a narcotic drug as an element of a criminal offence independently, but they yield this to another regulation, i.e., the Manufacture and Trafficking of Illicit Drugs Act and on its basis to the List. However, as it follows from paragraph 15 of the reasoning of the present decision, since it is not by itself necessary from the viewpoint of the principle of legality that a rule to which the "blanket" norm directs for the understanding of the description of a criminal offence, would be of a statutory nature, the provision of Article 2 (2) of the Manufacture and Trafficking of Illicit Drugs Act, according to which the List that contains the categorization of illicit drugs is adopted by the Government, is also not inconsistent with Article 28 (1) of the Constitution.

The decision, which harmful or dangerous conduct will in a certain case the legislature declare as criminal, belongs on principle in the field of their discretion, under the condition that the decision on incrimination or non-incrimination does not represent an inadmissible interference with human rights or fundamental freedoms or in other constitutional guarantees, above all the principle of a state governed by the rule of law (Article 2 of the Constitution).

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