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

REPORT ON THE SITUATION OF FUNDAMENTAL RIGHTS IN SLOVENIA IN 2004

submitted to the Network by **Dr. Arne Marjan MAVCIC**
on 3 January 2005

Reference: CFR-CDF/Si/2004

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

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

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

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

Article 1. Human Dignity

Reasons for concern

The Committee recommends the State party to take all measures to ensure that discipline in schools is upheld in a manner that respects the human dignity of the child. It also encourages the State party to ensure that the commission appointed by the Minister of Education to analyze the problem of violence in Slovene education be given adequate support. Furthermore, the Committee recommends the State party to strengthen the measures to address the general problem of violence among adolescents *inter alia*, through education and awareness-raising campaigns. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Article 2. Right to life

Rules regarding the engagement of security forces (use of firearms)

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

Some of these new Member States have significant arms production and exporting activities. For example, the enlarged EU will have over 400 companies in 23 countries producing small arms & light weapons (SALW) – only slightly less than the USA. (2): (2) Source Omega Foundation Database. Compiled September 2003. (Numbers of companies in brackets): Existing EU countries: …Slovenia. Danger of diversion – in contravention of EU Code Criterion Seven, diversion of arms shipments is facilitated by poor laws and oversight, inadequate customs and transport controls, lack of resources and corruption – allowing, criminal gangs, terrorist supplier and, UN sanctions busters to flourish. This is reported principally in some of the new Member States for example…Slovenia…

According to a Saferworld report Slovenia has had problems regulating SALW on its territory, and the number of shipments that have been intercepted and confiscated led to suggestions that "many others have slipped through" and that Slovenian territory is an important transit route for weapons going to and from the former Yugoslavia. However, the number of seizures ilicit SALW on Slovenian territory and at border points does indicate that security and prevention measures are yielding results. In autumn 1999, arms smugglers were caught on the Croatian-Slovenian border with approximately 5,000 handguns. More significantly, in September 2001, Slovenia customs officials in the port of Koper detained an enormous 48-ton batch of smuggled infantry weapons sent from Malaysia, which police believe were destined for Macedonia and Kosovo. 'Large batch of weapons for Macedonia and Kosovo detained in Slovenia' (RIA Novosti, Belgrade, 6 September 2001, source: David Isenberg's Weapons Trade Observer, as cited in: Saferworld, Arms production, exports and decision-making in Central and Eastern Europe). No matter how effective the export controls of individual EU states are, without consistent and coherent controls at the EU level, they will not prevent brokers of electro-shock weapons operating in other European Union or New Member States – or from marketing their products elsewhere in the world. These products have been marketed by at least 26 companies in 14 countries including…Slovenia...Many of these countries have no domestic or export controls on stun guns, treating them as "free weapons". Between 2000 and 2004 there were at least 63 companies in 13 of the EU or new

Member States manufacturing, selling or marketing electro-chock stun weapons (333). (333) Source: Omega Foundation database (numbers of companies in brackets): Existing EU member states: …Slovenia. Examination of the dual-use lists suggests that the two category codes, 3A001a2 or 3A001a7 may be the ones used to control the export of the SHARC components. The table below shows the Individual Export licences granted by the DETE for the 3A001a2 category between 1998 and 2002. The following countries could also have received products within those categories via "Global licences" issued between 2000 – 2002 that covered: … Slovenia…According to the DETE a "Global licence" can be issued when an "unusually large number of licences are required for the export of dual-use items… to prevent the creation of an undue administrative burden for the exporter" and is valid for six months. Although, global licences are granted on the understanding that the licence is not valid for military or security users, it is unclear if that restriction applies if the recipient of the dual-use components is a civilian company. (Amnesty International, Undermining Global Security, The European Union's Arms Exports, A Report by Amnesty International, 2004, ACT 30/003/2004, ISBN: 0-86210-356-8)

The fight against the trafficking in human beings (including the use of technical means to prohibit the illegal crossing of borders)

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

Prostitution is illegal but decriminalized. Anti-trafficking authorities and NGOs informally estimated that as many as 80 bars and clubs across the country could be engaged in prostitution. Trafficking in women for the purpose of sexual exploitation was a problem (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status, Women, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

The Committee recommends the State party to further strengthen its efforts to identify, to prevent and to combat trafficking in children for sexual and other exploitative purposes, including by undertaking studies to assess the nature and magnitude of the problem and allocating sufficient recourses to this field, in accordance with the Declaration and Agenda for Actions, and the Global Commitment adopted at the 1996 and 2001 World Congresses against Sexual Exploitation. The State party is encouraged to ratify the United Nations Convention against Transnational Organized Crime and its two supplementing protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; and the Protocol against the Smuggling of Migrants by Land, Air and Sea. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to classify "trafficking" as a grave criminal offence under the penal code. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Legislative initiatives, national case law and practices of national authorities

Some treaties were ratified in the meantime, as follows: Zakon o ratifikaciji Konvencije Združenih narodov proti mednarodnemu organiziranemu kriminalu, Act on Ratification of the United Nations Convention against Transnational Organized Crime, *Official Gazette* 2004, nr. 14, MP; Zakon o ratifikaciji Protokola proti tihotapljenju migrantov po kopnem, morju in

zraku, ki dopolnjuje Konvencijo Združenih narodov proti mednarodnemu organiziranemu kriminalu, Act on Ratification of the Protocol against Smuggling of Migrants by Land, Air and See, supplementing the United Nations Convention against Transnational Organized Crime, *Official Gazette* 2004, nr. 15, MP; Zakon o ratifikaciji Protokola o nedovoljeni proizvodnji strelnega orožja, njegovih sestavnih delov in streliva ter trgovini z njimi, ki dopolnjuje Konvencijo Združenih narodov proti mednarodnemu organiziranemu kriminalu, Act on Ratification of the Protocol Against Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime, *Official Gazette* 2004, nr. 15, MP; Zakon o ratifikaciji Protokola za preprečevanje, zatiranje in kaznovanje trgovine z ljudmi, zlasti ženskami in otroki, ki dopolnjuje Konvencijo Združenih narodov proti mednarodnemu organiziranemu kriminalu, Act on Ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, *Official Gazette* 2004, nr. 15, MP.

The Penal Code (E.g. Kazenski zakonik republike Slovenije, The Penal Code of the Republic of Slovenia, *Official Gazette* 2004, nr. 40, hereinafter the Penal Code) was amended including Trafficking in Persons as a criminal offence: Article 387a.: (1) Whoever, for the purposes of prostitution or other forms of sexual abuse, forced labour, slavery, servitude or trafficking with human organs, tissues or blood, buys, takes possession of, houses, transports, sells, delivers another person or disposes with another person in some other manner or mediates in these treatments, shall be punished to imprisonment for not less than 1 year and not more than 10 years. (2) If the offence from the previous paragraph is committed against a minor, or with use of force, threat or with fraud or deceit, kidnapping or by abuse of position, or with the intention of forcing to pregnancy or artificial insemination, the perpetrator shall be punished with at least 3 years of imprisonment. (3) Whoever commits the offences from Paragraphs 1 and 2 in an organized criminal group for the performing of such offences, or if the substantial material benefit was acquired,

Support work and provision of service to meet the requirements of women who experience violence have also been steadily improving. Although telephone helplines, crisis support, safe houses, legal support and counselling, social work and other services have been developed, evidence from many Slovenian regions confirms that their provision is not sufficient and always appropriate. Training (general and specialist) of professionals who are likely to be involved in working with women who experience violence (police, social workers, healthcare staff and education workers and others) has become a regular part of national response to violence against women. The major developments were achieved in specialist training for police officers.In addition to the above mentioned examples of the work that has been undertaken in Slovenia in the last decade to address violence against women in 2004 the Government adopted the first Plan of action to fight against trafficking in human beings. (Government of the Republic of Slovenia, Office for Equal Opportunities, National report of Slovenia, July 2004)

At the end of the last year, the Inter-Ministerial Working Group of the Government was established pursuant to the Government's Decision nr. 240-05/2003-1 with the new substantive and organizational definition of inter-ministerial cooperation and coordination in the prevention of trafficking in human beings. The appointed members are representatives of competent ministries; NGOs and inter-governmental international organizations. With this approval by the Government, the Inter-Ministerial Working Group obtained a more extensive mandate for its operations and thus established the national mechanism for defining strategies for fighting against trafficking in human beings, which is comparable to that of other European countries. In addition to exchange of information on current developments in individual ministries (organizations) with regard to fighting against trafficking in human beings, the Inter-Ministerial Working Group also implemented the goals set in the Report for

2002, which were the following: - Formalization of procedures for dealing with victims of trafficking in human beings between competent organizations; - Providing safe houses to victims of trafficking in human beings; and - Preparing a study on trafficking in human beings in Slovenia for the purpose of its further use in the preparation of action plans and other important projects. The activities of the Inter-Ministerial Working Group were at he same time adjusted to current needs and the operational work of government and non-government organizations in fighting against trafficking in human beings.

Prosecution of Criminal Offences Related to Trafficking in human beings: In 2003, the police processed 21 cases related to trafficking in human beings. In two cases criminal charges were filed against 8 persons for criminal offences of enslaving pursuant to Article 387 of the Penal Code and in two cases a report was submitted to the District State Prosecutor's Office (hereinafter: the DSPO). One criminal charge was filed for the criminal offence of procurement pursuant to Article 185 of the Penal Code and 13 criminal charges were filed for the criminal offence of facilitating prostitution pursuant to Article 186 of the Penal Code. Twenty-six suspects were charged with both criminal offences (25 pursuant to Article 186 and 1 pursuant to Article 185) One report of the case of suspected criminal offence of procurement and two reports on the suspicion of criminal offence of facilitating prostitution were submitted to the DSPO, because there was insufficient evidence confirming the suspicion to file criminal charges. In all three criminal offences there were 28 victims of sexual abuse of which one was a minor. Eleven of these persons were in accordance with the general criteria defined as victims of trafficking in human beings. Additionally the police processed 16 events and for 27 persons established that they could be or become victims of trafficking in human beings. These persons were travelling through Slovenia or were caught in attempted illegal crossing of the border or were residing in Slovenia and were engaged in prostitution. In the course of the procedure it was not possible to confirm that they were victims of trafficking in human beings.

The NGO Ključ society offered help and assistance to some persons on the assumption that they were victims of trafficking in human beings. In three of these cases the events were also processed by the police, these persons are also the same as those for which the police believes that they could become victims of trafficking in human beings. The police submitted a report to the District State Prosecutor's office in relation with two alleged victims, one victim was a witness in the procedure and one was processed in the centre for aliens. In six cases the NGO Ključ and the police co-operated, while in one case of victims of trafficking in human beings only the NGO Ključ provided for the victim.

Last year the NGO Ključ concluded an important project called "PRIČA" (WITNESS") It was selected and approved by the Delegation of the European Commission in the Republic of Slovenia and was financed by PHARE. The project was evaluated at €125,000 of which 80% was financed by PHARE and 20% was provided by Ključ from invitations for application in the Republic of Slovenia and individual donations. The main objectives of the project were the following: Putting in place the first therapeutic group for work with victims, purchase of a suitable building for the safe house for victims of trafficking in human beings and establishing of the safe house and signing of an agreement on co-operation in providing help to victims of trafficking in human beings and establishing of the safe house and signing of an agreement on co-operation in providing help to victims of trafficking in human beings with the Supreme State Prosecutor's Office of the RS and the Ministry of the Interior. The Ministry of Labour, Family and Social Affairs has been continuing to co-finance the activities of the NGO Ključ with the assistance of the City Municipality of Ljubljana..
Previously, there started in Ljubljana the implementation of the programme of direct assistance to victims of trafficking in human beings in Slovenia through the "Programme of Voluntary Repatriation and Reintegration for Victims of People Trafficking" co-financed by the British Government. The project was based on direct assistance to victims and on building possibilities for each individual for his/her repatriation and reintegration. The project included

funds for medical and psychosocial help to the victim, airplane ticket and pocket money. The non-governmental organizations Slovenska filantropija (Slovene Philanthropy) and the society Ključ (Key) as well as the outpatient clinic with the consultancy for people without health insurance also co-operated in the implementation of this project.

The NGO Ključ continued its project "Svetovalni telefon" ("Consultancy Telephone") and established a 24-hour consultancy telephone line. Additionally, the NGO Ključ continued the implementation of the programme "VIOLET – How to Avoid the Traps of Trafficking in Human Beings" intended for pupils in primary and secondary schools, parents and school staff. Participants get informed of the basic terms related to trafficking in human beings. Initiatives are also implemented with regard to the co-operation of secondary schools and colleges with the NGO Ključ, namely by encouraging pupils and students to write essays on violation of human rights, trafficking in human beings and prostitution in Slovenia. (Report on the Work of the Inter-Ministerial Work Group Fighting Against Trafficking in Human Beings in 2003, approved by the Government of the Republic of Slovenia, Ljubljana, 15 April 2004)

Domestic violence (especially as exercised against women)

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

Violence against women occurred and was underreported; however, awareness of spousal abuse and violence against women increased. SOS Phone, a non-governmental organization (NGO) that provided anonymous emergency counseling and services to domestic violence victims, received thousands of calls throughout the year. The Government partially funded 3 shelters for battered women (approximately 40 beds combined) and turned away numerous women. In cases of reported spousal abuse or violence, the police actively intervened and prosecuted the offenders. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status,Women, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

The Committee welcomes the information that the Police Act (E.g. Zakon o policiji, Police Act, *Official Gazette* 2004, nr. 102) has been amended (allowing the police to remove an alleged perpetrator of child abuse or other forms of family violence from home for up to 10 days and that the courts can extend this period to 30 days). The Committee, however, remains concerned that child abuse in the family and in institutions appears to be widespread. Furthermore, while noting that an Act on Prevention of Violence in the Family is under preparation, it is concerned that the existing preventive and protective measures taken to address the problem are not sufficient. The Committee recommends the State party to continue and to strengthen its efforts to address the problem of child abuse by, *inter alia*:

(a) Ensuring full and effective implementation of the changes in the Police Act and adequate ongoing training of police officers and judges;
(b) Expediting the drafting and approval of the Act on Prevention of Violence in the Family and related changes in the family law, legislative measures which should provide for effective procedures and mechanisms to receive, monitor and investigate complaints, including intervention where necessary;
(c) Ensuring that cases of ill-treatment are investigated and prosecuted, that the abused child is not victimized in legal proceedings and that his or her privacy is protected;
(d) Providing training for parents, teachers, law enforcement officials, care workers, judges, health professionals and children themselves in the identification, reporting and management of cases of ill-treatment using a multidisciplinary and multisectoral approach;

(e) Ensuring effective coordination among the multidisciplinary team dealing with child abuse and neglect;
(f) Carrying out public education campaigns about the negative consequences of ill-treatment of children;
(g) Providing facilities for the care, recovery and reintegration of victims. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to strengthen its efforts to address ill-treatment of children in the family, including by raising awareness of alternative non-violent forms of discipline through public campaigns. The Committee also urges the State party to consider introducing an explicit prohibition of corporal punishment of children in the family, both in the draft amendments to the Marriage and Family Relations Act or the special act on preventing violence in the family. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Legislative initiatives, national case law and practices of national authorities

The Act on Prevention of Violence in the Family has been under preparation, currently in a phase of a Bill, with the assistance of the Law School of the University of Ljubljana; additionally, it is necessary to consider the appropriate time for reconciliation between particular ministries. So the Bill will not be discussed in the National Assembly in the near future.

In accordance with the Strategy of development of Social Security, until now the City Municipality of Ljubljana took a lot of measures to improve the activities and the results regarding violence against woman. During the last period, the level of the respective funds for such activities has been increased. The appropriate location and funds were assured for founding the first Crisis Center for victims. Spousal abuse and violence should be treated as a problem of the society. Concerning these issues, the support of Council for Prevention of Violence against Woman (active under the Ministry of Labor, Family and Social Affairs) was very important. The Ministry participated in some legislative procedures; the Police Act and the Penal Code were amended, the Equal Opportunities for Woman and Men Act (E.g. Zakon o enakih možnostih moških in žensk, Equal Opportunities for Woman and Men Act, *Official Gazette* 2003, nr. 59) was passed by the National Assembly. The last Act also included violence against woman. The respective amendments of the Marriage and Family Relations Act concerning violence are under preparation by the same Ministry, too; the respective bill should be discussed by the National Assembly in spring 2005. Participating together with the Consultation Office for Woman and the City Municipality of Ljubljana in the Project "Stopnice 2003" within the international fight against violence, the Police Administration of Ljubljana appealed for urgent cooperation of all competent governmental and non-governmental institutions in the fight against violence against woman. Such offences have been increasing in number; however the statistics presents only some of registered offences. (Mestna občina Ljubljana, Press Conference, 25 November 2004, http://www.ljubljana.si/novice/index_nk_15.html)

Concerning ill-treatment of children in the family, the respective interpretation of Article 5a of the Marriage and Family Relations Act (E.g. Zakon o spremembah in dopolnitvah Zakona o zakonski zvezi in družinskih razmerjih. Act on Changes and Amendments of the Marriage and Family Relations Act, *Official Gazette* 1994, nr. 16) can be taken into account. Article 5a regulates in detail the parents' duties in children's upbringing: (1) Parents, other persons, state bodies and subjects exercising public authority should take care of children benefits in all

their activities and procedures concerning children; 2) Parents shall act on behalf of the child when they satisfy children's material, emotional and psycho-social needs through such treatment approved by the public and such treatment shows their care and their responsibility for a child considering children's personality and wishes." Considering such interpretation, it is not possible to say that parents cannot (gently) punish their child. Very intensive NGOs' activities in this filed are noticed in Slovenia.

The Slovenian Ombudsman has been striving for encouragement of all those with responsibility to be involved in improving the over-all system of protecting children's rights, and within this framework particularly that they deal systemically on the prevention of domestic violence. For this reason, at the beginning of last year the Ombudsman in cooperation with the State Prosecutor General invited the collaboration of the heads of institutions governed by legislation or the implementation thereof prescribing the duty to combat domestic violence, to help victims and to protect victims and society from the damage caused by domestic violence.
The Ombudsman proposed that a special law should ensure:
- Removal of a violent person from a family through appropriate judicial protection (police),
- Rapid and effective prosecution of violent persons (prosecutors),
- Defining specialized groups/department at district courts for family issues (he supports specialization and not reform in the form of establishing family courts),
- Appropriate penal and post-penal management of violent persons (justice department, social work centres),
- Duty to report (doctors, teachers, educators, health care),
- Coordination and a system of work and information provision among individual departments.(The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004; The Slovenian Human Rights Ombudsman, Domestic Violence – Clues for Solutions, Special Report, Ljubljana, June 2004)

Other relevant developments

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

The Committee recommends the State party to strengthen its efforts and programmes to prevent suicide among young people. The Committee recommends the State party to ensure psychosocial counseling for children with mental health problems and for those subjected to various forms of abuse in order to improve early detection and prevention of suicide. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

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

Conditions of detention and external supervision of the places of detention

Penal institutions

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

In May the UN Committee against Torture examined a report by the Slovenian authorities on the measures taken to give effect to the rights enshrined in the UN Convention against Torture. Before the examination of this report AI submitted a briefing to the Committee, highlighting in particular Slovenia's failure to establish an independent mechanism to address complaints of ill-treatment brought against the police.

In its briefing to the Committee, AI documented reports of some ill-treatment and excessive force by police officers. Members of ethnic and racial minorities, often children, were targeted for ill-treatment, which usually occurred during routine police arrests and detentions. Police detainees were frequently denied their rights to call their family or a lawyer, or to receive medical assistance.

Amnesty International reported on the failure to investigate promptly and impartially all allegations of ill-treatment as required under the Convention against Torture and Slovenian domestic law. In virtually every case, this was despite formal complaints lodged with the relevant police station or local State Prosecutor. Even where victims provided medical evidence of their injuries, their complaints were rejected after apparently summary investigations. The mechanism for investigating complaints of police misconduct did not meet international standards of independence and effectiveness. The authorities also failed to ensure that victims of torture and ill-treatment obtained redress and had the right to fair and adequate compensation.

The Slovenian authorities have repeatedly failed to publish or make accessible up-to-date data on the total number of complaints of ill-treatment against the police and other law enforcement officials, the number of complaints that result in disciplinary or criminal proceedings, and the outcome of such proceedings.

The Committee recommended that Slovenia establish an "effective, reliable and independent complaints system to undertake prompt and impartial investigations into allegations of ill-treatment or torture by police and other public officials and to punish the offenders". It also urged Slovenia to introduce a broad definition of torture as required under the Convention against Torture, an outstanding obligation since May 2000 when the Committee examined Slovenia's initial report.

Slovenia was requested to repeal the statute of limitation for torture, to increase the limitation period for other types of ill-treatment and to provide up-to-date statistics on cases of ill-treatment. (Amnesty International Report 2004, Slovenia, http://amnestyusa.org/countries/slovenia/document.do?id=4395F362D448641F, 28 October 2004)

A new Regulation on the Investigation of Complaints Against the Police entered into force in Slovenia (E.g. Pravilnik o pritožbah zoper policijo, Regulation on the Investigation of Complaints Against the Police, *Official Gazette* 2004, nr. 21), under Article 28 of the amended Police Act. Amnesty International notes the inclusion of some of the organization's recommendations in the new Regulation on the Resolution of Complaints, which provide for more transparent procedures of investigation of complaints about police conduct. While Amnesty International considers the new procedure a first step towards greater accountability

of the Slovenian police forces, the organization is concerned that the new regulation does not adequately ensure that complaints against the police will be thoroughly and effectively investigated in a manner that is truly independent and seen to be independent.

Under the previous system the investigation of complaints against the police was in all cases conducted by the police and, at the end of the investigation, complaints were considered by a three-member committee chaired by a serving police officer, who had the power to take the final decision on whether the complaint was founded. The decision on the prosecution of police officers suspected of criminal conduct was taken by the prosecution authorities, often on the basis of the findings of the internal investigation.

Under the new rules complaints that allege criminal behaviour of members of the police force are immediately forwarded to the Ministry of the Interior. The Ministry appoints a rapporteur (poročevalec), who can be a Ministry of the Interior officer or a police investigator, who is tasked with conducting an investigation. During the investigation the complainant has the right to have access to the relevant evidence, including documentation in the possession of the police, and can present further evidence to the rapporteur. After having conducted the investigation the rapporteur presents its results to a committee, which is constituted ad hoc, and is composed of a Ministry of the Interior representative and two members of the Slovenian public who serve in the committee in a voluntary capacity. The complainant has the right to attend the hearing of the committee and to present a statement, and may be questioned by the committee members. The committee then decides whether the complaint is founded and informs the complainant and the General Police Directorate of its decision, as well as of its reasons.

Complaints against the police for conduct that is not criminalized under Slovenian law are, in the first instance, investigated by the police. After the initial investigation, if no agreement of informal resolution is reached between the police and the complainant, the complaint is passed to the Ministry of the Interior. On receipt of the complaint the Ministry decides whether a further investigation is needed and, if necessary, appoints a rapporteur who conducts an investigation and reports to the three-member committee, following the same procedure as for complaints of alleged criminal conduct of members of the police.

