



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Third periodic report of States parties**

**Slovakia\* \*\***

[26 June 2009]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\* Annexes to the present report can be consulted in the files of the secretariat.

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## I. Introduction

1. The Government of the Slovak Republic welcomes the opportunity to submit this third periodic report of the Slovak Republic on the International Covenant on Civil and Political Rights (hereinafter “the Covenant”) pursuant to article 40, paragraph 1 (b), of the Covenant and in accordance with the recommendations of the concluding observations of the Human Rights Committee (CCPR/CO/78/SVK) (hereinafter “recommendations”, “concluding observations”) adopted after consideration by the Committee of the second periodic report of the Slovak Republic (CCPR/C/SVK/2003/2) at its 2107th and 2108th meetings, and at its 2121st meeting in July 2003 when it adopted concluding observations to the second periodic report of the Slovak Republic.

2. The Slovak Republic is a State party to the Covenant, which was signed on behalf of the Czechoslovak Socialist Republic on 7 October 1968. As a successor State to the Czech and Slovak Federal Republic (the former Czechoslovak Socialist Republic/Czechoslovak Republic), the Slovak Republic became a State party to the Convention on 28 May 1993 with retroactive effect from 1 January 1993.

3. As a contracting party to human rights instruments of the United Nations system, the Slovak Republic submits regular reports to relevant United Nations committees concerning measures taken to implement the rights recognized under the Covenant and the progress achieved by the Slovak Republic (hereinafter also “Slovakia”) in the implementation of these rights.

4. The Ministry of Foreign Affairs of the Slovak Republic (hereinafter “Ministry of Foreign Affairs”) prepared the second periodic report to the Covenant in 2001 in cooperation with the relevant sectors; the report was approved by Government Resolution No. 479 of 9 May 2002.

5. The text of the second periodic report and the replies to the Committee’s list of issues and concluding observations were published in the Slovak language on the website of the Ministry of Foreign Affairs and were made available to the Slovak National Centre for Human Rights and Slovak non-governmental human rights organisations (recommendation 20).

6. The third periodic report charts the development during the relevant period and gives an overview of changes in and activities of Slovak society in the area of civil and political rights.

7. The report gives detailed information on concrete steps taken by the Government and State administration authorities and on certain activities carried out by the NGO sector in Slovakia in connection with the implementation of the provisions of the Covenant and of the recommendations contained in the concluding observations to the second periodic report during the period that followed the submission of the second periodic report. The third report gives an overview of the developments in the areas covered by individual articles of the Covenant between November 2001 and December 2008.

8. The present report was prepared with due regard to the recommendations of the consolidated guidelines for State reports under the International Covenant on Civil and Political Rights<sup>1</sup>

9. Information provided in this report is complementary to that contained in the reports previously submitted to the United Nations Human Rights Committee and to the information provided in the core document – Slovakia.<sup>2</sup>

10. The Ministry of Foreign Affairs prepared the report in close cooperation with the Slovak Government Office, other ministries, the General Prosecutor's Office and other institutions. Draft versions of the report were submitted to the Slovak National Centre for Human Rights and the Office of the Public Defender of Rights; they both contributed to and commented on the text.

11. Considering the period covered by the third periodic report and the broad spectrum of rights protected under the Covenant, certain sections of the report are complementary to the previous report and only basic information is provided on certain specific issues to avoid duplication, while referring to other reports submitted by the Slovak Republic to other United Nations committees under other international treaties.<sup>3</sup>

## II. Implementation of individual articles of the Covenant

### Article 1

12. No changes have been recorded in Slovakia in the area covered by article 1 of the Covenant since the previous, i.e. the second periodic report.

### Article 2

#### Recommendations 7, 8\*

13. Since the previous periodic report, the Slovak Republic achieved a significant progress in the protection of civil and political rights. Legislative, institutional and procedural arrangements in the system of human rights protection in Slovakia meet the highest European standards.

14. Although the Slovak legal system enshrined the principles of human rights protection and equal treatment already before Slovakia's accession to the European Union (hereinafter also the "EU")<sup>4</sup> in the Constitution of the Slovak Republic (hereinafter the

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\* *Note:* The recommendation numbers refer to the corresponding paragraph in the concluding observations (CCPR/CO/78/SVK).

<sup>1</sup> CCPR/C/66/GUI/Rev.2.

<sup>2</sup> Initial report of the Slovak Republic (CCPR/C/81/Add.9); second periodic report of the Slovak Republic on the International Covenant on Civil and Political Rights (CCPR/C/SVK/2003/2); core document (HRI/CORE/1/Add.120).

<sup>3</sup> Periodic reports of the Slovak Republic for CEDAW, CAT, CERD, and CESCR.

<sup>4</sup> Act No. 311/2001 Coll., the Labour Code, as amended, § 13. The prohibition of discrimination is worded as follows: "An employee shall be entitled to rights arising from labour relations with no restriction whatsoever and direct or indirect discrimination on grounds of sex, marital status or family status, race, colour of skin, language, age, state of health, belief and religion, political or other conviction, trade union involvement, national or social origin, national or ethnic group affiliation, property, birth or other status, except for cases stipulated by law or if there is a tangible reason for the

“Constitution”)<sup>5</sup> and in certain other legal acts of varying legal force, more detailed legal provisions were adopted in this field in the process of legislative alignment with the law of the EU.

15. On 20 May 2004, the National Council of the Slovak Republic (hereinafter the “National Council” or “Parliament”) adopted Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination, amending and supplementing other relevant acts (hereinafter the “Anti-Discrimination Act”), transposing into the national legal system of the Slovak Republic the EU Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and the EU Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation.<sup>6</sup>

16. Under §2 a (1) of the Anti-Discrimination Act, discrimination means direct discrimination, indirect discrimination, harassment, sexual harassment and victimisation; it also includes instructions to discriminate and incitement to discrimination.

17. Under the aforesaid Act, every person is entitled to equal treatment and protection against discrimination. All persons who consider themselves wronged in their rights, lawfully protected interests or liberties due to the failure to apply the principle of equal treatment may pursue their claims by judicial process. In particular, they may seek a decision whereby the entity violating the equal treatment principle would have to refrain from such conduct and, where possible, rectify the unlawful situation or provide adequate satisfaction. If adequate satisfaction is not sufficient, especially if the infringement of the

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performance of work such as the aptitudes or requirements for and the nature of the work that the employee is to perform.”

<sup>5</sup> The Constitution of the Slovak Republic provides in the first paragraph of article 12, chapter two, entitled “Fundamental Rights and Freedoms”, that people are free and equal in dignity and rights, i. e. not only the basic rights but also the rights provided for in secondary legislation, mainly the laws laying down detailed rules for the exercise of fundamental rights or liberties. The human rights legislation is based on the recognition of the equal value and dignity of every human being and on the premise that society (represented by the state) and every legal and natural person will not only recognise but also respect human rights. The provision of article 12, paragraph 2, of the Constitution guarantees fundamental rights and freedoms (transformed into other laws) on the territory of the Slovak Republic to every person irrespective of sex, race, colour of skin, language, religious beliefs or faith, political or other conviction, national or social origin, national or ethnic affiliation, property, birth or other status. The constitutional wording “other status” allows for taking account also of other status of a person in the exercise of fundamental rights and freedoms (including human, political, economic, social, cultural rights, environmental protection rights, cultural heritage and the rights of national minorities and ethnic groups). These include, e.g., the status of disabled persons. The constitutional criterion of equality of every person in dignity and in rights, guaranteed irrespective of the status of the person exercising the right or freedom, means that legal system of the Slovak Republic prohibits any discrimination. In case of infringements impeding the exercise of one’s rights (freedoms), any person can seek protection with the competent court.

<sup>6</sup> Based on formal communications whereby the Commission of the European Communities complained of incomplete or incorrect transposition of Council Directive 2000/43/EC and Council Directive 2000/78/EC, an amendment was adopted to Antidiscrimination Act No. 326/2007 Coll. amending and supplementing Act No. 365/2004 Coll. (the Ant-Discrimination Act) as amended by Finding No. 539/2005 Coll. of the Constitutional Court effective from 1 September 2007. The subsequent amendment of the Anti-Discrimination Act was introduced mainly because of the fact that article 17 of Council Directive 2004/113/EC required the Member States to transpose the directive into national legislation by 21 December 2007. The main objective of the amendment was to extend protection against discrimination. The amendment also included changes in the structure of the Act that led to modifications of several of its provisions. This latest amendment was adopted as Act No. 85/2008 Coll.

equal treatment principle considerably prejudiced the dignity, social status or social functioning of the victim, the victim may also claim non-pecuniary damages in cash. The amount of non-pecuniary damages in cash is determined by the court which takes account of the extent of non-pecuniary damage and all underlying circumstances.

18. The Anti-Discrimination Act elaborates in more detail on the content of equality and non-discrimination provisions of the Constitution and international treaties. Its objective is to guarantee protection to entities under the law against all forms of discrimination based on the widest possible and open-ended range of grounds, giving the victims the right to seek adequate and effective judicial protection, including by filing claims for damages and non-pecuniary damages. The Act lays down a generally valid principle of equal treatment which consists in the prohibition of discrimination on demonstratively enumerated grounds, applying to all the areas regulated by the Anti-Discrimination Act (labour law and other similar legal relationships, social security, education, healthcare, provision of goods and services). The aim is to ensure uniform interpretation of the concept of “discrimination” in the application of specific legal provisions which — while prohibiting discrimination in the various areas of substantive law (such as consumer protection, employment, etc.) — do not contain definitions of its different forms. The passage of the Anti-Discrimination Act made it necessary to amend another 20 substantively related legal acts, including the Trade Licence Act, the Act on Employment Services and on amending and supplementing other relevant acts, and the Social Insurance Act.<sup>7</sup> The Act also establishes the principle according to which the burden of proof is laid on the discriminating entity,<sup>8</sup> i.e. the defendant and not the victim, and introduces the possibility of mediation as a means of seeking protection against discrimination. The amendment introduced through Act No. 85/2008 Coll. expanded the grounds prohibiting discrimination (by including disability and sexual orientation).<sup>9</sup>

19. An integral part of the Anti-Discrimination Act is the strengthening of the competences of the Slovak National Centre for Human Rights (hereinafter the “Centre”).<sup>10</sup> The amendment to Act No. 308/1993 Coll. on establishing the Slovak National Centre for Human Rights expanded the competences of the Centre by including the monitoring of the equal treatment principle, collection and provision of information on racism, xenophobia and anti-Semitism in the Slovak Republic, arranging legal aid for victims of discrimination and expressions of intolerance, and presentation of expert opinions on matters involving observance of the principle of equal treatment.

20. The Centre is an independent legal person with nationwide competence and a cross-sectoral character. The administrative capacity of the Centre as a monitoring, advisory and educational institution for the protection of human rights, fundamental freedoms, including the rights of the child and the equal treatment principle under relevant legislation, was

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<sup>7</sup> See articles II-XXII of the Anti-Discrimination Act.

<sup>8</sup> Pursuant to § 11, paragraph 2, of the Anti-Discrimination Act, “The defendant has the obligation to prove that there was no violation of the principle of equal treatment if the evidence submitted to court by the plaintiff gives rise to a reasonable assumption that such violation indeed occurred.”

<sup>9</sup> The Slovak Republic submitted the United Nations Committee for the Elimination of Racial Discrimination its sixth, seventh and eighth periodic report on the International Convention on the Elimination of All Forms of Racial Discrimination in June 2008, and its second periodic report on the International Covenant on Economic, Social and Cultural Rights in December 2008. The reports give a more detailed description of the measures taken to eliminate all forms of discrimination on the territory of the Slovak Republic. Annex 1 to the second periodic report on the International Covenant on Economic, Social and Cultural Rights presents the current wording of the antidiscrimination Act.

