FUNDAMENTAL RIGHTS SERIES

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

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN SLOVENIA IN 2003

January 2004

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[*] submitted to the Network by Dr Arne Marjan Mavcic.

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

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

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

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PRELIMINARY REMARKS

Introduction

Although there is no doubt that Slovenia has been absorbing the same ideals and tradition of consideration for freedom and the principle of the rule of law as did the framers of the Charter of Fundamental Rights of the European Union and other similar international acts and has furthermore been reintroducing and developing the legal culture of human rights after almost half a century of arrears, Slovenia nevertheless does not lack tradition in the field of human rights.

The 1991 Constitution[1] of the newly independent Republic of Slovenia, in addition to the catalogue of standard fundamental rights in combination with the newly defined powers of the Constitutional Court, also established the foundation for the strengthening of the Court's role in this domain. Now the Constitutional Court is considered to have sufficient scope for such activities. The Slovenian Constitution contains adequate definitions of rights, which should ensure reasonably clear understanding. Almost all fundamental rights have the nature of legal principles and are, as such, still open to such an extent that they require significant further concretization and expert interpretation[2]. In this respect, the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the practice of the European Court of Human Rights have been of significant help, and in the years to come – with Slovenia's accession to the European Union – the ever greater significance of the Charter of Fundamental Rights of the European Union can be expected.

Accordingly, on the legislative level Slovenia has reached the standard of contemporary European legal culture, in which it is normal for domestic courts to be influenced by the case-law of the European Court of Human Rights and as such increasing the level of the protection of human rights.

The high level of democracy and respect for the rule of law achieved during this period indicates that these values must have been deeply rooted in the Slovenian society long before its independence in 1991. Otherwise such significant progress would have been difficult to achieve in just more than a decade after the collapse of the totalitarian political system of the SFRY[3].

Fundamental Rights Protection System

A. National System

The Slovenian constitutional order is based on the protection of human rights and freedoms (the Preamble of the *Constitution*). On its own territory, Slovenia shall protect human rights and fundamental freedoms[4].

1. Judicial Protection

1.1. Human rights and fundamental freedoms shall be subject to judicial protection (e.g. civil law, penal law, constitutional law and administrative law). Moreover, this protection shall include the right to obtain redress for the abuse of such rights and freedoms[5].

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[1] Official Gazette RS, Nos. 33/91, 42/97, 66/00 and 24/03.
[2] Citation from Pavčnik Marijan, *Verfassungsauslegung am Beispiel der Grundrechte in der neuen slowenischen Verfassung*, WGO Monatshefte für Osteuropaeisches Recht, 35th Yearbook 1993, Heft 6, p. 345-356.
[3] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 1.
[4] Para. 1 of Article 5 of the Constitution.
[5] Para. 4 of Article 15 of the Constitution.

1.2. Specialized courts have jurisdiction in their respective legal field only. Under the *Labour and Social Courts Act,* such courts are as follows:
- Labour Courts: are empowered to decide on individual labour disputes and collective labour disputes.
- Social Courts: the Social Court of first instance is empowered to decide on disputes concerning pension and disability insurance, health insurance, unemployment insurance, as well as family and social support benefits. The higher labour and social courts (decided by three judges) shall decide matters relating to complaints against decisions decided by the labour courts and the social court of the first instance.

2. Administrative-Penal Protection (Offences)

If no other legal redress is provided, courts of competent jurisdiction shall also be empowered to decide upon the legal validity of individual activities and acts which infringe the constitutional rights of the individual[6].

The right to the judicial review of the acts and decisions of all administrative bodies and statutory authorities that affect the rights and legal entitlements of individuals or organizations shall be guaranteed[7].

3. Constitutional Complaint [8]

The provisions of the Slovenian *Constitution* of 1991 that regulate the constitutional complaint in detail are relatively modest[9]. However, the *Constitution* itself[10] envisages a special regulation[11].

The Constitutional Court decides cases of constitutional complaints alleging violations of human rights and fundamental freedoms[12]. Thus the protection embraces all constitutionally guaranteed human rights and fundamental freedoms[13] including those adopted through the treaties that have become part of the national law through ratification.

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[6] Para. 2 of Article 157 of the Constitution.
[7] Para. 3 of Article 120 of the Constitution.
[8] Subpara. 6 of Para. 1 of Article 160 of the Constitution; Article 50 through 60 of the Constitutional Court Act. See Mavcic, A., Slovenian Constitutional Review, Its Position in the World and Its Role in the Transition to a New Democratic System, Ljubljana, Založba Nova revija, 1995. Mavcic, A., The Citizen as an Applicant Before the Constitutional Court, Report on the Seminar organised by the European Commission for Democracy through Law in conjunction with the Constitutional Court of Georgia on Contemporary Problems of Constitutional Justice, Tbilissi, Georgia, 1-3 December 1996, Offprint. Mavcic, A., The Role of the Slovenian Constitutional Court in Legal Transition, Report on the Conference on Constitutional Transition, CCT'97, Hong Kong, 29 May - 1 June, 1997, Offprint. Mavcic, A., Nature and Effects of Decisions of the Slovenian Constitutional Court, Temporary Order as an Element of the Constitutional Review Procedure, Report on the Colloquium ueber Grundfragen der Verfassungsgerichtsbarkeit in Mittel- und Osteuropa, das Max-Planck-Institut fuer auslaendisches oeffentliches Recht und Voelkerrecht, Heidelberg, 17-18 April, 1997, Offprint. Mavcic, A., The Protection of Basic Rights by the Constitutional Court and the Practice of the Constitutional Court of the Republic of Slovenia, Report on the Seminar "The Protection of Basic Rights by the Constitutional Court", European Commission for Democracy through Law, Brioni, Croatia, 23-25 September 1995, Proceedings, p. 204. Mavcic, A., The Protection of Basic Rights by the Constitutional Court, Report on the Seminar Constitutional Dimension of Judicial Reform and Judicial Organization, Kyrghyz Republic, Bishkek, 17-18 June 1997, Offprint. Mavcic, A., Constitutional Complaint, Report on the Seminar organised by the European Commission for Democracy Through Law in conjunction with the Constitutional Court of Latvia, Riga, Latvia, 3-4 July 1997, Offprint. Mavcic, A., Report on Constitutional Review in the Field of Human Rights Protection, Seminar organised by the European Commission for Democracy through Law in conjunction with the Constitutional Court of Azerbaijan, Baku, Azerbaijan, 8-9 November 2002, Offprint.
[9] Articles 160 and 161 of the Constitution.
[10] Para. 3 of Article 160 of the Constitution.
[11] Provisions of Articles 50 through 60 of the Constitutional Court Act.
[12] Item 6 of Para. 1 of Article 160 of the *Constitution.*
[13] Such a formulation in the Slovenian system is rare, since other arrangements as a rule explicitly define the circle of rights protected by the constitutional complaint.

Any legal entity or individual may file a constitutional complaint[14], as may the Ombudsman if directly connected with particular case he is concerned with[15], although subject to the agreement of those whose human rights and fundamental freedoms he is protecting in an individual case[16]. The subject matter of constitutional complaint is an individual act of a government body, a body of local self-government, or public authority allegedly violating human rights or fundamental freedoms[17].

The precondition for lodging a constitutional complaint is the prior exhaustion of all possible legal remedies[18]. As an exception to this condition the Constitutional Court may hear a constitutional complaint even before all legal remedies have been exhausted in cases if the alleged violation is obvious and if the carrying out of the individual act would have irreparable consequences for the petitioner[19].

A constitutional complaint may be lodged within sixty days of the adoption of the individual act[20], though in individual cases with good grounds, the Constitutional Court may decide on a constitutional complaint after the expiry of this time limit[21]. The complaint must cite the disputed individual act, the facts on which the complaint is based, and the suspected violation of human rights and fundamental freedoms[22]. It shall be made in writing and a copy of the respective act and appropriate documentation shall be attached to the complaint[23].

In a group of three judges[24] the Constitutional Court decides whether it will accept or reject the constitutional complaint for review (or its allowability) at a non-public session. The Constitutional Court may establish a number of senates as required. The ruling of the Constitutional Court on the allowability of a constitutional complaint is final[25]. The constitutional complaint may be communicated to the opposing party for response, either prior to or after acceptance[26]. The Constitutional Court normally deals with a constitutional complaint in a closed session but it may also call a public hearing[27]. The Constitutional Court may suspend the implementation of an individual act, or even suspend the implementation of a statute and other regulation or general act on the grounds of which the disputed individual act was adopted[28].

The decision *in merito* of the Constitutional Court may:
- Deny the complaint as being unfounded[29];
- Partially or in entirety annul or invalidate the disputed (individual) act or return the case to the body having jurisdiction for retrial[30];
- Annul or invalidate (*ex officio*) unconstitutional regulations or general acts issued for the exercise of public authority if the Constitutional Court finds that the annulled individual act is based on such a regulation or general act[31];

[14] Para. 1 of Article 50 of the Constitutional Court Act.
[15] Para. 2 of Article 50 of the Constitutional Court Act.
[16] Para. 2 of Article 52 of the Constitutional Court Act.
[17] Para. 1 of Article 50 of the Constitutional Court Act.
[18] Para. 3 of Article 160 of the Constitution; Para. 1 of Article 51 of the Constitutional Court Act.
[19] Para. 2 of Article 51 of the Constitutional Court Act.
[20] Para. 1 of Article 52 of the Constitutional Court Act.
[21] Para. 3 of Article 52 of the Constitutional Court Act.
[22] Para. 1 of Article 53 of the Constitutional Court Act.
[23] Para. 2 of Article 53 and Para. 3 of Article 53 of the Constitutional Court Act.
[24] Para. 3 of Article 162 of the Constitution; Para. 1 of Article 54 of the Constitutional Court Act.
[25] Para. 3 of Article 55 of the Constitutional Court Act.
[26] Article 56 of the Constitutional Court Act.
[27] Article 57 of the Constitutional Court Act.
[28] Article 58 of the Constitutional Court Act.
[29] Para. 1 of Article 59 of the Constitutional Court Act.
[30] Para. 1 of Article 59 of the Constitutional Court Act.
[31] Para. 2 of Article 161 of the Constitution; Para. 2 of Article 59 of the Constitutional Court Act.

- In case it annuls or invalidates a disputed individual act it may also decide on the disputed rights or freedoms if this is necessary to remove the consequences that have already been caused by the annulled or invalidated individual act, or if so required by the nature of the constitutional right or freedom, and if it is possible to so decide on the basis of data in the documentation[32]. Such an order is executed by the body having jurisdiction for the implementation of the respective act that was retroactively abrogated by the Constitutional Court and replaced by the Court's decision on the same. If there is no such body having jurisdiction according to currently valid regulations, the Constitutional Court shall appoint one[33].

4. Ombudsman [34]

The Ombudsman is an institution for out of court and informal protection of human rights and fundamental freedoms. According to the *Constitution*, its function is to protect human rights and fundamental freedoms in matters involving state bodies, local government bodies and statutory authorities[35].

The Ombudsman is empowered to submit proposals, opinions, criticisms or recommendations to state bodies, local government bodies and statutory authorities which these bodies are obliged to discuss and answer to within the term determined by the Ombudsman[36]. The Ombudsman may submit initiatives for amendments of statutes and other legal acts to the National Assembly and the Government[37], and provides opinions from the viewpoint of the protection of human rights and fundamental freedoms on the issue dealt with to all other bodies[38]. The Ombudsman may enter any premise and may perform a so-called inspection also in jails and other premises with limited freedom of movement[39]. The Ombudsman is also authorised to discuss broader questions important for the protection of human rights and fundamental freedoms as well as for the legal protection of citizens in the Republic of Slovenia[40]. According to Para. 2 of Article 50 of the *Constitutional Court Act*, the Ombudsman is empowered to lodge a constitutional complaint before the Constitutional Court.

A special ombudsman may be empowered by law to make determinations on particular subjects[41].

B. International System

Slovenia shall be bound by the constitutional provision that statutes and other regulations shall comply with generally accepted principles of international law and shall be in accordance with treaties that are binding upon Slovenia from time to time. Treaties to which Slovenia adheres shall take immediate effect; i.e. with ratification and publication they become a part of the Slovenian internal legal order[42].

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[32] Para. 1 of Article 60 of the Constitutional Court Act.
[33] Para. 2 of Article 60 of the Constitutional Court Act.
[34] See also Trpin, G., Varuh človekovih pravic in temeljnih svoboščin, Nova ustavna ureditev Slovenije, Zbornik razprav, Ljubljana, ČZP Uradni list, 1992, 114. See Grad, F., Kaučič, I., Ribičič, C., Kristan, I., Državna ureditev Slovenije, Ljubljana, ČZP Uradni list, 1996, 442.
[35] Para. 1 of Article 159 of the Constitution.
[36] Article 7 of the Ombudsman Act.
[37] Para. 1 of Article 45 of the Constitutional Court Act.
[38] Article 25 of the Ombudsman Act.
[39] Article 42 of the Ombudsman Act.
[40] Para. 2 of Article 9 of the Ombudsman Act.
[41] Para. 2 of Article 159 of the Constitution.
[42] Article 8 of the Constitution.

Under the *Constitution*, the principles of international law and ratified treaties have an important position within the hierarchy of legal acts. The *Constitution* makes a distinction between treaties ratified by the National Assembly[43], and treaties ratified by the Government (regulations and other legislative measures must conform to them). The *Constitution* gives to the ratified treaties the character and position of legal source. The above mentioned matters are specified by Article 153 of the *Constitution*: Statutes must conform with generally accepted principles of international law and with treaties currently in force and adopted by the National Assembly, and regulations and other legislative measures must also conform to other ratified treaties. At the request of the President of the Republic, of the Government or of no less one third of the Deputies of the National Assembly, the Constitutional Court shall provide an opinion as to the conformity of a treaty in the process of being adopted by the State, with the *Constitution*. The National Assembly shall be bound by any such opinion of the Constitutional Court[44].

Being a member of the United Nations as well as a member of the Council of Europe Slovenia shall consider the corresponding documents, that also oblige the States in terms of economic and social rights.

1. United Nations [45]

- Charter of the United Nations, 26 June 1945,
- Universal Declaration of Human Rights, 10 December 1948,
- International Pact on Citizenship and Political Rights of 19 December 1966,
- International Pact on Economic, Social and Cultural Rights of 19 December 1966,
- Facultative Protocol of the General Assembly of the UN to the International Pact on Citizenship and Political Rights of 19 December 1966 (Resolution No. 2000 A XXI).

2. Council of Europe

- Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 incl. the 13 Protocols.[46] Slovenia also signed, but not yet ratified, Protocol No. 12 and Protocol 13.
- (revised) European Social Charter (to it referring also by the Resolution Concerning the Basis for The Creation of Family Policies in the Republic of Slovenia[47].
- Framework Convention for the Protection of National Minorities,
- European Charter for Regional or Minority Languages,
- European Convention for the Prevention of Torture and Inhumane or degrading Treatment or Punishment,
- 1995 Protocol to the Social Charter.

As a candidate member [48]of the European Community Slovenia is also becoming familiar with the following documents (however, the above mentioned documents are currently not self-executing in Slovenian law).

[43] Statutes must conform with them; Article 213 of the Rules of Procedure of the National Assembly.
[44] Para. 2 of Article 160 of the Constitution; Article 70 of the Constitutional Court Act.
[45] Under Article 8 of the Constitution the treaties to which Slovenia adheres shall take immediate effect. The conventions of UN are the sources of the rights and liberties under the Notification of Succession to the United Nations Conventions Act.
[46] The Slovenian ratification published in the Official Gazette RS, No. 7/94.
[47] The Resolution was published in the Official Gazette RS, No. 40/93. The Slovenian ratification of the European Social Charter published in the Official Gazette RS, No. 24/99, MP 7/99.
[48] Slovenia already recognized the supremacy of the EU Law, see Article 3a of amended Constitution (Official Gazette RS, No. 24/03) : "Article 3a
Pursuant to a treaty ratified by the National Assembly by a two-thirds majority vote of all deputies, Slovenia may transfer the exercise of part of its sovereign rights to international organisations which are based on respect for

3. European Communities

- *Declaration on Basic Rights and Freedoms of the European Parliament of 12 April 1989,*
- *Contract on the European Community of 1 February 1992.*
- *Charter of Fundamental Rights of the European Union of 7 December 2000.*

C. Slovenia Needs an Independent Human Rights Institution

The feasibility of setting up a suitable institution for the protection and promotion of human rights in Slovenia topped the agenda of a panel on human rights institution organised by the Slovenian Ombudsman on 20 October 2003 in Ljubljana. Such an institution would include the promotion of human rights, education, research and coordination of anti-discriminatory policies in the country. Other factors that seem to be on the increase include hidden forms of discrimination, xenophobia, and certain forms of nationalism. Therefore, the measures taken so far in Slovenia are clearly insufficient. For these reasons the appropriate authorities are often imprisoned by the Government's policy, as their way of solving certain issues can often be seen as anti-government activity. The Slovenia's Government offices practically never publish any tenders on human rights, which would enable NGO's to obtain funds for operating

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human rights and fundamental freedoms, democracy and the principles of the rule of law and may enter into a defensive alliance with states which are based on respect for these values.

