



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

Distr.
GENERAL

CAT/C/43/Add.4
22 July 2002

Original: ENGLISH

COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Second periodic reports of States parties due in 1998

Addendum

SLOVENIA*

[8 October 2001]

* The initial report submitted by the Government of Slovenia is contained in document CAT/C/24/Add.5; for its consideration by the Committee, see document CAT/C/SR.428, 431 and 435 and Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 44 (A/55/44), paras. 189-212.

The information submitted by Slovenia in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in HRI/CORE/1/Add.35.

The appendices to the present report can be consulted in the files of the secretariat.

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Introduction

1. The Government of Slovenia submitted its initial report to the Committee against Torture in August 1999 and the supplementary report in May 2000.
2. In accordance with the provisions of article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Government hereby submits to the Committee against Torture the second periodic report on the implementation of the Convention. The report lays particular emphasis on the conclusions and recommendations submitted by the Committee against Torture to the Government of Slovenia in May 2000 following the examination of the above reports.
3. Since Slovenia's previous report was overdue, the present report covers the period between the session of the Committee against Torture held in Geneva in May 2000, at which the previous report was examined, and 31 March 2001. The relatively short reference period is one of the main reasons for only minor changes in the relevant positive law, judicial and administrative practice and in the majority of theoretical legal positions in Slovenia. The nature of the reference period has opened specific problems relating to the collection and evaluation of statistical data: numerous data have not been available in sufficiently statistically processed form at the time of the drawing up of this report, or they refer to periods extending over the reference period; due to technical reasons it was difficult or even impossible to calculate the values for the reference period.¹
4. The present report was drawn up by: the Ministry of Foreign Affairs, the Ministry of the Interior, the Ministry of Defence and in particular the General Staff of the Slovenian Army, the Ministry of Justice, the Prison Administration, the Ministry of Health, the Government Office for Nationalities, the Faculty of Law of the University of Ljubljana - Chair for Criminal Sciences, and the Institute of Criminology at the Faculty of Law of the University of Ljubljana. Their reports are summarized in or their full text is appended to this report.
5. Statistical data and data "on practice" are taken from the official written reports of the above ministries and their special services, from the available annual and special interim reports and from public releases of the Office of the Human Rights Ombudsman and publications of the Statistical Office of the Republic of Slovenia. Where possible and reasonable, these sources are appropriately referenced in the report.
6. Texts of Slovenian legal theories are referred to only in places where they can serve as an argument for the theoretical protection of standards included in the Convention against Torture, primarily with respect to those issues on which the Slovenian judicature and administration have not yet taken their stand.

I. ARTICLES 1 AND 4

7. Neither the central act of Slovenian substantive criminal law - the Penal Code of the Republic of Slovenia (among the definitions of individual criminal offences²), nor any potential incrimination norms which could be ascribed the character of secondary criminal legislation as yet incorporate any specific definition of torture (a specific literal transformation of the

definition included in the Convention against Torture). No specific sentence is thus envisaged in Slovenia for torture, and no legislative procedures have been initialized for such amendments to Slovenian positive law. Certain interesting informal shifts are, however, noticeable towards amending the specific part of the Slovenian substantive criminal legislation with reference to the prohibition of torture.

8. The recommendations of the Committee against Torture concerning the specific direct crime of torture in the positive criminal law of Slovenia in accordance with article 1 of the Convention against Torture have encouraged Slovenian theorists on criminal law (particularly experts linked to the two most prominent specialized scientific institutions on criminal law in Slovenia - the Faculty of Law of the University of Ljubljana, and the Institute of Criminology of this Faculty) to deal more intensively with the issues of torture in substantive criminal law in 2000 and 2001.³ Even though their theory and legislation are relatively well developed, numerous countries (in particular in the so-called Euro-continental legal circle) do not class torture as a specific criminal offence in accordance with article 1 of the Convention against Torture. The aforementioned experts have therefore initiated a public debate in Slovenia on the advantages and disadvantages of various possible forms of the incorporation of specific forms in the Penal Code or of a specific integrated crime of torture (as a severe infliction of pain upon a person with the specific and perfidious participation of a State) into the present Penal Code of the Republic of Slovenia.

9. The expert discussion on the compliance of the Slovenian substantive criminal law (both positive and its theoretic content) with the Convention against Torture has shown that torture in the sense of the Convention may to a large extent be made appropriately punishable by the concurrence of various incriminations contained in the Slovenian Penal Code and by the very loose definition of an official provided in the Penal Code, various forms of participation and relatively broadly understood responsibility for unjustified omissions. It should be underlined that the discussion has indicated the majority position that there are no particular reservations, at least from the criminological political standpoint, against a specific incrimination of torture in the sense of the Convention, as is also the case with terrorism or genocide.

10. Slovenian theorists participating in the discussion believe that the potential new incrimination of torture should be incorporated in the chapter on criminal offences against official duties and public authorizations (chapter 26 of the Penal Code) and additionally in the chapter on criminal offences against military duty (chapter 27 of the Penal Code). This would be in accordance with the object of protection, on which the Convention against Torture focuses. Such an amendment of the Penal Code would make some other existing incrimination redundant (e.g. certain specially qualified forms of criminal offences against official duties - for instance article 271/II of the Penal Code, which could no longer be understood in any other way than as torture in the sense of the Convention against Torture). In legislative technical terms the new incrimination should relate to both basic and grievous intentional forms, as is grievous bodily harm or death of a person (as is similarly done by the legislator with regard to death in the provision of article 388/IV of the Penal Code).

11. Some people involved in the expert discussion advocate the position that the Slovenian legislator should adopt an amendment to the Penal Code, which would be more demanding and extensive in legislative technical terms. Such amendment would add qualified forms (a new

paragraph of incriminations) relating to certain criminal offences against the body, sexual integrity, human rights, etc., which would particularly incriminate as more grievous the basic deed (e.g. murder, bodily harm, rape, sexual violence, extortion of statement) that comprises torture. In this case the definition of torture (in accordance with the definition as provided in the Convention against Torture) would have to be incorporated in the general part of the Penal Code, or refer to the definition of torture in the Convention against Torture.

12. The Slovenian Government will shortly be deciding on the formal invitation of a special independent expert and scientific institution to draw up an expert opinion on the possibilities of the incorporation of a specific incrimination of torture in the Slovenian positive criminal law. This will be a response to the recommendation by the Committee against Torture concerning the need for the specific incrimination of torture in Slovenia's positive criminal law and to the results of the aforementioned expert public discussion. The proposal for such action of the Government was submitted by the Ministry of Foreign Affairs of the Republic of Slovenia and endorsed by the Interdepartmental Working Group at the Ministry of Foreign Affairs for Monitoring Human Rights Issues, which is a special expert working body composed of representatives of various Slovenian ministers and their specialized agencies, the Office of the Human Rights Ombudsman, civil society and research institutions.

II. ARTICLE 2

General

13. During the reference period, the Supreme Court of the Republic of Slovenia adopted at its plenary session on 19 December 2000 an opinion of principle which defines in greater detail the provisions of the Code of Criminal Procedure⁴ relating to remand in custody, i.e. the provisions which are obviously potentially important in the light of the Convention against Torture. According to this decision of the Supreme Court remand in custody may last two years at most after the indictment according to article 250 (207)/V of the Code of Criminal Procedure has been filed, until the court of first instance pronounces the judgement (and not, for instance, until the judgement is final).⁵ The decision of the Supreme Court potentially shortens remand in custody in Slovenian criminal procedures.

14. In his last officially published annual report, the Human Rights Ombudsman of the Republic of Slovenia criticizes, inter alia, "the slowness, which raises concern, of the adoption of executive regulations. Only executive regulations can define in greater detail the manner of exercising individual rights stipulated by relevant laws, or of implementing restrictions laid down by laws". The Human Rights Ombudsman warns that "the executive regulations should be drawn up and adopted more frequently together with the law. The suitably short statutory time limit may not be exceeded." Several new important executive regulations have nevertheless taken effect during the reference period. The new executive regulation of the Police Act (*Uradni list RS - Official Gazette of the RS*, 49/98 and 66/98⁶): Rules on Police Powers (*Uradni list RS*, 51/2000) has applied in Slovenia as of 24 June 2000. This executive regulation is very relevant with regard to potential violations of the Convention against Torture.

15. The Rules provide a detailed and extensive regulation of the limits of the police powers in official contacts with individuals. It defines the police powers as measures stipulated by law which enable police officers to perform their tasks (article 2 of the Rules). Individual police powers can only be applied in a manner that does not cause harm disproportionate to their purpose and to the set legal goals of their application. The provision of article 4, paragraph II, of the Rules explicitly stipulates that police officers may only use “the powers least harmful to an individual and the public”. Coercive measures may be applied only until their purpose is achieved or until it becomes evident that the purpose cannot be achieved. The provision of article 5 stipulates that a police officer must always apply the most lenient of all relevant coercive measures. A more severe measure may only be applied if “the application of a lenient measure was inefficient or impossible for the reasons of the safety of life, personal safety or safety of property of people”. The provision of article 6 of the Rules requires that every police power be “exercised professionally and decisively, yet conscientiously so as not to unnecessarily affect the dignity of persons during the procedure”. They make the following particular reference to the prohibition of torture “The exercising of police powers may not expose any person to torture, inhumane or degrading treatment” (art. 6/II). The Rules require police officers to act particularly carefully when dealing with children or juveniles, i.e. persons under 14 or between 14 and 18 years of age. According to article 8, police power should be applied so that “lives and security of persons who are not involved in the procedure are not endangered, these persons are not unnecessarily disturbed and that no unnecessary obligations are imposed on them”. The provision of article 12 stipulates that any exercise of police powers must be reported in “a report on the work performed” or at least in the form of an official note. Articles 14-16 regulate in detail the manner of the exercise of police powers (general police powers, secret police measures, coercive measures and police powers on waters).