<sup>10</sup> Article II of the Anti-Discrimination Act.

strengthened in 2007 with the setting up of seven permanent offices in different regions of Slovakia.<sup>11</sup>

21. The Centre provides legal aid on matters involving discrimination, expressions of intolerance and violation of the equal treatment principle to all inhabitants of the Slovak Republic, and is authorised under the law to represent the parties to the proceedings aimed at enforcing compliance with the principle of equal treatment. Moreover, it provides legal advice on matters that fall under the purview of other institutions by giving initial guidance to the complainant/applicant.

22. The Centre also provides mediation services (extrajudicial dispute resolution) as a supplementary means of legal protection in cases of infringements of the principle of equal treatment (discrimination) under the Anti-Discrimination Act.

23. The Act also provides that parties may be represented, besides the Centre, by legal persons whose purpose or object of activity include protection against discrimination.

24. Research activities of the Centre are focused on ascertaining the awareness level and attitudes of the adult population of Slovakia as regards human rights and application of the principle of equal treatment, on analysing educational needs in this field, and on building information databases. Its research conclusions and recommendations are made available to relevant State institutions, local and regional Government bodies, schools, public service institutions, etc.

25. Other areas of work of the Centre include the presentation of expert opinions on matters involving infringements of the principle of equal treatment pursuant to the Anti-Discrimination Act; it does so in the form of written replies to inquiries made in person, in writing or by telephone, to submissions, complaints or requests for assistance, or in the form of participation in educational, information and media campaigns. The Centre also prepares case studies on discrimination topics and publishes them on its website.

26. The statistics concerning petitions and complaints processed by the central Bratislava office and regional offices of the Centre show that the most frequent themes recurring in close to 75 per cent of a total of 1,700 written petitions and information received from 1,130 personal visitors and around 1,600 callers were: discrimination, infringements of the principle of equal treatment and violation of good manners in labour law and similar legal relationships and in the provision of goods or services. Among the grounds that prevailed were age, gender, affiliation with a national minority, and violation of the rights of the child (recommendation 8).

Table 1

**Statistics on submissions and petitions processed by the Slovak National Centre for Human Rights in 2004–2007 (areas, grounds and forms under the Anti-Discrimination Act)**

<i>Year</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>2008 (1–8/2008)</i>
Total number of submissions and motions alleging discrimination	600	650	985	1 450	760
Labour law and similar legal	80	80	84	86	

<sup>11</sup> Seven regional offices of the Centre were opened in May 2007 at: Kysucké Nové Mesto, Humenné, Kežmarok, Dolný Kubín, Rimavská Sobota, Nové Zámky and Zvolen. The existence of regional offices accounts for an increase in the number of the petitions handled directly by regional representatives who shared in the processing of petitions with more than 50 per cent.

Year	2004	2005	2006	2007	2008 (1–8/2008)
relationships (%)					
Provision of goods and services (%)	10	10	8	5	
Social security and healthcare (%)	5	6	7	8	
Education (%)	5	4	1	1	

27. Specific references made to the activities of the Centre in each part of this document reflect the recognition of the statutory competences of the Centre for monitoring compliance with the principle of equal treatment.

28. On 19 March 2002, the National Council elected the first Public Defender of Rights (Ombudsman) of the Slovak Republic. He took the oath of office administered by the speaker of the National Council on 27 March 2002. The first Public Defender of Rights in the Slovak Republic is Assoc. Prof. JUDr. Pavel Kandráč CSc [Ph.D].

29. The Public Defender of Rights in the Slovak Republic is an independent constitutional body established to protect, within the scope and in a manner provided for in the Act on the Public Defender of Rights, the fundamental rights and freedoms of natural and legal persons in the proceedings before public administration and other public authorities whose actions, decisions or inaction are in conflict with the law.

30. A complaint may be lodged with the Public Defender of Rights by any person who believes that his or her fundamental rights and freedoms were violated by the action, decision or inaction of a public administration body acting in contravention of the legal order or principles of a democratic State governed by the rule of law.<sup>12</sup> The Public Defender of Rights reviews petitions with a view to establishing whether a fundamental right has been infringed and whether the infringement was caused by a public authority. These are the basic preconditions that a petition must meet in order to be reviewable by the Public Defender of Rights. The filing of a petition is not conditional on the previous exhaustion of other available remedies.

31. The most important change in the functioning of the Office of the Public Defender of Rights was brought by the amendment of 2006 that resulted in modifying the constitutional status of the Public Defender of Rights<sup>13</sup> and subsequently also the Act on the Public Defender of Rights.<sup>14</sup>

32. The changes introduced by the National Council included, in particular, the inclusion of the Public Defender of Rights among the persons who have the standing to initiate proceedings before the Constitutional Court if they establish any facts suggesting that the implementation of a legal provision can prejudice fundamental rights or freedoms or human rights or fundamental freedoms arising from an international treaty ratified by the Slovak Republic and promulgated in a manner prescribed by law; the power of the Public Defender of Rights to participate in bringing the holders of public authority positions to account for violations of fundamental rights or freedoms of natural or legal persons; and the obligation of all public authorities to provide adequate cooperation to the Public Defender of Rights.

<sup>12</sup> § 11 of Act No. 564/2001 Coll.

<sup>13</sup> Constitutional Act No. 92/2006 Coll.

<sup>14</sup> Act No. 122/2006 Coll.



33. The institution of the Public Defender of Rights in the Slovak Republic marked six years of its existence in March 2008. Over that period, the Public Defender of Rights received more than 14,000 petitions, in approximately 800 of which he established violation of a fundamental right or freedom of a natural or legal person; the most frequent cases were infringements of the basic right to have one's case heard without unreasonable delay. Moreover, the central Bratislava office of the Public Defender of Rights and its 12 regional branches (Prešov, Košice, Žilina, Trenčín, Dohňany, Banská Bystrica, Žarnovica, Veľký Krtíš, Veľký Meder, Nitra, Bratislava – Karlova Ves, Bratislava – Petržalka) provided legal guidance in more than 12,000 cases.

34. An overview of the petitions filed annually with the Public Defender of Rights and the number and structure of violations of fundamental rights and freedoms are provided as a separate annex to this document.<sup>15</sup> An analysis of established violations is also provided in annual activity reports of the Public Defender of Rights<sup>16</sup> (recommendation 7).

35. The successful review of criminal law in the Slovak Republic resulted in the adoption with effect from 1 January 2006 of a new Criminal Code No. 300/2005 Coll. as amended, and Code of Criminal Procedure No. 301/2005 Coll. as amended.<sup>17</sup>

36. The Criminal Code lays down criminal penalties for actions that lead to violations of human rights or fundamental freedoms on the grounds of racial discrimination.

37. The general part of the Criminal Code defines a "special motive" (§ 140) – the aggravating element of a criminal offence carrying a stricter punishment compared with the basic (simple) offence. Such special motive is found to exist in the crimes committed by hired persons, for revenge, with the intention to cover up for or facilitate another criminal offence, crimes committed because of hatred based on national, ethnic or racial origin or on the colour of the skin, and sexually motivated crimes.<sup>18</sup>

38. On 23 September 2008, the National Council adopted Act No. 384/2008 Coll. amending and supplementing Act No. 99/1963 Coll., the Code of Civil Procedure as amended, amending and supplementing other relevant acts ("major amendment" of the Code of Civil Procedure) with effect from 15 October 2008.

39. The key objective of the amendment was to accelerate judicial proceedings and eliminate unreasonable delays in civil proceedings.

40. On 20 May 2005, the National Council adopted Act No. 300/2005 Coll., the Criminal Code, with effect from 1 January 2006, amending Act No. 650/2005 Coll., Act No. 692/2005 Coll., and Act No. 218/2007 Coll.

41. Furthermore, on 24 May 2005, the National Council approved Act No. 301/2005 Coll., the Code of Criminal Procedure, with effect from 1 January 2006, amended by Act No. 650/2005 Coll., and Act No. 692/2005 Coll.

<sup>15</sup> Annex 1. "Informácie o činnosti Verejného ochrancu práv (2002–2008)" (Information about the activities of the Public Defender of Rights Public Defender of Rights (2002–2008)).

<sup>16</sup> Public Defender of Rights – activity reports for the years 2002, 2003, 2004, 2005, 2006, 2007 available at <http://www.vop.gov.sk/annual-report>.

<sup>17</sup> Resolution No. 466 of the National Council of the Slovak Republic of 14 October 2008.

<sup>18</sup> See the sixth, seventh and eighth periodic report on the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

42. The scope of competence and the rights and duties of prosecutors continue to be governed by Act No. 153/2001 Coll. on public prosecution as amended and Act No. 154/2001 Coll. on prosecutors and candidates for the post of prosecutor as amended.

43. Both criminal codes and the Public Prosecution Act contribute to strengthening civil and political rights in the Slovak Republic.

44. The Government Manifesto states that “the Government will examine the possibilities and the impact of creating the legislative conditions that would give the Constitutional Court of the Slovak Republic the power to decide on the conformity of legal provisions also in the proceedings on constitutional complaints filed pursuant to article 127 of the Constitution of the Slovak Republic and in other proceedings, and to propose solutions based on the results of its analysis.”

45. The Ministry of Justice of the Slovak Republic (hereinafter “the Ministry of Justice”) is preparing a legislative amendment whereby a chamber of the Constitutional Court hearing complaints lodged by natural or legal persons that allege infringement of fundamental rights or freedoms or human rights and fundamental freedoms arising from an international treaty ratified by the Slovak Republic and promulgated in a manner prescribed by law would be authorised to initiate proceedings before the full Constitutional Court in conformity with legal provisions pursuant to article 125, paragraph 1, of the Constitution, if it finds that the legal provision that was used as the (legal) basis for a final decision, measure or other action which infringed the rights or freedoms, is in conflict with the Constitution, a constitutional act, or with international treaties approved by the National Council and ratified and promulgated in a manner prescribed by law, and that its further application could prejudice the fundamental rights or freedoms or human rights arising from an international treaty ratified by the Slovak Republic and promulgated in a manner prescribed by law.

46. Any person who feels that his or her human rights and freedoms guaranteed under the Constitution or international legal instruments that are binding on the Slovak Republic were violated has the right to make use of all national and international instruments for the protection of human rights and freedoms.

### **Article 3**

#### **Recommendation 9**

47. The legal system of the Slovak Republic guarantees civil and political rights to women and men without distinction.

48. The Slovak Republic attaches great significance to the issues of equal treatment, which are currently incorporated into all relevant laws. Equal treatment between women and men is provided for, inter alia, in the Anti-Discrimination Act as amended.<sup>19</sup>

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<sup>19</sup> § 2, paragraph 1, of the Anti-Discrimination Act stipulates: “Application of the principle of equal treatment means that there is to be no discrimination whatsoever on grounds of sex, religious beliefs or faith, race, national or ethnic affiliation, disability, age, sexual orientation, marital and family status, colour of skin, language, political or other conviction, national or social origin, property, birth or other status”. Furthermore, § 2a, paragraph 1, stipulates that discrimination means, inter alia, sexual harassment defined in § 2a, paragraph 5, as: verbal, non-verbal or physical conduct of a sexual

49. An important change was made in the relevant period in institutional arrangements in the area of gender equality.<sup>20</sup>

50. Key documents ensuring gender equality in Slovak society were the National Action Plan for Women in the Slovak Republic (until 2007) and a Policy Document on Equal Opportunities for Women and Men. Intensive work was under way in 2008 to prepare a new policy document on the National Gender Equality Strategy to be submitted to the Government in 2009. The Strategy will reflect the public recognition of the concern for and the political will to apply gender mainstreaming. The application of gender mainstreaming will make it necessary to make procedural changes in policy development and implementation and will require a new organisational culture and cooperation among the stakeholders at all management and decision-making levels.