Before ratifying a treaty referred to in the preceding paragraph, the National Assembly may call a referendum. A proposal shall pass at the referendum if a majority of voters who have cast valid votes vote in favour of such. The National Assembly is bound by the result of such referendum. If such referendum has been held, a referendum regarding the law on the ratification of the treaty concerned may not be called.

Legal acts and decisions adopted within international organisations to which Slovenia has transferred the exercise of part of its sovereign rights shall be applied in Slovenia in accordance with the legal regulation of these organisations.

In the procedures for the adoption of legal acts and decisions in international organisations to which Slovenia has transferred the exercising of part of its sovereign rights, the Government shall promptly inform the National Assembly of the proposals for such acts and decisions as well as of its own activities. The National Assembly may adopt positions thereon, which the Government shall take into consideration in its activities. The relationship between the National Assembly and the Government arising from this paragraph shall be regulated in detail by a law adopted by a two-thirds majority vote of deputies present."

in this field. For this reason an independent body for the protection of human rights would be essential to avoid any interference on the part of the authorities currently in power[49].

The current plans to complement the existing institutional framework for the protection of human rights through the creation of a National Institution for Human Rights, are commendable[50].

[49] Delo, 21 October 2003, p. 2; www.varuh-rs.si, p. 1.
[50] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 1.

CHAPTER I : DIGNITY

Article 1. Human dignity

No significant developments to be reported.

Article 2. Right to life

No significant developments to be reported.

Article 3. Right to the integrity of the person

No significant developments to be reported.

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

1. Police proceedings in pre-trial detentions:

International case law and concluding observation of international organs

The Commissioner for Human Rights referred to the concerns that have been raised about the lack of a specific criminal offence of torture in Slovenian Criminal law[51]. The question should be addressed in the context of the forthcoming reform of the Slovenian Criminal Code[52].

National legislation, regulation and case law

No one may be subjected to torture, inhuman or degrading punishment or treatment. The conducting of medical or other scientific experiments on any person without his free consent is prohibited (Article 18 of the Constitution). Violence of any form on any person whose liberty has been restricted in any way is prohibited, as is the use of any form of coercion in obtaining confessions and statements (Para. 2 of Article 21 of the Constitution).

Practice of national authorities

In 2002, the Ombudsman for Human Rights and Fundamental Freedoms received 78 complaints in connection with police procedures, which is approximately 30% less than in the previous year[53]. Naturally, we cannot assert that the work of the police was improved with regard to respect for human rights. Again, most of the complaints received concerned the execution of police authority, especially in connection with the use of physical force and the means of apprehension. The Ombudsman reported a larger number of complaints regarding unjustified harassment by the police in cases where the persons involved were not in breach of the law. A number of cases were reported in which the police tried to explain the physical injuries of a person arrested by claiming the person deliberately hurt himself during the course of the police procedure in order to claim in subsequent proceedings that the police had dealt with him with undue physical severity. Such cases occur annually. The Ombudsman expressed significant doubt regarding such explanations given by the police.

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[51] Conclusions and Observations of the UN Committee against Torture, Slovenia, 27 May 2003, CAT/C/CR/30/4.
[52] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 11.
[53] 2002 Annual Report of the Ombudsman for Human Rights, (the 8th such annual report) , Ljubljana, June 2003, p.54

2. Conditions of detention

In the second part of 2002, a number of joint complaints and petitions were filed in various imprisonment institutions, some were even accompanied by (the threat of) hunger strikes. The most significant hunger strike was carried out in Dob, although there were other protests in Ljubljana, Maribor and Koper. The Ombudsman reported complaints of insufficient medical treatment for the imprisoned[54].

In 2002, some encouraging developments took place in connection with police detentions. The Minister of the Interior issued an order for the construction of new facilities needed for police detentions. The completion of this project is envisaged by 2005 and will significantly improve material conditions.

3. The treatment and detention of aliens

The Ombudsman received fewer complaints in the area of the treatment of aliens in 2002 than in previous years. Most of complaints were in connection with the length of procedures in connection with the issuance of a permit for permanent residence in Slovenia and in connection with the conditions that must be fulfilled to obtain such a permit.

There is only one police detention facility for foreigners awaiting deportation in Slovenia. In practice, the management of the Detention Centre for Aliens in Ljubljana (COT) is also in charge of other similar facilities in Postojna, Prosenjakovci and Vidonci. These facilities are formally branches of the Ljubljana centre.

The COT in Ljubljana has been operating since January 1st, 2000. It is situated in downtown Ljubljana, in a 7-storey building, formerly used as a hotel. The premises also contain the Slovenian Asylum Centre (for asylum seekers who are not deprived of their freedom of movement), with which the COT shares certain facilities (a reception/transit area, health care facilities, a laundry, kitchen and canteen). Material conditions in the main living quarters at the COT in Ljubljana are on the whole acceptable.

The High Security Alien Detention Centre under Police Supervision (OSPN) in Postojna was opened at the end of 2000. It is primarily intended to provide accommodation for adult men who are considered to be at risk of absconding or of resisting deportation; however, on occasion it is also used to hold women and minors, especially if they request to be accommodated together with a person detained there with whom they have a close relationship.[55]

4. The status of citizens from former Yugoslav republics

During the period in question the notorious "erased" affair arose. Persons from other former SFRJ republics who had had permanent residency status in Slovenia at the time Slovenia became independent called on the Republic of Slovenia to correct its ill-treatment of their status. They alleged that the Republic of Slovenia had illegally revoked such status, i.e. they had been "erased" from the register of permanent legal residents. According to the data of the Ministry of the Interior, 18,305 persons were erased from the register of permanent residents in 1992. As of 19th June 2002, the status of 4,205 persons was still not clear. Persons with such unclear status experienced troubles in their everyday life – in connection with their work, health care, pensions, etc. Some of them were even (arbitrarily) deported from the country due to their alleged illegal residency in Slovenia.

[54] *Ibidem,* p.25
[55] *Source:* Homepage of the Ministry of the Interior, http://www.mnz.si/ (as of May 2003)

In its second report on Slovenia the European Commission against Racism and Intolerance (adopted on 13th December 2002, issued on 8th July 2003) also expressed great concern with regard to these problems, however they also acknowledged the positive measures taken by the authorities[56].

National legislation, regulation and case law

The Association of the Erased Residents of Slovenia filed a petition for the review of the constitutionality of the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia (Official Gazette RS, Nos. 61/99, 54/00, 64/01). The Constitutional Court in Decision No. U-I-246/02 (Official Gazette RS, No. 36/03)[57], adopted on 3rd of April 2003, decided as follows:

The Constitutional Court established that the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia (Official Gazette RS, Nos. 61/99, 54/2000 and 64/01 – hereinafter ZUSDDD) did not enable citizens of other successor States to the former SFRY (hereinafter citizens of other Republics) to also acquire a permit for permanent residence retroactively, i.e. from 26 February 1992, when they lost their permanent residence in the Republic of Slovenia through the revocation of their permanent resident status and their transfer to the register of foreigners. As the principles of a State governed by the rule of law, in particular the principle of legal certainty, require that the position of citizens of other Republics shall not remain legally unregulated, the Constitutional Court decided in Para. 1 of the operative provisions that ZUSDDD is inconsistent with the Constitution, as it does not recognize to citizens of other Republics, who were removed on 26 February 1992 from the register of permanent residents, permanent residence status from the above mentioned date.

The Constitutional Court established that, due to the special legal position of citizens of other Republics, the legislature should not define the established unconstitutional gap in the law in a different manner than to determine that the above mentioned persons who have already acquired a permit for permanent residence are to be recognized permanent residence retroactively. Therefore, the Constitutional Court decided to determine the manner of the implementation of its decision under Para. 1 of the operative provisions, requiring retroactive establishment of the permanent residence status i.e. from 26 February 1992, being the date of their removal from the register of permanent residents. Furthermore, it imposed on the Ministry of the Interior the obligation to issue, as an official duty, supplementary decisions on the establishment of permanent residence from 26 February 1992 onwards to all those citizens of other Republics who had been removed from the register of residents on 26 February 1992 and who have already acquired permits for permanent residence (Para. 8 of the operative provisions).

The Constitutional Court decided that the principles of a State governed by the rule of law require special regulation of the position of citizens of other Republics for whom the measure of the forced removal of a foreigner from the State was pronounced due to their unregulated legal position. Accordingly, it established in Para. 2 of the operative provisions, the inconsistency of ZUSDDD with the Constitution also due to its failing to regulate the acquisition of a permit for permanent residence by citizens of other Republics who were removed from the register of permanent residents and for whom the measure of the forcible removal of a foreigner from the State was pronounced due to their unregulated legal position under Article 28 of the Foreigners Act (Official Gazette RS, No. 1/91-I and 44/97).

[56] *See* p. 20 of the report. This report is also available at http://www.coe.int/t/E/human_rights/ecri/ (as of July 2003)

[57] The decision can also be found on the official home page of the Constitutional Court, http://www.us-rs.si/en/index.html

In terms of the principles of a State governed by the rule of law (Article 2 of the Constitution and the principle of administrative bodies being bound by the framework of the Constitution and statutes (Para. 2 of Article 120 of the Constitution), and in view of the special position of citizens of other Republics, the Act should define what actual presence means according to ZUSDDD. Due to the loss of permanent residence in the Republic of Slovenia and their legal position being unregulated for a longer time, the citizens of other Republics faced a variety of circumstances. Thus it is necessary to prescribe criteria (a framework) for establishing the fulfillment of the condition of actual presence in order to acquire a permit for permanent residence. Therefore, the Constitutional Court decided that Article 1 of ZUSDDD is in this part inconsistent with the Constitution (Para. 3 of the operative provisions).

As the legislature did not have any justified reason for determining a short (preclusive) time period concerning the filing of an application for issuing a permit of permanent residence, the Constitutional Court annulled the disputed Para. 1 and 2 of Article, in the part in which a time limit of three months was determined (Para. 4 of the operative provisions).

Moreover, the Constitutional Court ordered that the legislator should amend the law within six months to determine a new time limit for possible new applications for a permit of permanent residence.

With this decision the legal aspect of this case was concluded, however, presently it needs to be implemented in practice.

Actually, in favour of implementation of the above mentioned Constitutional Court decision, the respective Act was passed by the Parliament on 26 November 2003 under the shortened procedure. However, for the first time the same Act was passed by the Parliament on 29 October 2003, but the final passing was postponed due to the suspensive veto filed on 5 November 2003 by the National Council (which requested a Bill to be discussed again because of its non-cleared financial consequences"). The Act (ZIOdlUS246/02 – the so called "Technical Act on Erased Persons") paves the way for issuing supplementary decisions on the establishment of permanent residence, from 26 February 1992 onwards to all those citizens of other Republics who had been removed from the register of residents on 26 February 1992 and who have already acquired permits for permanent residence. However, the Act should come in force, if a referendum against enforcement of the Act is not be requested by some political parties. Moreover, the Constitutional Court would have the final say in decision-making on the constitutionality of such referendum.

Actually, on 12 December 2003 the referendum against enforcement of the above mentioned Act was requested by a group of 30 deputies of the National Assembly. However, later on the National Assembly required a procedure before the Constitutional Court to decide if due to refusal of the enforcement of the ZIOdlUS246/02 by the subsequent legislative referendum there might arise unconstitutional consequences. By its ruling of 22 December 2003 the Constitutional Court rejected the National Assembly's request because of its submission before the Constitutional Court after the respective term had expired. Additionally, the Constitutional Court stated that the Ministry of Interior has a legal basis in the Constitutional Court's decision which should be that implemented the unconstitutional situation established by the Court should be abolished. Therefore an eventual refusal of the Act does not exert any influence on the implementation of the latest Constitutional Court decision. An Act in terms of the implementation of the Constitutional Court decision could not be subject to decision-making by a referendum.

The public debate on the erasure has focused on the issue of political responsibility and accountability, as Slovenia will have to pay compensation to the erased in the future.

Article 5. Prohibition of slavery and forced labor

Trafficking in persons:

In the period in question, Slovenia has not been found to be in violation for offering insufficient protection against slavery or exploitation of persons as regards trafficking in human beings by any international institution or supervisory body. However, trafficking in women through and to the country was a problem. Within Slovenia trafficking in persons was found solely in the form of trafficking in women for the purpose of sexual abuse.

With respect to the classification of states as regards their role in this form of trafficking in human beings, Slovenia is placed in all three classification groups: it is a state of origin, transit and destination. The number of women trafficked out of the country was not known and was believed to be very low. (According to unofficial data provided by inter-governmental and non-governmental organisations domestically and abroad, several dozen women holding Slovene citizenship were sold in Western Europe in the years 1995-2000.)[58]

The country was primarily a transit point, and less so a destination country. Most victims were women trafficked from Ukraine, the Czech Republic, Slovakia, Moldova, Russia, Romania and Bulgaria. The number of women holding citizenship of South-Eastern European countries in transit in Slovenia is estimated to range between 2000 and 2500[59]. They were mostly trafficked onwards to Italy, Belgium, and the Netherlands[60].

Many women who were trafficked into the country were promised work as waitresses or performers in nightclubs. It was common for some of the nightclub owners to illegally transport foreign nationals into the country and arrange work permits for them as auxiliary workers and dancers. Often the promised work did not provide enough money, so the women were encouraged to turn to prostitution. Women who were victims of trafficking were presumably subjected to violence.

International case law and concluding observation of international organs

A comprehensive plan of action against trafficking should be adopted in the near future and a process is under way to make the necessary changes to the legislation relating to the protection of victims and witnesses, and to include in the Slovenian Criminal Code a definition of the crime of trafficking. The Commissioner strongly supported the early adoption of such provisions, which should be supplemented by the provision of training to the relevant authorities and the allocation of funds needed for the assistance and protection of the victims[61].

National legislation, regulation and case law

Para 4 of Article 49 of the Constitution prohibits forced or bonded labour, including by children, and there were no reports that such practices occurred.

Children are guaranteed special constitutional protection against economic, social and physical abuse (Para. 2 of Article 56 of the Constitution). The minimum age for employment

[58] *Source:* Report of the Inter-departmental Working Group for Combating Trafficking in Human Beings for 2002.
[59] *Source:* Report of the Inter-departmental Working Group for Combating Trafficking in Human Beings for 2002.
[60] *Source:* US State Department Report on Slovenia for 2003, http://www.state.gov/g/tip/rls/tiprpt/2003/ (May 2003)
[61] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 21.

is 15 (Para. 1 and 2 of Article 19 of the Employment Act, Official Gazette RS, No. 42/02). In general, employers respected the age limits.

In May, International Labour Organization Convention No. 182 Concerning the Prohibition of and Immediate Action for the Elimination of the Worst Forms of Child Labour entered into force. The Government had ratified it in March 2001 (Official Gazette RS – International Agreements, Nos. 7/01, 21/01).

Slovenia has signed all the important international documents that deal with trafficking in persons[62] and participated in other regional anti-trafficking efforts.

Slovenian criminal legislation deals with the trade and smuggling of persons in several criminal offences. Sentences for enslavement convictions range from 1 to 10 years imprisonment. A person can also be prosecuted for rape, pimping, procurement of sexual acts, inducement into prostitution, sexual assault and other related offences. The penalty for these range from 3 months to 5 years imprisonment or, in cases involving minors or forced prostitution, 1 to 10 years imprisonment.

In Slovenia there is no special single legislative act that would deal with the prohibition of slavery, forced labour and trafficking in human beings. The law does not specifically prohibit trafficking in persons, although some aspects of trafficking are regarded as criminal offences (e.g. Articles 185, 186 and 387 of the Slovenian Penal Code). The Slovenian Penal Code (Official Gazette RS, Nos. 63/94, 70/94 – corr., 23/99, 60/99; Decision by the Constitutional Court U-I-226/95, 110/02) criminalizes, among others, the following acts:

- Article 185 prohibits procuration. Anyone who procures or enables sexual intercourse or other sexual acts (for the purpose of prostitution) shall be sentenced to imprisonment for three months to five years. Anyone who procures a minor shall be sentenced to imprisonment for one to ten years.
- Article 186 prohibits encouraging prostitution. Anyone who incites, solicits, lures or entices other persons to prostitution or is in any other way engaged in presenting these persons for prostitution to a third person shall be sentenced to imprisonment for six months to five years. If the offence under this article has been committed by force, threat or deception; the perpetrator shall be sentenced to imprisonment for one to ten years.
- Article 387 of the Penal Code prohibits enslavement. Anyone who, in violation of international law, forces someone into slavery or a similar condition, or keeps someone in such a condition, or buys, sells or delivers someone to a third party, or brokers the buying, selling or delivery of someone, or urges someone to sell their freedom or the freedom of someone they support or look after, shall be sentenced to imprisonment for not less than one and not more than ten years. Anyone who transports persons held under conditions of slavery or in some similar condition from one country to another shall be sentenced to imprisonment for six months to five years. Anyone who commits an offence determined in the first and the second paragraphs of this article against a minor shall be sentenced to imprisonment for up to three years.

[62] Among these:
- The UN Convention against Trans-national Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Official Gazette RS – International Agreements, Nos. 23-114/00, 13-45/03).
- Anti-Trafficking Declaration of South Eastern Europe (proposed within the Stability Pact for South Eastern Europe, Palermo in December 2000).
- Declaration adopted at the Ministerial Conference containing European Guidelines for Measures to Prevent and Combat Trafficking in Women for the Purpose of Sexual Exploitation (The Hague, 24-26 April 1997).
- Council of Europe Recommendation No. R (2000) 11 of the Committee of Ministers to member states on action against trafficking in human beings for the purpose of sexual exploitation.