Amnesty International is concerned that the new regulation still allows for the police to continue playing a major role in investigating complaints of police misconduct amounting to human rights violations, as it authorizes the Ministry of the Interior to choose a police officer as rapporteur. The organization is also concerned about the limited powers of the three-member committee which only decides whether the complaint is founded and has no authority to issue recommendations on disciplinary sanctions against police personnel or on compensation to victims of police misconduct. Any decision on disciplinary measures against Slovenian police officers is left to the relevant regional police directorate. To receive compensation, victims have to file a claim seeking compensation in court.

Moreover, Amnesty International is concerned that the Regulation on the Investigation of Complaints Against the Police does not state at which stage of the complaint procedure the competent prosecutor should be informed of complaints which allege criminal behaviour of members of the Slovenian police and does not explicitly require that the committee forward the findings of the investigation on possible criminal conduct of members of the police to the prosecution authorities.

Amnesty International calls on the Slovenian authorities to set up a truly independent body equipped and authorized to investigate allegations of human rights violations by members of the police force. The body should be composed of experts acting independently of the police force and should be explicitly empowered to launch investigations into allegations of serious police misconduct, whether or not complaints have been lodged. It should forward a copy of

any complaint which alleges conduct that might amount to a criminal offence to the prosecution authorities and, in those cases where it opens an investigation, should inform the competent prosecutor of its findings. Moreover, Amnesty International believes that the body should have the authority to issue recommendations on disciplinary measures against members of the police as well as on compensation to the victims. Finally, the body should have the expertise and the mandate to identify the patterns and underlying causes of police misconduct and should be tasked with issuing recommendations on police practices. Slovenia, Amnesty International, Public Statement, AI Index: EUR 68/001/2004, News Service nr.: 46, 27 February 2004, Slovenia: More needs to be done to ensure police accountability; http://amnestyusa.org/countries/slovenia/document.do?id=80256DD400782B84)

A new regulation on complaints against the police was under preparation and is expected to enter into force in February 2004. However, the regulation was not adequate to ensure that complaints against the police would be thoroughly and effectively investigated in a manner that would be truly independent and seen to be independent. The new regulation still allowed for the police to continue playing a major role in investigating complaints of police misconduct amounting to human rights violations, as it authorized the Ministry of the Interior to appoint a police officer to investigate complaints against the police. Moreover, it did not define a mechanism ensuring that an authority independent from the police would be empowered to issue recommendations on disciplinary sanctions against police personnel or on compensation to victims of police misconduct. Finally, the new regulation did not state at which stage of the complaints procedure the competent prosecutor should be informed of complaints that alleged criminal behaviour of members of the police and did not explicitly require that the committee forward the findings of the investigation on possible criminal conduct of members of the police to the prosecution authorities. (Amnesty International, Europe and Central Asia, Concerns in Europe and Central Asia, July – December 2003, AI Index: EUR 01/001/2004)

Legislative initiatives, national case law and practices of national authorities

Recently, again the largest number of complaints received related to the exercising of powers that police officers have in performing police assignments. A considerable number of complaints asserted unlawful or merely improper use of forcible measures, most frequently physical force and means of restraint. Among the powers that encroach on personal liberty and freedom of movement, complaints most commonly referred to the lack of proportion in deciding on police detention, especially regarding its duration.

The police are bound to carry out effectively the tasks that are entrusted to them in a democratic country based on the rule of law. Human rights and fundamental freedoms are limited by the rights of others, and the job of the police is to ensure effectively the protection and observance of these rights and freedoms. Dereliction of the duty to act by police officers, in contravention of their entrusted tasks and powers, threatens the security that people justifiably expect from the State and its bodies. For this reason it is essential through continuous education and development to train police officers for the difficult and responsible work they perform on behalf of the State for its inhabitants. And of course the police are always bound to act in such a way that their intervention does not cause greater harm than is brought by the danger for which they are exercising their powers. The police may therefore encroach upon human rights and fundamental freedoms only in order to achieve a lawful and legitimate objective, and in strict observance of the principle of proportionality. In overseeing the police force and resolving complaints made against police officers, circumstances may be established that would provide grounds for instigating disciplinary proceedings. The timely and consistent instigation of disciplinary proceedings is an important security against the conscious abuse of police powers and illegal encroachment on human rights and fundamental freedoms. Decisive action in this area sends a clear signal to police officers that no illegal or

arbitrary action in carrying out tasks, and especially in exercising police powers, will go unpunished. Such a clear position adopted by the superiors also has a preventive effect, with the message that the State (the police) will not permit such behaviour, and will respond immediately and decisively in all cases.

The Act on Changes and amendments of the Police Act (E.g. Zakon o spremembah in dopolnitvah Zakona o policiji, Act on Changes and Amendments of the Police Act, *Official Gazette* 2003, nr. 79) introduced at first glance a small, but important amendment to Article 44 of the Police Act. The earlier system deemed deprivation of liberty to include arrest, which Article41 of the Police Act defined as temporary restriction of movement for a specific person for the purpose of the police producing that person, detaining them or performing some other action provided by law. The Act on Changes and Amendments of the Police Act, however, clearly no longer deems arrest to be deprivation of liberty, something evident in Article 51.b, which explicitly distinguishes between arrest, production and deprivation of liberty. But is not arrest also deprivation of liberty? Article 19 of the Constitution (E.g. Ustava Republike Slovenije, Constitution of the Republic of Slovenia, *Official Gazette* 1991, nr. 33, 1997, nr. 42, 2000, nr. 66, 2003, nr. 24, 2004, nr. 69 International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up) guarantees the protection of personal freedom, and talks here of deprivation of liberty [odvzem prostosti]. This collocation leads one to understand any restriction or deprivation of liberty, including arrest [prijetje]. Deprivation of liberty means any position where an individual cannot freely go from or leave a given place. Restricting the movement of a certain person for the purpose of the police producing them, detaining them or performing some other action provided by law, is of such intensity that in substance it is nothing other than deprivation of liberty. Here through the expression arrest, one is given to understand primarily the moment signaling the starting time of deprivation of liberty.

In the revised Article 44 of the Police Act the provision is made not for deprivation of liberty upon arrest but only for detention (and being held in custody pursuant to the provisions of the National Border Control Act; E.g. Zakon o nadzoru državne meje, National Border Control Act, *Official Gazette* 2002, nr. 87, 2002, nr. 110, 2003, nr. 126). This Article binds police officers to inform only the persons who are detained (held), and not arrested persons, of the constitutional requirement, which is the Slovenian version of what is called the "Miranda rights". This means that on arrest, police officers give no information to the arrested person or advice as to their rights, something that is required by Article 19 of the Constitution in the event of deprivation of liberty.

At the same time the police informed the Ombudsman that they are preparing a special leaflet on the rights of persons deprived of liberty. The leaflet will be available at all premises for detention. And like the posters, the leaflet will also be translated into 18 foreign languages. We regard this action, too, as a response to the Ombudsman's recommendation set out in last year's annual report, that the police should hand to detained persons a copy of the official record or other appropriate document setting out the rights pertaining to per-sons deprived of liberty. This will ensure that such persons have the possibility of familiarizing themselves "in their own time" with their rights even after the procedure has been completed, they have been read their rights and have confirmed this with a signature. The current police practice is indeed such that detained persons confirm by signing the official record that they have been advised of their rights upon detention, but at this point the police do not hand them a copy of the signed official record. By placing posters outside the detention rooms and systematically handing out leaflets upon the actual deprivation of liberty, detained persons will be more fully informed of their rights. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

It can be stated that the regulation on the investigation of complaints against the police (E.g. Pravilnik o pritožbah zoper policijo, Regulation on the Investigation of Complaints against

the Police, *Official Gazette* 2004, nr. 21) does not guarantee any efficient and objective procedure with such complaints. It can also be stated that the Ministry of Internal Affairs, responsible for dealing with such complaints, is not an independent appellate body; additionally, the Ministry is not sufficiently efficient at dealing with complaints and supervising the police. Therefore the Slovenian authorities shall fund a special body that would be independent of politics and police and explicitly professional, with the respective competences and capacities for examination of supposed violations of human rights caused by the police.

In Slovenia, there are no NGOs, governmental bodies or some other organizations exercising monitoring which would be in accordance with minimum requests for prevention of torture or ill-treatment in the form of unannounced and permanent professional visits. At the moment, the only similar body acting in this field is the Ombudsman; however its activities are not in conformity with international standards for exercising of monitoring. The level of human rights protection of detained persons in Slovenia does not reach the international standards and requests determined by the Optional Protocol to the UN Convention against Torture.

The main reason for current anomalies concerning monitoring lies in the lack of capacities. As a matter of fact, the Ombudsman is an institution for protection of all human rights and fundamental freedoms in relation to the governmental bodies, bodies of local communities and subjects exercising public authority. The police are only one among governmental bodies and the monitoring is only one among different forms of human rights protection. Dealing with the police is only one among different tasks of the Ombudsman's Office, therefore is not possible to expect that the monitoring would be as intensive as possible. (Amnesty International Slovenije, September 2004, Državljanski nadzor nad policijo – priporočila za Slovenijo, "Monitoring policijskih prostorov za pridržanje, 6. Slovenija)

The Amnesty International Report to the UN Committee against Torture and statements of the mentioned Committee emphasize the unsuitability of appellate procedure against police. There some efforts to improve these procedures, however, regarding international standards are not fully independent and efficient. Amnesty International reported about the deficiency of new appellate procedure (E.g. Pravilnik o pritožbah zoper policijo, Regulation on the Investigation of Complaints Against the Police, *Official Gazette* nr. 21/04) and expressed its statement at the beginning of usage of the mentioned procedure. The main problem involves absence of respective guarantees of the police for violences and complaints and elimination of reasons - which is the practice of several foreign countries. (Amnesty International Slovenije, Poročilo Amnesty International 2004, 25 May 2004, http://www.amnesty.si/clanek.php?id=212)

Amnesty International Slovenije states that the new Regulation on the Investigation of Complaints Against the Police (E.g. Pravilnik o pritožbah zoper policijo, Regulation on the Investigation of Complaints Against the Police, *Official Gazette* 2004, nr. 21), adopted on the basis of Article 28 of the Police Act (E.g. Zakon o policiji, Police Act, *Official Gazette* 1998, nr. 49) considered some proposals given by the Amnesty International, especially higher transparency of the investigation procedure of complaints against the police. Amnesty International Slovenije welcomes the new Regulation, however with some reserve: the new regulation does not guarantee any detailed and efficient examination of complaints which should be clearly independent (Amnesty International Slovenije, Ljubljana, 27 February 2004, http//www.amnesty.si/mediji.php?kid=56; http://.amnesty.si/clanek.php?id=142&1=mediji))

Good practices

Police is a governmental body with a lot of repressive powers to be able to protect security of people, property and public order, however, such powers can be the basis for violation of human rights. In case of violation, it is necessary to know the system of human rights and

fundamental freedoms as well as the respective legal remedies that are available for the affected individual. Therefore Amnesty International Slovenije issued a brochure with the title When the police violates your rights…what you can do?" which gives answers, what, when, where and how to proceed in case of violation. (Amnesty International Slovenije, 10 September 2004, http://amnesty.si/clanek.php?id=13&1=mediji)

Other relevant developments

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The Constitution prohibits such practices; however, human rights observers alleged that police in several cases used excessive force against detainees. The Penal Code (E.g. Kazenski zakonik republike Slovenije, The Penal Code of the Republic of Slovenia, *Official Gazette* 2004, nr. 40) does not separate out torture as a criminal act, but such crimes are prosecuted based on the nature of each incident (i.e., severe physical injury, extreme injury, or extortion of a statement). The report of the European Committee for the Prevention of Torture (CPT) on its last visit to the country noted that it received some allegations of physical ill-treatment by police, relating essentially to the disproportionate use of force at the time of apprehension. In a few isolated cases, the physical ill-treatment was alleged to have occurred while the person concerned was being transferred in a police vehicle or during questioning by police officers. The alleged ill-treatment consisted primarily of slaps, punches, and kicks. The report noted that the majority of persons met by the CPT delegation who were, or recently had been, detained by police indicated that they had been treated correctly at both time of arrest and during questioning. Prison conditions generally met international standards; however, jails were overcrowded. Male and female prisoners were held separately, juvenile offenders were held separately from adults, and convicted criminals were held separately from pretrial detainees. The Government permitted prison visits by independent human rights observers and the media, and such visits took place during the year. The Human Rights Ombudsman and his staff also conducted periodic prison visits. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 1 Respect for the Integrity of the Person, Including Freedom From: c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Article 5. Prohibition of slavery and forced labour

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

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The law does not specifically prohibit trafficking in persons, and trafficking in women through and to the country was a problem. In the absence of a law against trafficking, the Government continued to investigate and prosecute traffickers under laws against pimping, procurement of sexual acts, inducement into prostitution, rape, sexual assault, bringing a person in slavery or similar conditions, and the transportation of slaves. Enslavement convictions carry sentences of 1 to 10 years' imprisonment. Persons also can be prosecuted for rape, pimping, procurement of sexual acts, inducement into prostitution, sexual assault, and other related offenses. The penalty ranges from 3 months' to 5 years' imprisonment or, in cases involving minors or forced prostitution, 1 to 10 years' imprisonment. Regional police directorates had departments that investigated trafficking and organized crime.

The country was primarily a transit, and secondarily a destination, country for women and teenage girls trafficked from Southeastern, Eastern, and Central Europe to Western Europe, the United States, and Canada. The country was also a country of origin for a small number of women and teenaged girls trafficked to Western Europe. Victims were trafficked for purposes of sexual exploitation. Government officials generally were not involved in trafficking, although there was anecdotal evidence that some tolerated trafficking at the local level.

The Government has not fully established a system of shelter and protection for victims and witnesses. There is a National Coordinator for Trafficking in Persons and an interagency anti-trafficking working group that based its activities on the national strategy to combat trafficking. The working group, which included parliamentary, NGOs' and media representatives, established standard operating procedures for first-responders to ensure that victims receive information about the options and assistance available to them. During the year, a cabinet-level decision enhanced the working group's status and authority.

A study conducted during the year by the International Organization for Migration office identified five common deceptive practices used to recruit women trafficked to the country from Eastern Europe and the Balkans: (1) through offers of employment with no indication of work in the sex industry; (2) through media advertisements promising high wages; (3) through offers of employment in entertainment and dancing; (4) through offers of marriage; and, (5) regarding the conditions under which women will undertake prostitution. Women who were victims of trafficking reportedly were subjected to violence. Organized crime was responsible for some of the trafficking. In general, victims trafficked into the country were not treated as criminals; however, they usually were voluntarily deported either immediately upon apprehension or following their testimony in court.

In September, the domestic NGO Ključ, in cooperation with the EU and several ministries, established the first shelter devoted to trafficking victims. Ključ signed a memorandum of understanding with the Ministry of Interior that provided victims' immunity from prosecution and temporary legal status, including work permits and access to social services. Ključ also worked to raise public awareness of the trafficking problem, provide legal assistance, counseling, and other services to trafficked women, and improve cooperation among NGOs in the region.

To deter trafficking, the Ministry of Interior produced pamphlets and other informational materials for NGO-run awareness programs to sensitize potential target populations to the dangers of and approaches used by traffickers. The Ministry also worked with NGOs to provide specialized training to police and to assist the small number of victims with reintegration. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 6 Worker Rights, f Trafficking in Persons, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

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

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The Committee recommends the State party to strengthen the legal protection of children against various forms of abuse over the Internet, including child pornography, and introduces legislation that would make Slovenia citizens liable to criminal prosecution for child abuse committed abroad. (Committee on the Rights of the Child, 35th session, Consideration of

reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Legislative initiatives, national case law and practices of national authorities

The Penal Code (E.g. Kazenski zakonik Republike Slovenije, The Penal Code of the Republic of Slovenia, *Official Gazette* 2004, nr. 40) was amended including Trafficking in Persons as a criminal offence: Article 387a.: (1) Whoever, for the purposes of prostitution or other forms of sexual abuse, forced labour, slavery, servitude or trafficking with human organs, tissues or blood, buys, takes possession of, houses, transports, sells, delivers another person or disposes with another person in some other manner or mediates in these treatments, shall be punished to imprisonment for not less than 1 year and not more than 10 years. (2) If the offence from the previous Paragraph is committed against a minor, or with use of force, threat or with fraud or deceit, kidnapping or by abuse of position, or with the intention of forcing to pregnancy or artificial insemination, the perpetrator shall be punished with at least 3 years of imprisonment. (3) Whoever commits the offences from Paragraphs 1 and 2 in an organized criminal group for the performing of such offences, or if the substantial material benefit was acquired,

CHAPTER II : FREEDOMS

Article 6. Right to liberty and security

Pre-trial detention

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The Constitution prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions.

Police are centrally organized under the supervision of the Police and Security Bureau of the Ministry of Interior. The Bureau oversees the drafting of basic guidelines, security policy, and regulations governing the work of the police and exercises special inspectorial authority in monitoring police performance, with an emphasis on the protection of human rights and fundamental freedoms. Police duties include protection of life, personal safety, and property; prevention and investigation of criminal offenses and detection and arrest of perpetrators; maintenance of public order; management and control of traffic on public roads; protection of national borders and border crossings; enforcement of immigration law; protection of certain state structures, individuals, and facilities; and, protection of classified data. The General Police Administration, headed by the General Director of the Police, has overall responsibility for the execution of police duties and directly oversees activities at the national level. Regional police duties are under the jurisdiction of Police Administration Units, whose Directors report to the General Director. Local police tasks fall to individual Police Stations, whose Commanders report to the Director of the relevant Police Administration.

Police corruption and abuse initially were investigated internally. If there was evidence of wrongdoing, the officers involved could be referred to the Ministry of Interior or the prosecutor's office, depending on the severity of the breech. There was anecdotal evidence to suggest that police officers were sometimes subject to informal sanction, such as being transferred to a new, less desirable, assignment, in lieu of being formally disciplined.

The authorities must advise detainees in writing within 24 hours, in their own language, of the reasons for the arrest. Until charges are brought, detention may last up to 6 months; once charges are brought, detention may be prolonged for a maximum of 2 years. Persons detained in excess of 2 years while awaiting trial or while their trial is ongoing must be released pending conclusion of their trial. The problem of lengthy pretrial detention was not widespread, and defendants generally were released on bail, except in the most serious criminal cases. The law also provides safeguards against self-incrimination.

The Constitution prohibits forced exile, and the Government did not employ it. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 1 Respect for the Integrity of the Person, Including Freedom From: d. Arbitrary Arrest, Detention, or Exile, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Detention following a criminal conviction (including the alternatives to the deprivation of liberty and the conditions for the access to release on parole)

Legislative initiatives, national case law and practices of national authorities

The loose and insufficiently clear provisions of regulations merely facilitate arbitrariness, bias or even abuse of authority in deciding on conditional release, on awarding privileges and generally on all issues relating to the life and accommodation of convicts while serving prison sentences. The substance of the Recommendation of the Committee of Ministers of the Council of Europe, Rec (2003)22 of 24 September 2003 on conditional release will also be welcome for the forecast legislative changes of this nature and for the adoption of implementing regulations.
The negative consequences of overcrowding are exacerbated in the majority of Slovenian prisons owing to the still predominant practice of communal accommodation for those serving sentences.
The State is nevertheless striving to improve conditions.
It would be right for the presence of representatives of religious communities in prisons to be properly regulated, since we were given to understand from talks with a member of the clergy that he did not have access to all areas of the prison where there were inmates. A Roman Catholic priest regularly visits the prison, and representatives of other religious communities also have the same possibility.
Prisons are bound to take all reasonable steps to ensure for individual inmates security in relation to fellow inmates. There is no doubt that physical violence exists between convicts, and especially in communal accommodation for serving sentences. If physical clashes are not always possible to predict and prevent, then at least rapid and effective action must be ensured if they arise. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Deprivation of liberty for persons with a mental disability

Legislative initiatives, national case law and practices of national authorities

For a number of years now the Ombudsman has drawn attention to the fact that a law is urgently needed that will regulate entirely the area of mental health, including the rights pertaining to mental patients. Although all the relevant recommendations thus far from the Ombudsman have not been sufficient, since of course they are not legally binding, a significant change was achieved in 2003 with a decision of the Constitutional Court (C.C. (the Constitutional Court), nr. U-I-60/03, 4 December 2003, *Official Gazette* 2003, nr. 131). This decision found out that the provisions of Articles 70 to 81 of the Non-Litigious Civil Procedure Act are not in conformity with the Constitution, for the reasons cited in the explanation attached to the decision. The Constitutional Court therefore binds the National Assembly to eliminate the established unconformity with the Constitution within six months of publication of the decision in the Official Gazette of the Republic of Slovenia, accordingly by 24 June 2004. This offers a reliable promise that finally such law is adopted that is so important for protecting the rights of forcibly detained persons in psychiatric hospitals. For the period up to removal of the unconstitutional elements, the Constitutional Court determined that in the instigation of the confinement procedure, courts must ex officio provide an advocate for the forcibly confined person. The notification of confinement, which the authorized officer of the health institution is bound to send to the court, must contain the reasons justifying the urgency of the confinement.
The Constitutional Court opted for a six-month period in which the legislator must revise the procedure for forced confinement of persons in psychiatric hospitals, since it understood from the Ombudsman's report that a proposed new law had already been drafted, and that this would comprehensively regulate the institution of confinement in closed sections of psychiatric hospitals. The Ombudsman now expects that the National Assembly, which has

also been reminded by the Constitutional Court, will eventually take appropriate action and eliminate all the unconstitutional elements by the given deadline and it will at the same time comprehensively set in order the conditions and procedures for receiving persons in psychiatric hospitals and social security institutions, the status and the rights of such persons during treatment and will provide for their treatment outside hospital. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Article 7. Respect for private and family life

No significant developments to be reported.