16. The use of binding and chaining devices (handcuffs, plastic ties, ropes and similar devices), for instance, is under articles 113 to 115 only permissible “if it is suspected that the person might resist or injure herself or himself or that she or he will attack or run away”. The use of such devices is, in principle, forbidden with children, clearly ill, old, feeble, or seriously handicapped and apparently pregnant persons unless “they directly threaten their or other lives or a police officer”.⁷

17. Some implementing regulations of the Act on Enforcement of Penal Sentences (*Uradni list RS*, 22/2000)⁸ were adopted during the reference period, which are relevant to the combat against torture in the sense of the Convention against Torture. The Rules on the Enforcement of the Imprisonment Sentence (*Uradni list RS*, 102/2000) applicable as of 18 November 2000 provides in its 139 articles a detailed regulation of the enforcement of sentences of imprisonment and juvenile imprisonment as well as sentences of imprisonment pronounced in misdemeanour proceedings. The provision of article 2 of the Rules stipulates that all sentences must be carried out so as to “enable the preparation of a convict for life in freedom”. Convicts stay in living areas and sleep in sleeping rooms, which “must be light, dry, airy and large enough”, “single rooms must be at least 9 m² large and each convict must have at least 7 m² space in multiple rooms” (art. 27). Living rooms must, “as a rule, be equipped with toilets and drinking water always accessible to convicts” (art. 28). Convicts’ beds must “have appropriate mattresses, two sheets or a cover, a pillow and the required number of blankets”. Bed linen must be replaced at least every 14 days (art. 29). A solitary cell in the sense of article 97 of the Rules, i.e. a set room for carrying out the disciplinary measure of solitary confinement as the severest

disciplinary measure against a convict, must be equipped with a bed, table and a chair as well as with a toilet (art. 98). According to the Rules the convicts must get three meals per day: breakfast, lunch and dinner prepared on the basis of standards and menus, which are verified by the competent State institution and used in all prisons in Slovenia (art. 32). Article 32, paragraph II, of the Rules stipulates that appropriate food - in accordance with the capacity of the prison - must be provided for convicts who do not eat certain food "for religious or other reasons" (vegetarians). According to article 33 of the Rules, those convicts who work get an additional meal on working days, while ill convicts get food prescribed by a doctor (dietary food), as is explicitly required by article 36 of the Rules. The provision of article 90 stipulates that mutual relations between convicts must be "tolerant and correct". "Any pressures by groups or individuals on other groups or individuals, confrontations, insulting, humiliating or mocking" are forbidden.

18. Similar provisions to those of the Rules on the enforcement of the imprisonment sentence can also be found in another implementing regulation of the Act on the Enforcement of Penal Sanctions: Rules on the Enforcement of the Educational Measure of the Committal to the Juvenile Detention Centre (*Uradni list RS*, 73/2000) which took effect on 27 August 2000. The provision of article 2 of the Rules, for instance, requires that this educational measure must be carried out so as "to enable a juvenile to be educated and to learn the skills and to receive training required for his or her work and for his or her sport as well as creative and cultural activities". A juvenile detention centre which carries out the educational measure must under the same article "do everything necessary to prevent the exerting of pressure by a group of juveniles or by individuals on other groups or individuals, confrontations or intimidating, abusing, insulting, humiliating or mocking". According to the rules the detained juveniles get at least three meals per day, which are prepared in compliance with the standards confirmed by the Institute of Public Health of the Republic of Slovenia⁹ (art. 18). Article 20 of the Rules stipulates that a detention centre must organize "useful and reasonable use of free time" for the detainees.

19. A special chapter of the Rules is dedicated to the disciplinary responsibility of detainees. The severest disciplinary sanction is placement in a set room; pursuant to article 54 this room must be equipped with a bed, table and chair and must meet "adequate hygienic and sanitary conditions".

20. The House Rules of prisons, which are specific implementing regulations of the Act on Enforcement of Penal Sanctions, are being aligned with the new legislation on the enforcement of penal sanctions (described in the appendix to Slovenia's initial report to the Committee against Torture and in the present report). A number of implementing regulations of the Act on the Enforcement of Penal Sanctions are undergoing the process of adoption.

21. The practice has shown that a number of provisions of the Customs Service Act (*Uradni list RS*, 56/99), applicable as of 14 July 1999, and particularly of its fourth chapter (relating to powers of authorized officials of customs service) may contain potential human rights violations. Some powers of customs officers under these provisions are comparable to police powers under the Police Act.¹⁰ Customs officers may, for instance, invite persons to official rooms, impound documents, halt, check and inspect any vehicle, enter certain facilities, inspect business or other premises (a court decision is required for the inspection of business premises without consent),

conduct personal examination, etc. A means of transport or transfer may only be inspected if grounds for suspicion exist (which is a relatively low level of probability) of a violation of customs, excise tax or other regulations, the implementation of which is in competence of customs service. Personal examination may also be conducted if grounds for suspicion exist that the above regulations have been violated. These powers can in practice easily exceed their lawful purpose and violate human rights and fundamental freedoms. This is also stated in the last published annual report of the Human Rights Ombudsman.¹¹ This was one of the reasons for the adoption of a relatively detailed implementing regulation of this Act, the Rules on the Manner of Exercising Powers by Authorized Officials of the Customs Service (*Uradni list RS*, 65/2000). The Rules, which contain 58 articles, regulate in detail the rights of persons concerned in their contacts with the customs service. According to the provision of article 3 of the Rules customs officers may “carry out only those measures which are stipulated by the Act and which ensure the fulfilment of the task with the least harm to legal and natural persons”. The provision of paragraph II of the same article requires that when performing their duties with people, customs officers must “act considerately and must be careful not to hurt their honour or reputation, insult their dignity and not to disturb them unnecessarily or impose unnecessary obligations on them”.

22. The Executive Committee of the Slovenian Judicial Society agreed upon a draft code of judicial ethics (Judicial Bulletin¹² No. 1/2001, pp. 45-52) at its session on 15 December 2000, and submitted it to members of the Society for expert examination. The Judicial Society intends to submit the code to the procedure of adoption at its general meeting in June 2001. The draft code of judicial ethics, which is “a register of the most important principles providing the basis for acting of every judge” (the provision of article I), requires, inter alia, that a judge “establishes and maintains correct and respectful relations with associates and persons involved in proceedings” (the provision of article IX), which undoubtedly excludes any form of torture in the sense of the Convention against Torture.

23. The Public Servants’ Ethics Code (*Uradni list RS*, 8/2001), a set code of ethics in Slovenian State administration, contains very similar provisions, particularly as regards the necessity of a respectful attitude towards clients.

Problems in practice

24. Ethnic and similar minorities are characteristically exposed to potential violations of human rights. Particular concern is therefore required on behalf of the majority to protect their rights. The only ethnic group that is traditionally socially and culturally conspicuous is the Roma. The present report therefore devotes special attention to them, also in the light of recommendations by the Committee against Torture of May 2000.

25. According to the data provided by the Government Office of the Republic of Slovenia for Nationalities (a special government office monitoring the situation of ethnic and national minorities in Slovenia), 7,000 to 10,000 members of the Romany ethnic group live in 20 Slovenian municipalities¹³ (even though only 2,293 people declared themselves to be Roma at the last census of 1999). More than half of the Roma live in Prekmurje, in the easternmost part of the country, over 2,000 live in Dolenjska and Bela Krajina, and the rest are distributed in small numbers in other parts of Slovenia. The Government Office of the Republic of Slovenia

for Nationalities establishes that the number of the Roma has been slightly increasing and size of families decreasing, probably due to specific social difficulties experienced by the Roma. Approximately half of the Roma living in Slovenia are under 18 years of age; 650 Roma reside in the largest Romany settlement (Pušča pri Murski Soboti). The majority of the Slovenian Roma reside in settlements isolated from other populations or at the margin of settled areas. About 12 per cent dwell in apartments, 39 per cent in built houses (half of them do not possess the licences required by administrative authorities), and others in provisional residences - cottages, caravans, containers. According to data available to the Government Office of the Republic of Slovenia for Nationalities only 13 per cent of the Roma are regularly employed, 25 per cent perform occasional or seasonal work and 74 per cent receive various forms of State social aid. A total of 1,067 Romany students attended elementary schools in Slovenia in school year 1998/99;¹⁴ classes with Romany children only have become very rare (seven in school year 1998/99).¹⁵ This may be evaluated as a reflection of the trend of an improved integration of the Roma into the broader Slovenian society. However, a relatively small number - only 58 - of Romany children enrolled in secondary education in that school year.

26. According to the report of the Government Office of the Republic of Slovenia for Nationalities of 15 February 2001, the situation of the Roma in Slovenia has improved in recent years. On the basis of article 65 of the Constitution of the Republic of Slovenia defining the situation and the specific rights of the Romany community in Slovenia, provisions on the specific rights of the Roma have been included in numerous laws. Various special ministerial programmes have also been drawn up on the basis of these provisions for the improvement of the social situation of the Roma, including (as already stated in the initial report of Slovenia to the Committee against Torture) the Programme of Measures for Assisting Roma, adopted by the Government of the Republic of Slovenia in 1995, as well as the special programme of the Ministry of Education and Sport of the Republic of Slovenia in the area of education of Romany children, special measures of the Government of the Republic of Slovenia of 1 July 1999 for operation of State bodies relating to the Roma, etc. The Commission of the Government of the Republic of Slovenia for the Protection of the Romany Ethnic Community was set up, which consists of representatives of the ministries and State bodies, some municipalities, as well as a representative of the Romany Association of Slovenia, a special association of societies. Eight Romany associations have been established in Slovenia during recent years. Special attention should be paid to those established in the regions of Bela Krajina and Dolenjska, where the social activities of the Roma had so far been relatively neglected. The last adopted budget of the Republic of Slovenia increased by index 400 in the item "Romany activities and organizations" in comparison with the previous State budget.

27. According to the information available to the Government Office of the Republic of Slovenia for Nationalities the actual political representation of the Roma in local self-government improved during the reference period. Greater progress in this area may also be expected from the institution of the permanent Roma representatives in the local self-government bodies in numerous Slovenian municipalities, as provided for by the provisions of the Local Self-Government Act, which is in the legislative procedure at the moment.

28. The Roma living in Slovenia are either citizens of the Republic of Slovenia or aliens, and they are therefore statistically processed as citizens or as aliens. The Slovenian Police has no accurate overview of procedures carried out by the police against persons belonging to the Roma. The Police has no legal basis for collecting, processing and storing data on nationality or ethnicity. On the basis of the Police Act the police register may only contain the following information:

- Name;
- Place and date of birth;
- Permanent and/or temporary residence;
- Nationality.

The same holds for the Ministry of Justice of the Republic of Slovenia and its Prison Administration.

29. The Ministry of Culture of the Republic of Slovenia has established outstanding cooperation with the Roma within its competence. The Ministry has a special programme and model for the protection of cultural rights of (contemporary) minorities, which is particularly applicable to the Roma. The Ministry of Culture of the Republic of Slovenia and the Council of Europe organized an international seminar entitled “Instruments of Public Authorities in the Area of the Protection of Minorities’ Cultural Rights” held on 29 and 30 September 2000. The seminar also dealt with the issues of the Romany population in Slovenia and received international praise. A follow-up seminar is foreseen.

30. Despite some obvious improvements in the general social situation of the Roma in Slovenia, the Government Office of the Republic of Slovenia for Nationalities holds that their situation is not yet satisfactory. The State will have to allocate more funds, particularly for settling the living and housing conditions of the Roma.

Detention

31. According to information provided by the Ministry of the Interior of the Republic of Slovenia, 66 police units have detention rooms, only 44 of which meet the set standards (41 for detention up to 12 hours and 3 for detention over 12 hours). Several detention rooms have been renovated at police stations and departments in the Republic of Slovenia since 1999 (Ribnica Police Station, Škofja Loka Police Station, Brnik Border Police Station - international area for rejected aliens, Laško Police Station, Rogaška Slatina Police Department, Ravne na Koroškem Police Station, Jesenice Police Station, Lenart Police Department, Celje Police Station, Tolmin Police Station, Vrhnika Police Station, Krško Police Station, Idrija Police Station). All the rooms renovated or built during the last two years comply with the relevant standards for building and maintenance of rooms for detention of up to 12 hours. The rooms for

detention over 12 hours at Krško and Tržič Police Stations do not meet the standards (the bed is suitable for only 12-hour detention and there is no washbasin in the living part of the room). Nobody may be detained in the police stations in which detention rooms fail to meet the standards to such an extent that the basic conditions are not fulfilled.