- Illegal crossing the state border is dealt with in Article 311 of the Penal Code. Anyone who, without the prescribed permit, crosses or attempts to cross the border of the Republic of Slovenia armed with weapons or in a violent manner, shall be sentenced to imprisonment for up to one year. Anyone who is engaged in the illegal trafficking in persons across the border of the Republic of Slovenia, or who forcibly brings another person across the border for profit or in an organized group, shall be sentenced to imprisonment for up to three years.
- Forgery is prohibited in Article 256 of the Penal Code. Anyone who creates a false document or alters a genuine document for the purpose of using such a document as genuine or who presents a false or altered document as genuine shall be sentenced to imprisonment for up to two years. Any attempt to commit such an offence shall be punishable.

- Article 187 of the Penal Code prohibits the presentation or production of pornographic material. Anyone who by sale or public exhibition provides a person under the age of fourteen with access to writings, pictures, audio-visual or other materials of pornographic content or who presents a pornographic performance to such a person shall be punished by a fine or sentenced to imprisonment for up to one year. Anyone who abuses a minor for the production of pornographic pictures, audio-visual or other materials of pornographic content, or who employs a minor to appear in a pornographic performance shall be sentenced to imprisonment for up to three years.

- Article 191 of the Penal Code prohibits the illegal transplantation of parts of the human body. A doctor who removes part of a human body from or transplants a part of a body to a patient in violation of the medical code of professional conduct and thereby causes a substantial impairment of the patient's health shall be sentenced to imprisonment for six months to five years. A doctor who, for the purpose of performing a transplant, removes a part of the body of a patient prior to the death of that patient having been established in the proper manner shall be punished to the same extent. A doctor who for the purpose of performing a transplant removes a part of the body of a patient or who transplants a part of the body of a patient without having obtained prior consent from the donor or the recipient of the part of the body or from their statutory representatives shall be sentenced to imprisonment for up to three years. The same punishment shall be imposed on anyone who illegally or for payment serves as an agent mediating the transplantation of parts of the body of a living or deceased person.

- The preparation of amendments to the Penal Code that would include new criminal offences specifically connected to the issue of trafficking in human beings is being debated[63].

The new State Prosecution Act (Official Gazette RS, No. 110/02) in Article 10 established a special task force of prosecutors to handle special assignments dealing with criminal offences connected with trafficking in persons.

Practice of national authorities

In 2002, the police handled 548 cases involving the illegal crossing of the state border and documented 1088 suspects. 196 of the cases were connected with organized crime. 179 members of criminal gangs were charged, of which 73.7% had Slovene citizenship[64]. The high number of suspects and smaller number of cases evidences better organization in trafficking.

In 2002, the police handled 21 cases in the field of prostitution, and 10 cases in the field of slavery, all concerned the criminal offence of trafficking in human beings for the purpose of sexual exploitation. Information regarding altogether 55 persons was passed on to the

[63] *Source:* Report of the Inter-departmental Working Group for Combating Trafficking in Human Beings for 2002.
[64] *Source:* http://www.state.gov/g/tip/rls/tiprpt/2003/ and http://www.mnz.si/ (May 2003).

authorities for the criminal offences of prostitution and trafficking in human beings; 28 persons were treated as victims, including 15 victims of the offence of being held in slavery[65].

In general, victims trafficked into the country were not treated as criminals, however, they usually were deported either immediately upon apprehension or once they have made statements in Court. Victims were not encouraged to file complaints, and very few cases were reported to the police. The Government did not provide protection for victims and witnesses. Eight victims of trafficking in persons received assistance in 2002[66].

In these eight cases the assistance was offered by the police (with respect to directing victims to the organizations providing specific types of assistance), a non-governmental organization »Ključ«[67] (which provided various forms of direct assistance to victims), the intergovernmental International Organization for Migration – IOM (which deals with voluntary return), "Slovenska filantropija" – "Slovenian Philanthropy" (which provided psycho-social assistance), a dispensary with consulting room for persons without health insurance, with respect to medical assistance[68]. In almost all cases the victims were sent back to their home countries, where some of them entered reintegration programs. Non-governmental organizations operated safe houses and counselling services for female victims of violence. Eight safe-houses are currently operating in the territory of the Republic of Slovenia and are organized as public institutions or as non-governmental organizations[69]. These generally were full, and non-governmental organizations announced that victims of trafficking would not be given shelter unless they were in immediate danger. Victims of trafficking who did not have proper identity documents were given shelter at a refugee centre until they could be returned to their native country. The Ministry of the Interior also worked with non-governmental organizations to assist the small number of Slovene victims with reintegration.

Regarding the protection of child victims of trafficking in persons and the assurance of their social security (e.g. place of dwelling, social care, advice, schooling and reintegration in their domestic environment) it can be stressed that some mechanisms have already been developed for housing children of asylum seekers in collective centres.

Any child not cared for by his parents is guaranteed basic protection, a place to live, basic health care, financial assistance or some determined allowance, free legal aid, humanitarian aid and the right to schooling if he is of school age.

Organized crime was responsible for some trafficking. In 2000, the Government apprehended a suspected organized-crime leader whose alleged crimes included trafficking in persons; his trial was ongoing at year's end. Government officials generally were not involved in trafficking. In November 2001 the Government established an Inter-departmental Working Group that based its activities on the National Strategy to Combat Trafficking and in February 2002 a National Coordinator for Trafficking in Persons[70]. Regional police directorates had departments that investigated trafficking and organized crime.

[65] *Source:* Report of the Inter-departmental Working Group for Combating Trafficking in Human Beings for 2002.
[66] *Ibidem.*
[67] For example, in Article 6 of the statue of *"Ključ"* it is stated that the purpose of the association is, among others: to offer emergency help to the victims of trafficking in persons, to help with the organization of their return to their country of origin, to offer free legal advice to victims, to stimulate and organize cooperation between victims and the police and to help with the protection of witnesses.
[68] *Source:* Report of the Inter-departmental Working Group for Combating Trafficking in Human Beings for the year 2002.
[69] *Ibidem.*
[70] *Ibidem.*

Awareness-raising of the population was conducted mainly through television and radio broadcasts in the form of discussions and interviews with the national coordinator, representatives of the police, non-governmental organizations and inter-governmental international organizations. It is estimated that approximately 60 various media broadcasts dealing with trafficking in human beings were broadcast in 2002[71]. In an effort to prevent trafficking, the Ministry of the Interior produced pamphlets and other informational materials for awareness-raising programs to sensitise potential target populations to the dangers of and approaches used by traffickers.

Until recently the act of prostitution was treated as a violation[72]. However, the legislation regulating this was changed recently in a manner that »de-criminalizes« the mere act of prostitution. The proponents of the »decriminalisation« have elaborated their stance in the following way[73]: Decriminalisation is only the removal of the provision that defines the mere act of prostitution as a violation. Modern societies have tended to abolish prostitution as a misdemeanour or felony on one hand, but on the other, they are intensifying the persecution of those who profit from it.

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

National legislation, regulation and case law

Everyone has the right to personal liberty (Para 1 of Article of the Constitution). No one may be deprived of his liberty except in such cases and pursuant to such procedures as are provided by law. Anyone deprived of his liberty must be immediately informed in his mother tongue, or in a language which he understands, of the reasons for being deprived of his liberty (Para. 2 of Article 19 of the Constitution). Within the shortest possible time thereafter, he must also be informed in writing of why he has been deprived of his liberty. He must be instructed immediately that he is not obliged to make any statement, that he has the right to immediate legal representation of his own free choice and that the competent authority must, on his request, notify his relatives or those close to him of the deprivation of his liberty (Para. 3 of Article 19 of the Constitution).

Everyone has the right to personal dignity and safety (Article 34 of the Constitution).

One of the duties of the state authority is to limit the "natural freedom" of the individual as little as possible and to intervene only when it is necessary to protect the freedom of the individual against others. Therefore the Constitution declares that no person may be deprived of their liberty except in such cases, and pursuant to such procedures, as are determined by statute (postulat habeas corpus). In accordance with the above mentioned constitutional provision, personal liberty is guaranteed within the scope of statutes. This means that no limits are imposed on the legislature; only the executive branch is prohibited from depriving somebody of their liberty, except when otherwise determined by statute in advance and based on the abstract authorization for such an act.

The right to personal liberty can be limited by the State, and a citizen's liberty may be encroached upon in accordance with statute e.g. by Para. 2 of Article 1 of the Criminal

[71] *Ibidem.*
[72] Violations Against Public Order and Peace Act (Official Gazette SRS, Nos. 16/74, 15/76, 42/86, 5/90 and Official Gazette RS, Nos. 8/90, 17/91-I, 10/91, 4/92, 13/93, 66/93, 67/94, 29/95, 98/99, 15/03).
[73] *Source:* http://www.dz-rs.si/si/aktualno/spremljanje_zakonodaje/predlogi_zakonov (May 2003)

Procedure Act[74] , which determines the cases and conditions concerning such limitation of liberty.

Practice of national authorities

1. Performance of police duties

The performance of official police duties has resulted in the following data: During normal operational work the police checked the documents of 117,467 persons – by 10.9% less than the year before (131,837). 10,170 were detained – by 33.7% less than the year before (15,342).

Police officers used various compulsory measures 7,061 times during their work (6,747 times in the previous year). Physical force was used 3,038 times (the previous year: 2,778 times), various means of apprehension 3,829 times (in the preceding year: 3,792 times). The severest measures (fire arms) were used 2 times (in the preceding year: not used), 2 times as a warning shot (in the preceding year: 9 times).

The use of compulsory measures led to complaints in 124 cases or 10.1% of all filed complaints (in the preceding year: 171). These complaints mostly concerned the use of physical force and the means of apprehension.

The use of compulsory measures was the reason for 20 (in the preceding year: 24) out of a total of 92 (in the preceding year: 97) disciplinary measures adopted in 2002. 262 police officers were victims of violent behaviour (in the preceding year: 300).

In 2002 complaints against police officers were filed 1,222 times (in the preceding year: 1,240 times), i.e. by 1.4% less than the year before. 1,133 complaint cases were closed (in the preceding year: 1,144), 89 were still in procedure (in the preceding year: 96). In 277 cases the procedure was discontinued because of the demanding conditions of Article 28 of the Police Act and Guideline for Solving Official Complaints had not been fulfilled (in the preceding year: 273), 5 complaints filed were transferred to other institutions (in the preceding year: 6). The senate for complaints discussed 851 complaints (in the preceding: 865), 132 or 15.5% were deemed justified (the preceding: 117 or 13.5%).

119 official warnings were given to police officers (in the preceding: 94), 44 verbal reprimands (the same as in the preceding), 14 disciplinary procedures were held (in the preceding: 12), in 2 cases the police received information about various criminal offences committed by police officers (in the preceding year: 7).

The police have no data that would synthesize complaints concerning the detention procedure and the excessive use of force in police procedures.

2. Supervision of the execution of police authority

With regard to the excessive use of force with detainees, it has to be emphasized that representatives of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment who made an inspection in 2002, their second visit to Slovenia, reported that no such cases were found.

[74] Official Gazette RS, No. 63/94 (70/1994 - corr.), 25/96; Decisions of the Constitutional Court (DCC): U-I-18/93, 39/96 DCC: U-I-33/95-12, 5/98 DCC: U-I-25/95, 49/98 (66/98 - corr.), 72/98, 6/99, 42/00 DCC: U I 282/99, 66/00, 111/01, 32/02 DCC: U-I-92/96-27, 3/03 DCC: U-I-204/99-22, 21/03 DCC: U-I-190/00-11, 44/03 DCC: U-I-149/99-15, 56/03.

The (Ministerial) Office for Guidance and Supervision of the Police conducted a supervisory investigation of police detentions from 27th February to 12th March 2003. The purpose of this investigation was to ascertain whether the guidelines issued by the Minister of the Interior were respected. Accordingly, the police realized most of the 9 issued guidelines and recommendations. Some guidelines were realized only in part, due to their long-term nature and financial aspects.

There are positive developments with regard to the regularity of control over the police authority to carry out detentions and the implementation of recommendations issued by the Ombudsman and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or punishment by the Police.

3. Private security agencies

There were reports of cases concerning the actions of private companies and private individuals with a licence to conduct private security. The Ombudsman asserts that there are more and more cases of purported creditors taking the law into their own hands with the help of various private security agencies. E.g. a number of cases of forceful eviction were reported, in some instances private security agencies were hired in order to unlawfully prevent access to a specific building or location. Such and similar cases give rise to the concern that, because of the under-defined area of private security, an individual can acquire a crucial advantage (of possession of property) impossible to acquire through lawful proceedings. The Ombudsman concluded that such a privatisation dispute regulation cannot be in accordance with the constitutional provision providing for the rule of law[75].

Article 17 of the Private Security and the Compulsory Organization of Security Service Act (Official Gazette RS, No. 32/94, 23/97, 9/98) requires that security guards use the minimum level of necessary force to prevent someone from entering into a protected area, into a protected building, nearing a protected person or for detainment prior to the arrival of the police. Nevertheless there have been cases in which a security guard used physical force to remove a person from the protected area although this is not legal under the law[76].

4. Police authority to ascertain identity

Para. 1 of Article 35 of the Police Act reads as follows*: "A police officer can ascertain the identity of a person who by his …appearance… raises the suspicion that he will commit, is committing or has committed a violation or a criminal offence…."*. A number of cases initiated before the Ombudsman dealt with this provision, and they attracted his special attention. Authority of this kind is an encroachment upon the right of freedom of movement, also guaranteed in Article 32 of the Constitution. However an identification procedure can lead to the detention of a person by the police, which is an invasion of the right to personal liberty as guaranteed in Article 19 of the Constitution. The Ombudsman has warned of the vagueness of the above mentioned provision, which may lead or leads to unjustified document checking. E.g. if only appearance is enough to justify document checking by the police officer, a person could be checked merely for having long hair, for dressing in a certain way, etc., but not for having violated the law in any way. The Ombudsman disputes whether the concerned provision is in compliance with the constitutional demand of the rule of law, which includes the principle of definiteness of legislation and, consequently of all legal rules[77].

[75] 2002 annual report of the Ombudsman for Human Rights, Ljubljana, June 2003, p.58
[76] *Ibidem.*
[77] *Ibidem,* p. 62.

Article 7. Respect for private and family life

International case law and concluding observation of international organs

During the period in question the European Court of Human Rights did not find the Republic of Slovenia to be in violation of Article 8 of the ECHR, by the European Court of Human Rights. No negative concluding observations on this issue were issued by the UN Human Rights Committee, nor by the Committee on the Rights of the Child.

National legislation, regulation and case law

The inviolability of the physical and mental integrity of every person, his privacy and personality rights shall be guaranteed (Article 35 of the Constitution, Protection of Rights to Privacy and Personality Rights).

Article 36 of the Constitution (Inviolability of Dwellings): Dwellings are inviolable. No one may, without a court order, enter the dwelling or other premises of another person, nor may he search the same, against the will of the resident. Any person whose dwelling or other premises are searched has the right to be present or to have a representative present. Such a search may only be conducted in the presence of two witnesses. Subject to conditions provided by law, an official may enter the dwelling or other premises of another person without a court order, and may in exceptional circumstances conduct a search in the absence of witnesses, where this is absolutely necessary for the direct apprehension of a person who has committed a criminal offence or to protect people or property.

Article 37 of the Constitution (Protection of the Privacy of Correspondence and Other Means of Communication): The privacy of correspondence and other means of communication shall be guaranteed. Only a law may prescribe that on the basis of a court order the protection of the privacy of correspondence and other means of communication and the inviolability of personal privacy be suspended for a set time where such is necessary for the institution or course of criminal proceedings or for reasons of national security.

The state shall protect the family, motherhood, fatherhood, children and young people and shall create the necessary conditions for such protection (Para. 3 of Article 53 of the Constitution).

Legislation concerning methods of inquiry, investigation and security checks into potential candidates or applicants for "sensitive jobs" is concentrated in the Secret Data Act (Official Gazette RS, No. 87/01), hereinafter SDA. This Act contains regulations setting the conditions for handling sensitive (secret) data and the standards of security control over persons who are permitted access to secret data (Articles 22, 23, 24 and 25 of the SDA). In the period under scrutiny the Constitutional Court issued a ruling, as a consequence of a Initiative for the Review of Constitutionality (U-1-79/03-7, Official Gazette RS, No. 48/03), which temporary suspended Para. 2 of Article 25 of the SDA, which put personal data under security control.

For the definition of the term apartment or other premises, within the meaning of Article 36 of the Constitution, it is essential that it is a closed space unit, foreseen and used for dwelling and hidden from the public eye. As a rule means of transportation is not a closed space as described above, in which privacy could be expected (Constitutional Court, No. Up-430/00, 3 April 2003, Official Gazette RS, No. 36/03).

The Initiative for the Review of Constitutionality was filed by the State Institutions Employees Union of Slovenia. The initiator challenged the part of the act that defines the content of the data a person under security control must provide. It maintains that some requested data and its nature has no connection with secret data or the protection of such. It

claims that the above mentioned provisions present a violation of Article 14 of the Constitution (Equality before the Law), Article 38 (Protection of Personal Data), Article 49 (Freedom of Work) and Article 120 (the Organisation and Work of the State Administration) of the Constitution. The Constitutional Court will process the initiative as a priority.