Article 8. Protection of personal data

Independent control authority (evolution of its powers, competences)

Legislative initiatives, national case law and practices of national authorities

For a long time, the Ombudsman has been noting certain systemic deficiencies in the protection of personal data in Slovenia, both on the regulatory level and in the sense of oversight mechanisms. The Personal Data Protection Act (E.g. Zakon o varstvu osebnih podatkov, Personal data Protection Act, Official Gazette 1999, nr. 59, 2001, nr. 57, 2001, nr. 59, 2004, nr. 73, 2004, nr. 86) is what is termed a systemic law, which permits the establishing of personal databases in the public sector only on the basis of special legal authorization. In all areas of life in society, therefore, sectored laws should clearly and unequivocally lay down which personal databases will be set up, the type of personal data individual databases will contain, the method of data collection, the time of storage, protection of confidentiality and the purpose of the collected personal data. These requirements of the systemic law, which has been in effect more or less unchanged for more than thirteen years, have thus far not been sufficiently fulfilled in legislation. This is also evident from the annual reports of the inspectorate for personal data protection. This is generating major problems both in practice and in overseeing implementation of the Personal Data Protection Act. In the public sector, therefore, personal databases can be set up exclusively on the basis of a law. It cannot be done through implementing regulations. So if the need arises to establish a new personal database, for example owing to a new form of disease, a sectored law must be adopted or amended. In Slovenia's system for setting up personal databases in the public sector there is no other possibility. In the private sector it is possible to process personal data on the basis of written consent from the individual in question, whereby the Personal Data Protection Act requires that before consenting, the individual must be familiarized in writing with the purpose of the data processing, the intended use of such data and the time of storage. This provision, too, is only rarely observed with consistency.
It was already suggested that consideration should be given to changing the regulatory system for personal data protection, at the same time as the formation of a special unified independent body to oversee the establishing of databases and the use of personal data. Such a requirement also derives from Directive 95/46/EC, which has not been adequately regulated in Slovenia, something observed also by the European Commission. On this basis and on examination of our report, the National Assembly adopted three decisions relating to personal data protection. In its third decision it recommended that, particularly in view of the development of new technology, the Government should study increasing the jurisdiction and professional independence of the personal data protection inspectorate. In its subsequent decision it recommended that the governmental draft at the earliest opportunity a new personal data protection act which would be harmonized with EU Directive 95/46/EC.
Article 28 of the EU directive requires that each State establish a completely independent institution to protect personal data, precisely in order to carry out the above tasks.

Independence is directly linked to the tasks and responsibility of such an institution. Incompliance with the directive, the independent body should participate in all the drafting of regulations and other administrative measures in the protection of the liberties and rights of individuals in personal data processing. It should also offer opinions on the justification of setting up databases and regarding exceptions allowing them to be set up while adhering to the legal criteria. The independent body should also have the possibility of direct participation in administrative and court proceedings, including the possibility of active verification in court proceedings. From the above jurisdiction and powers, it is clear that the independent body for personal data protection in the country must be able and ready to weigh up different rights and to independently adopt decisions as to whether and under what conditions it will permit in individual cases an intrusion on privacy.
An example of a law that allows excessive encroachment on privacy and a disproportionate collection of the most intimate personal data is the Health Databases Act (E.g. Zakon o zbirkah podatkov s področja zdravstvenega varstva, Healthcare Databases Act, *Official Gazette* 2000, nr. 65). There was no extensive debate on the contents of the law in the National Assembly, and the main substance is in fact evident in its annexes, which allow the introduction of numerous personal databases in the health sector, which in effect all contain personal national ID numbers (EMŠO). The records on treatment of drug users (IVZ 14),for example, require - in addition to the EMŠO, sex, date of birth, permanent residence and other identifying data - the collection of data on sexual orientation, sexual relations to date, the number of sexual partners, the use of condoms, psychiatric diagnoses and even police and court records.

The solution proposed by the Ombudsman is the formulation of such a law that will allow, on the basis of legal criteria, the establishing of personal databases founded on the consent of an independent institution for personal data protection, which will assume responsibility both for establishing certain databases and responsibility for overseeing their use, protection, time of storage and other details that are frequently not possible to envisage in advance in a law.
The unrealistic and inflexible nature of the present system of setting up, using and over-seeing personal data has also been demonstrated by the decision of the police, on the recommendation of the personal data protection inspector at the end of 2003, no longer to disclose to the media the initial letters of the name and surname of persons suspected of crimes. This measure met with a predictably sharp response from journalists and media organizations, which cite the right of the public to be acquainted with information that is publicly important. The Ombudsman supports the police decision, since apart from anything else it signifies a fulfillment of the suggestions, which the Ombudsman has been repeating for a couple of years. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

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

No significant developments to be reported.

Article 10. Freedom of thought, conscience and religion

Reasonable accommodation provided in order to ensure the freedom of religion.

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

The Constitution provides for freedom of religion, and the Government generally respects this right in practice. There was no change in the status of respect for religious freedom during the period covered by this report, and the government policy continued to contribute to the generally free practice of religion. The generally amicable relationship among religions in

society contributed to religious freedom. The U.S. Government discusses religious freedom issues with the Government as part of its overall policy to promote human rights.
The Government at all levels strives to protect this right in full and does not tolerate its abuse, either by governmental or private actors.

There are no formal requirements for recognition as a religion by the Government. Religious communities must register with the Government's Office for Religious Communities it they wish to be legal entities, and registration entitles such groups to rebates on value-added taxes. In response to complaints from several groups that the Office had failed to act on their registration applications, the Secretary General of the Government clarified registration procedures and instructed the Office to process outstanding applications. As of September 2003, the Office had approved 6 out of 10 pending applications. The applications pending as of the end of 2003 were for Holy Church Annasann, Traditional Catholics, Church of Holy Innocence, and a religious community referred to as "Reformed Gospel Church". Registered religious groups, including foreign missionaries, may receive value-added tax rebates on a quarterly basis from the Ministry of Finance. All groups in the country report equal access to registration and tax rebate status.

The appropriate role for religious instruction in school continued to be an issue of debate during the period covered by this report. The Constitution states that parents are entitled to give their children "a moral and religious upbringing. "Only those schools supported by religious bodies taught religion.

Government policy and practice contributed to the generally free practice of religion; however, the Muslim community has experienced difficulty in receiving permission from the Government to build mosques. There were no reports of religious prisoners or detainees.

There were no reports of forced religious conversion, including of minor U.S. citizens who had been abducted or illegally removed from the United States, or of the refusal to allow such citizens to be returned to the United States.

While there are no governmental restrictions on the Muslim community's freedom of worship services commonly are held in private homes under cramped conditions. There are no mosques in the capital of Ljubljana. The lack of a mosque has been due, in part, to a lack of Muslim community organization and to complex legislation and bureaucracy in construction and land regulations. The Muslim community has conceptual plans to build a new facility in Ljubljana. In 2001 the Ljubljana Municipality Council selected one of five potential sites that the city previously had identified for the facility and tasked the city's planning department to begin preparing the materials necessary to move ahead with the project. At the beginning of 2003, Ljubljana mayor Danica Simsic expressed support for the Mosque and the location on which it is to be built. In August 2003, the Agency for Environment granted permission to the Ljubljana Department for Urbanism to make zoning changes that would enable construction of the Mosque on the selected site. One of the City councillors launched an initiative in December 2003 for a referendum opposing the zoning regulation change that would enable mosque construction and collected the requisite 11,000 signatures to call the referendum. Extreme supporters of the referendum effort said that the country could become a "terrorist breeding ground" if the mosque were constructed. In April 2004 the same councillor started that Muslim values are seen as somehow opposed to the Jewish, Christian and Orthodox European tradition. On April 18 2004, the City Council voted to acknowledge the petition as legitimate and set the referendum date for May 23 2004 the Ombudsman noted, however, that referendum gatherers used tactics asking residents to "sign a petition against the mosque" rather than a zoning change. The Mayor considered the referendum to be an unconstitutional, unlawful encroachment on the constitutionally guaranteed rights of religious minorities and sent the initiative to the Constitutional Court to decide whether the referendum is in accordance with the Constitution and whether it violates basic human rights. On April 28

2004, the Constitutional Court issued a temporary injunction halting the referendum (E.g. C.C. (Constitutional Court), nr.U-I-111/04, 28 April 2004, *Official Gazette* 2004, nr. 51 and 2004, nr. 62; the final decision C.C. (Constitutional Court), nr.U-I-111/04, 8 July 2004, *Official Gazette* 2004, nr. 77) On June 28 2004, the City Council voted to reverse its earlier position and to support the Mayor's effort to have the constitutionality of the referendum decided by the Court.

The Government promotes anti-bias and tolerance education through its programs in primary and secondary schools, with the Holocaust as an obligatory topic in the contemporary history curriculum. However, teachers have a great deal of latitude in deciding how much time to devote to it. The country formally joined in the Council of Europe's proclamation of May 9, 2004, as Holocaust Memorial Day. Schools carried out various activities to remember the Holocaust that day, for example, watching documentaries, written assignments and discussions on the topic. (U.S. Department of State, Slovenia, International Religious Freedom Report 2004-12-13 Release by the Bureau of Democracy, Human Rights, and Labor, http://state.gov/g/drl/rls/irf/2004/35484.htm)

Legislative initiatives, national case law and practices of national authorities

Muslims in Ljubljana did not receive any appropriate explanation to their question, when they can start to build their religious and cultural center. The City Municipality of Ljubljana did not send to the Islamic Community any official offer for repurchase of land that was announced for the end of October 2004. The Constitutional Court rejected the petition for the possible referendum about a municipal spatial for the respective region (E.g. C.C. (Constitutional Court), nr. U-I-111/04, 8 July 2004, *Official Gazette* 2004, nr. 77); which gave an opportunity for a concrete realization of their longstanding goal – a construction of mosque. Now, things became slightly entangled again. The so far existing findings show that a territory that was offered by the City Municipality of Ljubljana to the Islamic Community is small. Additionally, the mentioned land is partially in the denationalization procedure that is bound by a temporary prohibition of trade with this land. Such procedure will evidently last some longer period of time. (Za islamsko skupnost namesto 18.000 le približno 10.000 kvadratnih metrov – Del parcele v denacionalizacijskem postopku Delo, 13/11-2004 str. 2)

As the Constitutional Court has no jurisdiction to decide on the petition for the review of the constitutionality of the contents of the requirement to call a referendum on the implementation of the Ordinance, which was lodged by the City Council of Ljubljana City Municipality, it rejected its petition. Jurisdiction for the prior review of the referendum issue is a special power of the Constitutional Court, which is determined by statute. The Referendum and Public Initiative Act is the Act that, according to the provision of Subpara. 11 of Para. 1 of Article 160 of the Constitution, explicitly determines the legal remedy (a requirement for the review of constitutionality of a referendum issue), its contents, and the body that may lodge it. A requirement may only be lodged by the National Assembly in a determined time-limit (Para. 2 of Article 16 of the Referendum and Public Initiative Act – hereinafter ZRLI). Such a legal remedy, as foreseen by Article 16 of ZRLI in the case of a legislative referendum, is not foreseen by the Local Self-Government Act in the case of a local referendum. (E.g. C.C. (Constitutional Court), nr. U-II-2/04, 15 April 2004, Published in the Official Digest of the Constitutional Court, OdlUS XIII, 28)

A local community resolution by which a referendum is called is a general act by which entitled persons are called to express their will on a specific date concerning the subject of the referendum issue. On the request of an entitled proposer, the Constitutional Court has jurisdiction to review the respective constitutionality.
The right to freely profess a religion, determined in Para. 1 of Article 41 of the Constitution includes the right of individuals and religious communities to individually or collectively profess their religion in buildings that are typical and generally accepted for the profession of

their religion and the practice of their religious rites. Deciding on land use conditions in a referendum whose intention is to prevent the building of a mosque would not only entail deciding on the placement of the object into the area, but also deciding on whether members of the Islamic religious community can profess their religion in a mosque or not. A resolution calling such a referendum interferes with the right to freely profess a religion.
If an interference with a human right is intended to restrict such without thereby the intention to protect the rights of others, such is inadmissible with regard to Para. 3 of Article 15 of the Constitution, according to which human rights can be limited only by the rights of others and in such cases as, are provided by the Constitution. The resolution calling a referendum, whose goal of which is to limit the right to freely profess a religion as ensured by the Constitution without thereby protecting the rights of others, is thus inconsistent with the Constitution.
The request submitted by the mayor of a municipality for the review of the constitutionality of the Local Self-Government Act, who does not have authorization in the municipal charter to commence proceedings for the review of the constitutionality of a state regulation, is rejected by the Constitutional Court. The Constitutional Court rejects petitions for the commencement of proceedings for the review of the constitutionality of a statute, if the granting of the petition would not improve the petitioner's legal position. (E.g. C.C. (Constitutional Court), nr. U-I-111/04, 8 July 2004, *Official Gazette* 2004, nr. 51, 2004, nr. 62 and 2004, nr. 77)

The Ombudsman stated that the defence of national identity has become an excuse for intolerance of other religions and nations. The Ombudsman believes those supporting the right of minority to be included in the society are even labelled "xenophobic towards Slovenians". Worst of all, this has become everyday practice, even in the Parliament and the media. Under Ombudsman's opinion, a comprehensive national programme on the "inclusion of the excluded" should be drafted. However, years of efforts would be required for the programme to bear some fruit. It has not been done yet because solutions are so long-term and therefore not of interest to politicians, since their terms in office usually last only four or five years. The State was criticized for writing off problems of marginalized groups by giving them money and then expecting from them to be "satisfied and keep quiet". Newly emerged ethnic communities in Slovenia, such as those of Serbs, Bosniacs and Albanians, are officially often treated as "mere societies" so the only address they can turn to for help is the Culture Ministry which is in charge of the national culture programme. Under the Ljubljana Mayor's opinion a mosque would be a proof that Ljubljana has become a truly multicultural city (SOURCE: STA (Slovenian Press Agency), 18. 5. 2004, Republic of Slovenia, Human Rights Ombudsman: etnomiza, http://www.varuh-rs.si/cgi/teksti-eng.cgi/Show?_id=etnomiza)

Protection against harassment especially of religious minorities

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

Societal attitudes toward the minority Muslim and Serb Orthodox communities generally were tolerant; however, some persons feared the possible emergence of Muslim fundamentalism. Interfaith relations were generally amicable, although there was little warmth between the majority Catholic Church and foreign missionary groups that were viewed as aggressive proselytizers. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February 2004, Section 2 Respect for Civil Liberties, Including: c. Freedom of Religion, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Article 11. Freedom of expression and of information

Freedom of expression and information (in general)

Legislative initiatives, national case law and practices of national authorities

The Ombudsman welcomes the adoption of the Access to Information of a Public Nature Act (E.g. Zakon o dostopu do informacij javnega značaja, Access to Information of a Public Nature Act, *Official Gazette* 2003, nr. 24). This is a modern law deriving from the principle that all information is accessible save for that excepted in a lawful manner. The act also introduces important new features in the obligations of state administration bodies, whereby they must actively familiarize the public, through publication on the Internet, with important information on their work, the regulations in their area and other information that may be important for users of public administration services. The act has already affected visible shifts in this area, with increasing numbers of state and local bodies setting up web sites and using them to post a substantial amount of information that could otherwise be obtained by citizens only with a lot of effort or by special request. Another very useful feature is the new state portal, which alongside the aforementioned information contains links to useful information connected to what are termed "real-life events". Informal oversight of implementation of the Access to Information of a Public Nature Act would be entrusted entirely to the independent IT Ombudsman, who would also perform advisory and promotional tasks. Separate from these informal tasks, which must be carried out by a body independent of the government, would be the formal complaints procedures at bodies that are competent to rule in second instance administrative procedures. Indeed, these tasks are not compatible. The same body cannot at the same time advise bodies on implementation of the law, for example on what is information of public nature and what is not, and then decide on the same matters in an administrative procedure. In dealing with certain complaints we encountered the issue of accessibility of local community regulations. Formally, of course, accessibility is ensured through their publication in the public organs of municipalities or in the Official Gazette of the Republic of Slovenia. But only actual accessibility of regulations makes possible the familiarization of citizens with their rights and duties, and it ensures the predictability of actions by local authority bodies. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Media pluralism and fair treatment of the information by the media

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

The Constitution provides for freedom of speech and of the press, and the Government generally respects these rights in practice; however, there are reports that through indirect political and economic pressures continue to influence the media, resulting in occasional self-censorship. There are some credible reports that advertisers pressured media outlets to present various issues in certain ways, which result in little separation of marketing and editorial decision-making.

The press is active and independent; however, major media do not represent a broad range of political or ethnic interests. The major print media are supported through private investment and advertising, although cultural publications and book publishing receive government subsidies. Numerous foreign broadcasts are accessible via satellite and cable. All major towns have radio stations and cable television. A newspaper has been published for the ethnic Italian minority living on the Adriatic coast. Bosnian refugees and the Albanian community have newsletters in their own languages. Foreign newspapers, magazines, and journals are widely available. Minority language television and radio broadcasts are available. The National Assembly Elections Act (E.g. Zakon o volitvah v Državni zbor, National Assembly Elections

Act, *Official Gazette* 1992, nr. 44, 1993, nr. 13, 1995, nr. 60, 1996, nr. 14, 1996, nr. 36, 1997, nr. 67, 1998, nr. 20, 1999, nr. 22, 2000, nr. 31, 2000, nr. 66, 2000, nr. 70, 2003, nr. 11, 2003, nr. 73) requires the media to offer free space and broadcasting time to political parties at election time. Television networks provide public figures by routine and opinion makers from across the political spectrum access to a broad range of programming and advertising opportunities.

On February 25, the National Assembly adopted the Law on the Access to Information of Public Character (E.g. Zakon o dostopu do informacij javnega značaja, Access to Information of Public Nature Act, *Official Gazette* 2003, nr. 24) to provide free public access to all such information controlled by state or local institutions and their agents.

The Government does not restrict access to the Internet or academic freedom. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 2 Respect for Civil Liberties, Including: a. Freedom of Speech and Press, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Article 12. Freedom of assembly and of association

Freedom of civic association

Legislative initiatives, national case law and practices of national authorities

The Environmental Protection Act (E.g. Zakon o varstvu okolja, Environmental Protection Act, *Official Gazette* 2004, nr. 41) – Article 152 regulates terms for acquiring of status of the NGO of public interest. Under the Act such NGOs as a "qualified public" have some rights that are not available for other public. Among others, the respective conditions are: the appropriate number of members (in case of association) or employees (in case of institution) or extent of funds (in case of foundation); it should be active in the field of environmental protection least 5 years; it should act on the whole territory of the State, additionally also on territories of at least 5 members of EU (in case of NGO with a seat out of Slovenia). The Minister prescribes detailed terms and the respective criteria. Up to the present, such regulation was not adopted. Concerning environmental protection, constructive activities of any NGO are a priori in a public interest. Any administrative or formal (and not substantive) criterion will totally reduce a number of candidates for such status. The result will be only a small number of NGOs with a status of NGO in a public interest. This is contrary to the ratified so-called Aarhus Convention (E.g. Zakon o ratifikaciji Konvencije o dostopu do informacij, udeležbi javnosti pri odločanju in dostopu do pravnega varstva v okoljskih zadevah, Convention on Access to Information, public Participation and Decision-Making and Access to Justice in Environmental Matters, *Official Gazette* 2004, nr.17, MP). (Pravno-informacijski center nevladnih organizacij – PIC, Poročilo o zaznanih kršitvah in nepravilnostih. Ljubljana, 30 September 2004)

The starting point of the Matra project was the analysis that there are many NGOs in Slovenia, but that there are only a few that are well rooted in society and qualified in what they do. Most of the NGOs are not developed enough to become a significant actor in Slovene society and to be a participant in the civil dialogue with the Government. The original project proposal identified the major areas of technical support as: Establishment/ capacity enhancement of NGO support structures, such as an NGO Centre; Development of a Regulatory Framework for the NGO sector; Communication and dialogue between Government and NGOs at central and regional level; Support the development of networks of the NGO sector; Development of funding mechanisms for the NGO sector. The emphasis on activities in each of these areas has shifted throughout project. The overall issue of cohesion

and coordination of Governmental policy and strategy has gained importance throughout the project when it became clear that it was necessary to provide for an overall framework to "anchor" activities and achievements in each of the areas. (Support to NGO sector, Matra project implemented in Slovenia, The Matra project "Support to NGO Sector Slovenia", provided technical assistance to the Government of Slovenia and the NGO sector in Slovenia from 1 May 2001 to 30 April 2004).

The Bill on the Position and on the NGOs' Activities to the Public Benefit (Zakona o položaju in javno koristnem delovanju nevladnih organizacij) was created within the "Law on Non-Governmental Organizations" project (www.pic.si, projekti/nevladne organizacije), which was managed by the Legal Information Center of NGOs, Pravno-informacijski center nevladnih organizacij – PIC with the support of Trust for Civil Society in Central and Eastern Europe (TRUST) an with cooperation with the International Center for Not-for-Profit Law as well as other domestic and foreign experts. The aim of the Bill is to regulate the position and the terms for placement of NGOs into the procedures in different fields of social life, to regulate the relationship between NGOs, governmental bodies and local community bodies as well as to regulate NGOs' activities to public benefit. The Bill included contents, important for NGOs' activities that were not bad or only partially regulated in the past, common specialties of NGOs, the civil dialog and its implementation, financial sources of NGOs, the complete regulation of NGOs of public interest and its activities, the respective special rights, benefits and mechanisms of its public activities. The Bill determines foundation and regulation of an institutional scheme for the NGOs' activities, especially foundation of the Council for NGOs and a public fund of the Republic of Slovenia. Introducing many new rights and benefits in favor of NGOs, the Bill keeps all rights, acquired in favor of NGOs under other laws. Furthermore, the Bill does not encroach upon existing rights and duties. The most important section of the Bill concerns the coordination of NGOs' activities in public interest. (Pravno-informacijski center nevladnih organizacij – PIC/Legal Information Center for NGOs, Predlog Zakona o položaju in javno koristnem delovanju nevladnih organizacij – dokument za razpravo, Ljubljana, 30 April 2004)

Article 13. Freedom of the arts and sciences

No significant developments to be reported.

Article 14. Right to education

Access to education

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

The Committee recommends the State party to take measures to address the high drop-out rate in secondary education. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Vocational training

Legislative initiatives, national case law and practices of national authorities

In accordance with the National Program of the Republic of Slovenia for adoption of the EU legal order the new systemic Zakon o nacionalnih poklicnih kvalifikacijah (E.g. National Professional Qualifications Act, Zakon o nacionalnih poklicnih kvalifikacijah, *Official Gazette* 2003, nr. 83) was adopted. The Act determines as a national professional qualification

such qualification that was adopted in accordance with the Act. The professional qualification, acquired in the certificate system is not obtained through professional education such as can be acquired in an ordinary educational system. The national professional qualification is stated by a certificate that is an official document. A certificate on professional qualification can be acquired by anyone who was not able to acquire an officially valid document on professional education, but this person acquired some professional competences by informal education as well as by working and life experiences or know-how. Thereby it is also possible to acquire qualifications for professions that are not covered by a formally organized education. The Act regulates the respective procedure that can be managed by performers registered by the Ministry of Labor, Family and Social Affairs. The legality of the procedure shall be controlled by the Inspection for national professional qualifications.

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

No significant developments to be reported.