51. In 2008, the Slovak Republic defended its second, third and fourth periodic report on the Convention on the Elimination of All Forms of Discrimination against Women before the Committee on the Elimination of Discrimination against Women. In the light of the Committee's concluding observations and recommendations, gender equality issues are currently at the top of the agenda of intersectoral cooperation and Government deliberations. Relevant sectors have assumed responsibility for implementing individual recommendations of the Committee within their respective areas of competence.

52. At the level of Parliament, the gender equality agenda was assigned to the Committee on Human Rights and National Minorities, as a result of which the Committee was transformed into the National Council's Committee on Human Rights, National Minorities and the Status of Women. According to the rules of procedure, the Commission on Equal Opportunities and the Status of Women in Society (hereinafter "the Commission") set up within the Committee in 2002 was an advisory body to the National Council's Committee on Human Rights, National Minorities and the Status of Women. The task of the Commission was to examine legislative proposals for compliance with gender equality criteria, and to address certain other issues facing society. After the 2006 parliamentary election, the Commission's agenda was taken up by the Standing Commission on Gender Equality and Equal Opportunities set up within the National Council's Committee on Social Affairs and Housing.

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nature whose purpose or effect is or may be the violation of the dignity of a person and which creates an intimidating, hostile, degrading, humiliating or offensive environment."

§ 8, paragraph 7, of the Anti-Discrimination Act stipulates that "Differences of treatment shall not constitute gender discrimination if they are objectively justified:

- (a) And consist in fixing a different retirement age for men and women;
- (b) By the need to protect pregnant women and mothers;
- (c) And consist in the provision of goods or services exclusively or preferentially to

members of one gender where it is justified by legitimate aims, and the means are appropriate and necessary for achieving these aims."

At the same time, § 8, paragraph 8, of the Anti-Discrimination Act provides that "Sex-related differences in the calculation of insurance premiums and benefits provided by an insurance company or a branch of a foreign insurance company shall not constitute discrimination where the gender is the decisive actuarial factor for the assessment of risk under insurance contracts concluded pursuant to the relevant legislation, and this assessment is based on actuarial and statistical data." Pursuant to § 8, paragraph 9, of the Anti-Discrimination Act, the "costs related to pregnancy and maternity may not result in differences in the calculation of insurance premiums and benefits."

<sup>20</sup> See the second, third and fourth periodic report of the Slovak Republic on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/SVK/4).

53. In its Manifesto, the Slovak Government gave the undertaking to pursue the policy of equality between women and men, which is an important factor of democratic development and exercise of human rights, with a view to fulfilling the commitments arising from the Lisbon Strategy and international instruments.

54. To this end, the Government provided for the creation of institutional structures to ensure that gender considerations are incorporated into all policies and decisions taken at all levels of governance and approved the creation of a Government Council on Gender Equality (hereinafter “the Council”) in 2007. Among other things, the Council designs measures aimed at ensuring coordination of gender-equality activities of the various ministries and other central State administration authorities with a view to achieving synergy both as regards the substantive content and timetable, and serves as an advisory, coordination, consultative, specialised and initiative-taking body of the Government of the Slovak Republic.

55. At the Government level, the gender equality and equal treatment agenda was pursued in the relevant period by the Family and Gender Policy Department of the Ministry of Labour, Social Affairs and Family of the Slovak Republic (hereinafter “the Ministry of Labour, Social Affairs and Family”); the position of the Department within the Ministry was strengthened in 2007 when it became the Gender Equality and Equal Opportunities Department.

#### **Recommendation 9**

56. In the context of addressing the problem of violence against women, the National Strategy on the Prevention and Elimination of Violence against Women and in the Family<sup>21</sup> adopted in 2004 aimed at ensuring the coordinated and integrated cooperation of all relevant actors in the prevention of violence, the provision of rapid and effective assistance, effective application of the existing legislation, and development of an adequate database concerning violence committed against women and in the family.

57. With a view to promoting effective implementation of the Strategy, the Government approved a National Strategy for the Prevention and Elimination of Violence against Women for 2005–2008.<sup>22</sup> The implementation of the National Action Plan for the Prevention and Elimination of Violence against Women was monitored in 2007 and 2008 and a new action plan for the period 2009–2012 was under preparation in 2008. The latter action plan, which is to be submitted to the Slovak Government for approval in 2009, is formulated with the participation of an expert group on the prevention and elimination of violence against women and in the family set up within the Government Council on Crime Prevention.

58. As regards the legislation in the area of violence against women, amendments to the Criminal Code, the Code of Criminal Procedure, the Misdemeanour Act, the Code of Civil Procedure, the Civil Code, the Act on Compensation to Victims of Violent Crimes, and the Social Assistance Act that were adopted in Slovakia in the period 1999–2002 have a potential to significantly contribute to enhancing the effectiveness of the process of eliminating violence against women. A review of the effects of these amendments that is already under way seems to suggest that the situation in addressing domestic violence issues has improved.

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<sup>21</sup> Government Resolution No. 1092/2004.

<sup>22</sup> Government Resolution No. 635/2005 of 24 August 2005.

59. The most substantial changes have taken place in what is referred to more broadly as “domestic violence”. The Criminal Code extended the definition of the terms “a significant other” and “a person in one’s care”, thus broadening the applicability of the provisions relative to actions that constitute the criminal offence of ill-treatment of a significant other or of a person in one’s care to a wider category of entities, and it introduced the so-called protective treatment that the court may impose on the offender who commits a violent offence against a significant other or a person in his or her care and can be expected to repeat such violent actions.

60. Under the amended Criminal Code (Act No. 300/2005 Coll.) and Code of Criminal Procedure (Act No. 301/2005 Coll.), criminal prosecution can be initiated even without the consent of the victim. Newly adopted provisions stipulate that no consent of the victim is required in criminal offences that are characteristic of domestic violence (such as ill-treatment of a significant other or of a person in one’s care, rape, sexual violence, etc.). Moreover, they make it possible to grant a new consent in case the consent is denied or withdrawn, where such denial or withdrawal is not made by a free expression of will. A new criminal offence of “sexual violence” was introduced in 2001. The perpetrator of this type of criminal offence may be either a man or a woman.

61. Several amendments were adopted in the relevant period to the Social Assistance Act,<sup>23</sup> which is the basis for building a network of special facilities for women affected by violence, offering them specialised social help and social assistance, social and psychological counselling, access to legal counselling and to other forms of specialised counselling. The Act assigns responsibility for administering and financing the facilities that provide assistance to women — victims of violence — to self-governing regions. Concrete forms of social assistance and the breakdown of funds allocated to individual facilities for the above purposes were outlined in the assessment report on the National Action Plan for the Prevention and Elimination of Violence against Women submitted to the Government in June 2008.

62. The date of the entry into effect of Act No. 448/2008 Coll. on social services and on supplementing Act No. 455/1991 Coll. on trade licences (the Trade Licence Act) as amended, repealing the Social Assistance Act, was 1 January 2009. The Social Services Act revises the forms of social services provided to persons in social distress, including those that are at risk due to the actions of other natural persons, i.e. also to women who are the targets of violence. In addition to professional assistance provided, e.g. in the form of specialised social counselling, social services may be provided to women exposed to violence who are housed in emergency shelters; in these shelters, which offer adequate conditions for satisfying basic life necessities, women may also receive social counselling and assistance in the exercise of their rights and legally protected interests. If necessary, the place where the woman is staying is kept confidential and her anonymity is protected. The obligation to provide or ensure this type of social service and to ensure its funding falls under the competence of self-governing regions.

63. The most important information and awareness-raising effort financed by the Slovak Government that aimed at enhancing awareness of gender-related violence among the population and involved the experts on these issues was a national campaign, “Let’s stop domestic violence against women”, responding to the appeals and implemented along the lines of the all-European campaign of the Council of Europe.

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<sup>23</sup> Act No. 195/1998 Coll. on social assistance as amended.

Table 2  
**Total number of criminal offences of violence against women between the year 2003 and 30 April 2008**

<i>Offence</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>Until 30 April 2008</i>
Ill-treatment of a significant other or a person in one's care	952	964	694	609	457	200
Rape	233	224	200	174	182	81
Sexual violence	86	92	85	109	111	35
Sexual abuse	409	449	384	405	361	132

Table 3  
**Total number of victims of violence against women between the year 2003 and 30 April 2008**

<i>Offence</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>Until 30 April 2008</i>
Ill-treatment of a significant other or a person in one's care	710	783	558	511	383	236
Rape	232	224	200	173	182	81
Sexual abuse	424	468	370	392	296	135

64. The problem of violence against women and/or more broadly perceived domestic violence comes also to the knowledge of the Public Defender of Rights who is a member of the Government's Council on Gender Equality. Most petitions in this area were filed by women – mothers who, sometimes along with their children, were exposed to violence by their partners and who turned to the Public Defender of Rights especially when they found themselves in a situation of social distress which often accompanies the acts of domestic violence.

65. The findings of the Public Defender of Rights suggest that the problem of such secondary victimisation is often due not to the legislation as such, but to the bodies that apply the legislation regardless of whether the reasons are objective or subjective. In line with his or her powers, the Public Defender of Rights focuses on the procedural aspects of handling petitions, such as the elimination of unreasonable delays in the actions of public authorities concerned.

66. The interventions by the Public Defender of Rights have been generally found to accelerate the proceedings that were marked with delays. The latest annual report submitted by the Public Defender of Rights to the National Council in March 2008 highlighted the need to address violence against women, domestic violence and the need for effective protective arrangements for victims.

#### **Article 4**

67. Articles 2 to 5 of Constitutional Act No. 227/2002 Coll. on State security in time of war, state of war, state of emergency, and state of urgency as amended (hereinafter the "State Security Act") lay down in detail the preconditions for declaring war, the state of war, the state of emergency or the state of urgency.

68. The State Security Act provides, for instance, for the possibility of restricting fundamental rights and freedoms and imposing obligations to the necessary extent and for the necessary time depending on the circumstances, with applicability to the entire territory

of the country or a part of it. They can be illustrated by the state of urgency (which, given its character, is the most likely state to be declared in case of necessity in the conditions of the Slovak Republic).

*The state of urgency*

69. The Government may declare a state of urgency only in case of an actual or imminent danger to human life or health, which can be causally connected to the outbreak of a pandemic, environmental factors, or a considerable threat to property in connection with a natural disaster, a catastrophe, or an industrial, traffic or other operational accident; the state of urgency may be declared only in the affected or the imminently threatened area.

70. The state of urgency may be declared only “to the necessary extent and for the necessary time”, but for no more than 90 days.

71. Fundamental rights and freedoms may be restricted and obligations may be imposed during the state of urgency in the affected or imminently threatened area to the extent and for the time required by the exigencies of the situation, limited to:

(a) Restricting the inviolability and privacy of the person by evacuation to a specified location;

(b) Imposing a work obligation to ensure the provision of supplies, maintenance of roads and railroads, functioning of the means of transport, functioning of water supply and sewerage systems, generation and distribution of electricity, gas and heat, provision of health care, maintenance of public order and repairing the damage;

(c) Restricting the exercise of real property ownership rights for the purpose of the deployment of soldiers, members of the Armed Forces, health care facilities, supply facilities, rescue services and recovery and other types of equipment;

(d) Restricting the exercise of movable property ownership rights by prohibiting entry of motor vehicles or restricting their use for private or business purposes;

(e) Restricting the inviolability of the home with the aim of providing shelter to evacuees;

(f) Restricting the delivery of postal consignments;

(g) Restricting the freedom of movement and residence by imposing a curfew and prohibiting access to the affected or imminently threatened area;

(h) Restricting or prohibiting the exercise of the right to peaceful assembly, or making public assemblies subject to authorisation;

(i) Restricting the right to free dissemination of information irrespective of the borders of the State and the right to the freedom of expression in public;

(j) Guaranteeing access to radio and television broadcasting for the purpose of making appeals or providing information to the population;

(k) Prohibiting the exercise of the right to strike;

(l) Carrying out measures to address oil supply emergencies.