Statistical indicators show that the number of documented criminal offences connected with family violence is increasing dramatically. The victims are mostly women and children. The number of documented criminal violations of sexual inviolability is increasing as well (in the year 1995 – 246 criminal offences, in 2001 – 440). Therefore, the Government has expressed great concern for this matter. In the proposed amendments to the Police Act a new type of police measure is foreseen: a restraining order that would help prevent violence in families[78].

Article 8. Protection of personal data

National legislation, regulation and case law

The Constitution of the Republic of Slovenia (Article 38) provides for the protection of privacy and personal data rights, the inviolability of the home, mail and their means of communication. These rights are protected and respected in practice and violations are subject to legal sanction. There is no data whether the state has been found in violation of these rights.

The Constitutional Court issued only one decision (Decision by the Constitutional Court U-I-92/01, Official Gazette RS, No. 22/02) on the subject of the protection of personal data – with regard to the recently conducted population census.

The Population, Households and Apartments Census of the Republic of Slovenia for the Year 2002 Act (hereinafter ZPPGO1, Official Gazette RS, No. 66/00) ensures that every person surveyed can freely declare their religion, if they want to answer this question at all. The Act explicitly determines which data may be collected and processed and for what purpose it can be used. Furthermore, supervision of the collecting, processing and use was established and the privacy of collected personal data is protected.

The provisions of Article 23 of ZPPGO1, which allowed the use of data collected in the population census for other (not only for statistical) purposes than those for which they were collected and the provision of Article 5 of the PPGO1 did not ensure the protection of the right to the privacy of personal data and are thus inconsistent with Article 38 of the Constitution (Decision by the Constitutional Court U-I-92/01, Official Gazette RS, No. 22/02).

Slovenia does not have a special act regulating access to the archives of the secret police. In general access to the archives is regulated by the Archive Material and Archives Act (Official Gazette RS, No. 20/97), hereinafter ZAGA.

In Article 38 of ZAGA, the use of archive material in archives is regulated. Public archive material in archives can be used for scientific, research, cultural and publishing purposes, for presenting archive material and education. Legal persons and natural persons are also entitled to use public archive material for other purposes if they can demonstrate their legal interest. Public archive material is used for permitted purposes on the grounds of an application filed with the archive by a rightful claimant (Article 40 of the ZAGA). General accessibility to public archive material in public archives is normally possible 30 years after its production, except for material that is originally publicly accessible (Article 41 of the ZAGA). This

[78] *Ibidem.*

provision concerns material originating after the adoption of the 1991 Constitution and already in public archives. Most material in Slovenian public archives originating before 1991 is publicly accessible, except the material concerning personal data and individual privacy. Public archive material consisting of data related to national defence, international affairs, matters concerning national security, including the maintenance of law and order and economic interests, the disclosure of which could be harmful, becomes accessible for public use 40 years after its origination (Article 41 of the ZAGA).

Archive material belonging to former social political organizations: the Communist Party of Slovenia, the Socialist Alliance of Working People of Slovenia, the Alliance of Slovenian Trade Unions and the Alliance of Young Socialist of Slovenia is accessible without limits, personal and private data are excepted. With the adoption of ZAGA all levels of confidentiality of documents, archive funds and other collected material originating from different SFRJ organizations (Article 66 of the ZAGA) are rescinded. All limitations on the use of archive materials that were established by bodies of the former SFRJ before the declaration of state independence are void (Article 67 of the ZAGA).

Public archive material consisting of personal data or data relating to the privacy of the individual becomes accessible for use 75 years after their origination or 10 years after the death of the individual whom this data concerns, if the date of death is known, unless other acts regulate this matter differently (Article 41 of the ZAGA). It is necessary to distinguish between personal data, consisting of collections such as public and official registers, and personal data of a private nature saved in a variety of files and documents (police files, health files, other personal files). The legal definition of the privacy of the individual is formulated very broadly and includes data on an individual's ideology, religious and political beliefs, education, profession, health condition, intimate relations, financial circumstances, taxation and business matters, etc. These kinds of data and documents can be found especially in political, church, police, judicial, school, prison, health insurance and other files and dossiers.

The Archive Material and Archives Act does not set any limits on individuals using materials consisting of confidential data. Minors need to be represented by a statutory representative in order to execute these rights.

All disputes regarding the accessibility of archive material or the narrowing and broadening of the terms of confidentiality are resolved by a special commission appointed by the Government of the Republic of Slovenia (Article 44 of the ZAGA).

Practice of national authorities

During the period under scrutiny no initiatives or proposals on the issue of protecting personal data have been introduced by the legislature or by any other authority.

The Chief Inspector for the Protection of Public Data recommended in his annual report for 2002 that the inspectorate be strengthened by employing at least one additional inspector besides the current two. The main reason for the strengthening of the service is that the current number of inspectors are no longer able to fulfil their task of preventive surveillance.[79]

One novelty presented in connection with the protection of personal data is a public website which enables each individual to view his own personal data in the central population register. This project is part of a wider program run by the Government called the "e-administration". Of course each individual has, according to the law, the right to access only his own personal data[80].

[79] *Source:* www.sigov.si/mp/ivop/pdf/porocilo-2002-1.pdf (May 2003)
[80] *Source:* Ministry of the Interior, http://www.mnz.si/ (May 2003)

In his annual report the Inspector was also concerned about the following facts: Ministries still lack the register describing all registers of personal data that are collected and managed. They do not inform the Ministry of Justice of all the data needed for the common register of personal data managed and publicly published by this ministry. Furthermore most of the administrative units do not have registers of data and acts regulating the protection of personal data. No municipality which was put under scrutiny by the inspector managed or collected registers of data for the collection of personal data which it dealt with and should have sent to the Ministry. Some employers collect extensive amounts of personal data on their employees or candidates for employment, even data in connection with their family members. Personal data is saved for too long a period and is not always deleted within a legitimate time period. Some legislation does not even provide for the deletion of personal data after the expiry of a certain time limit, etc.

Since 2001 the Ombudsman has been conducting the role of independent institution for the protection of personal data. This role has been conferred on him by the changes made to the Protection of Personal Data Act (Official Gazette RS, Nos. 59/99, 57/01, 59/01, 52/02) in 2001. The change was necessary because of harmonization with EU directive 95/46/EC, which requires an independent body for the supervision of the execution of provisions regulating the protection of personal data. The Inspectorate for the Protection of Personal Data remains the main body responsible for the protection of personal data. Both institutions working in this area lack the sufficient number of employees needed to carry out its functions properly. Besides, the overlapping of institutions itself is a source of various problems, although the cooperation is good. The current situation, in the Ombudsman's opinion, demands systematic changes to the institutional control of the protection of personal data in Slovenia[81].

The Ombudsman also proposed in a letter to the Government the regulation of video surveillance and the management of visitor's logs. The proposed legislation should define all the conditions for the future management of the issue concerned[82].

The Republic of Slovenia did not enact any lustration nor did it carry out any official procedure for the purpose of disqualifying high members of the former communist regime or collaborators with the regime's intelligence service and militia; no prosecutions took place. Therefore no problems linked with personal data have arisen in this context. The only act with tensions concerning lustration in Slovenian legislation is Article 8 of the Judiciary Office Act (Official Gazette RS, No. 19/94), hereinafter JOA. A petition for the review of the constitutionality of Para. 3 of Article 8 of the JOA was filed. Para. 3 of Article 8 of the JOA reads as follows: "Regardless of the provision of the first paragraph of this Article, judges who have administered justice or made decisions in pre-trial investigations and Court proceedings by which fundamental human rights and freedoms have been infringed, shall, upon termination of their office, no longer fulfil the conditions of appointment to judicial office." The Constitutional Court has decided that the provision of Para. 3 of Article 8 of the JOA is not in conflict with the Constitution (Constitutional Court. No. U-I-83/94, Official Gazette RS, No. 48/94).

In spite of this, during the period in question a notorious affair emerged with the publication of the purported archives of the Yugoslav Secret Service (UDB) on the World Wide Web[83], containing data on UDB's collaborators and people who were under surveillance by UDB in Slovenia. After a month of free access the website was banned by an oral decision by the Chief Inspector for the Protection of Public Data, claiming the illegal treatment of personal data had occurred, according to the Personal Data Protection Act (Official Gazette RS, No.

[81] 2002 annual report of the Ombudsman for Human Rights, Ljubljana, June 2003, p.21
[82] *Ibidem*, p. 23
[83] *See* http:// www.udba.net/ (May 2003)

20/98). All Internet providers were ordered to prevent all access to the website. Eleven days after the first decision, the Chief Inspector for the Protection of Public Data issued a decision that repealed the previous one due to its un-executability. The website was set on a server located abroad. The origins of published data are unknown; their genuineness is not confirmed as well, it is not certain if the data are truly from UDB's files.

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

National legislation, regulation and case law

The provision of Para. 1 of Article 106 of the Marriage and Family Relations Act (Marriage and Family Relations Act (Official Gazette SRS, Nos. 15/76, 30/86, 1/89, 14/89 and Official Gazette RS, Nos. 13/94, 82/94, 26/99, 60/99, 70/2000 and 64/01) (hereinafter ZZZDR) determines that a parent who does not live with a child has the right to personal contacts with the child, except in cases that a department for social security decided otherwise regarding the best interest of a child. On the basis of Para. 3 of Article 78 and Article 80 of ZZZDR a court decides on the deprivation and limitation of personal contacts in case of divorce or an annulment of marriage. In all other cases a department for social security decides on contacts according to Para. 1 of Article 106 of ZZZDR. At the request of one of the parents, the department for social security also decides on the manner of carrying out the above mentioned parent's rights to the contacts with a child, which are prevented by the parent who was entrusted the care for a child. A court decides on the deprivation and limitation of personal contacts on the basis of the Civil Procedure Act (hereinafter ZPP) whereas a department for social security decides on the basis of the Administrative Procedure Act (hereinafter ZUP). The fact that the provision of Para. 1 of Article 106 of ZZZDR determines the competence of a department for social security to decide on the right of parents to the contacts with a child, it is by itself not inconsistent with the provisions of MEKUOP, as the Convention allows that an administrative body decides thereof, however, only if it had the same competence as a court. Departments for social security do not have such competence. The important provisions of MEKUOP which grant the special rights of a child when decided on its contacts with the parents, are not directly applicable. ZUP, applied by departments for social security, does not contain the same provisions as ZPP. Thus, the legislature did not fulfil the obligations which the State engaged by the ratification of MRKOUP. This is the reason why the provision of Para. 1 of Article 106 of ZZZDR is inconsistent with the previously above mentioned MEKOUP provisions. Therefore, the Constitutional Court annulled it. For the same reasons the Constitutional Court annulled the provision of Para. 4 of Article 114 of ZZZDR which determined that care of a child (or a scope of carrying out a parental right which is in fact a decision on a care) is decided in some cases by a court according to ZPP, and in some by a department for social security according to ZUP.

In cases when parents, even if they do not live together, wish to have joint responsibility for a child and their agreement is not contrary to the child's interests, a statutory restriction of the rights of the parents is not needed. In such a case the legislature is not entitled to interfere with the constitutionally protected rights of parents in accordance with Para. 1 of Article 54 of the Constitution, and exclude one of them from carrying out a parental right. The regulation of Para. 1 of Article 105 and Para. 1 and 2 of Article 114 of ZZZDR which does not foresee the possibility of a joint care of children or joint carrying out of a parental right in the case of a separated living of parents, in cases that parents agree thereof and their agreement is to the benefit of a child, restricts the rights of the parents without a justified reason, and is thus inconsistent with Para. 1 of Article 54 of the Constitution.

On the basis of an act on ratification, which is a national statutory act, the provisions of a treaty become a part of the national legal order. This is true in cases when its provisions are directly applicable, i.e. they regulate the rights and obligations of legal entities and natural

persons. However, if they are not directly applicable such ratified, published and binding treaties create an international legal obligation for the State according to which the State must adopt adequate legal acts in the national legal order by which it will fulfil this obligation. Therefore, for the review of the consistency of a statutory regulation with a treaty it is important whether an individual provision of the treaty is directly applicable. The courts in the State are addressed to answer this question. In the proceedings of a constitutional review, the Constitutional Court is addressed to answer this question.

The provision of Para. 3 of Article 9 of the Convention on the Rights of the Child (hereinafter KOP) is directly applicable, as from the Convention it clearly derives the right of a child to maintain personal relations with both parents on a regular basis. At the time of coming into force of this provisions in our legal order, the provision of Para. 1 of Article 106 of ZZZDR was already in force. This means that the provision of Para. 3 of Article 9 of KOP is a subsequent, hierarchically higher (Article 8 of the Constitution) provision, which with its coming into force annuls so far applicable possibly different provisions (*lex posterior derogat legi priori*). Thus, the Constitutional Court did not need to review the issue whether, regarding the provision of Para. 1 of Article 56 of the Constitution, the provision of Para. 1 of Article 106 of ZZZDR must be interpreted in the above-mentioned manner, as the provision of Para. 3 of Article 9 of KOP which grants this right is unambiguous (Constitutional Court, No. U-I-312/00, 23 April 2003, Official Gazette RS, No. 42/03).

Article 10. Freedom of thought, conscience and religion

Estimates of religious identification vary. According to the 1991 census, the numbers are: Roman Catholic, 1.4 million /72%); No answer, 377,000 (19%); Atheist, 85,500 (4.3%); Orthodox, 46,000 (2%); Muslim, 29,000 (1.5%); Protestant (1%); Agnostic, 4,000 (0.2%) and Jewish, 201 (0.01%). The Government generally respects this right in practice: The Government at all levels strives to protect this right in full, and does not tolerate its abuse, either by governmental or private actors[84].

International case law and concluding observation of international organs

Having a place to worship is an integral part of one's right to freely exercise his or her religion. In this context, it was referred to the Recommendation by the European Commission against Racism and Intolerance which called upon member States to "ensure that the Muslim communities are not discriminated against as to the circumstances in which they organise and exercise their religion" [85].

National legislation, regulation and case law

Article 41 of the Constitution (Freedom of Conscience): Religious and other beliefs may be freely professed in private and public life. No one shall be obliged to declare his religious or other beliefs. Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions.

[84] U.S. Department of State, Slovenia, International Religious Freedom Report 2002, Released by the Bureau of Democracy, Human Rights and Labour, p. 1.
[85] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 10.

Practice of national authorities

The unresolved issue of a site for the construction of a Ljubljana mosque and cultural complex gained increased media attention for some time, with both supportive editorials and negative stereotyping appearing in the national media [86]. While there are no governmental restrictions on the Muslim community's freedom of worship, services commonly are held in private homes. The community has conceptual plans to build a new facility in Ljubljana. As of June 2002, a potential site had been identified and necessary amendments to the city plan were under consideration by the local Government. Processes to obtain permits were notoriously complex, and offered anyone who might wish to oppose the construction many opportunities to delay the project [87]. The respective amendments to the city plan were finally adopted by the Municipal Council of the Municipality of Ljubljana on 9 December 2003. These amendments gave a legal basis for the construction of the Muslim Cultural Center of almost 4000 square meters [88].

Article 11. Freedom of expression and of information

No significant developments to be reported.

Article 12. Freedom of assembly and of association

National legislation, regulation and case law

Article 42 of the Constitution (Right of Assembly and Association): The right of peaceful assembly and public meeting shall be guaranteed. Everyone has the right to freedom of association with others. Legal restrictions of these rights shall be permissible where so required for national security or public safety and for protection against the spread of infectious diseases. Professional members of the defence forces and the police may not be members of political parties.

Article 76 of the Constitution (Freedom of Trade Unions): The freedom to establish, operate and join trade unions shall be guaranteed.

The provisions of the Small Business Act (Official Gazette RS, No. 50/94, amended) which regulate compulsory membership in the Chamber of Commerce and the compulsory payment of a membership fee are not inconsistent with the Constitution.
The Small Business Act does not contain provisions (an unconstitutional gap in the law) which would assure that the standpoints taken by the bodies of the Chamber were a representative reflection of the interests of small business. Thus, it is inconsistent with the Constitution (the general freedom of conduct determined in Article 35 of the Constitution).
The Small Business Act did not determine a basis and criteria for determining the amount of the membership fee, and did not determine the supervision of the State regarding the determining thereof, but only delegated the authority to determine the membership fee to the Assembly of the Chamber of Commerce. Accordingly, the Act is inconsistent with the Constitution. (Constitutional Court, No. U-I-90/99, 6 March 2003, Official Gazette RS, No. 31/03).

[86] U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2002, Released by the Bureau of Democracy, Human Rights, and Labour, March 31, 2003, p. 1; see also issues concerning Article 21 presented by this report.
[87] U.S. Department of State, Slovenia, International Religious Freedom Report 2002, Released by the Bureau of Democracy, Human Rights and Labour, p. 2.
[88] Dnevnik, 9 December 2003, p. 1 and 14.

The Chamber of Agriculture and Forestry Act (Official Gazette RS, No. 41/99) is inconsistent with the Constitution, as it did not determine the criteria for determining the amount of a Chamber's contribution, but it merely delegated the authority for its determination to the Statute and to the Board of the Chamber (Constitutional Court, No. U-I-283/99, 20 March 2003, Official Gazette RS, No. 33/03).

Article 13. Freedom of the arts and sciences

No significant developments to be reported.