Article 17. Right to property

The right to property and the restrictions to this right

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

European Court of Human Rights decided that it is competent for decision-making on the complaint of the former branch of the Ljubljana Bank (Ljubljanska banka) in Zagreb against Slovenia. The complaint against Slovenia was filed six years ago, in May 2001 the European Court gave a permission to the Croatian Government to act as party of the procedure. In their complaint the Croatian savers maintain that they are prevented to come to their savings, which means that their fundamental right to property and its enjoyment are violated in terms of Article 1 of the First protocol to the European Convention on Human Rights and Fundamental Freedoms. Additionally, they maintain that they are victims of discrimination due to their nationality (in terms of Article 14 of the European Convention on Human Rights and Fundamental Freedoms), because the Slovenian savers were able to withdraw their savings at the same bank. The European Court of Human Rights stated that their complaint cannot be rejected as inadmissible. (Evropsko sodišče pristojno za tožbo, Strasbourg /8.4.2004/STA/B.R., http://24ur.com/naslovnica/slovenija/20040408_2038781.php?Acl=s3)

As to the matter of compliance with Article 1 of Protocol nr. 1 raised by all three applicants and with Article 14 of the Convention taken together with Article 1 of Protocol nr. 1 raised solely by Mr Kovacic, the Court considered in the light of the parties' submissions, that the complaints raise serious issues of fact and law under the Convention, the determination of that requires an examination of the merits. The Court concluded therefore that the complaint is not evidently ill-founded within the meaning of Para. 3 of Article 14 of the Convention. No other ground for declaring the application inadmissible has been established. For these reasons, the Court unanimously joined the question of compliance with the six-month rule to the merits. Declared admissible, without prejudging the merits, the applicants' complaints concerning Article 1 of Protocol No. 1 and Mr. Kovacic's complaint under Article 14 of the Convention taken together with Article 1 of Protocol No. 1 (Third Section, Decision, As to the

Admissibility of, Application nrs. 44574/98, 45133/98 and 48316/99, by Ivo Kovacic, Marjan Mrkonjic and Dolores Golubovic against Slovenia, The European Court of Human Rights (Third Section), sitting on 9 October 2003 and 1 April 2004 as a Chamber).

Public expropriations and compensation

Legislative initiatives, national case law and practices of national authorities

The reasons for the length of the procedures remain the same as in previous periods. In the last period the Ombudsman again encountered cases where the processing of individual denationalization requests was still in the initial phase, for which there is of course no excuse. The latest monitoring of fulfillment of the planned completion of the denationalization process indicated that the plans set out have not been entirely fulfilled.

Every year the Ombudsman describes in the annual report the issue of tenants who through no fault of their own have ended up in a position that causes insoluble problems between them and the owners who through denationalization have acquired their apartments in ownership but not also in physical possession. The Ombudsman also sent to the National Assembly a Special Report on this issue, and it was debated for a long time in the National Assembly working bodies, then being debated in a plenary session as the new housing act. The majority of deputies and deputy groups agreed with the findings of the Special Report, which indicates problems that such tenants encounter, but the Act did not bring them any expected solutions. The Ombudsman received several complaints from tenant associations who are disappointed with the new Act and who point out the daily and real problems that such tenants encounter, while also proposing amendments to the Housing Act (Stanovanjski zakon, Housing Act, *Official Gazette* 2003, nr. 69). The feeling remained that this problem, which can be ranked among the injustices caused in the past by the State, has not been resolved mainly due to the material obligations that the resolving of this problem would require. This category of citizens remained in an unenviable position, and there are fewer and fewer of them, since the majority of them are elderly tenants who do not know how to stand up for their rights as loudly as certain other categories of affected persons. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Article 18. Right to asylum

Asylum proceedings

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

The Constitution provides for the granting of asylum and refugee status to persons who meet the definition in the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. In practice, the Government provided protection against refoulement and granted refugee status or asylum, although there was some concern that border police did not consistently inform individuals of their rights as potential refugees. The Government cooperated with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees. Since potential refugees viewed the country as a transit point rather than a destination, few stayed long enough to be processed as refugees. As a result, the Government provided refuge or temporary protection to only a small number of persons fleeing persecution or civil conflict refugees. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 2 Respect for Civil Liberties, Including: d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Unaccompanied minors seeking asylum

International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up
Committee recommends the State party to ensure the effective implementation of the Asylum Act (E.g. Zakon o azilu, Asylum Act, *Official Gazette* 1999, nr. 61, 2000, nr. 66, 2000, nr. 113, 2000, nr. 124, 2001, nr. 67, 2003, nr. 98) and the amendments to the Aliens Act (E.g. Zakon o spremembah in dopolnitvah zakona o tujcih, Act on Changes and Amendments of the Aliens Act, *Official Gazette* 2002, nr. 87) concerning asylum claims involving children and the appointment of a guardian to unaccompanied children. The State party should ensure that reception centres have special sections for children and the necessary support, including access to education, is given to children and families throughout the process with the involvement of all concerned authorities with a view to finding durable solutions in the best interest of the child. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

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

No significant development to be reported

Article 21. Non-discrimination

Protection against discrimination

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

The Committee recommends the State party to proceed with full and prompt implementation of the decisions of the Constitutional Court, compensate the children affected by the negative consequences of the erasure and ensure that they enjoy all rights under the Convention in the same way as other children in the State party. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The status of thousands of former Yugoslav citizens who were removed from the Slovenian population registry in 1992 (otherwise known as the "erased") remained non-clarified. Most of the individuals removed from the population registry were citizens of other former Yugoslav republics who had been living in Slovenia and had not filed an application for Slovenian citizenship, after Slovenia became independent. The Slovenian Constitutional Court had recognized that the measure constituted a violation of the principle of equality and, in those cases where the individuals concerned had to leave the Slovenian territory, it gave rise to a violation of their rights to a family life and to freedom of movement. Moreover, Amnesty International was concerned that the removal from population registries gave rise to violations of the social and economic rights; in some cases the individuals concerned lost their employment and pension rights. The Slovenian Constitutional Court had established in April 2003 that previous provisions to solve this issue were inadequate to restore the rights of former Yugoslav citizens who were unlawfully removed from Slovenian population registries. A "technicalities bill" the first of two acts aimed at reinstating the status of individuals removed from the population registry, was later adopted by the Parliament, however, debates on a second bill continued, prompting opposition parties to call for a referendum to address the "technicalities bill". (Amnesty International, Europe and Central Asia, Concerns in Europe and Central Asia, July – December 2003, AI Index: EUR 01/001/2004)

Legislative initiatives, national case law and practices of national authorities

The Chronicle of the Problem of the Erased Persons through the Constitutional Court's Jurisprudence

The emergence of new states in the territory of the former Yugoslavia resulted in the fact that many former Yugoslav citizens were suddenly residing in a state whereof the citizenship they did not hold. The republican citizenship was attributed with reference to the place of birth, but many citizens have moved from one republic to another; a lot of citizens of other Republics came to Slovenia for economic reasons and a large part of them remained. In Yugoslavia all citizens enjoyed equal rights in the whole territory, but when individual Republics gained their independence it was not to be expected that they would automatically grant their

citizenship to all citizens of other Republics who for various reasons were staying in their territory at the time.

Slovenia adopted a rather liberal statute under which the citizens of other Republics could opt for Slovenian citizenship within a certain time limit (six months following the adoption of the Citizenship Act; E.g. Zakon o državljanstvu Republike Slovenije, Citizenship of the Republic of Slovenia Act, *Official Gazette* 1991, nr. 1, 1991, nr. 30, 1992, nr. 38, 1992, nr. 61, 1994, nr. 13, 1995, nr. 13, 1995, nr. 29, 1999, nr. 59, 2002, nr. 96) or they could retain the citizenship of the Republic they came from in which case they could have reasonably expected that their previous status of permanent citizens and the rights attributed to such status (not all of them had this status) would not worsen. The State had an obligation to regulate their new status since they legally resided in its territory at the time it gained independence and it did fulfill it to a high degree. Since there were few conditions to acquire Slovenian citizenship (permanent residence status, actual presence in the territory), most of those citizens opted for it. One tenth, however, for various reasons did not. Some of them perhaps did not believe that Slovenia could subsist as an independent entity or they were prevented from doing so by the uncertainty of the time, nevertheless they could expect to enjoy many of the rights and duties of the citizens as permanent residents. Slovenian legislator regulated their status with the Aliens Act (E.g. Zakon o tujcih, Aliens Act, *Official Gazette* 1999, nr. 61, 2001, nr. 9, 2002, nr. 87, 2002, nr. 96) which, however, did not contain any special provisions regarding the status of citizens of other Republics, since Slovenian authorities expected to arrange their status through agreements between newly formed states. The war in Croatia and Bosnia and Herzegovina made it impossible for these agreements to be reached, so the legal position of the said citizens remained unregulated.

After the expiration of a six-month term, during which a large majority of citizens of the other Republics applied for Slovenian citizenship, the Aliens Act that, as mentioned above, did not contain special provisions for these citizens, became applicable for the rest of them. Paragraph 2 of Article 81 only provided that with respect to the citizens of the other Republics, the Aliens Act shall start to apply two months after the expiry of the time period within which they could apply for citizenship of the Republic of Slovenia, or with the date of issuance of the final decision on citizenship.

These people were consequently transferred from the registry of permanent population to the record of foreigners and therefore lost all the rights that the law applies to the circumstance of permanent residence. The administrative authorities performed the transfer ex officio in February 1992 and omitted to inform the said citizens about the removal and their new legal position. These persons later experienced trouble in connection with their work permits, health care and insurance, pensions, etc. In some cases they were even deported from Slovenia due to their alleged illegal residency since they had to apply for temporary or permanent residence permit anew and not all of them fulfilled the new conditions. It is not disputable that the Aliens Act adequately regulates the acquisition of temporary or permanent residence status for newly come foreigners, but to apply the same provisions to citizens of other Republics who had already had permanent resident status is not only inadequate but also illegal. The State thus encroached upon their already acquired rights and the consequence was that until September 1992, when the Government adopted a resolution to include permanent residence (a three-year period of actual presence was required for permanent residence status) prior to the coming into force of the Aliens Act into required period of actual presence, the administrative authorities only issued these persons temporary residence permits.

The Constitutional Court of the Republic of Slovenia found in their decision (E.g. C.C. (Constitutional Court), nr. U-I-284/94, 4 February 1999, *Official Gazette* 1999, nr. 14) that "the provisions of Paragraph 2 of Article 13 and Paragraph 1 of Article 16 of the Aliens Act should not apply to citizens of other Republics who have not acquired the citizenship of Slovenia. Neither should competent authorities have affected the transfer of these persons

from the existing registry of permanent population to the record of foreigners ex officio, without any decision or notification addressed to the person concerned. There was no statutory basis whatsoever for them to act so."

The Constitutional Court ruled that the Aliens Act, whose transitional provisions failed to regulate the status of citizens of other republics, was in disagreement with the Constitution and has violated the principles of the rule of law under Article 2 of the Constitution. The Court also established that the said citizens found themselves in insecure position, since the State should guarantee to each individual that their legal position will not worsen without justified reasons; in some cases (in the case of deportation or expulsion), the Court opined, there were possible violations of human rights and freedoms that belong in accordance with the Constitution and international law to all persons who legally reside in its territory regardless of their nationality. Therefore the Court decided that pending the elimination of the disagreement, for which a time limit of six months was determined, no measure of deportation against citizens of other Republics who actually lived in Slovenia and were registered as permanent residents on the date of the Plebiscite 23. 12. 1990 should be pronounced.

In 2002, two years after the illegal situation was supposed to be rectified, there came a petition to determine inconsistency of the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia (E.g. Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji, Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, *Official Gazette* 1999, nr. 61, 2000, nr. 54, 2001, nr. 64, 2003, nr. 96, hereinafter ZUSDDD), the Act adopted to remedy the legal situation of the citizens of other Republics, with the Constitution. It was adopted following the Constitutional Court decision U-I-284/94 and regulates the legal position of the citizens of other Republics who after Slovenia's gaining independence did not opt for Slovenian citizenship and were consequently transferred from the registry of permanent population into the record of foreigners. The petitioners stated that the said Act did not entirely remedy the situation of these persons, since it only returned them the status of permanent residents for the period starting with its entry into force; ZUSDDD is therefore an Act with prospective effect. They also stated that the time limit of three months for filing an application for the issuance of a permanent residence permit was too short and did not consider the special position of the citizens of other Republics who had been subjected to unlawful state of affairs for several years.

The Constitutional Court agreed with the petitioners that the legislator should have regulated their status retroactively; the unregulated state of affairs lasted from 1992 until 1999 at least, and if the citizens of other Republics are only entitled to apply for their status back from the coming into force of ZUSDDD onwards, there remains a seven year gap in the law where their status was unregulated. That did not fulfill the purpose of the court's decision U-I-284/94 that was "to regulate the entire period in which the position of the mentioned persons was not legally regulated." The Constitutional Court already reached that position in some cases of constitutional complaints, which were filed by the adversely affected citizens of other Republics. In the last year's decision U-I-246/02 abstract from which is below, the Court once again noted that "permanent resident status is an important linking circumstance for the exercise of certain rights and legal benefits that the mentioned persons (the citizens of other Republics) could not exercise due to the legally unregulated state of affairs. Their position in the Republic of Slovenia was legally uncertain due to the unregulated state of affairs, as by the acquisition of the status of foreigner they lost permanent resident status in the territory of the Republic of Slovenia and found themselves in an unregulated position or in an essentially worsened legal position (E.g. that of having temporary resident status), which has lasted for some of the adversely affected persons for as much as ten years." The Court established that in case of the said citizens the law should merely establish their legal position, which has already existed and does not constitute a new legal position, therefore the permits for

permanent residence should have been given the effect of declaratory decisions that have legal effect from the time when certain facts occur and thus form a legal relation *ex tunc*.

The Constitutional Court decided to determine the implementation of the Decision in such a manner that the citizens of other Republics, who had already been issued their permits for permanent residence, should get supplementary decisions establishing their status retroactively and the citizens who got back their status on the basis of the Aliens Act prior to the adoption of ZUSDDD, their permits must be considered as declaratory decisions with retroactive effect. The Court imposed this obligation upon the Ministry of the Interior.

The Court also established that of the status of the citizens of other Republics who were forcibly removed from the Republic of Slovenia would have to be restored and that the Aliens Act, which did not regulate the possibility of acquiring a permit for permanent residence by these citizens, is inconsistent with the Constitution. Regarding a very short time limit for filing an application, the Court agreed with the petitioners that it was indeed too short, since the legislator should have considered "personal and other circumstances that could impede the timely filing of an application by entitled persons." The legislator did not have any justified reasons for a three-month time limit and the Court annulled the challenged provisions of ZUSDDD.

(E.g. C.C. (Constitutional Court), nr. U-I-136/02, 3 April 2003, *Official Gazette* 2003, nr. 36)

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 (E.g. Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji, Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, *Official Gazette* 1999, nr. 61, 2000, nr. 54 and 2001, nr. 64 - 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 the their permanent resident status and their transfer to the registry 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 must not remain legally unregulated, the Constitutional Court in Para. 1 of the operative provisions decided 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 registry of permanent residents, permanent residence status from the 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 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 such that by the permits for permanent residence that have already been issued to citizens of other Republics, permanent residence status be established retroactively, i.e. from 26 February 1992, being the date of their removal from the registry 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 on 26 February 1992 removed from the registry of residents 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 forcible removal of a foreigner from the State was pronounced due to their unregulated legal position. Therefore, it established, in Para. 2 of the operative provisions, the inconsistency of ZUSDDD with the Constitution also for reason of its failing to regulate the acquisition of a permit for permanent residence by citizens of other Republics who were removed from the registry 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 8 of the Aliens Act (E.g. Zakon o tujcih, Aliens Act, *Official Gazette* 1991, nr. 1 and 1997, nr. 44).

From the view 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 a justified reason for determining a short (preclusive) time period for filing an application for issuing a permit for permanent residence, the Constitutional Court annulled the challenged Para. 1 and 2 of Article 2, in the part in which a time limit of three months was determined (Para. 4 of the operative provisions).

The above-cited decision so established the permanent residence of citizens of other Republics retroactively and despite the fact that it could have been executed directly the National Assembly decided to adopt a law determining the manner of execution. On 25 November 2003 the National Assembly adopted the Act on the Implementation of Item Nr. 8 of the Decision of the Constitutional Court nr.U-I-246/02-28 (E.g. Zakon o izvršitvi 8. točke odločbe Ustavnega sodišča Republike Slovenije št. U-I-246/02-28, Act on the Implementation of Item nr. 8 of the Decision of the Constitutional Court No.U-I-246/02-28, hereinafter the Act on the Implementation). It did so for two reasons: the principles of separation of powers and legality assure independence of all powers; the judicial power must not interfere with jurisdiction of the legislative power, which the Government opined the Constitutional Court did in its decision. Also the principle of legality demands that the executive power issues individual decisions based on laws. The other reason was of a procedural nature; in order to implement Item No. 8 of the decision certain procedural completions were supposed to be made.

Item No. 8 of decision U-I-246/02 reads as follows:

"The permanent residence status of citizens of other Republics of the former SFRY is hereby established from 26 February 1992 onwards if they were removed on that day from the registry of permanent residents, by a permit for permanent residence issued on the basis of the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, the Aliens Act (E.g. Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji, Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia, *Official Gazett*, 1991, nr.1, and 1997, nr. 44), or the Aliens Act (E.g. Zakon o tujcih, Aliens Act, *Official Gazette* 1999, nr.61). The Ministry of the Interior must as an official duty issue them supplementary decisions on the establishment of their permanent residence in the Republic of Slovenia from 26 February onwards."

The political minority in the National Assembly opined that the Act on the Implementation was discriminatory since it only applied to the citizens of other Republics not allowing for those citizens who in the meantime might have acquired a citizenship of any other country and did not oblige the authorities to establish actual presence of these citizens in Slovenia on case by case basis whereas the citizens who had already got their permanent residence status back were exposed to stricter conditions of the Aliens Act. In their opinion the execution of the said Act could also have adverse effects, financial as well as effects in the field of international relations. The group of thirty deputees lodged a request for calling a subsequent legislative referendum regarding refusal of the Act on the Implementation. The National Assembly found that their request was inconsistent with the Constitution and lodged a request with the Constitutional Court to declare the request concerning the call of a referendum unconstitutional. They opined that such a referendum, if the Act on the Implementation were rejected, might derive unconstitutional consequences. Under Article 16 of the Referendum and People's Initiative Act (E.g. Zakon o referendumu in ljudski iniciativi, Referendum and People's Initiative Act, *Official Gazette* 1994, nr. 15, 1995, nr. 13, 1996, nr. 34, 1996, nr. 38, 1996, nr. 43, 1996, nr. 57, 1998, nr. 82, 2000, nr. 24, 2001, nr. 59, 2003, nr. 11, 2003, nr. 48, 2003, nr. 73, 2004, nr. 89 the Constitutional Court's jurisdiction includes adjudication in respect of request concerning a call for referendum:

Article 16
(1) If the National Assembly opines that the contents of a request for calling a referendum is contrary to the Constitution or that by postponing the adoption or coming into force of a statute, or by refusing the adoption of a statute, unconstitutional consequences might occur, it shall require that the Constitutional Court decide on such.
(2) The National Assembly may submit the request under the previous Paragraph from the receipt of the initiative or the request and no later than by the expiry of the time limit for calling the referendum.
(3) The Constitutional Court shall decide on the request of the National Assembly within 15 days.

The prescribed time limit from the second Paragraph is seven days and is determined in Article 22 of the Referendum and People's Initiative Act. The purpose of that limit is to protect the constitutional right to direct deciding of citizens from unjustified infringements of the National Assembly and in this case the National Assembly did indeed exceed it and lodged their request late. By its ruling of 22 December 2003 the Constitutional Court rejected the request because of its late submission. Additionally, the Constitutional Court stated that the Ministry of Interior has a legal basis in the Constitutional Court decision, which not only established the unconstitutional situation but also determined the way 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 Court decision.

(E.g. C.C. (Constitutional Court), nr.U-II-3/03, 22 December 2003, *Official Gazette* 2004, nr.8)

The Referendum and Public Initiative Act (hereinafter ZRLI) enables the National Assembly to temporarily interfere with the constitutional right of deciding in a referendum in a manner such that it suspends the constitutional obligation to call a legislative referendum until its request, that the National Assembly is obliged to lodge in a prescribed time limit, is decided by the Constitutional Court. The purpose of the above mentioned time limit is to protect the constitutional right to direct deciding of citizens from the unjustified infringements of the National Assembly. Therefore, it cannot merely be considered a recommendation to the National Assembly to, as soon as possible (if possible in a determined time-limit), evaluate the lodged request to call a referendum. The National Assembly must lodge a request in a determined time limit.

The reason to review the request of the National Assembly notwithstanding the fact that it was not lodged in due time could only be serious unconstitutional consequences that would occur for carrying out a referendum or for refusal of an act in the subsequent legislative referendum. The unconstitutional consequences that could be a reason for the review of the request not lodged in due time by the National Assembly must thus be more severe as if it were lodged in due time.

As the possible refusal of the Act on the Implementation of Item nr. 8 of the Constitutional Court Decision nr. U-I-246/02 in a subsequent legislative referendum would not cause such serious unconstitutional consequences, which would require deciding the request of the National Assembly that was lodged after the determined time limit provided in Para. 2 of Article 16 of ZRLI, the Constitutional Court rejected the request as being late.

After the National Assembly's request was rejected they proceeded to the referendum regarding the Act on the Implementation of Item No. 8 of the decision No. U-I-246/02, the so-called Technical Act on Erased Persons, which was only going to apply to all those citizens of other Republics who had been removed from the registry of residents on 26 February 1992 and who have already acquired permits for permanent residence; the Act was supposed to become a basis for issuing supplementary decisions. 31.45% voters attended the referendum and a large majority, 94.7% of them voted against the Technical Act on Erased Persons, only 3.8% voted for and 1.8% of ballots were invalid, which created an unconstitutional situation since the result of the referendum directly opposes the Constitutional Court's decision. The Ministry of Interior, however, has already proceeded to issuing supplementary decisions, which further complicates the situation.

There is, however, another bill on the erased regarding the same Constitutional Court's decision in parliamentary procedure. For the second category of erased persons, namely all those who have not yet acquired their permanent residence status at all – another bill, the Bill on the Permanent Residence of Foreigners having the Citizenship of Other State Successors to the Former SFRY in the Republic of Slovenia, Who Were on 23 December 1990 and 25 February 1992 Registered as Permanent Residents in the Republic of Slovenia, was drafted.
The parlamental minority again objected to the Bill due to its alleged adverse financial effects as well as harmful influence in respect of international relations; they also believe that the citizens of other Republics should have attempted to regulate their status after Slovenia's gaining independence although the Constitutional Court has emphasized more than once that no such duty emanated either from the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia, the Constitutional Act for its Implementation, the Aliens Act or any other regulation. They lodged another request for calling a referendum, this time a preliminary legislative referendum on the Bill on the Permanent Residence of Aliens having the Citizenship of Other State Successors (hereinafter ZSPTDDD).