72. On a proposal from the Government, the President may, at a time of urgency:

(a) Issue an order calling up professional soldiers and reserve soldiers in professional training for extraordinary service;

(b) Call up reserve soldiers for extraordinary service.

73. The State Security Act also lays down the right to compensation for ownership right restrictions, for the damage caused by armed forces and other armed services or by the Fire and Rescue Corps and other rescue services, the right to compensation for fulfilling work duties and performing other works and services connected with the fulfilment of tasks under this constitutional act in time of war, state of war or state of emergency.

## Article 5

74. No change was recorded in the relevant period in Slovakia with regard to the area covered by article 5 of the Covenant.

## Article 6

75. The right to life is protected by the Constitution of the Slovak Republic. According to article 15, paragraph 1, of the Constitution, “everybody has the right to life”. Article 15, paragraph 2, of the Constitution stipulates that “no one shall be deprived of his life”.

76. In 1999, the Slovak Republic ratified the Second Optional Protocol to the Covenant, published in the Collection of Laws of the Slovak Republic under No. 327/1999 Coll. The Protocol entered into effect for Slovakia on 22 September 1999.

77. Section 32 of Act No. 300/2005 — the new Criminal Code as amended — that entered into effect on 1 January 2006 establishes 11 types of criminal offences. Offenders — natural persons — are liable to the following types of penalty: custodial sentence, house arrest, community service, fine, forfeiture of property or other thing, ban on engaging in professional activity, ban from residence, stripping of military or other rank, expulsion. Custodial sentences may be for a fixed term not exceeding 25 years or life imprisonment. The division of custodial sentences into imprisonment for a maximum of 15 years, exceptional imprisonment for up to 25 years and life imprisonment that existed in the previous legislation was replaced. The new Criminal Code sets the maximum duration of fixed-term custodial sentences at 25 years and no longer provides for exceptional sentences.

### *Baby hatches (“rescue nests”)*

78. In the Slovak legislation, the act of depositing a newborn child in a baby hatch, a so-called “rescue nest” (*hniezdo záchrany* in Slovak), is covered by § 205 of the Criminal Code. The placing of a newborn child in a baby hatch is governed by specific provisions of criminal law.

79. According to Act No. 576/2004 Coll. on health care and on health care-related services, as amended, with the entry into effect of the amendment to Act No. 538/2005 Coll., health care providers whose establishments include neonatal departments are authorized to set up publicly accessible baby hatches for the purpose of saving abandoned newborn babies. Under the Act, the health care system includes the right of a mother to deposit her newborn child in a baby hatch, where available. Under such circumstances, the placement of a child in a baby hatch falls under the rights and obligations set out in § 28 and is therefore not considered unlawful.

80. The “baby hatch project” should be seen as a last-resort solution to a critical situation which is designed, first and foremost, to save lives and thus ensure the most fundamental and quintessential right of every person, including children, the right to life. The right to life is guaranteed to “every person” under basic human rights instruments,



article 15 of the Slovak Constitution, and it is specifically guaranteed for each child under article 6 of the Convention on the Rights of the Child (hereinafter “the Convention”).<sup>24</sup> According to article 6 paragraph 2, of the Convention, States parties shall ensure to the maximum extent possible the survival and development of the child.

81. Baby hatches are connected to healthcare facilities that provide continuous medical service; members of medical staff reach the newborn within 5 minutes of its placement and do a maximum to save the child’s life.

82. The most widely discussed provision concerning hatches for newborns is article 7 of the Convention (art. 24, paras. 2 and 3 of the Covenant), which gives the child the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

83. A mother, most often one experiencing a situation of psychological or social distress, who gives up the care of her child in order to save its life, deprives the child of this “possibility” by her own decision.

84. Although the mother deprives the child of that right, she did not break the law and is thus free from prosecution because she did not put the life of her child in danger by depositing it in a baby hatch (which guarantees its safety and protection of life).

85. Fourteen baby hatches are in operation in Slovakia today. They are installed in the outside walls of hospitals, are directly connected to hospitals’ newborn departments, and mothers in difficulties may use them to give up their newborn babies without endangering their lives. By 2007 they had helped save 14 babies.

86. As regards the question whether the “baby hatch project” infringes article 7 of the Convention (art. 24, paras. 2 and 3 of the Covenant), the argument that may be put forward to support this initiative is that the average number of dead newborn babies found in Slovakia during its implementation dropped from 10 to 2 a year. Conversely, 14 babies were found alive in baby hatches during the three years of their existence. The number of abandoned children (other than those placed in baby hatches) and thus the number of cases of “endangering a child’s life and health” fell as well. Only two such cases were recorded in the three-year existence of baby hatches.

87. The “baby hatch project” also foresees the possibility that the mother will reconsider her decision. She may retrieve her baby within six weeks after she has deposited it in a baby hatch and thus preserve not only the child’s life but also its identity. In this way, the project gives the child the possibility to exercise its right to know, “as far as possible”, its parents, or at least its mother. In 3 out of 14 cases, this actually happened. The remaining children were adopted by new families after the expiry of the statutory time limit and were thus guaranteed not only the right to life, but also to “development” pursuant to article 6 of the Convention.

88. By supporting the project of baby hatches, the Slovak Republic joined a large number of States Members of the United Nations where similar projects known as “baby

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<sup>24</sup> The Convention on the Rights of the Child was published in the Collection of Laws of the Slovak Republic under No. 104/1991 Coll. The Slovak Republic as a contracting party to this international instrument submitted to the United Nations Committee on the Rights of the Child its periodic report on the implementation of the Convention on the Rights of the Child. The text of the second periodic report of the Slovak Republic on the implementation of the Convention on the Rights of the Child was approved by Slovak Government Resolution No. 508 of 7 June 2006. The consideration of the second periodic report of the Slovak Republic (CRC/C/SVK/2) took place on 22 May 2007 during the forty-fifth session of the Committee in Geneva. On 8 June 2007, the Committee approved concluding observations on the second periodic report of the Slovak Republic (CRC/C/SVK/CO/2).

boxes” or “baby windows” have existed already for several decades, and become part of the systemic solution for saving the lives of unwanted children and one of the reasons for a fall in the number of newborns found dead.

89. To enhance the protection of the rights of the child, the Centre carried out a project in 2007 and partly also in 2008 in cooperation with the civil association “A Chance for the Unwanted” which, employing the form of structured interviews with specialists working in this field and with head physicians of neonatal departments at which baby hatches were installed, examined the positive and negative aspects of the “rescue nests” programme in the light of the commitments arising from the Convention on the Rights of the Child and from the Covenant.

90. The underlying premise for the project was the perception of baby hatches as a last resort solution in situations of distress, whose aim is primarily to save lives, i. e. to guarantee the most fundamental and essential right of every person, and thus of every child: the right to life.

91. The aim of the monitoring carried out in this connection was to analyse the legislative and social aspects of the existing situation, identify the experience with and trends in this area, and formulate the topics and recommendations for further actions in the field.

92. Consulted experts and physicians pointed to the need for adopting a more concrete legislative framework for baby hatches regulating, for instance, the legal liability of medical staff in case of serious harm to or death of a child, etc. Due to their positive experience with “confidential births”, they expressed a clear preference for stepping up the promotion of this type of delivery. They guarantee a safe environment for the mother and the child, and access to medical history data makes it possible to effectively handle potential medical complications. The loss of identity of newborns deposited in baby hatches is in contradiction with the right to life, and may be accompanied by psychological, social, and also health risks (absence of information on genetically caused diseases, search for parents in teenage years, risk of social exclusion, psychological trauma from the loss of identity, etc.). No correlation was found between the extreme choice of placing the child in a baby hatch and infanticide, since an absolute majority of babies were deposited in baby hatches with forethought. Children were found to be in relatively good health, they were clean and had the necessary layette, suggesting that their mothers did not act on the spur of the moment. A problem in this connection is to find a suitable place for installing the hatch: the busier the place, the less likely are the mothers to use it (for fear of possible disclosure). An issue that requires a clear legislative answer is the coverage of the child’s hospital stay by health insurance (judicial proceedings may prolong the child’s hospitalisation).

#### *Artificial interruptions of pregnancy*

93. This area is governed by Act No. 73/1986 Coll. on artificial interruption of pregnancy as amended by Slovak National Council Act No. 419/1991.

94. Since the end of the 1980s, the number of interruptions of pregnancy fell by 76%. The number of interruptions of pregnancy performed in Slovakia at the woman’s request in 1988 was 48,603, i. e. 43 interruptions per 1,000 women of fertile age (National Health Information Centre – NCZI). The number of pregnancy interruptions performed on request in 2006 was 11,971, i. e. less than 10 interruptions per 1,000 women of fertile age (NCZI).

95. Terminations of pregnancy are performed in Slovakia at a good professional level.

## Article 7

### Recommendations 12, 13

96. The Slovak Republic is a State party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>25</sup> and to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Both these conventions were transposed into the national law.

97. Article 16, paragraph 2, of the Constitution provides that “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment”.

98. Violations of the prohibition of torture and of cruel, inhuman or degrading treatment or punishment constitute criminal offences and give rise to prosecution and punishment in conformity with the provisions of Act No. 300/2005 Coll. – the Criminal Code as amended (hereinafter the “Criminal Code”) and Act No. 301/2005 Coll. – the Code of Criminal Procedure as amended (hereinafter the “Code of Criminal Procedure”).

99. According to § 208 of the Criminal Code, ill-treatment of a significant other or of a person in one’s care is also considered a criminal offence. This provision grants protection not only to minors but also to all significant others who, for any reason, depend on care provided by other persons (old age, disability, disease, etc.).

100. The Criminal Code also establishes as criminal offences other forms of conduct that violate the above article, depending on the specific circumstances of the case. These include, for instance, injury to health, deprivation of personal liberty, restriction of personal liberty, extortion, racketeering and others.

#### *Measures to prevent torture of persons remanded in custody and persons serving custodial sentences*

101. The protection of persons remanded in custody and of persons serving imprisonment sentences from torture and other cruel, inhuman or degrading treatment is ensured by the officers of the Corps of Prison and Court Guards acting in strict compliance with the provisions of Act No. 221/2006 Coll. on remand custody as amended (hereinafter the “Remand Custody Act”), Decree No. 437/2006 Coll. of the Ministry of Justice issuing Remand Custody Rules (hereinafter “Remand Custody Rules”), Act No. 475/2005 Coll. on the execution of custodial sentences as amended (hereinafter “Act on the Execution of Custodial Sentences”, and Decree No. 664/2005 Coll. of the Ministry of Justice issuing the rules for the execution of custodial sentences (hereinafter “Rules for the Execution of Custodial Sentences”).

102. Act No. 93/2008 Coll. amending and supplementing Act No. 475/2005 Coll. on the execution of custodial sentences and on amending and supplementing other relevant acts, adopted in March 2008, significantly broadens and guarantees the basic civil rights of persons serving custodial sentences (e. g. by extending their telephone rights, contacts with the outside world, petition rights including the right to lodge complaints and applications with international bodies, etc.) As a follow-up to the Act, the Ministry of Justice passed Decree No. 368/2008 Coll. issuing the rules for the execution of custodial sentences with effect from 1 January 2009. The decree sets out the detailed technical arrangements for extending the exercise of civil rights and liberties by sentenced persons.