32. Detention rooms at the Sežana Police Station, Nova Gorica Police Station, Hrastnik Police Department, Ormož Police Station, Postojna Police Station, Kobarid Border Police Station, Kranjska Gora Border Police Station, Bled Police Department, Gornja Radgona Police Station and Črnomelj Police Station are to be renovated in 2001. Ptuj Police Station and Bovec Border Police Station are also to be constructed. The renovation of all detention rooms has been in progress for several years and will continue for a few years due to the lack of funds.

33. The Ministry of the Interior of the Republic of Slovenia explains in particular the issue relating to the Aliens' Centre on Celovška cesta in Ljubljana, to which the Committee against Torture points in its report of May 2000. The Aliens' Centre operated between 1991 and 2000 on the basis of the previous Law on Foreigners adopted by the Republic of Slovenia in 1991, after independence. The Law regulated the accommodation of and provisions for aliens, applicants for refugee status in the Republic of Slovenia (asylum), and foreigners to be deported from the country. The Aliens' Centre formally ceased to exist after the adoption of the new Aliens Act and the Asylum Act in 1999. The new Aliens Act envisaged the establishment of the aliens' centre, and the Asylum Act envisaged the establishment of the asylum centre. Both institutions have assumed the tasks of the former Aliens Centre and numerous new duties in compliance with the provisions of the new legislation as of 1 January 2000.

34. The Aliens' Centre and the Asylum Centre deal with two different categories of person also with a view to the international standards (aliens in the process of deportation from the country and refugee applicants). These two centres used to operate in the same premises, which was inappropriate. International organizations protested against this (UNHCR and other international institutions). The main reason for the separate legal arrangement of the two categories has been the efforts of the Republic of Slovenia to adopt modern legislation comparable to the European one and to guarantee asylum-seekers efficient access to international protection and to guarantee other categories of aliens appropriate treatment in all the procedures implemented by State authorities taking into account human rights and fundamental freedoms and the application of standards and rules in this field.

35. In compliance with the Aliens Act and the regulations on the organization and work of the Ministry of the Interior of the Republic of Slovenia, the Aliens Centre operates as an internal organizational unit of the Uniformed Police Directorate within the General Police Directorate. Like the special police unit it implements the forcible deportation of aliens from the country in cases when an alien does not want to leave within a certain time period or cannot be immediately deported for any other reason. The Aliens Centre is responsible for reception and accommodation of and providing for aliens as well as for the successful realization of the process of forcible deportation from the country. Special rules on the stay and movement of aliens apply in the Centre, which are stipulated by the Regulations on Special Rules of Stay and Movement of Aliens in the Deportation Centre and on the Conditions and Procedure on the Use of More Lenient Measures (*Uradni list RS*, 61/99).

36. The Centre is responsible for the reception, accommodation of and provision for aliens for the time required for their deportation from the country and restriction of movement of aliens in the scope and manner which allows for successful deportation of an alien from the country, but not exceeding the period of six months. Under the conditions, stipulated by the Aliens Act (art. 57), accommodation under stricter police supervision may be ordered by the Centre for aliens against whom a measure of deportation from the country has been passed, which means the restriction of movement to the premises of the Centre intended for this purpose. The Ministry of the Interior believes that the location of this Centre within the Uniformed Police Directorate or the General Police Directorate is appropriate since it allows for faster and more economic carrying out of tasks.

37. The number of aliens, who are first accommodated in the Transitory Home for Aliens (since 1999 known as the Aliens' Centre), has increased significantly since 1992. Detailed information is evident from the appendix to this report entitled "Ministry of the Interior of the Republic of Slovenia - Report on the Implementation of the UN Convention against Torture" and from the appendices to this appendix.

38. Pursuant to the new legislation asylum-seekers and aliens pending deportation from the country are formally treated separately. It also includes separate accommodation of these persons, by which, in the opinion of the Ministry of the Interior, an important goal has been achieved; however, this is only the first step. Concrete conditions will have to be fulfilled in the future for consistent implementation of new legislative provisions. Despite the formal separation of the two categories of alien, the Aliens Centre and the Asylum Home still operate in the common building of the former Transitory Home/Centre for Aliens at Celovška cesta in Ljubljana, which prevents separate accommodation of different categories of alien.

39. Therefore, the Ministry of the Interior of the Republic of Slovenia is making efforts to find additional facilities at appropriate locations which would enable separate treatment of these categories of aliens also in terms of space. Until now the Ministry has not found additional accommodation facilities and appropriate buildings. The Aliens Centre has 325 beds, of which 140 are in Ljubljana, 145 in Veliki Otok near Postojna and 40 in Prosenjakovci. In 2000, the capacities were exceeded several times due to a large number of aliens. Complying with the standards of accommodation that apply to persons with restricted movement pending their deportation from the country is very difficult in such circumstances. Despite all of these difficulties the management of the Centre makes efforts to reduce the number of aliens in the premises, to improve the living conditions, to provide separate rooms for aliens with regard to sex, age, nationality and other criteria, to ensure the uninterrupted functioning of the department for juveniles without escort, to improve conditions of hygiene, respect privacy, and provide community rooms, play and education of children. The Minister of the Interior submitted specific guidelines to the Police for the improvement of this situation. A conceptual project for the building of a new facility for the Aliens Centre has been prepared with funds from the PHARE programme.

40. The issue of illegal migrations, overcrowded facilities and poor living conditions in the Centre has been discussed by the Government of the Republic of Slovenia several times within the reference period and a number of decisions have been adopted to improve the situation. The burning issue of illegal migration was discussed in February 2001 by the Council for National

Security of the Republic of Slovenia and the Committee on Home Affairs of the National Assembly of the Republic of Slovenia. After the consultations mentioned above, the Ministry of the Interior of the Republic of Slovenia speeded up the endeavours to improve the critical situation in the overcrowded Asylum Centre at Celovška cesta in Ljubljana. Various media activities to restrict or prevent the improper responses to the increased number of asylum-seekers in Slovenia or the persons accommodated in the Asylum Centre in Ljubljana have been noted by the Slovenian public (including the tenants in the immediate vicinity of the Asylum Centre in Ljubljana).

41. According to the Ministry of the Interior of the Republic of Slovenia there were no cases of death among the detained persons in the last two years and only in four cases did detainees try to commit suicide. The Police prevented suicides, took care of proper medical aid and reported the incidents to the district State prosecutor. In this reference period no disciplinary, criminal or similar proceedings were instituted against police officers.

42. In the reference period six persons died during the carrying out of measures and procedures, among whom three were foreign citizens. Three persons were killed with police firearms (an armed murderer while being arrested; a person for whom a warrant for arrest was issued while being arrested; an illegal immigrant from the accidental triggering of firearms while attacking the police officer). Two persons committed suicide with their own weapons at the time of arrest, and one person died during a house search due to health reasons.

43. In the reference period the procedure as provided by the statute was instituted to establish the facts and responsibility for death. According to the Ministry of the Interior of the Republic of Slovenia all investigatory and other actions stipulated by the Code of Criminal Procedure had been conducted (investigation of the crime scene, gathering information, seizure of objects, expert opinion, house and personal search, etc.). In compliance with the provisions of the Code of Criminal Procedure, the State prosecutor was informed about the established facts and circumstances. In the course of exercising police powers, the crime scenes of all cases of death were visited by an investigating judge.

44. Furthermore, five persons were seriously injured in the reference period due to the use of coercive measures, in three cases because the police used coercive measures when they were attacked, in one case because of the aggressive conduct of the person in the proceedings before the misdemeanour judge, and in one case because of the aggressive conduct of the handcuffed person in a police intervention vehicle.

45. In all cases when, in the reference period, a police officer used firearms, or caused serious or grievous bodily harm, or even death by using forcible means, the Director General of the Police or the director of the Police Directorate to which the police officer concerned was attached, appointed at least a three-member commission in accordance with the provisions of the new Rules on Police Powers (see above). Such commission investigated all circumstances of the use of forcible means, produced an official report and gave an opinion on whether the forcible means were applied in a legal and professional way.

46. In one of the above cases (when a police officer, during an arrest, killed the person for whom the arrest warrant was issued) the State prosecutor initiated an investigation in accordance with the Code on Criminal Procedure. In other cases no irregularities were detected in the conduct of the police officers.

47. Persons serving penal sanctions linked to the deprivation of liberty are also of interest from the perspective of the Convention against Torture. According to the data of the Ministry of Justice of the Republic of Slovenia and its Prison Administration, 656 convicts were incarcerated in Slovenian prisons on 1 January 2000. On 31 December 2000, 738 convicts were serving imprisonment sentence. In 2000, there were 973 newly admitted convicts to prison, which is 14.2 per cent more than a year earlier. The number of all convicts serving imprisonment sentence in 2000 was 1,629, i.e. 13.8 per cent more than a year earlier. The number of prisoners has been constantly on the rise in Slovenia for several years.¹⁶

48. The Ministry of Justice of the Republic of Slovenia established that the total capacity of prisons in Slovenia is 1,072 beds. The average occupancy is 68 per cent, and if we add approximately 330 detainees, the occupancy of available beds is 110 per cent. This represents a problem in the majority of prisons.

49. On the basis of Slovenian legislation on the restriction of the use of tobacco products and according to the Ministry of Justice, non-smoking areas were introduced in all prisons in the reference period (in dormitories, living rooms, departments). When placing a convict in a prison cell, it is taken into account whether he/she smokes, so that there is no combination of smoker and non-smoker, if possible.

50. In 2000, four convicts died in Slovenian prisons; one of them committed suicide. A special commission investigated all cases of the death of a convict in prison or a youth in a juvenile detention centre in the reference period, in which an investigating judge, a doctor and a representative of the police participated. In practice, the commission always orders an autopsy. In 2000, no indictments were made in connection with any of the mentioned deaths.

51. In 2000, 11 convicts and 9 juveniles inflicted injuries on themselves, while 46 convicts were injured by others. According to the Ministry of Justice of the Republic of Slovenia, the latter were treated as disciplinary violations within the framework of disciplinary procedures.

52. In 2000, the Slovenian Police discussed the report which the Slovenian delegation presented to the Committee against Torture. On the basis of this report and the subsequent recommendations of the Committee against Torture, concrete tasks of the Police were undertaken in the area of exercising control; adequate internal acts and guidelines were drawn up as well as adapted programmes for training police officers. Comprehensive guidelines for the enforcement of police detentions were prepared. In accordance with the recommendations of the Committee against Torture, the conditions were improved at the premises of the Aliens Centre in Ljubljana, Prosenjakovci and in Veliki Otok near Postojna. The recommendations of the Committee against Torture were followed in the annual working plan of the competent department of the Uniformed Police Directorate of the General Police Directorate for 2001.