They proposed seven points on which the referendum should decide, but the National Assembly submitted them to the Constitutional Court for review of constitutionality. It must be noted that the proposed bill (ZSPTDDD) in its implementation followed the Court's Decision nr. U-I-246/02, so it will be difficult to produce a referendum issue that would not be contrary to the Constitution, but their first proposal consisted of these seven points most of which were rejected by the Court in its Decision nr. U-II-1/04 from 26 February 2004:

(E.g. C.C. (Constitutional Court), nr. U-II-1/04, 26 February 2004, *Official Gazette* 2004, nr.25)

Operative provisions

(1) The referendum issue contained in the request for calling a preliminary legislative referendum on the Bill on the Permanent Residence of Foreigners having the Citizenship of

Other State Successors to the Former SFRY in the Republic of Slovenia, Who Were on 23 December 1990 and 25 February 1992 Registered as Permanent Residents in the Republic of Slovenia, which in Subpara. 1 reads as follows:

"every person who was on 25 February 1992 transferred from the registry of permanent residents to the registry of foreigners having no permanent residence, and who wants to claim permanent resident status retroactively, must initiate proceedings by means of an appropriate application in which they must explain the circumstances due to which they could not timely regulate their status in accordance with the Basic Constitutional Charter, the Constitutional Act for its implementation, the Aliens Act or other regulations that regulated this issue in the period after the Republic of Slovenia had gained independence;" is contrary to the Constitution.

(2) The referendum issue from the previous item of the operative provisions that in Supara. 2 reads as follows:

"the time limit for submitting an application for the retroactive recognition of permanent resident status is six months from the coming into force of this Act;" is not contrary to the Constitution.

(3) The referendum issue from Item 1 of the operative provisions that in Subpara. 3 reads that:

"the status is retroactively recognized only to persons for which it is established that they tried to regulated their status in the entire period from 25 February 1992 onwards, however which could not do this due to objective circumstances or due to the violation of substantive or procedural law by an administrative authority;" is contrary to the Constitution.

(4) The referendum issue from Item 1 of the operative provisions that in Subpara. 4 reads as follows:

"also the Veterans of the War for Slovenia Association may require the renewal of proceedings of issuing a permanent resident permit according to the Aliens Act (ZTuj1 and ZTuj2) or ZUSDDD or according to this Act, and the time limit for submitting such a request is two years from the coming into force of this Act or from the issuance of a decision on the basis of this Act;" is contrary to the Constitution.

(5) The referendum issue from Item 1 of the operative provisions that in the part of Subpara. 5 reads as follows:

"eligible persons according to this Act are not the persons who did not respond to the call of the Presidency of the Republic of Slovenia to leave the Yugoslav People's Army or the bodies of SFRY federal authorities within a time limit determined in that call;" is contrary to the Constitution,

and in the remaining part that reads as follows:

"Or acted against the values that are in accordance with Para. 1 of Article 4 of the Constitutional Act for the Implementation of the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia protected by the penal legislation of the Republic of Slovenia;" is not contrary to the Constitution.

(6) The referendum issue from Item 1 of the operative provisions that in Subpara. 6 reads as follows:

"Every possibility of the retroactively asserting of the rights that are linked with permanent resident status, or the payment of damages, is excluded;" is contrary to the Constitution.

(7) The referendum issue from Item 1 of the operative provisions that in Subpara. 7 reads as follows:

"Every act of an administrative authority in issuing decisions in connection with the retroactive regulation of status, which is evidently contrary to the Constitution, including the possible issuance of decisions retroactively recognizing permanent resident status without an explicit basis in statute or lawful regulation, what is determined in Para. 3 of Article 153 of the Constitution of the Republic of Slovenia, is explicitly determined in the Act as a serious criminal offense;" is contrary to the Constitution.

Headnote:

The solutions contained in Subparas. 1 and 3 of the referendum issue are based on the interpretation that the citizens of other Republics should have regulated their legal status, which they had from 25 February 1992, in conformity with the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (E.g. Temeljna ustavna listina o neodvisnosti in suverenosti Republike Slovenije, Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, *Official Gazette* 1991, nr. 1 – hereinafter TUL), the Constitutional Act for the Implementation of TUL (Ustavni zakon o izvedbi TUL, Constitutional Act for the Implementation of TUL, *Official Gazette* nr. 1991, nr. 1 – hereinafter UZITUL) and ZTuj,"or with other regulations that regulated the issue in the period after the Republic of Slovenia gained its independence."

The Constitutional Court established that the interpretation of Item III of TUL and Article 13 of UZITUL, according to which the citizens of other Republics who were on the day of the plebiscite registered as permanent residents in the territory of the Republic of Slovenia and who remained such also after the expiry of the time limit under ZTuj and also actually resided in the Republic of Slovenia, are not recognized any status and with the expiry of the time limits lost their permanent residence for which they must apply again as if they just settle in the Republic of Slovenia, is legally incorrect and cannot find support in any established methods of interpretations that the legal profession is aware of, and is obviously contrary to the principle of equality before the law (Para. 2 of Article 14 of the Constitution). Only the interpretation on the basis of which the citizens of other Republics are recognized permanent residence, such as it was recognized to foreigners under Para. 3 of Article 82 of ZTuj, would be in conformity with the principle of equality, which already TUL contained in Item III.
The regulation proposed in Subpara. 1 of the referendum issue is in the part in which it defines as persons eligible for the retroactively claiming of permanent resident status those persons who were on 25 February 1992 "transferred from the registry of permanent residents to the registry of foreigners having no permanent residence," also contrary to those principles of a State governed by the rule of law that require that legal norms be clear, determined and unambiguous, and that it should not depend on every interpreter how they are interpreted. As the definition of an eligible person under Subpara.1 of the referendum issue would, if adopted at the referendum, mean that the legislature is to enact the definition that refers to the transfer to the non-existing registry, or would stem from a legal situation that did not exist, the regulation proposed in Subpara. 1 of the referendum issue is inconsistent with Article 2 of the Constitution also for this reason.

The referendum issue contained in Subpara. 2, that would bind the legislature to determine six months as the time limit for submitting an application for the retroactive recognition of permanent resident status is in itself not contrary to the Constitution, although the solution is less favorable than the proposed statutory regulation.

The regulation proposed in Subpara. 4 of the referendum issue, according to which the Veterans of the War for Slovenia Association as a proposer of the renewal of proceedings and the time limit of two years for submitting such a proposal should be determined, is contrary to Article 2 of the Constitution, as it would not be consistent with those General Administrative Procedure Act (E.g. Zakon o splošnem upravnem postopku, General Administrative Procedure Act, *Official Gazette* 1999, nr. 80, 2000, nr. 70, 2002, nr. 52, 2004, nr. 73) provisions that regulate renewal of proceedings as a "general" extraordinary legal remedy against final administrative decisions.

The proposed condition in Subpara.5 of the referendum issue, that allegedly excludes the possibility of acquiring a permanent residence permit for those persons who did not respond to the call of the Presidency of the Republic of Slovenia to leave the YPA and the bodies of Yugoslav federal authorities within the time limit determined in that call, would be clearly inconsistent with the Constitution, particularly with the principle of trust in the law as one of the legal principles of a State governed by the rule of law determined in Article 2 of the Constitution, and would violate the right to equal treatment determined in Para. 2 of Article 14 of the Constitution. However, according to the Constitutional Court, the condition proposed in the same subparagraph of the referendum issue, according to which also those persons that acted against the values that are in accordance with Para. 1 of Article 4 of UZITUL protected by the penal legislation of the Republic of Slovenia would not be inconsistent with the Constitution. Concerning that the Constitutional Court derived from the fact that Article 4 of UZITUL should be interpreted in conjunction with Article 20 of UZITUL. Besides that it also considered the rule that such activity must contain all the elements of a criminal offence to which the mentioned provision refers.

Pursuant to the regulation proposed in Subpara. 6 of the referendum issue, what is allegedly excluded is any possibility of compensation for the damage that the citizens of other Republic suffered due to their inability to claim rights related to permanent residence. The Constitutional Court established that the exclusion of the possibility to claim damages for the unlawful conduct of the State is contrary to Article 26 of the Constitution, and that the exclusion of any possibility of claiming the rights related to the recognition of permanent resident status, retroactively, is contrary to Para. 4 of Article 15 of the Constitution, which guarantees the right to obtain redress for the consequences of human rights and fundamental freedoms violations.

In Subpara.7 of the referendum issue a regulation is proposed according to which the unlawful and unconstitutional issuance of decisions on permanent residence with retroactive effects would allegedly be determined as a special criminal offense. The Constitutional Court established that the proposed regulation that represents a new incrimination that interferes with the already determined criminal offense is contrary to Para.1 of Article 28 of the Constitution. When a referendum issue refers to a future legislature's obligation to determine a certain activity as a criminal offense the guaranties provided by the principle of legality under Para. 1 of Article 28 of the Constitution must be considered already in forming the referendum issue, and not only or merely in forming the penal norm on the basis of the referendum issue voted for.

After their first proposal of a referendum issue was declared contrary to the Constitution to a large extent the minority in the National Assembly attempted another approach. In March 2004 they lodged another referendum issue into parliamentary procedure:
"Are you in favour of regulating the permanent residence status of citizens of other Republics in the manner as proposed by the Bill on the Permanent Residence of Foreigners having the Citizenship of Other State Successors to the Former SFRY in the Republic of Slovenia, Who Were on 23 December 1990 and 25 February 1992 Registered as Permanent Residents in the Republic of Slovenia?"

The very generally formed question posed certain doubts about its clarity, but the National Assembly decided that it applied to provisions regarding the attainment of permanent residence permit, its conditions and procedure and considered it a new emanation of the previous question, already declared unconstitutional. Therefore the National Assembly once again requested the Constitutional Court to review the request concerning the call of a referendum and the Court once again repeated that the unconstitutional situation in which the citizens of other Republics have found themselves couldn't be regulated in any other way than to return their permanent residence status retroactively, as the Court decided in their Decision U-I-246/02.

(E.g. C.C. (Constitutional Court), nr. U-II-3/04, 20 April 2004, *Official Gazette* 2004, nr. 44)

The Constitutional Court established that the referendum issue stated in Item 1 of the operative provisions of this decision is contrary to the Constitution, particularly with the principles of a state governed by the rule of law under Article 2 of the Constitution, which do not only oblige the legislature to respect Constitutional Court decisions, but also voters (the people) in the event in which the subject of deciding at a referendum is a statute by which the unconstitutionality established by a Constitutional Court decision is to be remedied.On the basis of Constitutional Court Decision nr. U-I-246/02, the issue of the permanent residence of erased persons can only be regulated in one manner consistent with the Constitution. Thus, the legislature can regulate the effect of declaratory decisions on permanent residence only in the manner following from the mentioned decision.

The number of complaints received and their content indicate that fulfillment of conditions for ensuring means of support still remains a problem for those spouses of Slovenian citizens who do not meet the requirements under Article 19 of the Citizenship of the Republic of Slovenia Act (E.g. Zakon o državljanstvu Republike Slovenije, Citizenship of the Republic of Slovenia Act, *Official Gazette* 2002, nr. 96). The Ombudsman already set out extensive argumentation in favour of more flexible application of the Regulation on Criteria for Determining Fulfillment of Certain Conditions for Obtaining Citizenship of the Republic of Slovenia (the Regulation) in such cases in earlier annual reports.

By the decision nr.U-I-246/02 of 3 April 2003 the Constitutional Court determined that the Act Regulating the Legal Status of Citizens of the Former Yugoslavia Living in the Republic of Slovenia (E.g. Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ, Act Regulating the Legal Status of Citizens of the Former Yugoslavia Living in the Republic of Slovenia, *Official Gazette* 1999, nr. 61, 2000, nr. 54, 2001, nr. 64 and 2003, nr. 36 (hereinafter – ZUSDDD) was not in conformity with the Constitution, because:- citizens of other republics of the former SFRY (Yugoslavia) who were erased on 26 February 1992 from the registry of permanent residents are not granted permanent residence from that day;
- it does not regulate the obtaining of permanent residence permits by those subjected to the measure of forced expulsion of an alien under Article 28 of the Aliens Act (E.g. Zakon o tujcih, Aliens Act, *Official Gazette* 1991, nr. 1 and 1997, nr. 44);
- it does not prescribe criteria for determining fulfillment of the condition of actually living in Slovenia for obtaining permanent residence permits. At the same time the Constitutional Court annulled the first and second Paragraphs of Article 2 of the ZUSDDD in those parts where they lay down a three-month deadline for submitting applications for permanent residence permits. It also ruled that the permanent residence of citizens of other republics of the former SFRY from 26 February 1992 on be determined through permanent residence permits issued on the basis of the ZUSDDD or previously on the basis of the Aliens Act (of 1991, 1999 and 2002), if from that day they were erased from the registry of permanent residents. The Ministry of International Affairs must issue them ex officio supplemental decisions determining their permanent residence from 26 February1992 on.
The Constitutional Court decision speaks only of the erasure on 26 February 1992, but undoubtedly the decision also applies for erasures of a later date (two months after issuing a

negative decision given on the basis of Article 40 of the Citizenship of the Republic of Slovenia Act (E.g. Zakon o državljanstvu Republike Slovenije, Citizenship of the Republic of Slovenia Act, *Official Gazette* 1991, nr. 1, 1991, nr. 30, 1992, nr. 38, 1992, nr. 61, 1994, nr.13, 1995, nr. 13, 1995, nr. 29, 1999, nr. 59 and 2002, nr. 96). On the basis of this decision there is a need to recognise for those who obtained citizenship later on another basis (and who therefore reside in Slovenia on the basis of a permanent residence permit) that they were permanent residents during the time from erasure up until the obtaining of citizenship.
A final settling of the position of those erased would require:- the issuing of a supplemental decision determining permanent residence in Slovenia from 26 February 1992 up until a permanent residence permit or citizenship was obtained and
- the drafting either of amendments and supplements to the ZUSDDD or a special law and:
- a new deadline for submitting applications to be determined;
- the prescribing of criteria for determining fulfillment of the condition of actually living in Slovenia, and observance of the view of the Constitutional Court that leaving Slovenia for up to one year cannot be deemed termination of actually living in Slovenia;
- regulation of the possibility of obtaining permanent residence permits for those who were subjected to the measure of forced expulsion from the country;- where necessary, the prescribing of everything else to finally settle the status of citizens of other republics of the former SFRY who remained in Slovenia as aliens. The Slovenian Government decided that the issue of the erased persons would be resolved through legislation in two parts, with a technical and a systemic law. The purpose of the technical law was to ensure a legal basis for the issuing of decisions determining permanent residence retroactively, and thereby to fulfill point 8 of the Constitutional Court decision on the issuing of supplemental decisions.
The technical law, by name the Act Executing Point 8 of the Constitutional Court Decision nr.U-I-246/02 (hereinafter ZIOdlUS246/02) was adopted by the National Assembly (hereinafter NA) on 29 October 2003, but a suspensor veto was pronounced on it by the National Council (hereinafter NC).On 25 November 2003 the NA voted out the suspensor veto with the necessary majority, and adopted the technical law, against which NA deputies lodged a request for the calling of a subsequent legislative referendum. The NA submitted a request to the Constitutional Court to decide whether rejection of the ZIOdlUS246/02, which the NA adopted on 25 November 2003, in a subsequent legislative referendum requested by 30 deputies, would give rise to unconstitutional consequences. In decision nr. U-II-3/03 of 22 December 2003 the Constitutional Court rejected the NA request. In its decision, the Constitutional Court found out that unconstitutional consequences, which are laid down as a reason for the unconstitutionality of a request for calling a subsequent legislative referendum by the Referendum and People's Initiative Act (E.g. Zakon o referendumu in ljudski iniciativi, Referendum and People's Initiative Act, *Official Gazette* 1994, nr. 15, 1995, nr. 13, 1996, nr. 34, 1996, nr. 38, 1996, nr. 43, 1996, nr. 57, 1998, nr. 82, 2000, nr. 24, 2001, nr. 59, 2003, nr. 11, 2003, nr. 48, 2003, nr. 73, 2004, nr. 83) been caused through the unobserved expiry of the deadline for execution of the Constitutional Court decision and also through non-adherence to point 8 of that same decision. And any prevarication in executing the aforesaid Constitutional Court decision signified a continuance of the unconstitutional state of affairs.

As the Constitutional Court noted, the possible rejection of the aforementioned law in a subsequent referendum would still not remove the duty of the NA to execute the Court's decision, nor would it remove the duty of the Ministry of Internal Affairs to immediately begin execution of point of the Constitutional Court decision. For this reason a potential rejection of the law in a referendum would not cause the asserted violation of human rights. It is expected that the legislators to resolve all key and open issues relating to the status of the erased persons, within the deadline laid down by the Constitutional Court. Unfortunately the process of adopting legislation that would ensure fulfillment of the Constitutional Court decision of 3 April 2003, has become very complicated, such that at this time it is not possible to predict when and how it will end. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Concerning the execution of the Constitutional Court (C.C.) decision nr. U-I-246/02 of 3 April 2003 the Ombudsman stated that the unconstitutionalities and illegalities should be abolished as soon as possible in such a way that such regulation could sustain a new review before the Constitutional Court and before the European Court for Human Rights as well. Both sides pay to the question of compensation too much attention. Currently, there are not all circumstances known concerning the state liability for damages as well as the level of compensation. The possibility of limitation of the level of compensation by law is mainly welcomed. From the Ombudsman's point of view it is more important finally to regulate a status of erased persons whom the Constitutional Court's decision denied the right to an uninterrupted permanent residence. These persons have vital interests to be bound with Slovenia that was evidently presented by their presence in Slovenia also during the period when they were officially "erased". They also plan to stay in Slovenia permanently. It would be unconstitutional, inadmissible and disadvantageous for the Slovenian reputation if in case of unregulated status the relations between them and the majority would be troubled. (The Slovenian Human Rights Ombudsman, Issues of the Erased Persons in the Ombudsman's Annual Reports, Special Report, Ljubljana, June 2004)

Chronicle of Erased Persons in 2004:

On 1 January 2004, opinions about the so-called "systemic act on erased persons" were presented in public; however this event did not bring relevant answers concerning main principles regulated by the discussed act, nor answers about suitability of mentioned Act as well as concerning implementation of the decision taken by the Constitutional Court.

On 22 January 2004, the Legislative Affairs Department of the of the National Assembly stated that the Government did not propose a new bill on the erased persons to be discussed in the parliamentary procedure in accordance with the National Assembly of the Republic of Slovenia Rules of Procedure (E.g. Poslovnik Državnega zbora Republike Slovenije, National Assembly of the Republic of Slovenia Rules of Procedure, *Official Gazette* 2002, nr. 35, 2004, nr. 60). The deficiency lied in fact that the Bill did not clearly present the financial consequences of the proposed Bill for the State budget. The government was invited to amend the Bill.

On 22 January 2004, the Legislative Affairs Department of the of the National Assembly stated that considering the Rules of Procedure of the National Assembly the Government can not replace the former text of so-called systemic act on the erased persons with a new one, because the previous one already passed the first phase of the legislative procedure.

On 30 January 2004, the Parliamentary Committee for Internal Affairs prepared the text of the systemic act on the erased persons for the second phase of the legislative procedure. The text of the Bill should be amended with some new solutions, for example, concerning limits of compensation in favor of the erased persons, possibilities for issuing permits for permanent residency and concerning selectivity in procedures for obtaining the status for the past.

On 2 February 2004, the National Assembly refused changes of Ordinance request for calling a subsequent legislative referendum about the so-called technical act on the erased persons. On the same day, the opposition filed before the National Assembly the initiative for collecting of signatures for the support of a subsequent legislative referendum.

On 5 February 2004, some political parties filed before the National Assembly a new request for calling an extraordinary session of the National Assembly. They proposed to adopt an ordinance on calling referendum and the 4 April to be determined as a date of its realization. On the same day, the President of the National Assembly presented the opinion of the Legislative Affairs Department of the National Assembly on the contents of the referendum issue. Following the opinion of the mentioned Department, the contents of the referendum

issue could have unconstitutional consequences. Therefore, the President of the Parliament proposed the constitutionality of the contents of the request to be decided by the National Assembly.

On 10 February 2004, on the extraordinary session, the National Assembly determined the 4 April as the date for realization of the referendum. Additionally, the National Assembly decided to submit the initiative for calling a preliminary legislative referendum for proposing to the Constitutional Court to be reviewed. Under the National Assembly's opinion, the referendum issue should be contrary to as many as 13 constitutional provisions.

On 15 July 2004, the National Assembly discussed the Ombudsman's Ninth Annual Report and adopted the following recommendation: "The Government and the empowered ministries, considering a delay in execution of decisions taken by the Constitutional Court on unconstitutionality of laws and by-laws, should take all appropriate measures for simultaneous resolving of such cases. When the National Assembly decides on already filed proposals as in case of erased persons, it should use all respective legal measures and procedures foreseen to assure the execution of decisions taken by the Constitutional Court."

Fight against incitement to racial, ethnic, national or religious discrimination

Legislative initiatives, national case law and practices of national authorities

Ombudsman has criticized Slovenes for being narrow-minded and intolerant when it comes to marginal groups such as battered women, drug addicts or the disabled. "Some events indicate that we care little about other people. Moreover, that the citizens of Slovenia are egotists who do not let anybody in our vicinity who could disturb our daily self-satisfied lives," the Ombudsman told the press after visiting Maribor to learn about the problems faced by the locals. The Ombudsman also noted that this was the problem of the whole Slovenia, rather than Maribor alone, and said that such behaviour was intolerable. "Instead of removing the barriers dividing people, we create new ones, we atomize the society into small isolated groups that cannot communicate among each other," the Ombudsman said and asked everybody not to erect new borders within the country at the time when the borders between countries are falling. (Slovenian Press Agency (STA), 5. 5. 2004, Human rights Ombudsman criticizes Slovenes for being “intolerant”, 27 May 2004, http://www.varuh-rs.si/cgi/teksti-eng.cgi/Show?_id=jelovecang)

The most recently adopted law of relevance to gender equality is the Implementation of the Principle of Equal Treatment Act, adopted in May 2004 (E.g. Zakon o uresničevanju načela enakega obravnavanja, Principle of Equal Treatment Act, *Official Gazette* 2004, nr. 50). International case law and concluding observations of expert committees adopted during the period under scrutiny and their follow-up). It is aimed to improve the protection in relation to discrimination based on sex and other grounds, such as race or ethnic origin, health condition, disability, language, religious or other conviction, age, sexual orientation, education and social status. The Act bans direct and indirect discrimination, harassment and victimization and determines sanctions for violations, allows positive measures if they promote the achievement of its aims or are used as a compensation for lees favourable position of persons with particular personal circumstances. It also lays down the basis for the establishment of the Council of the Government for the Implementation of the Principle of Equal Treatment Act (the respective Rule should be adopted by the Government and is in preparatory phase), which will among other tasks, provide for implementation of the provisions of the Act, monitor their implementation and initiate educational, awareness-raising, information and research activities for the promotion of equal treatment. The Act also assigns duties in relation to the consideration of informal complaints in relation to anti-discrimination rules to the Advocate of the principle of equality, a body for investigating complaints about alleged breaches of the equal treatment principle, and determines circumstances in which the

Advocate shall cede a case to the competent inspection service. (Government of the Republic of Slovenia, Office for Equal Opportunities, National report of Slovenia, July 2004)

Remedies available to the victims of discrimination

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

The homophobic statements by church leaders are also reported from Slovenia. A small proportion of people who have been attacked (which was based on their perceived sexual orientation) report the incident to the police. Additionally, it is often pointed out that victims do not feel that the police take proper action following the report of a crime. Some victims fear that they will encounter a dismissive attitude from the police. In some countries, such victims had to face a rather hostile reaction from the police; this was less the case in Slovenia. (ILGA-Europe Media Release, Sexual orientation discrimination in new member states, 30 June 2004).