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<sup>25</sup> See the second periodic report of the Slovak Republic to the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; at the time of elaboration of the present report, the number of the second periodic report of the Slovak Republic to the CAT Convention was not yet published.

103. § 2, paragraph 2, of the Act on the Execution of Custodial Sentences explicitly provides that “during the execution of a custodial sentence, the natural dignity of a human being must be respected and any cruel treatment or punishment degrading human dignity is prohibited”.

104. According to § 37 of the Act on the Execution of Custodial Sentences, sentenced persons have the right to protection against unjustified violence and any acts degrading human dignity. If a member or an employee of the Corps finds an infringement or the threat of infringement of the aforesaid right of a sentenced person, or is notified thereof by a sentenced person, the member or the employee of the Corps takes the measures as necessary to prevent such action and reports the case to the director of the institution or to other authorised superior officer.

105. Pursuant to § 6 of Act No. 4/2001 Coll. on the Corps of Prison and Court Guards as amended, the officers of the Corps performing their duties must duly respect the honour, self-esteem and dignity of other persons and their own, must not allow unwarranted harm to be caused to any person in the exercise of their duties, and must ensure that any possible interference with a person’s rights and liberties is commensurate with the purpose to be achieved. Whenever an officer of the Corps performs an action in the line of duty that involves any interference with the rights or freedoms of a person, that person must be advised of his or her rights under the above Act or under a specific regulation, as soon as this is practicable.

106. The observance of laws in the establishments for sentenced persons is subject to prosecutorial supervision.<sup>26</sup>

#### *Public Defender of Rights*

107. When reviewing a petition, the Public Defender of Rights is authorised to enter establishments for remand prisoners and sentenced persons even without prior notice, to be granted access to relevant files and documents, to ask for explanations concerning the matter mentioned in the petition, even where specific legal provisions limit access to the files only to certain categories of persons, to interview the employees of the public authority and talk to persons held in establishments for remand custody, custodial sentences, disciplinary punishment of soldiers, protective treatment, protective education, institutional treatment or institutional education, and in police detention cells. If the Public Defender of Rights reveals any fact indicating that a person is held in such establishment without authority, he or she immediately reports this fact to the competent prosecutor by way of filing a complaint, and notifies thereof the management of the establishment and the person concerned. The prosecutor must notify the Public Defender of Rights within the statutory time limit of the measures taken to remedy the unlawful situation. A petition addressed in writing to the Public Defender of Rights by a person deprived of liberty or a person whose liberty has been restricted is not subject to official screening.

108. Out of the total number of received petitions, 17 alleged torture or other cruel, inhuman or degrading treatment or punishment according to article 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Sixteen of them were filed by persons held in establishments for remand custody or establishments for the execution of custodial sentences; in one case, a petition filed by other than the person concerned alleged the use of inappropriate punishment and corporal punishment by the director of a children’s home.

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<sup>26</sup> See article 9.

109. As regards petitions lodged by accused persons or persons sentenced in criminal proceedings, most applicants complained of inappropriate actions or pressure exerted by officers of the Prison and Court Guard, of the denial of necessary medical care, of the threat of disciplinary punishment, of inadequate hygienic or dietary conditions, of physical violence at the time of arrest, or of touching private parts of the body or use of psychological violence after the applicant had lodged a petition with the Public Defender of Rights. The examination of these petitions by the Public Defender of Rights within his scope of competence did not reveal any violation of a fundamental right or freedom. In 108 cases, the Public Defender of Rights referred the matter for further proceedings to the prosecutor responsible for overseeing the remand establishment or the prison for sentenced persons concerned. In the performance of his official duties, the Public Defender of Rights closely cooperates with members of the Corps of Prison and Court Guards. The Public Defender of Rights has encountered no problems in gaining access to the accused in remand establishments or to the inmates of prisons for sentenced persons. The Public Defender of Rights regularly participates in the meetings of the management of the Corps whose agenda includes the strengthening of cooperation with emphasis on the protection of fundamental rights and freedoms.

*Measures to prevent torture in the armed forces of the Slovak Republic*

110. Subsequent to the full professionalization of the Slovak armed forces, compulsory military service, alternative service and reservist service were abolished. § 118, paragraph 1, of Act No. 346/2005 Coll. on State service of professional soldiers as amended (hereinafter the “Act on State Service of Professional Soldiers”) stipulates that basic rights of professional soldiers include the right to protection of human dignity in their interactions that take place in the line of duty and in their personal interactions with the head of the service office or a commander and with other professional soldiers.

111. § 117, paragraph 3, of the Act on State Service of Professional Soldiers stipulates that no military order may be in contradiction with the Constitution, constitutional acts, other acts and generally binding legal regulations, rules of service, the military oath and the Code of Ethics of Professional Soldiers.

112. Professional soldiers are duty-bound to refuse a military order, command, direction, or instruction issued by the head of the service office or a commander if its execution would constitute a criminal offence; he or she must immediately notify of the refusal the next higher in the chain of command of the head of the service office or of the commander who issued the military order, command, direction or instruction.

113. The protection against any expression of cruel, inhuman or degrading treatment provided under criminal law to members of the armed forces is set out in chapter XI of the Criminal Code entitled “Military Criminal Offences”; its provisions criminalize unlawful and socially dangerous conduct that violates the rights and protected interests of soldiers (§ 400 of the Criminal Code – violation of rights and legally protected interests of soldiers).

114. Act No. 570/2005 Coll. on national service as amended repealed Act No. 370/1997 Coll. on military service as amended with effect from 1 January 2006 whose §§ 79 and 80 authorised the only extrajudicial restriction of personal liberty of soldiers available at the time, i.e. their placement in a ward for disciplinary punishments.

*Measures to prevent torture in the field of healthcare*

115. Provision of healthcare is governed by Act No. 576/2004 Coll. on healthcare, healthcare-related services and on amending and supplementing other relevant acts as amended (hereinafter the “Healthcare Act”).

116. Healthcare is provided on the basis of informed consent (§ 6, paragraph 4) unless the Act provides otherwise (§ 6, paragraph 8). According to § 6, paragraph 8, of the Healthcare Act, no informed consent is required in case of emergencies where the informed consent cannot be obtained in time but it can be inferred, and in the cases of protective treatment ordered by the court under relevant legislation, institutional treatment of persons spreading transmissible diseases and presenting a serious danger to their surroundings, and outpatient or inpatient care of persons who present a danger to their surroundings due to a mental illness or symptoms of a mental disorder, or persons who are in grave danger of deterioration of their health condition.

117. Informed consent means a demonstrable consent to medical treatment, preceded by an advice given in accordance with the above Act. Informed consent also means a demonstrable consent to medical treatment where the recipient of the treatment has refused the advice unless the Act provides otherwise (§ 27, paragraph 1, § 36, paragraph 2, § 38, paragraph 1, § 40, paragraph 2).

118. Unless the above Act provides otherwise (§ 6a), informed consent is given by a person who is to receive medical treatment or his or her legal guardian in case the person who is to receive medical treatment is not capable of giving informed consent; such person participates in making the decision within the limits of his or her capacities. If the legal guardian refuses to give informed consent, the healthcare provider may use the judicial process where this is in the interest of the person who is to receive medical treatment and is incapable of giving informed consent. In such case, the consent of the court to medical treatment replaces the informed consent by the legal guardian. Until the court decision, the only medical interventions that are allowed are those that are essential for saving the life of the person.

119. Any person who has the right to give informed consent has also the right to freely withdraw his or her informed consent at any time. In case of a woman who made a written request not to have her identity disclosed in connection with childbirth, the attending member of the medical staff is obliged to give her relevant advice. Informed consent needs to be obtained from a woman who has requested in writing that her identity not be disclosed in connection with childbirth. Provisions of § 6, paragraphs 2, 3, 4, 7, and § 6, paragraph 9, first sentence of the Healthcare Act apply by analogy.

*Provision of care in the absence of patient's consent*

120. Pursuant to § 6 of the Healthcare Act, no informed consent is required in case of placement in institutional care of persons who spread transmissible diseases and who thus present a grave danger for their surroundings, or in case of outpatient or inpatient care of persons who present a danger to their surroundings due to the symptoms of a mental illness or mental disorder, or who are in grave danger of deterioration of their health condition. The decisions on institutional care of persons remanded in custody or serving custodial sentences are made by a physician of the medical establishment of the Corps of Prison and Court Guards. The Corps of Prison and Court Guards also ensures the protection, as necessary, of these persons and of the healthcare provider. In these cases, the healthcare provider is obliged to notify the court that has territorial jurisdiction over the healthcare establishment within 24 hours of having admitted a person for institutional treatment. The court decides on the lawfulness of reasons for admission to institutional care. Until the court makes that decision, the only authorised medical interventions are those that are essential for saving the life and health of the person or for ensuring the security of his or her surroundings.

*Biomedical research*

121. Biomedical research means the acquisition of new knowledge in the fields of biology, medicine and nursing and of knowledge on obstetrical assistance and its testing on humans. Biomedical research in nursing and in obstetrical assistance has the potential of enhancing the aptitudes of individuals and families, optimise their functions and minimise those that can cause diseases. Biomedical research is conducted with the subject's free will, while ensuring the right to the protection of dignity, respect for physical and mental integrity, safety and legitimate interests of research subjects. The interests of research subjects always take precedence over those of science and society. Biomedical research can be conducted only if there is no other alternative of comparable effectiveness and if it is scientifically justified, meets the generally accepted criteria of scientific quality, is conducted under the guidance of a qualified researcher in compliance with relevant scientific and ethical principles, and is evaluated and approved in conformity with this Act and other relevant legislation. Biomedical research that is expected to bring direct benefits for physical or mental health of research subjects (hereinafter "medical indication based research") must not involve risks that are not commensurate with anticipated benefits. Biomedical research that is not expected to bring direct benefits for the physical or mental health of research subjects (hereinafter "research without medical indication") can be carried out only if the research subject deems the risk or burden connected with participation in the research to be acceptable. A precondition for participation in biomedical research is the informed consent given in writing after a prior instruction. Such informed consent must bear the date and signature of the prospective participant in biomedical research or of his or her legal guardian. The refusal to take part in biomedical research, and the granting or withdrawal of informed consent by a research subject must not entail negative consequences for the medical treatment of that person or other adverse consequences on the part of medical staff. Research without medical indication may not be carried out on a live human foetus or embryo, on a person remanded in custody or serving a custodial sentence, on a soldier performing compulsory military service, alternative service or preparatory service, or a person performing civilian service, a person in institutional care pursuant to § 6 paragraph 8(c) or on an alien.

*Removal and transfer of tissues and organs*

122. The Healthcare Act distinguishes between the removal of organs, tissues and cells from the bodies of live donors and the removal of organs, tissues and cells from the bodies of deceased donors.