53. A group was formed in the General Police Directorate, which drew up new registration forms to be completed at the time of the arrest or in the cases of detention and they have been in use since October 2000.

54. In computer registers, applications for detention in the police units are adapted in such a way that they enable the control and detection of errors. The print-outs of errors are forwarded to the police directorates, which then exert control over police units. In this way, certain irregularities were detected in detaining persons in police units.

55. The judgement of the European Court of Human Rights in the case of Rehbock v. Slovenia (inhuman treatment) was translated into the Slovenian language and the Ministry of the Interior has given assurance that it will be used as a basis for the preparation of textbooks for education and training in secondary school and in the Police Academy, the College of Police and Security Studies, and in the lessons of proceedings in practice given in all police units in the State.

56. The case was discussed in detail at the meeting of heads of the criminal and uniformed police of the General Police Directorate. Criminal police whose officers conducted the alleged ill-treatment against the applicant, Ernst Rehbock, presented the content at expert meetings of high-ranking officers of the criminal police units at the State and regional levels. Furthermore, the presentation of the Rehbock case was included in the regular and extraordinary forms of professional qualifications and training of all members of the police who carry out the measure of deprivation of liberty under the Code of Criminal Procedure.

57. Since the Republic of Slovenia still continues with military training of conscripts, some citizens still consider their service in the Slovenian Army - an armed hierarchical institution - to be imposed on them, despite the possibility of civil military service. This potentially worsens the issues of obedience, violence and inclination to suicide, in particular in the light of the Convention against Torture.

58. According to the findings of the General Staff of the Slovenian Army in the reference period, there were no major occurrences of ill-treatment of subordinates or major occurrences of exceeding and abuse of authority. In the reference period, no cases of discrimination were specifically registered among the military on the basis of ethnic background of conscripts. In this sense the Slovenian Army had not released any criminal information in relation to exceeding of the authority of a military officer, including the criminal offence of maltreatment of a subordinate under article 278 of the Penal Code.¹⁷

59. On 16 February 2001, the General Staff of the Slovenian Army gave assurances that the detention of conscripts doing military service in the Slovenian Army (due to the violation of military order and discipline) is carried out upon the written order of the unit commander of the military police. Each detention is registered officially in the detention register book; a certificate on the seizure of personal belongings is issued to the detainee and the right to counsel is given to him. Civil lawyers have to be involved since there are no military lawyers in Slovenia. In the period between 1999 and 2000 five detentions were carried out due to excessive intoxication with the consequence of violating military order and discipline. The detentions did not exceed 12 hours, and they ended with a proposal for the violator to be brought before the civilian

misdemeanour judge to institute proceedings on violations under general rules. The Slovenian Army has premises set aside for detention only in the Pivka barracks. The premises are constructed in accordance with standards which apply in Slovenia for such premises in non-military proceedings; they offer suitable conditions for rest and lavatories; they are constructed so that the detained person cannot injure himself.

60. According to the General Staff of the Slovenian Army the military personnel, including the conscripts during military service, may, in addition to military health care, take advantage of medical services of their civilian, freely chosen doctors whom they trust.

61. During the reference period, the Slovenian Army recorded one suicide of a soldier during military service and 10 attempts to commit suicide. All the cases were dealt with by the competent civilian services in accordance with general rules (investigating judge or State prosecutor). During the reference period there were no criminal proceedings in Slovenia concerning the death of military personnel.

Human Rights Ombudsman

62. The Human Rights Ombudsman of the Republic of Slovenia draws attention to numerous cases in different reports and press releases which potentially contain the elements of torture/ill-treatment pursuant to the Convention against Torture.

63. In February 2001, the Human Rights Ombudsman drew attention in a special press release to the increasing use by police of restraining devices. A police officer from the Ljubljana Central Police Station cut off a cyclist with his official vehicle on 6 March 2000. The cyclist was properly riding in a bicycle lane. The cyclist was upset and said the following to the police officer: "What are you driving like, you jerk, and on top of everything, a policeman!" Two nearby police officers observed the event and, prompted by the cyclist's statements, requested him to produce an identity document. The cyclist refused. The police officers called the Ljubljana Central Police Station for help and another two police officers arrived. Since the cyclist insisted that he would not cooperate in his identification, the police officers took him over to the police vehicle, where they handcuffed him. The police officers took him to the police station where his identity was established.

64. The Office of the Human Rights Ombudsman expressed doubt whether in this case the principle of proportionality had been observed by the police in their decision to use handcuffs. The cyclist's response and unwillingness to cooperate in his identification was, in the opinion of the Human Rights Ombudsman, merely the response of a party injured by the driving of the police officer in an official vehicle in a manner that was against the law. However, the Police at first did not take any measures against the offending police officer. It was proposed that the police officer should be brought before the misdemeanour judge for having violated traffic regulations only after the intervention of the Human Rights Ombudsman. The Ombudsman found that the policemen, by handcuffing the cyclist, depriving him of his freedom and bringing him to the police station, had committed violations of his human rights and that the cyclist had been provoked by the police officer. The Ombudsman drew particular attention to the fact that the Police neither clarified the circumstances nor described the reactions of the cyclist who, according to the police officer, "raised a well-founded suspicion of active resistance and even

attack”. In the opinion of the Human Rights Ombudsman, the actual situation shows that the cyclist only offered resistance in not cooperating in establishing his identity, without displaying convincing actions which would show an intention to attack the police officers with weapons, tools or other objects or force.

65. With regard to the circumstances in Slovenian prisons, after the inspection of some prisons in 2000 and 2001 (prisons in Maribor, Dob, Nova Gorica, Novo Mesto, Murska Sobota, Celje and Celje Juvenile Detention Centre), the Human Rights Ombudsman established the following:

“In the field of enforcing detention and serving sentences overcrowding has become almost an insurmountable problem. The number of prisoners serving sentences is growing annually. Since 1996 their number has grown by more than half. Slovenia still belongs to the group of countries with the smallest number of prisoners serving sentences in relation to the number of inhabitants. However, this is of no consolation to those forced into overcrowded cells without any real hope for the situation to change essentially, except perhaps for the worse. In prior reports, in particular in the 1999 Annual Report, we extensively pointed to the critical situation, since the consequence of overcrowding is that the regime of effectuating detention and serving sentence is stricter and less humane for prisoners.”

The Human Rights Ombudsman asserts that the solution to the problem of overcrowded prisons would not be resolved by building new prisons; the basic principle should be observed that the deprivation of liberty is an extreme measure, to be used only in the event that any other sanction would be improper due to the seriousness of a criminal offence. He proposed wider use of the institution of house arrest under the Code of Criminal Procedure¹⁸ as a possibility of alleviating the situation in the premises of prisons intended for remand in custody.

66. The Human Rights Ombudsman has also pointed out the case of a person remanded in custody in a criminal case at the Kranj Regional Court. In 2000, the person remanded in custody was to undergo surgery in the University Medical Centre in Ljubljana. The Ljubljana Prison Administration requested the opinion of the prison doctor about the necessity of medical treatment for the person concerned. His assessment was that “such operation at that moment was not an emergency”. On this basis, the Prison Administration believed that the doctor did not recommend the operation. Such opinion was also adopted by the Court, since the judge neither allowed the surgery to be performed nor allowed him to be treated in the Medical Centre. In a special press release in November 2000, the Human Rights Ombudsman admonished:

“While serving the sentence, a person remanded in custody should be treated in a humane way and his physical and mental health should be protected. Only such restrictions may be used against the person remanded in custody which are necessary to prevent escape or arrangements that could be detrimental to the successful realization of the procedure. In the intervention with the Court and the Prison Administration we pointed to paragraph 2 of article 32 of the Rules on persons remanded in custody under which the competent court, on the request of the prison doctor, orders medical treatment in a medical centre, should such treatment of a person remanded in custody be necessary. In the case of the person remanded in custody, the prison doctor used stricter measures

than prescribed, since he based his proposal on the opinion that treatment in the medical centre was not an emergency. Unfortunately, the opinion of the prison doctor was uncritically followed by the Prison Administration as well as by the Court. Since the legal standards were used contrary to the applicable regulation, the person remanded in custody was not allowed the treatment in hospital.”

67. Particularly in relation to the deprivation of liberty, the Human Rights Ombudsman points to certain violations of provisions in force in Slovenian legislation relating to the freedom of communication of persons remanded in custody with the Human Rights Ombudsman or his Office in practice. The Velenje District Court, for example, sent the Ombudsman seven letters from a person remanded in custody addressed to the Human Rights Ombudsman. A letter by the Court was enclosed in the mail with the explanation that the letters of the person remanded in custody had been opened and checked by mistake. The judge monitoring the person’s correspondence explained that the mistake had occurred because she had not expected letters addressed to the Human Rights Ombudsman to be in the mail, since the Prison Administration should have sent them directly to the Human Rights Ombudsman.

68. Special attention has to be paid to the inactivity of the Prison Administration, which may be unlawful under criminal law in accordance with the Convention against Torture and to which the Human Rights Ombudsman points in his last officially published Annual Report.¹⁹ A convict was charged with the criminal offence of sexual assault on a child. Shortly after arriving in the prison where he was to serve his sentence, he noticed that he was unwelcome among his cellmates. He asked to be moved to another room, while his cellmates also requested that he be moved “otherwise we’ll do something about it ourselves”. The warnings were in vain; the prison clearly did not do anything, or not enough. The applicant was physically attacked by his fellow convicts and seriously injured. The incident not only caused serious injuries to the applicant, it also had consequences for his state of mind. He claims that he sees every convict in Dob Prison as a potential assailant. Undoubtedly a contribution to this feeling is the fact that the perpetrator (or perpetrators) was (were) never tracked down and punished, which cannot contribute to the prevention of a repetition of such behaviour. Afraid of another attack, the applicant has not made use of his right to take exercise in the open air. Because he feels threatened he proposed a transfer to another prison, but his request was rejected on the grounds that “the employees of Dob Prison will protect the convict from potential new attacks by a fellow prisoner with all the measures and means at their disposal”. The applicant’s appeal was also rejected on the grounds that Dob Prison provides “the greatest possibilities of guaranteeing the convict’s security”. This may be regarded as a case of flagrant violation of the basic human right to safety and personal integrity on the grounds of an omission by the State.