Article 14. Right to education

National legislation, regulation and case law

Article 57 of the Constitution (Education and Schooling): Freedom of education shall be guaranteed. Primary education is compulsory and shall be financed from public funds. The state shall create the opportunities for citizens to obtain a proper education.

The Rules on Granting Scholarships (Official Gazette RS, No. 29/93, amended) which deprived aliens with the residence permit in the Republic of Slovenia of the right to assert State scholarship in accordance with the Employment and Insurance Against Unemployment Act, are inconsistent with the Constitution. To acknowledge the above stated right, as one of the rights from the activity of employment, only to Slovenian citizens could be regulated only by a statute on the basis of weighing the objective reasons. Thus, the Rules independently regulated the condition for asserting the right for which they did not have a substantial basis in a statute
(Constitutional Court, No. U-I-201/99, 30 January 2003, Official Gazette RS, No. 15/03).

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

No significant developments to be reported.

Article 16. Freedom to conduct a business

National legislation, regulation and case law

Article 74 (Free Enterprise): Free economic initiative shall be guaranteed. The conditions for establishing commercial organisations shall be established by law. Commercial activities may not be pursued in a manner contrary to the public interest. Unfair competition practices and practices which restrict competition in a manner contrary to the law are prohibited.

The legislature has a firm basis in Para. 1 of Article 74 of the Constitution, on one hand, and in the nature of the geodetic activity, on the other hand, to legally regulate this field (by the Geodetic Activity Act, Official Gazette RS, No. 8/00) and inter alia to also determine which educational and other conditions must be fulfilled for the one who wishes to perform geodetic services, as well as to determine how the responsibility for the consistency of such services with the regulations (responsible geodesist) be provided. There is also no violation of Article 14 of the Constitution as asserted by the petitioners with respect to Article 48 of the Real Estate, State Borders and Spacial Units Records Act (Official Gazette RS, No. 52/00), as the legislature cannot be considered to have acted arbitrarily in adopting a different transitional regulation of the position of geodesists with higher education. According to the

Constitutional Court, the nature of the activity and the goals of the legislature are sound enough reasons for such a different regulation (Constitutional Court, No. U-I-230/00, 17 April 2003, Official Gazette RS, Nos. 1/01 and 44/03).

Article 17. Right to property

The right to private property in Slovenia is fully assured and protected by the Constitution. However, the process of denationalisation (the restitution of nationalized assets) has not yet been completed even though there have been improvements.

National legislation, regulation and case law

Article 33 of the Constitution (Right to Private Property and Inheritance): The right to private property and inheritance shall be guaranteed.

Article 67 of the Constitution (Property): The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social and environmental function. The manner and conditions of inheritance shall be established by law.

Practice of national authorities

The main problem regarding the process of denationalisation in the Republic of Slovenia is the slow process of the restitution of nationalized assets. The Ombudsman received initiatives in connection with this problem in 2002, although fewer than in previous years. The initiatives complained especially about the longevity of procedures, the clarification of some provisions of the Denationalisation Act (Official Gazette RS, No. 27/91), advice on how to carry out the procedure and complaints that nationalized assets are not being returned by their current possessors although a final decision has been issued. According to Ombudsman's report, the insufficient number of employees working in the field was the main reason for the delays[89].

In previous years, the Constitutional Court urged in at least ten decisions that the work of administrative bodies in denationalisation cases be accelerated.

The reasons for the slow progress in such cases are various and specific. The reasons are mainly of a technical and not legal nature. Thus many problems have arisen out of undetermined functional lands and unexecuted land divisions. Many denationalisation cases are still pending due to the undetermined status (citizenship) of the persons eligible for the denationalisation. Another reason for the lengthy procedures is the scope of possible litigation. The consequence of such is that most cases were not solved at the appellate level but were sent back to the initial level where the entire procedure had started. The process of returning property is very slow and often complicated also due to the primary principle of denationalisation, which is that property must be returned in kind. There are numerous technical problems resulting from this principle: how to deduct previous investments in nationalized property, how to determine the amount of property to be returned in kind and the amount in compensation, etc. Nevertheless, these problems and complications will be overcome and the completion of the denationalisation of property and of the process of privatisation will lead to a new generation of private owners who will be set to take part in the market economy experiment. It is up to the future to assess if this will benefit the entire community.

[89] 2002 annual report of the Ombudsman for Human Rights, Ljubljana, June 2003, p.77

While at the beginning of the process the biggest problem involved the lack of experts, this has now been improved. This will also produce faster developments in the field of denationalisation and consequently its conclusion. The Republic of Slovenia is committed to the recommendations of Council of Europe Resolution No. 1096 (from June 27th 1996), which stated that it is necessary to destroy the heritage of former totalitarian regimes - Nazism, Fascism and Communism.

Denationalisation issues comprise a large number of the cases brought before the Constitutional Court. Following the line of logic that the Constitutional Court has taken from 1992 onwards, it is reasonable to assume that the Constitutional Court would uphold the current legislation regarding denationalisation, if challenged. According to the principle of the separation of powers, in predominantly political matters the Constitutional Court acts in accordance with the political branch in power at the time of the inquiry, reserving its power as a constitutional-legal entity and interfering in these (political) issues only when legal subjects are affected to the extent that a "social contract", a statute in this case, becomes questionable. Thus, the small number of Constitutional Court interferences with legislation in denationalisation cases demonstrates the strong commitment of society to returning property to its former owners, while, on the other hand, the strong political flavour resulting from this issue necessitates the Constitutional Court's self-restraint.

From the enactment of the Denationalisation Act (Official Gazette RS, No. 27/91), which came into force on December 7th 1991, until December 31st 2002, 37,988 denationalisation claims were filed. The number of procedures concluded up to December 31st 2002 amounts to 26,366. This is in 11% increase as compared to the previous year. Thus far 83% of denationalisation cases have been resolved (according to the Ministry of Justice data). The Slovenian Association of Former Owners of Expropriated Property confirms that 37,988 denationalisation claims have been filed but warns of delays. Considering the fact that almost 12 years have elapsed since the adoption of the Denationalisation Act, which set a time limit of one year after a complete claim has been filed for the settlement of the case and that the last deadline for filing a claim was December 7th 1993, one might ask if this extended term for resolving the cases represents a violation of Article 6 (Length of proceedings and a fair trial) of the Convention for the Protection of Human Rights and Fundamental Freedoms including the violation of Article 1 of Protocol 1 (Protection of property). In connection with this issue a partial decision concerning such admissibility was issued on May 17th 2002 by the European Court of Human Rights in the case of *Ljubo Sirc v. Slovenia* (Application No. 44580/98). This is the only appeal that has been accepted by the European Court of Human Rights, because the majority of other potential claimants did not satisfy the conditions of acceptance (all legal remedies had not been exhausted). The reason for this – as mentioned above – is the vast scope of possible litigation in Slovenia.

Article 18. Right to asylum

International case law and concluding observation of international organs

The European Commission Against Racism and Intolerance is also concerned about the situation regarding the accommodation of asylum seekers. While the problem of overcrowded centers is easing, the Commission has been informed of very harsh living conditions in certain remaining centers. The Commission urges the authorities to ensure that asylum seekers are treated in a humane way, which includes access to decent living conditions. In this regard, the Commission notes with interest that the Ministry of the Interior has undertaken the building of a new asylum center by 2004[90].

[90] The European Commission against Racism and Intolerance, second report on Slovenia, p. 12

Although the centers for foreigners are not described in the legislation as a prison or a detention center, the conditions under which the residents are held, clearly amount to a deprivation of liberty within the meaning of Subpara. f of Para. 1 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, and consequently, the safeguards stipulated in Article 5 must be ensured. Most importantly, everyone placed in such center must be afforded the right to take proceedings in which the lawfulness of the detention shall be decided speedily by a court, as required by Para. 4 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Additionally, the Commissioner recalled that periods of 31 and 46 days taken to rule on the release of a person detainment pending extradition under Subpara. F of Para. 1 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms were considered too long by the European Court of Human Rights. It is thus doubtful whether the procedure under Slovenian law, complies with the requirement of a speedy court decision of the lawfulness detention. There should also be a court review of the lawfulness of the decision at reasonable intervals.

The regulations relating to the rights of asylum seekers remain restrictive in the field of education and health care, which is a serious problem given the relatively lengthy asylum procedures. The Government was encouraged to proceed with the reform of these provisions, according to the recommendations put forward by the United Nations High Commissioner for Refugees[91].

Practice of national authorities

The establishment of an asylum centre was based on Article 45 of the Asylum Act (Official Gazette RS, No. 67/01). Asylum seekers are accommodated in an asylum centre where their social life, psycho-social treatment or aid and education is organized and ensured. Cooperation with other services of the Ministry of the Interior and other ministries, nongovernmental organizations and institutions is guaranteed. The accommodation capacity of the Asylum Centre (at 166, Celovška Street) in Ljubljana is 120 beds. In the centres of the Governmental Office for Immigration and Refugees (ZC Črnomelj, ZC Hrastnik, ZC Ilirska Bistrica, ZC Kozina in ZC Postojna) 122 more beds are provided[92].

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

No significant developments to be reported.

CHAPTER III : EQUALITY

Article 20. Equality before the law

National legislation, regulation and case law

Article 14 of the Constitution (Equality before the Law): In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance. All are equal before the law.

[91] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 20.
[92] *Source:* Ministry of the Interior, http://www.mnz.si/si/13331.php (May 2003)

The provision of the Labour and Social Courts Act (Official Gazette RS, No. 19/94) is inconsistent with the general principle of the equality before the law, insofar as it determines that an insured person who succeeds in a social dispute cannot claim the refund of costs of the proceedings from an institution in accordance with the principle of success (Constitutional Court, No. U-I-53/00, 12 June 2003, Official Gazette RS, No. 63/03).

The constitutional provision on equal protection of rights requires that the court recognises the mentioned parties, weighs their relevancy, and in a reasoning of a decision reasons the statements which are essential for the decision on a matter (Constitutional Court, No. Up-430/00, 3 April 2003, Official Gazette RS, No. 36/03).

The statutory regulation (Insurance Companies Act, Official Gazette Act, Nos. 13/00, 91/00 and 21/02) which recognises the employees in insurance companies a narrower scope of rights to participation in the management as foreseen by the general regulation is inconsistent with the constitutional principle of equality (Constitutional Court, No. U-I-131/00, 6 March 2003, Official Gazette RS, Nos. 12/01 and 29/03).

A differentiation in the calculation of the value of housing as a basis for determining rents (determined by the Housing Act, Official Gazette RS, Nos. 18/91-I, 19/91, 21/94, 23/96 and 1/00), which is based on a different item value regarding the fact whether housing was leased before the enforcement of the methodology for creating rents in non-profit housing or after it, is inconsistent with the constitutional principle of the equality before the law (Constitutional Court, No. U-I-303/00, 20 February 2003, Official Gazette RS, No. 29/03).

The provisions of Article 46 of the Energy Industries Act (Official Gazette RS, Nos. 79/99 and 8/00) that recognize employees in companies that provide public utilities in the field of energy industries a narrower scope of rights to participation in management than it is envisaged by general regulation without there being any sound reasons for that, are inconsistent with Para. 2 of Article 14 of the Constitution (Constitutional Court, No. U-I-250/00, 15 May 2003, Official Gazette RS, No. 50/03).

According to the Constitutional Court, sound reasons are not given for the regulation determining that employees whose employment is terminated as redundant labour according to the Employment Act (Official Gazette RS, No. 14/90, hereinafter ZDR90) are granted a redundancy payment, however, employees whose employment is terminated in a composition procedure are not entitled to such payment. The decisions of the courts which dismissed the complainant's claim notwithstanding the finding that he was granted only a partial payment of the above mentioned right from the means of the Security Fund (Article 19 of the Security Fund of the Republic of Slovenia Act, Official Gazette RS, No. 25/97 and 53/99), place the complainant in an unequal position compared with employees whose employment was terminated as redundant labour on the basis of ZDR90, for which, as reasoned above, there are no sound reasons. Thus, with the disputed judicial decisions the complainant was violated the right to equality before the law determined in Para. 2 of Article 14 of the Constitution (Constitutional Court, No. Up-167/00, 10 July 2003, Official Gazette RS, No. 73/03).

Article 21. Non-discrimination

International case law and concluding observation of international organs

Based on the constitutional principle of equal treatment (Article 14 of the Constitution) several legislative provisions include more detailed provisions prohibiting discrimination (e.g. the Equal Opportunities of Woman and Men Act, Official Gazette RS, No. 59/02; the Labour Relations Act, Official Gazette RS, No. 42/02). However, a number of legislative gaps do remain in the field of non-discrimination, which was identified by many NGO's as a major

impediment to achieving full equality. In order to tackle societal discrimination it was strongly encouraged the enactment of legislation aimed at combating discrimination in the private sphere, such as access to private housing and access to services. The authorities were encouraged to take steps towards the ratification of Protocol 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, and towards ensuring the full and prompt transposition of the Directive 2000/43/EC Implementing the Principle of Equal Treatment Between Persons Irrespective of Racial or Ethnic Origin into the Slovenian legislation[93].

Instances of discrimination on the basis of sexual orientation have been reported by NGO's and the Ombudsman. It has been also concerned to learn that homophobic statements have been frequently published in the media. It was welcomed the fact that discrimination on the basis of sexual orientation is explicitly prohibited in the Employment Act (Official Gazette RS, No. 67/02), however it was suggested that, in the process of complementing anti-discrimination legislation, similar provisions be included in other laws as well, in order to strengthen the public perception of discrimination on grounds of sexual orientation as a prohibited act [94].

National legislation, regulation and case law

Para. 1 of Article 14 of the Constitution (Equality before the Law): In Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms irrespective of national origin, race, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance.

Under the Slovenian law, both forms (a marriage and an extramarital union) are expressly determined as a "life union between man and woman" (Articles 3 and 12 of the Marriage and Family Relations Act, Official Gazette RS, Nos. 15/76, 30/86, 1/89, 14/89, 13/94, 82/94, 29/95, 28/99, 60/99, 70/200, 64/01 and 110/02). Accordingly, the Slovenian legislation in force does not regulate a life union between same-sex partners.

Practice of national authorities

There were some appeals by some NGO's in Slovenia (Legebitra, Škuc Magnus, Škuc-Roza klub) to regulate the same sex-partners relationship by law, considering legislation and practice of some countries, referring to Para. 1 of Article 14 of the Constitution. As a consequence, recently there were some discussions to prepare the Bill on Registered Partner Community regulating "registration of the same-sex partnership". For the time being, the respective Bill has still been at an early stage of preparation and has not yet been discussed by the National Assembly. Additionally, some of the latest public investigation shows that around 83% of the population did not express any precautions against the same-sex partnership (http://socialna-zavest.sou.uni-lj.si/RezAnCSD.htm).

[93] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 9.
[94] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 10.

Article 22. Cultural, religious and linguistic diversity

1. General

The protection of the rights of national minorities in the Republic of Slovenia is satisfactory and generally in compliance with international legal acts within this field. The Constitution of the Republic of Slovenia guarantees special ("collective") rights to the autochthonous Italian and Hungarian national communities (Article 64 of the Constitution) and the Romany community in Slovenia.

The status and special rights of the Romany community living in Slovenia are determined by statute (Article 65 of the Constitution). The protection of the special rights of the Italian and Hungarian national communities and Romany community in Slovenia is based on the territorial principle and on the autochthonous population principle. The autochthonous Hungarian and Italian national communities in Slovenia enjoy a full range of special benefits, whereas the Romany community enjoys special protection with some limitations, for other national groups the level of legal protection (of the community as a whole – collective rights etc.) is quite limited.

International case law and concluding observation of international organs

The European Commission against Racism and Intolerance noted in its second report that according to the last census, Croats comprised approximately 2.7%, Serbs 2.4%, and Bosnians 1.3% of the population, while Hungarians represented 0.4% and Italians 0.16% of the population. Although the national communities from the territories of former Yugoslavia greatly outnumbered the traditional national communities, they did not benefit from special cultural rights[95].

Moreover, in the same report the Commission expressed some serious concerns regarding discrimination in Slovenia – this will be mentioned below. It also recommended that the Slovenian authorities take action in a number of fields. These recommendations cover, inter alia: the pressing need to find solutions to the problems encountered by ex-Yugoslav minority groups as concerns access to citizenship and to social and economic rights, the need to organize training workshops on human rights and the tolerance of all civil servants working in contact with minority groups and the need to ensure that the existing legislation to combat racism and racial discrimination is fully applied. As regards immigrants, the Slovenian authorities should also consider adopting an integration strategy in order to reinforce the cohesion of the whole population of Slovenia[96].

The size of the Muslim community has increased due to the arrival of refugees, particularly from Bosnia and Kosovo. The Commission noted that there were some issues of concern as regards, for example, adequate places of worship for the Muslims. The Muslim community does not have a mosque and the premises currently used for religious events and activities are not very appropriate for such purposes, although the Muslim community has been applying for a place to build a mosque for several decades. Although such a site has already been granted by the authorities, the construction of the mosque has yet not started, apparently due to administrative delays. The Commission strongly urged the authorities to take steps to ensure that suitable premises are allocated to the Muslim community and to any small religious groups[97].