Reasonable accommodation of the specific needs of certain groups, especially religious or ethnic minorities

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

The Constitution provides special rights and protections to autochthonous Italian and Hungarian minorities, including the right to use their own national symbols and have bilingual education and the right for each to be represented as a community in Parliament. The Roma minority does not have comparable special rights and protections. The Constitution provides that "the status and special rights of Roma communities living in Slovenia shall be such as are determined by statute." By year's end, the Parliament had not enacted laws to establish such rights for the Roma community; however, the Government and Roma representatives have discussed possible legislation for several years. A study on measures to combat discrimination in the country, released in May and funded by the European Community (EC) action program to combat discrimination, estimated that 40 percent of Roma in the country were autochthonous.

Ethnic Serbs, Croats, Bosnians, Kosovar Albanians, and Roma from Kosovo and Albania were considered "new" minorities; they were not protected by the special constitutional provisions for autochthonous minorities and faced some governmental and societal discrimination. In its Report on Slovenia, the CERD expressed concern that discriminatory attitudes and practices against the Roma may persist and that the distinction between "indigenous" Roma and "new" Roma may give rise to new discrimination.

Regularization of status for non-Slovenian former Yugoslav citizens remained an issue. The Ministry of Interior (hereinafter MOI) reported that of the 211,830 applications for citizenship received since independence, as of September, 194,507 were approved, 6,542 were refused, 3,825 were being processed, 3,659 were awaiting processing, and 3,297 were rejected for technical reasons such as insufficient documentation. The MOI reported that 12,991 applications for permanent residence have been received since 1999. Of these, 10,980 were approved, 303 were refused, 518 were being processed, 1,069 were stopped while in process, and 121 were rejected for technical reasons.

Approximately 2,300 persons granted "temporary refugee" status after fleeing the 1992-95 conflict in Bosnia normalized their status by applying for permanent residency during a 6-month window in 2002-2003. Some Yugoslavs residing in Slovenia at the time of independence opted not to apply for citizenship in a 6-month window in 1991-92.

Subsequently, their records were "erased" from the population registry in a move characterized by some as administrative and by others as ethnically motivated. In April, the Constitutional Court ruled unconstitutional portions of the 1999 law governing the legal status of former Yugoslav citizens, because the law does not recognize the full period in which these "erased" persons resided in the country, nor does it provide them the opportunity to apply for permanent residency. At year's end, Government efforts to resolve the Court's concerns through new legislation remained in progress, despite considerable controversy. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status, National/Racial/Ethnic Minorities, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

The Committee is concerned that children belonging to some ethnic groups in Slovenia, such as Bosniacs, Croats, Serbs, Albanians and others, do not enjoy fully some of their cultural rights. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

General social environment for the two national communities and other ethnic communities and groups is favourable in Slovenia, which may be demonstrated by the increase in the number of persons declaring themselves Germans (40.3 per cent increase) and Austrians (30.4 per cent increase) or members of the Roma community (30.4 per cent increase); the latter are often stigmatized in many local areas. Tolerance and signs of the European model of co-existence, at least with regard to the autochthonous national communities, are also demonstrated by other facts: in the ethnically mixed area in Prekmurje, the majority population is, voluntarily and without major opposition, educated in bilingual education institutions, and in the coastal area, two members of the Italian national community were elected at the last elections to the National Assembly, mostly by votes of the majority population. The two national communities in Slovenia have so far expressed no dissatisfaction or other well-founded reservations for which an individual national community would fell discriminated or would take part in the census with concern for other well-founded reasons. (Council of Europe, ACFC/SR/II (2004)008, Second Report Submitted by Slovenia Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 6 July 2004))

Supplementary mother tongue classes for the children of migrants are based on Article 8 of the Elementary School Act (Ur. l. RS, Nos. 12/96, 33/97 and 59/01 on the recommendations of the Council of Europe and the EU, and on extensive experience from supplementary Slovenian language classes in Western European countries. The system of supplementary education for the children of migrants was described in the first Report (Article 6). The following numbers of pupils attend mother tongue classes in the school year 2003-04: Macedonian: 52 pupils (in Ljubljana, Kranj, Nova Gorica and Jesenice); Serbian: 16 pupils in Maribor; Croatian: 35 pupils (in Novo Mesto, Ljubljana, Maribor and Radovljica). (Council of Europe, ACFC/SR/II (2004)008, Second Report Submitted by Slovenia Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 6 July 2004))

Legislative initiatives, national case law and practices of national authorities

No protection is provided for the collective rights of ethnic communities that are not specifically named in the Constitution. There are especially the members of nations and ethnic groups from the former Yugoslavia, who became *de facto* a minority in Slovenia after independence, and who accounts for the largest proportion of the country's inhabitants who have not declared themselves to be Slovenian. Additionally, it is an unclear concept of being autochthonous, and it is the overly narrow definition of competence for the Slovenian

Government Nationalities Office, that on the basis of its founding acts deals only with the issues of ethnic groups named in the Constitution. Probably, sooner or later a debate will have to be opened up in Slovenia on the constitutional provisions regarding the status and rights of ethnic minorities. This debate is urgently needed. The first step could be taken by the Slovenian Government, by commissioning expert institutions with the relevant capacity to make a special analysis of the status of ethnic minorities that are currently not specifically mentioned in the Constitution. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

The National Assembly adopted the Act on Changes and Amendments of the Consumer Protection Act (E.g. Zakon o spremembah in dopolnitvah Zakona o varstvu potrošnikov, Act on Changes and Amendments of the Consumer Protection Act, *Official Gazette* 2004, nr. 51) that imposed an obligation to companies on territories with an autochthonous resided Italian and Hungarian National Community, to operate also in a language of the respective national community in addition to the obligation to use the Slovenian language as an official language. Some companies dispute such regulation as unconstitutional and filed the respective complaint for its constitutional review by the Constitutional Court.

Protection of Gypsies / Roms

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

The NGO European Roma Rights Center (ERRC) reported that Roma frequently lived in settlements apart from other communities that were characterized by lack of basic utilities such as electricity, running water, sanitation, and access to transportation. The ERRC also reported that some local authorities developed segregated substandard housing facilities to which Roma communities were forcibly relocated. The ERRC reported that Roma children frequently attended segregated classes or schools and that, in some instances, Roma children were segregated in schools for children with mental disabilities. In its June 2 report, the CERD expressed concern over the practice of educating some Roma children at vocational centers for adults and others in special classes; the Committee encouraged the Government to promote the integration of Roma children into mainstream schools. The May report funded by the EC action program to combat discrimination noted that the enrollment of Roma children to primary schools for children with special needs was ten times higher than the average for the country, reportedly because of their inadequate knowledge of the Slovenian language. The Government attempted to expand education of Roma children both through enrichment programs and their inclusion in public kindergartens. Roma also reported discrimination in employment, which in turn complicated their housing situation, and they were subject disproportionally to poverty and unemployment. The May report funded by the EC action program to combat discrimination noted that the unemployment rate among the Roma was 87 percent. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status, National/Racial/Ethnic Minorities, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

The Committee recommends the State party to intensify its efforts to combat negative stereotypes of and discrimination against Roma and children belonging to other minorities in the State party. Furthermore, the Committee recommends the State to improve the standard of living of Roma children and to ensure that all these children are integrated into mainstream education, so that special assistance and support for Roma children be provided at regular classes. It also recommends the State party to stop differentiating autochthonous and non-autochthonous Roma. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

In the 2003/2004 school year the ministry granted 512 teaching hours to schools for work in small groups. Schools state that this type of activities is necessary for successful work with Roma pupils. Within the framework of the Competitiveness of Slovenia 2001-2006 programme; a three-year research and development project was selected and financed pursuant to a call for applications. The objective of the project is to develop models of education and training of Roma, with the ultimate goal of increasing their regular employment. A programme entitled the Ensuring of Equal Opportunities for the Education of Roma Children and Their Families was selected and financed within the Competitiveness of Slovenia 2001-2006 programme, pursuant to a call for applications. The Ministry allocated SIT 6 million for this programme. The Ministry has also co-financed the research and development project entitled the Ensuring of Equal Opportunities for the Education of Roma Children and Their Families carried out by the Educational Research Institute (duration 2003-2005). The project focuses on the integration of Roma children in schools, increase in school efficiency adequate training of experts and work with parents.

In order to provide Roma with equal access to employment, the Ministry of Labour, Family and Social Affairs co-financed the project titled "Roma in the processes of European integration / the situation in Slovenia, Austria and Croatia: the Development of Models for Education and Training of Roma". The project is being prepared by the Institute for Ethnic Studies and is expected to be concluded in 2004. Its objectives and purposes are to implement the Equal Employment Opportunities for Roma and to prepare proposals for the most appropriate models for the development of education and vocational training of Roma in Slovenia. Te project will be carried out within the Stability Pact for South-Eastern Europe as part of a broader international project – Roma in the European Integration processes. The three-year project has been designed to give each year concrete proposals for experimental implementation of the selected cases for education, vocational training and employment of Roma.

Article 101(a) was added to the Local Self-Government Act in Article 14 of the Act on Changes and Amendments of the Local Self-Government Act (E.g. Zakon o spremembah in dopolnitvah Zakona o lokalni samoupravi, Act on Changes and Amendments of the Local Self-Government Act, *Official Gazette* 2002, nr. 51), which should eliminate the non-constitutionality, stipulating: "The municipalities of Beltinci, Cankova, Črenšovci, Črnomelj, Dobrovnik, Grosuplje, Kočevje, Krško, Kuzma, Lendava, Metlika, Murska Sobota, Novo Mesto, Puconci, Rogašovci, Semič, Šentjernej, Tišina, Trebnje and Turnišče shall be obliged to ensure the rights of the Roma community living in their respective municipalities to one representative in the municipal council before the ordinary local elections in 2002." To date, the Municipality of Grosuplje remains the only one not respecting the decisions of the Constitutional Court of the Republic of Slovenia. Currently, the Roma community has special counselors in 19 municipal councils. Through the amendment of the Law on Local Self-Government, that is again undergoing amendments, the issue of Roma counselors is also expected to be settled in the municipality of Grosuplje.

In drafting the proposals for settling the status of the Roma community in Slovenia at the local level, good guiding examples were provided by Article 4 of the Council of Europe's Framework Convention for the Protection of National Minorities and the Resolution of the Standing Conference of Local and Regional Authorities of the Council of Europe (nr. 294, 1993) for a Europe of tolerance, especially in facilitating the integration of the Roma into local communities. (Council of Europe, ACFC/SR/II (2004) 008, Second Report Submitted by Slovenia Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 6 July 2004)).

The working group for preparing a strategy for integrating Roma into the education system, on which we have reported in the comments of the Government of the Republic of Slovenia

on the opinion of the Advisory committee, has been drafting a document titled "The Strategy of Education of the Roma in the Republic of Slovenia". The document will contain an analysis of the situation to date and the Ministry's measures, a review of key unresolved issues and proposals for their settlement (e.g. integration of Roma children in pre-school institutions, abolishing prejudices, permanent professional teacher training etc.). The document will also cover the education of the Roma form pre-school to adult education. It will be considered and adopted by the Council of Experts for General Education as the highest professional authority, making decisions on technical issues in individual education areas. It is expected that the document will be finalized and adopted this year; The Ministry will then draft action plans for individual spheres. (Council of Europe, ACFC/SR/II (2004)008, Second Report Submitted by Slovenia Pursuant to Article 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities (Received on 6 July 2004))

Legislative initiatives, national case law and practices of national authorities

There is a need for adoption of a special Roma law that would regulate comprehensively the status and special rights of this community. The partial regulation of Roma issues is not appropriate, and does not address these issues to an adequate extent. The Ombudsman's opinion has been heeded by the National Assembly that upon examination of the Ombudsman's opinion recommended that the Government attend to the comprehensive legal regulation of the status of the Roma community in Slovenia.

Meanwhile it also adopted a decision on amendments and supplements to the regulatory plan for the aforementioned Roma settlement, on the basis of which it should be starting actual physical works in that settlement. It also had another two regulatory plans for the other two Roma settlements lined up for adoption and fulfillment. The project council set up on the basis of the April agreement to resolve Roma issues agreed on the formulation of a strategy to deal with this issue. A draft in the area of social work and infrastructural physical work was expected to be ready for debate by the end of March 2004. In dealing with this case, the Ombudsman was able to conclude that Novo Mesto Municipal Council has been tackling there solving of Roma issues within its territory more seriously. The Ombudsman must conclude otherwise, however, for the municipality of Grosuplje, at least in terms of the right of the Roma community to have a representative in the municipal council. Despite the decisions of the Constitutional Court, Grosuplje Municipal Council has still not amended its statutes and has no elected Roma counselor. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

The Charter of Beltinci Municipality (E.g. Statut Občine Beltinci, Charter of Beltinci Municipality, *Official Gazette* 2000, nr. 46, 2000, nr. 118 and 2001, nr. 67), the Charter of Grosuplje Municipality (E.g. Statut Občine Grosuplje, Charter of Grosuplje Municipality, *Official Gazette* 1999, nr. 42 and 2002, nr. 36), the Charter of Krško Municipality (E.g. Statut Občine Krško, Charter of Krško Municipality, *Official Gazette* 2000, nr. 98), the Charter of Semič Municipality (E.g. Statut Občine Semič, Charter of Semič Municipality, *Official Gazette* 1999, nr. 37, 2001, nr. 67 and 2002, nr. 23), the Charter of Šentjernej Municipality (E.g. Statut Občine Šentjernej, Charter of Šentjernej Municipality, *Official Gazette* 2001, nr. 4), and the Charter of Trebnje Municipality (E.g. Statut Občine Trebnje, Charter of Trebnje Municipality, *Official Gazette* 1995, nr. 50 and 1998, 80) are inconsistent with the Local Self-Government Act (E.g. Zakon o lokalni samoupravi, Local Self-Government Act, *Official Gazette* 1993, nr. 72, 1994, nr. 57, 1995, nr. 14, 1995, nr. 63, 1997, nr. 26, 1997, nr. 70, 1998, nr. 10, 1998, nr. 74, 2000, nr. 70 and 2002, nr. 51), as they do not determine that also Roma community representatives are members of municipal councils. The municipalities are obliged to remedy the illegality established in the previous item of the disposition in a time limit of forty-five days from the first session of the newly elected municipal councils. The municipal councils of the municipalities determined in Item 1 of the disposition must call the election of members of municipal councils, the representatives of the Roma community, if for

the 2002 regular elections they did not ensure the election of the representatives determined by the charters, pursuant to the provisions of the Local Self-Government Act (E.g. Zakon o lokalni samoupravi, Local Self-Government Act, *Official Gazette* 1993, nr. 72, 1994, nr. 57, 1995, nr. 14, 1995, nr. 63, 1997, nr. 26, 1997, nr. 70, 1998, nr. 10, 1998, nr. 74, 2000, nr. 70 and 2002, nr. 51) that apply to premature elections, in a time limit of thirty days after the promulgation of the charters in the Official Gazette of the Republic of Slovenia. (E.g. C.C. (Constitutional Court), nr. U-I-345/02, 14 November 2002, *Official Gazette* 2002, nr.105). Response of affected municipalities: Changes of the Charter of Krško Municipality (E.g. Spremembe Statuta Občine Krško, Changes of the Charter of Krško Municipality, *Official Gazette* 2003, nr. 5) that determined one post in the Municipal Council for a member of the Roma Community. Changes and Amendments of the Charter of Belitinci Municipality (E.g. Spremembe in dopolnitve Statuta Občine Beltinci, Changes and Amendments of the Charter of Belitinci Municipality, *Official Gazette* 2003, nr. 11) that determined one post in the Municipal Council for a member of the Roma Community. The Charter of Semič Municipality (E.g. Statut Občine Semič, Charter of Semič Municipality, *Official Gazette* 2003, nr. 24) that determines one post in the Municipal Council for a member of the Roma Community. The Changes and Amendments of the Charter of Šentjernej Municipality (E.g. Spremembe in dopolnitve Statuta Občine Šentjernej, Changes and Amendments of the Charter of Šentjernej Municipality, *Official Gazette of Šentjernej Municipality* 2003, nr. 2) that determined one post in the Municipal Council for one member of the Roma Communityi. The Šentjernej Municipality also realized the subsequent elections. The Trebnje Municipality already has a Roma representative in the Municipal Council, the respective changes of the Municipal Charter is under preparation. The Grosuplje Municipality did not response.

Article 22. Cultural, religious and linguistic diversity

Protection of religious minorities

Legislative initiatives, national case law and practices of national authorities

The majority of complaints from religious communities and their members related to the work of the Slovenian Government's Religious Communities Office (hereinafter UVRSVSS). The Office has been accused of unequal treatment in allocating financial support to religious communities and funds for social, health and pension insurance for clerics, the non-resolving of their open questions with the State and the registration of their operations. The Ombudsman has determined that the majority of complaints were justified and that the UVRSVS is not performing or performing badly certain tasks entrusted to it by law and by its founding acts. And the responses from the UVRSVS to the Ombudsman’s requests for clarification and specific answers were as a rule incomplete and evasive.

The Ombudsman had already observed the problems of the Islamic community in Slovenia regarding their intended construction of an Islamic cultural centre in Ljubljana. At that time the procedure was held up in the stage of drafting replies to the remarks offered during the public unveiling of the spatial planning document for determining the location of the Islamic cultural centre. In the opinion of the former mayor, the issue also went beyond the bounds of the local community's jurisdiction. The Ombudsman took the view that this particular case involved discrimination, evident in the hindrances to the progress of the procedure. The newly elected mayor kept her promise, and irrespective of her predecessor's opinion, continued the procedure. At the end of 2003, the Ljubljana Municipal Council confirmed the amendment of the spatial planning document for the zone where the Islamic religious and cultural centre is expected to stand. It is disturbing, however, to note the intolerant response of certain political circles in resolving this issue and in the events accompanying the progress of this procedure. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Protection of linguistic minorities

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

The Constitution provides the "autochthonous" (indigenous) Italian and Hungarian minorities the right, as a community, to have at least one representative in the Parliament. However, the Constitution and law do not provide any other minority group, autochthonous or otherwise, the right to be represented as a community in Parliament. The U.N. Committee on the Elimination of Racial Discrimination (CERD) issued a report recommending that the Government consider taking further measures to ensure that all groups of minorities are represented in Parliament.

Twenty distinct Roma communities, each designated autochthonous at the local level, are entitled to a seat on their local municipal councils. At year's end, all but one municipality (Grosuplje) was in compliance with the law in this regard. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Article 23. Equality between man and women

Gender discrimination in work and employment

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

In rural areas, women, even those employed outside the home, bore a disproportionate share of household work and family care, because of a generally conservative social tradition. However, women frequently were active in business and in government executive departments. Although both sexes had the same average period of unemployment, women frequently held lower paying jobs. On average, women's earnings were 89 percent of those of men. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status, Women, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Positive actions seeking to promote the professional integration of women

Legislative initiatives, national case law and practices of national authorities

On 23 September 2004, Slovenia ratified the Optional Ptotocol to the Convention on the Elimination of All Forms of Discrimination on 6 July 1992 (http://www.stopvaw.org/5=ct20048.html) (E.g. Zakon o ratifikaciji Opcijskega protokola h Konvenciji o odpravi vseh oblik diskriminacije žensk, Act Ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, *Official Gazette* 2004, nr. 15, MP)

The last normative change aimed to tackle the under-representation of women in elected representative bodies was the change of Article 43 on »Right to vote« of the Constitution of the Republic of Slovenia (E.g. Ustavni zakon o spremembi 43. člena Ustave Republike Slovenije, Constitutional Act Amending Article 43 of the Constitution of the Republic of Slovenia, *Official Gazette* 2004, nr. 69). The Slovenian parliament proclaimed this change

(together with the two mentioned under Women and the Economy) on 23 June 2004. By it a new paragraph was added to the Article 43, that confers on the law the responsibility of defining measures for the promotion of equal opportunities for women and men in standing as candidates in elections to state bodies and bodies of local communities. This novelty represents a continuation of introducing measures into electoral legislation, would facilitate a more balanced participation of women in political decision-making. (Government of the Republic of Slovenia, Office for Equal Opportunities, National Report of Slovenia, July 2004)

To tackle the persistent under-representation of women in political decision-making the Constitution of the Republic of Slovenia (E.g. Ustavni zakon o spremembi 43. člena Ustave Republike Slovenije, Constitutional Act Amending Article 43 of the Constitution of the Republic of Slovenia, *Official Gazette* 2004, nr. 69; Zakon o volitvah poslancev iz republike Slovenije v Evropski Parlament, Election of Slovenian members to the European Parliament Act, *Official Gazette* 2004, nr. 22) were changed in 2004. The constitutional reform provided a constitutional basis for legislator to take positive measures, while the Act made it compulsory to have a minimum of 40 % of each sex as candidates for European elections. The respect of the general principle of gender balanced participation and the pro-active role of political parties in promoting equal representation of women and men in decision-making are defined in the Act on Equal Opportunities for Women and Men. (Government of the Republic of Slovenia, Office for Equal Opportunities, National Report of Slovenia, July 2004).