123. Organs, tissues and cells may be removed from the body of a live donor for the purpose of their transfer to the body of another person only if it can be assumed that the removal will not seriously endanger the health status of the donor and is expected to bring direct therapeutical benefits for the recipients, if the benefits for the recipient prevail over the harm suffered by the donor, if it is not possible to obtain a suitable organ, tissue or cells from a deceased donor, and no other alternative therapy that brings better or comparable results is known. The removal may be performed only if the donor is a person with full legal capacity who gave his or her informed consent to the removal after a prior instruction. In exceptional cases, a person who is not capable of giving informed consent may become a donor on the basis of informed consent of his or her legal guardian in case of removal of a regenerative tissue, or where no suitable donor capable of giving informed consent is available, where the potential recipient is the donor's brother or sister, and where the donation has a lifesaving potential for the recipient. Persons remanded in custody or serving custodial sentences cannot be donors. In exceptional cases, a person remanded in custody or serving a custodial sentence may become a donor if the recipient is his or her significant other and the donation may save the recipient's life. The procurement of an organ, tissue or cell for the purpose of its transfer to the body of a person who is directly genetically related

to the donor may take place only subject to the approval by the board of the transplant centre. The procurement of an organ, tissue or cell for the purpose of its transfer to the body of a person who is remotely genetically related to the donor or a person who is not genetically related to the donor may take place only subject to the approval by a medical committee appointed for this purpose by the Ministry of Health.

124. A deceased donor may only be a person declared dead in accordance with this Act (§ 43).

125. Organs, tissues or cells may be removed from the bodies of deceased donors only if the persons concerned did not make a written declaration during their lifetime that they do not agree with such interference with their physical integrity. If a person is incapable of giving informed consent, such written declaration may be made during the person's lifetime by his or her legal guardian. The declaration, bearing an authorised signature pursuant to Act No. 599/2001 Coll. on verification of documents and signatures on documents by district authorities and municipalities as amended, is sent to the register of persons who made a declaration during their lifetime that they do not agree with the donation of their organs, tissues and cells after their death, run by the Ministry of Health [§ 45 (o)]. The refusal may be revoked at any time. Before removing an organ, tissue or cell from the body of a deceased donor, the healthcare provider must verify the identity of the donor and check the register to verify whether the person did not explicitly refuse the removal. An autopsy will be invariably performed on deceased donors after the removal of organs or tissues from their bodies. The report on the removal of organs or tissues is attached to the autopsy protocol.

126. The issue of illegitimate removal and transfer of organs and tissues is provided for also in §§ 159 and 160 of the Criminal Code – illegal removal of organs and tissues. Illegal removal of organs and tissues (and/or cells) from a human body constitutes a serious interference with one's right to the preservation of his or her physical integrity and the right to inviolability of the person. The legal framework for the procurement and transfer of tissues and bodies from the bodies of living and deceased donors is provided by Act No. 576/2004 Coll. on healthcare and healthcare-related services as amended. § 159 establishes criminal liability of any person who unlawfully removes an organ, tissue or cell from a live person or who unlawfully procures such organ, tissue or cell for himself/herself or for another person. The same punishment is applicable to persons who perform unlawful sterilisations on natural persons. More severe punishment is applicable to offenders who cause grievous bodily harm through such act, and the most severe punishment is imposed when they cause death. According to § 160, criminal liability applies also to persons who unlawfully procure organs, tissues or cells from deceased persons for themselves or other persons.<sup>27</sup>

*On Mustapha Labsi's extradition case*

127. Mustapha Labsi is currently held at the Bratislava remand establishment, while the proceedings are underway on his extradition for criminal prosecution in Algeria where he is sought as a person suspect of terrorist offences.

128. On 26 June 2008,<sup>28</sup> after an oral public hearing held before its second chamber, the Constitutional Court established that the decision of the Supreme Court of the Slovak Republic (hereinafter the "Supreme Court") violated the fundamental right of applicant

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<sup>27</sup> The Slovak Republic gave more detailed information on the issues concerned by article 7 of the Covenant in its initial and second periodic report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>28</sup> File Ref. 2 Tost 31/2007.



Mustapha Labsi not to be tortured or exposed to cruel, inhuman or degrading treatment laid down in article 16, paragraph 2, of the Constitution and article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

129. The Constitutional Court decided to quash the above decision of the Supreme Court and to refer the matter back to the Supreme Court for further proceedings. It acted on the complaint in which the applicant claimed that his extradition to the Democratic People's Republic of Algeria could make him exposed to torture, cruel or inhuman treatment and that this possibility should have been considered already at the level of ordinary courts.

130. This was expressed, on the one hand, in the "procedural part" of the applicant's arguments in which he stated that the decision-making by the Minister of Justice — who, according to the Code of Criminal Procedure, is the only State authority explicitly bound by article 3 of the Convention — does not give the applicant the procedural guarantees enabling him to express his views on the matter. Furthermore, applicant's arguments were based on the provisions prohibiting torture (article 16, paragraph 2, of the Constitution, article 3 of the Convention) and on the interpretation of these provisions and the relevant case law. The applicant also pointed to the security situation and internal political situation in the requesting country.

131. And, in connection with his case, he finally pointed out the need to interpret the laws in conformity with the Constitution. In the first place, the Constitutional Court is to establish that the aim of its decision-making is not to determine whether the applicant should be extradited to the requesting country or not. The Constitutional Court is to make a decision on the concept of extradition proceedings from the human rights perspective. According to the legal opinion of the Constitutional Court derived from the precedence of the Constitution and international human rights instruments over the laws, and based on the irreplaceable role of courts in the protection of human rights, the issue of whether the requesting country can be expected to observe the key fundamental rights and freedoms must be considered already at the level of ordinary courts that decide on the admissibility of extradition. The Constitutional Court therefore found that the Supreme Court, by not having carried out the test of the presumption of serious reasons and by totally ignoring the possibility of the violation of human rights of the applicant, was in breach of the procedural component of article 16, paragraph 2, of the Constitution and of article 3 of the Convention.

132. In view of the fact that the Supreme Court did not consider the issue of human rights and based its decision on a literal interpretation of selected provisions of the Code of Criminal Procedure, and that it even held that "the regional court was not obliged to consider this issue", the Constitutional Court reversed the Supreme Court decision and referred the matter back for further proceedings.<sup>29</sup>

133. The European Court of Human Rights issued a preliminary measure on 18 July 2008 preventing the extradition of Mustapha Labsi to Algeria.

134. The Supreme Court decided at a closed hearing on 7 August 2008 that Mustapha Labsi was to be released. Labsi was released from remand custody in Bratislava and was immediately detained by the alien police.<sup>30</sup>

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<sup>29</sup> Press Release No. 6/08 of 26 June 2008: The Supreme Court of the Slovak Republic violated a fundamental right of Mustapha Labsi guaranteed by the Constitution of the Slovak Republic and the Convention for the Protection of Human Rights and Freedoms, [http://www.concourt.sk/sk/Tlacove\\_spravy/2008/TS\\_20080626.pdf](http://www.concourt.sk/sk/Tlacove_spravy/2008/TS_20080626.pdf).

<sup>30</sup> <http://www.webnoviny.sk/slovensko/clanok/17852/Najvyssi-sud-dnes-prepustil-Mustafu-Labsiho-na-slobodu.html>.

**Recommendation 12**

135. With the aim of conducting investigation into forced or coerced sterilisations of Roma women that were allegedly performed in the eastern part of Slovakia, a specialised police investigation team was set up under the lead of a female Police Corps officer assisted by four more investigators. Their detailed investigation aimed at establishing all the circumstances of the case, and their conclusions were based on a considerable amount of evidence including professional expert opinions. In the course of the proceedings, the investigators closely cooperated with non-governmental organisations, with the advisor to the Minister of the Interior on national minority and ethnic group issues, and with the general director of the Section for Human Rights and Minorities of the Slovak Government Office and the Slovak Government's Plenipotentiary for Roma Communities.

136. They conducted a series of interviews with Roma women who volunteered to give their depositions. Police Corps investigators cooperated closely with the Health Ministry's specialists in the field of obstetrics. All those involved in this joint endeavour pursued the common goal of investigating the matter as objectively as possible and of laying charges against potential offenders and, should criminal liability be established, bringing them to justice before the competent court. Investigators interviewed dozens of physicians, medical patients and women with the procedural standing of witnesses or victims. The authors of the publication "Body and Soul" were interviewed as well. Other evidence and materials of relevance for criminal proceedings were also procured. Following the presentation of the expert opinion written by renowned health sector specialists, steps were taken to examine the evidence in compliance with the rules of criminal proceedings.

137. In summary, the results of the investigation did not confirm the commission of a criminal offence (of genocide or other offence established by law) and no case was found of a Roma or a non-Roma patient having undergone sterilisation without written consent.

138. Based on the facts thus established the Police Corps investigator in charge issued a decision on 24 October 2003 pursuant to § 172 paragraph 1(a) of the Criminal Code (that was in force until 1 January 2006) to discontinue the prosecution on the grounds that the prosecuted offence was not committed. The prosecutor upheld the investigator's decision. It is necessary to accept the assurances that the investigator carried out the procedure under prosecutorial supervision in an objective manner, in compliance with the law, and that all available means of evidence were exhausted with a view to reaching an objective decision on the merits. No evidence was found of any psychological or physical pressure being exerted on the victims or of any violation of their guaranteed civil rights or freedoms.

139. Further to the finding of the Constitutional Court,<sup>31</sup> the Regional Prosecution Office of Košice issued a decision on 9 February 2007 to quash the decision of the Police Corps investigator to discontinue the prosecution and returned the matter for new proceedings and decision. In the light of these facts, a specialised team was set up at the Žilina Regional Police Corps Directorate by order of the Police Corps President<sup>32</sup> and was assigned the task to detect, investigate and document criminal activities connected with alleged sterilisations of Roma women.

140. In carrying out this task, the investigation team followed the finding of the Constitutional Court and instructions of the supervising prosecutor. The supervising prosecutor of the Košice Regional Prosecution Office personally participated in several of the team's actions.

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<sup>31</sup> No. III ÚS 194/06-46 of 13 December 2006.

<sup>32</sup> No. 50/2007 of 4 May 2007.

141. Based on the outcome of the investigation, the Police Corps investigator in charge discontinued the prosecution for the crime of genocide (§ 418, paragraph 1(b), of the Criminal Code) in conformity with § 215, paragraph 1(b), of the Code of Criminal Procedure, on 28 December 2007 on the ground that the above criminal offence was not committed and that there is no reason to refer the case for further proceedings. On a motion from the leader of the specialised team, the Police Corps President issued the order<sup>33</sup> to reverse the order on setting up the specialised team. The order took effect on 1 February 2008.

142. The above decision of the Police Corps investigator was challenged by a complaint filed on behalf of parties I. G., R. H. and M. K., by their authorised representative on 4 January 2008. The Office of Judicial and Criminal Police of the Regional Police Corps Directorate at Žilina received the complaint on 11 January 2008 and submitted it, together with a complete file, for a decision to the Regional Prosecution Office at Košice. The Regional Prosecution Office at Košice dismissed the complaint. The decision issued to this effect by the Regional Prosecution Office at Košice became final on 19 February 2008.

143. Regarding the case of sterilisations of Roma women, we declare that the Slovak Republic never pursued a State-sponsored policy encouraging anyone to sterilise certain groups of the population or having the effect of tolerating such illegal actions.

144. The case of alleged forced and coerced sterilisations was subjected to close scrutiny by relevant institutions of various international organisations (the UN, the OSCE, the CE, the EU), with which the Slovak Government was in intensive communication. They included, e. g., the Council of Europe's Human Rights Commissioner who paid considerable attention to this case and expressed appreciation of the new legislation, as well as the UN Committee on the Elimination of Discrimination against Women (CEDAW).<sup>34</sup>

145. New legislative measures adopted in connection with the specific context of sterilisation included Healthcare Act No. 576/2004 Coll. effective from 1 January 2005. The adoption of this Act resulted in the amendment to the Criminal Code, Act No. 140/1961 Coll. as amended, introducing a new criminal offence of "illegal sterilisation". By establishing this act as a criminal offence the Slovak Republic implemented its international law commitments arising from international instruments on the protection of human rights and fundamental freedoms and from the recommendations of relevant international bodies and organisations.