[95] European Commission against Racism and Intolerance in its second report on Slovenia, p. 16
[96] *Ibidem,* p. 6
[97] *Ibidem,* p.16

The Commission strongly urged the authorities to improve the implementation of legislation against racism and discrimination, for example by ensuring that the general public and potential victims are aware of the legislation in force and its implications and that victims are given encouragement and support to approach the police[98].

The Commission regretted that there has not been any comprehensive body of anti-discrimination legislation that would cover all aspects of life, including education, housing, access to public and social services, access to public places and contractual relations between individuals and that would provide for effective mechanisms of enforcement and redress[99].

Following the dissolution of the former Yugoslavia, the ethnic communities of persons originating from other parts of the former Yugoslavia became de facto minorities in Slovenia, but they have not been recognized as such, and do not enjoy minority protection. Many of them migrated to Slovenia between the 1960's and 1980's, but there are also traditional settlements of Serbs and Croats in Slovenia. Although the constitutional provisions guaranteeing a certain degree of protection for persons belonging to "ethnic communities" are applicable to these groups, the fact that they remain unrecognized as minorities in Slovenia, poses significant obstacles to the preservation of their language, religion, culture and identity. In order to ensure that the implementation of the Framework Convention for the Protection of National Minorities, ACF/SR(2000)004, does not create a source of arbitrary or unjustified distinctions, the Government was encouraged to consider including these groups in the application of the Convention for the Protection of Human Rights and Fundamental Freedoms[100].

Practice of national authorities

The Ombudsman claimed that the condition of "autochthony" prevents due protection of other national communities living in Slovenia. Other communities can be protected only indirectly through various constitutional provisions, thus national communities directly determined in the Constitution have an advantage over the others and have a privileged status[101]. For example: Unlike the Hungarian, Italian or Romany communities, ethnic Serbs, Croats, Bosnians or Kosovar Albanians are not protected by special provisions of the Constitution and are faced with some governmental and societal discrimination. Most of these people from the former Yugoslavia (mainly Bosnia, Serbia, and Kosovo) migrated internally to Slovenia during the decades leading up to independence due to economic opportunities.

2. Italian and Hungarian national minorities

National legislation, regulation and case law

Article 61 of the Constitution (Expression of National Affiliation): Everyone has the right to freely express affiliation with his nation or national community, to foster and give expression to his culture and to use his language and script. Article 62 of the Constitution (Right to Use One's Language and Script): Everyone has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other bodies performing a public function.

These two minorities have enjoyed special status in the new Slovenian constitutional system since its very beginning. The Basic Constitutional Charter on the Independence of the Republic of Slovenia (Official Gazette RS, No. 1/91) guarantees in Article 3 collective and

[98] *Ibidem,* p. 9
[99] *Ibidem,* p. 10
[100] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 9.
[101] *Ibidem,* p.17

individual rights to its members, as does the Constitution (e.g. Article 5) and various treaties in force.

Article 64 broadly specifies these rights. The autochthonous Italian and Hungarian national communities and their members shall be guaranteed the right to use their national symbols freely and, in order to preserve their national identity, the right to establish organisations and develop economic, cultural, scientific and research activities, as well as activities in the field of public media and publishing. In accordance with laws, these two national communities and their members have the right to education and schooling in their own languages, as well as the right to establish and develop such education and schooling. The geographic areas in which bilingual schools are compulsory shall be established by law. These national communities and their members shall be guaranteed the right to foster relations with their nations of origin and their respective countries. The state shall provide material and moral support for the exercise of these rights (all in Para. 1).

The two national communities shall be directly represented in representative bodies of local self-Government and in the National Assembly (Para. 3). The status of the Italian and the Hungarian national communities and the manner in which their rights may be exercised in those areas where the two national communities live, is determined by statute (Local Self-government Act, Official Gazette RS, No. 72/93). The rights of both national communities and their members shall be guaranteed irrespective of the number of members of these communities (Para. 4).

Laws, regulations and other general acts that concern the exercise of the constitutionally provided rights and the position of the national communities exclusively, may not be adopted without the consent of representatives of these national communities (Para. 5).

Generally speaking, the provisions of Article 64 of the Constitution exceed the minimal level of rights of members of national communities guaranteed by international acts.

3. Romany community

International case law and concluding observation of international bodies

There was concern about the unequal treatment of the Romany ethnic group in comparison with the two major recognized minorities[102]. Furthermore, consideration of reports submitted by Slovenia to the UN Committee on the Elimination of all Forms of Racial Discrimination on March 21st 2003 states that there are some concerns that the distinction between »indigenous« and »new« Romany may give rise to further discrimination[103]. The Committee encourages the State to pursue its current efforts to combat any discriminatory practices and attitudes against Romany which may exist, in particular in the areas of housing, employment and treatment by the police, by, inter alia, developing comprehensive proactive strategies in these fields. The Committee also expressed concern about the existing practice that some Romany children may be educated in vocational centres for adults, others in special classes. Recalling its General Recommendation XXVII on discrimination against Romany, the Committee encourages the State to promote the integration of Romany children into mainstream schools. Otherwise, the situation concerning the actual implementation of Article

[102] It is possible to infer that the constitution-framers indirectly recognized for the Romany community the status of autochthonism. This provision does not regulate the special rights and the status of the Romany community, nevertheless it is of wider importance because of the obligations of the Legislature to treat the Roma as a community and to regulate its collective rights.

[103] The European Commission against Racism and Intolerance also expressed some dissatisfaction in its second report on Slovenia with the criteria of "autochthonism" for the Romany community in the Local Self-government Act, which is not based on Article 65 of the Constitution, claiming it causes unnecessary confusion. See also Report of the European Roma Rights Center for the OHCHR, 5 March 2003, p. 1.

4 of the Convention on the Elimination of all Forms of Racial Discrimination (one of the core articles) does not give rise to any concerns.

The Romany do not enjoy the same level of minority protection as the Hungarian and Italian national communities, and even within this minority, there are differences in treatment depending on whether the Romany are autochthonous or non-autochthonous. Groups of persons originating from other parts of the former Yugoslavia do not enjoy any minority status, although numerically, Serbs, Croats and the Bosniacs are the largest minority groups[104]. Many Romany children continue to be placed in special classes for children with special needs, and some schools have special Romany classes. The manner in which the above mentioned measures are implemented may aggravate the exclusion of Romany children and carries a risk of discrimination[105]. Measures towards desegregation should therefore immediately be taken. In the absence of adequate anti-discrimination legislation, Romany in Slovenia are frequently blocked from accessing basic rights and social services[106]. Additionally, there is no provision in the legislation seeking to ensure the participation of Romany communities in the National Assembly, although such a provision exists for the Hungarian and Italian minorities[107].

At least two thirds of so-called "non-autochthonous" Romany do not have Slovenian citizenship. Amendments to the Citizenship Act (Official Gazette RS, No. 96/2002) fail to address all obstacles precluding so-called "non-autochthonous" Romany from acquiring Slovenian citizenship and do not fully comply with the relevant provisions of international law, including in particular European provisions on citizenship in the context of state succession[108].

National legislation and regulation

Article 65 of the Constitution provides that the status and special rights of the Romany community living in Slovenia shall be regulated by law. Such legislation has not yet been adopted. The Government continued to work with the Romany community on the implementation of special legislation regulating the Romany status called for in Article 65 of the Constitution[109]. Currently there are 9 statutes that contain special provisions protecting the Romany community. The Office of the Ombudsman expressed its dissatisfaction due to the lack of one complete, framework law that would govern the status of the Romany community, claiming insufficient funding of this community as a consequence[110].

[104] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 2-8; see a statement by the European Roma Rights Centre of 3 March 2003 to the United Nations Committee for the Elimination of Racial Discrimination; see also Slovenia's initial report to the Advisory Committee on the Framework Convention for the Protection of National Minorities in November 2000; see also Report of the European Roma Rights Center for the OHCHR, 5 March, 2003.

[105] See also Report of the European Roma Rights Center: The Human Rights Situation of Roma in the European Union, 16 October 2003, p. 8; see also Report of the European Roma Rights Center for the OHCHR, 5 March, 2003, p. 3.

[106] See Report of the European Roma Rights Center for the OHCHR, 5 March 2003, p. 3.

[107] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 6.

[108] See Para. 2 of Article 18 of the European Convention on Nationality; see also Report of the European Roma Rights Center: The Human Rights Situation of Roma in the European Union, 16 October 2003, p. 12.

[109] The Government adopted a special program in 1995 that is still in force. According to the program, the efforts of the state institutions are aimed at the regulation of living conditions, the provision of social support and other forms of aid, the ensuring of educational possibilities, the promotion of the development of culture, informing, supporting their own identity and their political participation at the local level. The Government has attempted to involve more Romany children in formal education at the earliest stages of schooling. Furthermore, a government Commission for the Protection of the Romany Ethnic Group has been established. It is composed of representatives of the state, municipalities with a higher number of Roma and representatives of the Romany framework association in Slovenia.

[110] 2002 Annual Report of the Ombudsman for Human Rights, Ljubljana, June 2003, p.16

The legislation does not define the concept of autochthonous settlement. The word autochthonous means one who is, by his or her origin, from the place where he or she lives, domestic, aboriginal (Constitutional Court, No. U-I-416/98, 22 March 2001, Official Gazette RS, No. 28/01). The legislator could have prescribed the criteria determining the municipalities obliged to ensure the Romany representation with the municipal council, however, it decided to determine already the municipalities where an autochthonous Romany community lives (Constitutional Court, No. U-I-345/02, 4 November 2002, Official Gazette RS, No.105/02).

Practice of national authorities and case law

According to the latest population census[111], which was conducted in 2002, there were 3,246 members in the Romany community living in the territory of Slovenia, although it is estimated that the real number could be as high as 8,000[112]. There are 21 Romany associations in 19 municipalities that are allied under one framework association called "Zveza Romov Slovenije"[113] (The Romany Association of Slovenia).

In specific areas the Romany are regarded as autochthonous: in the Prekmurje region, in the Dolenjska region, in the Posavje region, in the Bela Krajina region and partly in the Gorenjska region[114]. In most of the cases they live isolated from the other population and their living conditions are normally below minimum living standards[115]. Romany have reported discrimination in employment. Their economic situation represents a difficult social problem, except in some parts of Prekmurje.

The authorities have persistently strived to solve the problem of the integration of the Romany community. As mentioned above, a law regulating the issue of the Romany community in general has not yet been adopted. Specific aspects of their protection are dealt with in various legislation, e.g. schooling, participation in the local government, etc. Slovenia will, in accordance with the Constitution and relevant legislation, continue to ensure the special rights of the Romany community. Additionally, some municipalities with the Romany population already included different forms of support and regulation by municipal plans on strategy and development (e.g. the Semič Municipality Plan of November 2001, the Novo mesto Plan of 27 April 2002 etc.).

Changes to the Local Self-government Act (Official Gazette RS, No. 51/02), Local Elections Act (Official Gazette RS, No. 72/93, 7/94, 33/94, 61/95; Decisions of the Constitutional Court: U-I-213/95, 70/95, 51/02, 11/03; Ruling of the Constitutional Court: U-I-417/02-7) and the Voting Rights Evidence Act (Official Gazette RS, No. 52/02) from May 2002 secured the Romany community the right to elect their own representatives in 20 municipal councils in those municipalities where Romany are autochthonous and permanently settled. The Government proposed this after warnings received by European inter- and non-governmental organizations regarding the protection of the Romany community. Although this was the case in most municipalities as of the November 2002 local elections, full implementation of these provisions is expected for the next local elections in 2006.

One of the first special rights deriving from Article 65 is the right of the Romany community to their own representative in the representative bodies of the local governments.

[111] *Source:* http://www.stat.si/popis2002/ (May 2003)
[112] *Source:* Government of the Republic of Slovenia, Office for Nationalities. (internal paper)
[113] *Ibidem.*
[114] *Source:* Decision by the Constitutional Court U-I-315/02 (Official Gazette RS, No. 87/02).
[115] The European Commission against Racism and Intolerance in its second report on Slovenia stated that in some areas the living conditions of the Roma are "very disturbing".

The Constitutional Court in its 2001 decision on the constitutionality of the Local Self-government Act[116] agreed with the professional opinion of the Office for Nationalities, which stated that it is not possible to provide for special constitutional protection of the Romany community in a single act and that it is necessary to follow the adopted practice regarding protection of the Hungarian and Italian minorities.

Of special importance are the following two decisions by the Constitutional Court which guarantee the rights of the Romany community:

1.) In its decision No. U-I-315/02 (Official Gazette RS, No. 87/02) the Constitutional Court stated that it is not inconsistent with the principle of the separation of powers (Para. 2 of Article 3 of the Constitution), the principles of a state governed by the rule of law (Article 2 of the Constitution), and it is not an interference with the constitutional position and rights (competencies) of municipalities (Article 138 and Para. 1 of Article 140 of the Constitution) if the legislature by itself establishes and determines the municipalities which are obliged to ensure the Romany community a representative in a municipal council, notwithstanding the fact that the legislature was required by the Constitutional Court to regulate by statute (only) the criteria and other measurements on the basis of which municipalities would be able to determine whether an autochthonous Romany community lives in their territory. This namely means that the legislature may regulate the effective exercise of the special rights of the Romany community also in a different, non-arbitrary manner, pursuant to the Constitution. With regard to the criteria of autochthonism, the Court adopted the professional opinion of the Office of Nationalities that the status of autochthonism can be established through various scientific studies and historical sources.

2.) In its decision U-I-345/02 (Official Gazette RS, No. 105/02) the Constitutional Court stated that the charters of the relevant municipalities which do not determine that also Romany community representatives are to be members of municipal councils, are inconsistent with statute.

During the period in question there was public debate concerning this issue, above all in the municipalities affected by the statute, which in general opposed the statutory demands.

Concerning special classes for the Romany children, the orientation prevailed in the school practice the Romany children to be integrated into ordinary classes. Therefore the Ministry for School Matters, Science and Sports decided to change the standard-settings, which should enable the Romany children to be fully integrated into the ordinary classes (the Rules regulating the respective issues are published in the Official Gazette RS, No. 82/03).

The Romany community can draw financial resources[117] from different governmental institutions and from municipalities in which they have recognized autochthonous status.

Government Office for Nationalities: in SIT

	2001	*2002*	*2003*[118]	*2004*
Romany Association of Slovenia (Zveza Romov Slovenije)	4,350,000[119]	10,800,000	10,275,000	18,000,000
Radio shows	4,982,000	7,194,545	5,440,000	10,500,000

[116] Constitutional Court, No. U-I-416/98-38, Official Gazette RS, No. 28/01.
[117] *Source:* Government of the Republic of Slovenia, Office for Nationalities. (internal papers)
[118] Projected.
[119] All values are in Slovenian Tolars.

Ministry of Culture: in SIT

	2001	*2002*	*2003*	*2004*
Romany Association of Slovenia (Zveza Romov Slovenije)	10,043,000	10,600,000	12,600,000	13,000,000

Government Office for Structural Policy and Regional Development: in SIT

	2002	*2003*	*2004*
Romany ethnic community	59,300,000	64,960,800	31,299,200

The Ministry of Labour, Family and Social Affairs contributed altogether SIT 1,440,856 to various Romany societies in 2002. The Ministry of Education, Science and Sports contributed 66,543,967 SIT for the education of Romany children and adults in the years 2002 and 2003.

The Ministry of Economics participates in financing of various investments in the infrastructure of the municipalities where the Romany community is recognized as autochthonous. It contributed SIT 69,100,00 in 2002, SIT 51,600,800 in 2003 and SIT 31,299,200 in 2004.

Article 23. Equality between man and women

No significant developments to be reported.

Article 24. The rights of the child

No significant developments to be reported.

Article 25. The rights of the elderly

International case law and concluding observation of international organs

In order to respect the right to an adequate protection against poverty and social exclusion of the elderly, measures, such as offering retraining possibilities and introducing in the legislation a clear prohibition against discrimination based on age, should be taken. The labour unions have been informing that several employers do not respect the minimum salary established by law (The Minimum Salary Act, Official Gazette RS, No. 39/99 with amendments; the; last amended quotient, Official Gazette RS, No. 72/03) and that there have been cases of non-payment of salaries. The possibility of seeking effective redress for such violations of labour laws, is negatively affected by the length of judicial proceedings, which according to the trade union representatives is at least two years. The new Social Contract, signed in May 2003, introduces the possibility of using mediation in such situations, however, it is now important to promote this new possibility and to raise the awareness of it [120].

Article 26. Integration of persons with disabilities

No significant developments to be reported.

[120] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 22.

CHAPTER IV : SOLIDARITY

1. Social Welfare State

Slovenia is a Social Welfare State[121] with a market economy adapted to the present circumstances, where the human rights and citizens freedoms, especially social and economic rights, rights of employees to participate in the management, the freedom of trade unions, the right to own and inherit property as well as the freedom of movement and institutions of a civil society are respected (the *Declaration on the Sovereignty of the State of the Republic of Slovenia*[122]).

The constitutional system implements the principle of Slovenia as a Social Welfare State in such a way that also some social and economic rights among the provisions regulating human rights and fundamental freedoms are included. Furthermore, the respective provision could serve as a basis for the regulation of economic and social relations. This basis is clearly stated in the last sentence of Para. 1 of Article 5 of the *Constitution*, which binds the State to assist in the preservation of the natural and cultural heritage of Slovenia in harmony with the creation of opportunities for the development of civilized society and cultural life in Slovenia[123]. The declaration that the Republic of Slovenia is a Social Welfare State considers that the property has a social function, bound with some obligations and limitations. In addition, a statute shall specify the manner of its acquisition and enjoyment as well as its limits because of establishment of its social function as well as its general availability[124].