The amendment to the article on candidate list introduced the 40% representation of both sexes on a candidate list and an obligation that et least one candidate of both sexes must be placed in the upper half of the list (in Slovenia a list may have seven candidates). Lists that are not in accordance with this regulation are not valid and they are rejected by the National electoral commission. The enactment of this so called 40% quota rule was backed up by the forthcoming adoption of an amendment to the Constitution that would oblige Parliament to pass electoral legislation providing for positive measures and by a growing sense that the image of Slovenian democracy and its success might be endangered in Europe if nothing was done to improve the representation of women in European Parliament. And in fact, this rule placed Slovenia among EU member states with the highest percentage of women MPs in newely elected European Parliament (3 out of 7 members or 42 % are women). (Government of the Republic of Slovenia, Office for Equal Opportunities, National Report of Slovenia, July 2004)

The Office for Equal opportunities took over all the tasks of the previous office and in addition undertook some new tasks, that were added to its mandate on the basis of the government decision under which its working areas and its mandate are defined (2001). Its role has been further strengthened by the entering into force of the two equality acts, the Act on Equal Opportunities for Women and Men (2002) and the Act implementing the principle of equal treatment (2004). Four local government communities have also appointed a special coordinator for equal opportunities for women and men and other local governments are considering to follow these practice. (Government of the Republic of Slovenia, Office for Equal Opportunities, National Report of Slovenia, July 2004)

The most recently adopted law of relevance to gender equality is the Implementation of the Principle of Equal Treatment Act, adopted in May 2004 (E.g. Zakon o uresničevanju načela enakega obravnavanja, Implementation of the Principle of Equal Treatment Act, *Official Gazette* 2004, nr. 50). It is aimed to improve the protection in relation to discrimination based on sex and other grounds, such as race or ethnic origin, health condition, disability, language, religious or other conviction, age, sexual orientation, education and social status. The Act bans direct and indirect discrimination, harassment and victimization and determines sanctions for violations, allows positive measures if they promote the achievement of its aims or are used as a compensation for lees favourable position of persons with particular personal circumstances. It also lays down the basis for the establishment of the Council of the

Government for the Implementation of the Principle of Equal Treatment (the respective Rule should be adopted by the Government and is in preparatory phase), which will among other tasks, provide for implementation of the provisions of the Act, monitor their implementation and initiate educational, awareness-raising, information and research activities for the promotion of equal treatment. The Act also assigns duties in relation to the consideration of informal complaints in relation to anti-discrimination rules to the Advocate of the principle of equality, a body for investigating complaints about alleged breaches of the equal treatment principle, and determines circumstances in which the Advocate shall cede a case to the competent inspection service. (Government of the Republic of Slovenia, Office for Equal Opportunities, National Report of Slovenia, July 2004)

Zakon o enakih možnostih moških in žensk (E.g. Zakon o enakih možnostih žensk in moških, Equal Opportunities for Women and Men Act, *Official Gazette* 2002, nr. 59, hereinafter ZEMŽM) entered into force on 20 July 2002. According to the data available to us, ministries have already sent to the Equal Opportunities Office a list of officials performing the tasks of coordinator, ensuring implementation of tasks necessary for consistent adherence to equal opportunities for women and men (Article 13). The Office has already organized a meeting for coordinators, and called upon non-governmental organizations to draw up their proposals of criteria that the Office should observe in co-financing projects. Via a working group the Office is drafting guidelines for an Anti-discrimination Act, which the European Council requires of Slovenia in connection with implementation of directives 2000/43/EC and 2000/78/EC, and which would ensure non-discrimination on the basis of any personal circumstance. The general impression regarding implementation of the ZEMŽM is that a great deal will still have to be done before it is truly applied in practice. Ensuring equal opportunities for women and men means that equal representation of both genders is needed under equal conditions. The stereotypical arguments, such as that women are not prepared to become involved in politics or to take responsibility for decision-making in other senior management positions, do not stand up to scrutiny. Only a balanced representation of both genders in the decision-making processes on the important issues in the life of our society will translate into the possibility of optimal and of course compromise solutions that are acceptable for both genders. A statistical look at the (in) equality of women's representation in decision-making processes confirms the suspicion that the Ombudsman has only just begun. The circumstance whereby in the Slovenian society almost three years ago the need arose to set up the Coalition for Establishing Balanced Representation of Women and Men in Public Life, also speaks for itself. The Coalition has not yet concluded its mission, since it is only able with difficulty to pave the way towards a different kind of thinking in the views of those who make decisions. Nevertheless, it can boast success in getting the National Assembly to adopt a decision in favour of amending Article 44 of the Slovenian Constitution in such a way that would ensure greater scope for equal representation of both genders in decision-making processes and in politics. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

The Equal Opportunities for Women and Men Act (E.g. Zakon o enakih možnostih žensk in moških, the Equal Opportunities for Women and Men Act, *Official Gazette* 2002, nr. 59, hereinafter: ZEMŽM) intruced the post of Ombudsman for Equal Opportunities for Women and Men. In accordance with Article 39 of the ZEMŽM the Ombudsman should start to act at least one year after enforcement of the Act (in July 2003), however, due to concrete circumstances this was not possible. The main task of the Ombudsman shall be to deal with cases of supposed unequal treatment of genders and issuing of the respective opinions. Concerning these issues, Article 29 of the ZEMŽM determines that the Ombudsman shall every year (but at least until the end of March) prepare a report on its activities which shall be proposed by the Equal Opportunities Office in adoption to the Government. The Ombudsman acts at the Equal Opportunities Office. The respective procedural provisions are in Articles 20 to 29 of the ZEMŽM. The procedure is informal and free of charge. A written petition can be filed by individuals, NGOs, trade unions and other organizations of civil society as well as

other legal entities. The Ombudsman can discuss also anonymous petitions when they contain enough data allowing procedure. Any petition shall be filed as soon as possible and/or at least one year after a case was occurred, however, the Ombudsman can deal with such case also after this term was expired when the Ombudsman finds out that the case is so important or serious that the procedure can be reasonable considering the aim of the ZEMŽM. The Ombudsman does not accept petitions that do not show an unequal treatment of gender under the ZEMŽM. In principle, the procedure shall be written; however, the Ombudsman can hear the both parties when it finds out that such hearing can be useful for clarification of the respective case.
The Ombudsman shall stop the procedure upon the request of the petitioner in case of absence of petitioner's interest or in case of absence of data that are necessary for the procedure. The result of the procedure is a written Ombudsman's opinion that can contain also respective appeals how to remove the anomalies. The Ombudsman can invite the affected party to notify the Ombudsman about measure taken in favor of removal of anomalies. (Poročilo o delu zagovornice enakih možnosti žensk in moških za leto 2003, http://www.uem-rs.si/slo/zagovornica_porocilo2003.doc)

Article 24. The rights of the child

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

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

The Committee recommends, in the light of Article 12 of the Convention, that measures be taken to ensure that children are provided the opportunity to be heard not only in civil law procedures (e.g. related to custody and visitation rights) but in all other legal procedures and decision making processes, including at Social Work Centres. Furthermore, the Committee recommends that the right to be heard should be extended also to children below the age of 10 who are able to understand the significance of the proceeding. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends that the State party ensures the effective implementation of the Rules of Police Authorization under the Police Act and encourages the State party to ensure that regular special training is provided for police officers on how to deal with children and minors. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to strengthen the measures for addressing the problem of drug abuse among children. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends that the State party ensures the effective implementation of the Rules of Police Authorization under the Police Act and encourages the State party to ensure that regular special training is provided for police officers on how to deal with children and minors. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Legislative initiatives, national case law and practices of national authorities

The complaints associated with violence against children drew attention to the in appropriate action of bodies for discovering criminal acts, which place the interests of the investigation above the interests of the child, which for the Ombudsman is unacceptable and impermissible. The Ombudsman believes that the rights of children who are victims of crimes should be urgently protected through the introduction of a system of "advocates" for children and adolescents, in which a trusted adult would continuously accompany the child. Children and adolescents who are victims of crimes should first and foremost be treated as children.
Children and adolescents have the right to their own opinion and to express this opinion in all matters that affect them - for example in deciding on their return to their original family or on accommodation with a foster family, a residential group and so forth.
Children must be familiarized with all information that concerns their specific position, their rights, available forms of help, the duties of others and possible solutions. Explanations must be adapted to their age and emotional maturity - everyone must be familiarized with everything in a way that they are able to understand given their age and maturity.
The privacy and identity of victims who are minors must be protected. In no event should the public be given information on the basis of which it would be possible to recognize a child or his family.
As soon as victims are identified, they should be allocated a trusted adult person to accompany them throughout the entire procedure - until the best solution is found in line with the child's interests and needs (hereinafter also "escort", either male or female). "Advocates" (escorts) could be provided by the social services or non-government organizations under previously determined professional criteria for the selection of such persons. Providing a trusted adult person should be permanent, and the victim should be accompanied throughout by one and the same trusted adult. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Other relevant developments

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

The Constitution stipulates that children "enjoy human rights and fundamental freedoms consistent with their age and level of maturity," and the Government is committed to protecting children's rights and welfare. The Government provided compulsory, free, and universal primary school education for children through grade 9 (ages 14 and 15). Ministry of Education statistics showed an attendance rate of nearly 100 percent of school-aged children. The Government provided universal health care for all citizens, including children. During the last period, police investigated 198 counts of criminal sexual attacks on minors; however, there was no societal pattern of abuse of children. The law provides special protection for children from exploitation and mistreatment. Social workers visited schools regularly to monitor any incidents of mistreatment or abuse of children. Trafficking in girls for the purpose of sexual exploitation was a problem. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 5 Discrimination Based on Race, Sex, Disability, Language, or Social Status, Children, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

The Committee recommends the State party to establish either a deputy ombudsperson, a section within the Human Rights Ombudsman's Office, or a separate children's ombudsperson, supported with sufficient human and financial resources, for an independent and effective monitoring of the implementation of children's right in accordance with the Committee's General Comment nr. 2 on National Human Rights Institutions. Furthermore, the Committee recommends the State party to ensure that information on the possibility of filing

complaints with the Human Rights Ombudsman is widely disseminated, also in a child-friendly manner.(Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to establish effective mechanism for coordinating the implementation of the Convention, e.g. by providing the Ministry of labour, the Family and Social Affairs with a clear mandate in this regard and with adequate, resources for its coordinating role. The State party is encouraged to seek technical assistance from, among others, UNICEF in this regard. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to ensure that the National Plan of Action for Children covers all areas of the Convention and takes into account the outcome document of the 2002 UNGA Special Session on children, "A World Fit for Children". The State party should allocate sufficient resources towards its realization and the effective functioning of the Council of Children and other bodies that will be charged with its promotion and monitoring.(Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to develop a systematic and detailed allocation of resources in order to provide a clear picture of trends in budget allocations and to ensure that resources are made available, in accordance with Article 4 of the Convention, to the maximum extent of available resources to meet the needs of all children and correct poverty-related disparities. The Committee recommends the State party to continue and to strengthen its efforts to develop a system for a comprehensive collection and evaluation of the comparative and disaggregated data on the Convention, including by improving the integration of relevant databases and archives. The data should cover all children below the age of 18 years and be disaggregated by those groups of children who are in need of special protection. The State party should also develop indicators to effectively monitor and evaluate progress achieved in the implementation of the Convention and assess the impact of policies that effect children. The Committee encourages the State party to: (a) strengthen, expand, and make on-going its programme for the dissemination of information on the Convention and its implementation among children and parents, civil society and all sectors and levels of government; and (b) develop systematic and ongoing training programmes on human rights, including children's rights, for all persons working for and with children (e.g. judges, lawyers, law enforcement officials, civil servants, local governments officials, teachers, health personnel and especially children themselves). The Committee encourages the State party to strengthen its cooperation with NGOs and to involve NGOS and other sectors of civil society working with and for children more systematically throughout all stages of the implementation of the Convention. The Committee also recommends the State party to support NGOs and to financially assist particularly those that work as service providers and supplement the efforts of the State party yet maintaining full respect for their autonomy. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee encourages the State party to expedite the enactment of changes to the Marriage and family Relations Act and take all measures to protect the right of children to maintain contacts with both parents. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention,

Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to take all necessary steps to provide ongoing training to the staff of Social Work Centres and to provide for efficient administrative, legal and practical measures in order to ensure quality and efficiency of all activities of these institutions. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee urges the State party to take further measures to ensure a more effective implementation of legislation on the payment of maintenance, including by ensuring more expeditious court proceedings and strict enforcement of administrative and court orders. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to ensure that the legislation on foster care and adoption is in conformity with the Convention and the 1993 Hague Convention. The law on adoption should guarantee the right of the child to know his/her origin and access to information about background. Furthermore, the Committee recommends the State party to: (a) establish a national registry system of children to be adopted and of families qualified to adopt, which takes full account of the best interest of the child; (b) put in place monitoring mechanisms of the situation of fostered and adopted children; and (c) ensure that procedures of fostering and adoption are handled by a qualified and efficient multidisciplinary team. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee recommends the State party to give priority attention to identifying and addressing the causes of the poor health situation of some children, particularly Roma Children, and the high maternal mortality rate. It also recommends the State party to take further measures in order to prevent adolescents from abuse of tobacco and/or alcohol and/or to provide for their treatment. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

The Committee encourages the State party to introduce teaching on human rights and the rights of the child in particular, in the curricula for teacher's training at university level and to strengthen efforts to promote within the school environment the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic and religious groups. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Legislative initiatives, national case law and practices of national authorities

Human Rights Ombudsman has pointed to lengthy custody cases in a traditional press conference ahead of Child Week. Saying that children suffer as a result of the slow functioning of courts in such cases, the Ombudsman criticized the relevant institutions for being "scared to act" According to the Ombudsman, children should have the right to give their opinion in custody cases, that would have precedence over everything else. Moreover, the Ombudsman called on the relevant institutions to make sure that custody cases are resolved quickly. According to the Ombudsman's assistant, the majority of complaints

received by the Ombudsman's office involving children concern the child's relationship with the parents. Often we get cases where parents become overly possessive of their child, he said. What is more, children are often used as instruments in disputes between parents. The Ombudsman meanwhile, added that the courts and child welfare institutions must strive to resolve cases involving children faster. (Hanžek Points to Lengthy Custody Cases Ahead of Child Week: Ljubljana, 28 September (STA))

With the creation of a special group within the expert service of the Ombudsman the efforts were joined to improve the situation in the area of children's rights, since we wished to cut through the years of debate about what to do and where to begin. This area is specific and requires a special method of work, that is reflected in the approaches, aims and tasks of the group that is dealing with this issue: monitoring and implementing the Convention on the Rights of the Child; encouraging a positive attitude to children on the state and local level, in politics and in the civil society; proposing positive changes to legislation, politics and practice; working to improve cooperation between state bodies on the national and local level and non-governmental organizations; developing direct links with children and youth for them to express their opinions and views and encouraging the authorities and public to respect their opinions; collecting and publishing data on the position of children; promoting advocacy; supporting and encouraging research.

In seeking the possibility of getting through to children and at the same time to teachers and parents, and familiarizing them with these rights in an appropriate manner – not through instruction, but via empirical learning and active participation in ensuring their rights - last year the Ombudsman linked up with the Slovenian Peace School, a non-governmental organization (project coordinator) that has already been active in this field. Given that schools are the one place where all children, and indirectly also parents, are included, we aimed our activities at cooperation with schools. Later this cooperation was joined by all the major non-governmental and government organizations that have thus far been active in the area of children's rights. In this way we carried out together the project My Rights, which has become a national project for the pro-motion and teaching of children's rights. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Complaints involving violence among peers were numerically slightly higher than in the previous year. Violent events at school often come to light and always arouse wonder, anger and questions about the responsibility of staff that are unable in good time to identify violence, to notice it, prevent it and, when it happens, to act appropriately. In such moments what schools need is not censure and public condemnation but advice, since every day they are increasingly the scenes of various oppositions that arise between all participants in the educational process. Here it would be irresponsible to impose the burden of resolving conflicts and eliminating opposition simply on each individual school as an institution of the system in which everyone entering it should be appropriately equipped with knowledge of the rights, duties and responsibilities, where they should above all be significantly more tolerant and willing to cooperate. Coordinating values is an essential process in every school, and this can only be affected in a peaceful way, with the sufficient respect, confidence and personal culture of all participants. For this reason the rules and procedures valid in schools must be clearly formulated, unambiguous and written down. Violent events are shocking, and are always stressful for pupils, parents and school staff. But they are also an opportunity to consider focusing more sharply on the issue of responsibility of individual professional staff, who are also at the school to act in such cases in a considered, unequivocal, professional and effective way, and thereby to contribute to the more equitable division of responsibility on several levels and not just to leave it to the school management. Since certain situations at school cannot be prevented, when they do arise it is useful to have a previously prepared "crisis plan", that incorporates essential action and sets out a sequence of procedures, those in charge and their responsibilities. Staff should be as well prepared and organized as possible for this, so that they will cause the least errors and harm. The substantive basis for this lies in

the provisions of the Rules on Rights and Duties of Pupils at Primary School (E.g. Pravilnik o pravicah in dolžnostih učencev v osnovni šoli, Rules on Rights and Duties of Pupils at Primary School, *Official Gazette* 2004, nr. 75), which prescribes the procedures upon the determination of breaches of school rules, the manner and process of ordering reformatory measures and those in charge of procedures. In this respect there is a need to supplement the schoolhouse rules and to familiarize pupils, parents and school staff with this. The Ombudsman supports an increase in the supervision of pupils by professional staff by raising the number of duty teachers (which should take precedence over external security staff!) and by continuing the professional training of employees to make early identification of the signs of violence and in this way to ensure greater prospects for preventing it and for correct action in violent events. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

In Slovenia there are many laws respectively regulating children rights, determined by the United Nations Convention on the Rights of the Child (E.g. Zakon o ratifikaciji Konvencije Združenih narodov o otrokovih pravicah, Act Ratifying the United Nations Convention on the Rights of the Child, *Official Gazette SFRY*, MP, 1990, nr. 15, *Official Gazette RS*, 1992, nr. 9). Unfortunately, some of the have not been implemented efficiently. The executive and judicial power shall take measures for more efficient implementation of legislation that guarantee permanent contacts between children and both parents, guarantee the respective financial support (also by regularly paid alimonies); it should be also guaranteed children's right to be "hear" not only in the civil procedure, but also in other procedures and decision-making processes. It is also necessary to facilitate the implementation of the Placement of Children with Special Needs Act (E.g. Zakon o usmerjanju otrok s posebnimi potrebami, Placement of Children with Special Needs Act, *Official Gazette* 2000, nr. 54) and to abolish the discrimination of the Roma childer and childer, members of other national communities. It is necessary to support the adoption of legislation on prevention of abuse and domestic violence as well as the respective measures with the aim of children protection. Beside legal measures, it is necessary to introduce other possible programs, including promrams of NGOs.

The appointment of special Ombudsman-Deputy for Social Security and Children Rights, however, it would be useful to introduce a special independent Childer Rights Ombudsman that could give childer an opportunity to file petitions in case of violation their rights..

The Government shall create a basis for efficient activities of Council for Children Issues (E.g. Svet za otroke, Council for Children Issues) that was founded at the Ministry of Labor, Family and Social Affairs. This institution shall become an inter-ministerial body for the children's rights protection with guaranteed powers and respective funds, necessary for its coordinating role and activities. The Council for Children Issues shall take responsibility for coordination of measure taken in favor of implementation of the Convention on the Rights of the Child on the governmental level.

The Government shall create a national action program for children in the National Assembly; it is necessary to adopt as soon as possible also »Nacionalni razvojni program za izboljšanje položaja otrok v Republiki Sloveniji v obdobju 2003 -2013 National Development Program for Improvement of Children Position in the Republic of Slovenia for the period 2003-2013«.

Article 3 of the Convention on the Rights of Children shall be strictly implemented; under this Article children rights shall be the main goal all the activities in connection with children, in case of their exercising by governmental bodies, private institutions for social security, courts, administrative bodies and nother organizations.

Under the official opinion in Slovenia, principles and rights of children are not limited tonly to the Slovenian citizens; therefore the state and its government shall participate more

intensively in international programs of humanitarian help and development of international solidarity. (Zveza prijateljev mladine Slovenije, Youth League of Slovenia, Pravice otrok dopolnile15 let, sporočilo za javnost, 15. November 2005; http://www.zveza-pms.si/frami_vsi/pravice_dogaja.htm)

Positive aspects

The Marriage and Family Relations Act was amended as follows (E.g. Zakon o spremembah in odpolnitvah Zakona o zakonski zvezi in družinskih razmerjih, Act on Changes and Amendments of the Marriage and Family Relations Act, *Official Gazette* 2004, nr.16): Article 106: Any child has a right to contacts with the both parents, the both parents have a right to contacts with a child. The aims of such contacts are first of all children benefits.

Good practices

The following Crisis Centers for Children and Adolescents (hereinafter CSD) were founded: CSD Celje, CSD Ljubljana Bežigrad, CSD Maribor; CSD Murska Sobota; CSD Slovenj Gradec; the Crisis Center for Youth for Gorenjska Region. Under the Social Security Act (E.g. Zakon o socialnem varstvu, Social Security Act, *Official Gazette* 1992, nr. 54, 1992, nr. 56, 1994, nr. 41, 1999, nr. 1, 1999, nr. 41, 1999, nr. 60, 2000, nr. 36, 2000, nr. 54, 2001, nr. 26, 2002, nr. 110, 2004, nr. 2, 2004, nr. 7) and the National Program of Social Security (under which unitl 2005 a foundation of eight Crisis Centers for Youth was planned), the Ministry of Labor, Family and Social Affairs adopted the Foundation Act of the Crisis Center for Youth for Gorenjska Region. The Crisis Center started with its activities on 1 November 2004. (Ministry of Labor, Family and Social Affairs, http://www.sigov.si/mddsz/druzina/seznam_krizni.htm)

Article 25. The rights of the elderly

The possibility for the elderly to stay in their usual life environment

Legislative initiatives, national case law and practices of national authorities

A hidden discrimination of the elderly comes out in case of limitation of public transport and closing of small shops in province. Under the Act on the Access to Information of Public Character (E.g. Zakon o dostopu do informacij javnega značaja, Act on the Access to Information of Public Character, *Official Gazette* 2003, nr. 24) one of the main obligations of all "public" bodies to publish particular contents on the website. Therefore, the main basic information is available for individuals on websites, which is for the elderly (in principle) not available (due to computer illiteracy or due to lack of computer facilities). Concerning legislation, due to rush changing, there are mainly consolidated text of laws in use by contemporary lawyers and other users through electronic databases, which can be a problem for the elderly too. (Pravno-informacijski center nevladnih organizacij – PIC, Poročilo o zaznanih kršitvah in nepravilnostih. Ljubljana, 30 September 2004)

This year there were many complaints relating precisely to the elderly, both those who receive home care or some other institutional care, and those who live alone and abandoned at home. The Ombudsman cannot assert that society has no mechanisms to provide old people with a good life in our society. Nevertheless, the Ombudsman finds all too often that their children and relatives, who are caught up in the struggle for a better future, leave them to social institutions, which often only stir themselves when they are admonished (cases of old people in old people's homes, persons in social institutions, and of old people living alone at home). The Ombudsman has also observed that despite assertions to the contrary from the competent bodies, there is still a glaring insufficiency of space in old people's homes, and the waiting

lists are too long. This is especially true for sick old people, who are not capable of independent life and who upon discharge from hospital cannot be rapidly accommodated anywhere. The Ombudsman believes that in all major urban centres it is essential to ensure an adequate number of what are called care beds (and best of all as part of hospitals), where the elderly could be provided with continued health and social care for the period until they obtain free beds in a home or some other appropriate arrangement is found for them. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

There is a problem of unequal accessibility and inequality among insured persons, those accommodated in the nursery homes or in other special similar institutions and those insured persons living home Up to the present, there were no complete legislative solution that would connect a system of home medical treatment and care and assistance at home as a social service. In Slovenia, the assistance at home has a longer tradition, however for many reasons its contents was changed (aging of population, increasing of number of chronic diseases, a changed lifestyle and family structure, shortening of hospitalization as well as a general rationalization of costs of medical service. Additionally, the assistance at home is determined as a legal obligation under the Social Security Act (E.g. Zakon o socialnem varstvu, Social Security Act, *Official Gazette* 1992, nr. 54, 1992, nr. 56, 1994, nr. 42, 1999, nr. 1, 1999, nr. 41, 1999, nr. 60, 2000, nr. 36, 2000, nr. 54, 2001, nr. 26, 2992, nr. 110, 2004, nr. 2 and 2004, nr. 7): the assistance at home means social care of rightful person in case of disability, oldness as well as in other cases when the institutionalized care can be replaced by social care at home.(Pravno-informacijski center nevladnih organizacij – PIC, Poročilo o zaznanih kršitvah in nepravilnostih. Ljubljana, 30 September 2004; Zavod za oskrbo na domu Ljubljana, Strokovni aktiv Zavoda, Pripombe in predlogi v zvezi z Zdravstveno reformo – cilj 3, številka 1707)

Article 26. Integration of persons with disabilities

Protection against discrimination on the grounds of health or disability

Legislative initiatives, national case law and practices of national authorities

The Constitutional Act Amending Article 14 of the Constitution of the Republic of Slovenia (E.g. Ustavni zakon o spremembi 14. člena Ustave Republike Slovenije, Constitutional Act Amending Article 14 of the Constitution of the Republic of Slovenia, *Official Gazette* 2004, nr. 69) inserted into the Para. 1 of Article 14 (regulating prohibition of discrimination) also a general prohibition of discrimination regarding disability. The changed text of Para. 1 of Article 14 of the Constitution reads as follows: "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, disability or any other personal circumstance."