69. The Human Rights Ombudsman of the Republic of Slovenia points to the responsibility of the State to intervene in due time and efficiently in cases of violence in the family, in particular torture and abuse of children, as well as in cases of inhumane treatment of persons in social security institutions, in particular in old people’s homes. In the last published Annual Report, the Human Rights Ombudsman states, “The role of nursery nurses, teachers and counsellors in nursery schools and schools is indispensable in noticing various kinds of abuse, maltreatment and neglecting of children. Their coordinated cooperation with social service is required for efficient acting in such cases, sometimes even with the police and State prosecutor. There have been some well-known cases in which those involved merely shifted the

responsibility from one to another instead of acting in a coordinated manner to the benefit of the child.” The Human Rights Ombudsman further states that too much hesitation by the Police when it should act in such cases might be “contrary to its tasks of providing safety of life, personal safety or safety of property of people, and of maintaining public order”. This is particularly the case “in the event of calls showing violence in the family ... at home or in other private premises”. We hope that the law on the protection of the child, which is at present in the initial stages of legislative procedure, will contribute to the improvement of the situation in this area.

70. Another important statement by the Human Rights Ombudsman is that,

“the capacity of social security institutions suffices for the accommodation of approximately 4 per cent of the inhabitants of Slovenia of 65 years of age or older. These institutions are, however, also intended for younger people with special needs. Only 3.8 per cent of people over 65 years of age are therefore accommodated in these institutions. The old people’s homes are full. The number of applications for admission has been increasing every year, and waiting for a free bed has been ever longer. There have been thousands of applications, hundreds of applications for an individual institution. ... The old people’s homes are full and difficulties are experienced in the event of urgent admission. There is also great pressure to admit older persons directly from hospitals. As a rule, a free bed is only available in the event of death: 30 to 40 per cent of residents of old people’s homes are replaced in this way every year. Relations between the residents as well as between the residents and the staff may become impersonal in big old people’s homes. This can harmfully affect the residents and their treatment.”

71. The latest executive regulation of the Social Security Act attempts to resolve this unsatisfactory situation. This executive regulation is the National Programme of Social Security until 2005, adopted by the National Assembly of the Republic of Slovenia on 29 March 2000. The National Programme provides for the alignment of the places in the old people’s homes with the anticipated age structure of the inhabitants of Slovenia and certain other measures for resolving the above problems. It is obvious that the issues of the integration of older people in the society and satisfactory social and health security are complex problems, for which a comprehensive and long-term solution will have to be found.

72. Criticism expressed by the Human Rights Ombudsman of the Republic of Slovenia, at least in severe cases of maltreatment of socially underprivileged categories of people (children, women, the old, handicapped and ill), indicate the criminal law relevance of the issues of the Convention against Torture concerning an act of omission by responsible State authorities (police or social services’ failure to act). Such matters are difficult to prove under criminal law, and clear and specific legal standards are not available in the majority of cases in Slovenia. It has been nevertheless indicated that in the future attention will be focused on the responsibility for particularly drastic acts of omission of State aid in the broader sense, also within the Convention against Torture.

73. Other human rights violations described in the reports and press releases of the Human Rights Ombudsman of the Republic of Slovenia which deserve special mention include the use of a detention cell nicknamed “the pigeon loft” because the outer part of the window opening is used by pigeons, whose droppings cause an unpleasant smell. In another cell two persons remanded in custody drew the Human Rights Ombudsman’s attention to the toilet and sink which had been broken for a long time. The consequences of the leaking were clearly evident on the floor. The cells of convicts in the closed block of the prison were damp, dark and poorly maintained. The plaster was coming off in some places. The convicts complained that a bad smell was coming from the toilets in the cells and that at times they could see rats. Only after the Ombudsman’s intervention did Koper Prison see to it that the window in the detention cell was cleaned and protected in such a way that pigeons could not reach the window. The problems with the toilet in another detention cell were also put right. All the rooms in the closed block were repainted, as were most of the premises where convicts live. New neon lights were fitted in the closed block, improving the lighting of the living premises and thus living conditions. The Human Rights Ombudsman states that the principle of careful management requires that such damage to buildings and equipment be repaired as soon as possible, or it may be regarded as a human rights violation.

74. Of particular interest in regard to involuntary hospitalization and treatment of the mentally ill on the basis of decisions of criminal law is the criticism of experts in psychiatry published in the journal of the Chamber of Medicine of Slovenia (Isis - Journal of the Chamber of Medicine of Slovenia 2001, No. 3, pp. 32-34) concerning the practice of involuntary hospitalization and treatment in criminal proceedings, and particularly concerning the role of solicitors in such proceedings. The authors believe that solicitors are not motivated in these proceedings to offer efficient legal aid to their clients and in the majority of cases do not visit their clients in hospitals. In the opinion of an expert psychiatrist commissioned by the Ministry of Health of the Republic of Slovenia to participate in the drawing up of the present report, Slovenian psychiatry does not encounter problems of torture and is “professionally offended” if questions are posed on the issue of torture in Slovenian psychiatry.²⁰

75. Detailed information on the number and nature of non-litigious proceedings relating to psychiatric treatment of people without their consent in Slovenia during the reference period is included in the appendix “Ministry of Justice of the Republic of Slovenia - information for the report on the UN Convention against Torture”, pages 10-12. Other relevant statistical data about security measures of a medical nature in the Republic of Slovenia are available on page 8 of the above appendix.

III. ARTICLES 3 AND 6-8

76. In the light of the Convention against Torture, a decision of the Constitutional Court of the Republic of Slovenia in relation to the Asylum Act (*Uradni list RS, No. 61/1999*) was published in the Official Gazette, No. 66/2000 on 26 July 2000, serial number 3064. The Constitutional Court explains, inter alia, standards for the assessment of the danger that an extradited person will be tortured abroad, in particular in the light of article 3 of the Convention against Torture. It is stressed that the possibility of effectively implementing human rights in reality as well as the right not to undergo illegal treatment in the sense of the Convention against Torture should be guaranteed. Therefore, the Slovenian Constitutional Court stipulates that a

person “should not be imposed too heavy a burden to prove that they are in danger” during the process of deportation in the sense of the Convention against Torture. The Court stresses that the assessment of the possibility that a person is subject to inhuman treatment is very demanding. The State should consider the position of the person concerned as well as the situation in the State of origin and/or the State to which the person is to be extradited. The decision of the Constitutional Court gives further precise analysis of the terms used. The original of the judgement in question is therefore attached as an appendix to this report.

77. According to the data provided by the Ministry of Justice of the Republic of Slovenia, the secondary sentence of deportation of an alien from the country was passed in 171 cases of criminal procedures in 1999; more recent data are not yet available. When passing this secondary sentence, the courts do not assess the status of human rights protection in the country to which a person is to be deported, the reason being mainly the fact that the defendants do not refer to the danger of torture before the court.

78. Since illegal immigrants, i.e. persons residing illegally on the territory of the Republic of Slovenia, are potentially exposed to human rights violations to a high degree due to their specific social position and other specific factors, the issue of deportation should be reviewed on the basis of the most recent data of the Ministry of the Interior of the Republic of Slovenia and on the basis of the Convention against Torture.

79. During the reference period, illegal immigrants were mostly returned forcibly to the country from where they had illegally entered the Republic of Slovenia. International agreements have been concluded with all neighbouring countries, enabling the deportation of eligible immigrants for whom there is enough evidence that they have lived on the territory of the State party or proving that they have illegally crossed the border between the State party and the Republic of Slovenia. Thus, in 1999, 4,025 aliens were forcibly returned to neighbouring countries on the basis of international agreements, and 5,740 in 2000. If the collected evidence is insufficient according to international agreements, attempts are made to return the aliens to their respective countries of origin.

80. In 1999, from a total of 12,559 aliens, 70 with a secondary sentence of deportation from the Republic of Slovenia were accommodated at the Aliens Centre; deportation as a safety measure was imposed on 719 aliens. In the same year, 3,163 official extraditions were carried out; 1,831 aliens were removed with escort. In 2000, of a total of 14,576 aliens, 22 with a secondary sentence to deportation from the Republic of Slovenia were accommodated and deportation was imposed on 1,286 persons; 3,115 aliens were forcibly removed from the country.

81. According to the Ministry of the Interior of the Republic of Slovenia, so-called illegal aliens are dealt with individually during the entire procedure and have, during the time of the procedure, the possibility to refer to article 51 and state the grounds on which their life or liberty in their country of origin would be endangered. Social services are responsible for preparing aliens to return, talking to them, providing a medical examination, and offering health services for the time of their residence.

82. In November 2000, links were established with the International Organization for Migration (IOM) which started to operate in Slovenia. The Slovenian police expects that on the basis of cooperation with IOM representatives, the return of persons in compliance with the principle of voluntary return will be easier.

83. As a response to the report or recommendation of the Committee against Torture, the Ministry of the Interior, in relation to the non-conformity of article 51, paragraph II, of the Aliens Act with article 3 of the Convention, explains that in Slovenian legal order (as presented also in previous reports of Slovenia to the Committee against Torture), the Aliens Act (art. 51) and the Asylum Act (art. 6) forbid the forcible removal of an alien to a country where there are substantial grounds for believing that his or her life or freedom would be in danger due to his or her race, religion, nationality, membership of a specific social group or adherence to a political belief, or to a country where there are substantial grounds for believing that an alien might be subjected to torture or inhuman and degrading treatment or punishment. However, the second paragraph of both articles provides for an exception from the non-refoulement principle, according to which forcible removal of an alien is allowed despite the grounds stated in the previous paragraph, if the alien might pose a threat to national security or was, with a final judgement, convicted of a grave criminal offence and consequently presents a threat to the Republic of Slovenia. The Ministry of the Interior underlines that the said exception to the non-refoulement principle was included in the Slovenian Aliens Act and the Asylum Act or copied from the Convention relating to the Status of Refugees, article 33, paragraph 2, of which allows for the removal of an alien from a country on the grounds of national security.

84. Article 3 of the European Convention on Human Rights stipulates that no one is to be subjected to torture or inhuman or degrading treatment or punishment and thus it represents an absolute category, allowing for no exceptions. The Convention against Torture and the Constitution of the Republic of Slovenia (art. 18) contain a similar provision. The absoluteness of the non-refoulement principle was also proved by the practice of the European Court of Human Rights. According to the Ministry of the Interior of the Republic of Slovenia, the belief prevailing in the Republic of Slovenia is such that, despite the fact that the exception to the non-refoulement principle is also laid down by the Convention relating to the Status of Refugees, the latter is not in conformity with international human rights law.

85. At the moment, amending acts to the Aliens Act and to the Asylum Act are being drafted in Slovenia. Both bills also contain the exclusion of both paragraphs 2 allowing for derogation from the non-refoulement principle.

86. According to the Ministry of the Interior of the Republic of Slovenia, no alien was removed from the Republic of Slovenia pursuant to article 51, paragraph 2, of the Aliens Act or article 6, paragraph 2, of the Aliens Act.

IV. ARTICLE 10

87. The Ministry of Foreign Affairs of the Republic of Slovenia is preparing publication of all reports forwarded so far by Slovenia to the Committee against Torture under article 19 of the Convention against Torture. Thus, the awareness of the torture issue should be further raised among the Slovenian general and legal public.