The reestablishment of property relations is based on the following legislation:
- *former Basic Relations Under Property Law Act,*
- *Property Code*
- *Denationalisation Act,*
- *Companies' Ownership Transformation Act,*
- *Transformation of the Ownership of Monuments and Historical Sights in Social Ownership Act,*
- *Re-establishment Agricultural Communities and Restoration of Their Property and Rights Act.*

The Slovenian system in force is similar to some systems that have been partly using models that could be seen as models of equal life possibilities or models of rightful life possibilities. The above mentioned models are not limited to starting positions, but they try to reduce the respective differences among people, which can threaten their fundamental existential needs. In addition, they shall be not reduced only to the material goods, but also oriented to other social goods, with the aim to assure all the people a basic social security during their life period. The contents of the above mentioned models could be categorically recognized as an essence of the Social Welfare State, or concerning the economic system, as a social market economy[125].

2. Social Rights

Chapter II of the *Constitution* contains all human rights and fundamental freedoms, which constitute the civil society and the Rule of Law. On the other hand, it contains also social

[121] Article 2 of the Constitution.
[122] Official Gazette RS, No. 1/91.
[123] See also Articles 70 through 73 of the Constitution: National Assets and National Resources, The Protection of Land, a Healthy Living Environment, the Protection of the Natural and Cultural Heritage.
[124] Article 67 of the Constitution.
[125] Gaspari, M., Enakopravnost kot izvedba načela enakosti, Podjetje in delo, No. 1/92, 17. Šinkovec, J., Ustavno sodišče ob uveljavljanju ustavnosti in zakonitosti, Podjetje in delo, No. 5-6/93, p. 410.

guarantees, e.g. the right to social security, health protection and education[126]. Two bodies are empowered for the protection of these rights. While Article 159 of the *Constitution* establishes the Ombudsman as a protector of human rights and fundamental freedoms, the Constitutional Court is empowered to decide on constitutional complaints based on violations of human rights and fundamental freedoms when all other legal protection was exhausted[127]. Because the *Constitution* is considered as the paramount law of the country, the Constitutional Court is also empowered to undertake the constitutional review of all laws including laws, by laws and other regulations in the field of social and economic relations[128].

3. Historical Outline[129]

The Slovenian constitutional systems before 1991 declared the priority of the social and economic rights as an essential part of the former systems. Beside classical political and economic rights also some constitutional rights more typical for the former social systems were declared, e.g. the right to self-government as one of basic human and citizens' rights in the former so-called socialist society. In current constitutional systems in force such as the Slovenian system, we could meet with the renaissance of classical rights as well as with the gradual discontinuation of constitutional regulation of social and economic rights in wider extent.
The contents of the constitutional provisions concerning the part II. Human Rights and Fundamental freedoms as well as the Part III. Economic and Social Relations, shows that all rights which compose a general complex of human rights there are included. The system also includes two international protective measures:
- Article 8 of the *Constitution* which declares that statutes and other legislative measures shall comply with generally accepted principles of international law and shall be in accord with treaties which bind Slovenia from time to time, and
- The provision of Para. 5 of Article 15 of the *Constitution*, which prescribes that it shall not be permissible to restrict any human right or basic freedom exercisable by acts which would otherwise be legal in Slovenia, on the basis that this *Constitution* does not recognize that right or freedom or only recognizes it to a limited extent, as arises from some international legal acts concerning human rights.
The most important constitutional provisions are as follows:
- The protection of human rights against different possible repressive interventions of the State as well as against abuse of power[130];
- The economic, social and cultural rights[131];
- Legal and other mechanisms for the efficient human rights protection[132].

The Slovenian constitutions, adopted after World War II, contained a lot of social and economic rights. The *Constitution of 1991*, however, is based on the concept that the current *Constitution* shall contain only a minimal number or extent of economic and social rights.

The Representation of Some Special (including Social) Interests - the National Council
Besides the National Assembly representing the people through general elections, the National Council as a representative body of farmers, tradesmen, independent professionals

[126] Articles 14 through 65.
[127] Subpara. 6 of Para. 1 of Article 160 of the Constitution; Articles 50 through 60 of the Constitutional Court Act.
[128] Article 160 of the Constitution; Article 21 of the Constitutional Court Act.
[129] Rupnik, J., Cijan, R., Grafenauer, B., Ustavno pravo Republike Slovenije, Posebni del, II. knjiga, Maribor, Univerza v Mariboru, Pravna fakulteta, 1994, p. 63. Bavcon, L., Človekove pravice in temeljne svoboščine v novi Ustavi, Nova ustavna ureditev Slovenije, Zbornik razprav, Ljubljana 1992, p. 42. Cerar, M., et al., Ustavne določbe o človekovih pravicah in temeljnih svoboščinah, Nova ustavna ureditev Slovenije, Zbornik razprav, Ljubljana, ČZP Uradni list, 1992, p. 49. Sturm, L., et al., Komentar Ustave Republike Slovenije, Ljubljana, FDEŠ, 2002, p. 172.
[130] See Articles 16, 17, 18 through 31, 34 through 38 of the Constitution.
[131] In general, the III. Part of the Constitution.
[132] Articles 15, 129, 130, 131, 132, 133, 134,155, 156, 157, 158, 159 of the Constitution.

and non-profit organizations, as well as representatives of local interests was established[133]. In performing the duties of the legislative body some powers are vested also in the National Council, where the participation of some special social interests is guaranteed. These are social, economic, trade, professional, and local interests[134]. The National Council is composed of 40 Councilors as follows: four Councilors representing employers, four Councilors representing employees, four Councilors representing farmers, tradesmen and independent professionals, six Councilors representing non-profit organizations and twenty two Councilors representing local interests[135]. This body may propose bills, require a referendum in the course of the legislative process or force the National Assembly to repeat its vote (suspensive veto)[136], but it has no right to veto legislation. Despite the fact that the National Council is not called a Chamber of the Legislature by the *Constitution*, it actually serves this function in terms of its powers in the legislative process.

Individual representative communities of interests elect the National Council, as a representative body of special social interests[137].

Citizens of the Republic of Slovenia have the right to vote or run for the office of a member of the National Council if they are of legal age (18) and are legally competent for their actions[138]. The members of the National Council are elected on the basis of interest groups[139]. Even foreigners, carrying out certain activity or employed in Slovenia have the right to vote (but not run for the office) members of the National Council[140]. The elections are organised through the so-called electoral bodies[141], which are composed of the representatives elected by interest groups and local government bodies in compliance with their rules[142]. The representatives of employers are elected by the chambers of commerce and associations of employers[143], the representatives of employees are elected by the representative trade unions for the territory of the State[144], the representatives of farmers, tradesmen and independent professionals are elected by the electoral bodies of their national professional organisations[145]. Each electoral body of the following non-profit fields elect one representative to the National Council: e.g. higher education, other educational institutions, professional research institutes, culture and sports, health care and social welfare[146]. The representatives of local interests are elected by local government bodies that have the right to nominate candidates[147].

4. Government/Cabinet [148]

The structure of the Government corresponds to the structure of fields, as prescribed by statute[149]. The respective fields are as follows[150]:

[133] Article 96 of the Constitution.
[134] Para. 1 of Article 96 of the Constitution.
[135] Para. 2 of Article 96 of the Constitution.
[136] Article 97 of the Constitution.
[137] Article 11 of the National Council Act.
[138] Para. 1 of Article 2 of the National Council Act.
[139] Para. 2 of Article 2 of the National Council Act.
[140] Para. 3 of Article 2 of the National Council Act.
[141] Article 11 of the National Council Act.
[142] Para. 1 of Article 14 of the National Council Act.
[143] Articles 24 and 25 of the National Council Act.
[144] Articles 26 and 27 of the National Council Act.
[145] Articles 28 through 33 of the National Council Act.
[146] Articles 34 through 37 of the National Council Act.
[147] Articles 38 through 42 of the National Council Act.
[148] See also Rupnik, J., Cijan, R., Grafenauer, B., Ustavno pravo Republike Slovenije, Posebni del, II. knjiga, Maribor, Univerza v Mariboru, Pravna fakulteta, 1994, p. 201. See Grad, F., Kaučič, I., Ribičič, C., Kristan, I., Državna ureditev Slovenije, Ljubljana, ČZP Uradni list, 1996, p. 428.
[149] Articles 15 and 16 of the Administration Act.
[150] The Organisation and Areas of Work of Ministries Act, Articles 2 through 25; the Government of the Republic of Slovenia Act, Article 14.

- Economy: economic relations and development, commercial activities, traffic and communications, environment and urban planning;
- Non-commercial activities/social activities: science and technology, health care, schools and sports, culture, labour, family and social matters.

The most important act of the acts passed by the Government concerning the above mentioned fields is the so-called *Budgetary Memorandum* by which the Government proposes to the National Assembly the basic goals and projects of economic, social and budgetary policies of the Government as well as the general limits of public finances in general for the next year[151].

5. Administration

Under the provisions of the *Administration Act,* the main functions of the administration could also cover general economic, social, cultural, ecological and social development, by appropriate measures taken with the scope of its powers. In addition, the administration may propose measures to the Government and to other bodies of respective jurisdiction.

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

No significant developments to be reported.

Article 28. Right of collective bargaining and action

National legislation, regulation and case law

Everyone has the right to freedom of association with others (Para. 2 of Article 42 of the Constitution). Every citizen has the right, in accordance with the law, to participate either directly or through elected representatives in the management of public affairs (Article 44 of the Constitution: Participation in the Management of Public Affairs).

Practice of national authorities

Concerning the enforcement of consensus between trade unions, the Government and employers as for the respective measure and policies, the first ideas appeared in 1991. Bargaining about different drafts of Social Agreement was taking place from 1991 onwards; its first result was the Agreement on Salaries Policy of 1994. The above mentioned Agreement was foreseen as an element of the forthcoming Social Agreement, which was not signed in the respective year. Later, the most important result of the above mentioned Agreement was the establishment of the Economic Social Council (hereinafter ESC), since then active as the highest body of social partnership in Slovenia.

The activities of the ESC proved the existence of such a body of social bargaining to be able to assist in solution of actual economic and social issues. The ESC's activities have been based on the Rules of Procedure of 1994 that allow for exercising the following powers:
- to take an active part in preparations of the respective legislation as well as in preparations of the respective opinions and recommendations;
- to initiate adoption and/or amendments of the respective legislation;
- to create statements and opinions to the preparatory documents and drafts of laws and by-laws;
- to create statements and opinions to the budgetary issues

[151] Articles 155 to 168 of the Rules of Procedure of the National Assembly.

The respective proposals, recommendations and opinions of the ESC have been submitted to the National Assembly, the National Council as well as to the public. The decisions taken by the ESC are binding for organs and working bodies of all social partners. The ESC is composed of:
- five representatives of employers;
- five representatives of trade union confederations;
- five representatives of the Government.

However, the experiences existing so far showed that the position and the activities of the ESC should be regulated by law. The Rules of Procedure of 1994 does not have a character of parliamentary act. In case of establishment of the ESC by law the formal obligation for the Parliament and the Government would be introduced before any decision-making to obtain an opinion of the ESC. The same obligation should be considered also in case of any own initiative of the ESC concerning issues of its field of activities. The law should also definitely regulate financing of the ESC from the State budget.

At the beginning of 2003, the Social Agreement for the period of 2003-2005 was signed by social partners (the Government, the associations and employers and the trade unions). The main goal of the Agreement is a consensus between social partners about a balanced economic-social development of the country in more rigorous operational circumstances due to the accession to the European Union. The bargaining was of a great pretension, especially due to some economic issues:
- Excessive inflation rate;
- Salary policy;
- Excessive public expenditure;
- Non-efficiency of system of taxation;
- Reform of health care;
- Legal security in the field of labour relations and social issues.

Article 29. Right of access to placement services

No significant developments to be reported.

Article 30. Protection in the event of unjustified dismissal

No significant developments to be reported.

Article 31. Fair and just working conditions

Practice of national authorities

The gross monthly minimum wage during the period in question was SIT 103,643[152] (Implementation of the Wage Policy Agreement for 2002-2004 Act, Official Gazette RS, No. 59/02 and the Minimal Wage for December 2002 (Ministerial Decision), Official Gazette RS, No. 109/02), i.e. approximately $507, which provides for a decent standard of living for a worker and their family. The Parliament adopted a new Labour Law (Official Gazette RS, No. 42/02) on the 25th of April 2002 (in force since January 1st 2003) and reduced the work week from 42 to 40 hours and increased the minimum annual leave from 18 to 20 days. It also requires all job vacancies to be announced publicly for at least 8 days, and provides guidelines to ensure fair hiring practices, among other procedural developments.

[152] The currency of legal tender in the Republic of Slovenia is the "Slovenian Tolar".

Special inspections controlled by the Ministries of Health and Labour established and enforced standards for occupational health and safety. Workers have the right to remove themselves from dangerous work situations without jeopardising their continued employment. The law provides for the Labour Inspectorate to carry out supervisory inspections of the implementation of statutes, other regulations, collective agreements and general acts regulating employment, salaries and other incomes arising from the employment of employees in Slovenia and abroad, employees' participation in management, strikes and safety at work (Article 1 of the Labour Inspection Act, Official Gazette RS, No. 19/94). The inspectorate is established as a body (with its organizational units) within the Ministry of Labour (Article 2 of the Labour Inspection Act). The inspectorate provides for the implementation of the policies and measures of labour inspection and cooperates with the Ministry of Labour concerning the preparation of regulations in its field of activity (Article 3 of the Labour Inspection Act). In addition, the inspectorate prepares reports on its activities for the originating Ministry (Para. 1 of Article 5 of the Labour Inspection Act). The Government has to submit the respective report to the National Assembly. After approval, the report must be sent to the International Labour Office (Para. 2 of Article 5 of the Labour Inspection Act). During the performance of their duties, inspectors are empowered to take all necessary measures (Articles 12-23 of the Labour Inspection Act).

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

No significant developments to be reported.

Article 33. Family and professional life

No significant developments to be reported.

Article 34. Social security and social assistance

No significant developments to be reported.

Article 35. Health care

No significant developments to be reported.

Article 36. Access to services of general economic interest

No significant developments to be reported.

Article 37. Environmental protection

No significant developments to be reported.

Article 38. Consumer protection

No significant developments to be reported.

CHAPTER V : CITIZEN'S 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

1. General

International case law and concluding observation of international organs

The European Court of Human Rights did not find the state to have violated Para. 1 of Article 6 or Article 13 of the Convention for the Protection of Human Rights and Fundamental

Freedoms. The Human Rights Committee did not issue any final observations finding violations of Para. 3 of Article 2 or Para. 1 of Article 4 of the International Covenant on Civil and Political Rights.

However, the Commissioner for Human Rights stated that the excessive length of criminal proceedings is evidently due to the fact that under the current procedure, when a court of appeal decides to quash a first-instance decision the case must be sent back for retrial before the court of first instance, because courts of appeal have no jurisdiction to decide on the merits of individual cases. This specific procedural feature is largely responsible for protracting the proceedings, which could be considerably shortened of courts of appeal were competent to deal with the merits of criminal cases. Furthermore, it would appear that this solution has already been implemented in civil proceedings, which means that it could be extended to other fields of law[153].

National legislation, regulation and case law

In Article 23, the Constitution guarantees everyone the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law. A similar provision is contained in Article 6 of the ECHR.

Consequently, it can be said that the right to judicial protection without unreasonable delay has the nature of a fundamental human right in Slovenia and represents a constitutional category.

The provision of the Ownership Transformation of Insurance Companies Act (Official Gazette RS, No. 44/02), which does not guarantee judicial protection or a legal remedy to each of the known shareholders, interferes with the constitutional right to judicial protection and is thus inconsistent with the provision of Para. 1 of Article 23 of the Constitution (Constitutional Court, No. U-I-225/02, 6 February 2003, Official Gazette RS, Nos. 60/02 and 16/03).

The right to adjudication without undue delay is not violated if in regular court proceedings, in a certain period gaps (standstill) in the proceedings did not occur which could be exclusively ascribed to the court. The standpoint of the Supreme Court that the legality of the decision on the extension of detention is not influenced by the fact that a member of the non-trial panel was the judge who as the president of the panel is conducting criminal proceedings, is in this case not inconsistent with the constitutional right to an impartial judge (Constitutional Court, No. Up-604/02 and Up-610/02, 6 March 2003, Official Gazette RS, No. 30/03).

Practice of national authorities

However, judicial delays are the main problem facing the judiciary. The Government of the Republic of Slovenia and the Supreme Court stated in their joint report that despite important progress in recent years, the state is still not respecting the above mentioned right within a reasonable time period and thus it is not in full compliance with all constitutional provisions and the highest European standards[154].

One of the reasons for the slow decision-making process, which is unable to cope with the large caseload, can be explained by the ever increasing number of social disputes due to the

[153] Report by Mr. Alvarado Gil-Robles Commissioner for Human Rights on his visit to Slovenia, 11-14 May 2003, Office of the Commissioner, Strasbourg, 15 October 2003 (CommDH (2003)11), p. 11.
[154] *Source:* http://www.sigov.si/mp/si/vsebina/aktivnosti/sodni_zaostanki.pdf. (May 2003)

present crisis in values in Slovenian society. For example, due to the "crisis" within marriages, disputes concerning alimony, the custody of children, the division of joint property, etc., have increased, thus enlarging the caseload. Case overload and hence case delays threaten to further reduce the peoples' declining trust in the law and, as a consequence, in the courts[155].