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

Legislative initiatives, national case law and practices of national authorities

On 21 May 2004 the National Assembly adopted the Vocational Rehabilitation and Employment of Disabled Persons Act (E.g. Zakon o zaposlitveni rehabilitaciji in zaposlovanju invalidov, Vocational Rehabilitation and Employment of Disabled Persons Act, *Official Gazette* 2004, nr. 63). By the new Act the former Act Regulating the Training and Employment of Disabled Persons (E.g. Zakon o usposabljanju in zaposlovanjiu invalidnih oseb, Act Regulating the Training and Employment of Disabled Persons, *Official Gazette* 1976, nr. 18 and 1990, nr. 8) was replaced; the new Act is based on the principles of non-discrimination and positive measures for unification of opportunities for disabled persons,

additionally, the capacities of such persons are underlined (not a disability), the individual differences are underlined as well as an equal participation of disabled persons in labor market, opportunities in ordinary sphere of labour, founding of family, social partnership, continuity of rehabilitation treatment.
Under this Act, the respective rights may be asserted by disabled persons who obtain their status under this Act and other regulations. The basis for the determination of disability is Mednarodna klasifikacije funkcioniranja, manjzmožnosti in zdravja (ICF) (International Classification of Functioning, Disability and Health). Under the Act, a status of disability can be admitted also to the person with heavier body injury, determined under other regulations. Additionally, under this law the status of disability can be asserted also by a person who is not able to obtain this right under other regulations.
On 29 July 2004 the Government adopted the Resolution on Foundation of Fund of the Republic of Slovenia for Promotion of Disabled Persons Employment (Sklep o ustanovitvi Sklada republike Slovenije za vzpodbujanje zaposlovanja invalidov Resolution on Foundation of Fund of the Republic of Slovenia for Promotion of Disabled Persons Employment, *Official Gazette* 2004, nr. 92 and 2004, nr. 117) which is based on the Vocational Rehabilitation and Employment of Disabled Persons Act. The Fund shall take decisions on rights and duties of disabled persons and employers, first of all in subsidizing the salaries of disabled persons, costs of adaptation of working place, services concerning promotion of employment and other forms of financial support. The fund shall supervise implementation of the quota system.

Reasonable accommodations

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

The Committee notes with concern that implementing measures based on the Placement of Children with Special Needs Act (E.g. Zakon o usmerjanju otrok s posebnimi potrebami, Placement of Children with Special Needs Act, *Official Gazette* 2000, nr. 54) have still not been adopted and that, as a consequence, children with disabilities who are not enrolled in special institutions cannot take advantage of programmes provided for in the law. It is also concerned about the low enrolment of female children with disabilities in school. In light of the United Nations Standard Rules on the Equalization of Opportunities for Persons with Disabilities (General Assembly Resolution 48/96) and the Committee's recommendations adopted at its day of general discussion on "The rights of children with disabilities" (CRC/C/69, Paragraphs 310-339), the Committee encourages the State party to ensure the expeditious adoption of implementing measures concerning the Placement of Children with Special Needs Act, and to address the low enrolment of female children with disabilities in school. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Legislative initiatives, national case law and practices of national authorities

In the meantime the following by-laws were adopted: Pravilnik o osnovnošolskem izobraževanju učencev s posebnimi potrebami na domu, Rules on Elementary Home Education of Pupils with Special Needs, *Official Gazette* 2004, nr. 61); Pravilnik o postopku usmerjanja otrok s posebnimi potrebami, Rules on Procedure of Placement of Children with Special Needs, *Official Gazette* 2003, nr.54 and 2004, nr. 93); Pravilnik o organizaciji in načinu dela komisij za usmerjanje otrok s posebnimi potrebami ter o kriterijih za opredelitev vrste in stopnje primanjkljajev, ovir oziroma motenj otrok s posebnimi potrebami, Rules on Organization and Functioning of Commissions on Placement of Children with Special Needs and on Criteria of Sort and Level of Determination of Forms and levels of Deficits, Obstacles and/or Troubles of Children with Special Needs, *Official Gazette* 2003, nr. 54 and 2004, nr. 93); Pravilnik o določitvi območnih enot Zavoda Republike Slovenije za šolstvo za začasno

izvajanje nalog šolskih uprav, ki jih določa zakon o usmerjanju otrok s posebnimi potrebami, Rules of Establishment of Regional Units of Institution of School Affairs of the Republic of Slovenia for Temporary Exercising of Tasks of School Administration Units Determined by the Placement of Children with Special Needs Act, *Official Gazette* 2003, nr. 21 and 2004, nr. 107).

CHAPTER IV : SOLIDARITY

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

No significant developments to be reported.

Article 28. Right of collective bargaining and action

Social dialogue

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

The Government exercised a dominant role in setting the minimum wage and conditions of work; however, in the private sector, wages and working conditions were agreed upon in the 2003-2005 general collective agreement between the labor unions and the Chamber of Economy. This "Social Agreement" included provisions on issues such as wage policy, employment, training, social dialogue, equal opportunity, and taxation. Collective bargaining remained limited.

The Economic and Social Council comprised of government officials, managers, and union representatives, negotiated public sector wages, collective bargaining rules, and major regulatory changes. Of the 40 members of the upper chamber of Parliament--the National Council--4 represented employers, 4 represented employees, and 4 represented farmers, small business persons, and independent professional persons. If a labor dispute is not resolved, it initially is heard by district-level administrative courts and may be appealed to the Supreme Court or to the Constitutional Court, depending on the nature of the complaint. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February, 2004, Section 6 Worker Rights b. The Right to Organize and Bargain Collectively, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Article 29. Right of access to placement services

No significant developments to be reported.

Article 30. Protection in the event of unjustified dismissal

Remedies against the decision of dismissal

Legislative initiatives, national case law and practices of national authorities

There is much violence in the field of labor relationship. In all cases such violations can be disputed in accordance with the Employment Relationship Act (E.g. Zakon o delovnih razmerjih, Employment Relationship Act, *Official Gazette* 2002, nr. 42) before the Labor Court. However, in comparison with employers, labors are in a weaker position; therefore the affected persons execute such right in principle only in a case of l loss of employment. In such cases the role of the competent inspection is very weak. (Pravno-informacijski center nevladnih organizacij – PIC, Poročilo o zaznanih kršitvah in nepravilnostih. Ljubljana, 30 September 2004)

Article 31. Fair and just working conditions

Other relevant developments

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

The monthly minimum wage was approximately $456 (SIT 103,643), which provided a decent standard of living for a worker and family. A new labor law took effect in January, which reduced the workweek to 40 hours and increased the minimum annual leave to 20 days. The Ministry of Labor is responsible for monitoring labor practices and has inspection authority; police are responsible for investigating any violation of the law.

Special commissions controlled by the Ministries of Health and Labor set and enforced standards for occupational health and safety. Workers had the right to remove themselves from dangerous work situations without jeopardy to their continued employment.

Laws and regulations governing employees' rights, wages, and working conditions did not generally differentiate between citizens and non-citizens. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February 2004, Section 6 Worker Rights e. Acceptable Conditions of Work, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Article 32. Prohibition of child labour 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

Social assistance and fight against social exclusion (in general)

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

The Committee recommends the State party to continue and to further strengthen the measures to combat poverty, including special measures targeted at single-parent families and Roma. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Legislative initiatives, national case law and practices of national authorities

The Constitutional Act Amending Article 50 of the Constitution of the Republic of Slovenia (E.g. Ustavni zakon o spremembi 50. člena Ustave Republike Slovenije, Constitutional Act Amending Article 50 of the Constitution of the Republic of Slovenia, *Official Gazette* 2004, nr. 69) inserted among constitutional rights explicitly the right to a pension. The first Paragraph of Article 50is hereby amended to read as follows: "Citizens have the right to social security, including to a pension, under conditions provided by law."

Social assistance for undocumented foreigners and asylum seekers

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

The Committee encourages the State party to take further measures to ensure that asylum seeking and refugee children are granted equal access to services, including healthcare. (Committee on the Rights of the Child, 35th session, Consideration of reports submitted by State parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Slovenia), CRC/C/15/Add.230)

Article 35. Health care

Access to health care

Legislative initiatives, national case law and practices of national authorities

At the end of 2003 the Ombudsman received several comments and suggestions in connection with the envisaged reform of health protection and health insurance, especially regarding the reduced rights of children and women, since what is termed the "white paper" introduces the family practitioner, who in certain cases would replace pediatricians and specialist gynecologists in primary health care. Ministry of Health representatives have given several public assurances that the reform will not reduce the rights of insured persons, yet despite this the Ombudsman publicly supported the cautions and appeals of the civil society against reducing the right of children to see a pediatrician, something the Ombudsman's office will also monitor closely upon the drafting of amendments to health legislation, especially from the aspect of observing the Convention on the Rights of the Child. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

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

Access to a court

Legislative initiatives, national case law and practices of national authorities

On 13 May 2004 Slovenia signed the 14.Protocol to the European Convention for the Protection on Human Rights and Fundamental Freedoms, adopted on 12 May 2004. Slovenia was among the first member states signing the mentioned Protocol (Slovenija podpisnica protokola k Evropski konvenciji o človekovih pravicah in temeljnih svoboščinah, www.siol.net, Novice, Slovenija, 13 May 2004; Slovenska tiskovna Agencija, http://www.sta.si, 13 May 2004). The Slovenian support to the Protocol is a consequence of the critical situation that finds expression (in connection with the European Court of Human Rights) also in a great burdening of the Slovenian Constitutional Court by increased number of individual applications regarding human rights protection. From 1999 onwards a number of cases have grown for two times; the main part are the civil law cases.

Liability of public authorities and immunities of jurisdiction or execution

Legislative initiatives, national case law and practices of national authorities

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

Legal aid / judicial assistance

Reasons for concern

The Ministry of Justice issued a brochure on Free Legal Aid – as information for citizens. However, this brochure does not mention the right to the free first legal advice that is a right of any citizen, under particular terms a right of alien, association or of similar organization. This right is determined by the Free Legal Aid Act (E.g. Zakon o brezplačni pravni pomoči, Free Legal Aid Act, *Official Gazette* 2001, nr. 48 and 2004, nr. 50) and it is an essential acquirement of this Act that gives the opportunity to anyone from qualified person (who is not necessary an advocate) to get free information on his/her legal status, possible solutions, all procedural information and costs. The free lagal aid and free first legal advice is sponsored by the state, however it is not especially interested in promoting this important right. (Pravno-informacijski center nevladnih organizacij – PIC, Poročilo o zaznanih kršitvah in nepravilnostih. Ljubljana, 30 September 2004)

Reasonable delay in judicial proceedings

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

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice. The judiciary generally provided citizens with a fair and efficient judicial process. The judicial system consists of district courts, regional courts, courts of appeal, an administrative court, and the Supreme Court. A nine-member Constitutional Court rules on the constitutionality of legislation, treaties, and international agreements and is the highest level of appeal for administrative procedures. The speed with which the Constitutional Court considered various cases during the year caused some to question its impartiality.

Judges, elected by the National Assembly (Parliament) upon the nomination of the Judicial Council, are constitutionally independent and serve indefinitely, subject to an age limit. The Judicial Council is composed of six sitting judges elected by their peers and five presidential nominees elected by the Parliament. The Constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. Constitutional provisions include equality before the law, presumption of innocence, due process, open court proceedings, the right of appeal, and a prohibition against double jeopardy. Defendants by law have the right to counsel, and the Government provides counsel for the indigent. These rights were generally respected in practice, although the judicial system was overburdened and as a result, the judicial process frequently was protracted. In some cases, criminal trials reportedly have taken from 2 to 5 years to conclude.

Eligibility to file a denationalization under the Denationalization Act (E.g. Zakon o denacionalizaciji, Denationalization Act, *Official Gazette* 1991, nr. 27, 1992, nr. 56, 1993, nr. 13, 1993, nr. 31, 1995, nr. 24, 1995, nr. 29, 1995, nr. 74, 1997, nr. 20, 1997, nr. 23, 1997, nr. 41, 1997, nr. 49, 1997, nr. 87, 1998, nr. 65, 1998, nr. 67, 1998, nr. 83, 1999, nr. 11, 1999, nr. 31, 1999, nr. 60, 2000, nr. 1, 2000, nr. 66, 2002, nr. 54, 2004, nr. 54, 2004, nr. 56, 2004, nr. 62, 2004, nr. 63) claim depends on the citizenship of the claimant at the time the property was nationalized; however, current citizenship is not a factor in how the claims are processed. The Government did not track the claims of non-citizens separately from those of citizens. Claims filed by individuals who were not resident in the country took longer to resolve because they commonly did not have local legal representation actively engaged in monitoring their cases and because it took longer for them to gather and submit required supporting documentation. Court backlogs also contributed to delays in resolving claims for denationalization of property. (U.S. Department of State, Slovenia, Country Reports on Human Rights Practices – 2003, Released by the Bureau of Democracy, Human Rights, and Labor, 25 February 2004, Section 1 Respect for the Integrity of the Person, Including Freedom From: e. Denial of Fair Public Trial, http://www.state.gov/g/drl/rls/hrrpt/2003/27864.htm)

Legislative initiatives, national case law and practices of national authorities

The scapegoat for the court backlogs is the organizational changes to the courts carried out in 1994-1995. At that time we acquired a multitude of courts, especially small local courts. Despite the encouraging developments in eliminating judicial backlogs at certain courts, the Ombudsman can still derive no satisfaction whatsoever from the state of the judiciary in terms of ensuring adjudication within reasonable deadlines. Statistics on the number of unresolved cases in 2003 again show no remarkable shift towards more rapid and efficient adjudication. This is also evident in the complaints sent to the Ombudsman owing to the length of judicial procedures. Here it should be stressed that for some courts (including local) the Ombudsman does not receive complaints that would assert the unjustified dragging out of procedures. At the same time the Ombudsman is swamped with countless such criticism levelled at other,

especially larger local courts, as well as certain courts that decide in appellate proceedings. There is no shortage of cases where judicial procedures have only started moving again after the Ombudsman's intervention.

According to the information available to the Ombudsman, the process of computerizing the land register is making effective progress. As a rule, however, a year and more may still pass between the submission of a proposal and the issuing of a land register decision. The new Land Register Act entered into force in 2003, and this brings extensive changes to the legal arrangement of the land register. Since the land register is the cornerstone for the regulation of legal relations in the area of immovable property, this involves a significant legislative amendment of the legal arrangements, and it should ensure greater security in performing legal transactions with real estate.

The problems of ensuring adjudication in reasonable and legal time frames are also beset-ting the higher courts, which decide on appeals in civil and criminal cases. It appears that all the higher courts without exception require on average more than one year each to rule on appeals in civil cases, and the civil section of the Higher Court in Maribor, for example, needs up to three years and more. The Ombudsman is also still observing excessive time differences in the resolving of appellate cases allocated to different judges at the same higher court, which produces in the party concerned at the very least the feeling that certain individuals are privileged, if not accusations of biased adjudication. By changing the method of allocating cases to individual judges it would be possible to ensure better harmonization of the time spent on appellate rulings. Problems of timing are also being experienced by the judges at the Higher Labour and Social Court, who for several years now have determined an increase in the influx of social law cases, especially in 2003. The number of unresolved cases signifies a wait of more than two years merely for an appellate ruling in a social dispute, which is unacceptable.

The Act Amending and Supplementing the State Prosecutor Act (E.g. Zakon o spremembah in dopolnitvah Zakona o državnem tožilstvu, Act Amending and Supplementing the State Prosecutor Act, *Official Gazette* 2002, nr. 110, hereinafter ZDT-B) entered into force in 2003, and this represents an extensive and important revision of the State Prosecutor Act. The Government gave as the aim of the proposed revision the more effective exercising of powers by the state prosecution service and the facilitating of additional professional support for the work of the State Prosecutors. Changes have also been made on the symbolic level, since the ZDT-B provides that State Prosecutor's offices are independent state bodies as part of the judicial system. Although in the system of separation of powers the State Prosecutors are probably closer to the executive than the judicial branch of power, it is beneficial to understand such a declaration primarily as a guarantee of the independence of State Prosecutors in their work. It is therefore emphasized that State Prosecutors perform their tasks (only) on the basis of the Constitution and Law. The ZDT-B expressly binds State Prosecutors to resolve cases assigned to them without any undue delay. We are certain that State Prosecutors were well aware of this duty of theirs before the supplementing of the act. Nevertheless this is a welcome addition to the wording of the act, even if it is primarily symbolic.

General offences judges are in a period that could be described as a "transition". The new General Offences Act (Zakon o prekrških, General Offences Act, *Official Gazette* 2003, nr. 7, 2004, nr. 45, 2004, nr. 86, hereinafter ZP) entered into force on 8 February 2003, and will begin to apply on 1 January 2005. The entry into force of the ZP-1 has terminated the validity of the "old" General Offences Act, although its provisions will still be used until the ZP-1 begins to be applied. In short: the law that has ceased to be valid is being applied, while at the same time the law that is valid is not being applied. This situation seems a little complicated, but we trust that it will have no negative consequences in practice, especially in the work of general offences procedure bodies.

The State is responsible for ensuring the regularity and effectiveness of judicial decision-making. At the same time it is also contributing a great deal itself to the situation whereby Slovenia's courts are overworked, since it is acting as a party in several thousand judicial procedures. With a greater readiness on the part of the State to resolve disputes by agreement, it would be possible in a proper and professional way to achieve out-of-court settlement of many situations of dispute. The complaints received by the Ombudsman often indicate that in disputes, the State and State Prosecutors as its lawful representatives, simply do not want to adopt a final position or make a decision on the demands of the opposing side, and prefer to pass the buck on to the courts. It is as if the state officials are scared to take responsibility for their decisions that they might have to make in connection with the work and tasks they perform for their employer. Unnecessary judicial procedures are not simply an additional burden on the courts; they also usually generate even more cost to the state and the budget. There is probably no need here to highlight the ill-will and disappointment of individuals, who owing to the rigid views of state officials must wait several years for the outcome of a judicial procedure, even though it would often be possible to achieve a rapid out-of-court settlement regarding the disputed right or legal relation.

The responses, without any substantive explanation of the Bar Association's negative position, can only be assessed as prevarication, putting off the decision regarding the presentation of the disciplinary file to the Ombudsman for perusal. The behaviour of the Chamber of Attorney described can be understood as persisting in preventing external oversight of the treatment of attorneys in disciplinary procedures. And here the Ombudsman is absolutely determined that procedures in disciplinary cases against attorneys should not and cannot be merely a matter for the Bar Association, for attorneys themselves and their good will. (The Slovenian Human Rights Ombudsman, the Ninth Annual Report, Ljubljana, March 2004)

Article 48. Presumption of innocence and rights of defence

No significant developments to be reported.

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.

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

CHAPTER I: DIGNITY

Article 1: Human dignity

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

Article 2: Right to life

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

Article 3: Right to the integrity of the person

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

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

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

Article 5: Prohibition of slavery and forced labour

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

CHAPTER II: FREEDOMS

Article 6: Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7: Respect for private and family life

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

Article 8: Protection of personal data

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

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

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

Article 10: Freedom of thought, conscience and religion

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

Article 11: Freedom of expression and information

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

Article 12: Freedom of assembly and of association

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

Article 13: Freedom of the arts and sciences

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

Article 14: Right to education

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

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

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

Article 16: Freedom to conduct a business

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

Article 17: Right to property

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

Article 18: Right to asylum

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

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

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

CHAPTER III: EQUALITY

Article 20: Equality before the law

Everyone is equal before the law.

Article 21: Non-discrimination

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

Article 22: Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Article 23: Equality between men and women

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

Article 24: The rights of the child

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

freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Article 25: The rights of the elderly

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

Article 26: Integration of persons with disabilities

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

CHAPTER IV : SOLIDARITY

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

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

Article 28: Right of collective bargaining and action

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

Article 29: Right of access to placement services

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

Article 30: Protection in the event of unjustified dismissal

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

Article 31: Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

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

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

Article 33: Family and professional life

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

Article 34: Social security and social assistance

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

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient
resources, in accordance with the rules laid down by Community law and national laws and practices.

Article 35: Health care

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

Article 36: Access to services of general economic interest

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

Article 37: Environmental protection

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

Article 38: Consumer protection

Union policies shall ensure a high level of consumer protection.

CHAPTER V: CITIZENS' RIGHTS

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

1. Every citizen of the Union has the right to vote and to stand as a candidate at elections to the European Parliament in the Member State in which he or she resides, under the same conditions as nationals of that State.
2. Members of the European Parliament shall be elected by direct universal suffrage in a free and secret ballot.

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

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

Article 41: Right to good administration

1. Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.
2. This right includes:
a) the right of every person to be heard, before any individual measure which would affect him or her
adversely is taken;
b) the right of every person to have access to his or her file, while respecting the legitimate interests of
confidentiality and of professional and business secrecy;
c) the obligation of the administration to give reasons for its decisions.
3. Every person has the right to have the Community make good any damage caused by its institutions or by its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States.
4. Every person may write to the institutions of the Union in one of the languages of the Treaties and must have an answer in the same language.

Article 42: Right of access to documents

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

Article 43: Ombudsman

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

Article 44: Right to petition

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

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

Article 45

Freedom of movement and of residence
1. Every citizen of the Union has the right to move and reside freely within the territory of the Member States.
2. Freedom of movement and residence may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.

Article 46: Diplomatic and consular protection

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

CHAPTER VI : JUSTICE

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

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

Article 48: Presumption of innocence and right of defence

1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.
2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.

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

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than that which was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.
2. This Article shall not prejudice the trial and punishment of any person for any act or omission
which, at the time when it was committed, was criminal according to the general principles recognised by the community of nations.
3. The severity of penalties must not be disproportionate to the criminal offence.

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

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

CHAPTER VII: GENERAL PROVISIONS

Article 51: Scope

1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers.
2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

Article 52: Scope of guaranteed rights

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

the conditions and within the limits defined by those Treaties.

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

Article 53: Level of protection

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

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

Article 54: Prohibition of abuse of rights

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