88. According to the General Staff of the Slovenian Army on 16 February 2001, the main regulations, including the rights of military persons (Defence Act, Rules of Service in the Slovenian Army),²¹ are “always available” to members of the Slovenian Army, i.e. officers, non-commissioned officers, professional and non-professional soldiers and civilians, including the right to appeal. The General Staff of the Slovenian Army states that the mentioned rights are also dealt with within the scope of regular military education and training, whereby members are “informed of the possibility of lodging a complaint to other institutions for the protection of the rights of individuals”. The education includes a general overview of different international conventions as well as the responsibility of a military person with regard to obeying orders of his or her superiors. In order to acquire police authority, members of the Military Police in particular must complete a special education and training programme which also includes legal knowledge of substantive criminal and procedural law and law of violations.

89. According to the data of the Ministry of Justice of the Republic of Slovenia, on 31 December 2000, of the 861 persons employed at the Prison Administration of the Republic of Slovenia, 5 per cent of them had less than a secondary education, 55 per cent had secondary education, 18 per cent had a higher education and 22 per cent had a university education. It has to be stressed that after the new Enforcement of Penal Sanctions Act, all employees working with imprisoned persons had to pass an expertise examination in order to deal with administrative acts within the scope of administrative procedure. This is part of the endeavours for a higher degree of expertise of employees, which also includes instructions on the prohibition of torture in the spirit of the Convention against Torture.

90. According to the data of the Ministry of the Interior of the Republic of Slovenia, institutions for education and training of police officers (Police College and High School as well as the Training and Education Centre within the Police Academy, College for Police and Security Studies) focus on topics concerning respect for human rights and fundamental freedoms. The educational process is based on chapters on ethical dimensions of the law and legal regulations (introduction to law, criminal law, law of violations, authority with respect to practical procedures, code of police ethics, social system, history) and particularly rules included in international declarations and agreements relating to general human and civil rights and freedoms (Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Declaration on the Police etc.). In the continuation of education, the candidates upgrade the acquired knowledge of law with the contents of technical subjects. When dealing with chapters on authority derived from the law on criminal procedure, the basic principles of substantive criminal law and certain provisions of the Penal Code of the Republic of Slovenia (chaps. XVI, XXVI and XXXV in particular) and the provisions of the Convention against Torture will be particularly pointed out to the candidates. The candidates are also made aware of the issue of human rights when dealing with the provisions of the Criminal Procedure Act concerning deprivation of liberty and ordering detention.

91. According to the Ministry of the Interior of the Republic of Slovenia, all trainees are informed of the European Convention as an additional safety valve for the treatment of prisoners and detainees, the competencies of the Committee for the Prevention of Torture and its potential visits to places where persons are deprived of their liberty by a public authority, and by examining the treatment of these persons. Furthermore, all trainees receive a publication of the European Committee for the Prevention of Torture.

92. A special operative team has been formed to provide escort when removing aliens within the scope of the departments concerned with police supervision and operative work with aliens at the Aliens Centre. The team received additional training in this field abroad (removal of aliens on aircraft).

93. In order to inform police officers of human rights, the Ministry of the Interior of the Republic of Slovenia had 15,000 copies of the Manual on International Human Rights Standards for the Prosecution Authorities printed during the reference period. Every police officer received a copy of the Manual. In cooperation with the Information and Documentation Centre of the Council of Europe in Ljubljana, the Ministry of the Interior issued a publication with the title A Visit by the European Committee for the Prevention of Torture. An appendix, "A Visit by the Human Rights Ombudsman to a Police Station", was added to the publication.

94. The provisions of the previously mentioned draft Code of Judicial Ethics also include the requirement that "a judge shall continually strive to maintain the level of his or her expertise" (art. IV). Similar requirements in relation to public servants may also be found in different provisions of the previously mentioned Public Servants' Ethics Code.

95. Incidentally, in his latest official Annual Report, the Human Rights Ombudsman of the Republic of Slovenia continues to underline, "as concerns the functioning of the police and authorized persons in prisons", "the requirement for clear rules of the game and for constant and continuous education and training in order to carry out the authority lawfully and in compliance with the rights and dignity of an individual", as well as the requirement for "training of staff employed in social security and health service to identify the cases of violence against women and to treat such women properly". The Human Rights Ombudsman believes that in Slovenia, more efforts should be made to increase "the awareness of the seriousness of the issue of violence and of the fact that all forms of violence against women, physical, mental and sexual, represent a violation of human rights".

V. ARTICLES 11 AND 12

96. A special chapter ("XVIII - Supervision of institutions") of the above-mentioned Rules on the Implementation of Prison Sentences lays down in detail the extent of and competencies regarding the supervision of the work of Slovenian prisons. As stipulated by the provisions of article 122 of the Rules, the supervision also includes "establishing whether the treatment of convicts is in compliance with the regulations, in particular as concerns humanity and respect for human dignity, ... whether those rights are being implemented which were not withdrawn from these persons or limited in respect of them", and also, for example, establishing whether

“modern work methods and knowledge of different fields of expertise are being used by prison staff in dealing with convicts”. Pursuant to article 123 of the Rules, an official of the Ministry of Justice has, when carrying out the supervision, the right to demand oral explanations both from prison staff and convicts.

97. The previously mentioned draft Code of Judicial Ethics also includes requirements to the effect that “a judge should maintain and protect his or her independence and the independence of the judiciary and not allow any interventions which might jeopardize independent discharging of his or her duties” (provision of article II), to the effect that “a judge shall be impartial in performing his or her function and does not tolerate the adjudication to be subjected to his or her inclinations, prejudices or beliefs formed in advance, political, economic or other interests, his or her private knowledge of the matters in dispute, public demands or criticisms and other circumstances which might affect his or her decision in a particular case or which might seem as such inappropriate influence” (provision of article III). These provisions are particularly relevant in the light of article 12 of the Convention against Torture.

98. Within the scope of the provisions of article 12 of the Convention against Torture on the independent investigation of matters with elements of torture, the Human Rights Ombudsman of the Republic of Slovenia discovered the unsatisfactory legal conclusion of a case from 1999 of physical violence used against a detainee. The matter casts suspicion on the ability of the State to protect the human rights of persons deprived of their liberty. Since the legal resolution of the case was in progress during the reference period, the position of the Human Rights Ombudsman concerning it will be briefly outlined in this report.

99. On the occasion of the visit by the Human Rights Ombudsman to the Koper Prison, a detainee complained that on 20 May 1999, while he was being taken into custody, police officers from the Koper Police Station used undue physical violence against him. According to his statement, at the front door, a police officer hit him in the face, neck and shoulders with a fist and when he collapsed, the police officer kicked him and strangled him. The officer physically attacked him again at the second door to the closed block of the prison.

100. During his visit to the prison, the Human Rights Ombudsman received official notice of the statement from a warder who had witnessed the event. In his statement seven days after the event, the warder wrote that when the applicant spat at him, the police officer “reacted in a very aggressive manner, pushing the detainee so that he fell to the floor and dragged him away from the door; kicked the detainee several times and put a foot on his neck”. Later, the warder also gave a statement confirming that the police officer kicked the detainee. The prison doctor established that the detainee sustained abrasions to both knees, to his left hand on the outer side of the fingers, to his right shoulder, to the right side of his face, to the left and front side of his neck, and a bruise on the right side of his face. These injuries could confirm the detainee’s claims. When the Human Rights Ombudsman of the Republic of Slovenia proposed to the Ministry of the Interior of the Republic of Slovenia that it carefully investigate the matter, particularly from the aspect of the justification of the use of coercive means, a police inspector carried out two interviews with the warder who had witnessed the event. According to the official police report on the first interview, the warder did “not remember the event very well” after three months, but said that “the detainee was suddenly lying on the floor” and that “he had been kicked by the police officer in the neck area”. As concerns the second interview

two months later, the official police report states that the warder had “a poor view” of the incident and saw “that the police officer was swinging his legs, but this action could not be interpreted as intentional kicks”. The official report also says that in his first statement about the event the warder, “by mentioning the aggressive reaction of the police officer and the kicks, did not mean this to be understood literally, nor the fact that the police officer put his foot on the detainee’s neck”. Thus, the facts given by the warder in his first statement immediately after the event are “indeed more personal conclusions on the basis of insufficiently registered (seen) details within the scope of the entire event”. After the evidence was collected, the Koper Police Directorate found that the suspicion that a criminal offence had been committed was unfounded, and that there were no grounds to file a criminal complaint against the police officer. Moreover, the Police had not established sufficient circumstances to justify disciplinary proceedings. It was determined that the actions of the police officer in using physical force were lawful and professional. The applicant also forwarded the written application, the so-called “complaint-criminal information”, to the Office of the District State Prosecutor in Koper. However, the State Prosecutor did not consider the application to be a criminal complaint. In his decision, to the effect that the actions of the police officer did not indicate the commission of the criminal offence of violation of human dignity by abuse of his office or official duties pursuant to article 270 of the Penal Code of the Republic of Slovenia,²² he did not instruct the applicant of his right to instigate a criminal prosecution himself. In December 2000, in a special press release, the Human Rights Ombudsman of the Republic of Slovenia pointed out that it was not unlikely that it would be in the interest of the police inspector to record the statement of the witness in such a way so as not to incriminate another police officer. Due to the period of time that had elapsed since the event it was, on the one hand, more likely that the later statement was less trustworthy and, on the other, that there had been more opportunities to influence the witness. In his report, the Human Rights Ombudsman expressed his doubts as to the independent processing of the prisoner’s complaint in the matter, which is potentially relevant also within the context of the Convention against Torture.

101. The latest official Annual Report of the Human Rights Ombudsman of the Republic of Slovenia includes a description of the complaint lodged by a convict during the serving of his prison sentence in the Dob Prison to the effect that authorized officials (warders) illegally used coercive measures against him, including physical force and a truncheon. The allegations were refuted by the Prison Administration, since the convict had thrown a vessel containing food at a warder and tried to attack him physically. The Administration also pointed out that the convict was “offensive and aggressive” and that he had “tried the patience of the prison staff daily ... with rough refusals, insults, threats and spitting” and that the staff had “used up all the educational and disciplinary measures” on this person. According to the Human Rights Ombudsman, coercive means were used by at least two warders who inflicted at least three blows on the convict with a truncheon. After the event, the prison doctor established that the convict had sustained several bodily injuries in the form of bumps, swellings, weals and bruises on the head and other parts of his body. The warders who participated in the intervention were not hurt. The report by which the Prison Administration proved justification and lawfulness of the use of coercive measures includes the statement that “interviews were held with all involved in the conflict”. The report particularly referred to the interview with the convict, a copy of which the Human Rights Ombudsman was unable to obtain. Later, he was informed by the management of the prison that on the day following the event, the Assistant Head of the Security and Protection Bureau conducted an interview with the convict. His statements were included in

the report on the use of coercive measures; however, he made no special recording of the interview with the convict “on these grounds”. The Human Rights Ombudsman expressed his doubts as to whether the prison had dealt with the matter in an appropriate way. For details on disciplinary and criminal procedures, see also above the section on article 2, “Difficulties in practice”, and the appendices quoted therein.