The courts included in the statistics [156] are: the Supreme Court, Higher Courts, County Courts, Administrative Courts, the Higher Labour and Social Court, Labour and Social Courts.

Solved cases:

1998	1999	2000	2001	2002
509,409	585,695	558,779	530,215	508,250

New cases:

1998	1999	2000	2001	2002
586,740	553,324	527,856	529,981	543,119

Unsolved cases[157]:

1998	1999	2000	2001	2002
597,587	565,352	533,225	532,937	567,839

Judicial delays as defined by the Judicial Order Act[158]:

	2000	2001	2002	2001/2002	2000/2002
Delays – total		298,229	313,196	5.02 %	
Delays – important cases[159]	76,877	70,530	61,559	- 12.72 %	- 19.93 %

2. Measures instituted to combat judicial delays

The Ministry of Justice is undertaking legislative (e.g. proposing legislation which aims to make proceedings more fluid, to relieve judges of work that does not concern adjudication, to make judges positions more flexible) organizational (enlarging the judicial staff) and material measures (investment in additional work space for judicial bodies) in order to make judicial decisions possible in due time.

In the past three years the measures taken in order to improve the functioning of the judiciary have led to considerable improvements in organization and efficiency, which was also mirrored in statistics on resolved judicial cases.

Slovenian courts increasingly accelerated the process of delay-resolving, which is coordinated between the Supreme Court, the Judicial Council, the Association of Judges and the Ministry of Justice.

However, despite the positive trend, it is deemed that the speed of resolving judicial delays is still too slow. Therefore the Supreme Court has introduced a special project (called "Hercules") for the accelerated resolution of delays in specific judicial areas and at specific

[155] Novak, M., "The Promising Gift of Precedents: Changes in Culture and Techniques of Judicial Decision-Making in Slovenia" in *System of Justice in Transition*, Ashgate Publishing Ltd., p. 95.
[156] Marinko, J., "Delovanje sodstva v luči številk" in *Pravna Praksa* (a weekly law journal) No. 22-23/2003, appendix, p. IX.
[157] Unsolved cases are not necessarily judicial delays. The category of unsolved cases includes all cases which were brought before the Court by December 31st of the year concerned.
[158] The Judicial Order Act precisely defines judicial delays according to different judicial areas.
[159] As defined in Article 50 of the Judicial Order Act.

courts. The project aims at securing fluid adjudication in larger judicial districts or larger courts that are selected on the basis of the statistics measuring the burden-level of courts.

The information-technology modernization of the judiciary is also being implemented, especially the IT modernization of the land register. IT modernization of the land register was initiated in the year 2000 and will probably be concluded in 2003. 71% of all land register files have been put into electronic form[160].

In the standard civil law area it is possible to reduce the number of new cases by means of appropriate procedures of settlement and peaceful dispute resolution (and arbitration in the area of labour disputes), by narrowing the scope of the official testing of judicial decisions, etc.

The primary focus of the judiciary was to achieve the goals established in the Judicial Order Act concerning the resolution of judicial matters within a reasonable period of time, by the end of 2002. These goals were:

- to realize programs for faster dispute resolution, including the mediation project and the »Hercules« project
- to fill in the vacancies
- by means of amendments to the Judicial Service Act, to enable greater flexibility in the area of judge-appointment
- to realize the IT modernization of the land register (by 2004)
- to complete amendments to the Act on the Enforcement of Judgments in Civil Matters and Insurance
- to complete the legislative regulation of alternative dispute resolution
- to accelerate procedures at the Labour and Social Courts
- to complete the final institutionalisation of the Centre for Education in the Judiciary
- to complete further technological modernization of the courts

Changes in the field of material legislation will not significantly influence the efficiency of the courts very soon, with the exception of the possible redistribution of jurisdiction concerning criminal offences and misdemeanours in the area of criminal law. In the area of civil law the changes even tend to prolong the delays until a stable judicial practice is developed.

National legislation, regulation and case law

3. Legal Aid

3.1 General provisions[161]

Basically, the Legal Aid Act (Official Gazette RS, No. 48/01) determines legal aid as the right of an eligible person to the total or partial provision of funds necessary to cover the costs of

[160] Marinko, J., "Delovanje sodstva v luči številk" in *Pravna Praksa* (a weekly law journal) No. 22-23/2003, appendix, p. X.

[161] The Slovenian legislation in force regulating legal aid are as follows:
- The Legal Aid Act;
- The Regulation on the Legal Aid Application Form and Presentation of Instruments (Official Gazette RS, No. 75/01);
- The Regulation on the Note Form (Official Gazette RS, No. 75/01);
- The Regulation on the Terms and Procedure for the Registration of Persons Concerning Legal Aid Approval (Official Gazette RS, No. 83/01);
- Directive on the Maintenance and Contents of Legal Aid Records (Official Gazette RS, No. 75/01) in the form of an exemption from paying the costs of judicial proceeding.

legal assistance and the right to an exemption from paying the costs of judicial proceedings (Para. 3 of Article 1 of the Legal Aid Act).

Legal aid may be approved for legal advice, legal representation and other legal services laid down in the Act, for all forms of judicial protection before all courts of general jurisdiction and specialized courts based in the Republic of Slovenia, before the Constitutional Court of the Republic of Slovenia, and before all authorities, institutions or persons in the Republic of Slovenia authorized for out-of-Court settlement, as well as in the form of an exemption from paying the costs of judicial proceeding (Para. 1 of Article 7). Legal aid shall also be approved for proceedings before international courts or arbitration panels if the rules of these international courts or arbitration panels do not govern the right to legal aid, or if the individual is not eligible for legal aid pursuant to the rules governing legal aid (Para. 2 of Article 7).

Para. 2 of Article 2 states that legal aid shall be approved as regular (Article 11), extraordinary (Article 12), exceptional (Article 22), special (Article 24) or emergency legal aid (Article 36).

In principle, legal aid may be granted for any case. However, there are some limits prescribed by the Legal Aid Act: Legal aid shall not be approved in matters regarding:
- criminal offences involving insulting behaviour, libel, defamation and slander, unless the injured party proves the probability that he or she has suffered legally admissible damage due to these offences;
- disputes involving a reduction in maintenance payments when the person obliged to pay maintenance has failed to settle the due liabilities arising from maintenance, unless he or she has failed to settle these liabilities for reasons out of his or her control;
- damage disputes involving compensation for non-property and property damage caused by defamation and libel, unless the injured party provides credible evidence that this has affected his or her material, financial or social position (Article 8).

3.2 Eligible persons

By means of legal aid the State shall ensure access to the Court for parties in the territory of the Republic of Slovenia. Therefore, eligible persons shall be all such potential subjects who can be a party before a Court in the Republic of Slovenia[162]. Persons eligible for legal aid shall be deemed to include:
- Citizens of the Republic of Slovenia with permanent residence in the Republic of Slovenia (Subpara. 1 of Para. 1 of Article 10).
- Aliens holding a permit for permanent or temporary residence in the Republic of Slovenia and stateless persons residing legally in the Republic of Slovenia (Subpara. 2 of Para. 1 of Article 10). With respect to the right to legal aid, these aliens enjoy a status equal to that enjoyed by citizens of the Republic of Slovenia (Para. 1 of Article 10).
- Other aliens, subject to the condition of reciprocity or under the conditions and in cases laid down in treaties binding on the Republic of Slovenia (Subpara. 3 of Para. 1 of Article 10 of the Legal Aid Act; concerning the position of aliens, see Article 13 of the Constitution and Article 55 of the Aliens Act, Official Gazette RS, No. 61/99).

Legal entities are not in principle eligible for legal aid under the Legal Aid Act. However, under the Legal Aid Act non-profit non-governmental organizations and associations that operate in the public interest and that are entered into the appropriate register pursuant to the valid legislation, are eligible for legal aid in relation to disputes involving the performance of activities in the public interest or activities for the purpose of which they were founded (Subpara. 4 of Para. 1 of Article 10);

[162] Tratar, B., *Predpisi o pravni pomoči in odvetništvu*, Uradni list RS, 2001, Ljubljana, p. 107-111.

- Other persons determined by law, or a treaty binding on the Republic of Slovenia, to be persons eligible for legal aid (Subpara. 5 of Para. 1 of Article 10).

3.3. General criteria for granting legal aid

Legal aid is financed by the state budget. Therefore the respective terms and criteria for granting such must be determined by considering the principles of the rule of law, a social state and equality before the law.
The adoption of a decision on an application for regular legal aid shall include the determination of:
- the applicant's financial position (subjective conditions) and
- other conditions (objective/factual/procedural conditions) laid down in the Legal Aid Act (regular legal aid) (Para. 2 of Article 11).

3.4. Forms of legal aid

The forms of legal aid are as follows (Para. 1 of Article 26):
- legal advice beyond initial legal advice;
- the formulation, verification and certification of documents on legal relations, facts and statements;
- legal advice and representation in cases of out-of-Court settlement;
- legal advice and representation before courts in the first and second instances;
- legal advice and representation involving extraordinary appeals;
- legal advice and representation involving constitutional actions;
- legal advice and representation before international courts;
- legal advice and representation involving the filing of a petition for the assessment of constitutionality

4. Independence and impartiality of juges

The independence of the courts and equality before law are guaranteed by numerous provisions, only the most important ones will be mentioned.

Judges preside over and decide cases in the exercise of their judicial function, bound only by the Constitution and statute as well as by the general principles of international law and ratified and published treaties, as derived from Article 8 of the Constitution (Article 3 of the Judicial Act).

The status of judges is regulated foremost by the Constitution and Courts Act [163]. Other statues regulating this matter include the Judicial Office Act[164] and the Judicial Order Act [165]. The Constitution provides for the independence of judges in the performance of the judicial function (Article 125). The office of a judge is permanent and not compatible with office in any other public body or the bodies of a political party (Articles 129 and 133).

The judiciary is bound by many constitutional provisions e.g. the right to a fair trial, the independence of judges, permanence of office, the incompatibilities of judicial office, etc. The constitutional provisions are specified by some statutes, e.g. the Judicial Act; the Judicial

[163] Official Gazette RS, Nos. 19/94, 45/95, 26/99, 38/99, 45/99; Decisions of the Constitutional Court: U-I-144/95, 28/00, 26/01, 56/02.
[164] Official Gazette RS, Nos. 19/94, 8/96, 24/98, 101/99; Decisions of the Constitutional Court: U-I-175/97, 48/01, 67/02, 105/02; Decision of the Constitutional Court: U-I-202/99-20.
[165] Official Gazette RS, Nos. 17/95, 35/98, 91/98, 22/00, 22/00, 113/00, 62/01, 88/01, 102/01, 22/02, 15/03.

Office Act; the Labour and Social Courts Act; the Notaries Public Act; the Office of the Public Prosecutor Act; the State Legal Exam Act; the Solicitors Act[166].
There are no extraordinary or Military courts (Para. 2 of Article 126 of the Constitution) which adjudicate regarding civilians.

Judges independently exercise their duties and functions in accordance with the Constitution and with the law (Article 125 of the Constitution; Article 3 of the Judicial Act). Article 23 of the Constitution declares the principles of independence, impartiality (in connection with the constitutional principle of equality in the protection of rights before courts – see also Article 2 of the Judicial Office Act), and the principle of legality, as well as the right to be judged only by a judge duly appointed pursuant to principles established by statute and in accordance with normal judicial practices (see also Articles 14-17 of the Judicial Act).

The conditions (Article 8 of the Judicial Office Act) for the office of judge include the criteria of personal suitability for the exercise of judicial office[167].

5. Election

A speciality of the Slovenian system is the way judges are elected. The National Assembly elects judges upon the recommendation of the Judicial Council (Article 130 of the Constitution), which ensures the consideration of professional criteria as regards such election (Articles 7-14 and 15-23 of the Judicial Office Act). The Judicial Council is a body that ensures cooperation between the legislative and judicial branches concerning the election of judges (Articles 18-29 of the Judicial Act)[168].

The Judicial Council[169] demonstrates the autonomy of the judiciary. It is a special body with the constitutional power to propose to the National Assembly the election and dismissal of judges (Articles 18-29 of the Judicial Act). In addition, the Judicial Council also carries out other duties.

6. Permanence of the office

The office of a judge is permanent. The age and other conditions of election as well as the age of retirement of a judge are determined by statute (Article 129 of the Constitution).

Concerning the termination and dismissal from office of a judge, the circumstances under which a judge may no longer hold office are specified by statute (Para. 1 of Article 132 of the Constitution). The Constitution does not provide a mandatory age of retirement for judges, but it referred the respective matter to regulation by statute (Subpara. 1 of Para. 1 of Article 74 of the Judicial Office Act). When a judge violates the Constitution or commits a major breach of the law in the discharge of the duties and functions of his office, the National Assembly may, upon the recommendation of the Judicial Council, dismiss him (Para. 2 of Article 132 of the Constitution). When a judge is found by a duly constituted Court to have intentionally committed a criminal offence in contradiction to the duties and functions of his

[166] *See* Rupnik, J., Cijan, R., Grafenauer, B., *Ustavno pravo Republike Slovenije*, Posebni del, II. knjiga, Maribor, Univerza v Mariboru, Pravna fakulteta, 1994, p. 243.
[167] The provision of Para. 3 of Article 8 of the Judiciary Office Act is not in conflict with the Constitution. Performance of the office of a judge in judicial proceedings involving a sentence-based violation of human rights is such as represents negative reasons for the election of a judge. Decision of the Constitutional Court No. U-I-83/94 on July 14th 1994 (Official Gazette RS, No. 48/94).
[168] Article 130 of the Constitution. *See* Rupnik, J., Cijan, R., Grafenauer, B., *Ustavno pravo Republike Slovenije*, Posebni del, II. knjiga, Maribor, Univerza v Mariboru, Pravna fakulteta, 1974, p. 253.
[169] The Judicial Council is composed of eleven members. The National Assembly elects five members on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas judges holding permanent judicial office elect six members from among their own number. The members of the council select a president from among their own number. (Article 131 of the Constitution).

office, and thereby to have abused that office, he is to be dismissed from such office by the National Assembly (Para. 3 of Article 132 of the Constitution, Articles 77-79 of the Judicial Office Act).
Disciplinary courts decide autonomously in disciplinary proceedings against a judge charged with a breach of duties or the disorderly exercise of judicial office (Articles 86-89 of the Judicial Office Act).

7. Judicial immunities

Judicial independence is bound with judicial immunities: no person who takes part in the making of any judicial decision may be called on to account for any opinion expressed in a Court during the course of decision-making (Para. 1 of Article 134 of the Constitution). When a judge is suspected of criminal activity in the discharge of his judicial duties and functions, he may not be detained, nor may any proceedings be instituted against him, save with the permission of the National Assembly (Para. 2 of Article 134 of the Constitution).

8. Incompatibilities of judicial office

The principle of the incompatibility of the judicial office is of great importance (Article 133 of the Constitution; Article 3 and Articles 37-43 of the Judicial Office Act). The office of a judge is incompatible with the office in any other state body, local government body and any body of a political party and with similar other offices and activities as may be specified by statute (Article 133 of the Constitution). In the event of disrespect for this principle, the judicial office terminates.

Judicial office is not compatible with attorneyship, the office of notary or lucrative business. A judge can not pursue administrative office, can not be a member of administrative or supervisory boards of companies nor can he perform any other work that could give rise to the suspicion of his impartiality in his judicial function.

9. Principle of public Court proceedings

In accordance of the principle of public court proceedings, the activities of the courts are conducted in public. Article 24 of the Constitution provides that all court proceedings should be conducted in public and all judgments delivered in open court. The exceptions are expressly provided by statute (Article 25 of the Judicial Act). Through the constitutionally declared principle of public court proceedings (see also Criminal Procedure Act: Article 294 – the public character of public hearings; Article 360 – the public character of delivering judgments), the above mentioned publicity serves a supervisory role regarding the impartiality and legality of judgment. However, the Constitution provides a so-called legal reservation, which reserves the exclusion of publicity in statutory provisions in certain cases e.g. regarding the protection of the interests of a minor or public morality (e.g. Articles 295-297 of the Criminal Procedure Act).

Article 48. Presumption of innocence and right of defence

National legislation, regulation and case law

The presumption of innocence does not have absolute substantive-law effects, as the Constitution itself determined the possibility of interfering with the right to personal liberty of an individual already on the basis of a reasonable suspicion that a certain person had committed a criminal offence, and not only on the basis of a final judgment (Constitutional Court, No. Up-604/02 and Up-610/02, 6 March 2003, Official Gazette RS, No. 30/03).

The principle of presumption of innocence (Article 27 of the Constitution) was violated by the court's judgement when the court imposing a penalty to the condemned person considered also some procedures against the condemned person which have been in course before the minor offences judge; in such a way the court imposing a penalty considered something not to be considered following the Constitution and the law (violation of Item 5 of Article 372 of the Criminal Procedure Act) (Supreme Court, No. I Ips 239/2001, 13 February 2003, VSC Kp 55/2001).

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

No significant developments to be reported

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

No significant developments to be reported