146. On one hand, the new Criminal Code sets out this criminal offence in the second part of the separate section of the Code as the criminal offence of "illegal removal of organs, tissues and cells, and illegal sterilisation" (§ 159) and, on the other, introduces stricter criminal penalties for this offence.

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<sup>33</sup> No. 4/2008 of 21 January 2008.

<sup>34</sup> In September 2004, the non-governmental organisation the European Roma Rights Centre (ERRC) lodged a complaint with the Committee against the Slovak Republic alleging sterilisations of Roma women. The ERRC alleged violation of the Convention on the Elimination of All Forms of Discrimination against Women. The Slovak Republic (through the Ministry of Foreign Affairs) prepared its observations on the complaint under the confidential complaint mechanism and gave detailed information on the thorough investigation of these events in Slovakia and on measures taken (including changes in the legislation). The Committee examined the Government's observations and declined to conduct an inquiry into the matter. At the same time, however, it stated that it remains concerned that there may have been individual cases of sterilisation of Roma women without consent or with consent obtained by coercion, and advised the Slovak Government to address also the issues of responsibility and redress.

147. The Healthcare Act provides, inter alia, for non-discriminatory access to medical care, sets out the preconditions for obtaining the informed consent of patients, the carrying out of sterilisation, and access to medical files. Under the above Act, sterilisation may be performed only on the basis of a written application of and a written informed consent by a duly advised person with full legal capacity, or the legal guardian of a person incapable of giving informed consent, or on the basis of a court decision issued on an application filed by the legal guardian.

148. § 6, paragraph 5, of the Healthcare Act provides that written informed consent is required:

- (a) In cases referred to in § 27, paragraph 1, § 36, paragraph 2, § 38, paragraph 1, and § 40, paragraph 2;
- (b) Prior to performing invasive interventions under total or partial anaesthesia;
- (c) In case of a change in the diagnostics or treatment procedure to which the previously given informed consent does not apply.

149. The Healthcare Act provides (§ 40) that sterilisation may be performed only on the basis of a written application and written informed consent by a duly advised person with full legal capacity, or by the legal guardian of a person incapable of giving informed consent supplemented with a written application, or on the basis of a court decision issued on the application filed by the legal guardian. The advice preceding the granting of informed consent must be provided in a manner prescribed by law and must contain concise information on:

- (a) Alternative methods of contraception and planned parenthood;
- (b) The possibility that the life circumstances that were the primary reason for the sterilisation request might eventually change;
- (c) Medical consequences of the sterilisation as a method resulting in an irreversible loss of fertility;
- (d) Possible failure of sterilisation.

### **Recommendation 13**

#### *Measures in the social care area*

150. In line with the need to humanise conditions for the provision of care in social services establishments to persons with mental or behavioural disorders, and the need to apply the equal treatment principle, the legislation on social assistance provides for the creation of legal conditions for ensuring and enforcing the constitutional equality of the above-mentioned persons in dignity and in rights with other persons. In general, equality of citizens in dignity and rights also means that the use of any means of unlawful restraint is prohibited.

151. This was the reason for amending Act No. 195/1998 Coll. on social assistance with effect from 1 January 2004 through Act No. 453/2003 Coll. on State administration authorities in the area of social affairs, family and employment services and on amending and supplementing other relevant acts, adding a new provision of § 18a. This provision prohibits the use of means of restraint, both physical and non-physical, for persons with mental and behavioural disorders in social services establishments, even during acute stages of their disorder.

152. 1 January 2009 was the date of entry into effect of Act No. 448/2008 Coll. on social services and on supplementing Act No. 455/1991 Coll. on trade licences (Trade Licence

Act) as amended, repealing the Act on Social Assistance. § 10 of the Social Services Act prohibits the use of means of physical or non-physical restraint on recipients of social services in social services establishments, and stipulates that means of restraint can be used for recipients of social services only if there is an immediate threat to their life or health and only for the time necessary to avert the immediate threat. Means of restraint are defined in detail; physical restraint may be used only when ordered, or its use must be additionally approved without delay by a psychiatrist. The use of means of restraint must be recorded in a restraint register and notified to the Ministry of Labour, Social Affairs and Family and to the legal guardian of the recipient of social service, his or her caretaker or a significant other.

## Article 8

### Recommendation 10

153. The legal system of the Slovak Republic does not explicitly define the concepts of slavery or servitude; these forms of oppression do not occur in Slovakia and may not be imposed, not even as part of punishment. Article 18, paragraph 1, of the Constitution lays down the prohibition of forced labour or forced service as follows: “No one shall be required to perform forced labour or forced service.” Paragraph 2 of the article gives an exhaustive list of cases where the above provision does not apply. They are as follows:

- Work assigned under the law to persons serving custodial sentences or persons executing other sentences in lieu of imprisonment
- Military service or other service performed under the law in lieu of mandatory military service
- Service required under the law in the event of a natural disaster, accident or other threat to lives, health or property of considerable value
- Action required under the law to protect lives, health or rights of other persons
- Smaller-scale municipality services required under the law

#### *Work for the accused held on remand*

154. The legal framework governing assignment of work for the accused remanded in custody is represented by the Remand Custody Act amended in March 2008. The entire chapter three of the Act is devoted to assigning work to the accused held on remand. An accused remanded in custody may be assigned work only subject to his or her approval. Having regard to the purpose of remand custody, prior consent of the competent law enforcement agency or court is also required. Due account is taken of the health condition of the remand prisoner and of work opportunities at the establishment. Work for the accused held on remand is perceived as an important element of mental hygiene, mitigating negative effects of isolation during remand custody.

155. The accused held on remand are entitled to remuneration whose amount depends on the type of work performed, hours worked, and on labour input standards. The amount of and the conditions of entitlement to remuneration are set out in a Government ordinance. Assignment of work to an accused held on remand establishes a special relationship between the remand establishment and the accused, which does not amount to an employment relationship or other similar labour law relationship. In cases provided for by law, assignment of work to the accused held on remand is governed, as appropriate, by the provisions of the Labour Code.

*Work for sentenced persons*

156. Assignment of work to sentenced persons is governed by the Sentence Execution Act amended in March 2008. The entire chapter five of the Act is devoted to assigning sentenced persons to work. Moreover, § 39(e) of the Act stipulates that once the sentenced persons are assigned work, they are obliged to work; this does not apply to those who are incapacitated for work, to the recipients of disability, old-age or early retirement pensions, or to the prisoners assigned to full-time studies, retraining courses, or courses offered during working hours. Assignment of work is perceived as a form of treatment, which not only contributes to social reintegration, but also serves as an important element of mental hygiene mitigating negative consequences of social exclusion of sentenced persons during the execution of custodial sentences (hereinafter the “sentence”).

157. When assigning sentenced persons to work, due account is taken of their health condition, qualification, and objectives of the treatment programme. The Corps of Prison and Court Guards (hereinafter the “Corps”) organises and offers work programme activities to sentenced persons in its ancillary operations outside of the prison for sentenced persons and in internal operations inside the prisons; these activities do not have a profit-making character and their costs are covered from the State budget. Sentenced persons are entitled to remuneration for their work depending on the type of work performed, hours worked, and labour input standards. The amount of and the conditions of entitlement to remuneration are set forth in a Government ordinance. Assignment of work to sentenced persons establishes a special relationship between the sentenced person and the institution in which he or she serves the sentence of imprisonment. This special relationship does not constitute an employment relationship or other similar labour law relationship. In cases provided for by law, assignment of work to sentenced persons is governed, as appropriate, by the Labour Code. Working time and working conditions of sentenced persons are identical with those of other employees.

*National defence obligation*

158. As from 1 January 2006, the Armed Forces of the Slovak Republic became fully professional. The Constitution of the Slovak Republic provides in article 25: “(1) The defence of the Slovak Republic is an honourable privilege and duty of citizens. The law shall provide for the scope of the national defence obligation.”

159. The legislative framework for this area is provided by Act No. 569/2005 Coll. on alternative service in time of war and the state of war as amended, Act No. 570/2005 Coll. on national service and on amending and supplementing other relevant acts as amended, Constitutional Act No. 227/2002 Coll. on State security in time of war, state of war, state of emergency, and state of urgency as amended.

160. The scope of the national service obligation is laid down in § 4 of the National Service Act. The national service obligation means the obligation of conscription for military service unless this Act provides otherwise, and the obligation to perform extraordinary or alternative military service. The legal system of the Slovak Republic guarantees the freedom of religion in relation to mandatory military service in article 25, paragraph 2, of the Constitution according to which no one can be forced to perform military service if this is contrary to his or her conscience or religion. The details of alternative service in time of war or the state of war are laid down in Act No. 569/2005 Coll. on alternative service in time of war or state of war as amended.

161. Constitutional Act No. 227/2002 Coll. on State security in time of war, state of war, state of emergency, and state of urgency as amended provides also for the imposition of duties, depending on the development of the situation on the entire territory of the State or

part thereof. More detailed information is given in connection with the implementation of article 4 of the Covenant.

162. Unlawful coercion into forced labour may be deemed to constitute, depending on the circumstances of the case, a criminal offence of the restriction of personal freedom, deprivation of personal freedom, abduction abroad, extortion, oppression, trafficking in people for the purposes of forced labour or other criminal offences laid down in the current Criminal Code.

### **Recommendation 10**

163. In the time that elapsed since the last periodic report the Slovak Republic has adopted, based on recommendations from the Committee, measures against trafficking in persons aimed at restricting and preventing this form of crime.

#### *Institutional measures*

164. Reorganisations carried out within the Police Corps included the scaling up of the number of staff working at the specialised unit for human trafficking issues, transformed on 15 April 2004 into the Department for Trafficking in Human Beings, Sexual Exploitation and Victim Support and incorporated into the organisational structure of the Police Corps Presidium's Office for Combating Organised Crime. The Minister of the Interior was tasked by the Government with the creation of organisational, material and technical preconditions for increasing the staffing quota in the area of the fight against trafficking in human beings.<sup>35</sup>

165. On 30 September 2005, the Minister of the Interior appointed a national coordinator for the fight against trafficking in human beings. His task is to ensure the fulfilment of the tasks set forth in the National Action Plan for the Fight against Trafficking in Human Beings for 2006–2007 and to coordinate the activities of individual stakeholders.

166. An expert group on the prevention of trafficking in human beings and helping its victims (hereinafter the "expert group") started to work on 2 May 2005. Its task was to draw up the National Action Plan for the Fight against Trafficking in Human Beings for 2006–2007 and to monitor and evaluate, in cooperation with the national coordinator, implementation of the tasks and to propose other measures.<sup>36</sup>

167. On 23 April 2008, the Government passed Resolution No. 251/2008 approving the National Action Plan for the Fight against Trafficking in Human Beings for 2006–2007 (hereinafter the "national programme").

168. The objective of the national programme is to develop a comprehensive and effective national strategy for the fight against human trafficking (hereinafter the "national strategy"), to promote mutual understanding and coordinated activities of all stakeholders aimed at the elimination of risks and prevention of the crime of trafficking in human

<sup>35</sup> By Resolution No. 668/2005 of 7 September 2005 concerning the Report on the Activities of the Government of the Slovak Republic in 2005 aimed at preventing and suppressing the trafficking in human beings.

<sup>36</sup> Members of the expert group include the representatives of the Ministry of the Interior, the Ministry of Justice, the Public Prosecution Service, the Ministry of Foreign Affairs, the Ministry of Labour, Social Affairs and Family, the Ministry of Education, the Ministry of Finance, the Office of the Government, the Office of the Plenipotentiary of the Slovak Government for Roma Communities, the International Organisation for Migration (IOM) and representatives of non-governmental organisations.

beings, and to create conditions for providing support and help to victims of trafficking and ensure protection of their human rights and dignity.