VI. ARTICLE 13

General

102. Since 29 November 2000, new executive regulation of the Police Act has been in force (*Uradni list RS*, 49/98 and 66/98 - as mentioned above, the Act had been presented in the appendix to the initial report to the Committee against Torture), which is of particular importance in terms of the realization of the right to appeal. Relevant also in cases of torture under the Convention against Torture are the Instructions on Dealing with Complaints (*Uradni list RS*, 103/2000). The Instructions explain article 28 of the Police Act, which stipulates that an individual who is of the opinion that the treatment of a police officer violated any of his rights or freedoms may, independently of potential other appellate or criminal procedures, within 30 days file a complaint with the police. The Instructions regulate the method and the procedure for processing complaints and, inter alia, (co)define, together with the mentioned Act, that in case a complaint is filed personally, the responsible official must, upon request of the complainant, issue a certificate of the complaint filed. If it is not evident from the complaint which right or freedom of the complainant had been violated, the police request the complainant supplement his complaint within eight days. Should he fail to do so, it is considered that the complaint has been withdrawn. In compliance with the provisions of the Instructions, the complaint is dealt with by a duly authorized official. This is a person authorized either by the Director General of the Police (dealing with complaints lodged against employees of the General Police Directorate and directors of Police Directorates) or by the Director of a Police Directorate (dealing with complaints lodged against employees of the Police Directorate). The provisions of the Instructions stipulate that the Director General of the Police or the Director of a Police Directorate may, on the proposal of the complainant, exclude the authorized official from the procedure if he or she is directly connected with the police officer or the event in dispute. Furthermore, the Instructions explain the provisions of the Police Act, stipulating that the complaint is also dealt with by representatives of the public and trade unions. Representatives of the public are appointed and discharged, at the level of Police Directorate, by the Director of a Police Directorate on the proposal of the local community. The mentioned provision is one of the most important and potentially one of the most effective instruments of public supervision over police work.

103. The provisions of the above-mentioned Instructions stipulate that a special senate determines whether the complaint is substantiated. The senate consists, with regard to the nature of the complaint, of the Director General of the Police or the Director of a Police Directorate or a person authorized by him, a representative of the public or a trade union, the official authorized to deal with the complaint in the capacity of rapporteur and a recording clerk and, if required, experts to clarify technical issues. It must be particularly stressed that the members of the senate must decide whether the complaint is substantiated and notify the complainant thereof within 30 days of the receipt of the complaint. According to the

Instructions, the decision of the senate is final and no objection may be filed either by the police officer involved in the procedure or by the complainant.²³

104. Numerous provisions of the previously mentioned Rules on the Enforcement of Imprisonment Sentences explain different rights to appeal as stipulated by the Enforcement of Penal Sanctions Act. Article 95, for example, stipulates that the disciplinary commission - against whose decision a convict appealed in a disciplinary matter - must “immediately or within 48 hours at the latest transmit the complaint to the Ministry of Justice” together with the challenged decision, material on disciplinary violations and the personal file of the convict. Articles 117 to 121 of the Rules include further provisions on complaints of convicts. Upon receiving the complaint of a convict of a violation of rights or other irregularities in a prison, the Director of the Prison Administration at the Ministry of Justice of the Republic of Slovenia must “take the necessary steps to establish whether the actions of the prison staff were lawful and appropriate and whether the rights of the convict were violated” (art. 118/I). If the Director establishes that the complaint is justified, he instructs the prison administrator to take the necessary steps in order to guarantee the rights of the convict. At the same time, the Director informs the convict, in writing, of his conclusions on and potential measures to remedy the complaint and instructs him on the right to submit a written complaint to the Ministry of Justice if he believes that the complaint has not been resolved properly (art. 188/II and III). As stipulated by article 118, paragraph IV, of the Rules, the convict files the complaint with the Ministry in writing or orally, on record, or he or she may complain orally at the Ministry of Justice to an official responsible for supervision over institutions.

105. The aforementioned Rules on the Enforcement of the Educational Measure of Committal to the Juvenile Detention Centre define in detail the procedure for processing the complaint of a juvenile; the procedure is similar to the Rules on the Enforcement of Imprisonment Sentences dealt with above. Similarly, the provisions on supervision over the lawful functioning of correctional homes are practically the same as those on supervision over the lawful functioning of prisons.²⁴

106. According to data provided by the Ministry of the Interior of the Republic of Slovenia, during the reference period, the organization and classification of jobs has been systematically changed in order to increase the efficiency of work as concerns complaints and internal protection. The Department for Complaints, Internal Protection and Assistance to Police Officers within the Head Office of the Director General of the Police and the Offices of Directors of Police Directorates were authorized to investigate certain criminal offences of which police officers were suspected, and thus they were granted the possibility to investigate independently and objectively criminal offences committed by police officers.

107. In 2000, the General Police Directorate prepared cards printed in several languages (Slovenian, French, English, German, Hungarian and Italian) containing the notification of arrest for the purpose of deprivation of liberty as stipulated by the rules on police authority and which include the basic data on legal grounds for arrest and the rights of the person deprived of liberty (Miranda). The card was handed out to all police officers, who use it during arrest.

108. In 2000, two special posters were also designed informing the detainees in 12 languages of the legal grounds for deprivation of liberty and the rights of a person deprived of liberty. The posters were distributed to all police units where they are placed in such a way that they can be seen by detainees who may read their content.

Problems in practice

109. The Ministry of the Interior of the Republic of Slovenia states that during the reference period it made considerable efforts to improve and upgrade the procedure for dealing with complaints filed against police officers due to inappropriately performed police procedures. The new instructions for dealing with complaints in accordance with article 28 of the Police Act (see explanation above) took effect in November 2000. Since then, complaints that are found to be legitimate have been shown to participants in various forms of education or in professional specialization courses so as to decrease the possibility of acting wrongly in similar situations.

110. A total of 1,552 complaints were filed with the Slovenian Police in 2000, which is less than in 1999, when 1,843 complaints were filed; 14.9 per cent (201) of the complaints dealt with in 2000 were upheld, while 13.3 per cent (214) were upheld a year before. A detailed structure and statistics relating to these complaints are available in the appendix to the present report, entitled "Ministry of the Interior of the Republic of Slovenia - Report on the Implementation of the UN Convention against Torture".

111. The majority of complaints on account of allegedly unprofessional and incorrect work by police officers in 1999/2000 were filed in the area of road safety (requiring the payment of a fine on the spot, ordering breath alcohol testing, ordering professional examination). In the area of investigation of criminal offences, the majority of complaints filed related to the gathering of information, summoning of people and seizing of objects. In the area of public order, the majority of complaints filed related to the gathering of information and issuing orders and instructions. The majority of complaints in the area of border protection related to the refusal of permission to enter the country, inspection of vehicles, passengers and luggage, and issuing the orders and instructions. Police officers were in most cases accused of incorrect behaviour, unprofessional actions and inaction.

112. In complaint procedures initiated in 2000, 3,317 grounds for complaint were established, relating to the exercise of powers, coercive measures and other reasons, of which 492 (14.8 per cent) were upheld. A year before 3,440 grounds for complaint were established, of which 355 (10.3 per cent) were upheld. In 2000, 1,366 grounds for complaint were examined relating to the exercise of police powers, of which 154 (11.3 per cent) were upheld. In 1999, 1,330 grounds for complaint were examined, of which 99 (7.4 per cent) were upheld. The majority of complaints related to requirements to pay a fine on the spot, the gathering of information and to the ordering of breath alcohol testing. The use of coercive measures was the

reason for examination of 222 grounds for complaint, of which 26 (11.7 per cent) were grounded. The year before, 176 grounds for complaint were examined, of which only 9 (5.1 per cent) were grounded. The majority of complaints related to the use of restraint devices, pepper sprays and physical force. According to information provided by the Ministry of the Interior, the following statutory definitions apply to the specific cases examined:

(a) A police officer is said to step on the neck of a person in the presence of several people and kicked the person twice while the person was handcuffed and lying on the ground (the disciplinary procedure was halted since the disciplinary body ascertained that not all elements of a disciplinary violation were present);

(b) A police officer is said to have brutally pulled a driver out of a vehicle (disciplinary procedure was halted since the disciplinary body determined that there was insufficient evidence for a disciplinary violation);

(c) A police officer is said to have kicked a citizen lying on the ground in the stomach (disciplinary procedure was halted since it had lapsed);

(d) A police officer is said to have threatened a juvenile, insulted him and beat him with a truncheon and hands (disciplinary procedure was halted since it had lapsed);

(e) A police officer slapped a juvenile across the face (a disciplinary measure of suspension was passed);

(f) Two police officers hit a handcuffed person several times with their hands on the body and with a truncheon on the back (a disciplinary measure of suspension was passed for both);

(g) A police officer drew a service gun and jostled with a citizen (a disciplinary measure of suspension was passed);

(h) A police officer illegally deprived an alien of freedom for approximately half an hour (a disciplinary measure of suspension was passed);

(i) A police officer unjustifiably deprived five persons of liberty, drove them approximately 8 km away in a service car and then released them (a disciplinary measure of suspension was passed).

113. Thirteen complaints have been filed in recent years against orders of detainment issued according to the Police Act and the Code of Criminal Procedure. Judicial bodies have established in four cases that the complaints were legitimate and the persons were released from detention on the basis of an annulment decision; in two cases the grounds for ordering detention had to be supplemented; and complaints were found to be illegitimate in seven cases. It has been ascertained on the basis of the complaints and supervision that the families of detained persons were not informed in two cases during the reference period.

114. According to information provided by the Ministry of the Interior, a total of 38 disciplinary procedures were initiated in 1999 and 2000 on account of excessive use of coercive measures and exceeding of authority. Ten of these procedures related to exceeding of authority and dealt with cases concerning inhuman and cruel treatment (eight disciplinary procedures on account of violations with elements of inhuman or cruel treatment and two on account of ordering illegal detention). No disciplinary procedures were initiated against a person for having ordered inhuman, degrading or cruel treatment. The police officers acted on their own initiative in the above cases and not on the order of their superior. There were also no disciplinary procedures on account of ill-treatment of subordinates.

115. The disciplinary procedure was halted in 2 of the above 10 cases since it had lapsed, and in two cases there was insufficient evidence that the police officer had committed the criminal offence of which he or she was accused. A disciplinary measure of suspension was passed in six cases. In the cases concerning activities of police officers in their off-duty time, two disciplinary procedures were halted since they had lapsed and in one case a police officer was publicly reprimanded.

116. Three disciplinary procedures were initiated on account of actions with elements of inhuman or cruel treatment when police officers mistreated their family members while off duty.

117. According to the latest information available at the Ministry of the Interior, in 1999, police officers were suspected of 160 criminal offences committed while on duty or privately, and the number grew to 181 in 2000. The majority of cases were criminal offences under chapters XVI and XXVI of the Criminal Code of the Republic of Slovenia²⁵ (criminal offences against human rights and freedoms and criminal offences against official duty and public authority) which can only be committed during the performance of police tasks.

118. The majority of criminal offences under chapter XVI of the Penal Code committed in 2000 related to the abuse of personal data (art. 154), unlawful deprivation of liberty (art. 143) and threatening the security of another person (art. 145). The majority of criminal offences under chapter XXVI related to violation of human dignity (art. 270) and to the abuse of office or official duties (art. 261). In 2000, 175 police officers were suspected of committing criminal offences, which is 38 more than in 1999 (137).

119. During the reference period, one case of ill-treatment of aliens when depriving them of liberty was recorded. Three police officers maltreated three Chinese citizens in the Aliens Centre in Ljubljana on 10 September 2000 between 9.30 p.m. and 1.30 a.m., and insulted their human dignity. The Criminal Investigation Police Directorate in Ljubljana filed a criminal complaint against all three police officers on the grounds of suspicion of committing a criminal offence of violation of human dignity by abusing their office or official duties according to article 270 of the Penal Code. A disciplinary procedure was also initiated. A detailed structure and statistics relating to these criminal offences are available in the appendix to the present report, entitled "Ministry of the Interior of the Republic of Slovenia - Report on the Implementation of the UN Convention against Torture".

120. According to Slovenian legislation, the role of a complainant in police disciplinary and related procedures to establish responsibility of a police officer concludes when a written claim is filed for initiating a disciplinary procedure. On the basis of this claim, the person authorized to conduct the disciplinary procedure (who is never the complainant) carries out the disciplinary procedure on behalf of the employer of the accused. The complainant only participates in the procedure if invited as a witness by the person authorized to conduct the procedure.

121. The Prison Administration of the Republic of Slovenia dealt with 124 complaints in complaint procedures, 11 of which were fully or partially upheld. While examining the complaint, the competent experts of the Prison Administration held talks with both the complainant and the person against whom the complaint was filed. The Prison Administration always sends a written reply to the complainant. According to information available, all criminal complaints against prison staff sent during the reference period by individual convicts directly to the Office of the State Prosecutor were dismissed.

122. The majority of complaints dealt with by the Prison Administration in the reference period referred to the non-granting of furloughs from a prison, incorrect treatment by warders, particularly the use of coercive measures, overcrowded living spaces, inappropriate food, not respecting legislations relating to the use of tobacco products and being threatened by other convicts. There were no mass revolts of prisoners either in prisons or in juvenile detention centres in Slovenia during the reference period.

123. According to information provided by the Ministry of Justice, six disciplinary procedures were carried out against prison staff in 2000.

124. According to information provided by the General Staff of the Slovenian Army on 16 February 2001, the Slovenian Army dealt with five complaints about ill-treatment by superiors during the reference period. No complaint was made about exceeding of military police powers. Three disciplinary procedures were initiated in the same period. These procedures related to insulting the dignity of a group of female members of a unit, illegally depriving seven soldiers of freedom for a short period (five of them were bound for showing disrespect to their superior), and shooting in the air in front of a group of soldiers as a form of threat against subordinates. All these disciplinary procedures were still pending at the time of drawing up the present report. The General Staff of the Slovenian Army states that “the claimants participate in the procedure for taking evidence, if required”.

125. In both his reports and press releases, the Human Rights Ombudsman of the Republic of Slovenia constantly draws attention to the backlogs in the legal decision-making process on human rights, as well as to the backlogs in the resolving of complaints in the widest sense. The latest Annual Report of the Human Rights Ombudsman draws attention to the following: “As concerns administrative tasks carried out by ministries, focus should be placed on the backlogs still present in resolving complaints by the ministries acting as second instance decision-making bodies.” As established by the Human Rights Ombudsman, backlogs of such nature are present at, among others, the Ministry of the Interior. In his report, the Human Rights Ombudsman says: “We would like to point out the fact that lengthy procedures exist also at those ministries which are not burdened with many administrative procedures.” Further, the Human Rights Ombudsman highlights the backlogs at the district and regional (also criminal) courts and with

misdeemeanour court judges. Undoubtedly, these backlogs entail potential violations of effective legal protection of individuals when speaking of torture under the Convention against Torture.

126. In the latest Annual Report, the Human Rights Ombudsman also criticizes the fact that the possibility of filing a complaint was insufficiently known to residents of social security institutions. In Slovenia, most residences for the elderly do not have any brochure or even a leaflet to be handed out, upon arrival, to the residents or to their close relatives. The Human Rights Ombudsman suggested that each residence for the elderly prepare such written information, including on those rights and obligations of particular concern to the elderly. The information should also include institutional protection and the procedure fulfilling a complaint. The Human Rights Ombudsman criticizes in particular the insufficient accessibility of the house rules. In his opinion, these rules should be available (for instance as a poster) in libraries or lounges. The Human Rights Ombudsman noted that some Slovenian residences for the elderly have had the same house rules for 25 years (and these are not easily accessible); therefore new and updated rules should be published as soon as possible. According to the Human Rights Ombudsman, the right to file a complaint cannot be considered as seriously taken into account in such institutions, as there is generally just a suggestion box. The Human Rights Ombudsman said: "A person responsible for complaints (social worker, principal warden or director) should be selected and the instructions for lodging complaints should be clear. The procedure for filing a complaint should be easy and simple. The basic guideline is: a complaint should be dealt with quickly, thoroughly and justly. The procedure should be just, impartial and confidential. The complainant should be informed accurately about the matter. In the case of a legitimate complaint, suitable ways of correcting mistakes or penalizing irregularities should be ensured. Commitment to the principle of effectively dealing with complaints should be an integral part of an institution's care to provide quality services." In reality, the Human Rights Ombudsman has often witnessed the contrary situation.

127. A special part of the Human Rights Ombudsman's report is devoted to disciplinary procedures against residents of social security institutions. According to the Human Rights Ombudsman, residences for the elderly occasionally have to deal with disciplinary procedures against their residents, whereby dismissing a resident from the institution may be relevant as a disciplinary sanction. The Human Rights Ombudsman points out that, besides the disciplinary procedure and the right to file a complaint, disciplinary offences (offences against the house rules and good relations in the institution) should also be clearly defined in advance. He states that in practice, such provisions are defined in several documents: statute, house rules and rules on admission and dismissal of residents. Such fragmentation may lead to lack of transparency, which does not contribute to the legal security of a resident facing an alleged disciplinary offence and consequently also the procedure.

128. The aforementioned Customs Service Act contains no provisions on the methods of filing a complaint by an individual, who believes that his or her rights and freedoms were violated by the actions of authorized customs administration officials. In addition, there are no provisions on legal methods open to an individual when he or she believes that an authorized official has made a mistake or acted unjustly. On the one hand, the Act provides for disciplinary responsibility; on the other hand, however, an individual is by law given no right to act as a complainant in a disciplinary procedure. In the latest official Annual Report, the Human Rights Ombudsman of the Republic of Slovenia stated that the present legal regulations governing the ways to file a

complaint are unsatisfactory. This is due to the fact that a number of powers of the customs staff are comparable to those of the police as stipulated by the Police Act and are strongly susceptible to abuse of office. Therefore, the law should explicitly advocate a more extensive and detailed regulation of the ways to file a complaint, as is regulated by the Police Act.²⁶

129. The Human Rights Ombudsman's arguments still hold true even after the provisions of the Rules on the Methods of Implementing the Authority of Authorized Customs Service Officials took effect (*Uradni list RS*, 65/2000). These Rules regulate in detail, but only as an executive regulation, the rights of persons concerned when they are dealing with the customs service (including the right to file a complaint with the General Customs Office as stipulated by article 57 of the Rules).

Notes

¹ Some statistical data and concrete judicial and administrative matters refer to the second half of 1999 and the first half of 2000 but were not available in the appropriate form at the time of the submitting of the supplementary report to the Committee against Torture or during the examination of that report in May 2000. They are included in the present report because of their informative value with reference to the changes in this reference period.

² See the presentation of the relevant act in the initial report by Slovenia to the Committee against Torture.

³ See e.g. D. Korošec, *Slovensko materialno kazensko pravo v luči Konvencije proti mučenju OZN (Slovene Substantive Criminal Law in the light of the United Nations Convention against Torture)*, Pravnik, 2000, pp. 769-791.

⁴ See the initial report of Slovenia to the Committee against Torture.

⁵ Source: *Pravna praksa (Legal Practice)* 2001, 3-4, p. 19.

⁶ The Act was presented in detail in the annex to the previous report to the Committee against Torture.

⁷ Another implementing regulation of the Police Act should be mentioned, i.e. Decree on activities which a police officer may not perform (*Uradni list RS*, 79/2000), which - as is evident from the title - endeavours to contribute normatively to the independent work of the police and its reputation.

⁸ See detailed description in Slovenia's initial report to the Committee against Torture.

⁹ An independent scientific institution with its head office in Ljubljana.

¹⁰ Detailed description provided in the appendix to Slovenia's initial report to the Committee against Torture.

- ¹¹ See p. 33 of the 1999 report.
- ¹² Internal publication, published by the Registry Department of the Supreme Court of the Republic of Slovenia in Ljubljana.
- ¹³ The data are based on the collected assessments made by social security authorities, educational institutions, etc.
- ¹⁴ The latest available official information.
- ¹⁵ The latest available official information.
- ¹⁶ Detailed official data on the structure of the prison population in Slovenia are evident from the appendix to the report entitled the “Ministry of Justice of the Republic of Slovenia - data for the report on the UN Convention against Torture”, pp. 1-5).
- ¹⁷ See presentation of legislation in Slovenia’s initial report to the Committee against Torture.
- ¹⁸ See presentation of the institution in Slovenia’s initial report to the Committee against Torture.
- ¹⁹ See the 1999 Report, pp. 38-39.
- ²⁰ See also the 1999 Annual Report of the Ombudsman (appendix to the present report) concerning the issues of mentally ill persons and the included statistics of applications filed with the Office of the Human Rights Ombudsman (p. 40).
- ²¹ For a presentation of these acts, see Slovenia’s initial report to the Committee against Torture.
- ²² For an explanation of the relevant incriminatory provision, see Slovenia’s initial report to the Committee against Torture.
- ²³ For a presentation of the Instructions on Dealing with Complaints and critical positions from the point of view of the legal position of the suspected police officer involved in the above-mentioned procedures, see S. Jarc, Pritožba zoper postopek policistov. Pravna praksa 2001, 3-4, pp. 17-18.
- ²⁴ See the presentation above.
- ²⁵ See detailed description in Slovenia’s initial report to the Committee against Torture.
- ²⁶ See also the Annual Report of the Human Rights Ombudsman for the year 1999, p. 33.

LIST OF APPENDICES

1. Annual Report 1999 of the Human Rights Ombudsman of the Republic of Slovenia.
2. Statistical Report "Crime 1999" of the Statistical Office of the Republic of Slovenia.
3. Data on asylum seekers in the Republic of Slovenia.