#### *Legal framework*

169. The Slovak Republic ratified on 25 August 2004 the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime. Furthermore, on 27 March 2007, the Slovak Republic ratified the Council of Europe's Convention on Action against Trafficking in Human Beings. The new Criminal Code responded to the ratification of the above two conventions by revising the definition of the criminal offence of "trafficking in human beings". The extended definition of this criminal offence also reflects the measures taken by the EU to combat trafficking in human beings and sexual exploitation of children.

170. Criminal sanctions for trafficking in human beings are laid down in the Criminal Code. Division one of chapter two of the special part of the Criminal Code stipulates in § 179 that trafficking in human beings is a criminal offence.

171. Legal assessment of the criminal offence of trafficking in human beings, its clarification and the taking of evidence must strictly meet the terms of the definition of the elements of this criminal offence. The object is defined as the suppression of trafficking in human beings in line with international commitments and treaties. The objective elements of the offence are represented by the acts of perpetrators who recruit, transport, harbour, hand over or receive a man, a woman or a child for the purpose of prostitution, other form of sexual exploitation including pornography, forced labour or services, slavery or practices similar to slavery, servitude, removal of organs or tissues, or other form of exploitation. The criminal offence is deemed to have been accomplished when the perpetrator recruits, transports, harbours, hands over or receives a person, even with that person's consent. Perpetrators can be men or women whose attributes and actions meet all the elements laid down by law, and whose intentions are evident. The subject of the criminal offence of trafficking in human beings has a general nature. The subjective element of this offence is wilful causation.

172. According to the Criminal Code, aggravated forms of this crime carry custodial sentences of seven to twelve years, twelve to twenty years, or extraordinary custodial sentences of twenty to twenty-five years, or life imprisonment sentences.

#### *Protection of victims*

173. In the 2005 to 2006 period, Slovakia closed the gap in the victim protection area.

174. By means of Criminal Code No. 300/2005 Coll., it transposed into the Slovak legal system Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, which applied to criminal offences of human trafficking for labour exploitation or sexual exploitation purposes.

175. Through the adoption of Act No. 301/2005 Coll., the Code of Criminal Procedure, Slovakia transposed Council Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings aimed at giving the victims of criminal offences adequate standing in criminal proceedings and respecting their rights.

176. Through the adoption of Act No. 215/2006 Coll. on the compensation of persons injured by violent criminal offences, Slovakia transposed Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims with the aim of facilitating access to compensation in cases where the crime was committed in a Member State other than that of the victim's residence. On 14 December 2006, the Deputy Prime Minister and the



Minister of Justice of the Slovak Republic signed in Strasbourg the 1983 Convention on the Compensation of Victims of Violent Crimes.

177. With the aim of unifying victim protection procedures, the Ministry of the Interior of the Slovak Republic (hereinafter the “Ministry of the Interior”) adopted Ordinance No. 65/2006 on the programme of support to and protection of the victims of trafficking. A pilot project was carried out in 2007 within the above-mentioned programme based on agreements on cooperation and coordination of programme implementation activities in the Slovak Republic concluded between the Ministry of the Interior and selected non-governmental organisations: Slovak Crisis Centre DOTYK, Civil Association PRIMA and Civil Association STORM.

178. The victims who are included in the programme by decision of the national coordinator receive comprehensive assistance irrespective of their gender, age or ethnic affiliation. The forms of assistance provided to victims include their separation from the criminal environment, anonymous accommodation, financial support, social assistance, psychological and social counselling, psychotherapeutical services, legal counselling, interpretation, medical care, retraining courses, long-term social integration, possible inclusion into the witness protection programme, legalisation of stay on the territory of the Slovak Republic in the form of tolerated stay, possible acquisition of permanent residence where this is in the interest of the Slovak Republic, assistance in voluntary returns to their country of origin and arranging assistance by a non-governmental organisation in their country of origin, and a 40-day period for recuperation.

179. During this period, the victim has the right to decide to cooperate or not to cooperate with law enforcement agencies that pursue the aim of the most expedient detection and conviction of criminal offenders. Victims are provided safe havens in anonymous shelters.

180. In keeping with the tasks set out in Slovak Government’s Resolution No. 251/2008 on the National Programme of the Fight against Trafficking in Human Beings for 2008–2010, Act No. 448/2008 Coll. on social services and on supplementing Act No. 455/1991 Coll. on trade licences (the Trade Licence Act) as amended that will enter into effect on 1 January 2009 will regulate also social services that the victims of trafficking may receive in emergency shelters in addition to specialised social counselling and other forms of assistance. Emergency shelters, besides creating conditions for the satisfaction of basic life needs, are thus also used to provide social counselling and assistance to victims with the aim of enabling them to enforce their rights and legally protected interests; where the protection of victims’ life or health makes it necessary, their place of residence is kept confidential and their anonymity is guaranteed.

181. Ordinance No. 5/2005 on criminal police procedures applied in the fight against trafficking in human beings and sexual exploitation of 14 March 2005, issued by the Police Corps President, sets out the procedures aimed at combating people trafficking and sexual exploitation, designates contact persons and outlines their tasks, and provides for support to victims, cooperation with police forces of other countries, international police organisations, other international organisations and organisations operating on the territories of other countries.

182. The victims of people trafficking, especially those who decide to make a deposition before a law enforcement agency, may, subject to the fulfilment of certain conditions, be granted protection under Act No. 256/1998 Coll. on witness protection and on amending and supplementing other relevant acts. Other possibilities of victim protection are offered under the relevant provisions of the Code of Criminal Procedure (§ 136), internal instructions of the Interior Ministry on the witness protection programme, and internal instructions of the Police Corps President on short-term protection of persons. Every court hearing held in the course of criminal proceedings must comply with the relevant

provisions of the Code of Criminal Procedure. A victim of human trafficking has the standing of both an injured party and a witness. As the injured party, the victim has the right to file a damage claim. There has been one case to date of a trafficking victim being granted protection under the witness protection programme.

183. The provisions of Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration and who cooperate with the competent authorities were adequately transposed into amended Act No. 48/2002 Coll. on stay of aliens and on amending and supplementing other relevant acts as amended (hereinafter the “Act on the Stay of Aliens”) published in the Collection of Laws under No. 693/2006, and effective from 1 January 2007. The Act makes it possible to legalise the stay of victims of illegal trafficking on the territory of the Slovak Republic by granting them a tolerated stay permit. The police department grants a tolerated stay permit to the alien who is the victim of a trafficking-related criminal offence and has reached the age of 18 years. Tolerated stay permits are granted to aliens for no more than 40 days; this corresponds to the reflection period set out in article 6 of the directive. The Act on the Stay of Aliens also elaborates on other provisions of the directive related to the stay of victims of illegal trafficking in human beings on the territory of the Slovak Republic. This includes the renewal of tolerated stay permits, provision of shelter and the possibility of revocation and the grounds for revocation of a tolerated stay permit. In case of victims of illegal trafficking who are younger than 18, residence-related matters are handled by their legal guardians or designated caregivers. Aliens — victims of the criminal offence of trafficking in human beings — who are minors are granted a tolerated stay permit by the police department if they are children found on the territory of the Slovak Republic.

184. Victims of trafficking in human beings are exempted from paying the administrative fee for tolerated stay permits. Exemption of victims of illegal trafficking from the payment of the administrative fee is laid down in Act No. 342/2007 Coll. amending and supplementing relevant acts in connection with the accession of the Slovak Republic to the Schengen space.

185. Through Resolution No. 423/2006, the Slovak Government approved the proposal to sign the Council of Europe’s Convention on Action against Trafficking in Human Beings. The National Council approved adherence to the Council of Europe’s Convention on Action against Trafficking in Human Beings by Resolution of 30 January 2007. The Convention was ratified by the President of the Slovak Republic on 27 March 2007 and entered into effect on 1 February 2008.

Table 4

**Statistical data on criminal offences related to trafficking in human beings**

<i>Trafficking in human beings</i>	2003	2004	2005	2006	2007	<i>Until 30 April 2008</i>
Number of cases – total	28	27	14	19	13	4
Clarified cases	16	18	4	6	4	1
Additionally clarified cases	0	5	2	1	5	0
Number of offenders – total	46	21	6	11	9	1
of them:						
males	37	14	6	8	8	1
females	9	7	0	3	1	0
Number of victims – total	43	33	18	31	15	4
of them:						

<i>Trafficking in human beings</i>	2003	2004	2005	2006	2007	<i>Until 30 April 2008</i>
males	1	4	2	2	0	0
females	42	29	16	29	15	4
of them under:						
15 or 14 years of age	0	3	0	1	1	0
18 years of age	5	6	4	7	4	3

Table 5  
**Statistical data on criminal offences of pandering**

<i>Pandering</i>	2003	2004	2005	2006	2007	<i>Until 30 April</i>
Number of cases – total	13	22	22	10	18	6
Clarified cases	9	16	13	2	12	3
Additionally clarified cases	2	1	3	0	2	1
Number of offenders – total	11	24	11	3	18	5
of them:						
males	9	19	7	3	14	4
females	2	5	4	0	4	1
No victims – total	-	-	-	-	-	-

## Article 9

### Recommendation 11

186. One of the basic constitutional principles in the Slovak Republic is the guarantee of personal liberty in article 17 of the Constitution of the Slovak Republic: “Personal liberty of every individual shall be guaranteed. No one shall be prosecuted or deprived of liberty except on such grounds and in accordance with such procedures as are established by law. No one shall be deprived of liberty merely on the ground of inability to fulfil a contractual obligation. “Article 17, paragraph 2, of the Constitution lays down the prohibition of prosecuting or otherwise depriving a person of liberty on other grounds and by other means than those established by law.

187. Article 17, paragraph 3, of the Constitution provides for personal liberty of every detained person. A person may be detained only if charged with or suspected of a criminal offence and only in cases provided for by law. These cases are laid down in the Code of Criminal Procedure.<sup>37</sup>

188. Minimum rights of persons at the time of detention are laid down in the Constitution of the Slovak Republic, which stipulates the obligation to immediately inform the detained person of the reasons of detention. Moreover, the detained person must be heard and released or brought before a court within a 48-hour time limit. The judge must hear the detained person within 48 hours or, in case of particularly serious criminal offences, within

<sup>37</sup> An exhaustive list of reasons for restricting personal liberty is given in title four of part one of the Code of Criminal Procedure (Act of the National Council of the Slovak Republic No. 301/20005).

72 hours from the time the person was referred to court, and decide on whether the person is to be remanded in custody or released.<sup>38</sup>

189. Similar provisions apply to remand custody. A person charged with a crime can be arrested only on a written order issued by a judge. The arrested person must be referred to a court within 24 hours. The judge must hear the arrested person within 48 hours or, in case of particularly serious criminal offences, within 72 hours from the time the person was referred to court, and decide on whether the person is to be remanded in custody or released.<sup>39</sup> The following paragraph of the relevant article of the Constitution also provides for a fundamental right when it guarantees that a person may be remanded in custody only on the grounds and for the time established by law, and only by decision of a court.<sup>40</sup> Statutory grounds for and the duration of remand custody are laid down in the Criminal Code and in the Code of Criminal Procedure. The key legislative instrument setting out remand custody rules is Act No. 221/2006 Coll. on remand custody as amended. Remand custody, i. e. the institution used for detaining persons charged with a crime for criminal proceedings purposes, may be replaced by a guarantee, a pledge or supervision (§ 80 of the Code of Criminal Procedure), or by a pecuniary guarantee (§ 81 of the Code of Criminal Procedure). This issue is addressed in more detail in the text concerning article 10 of the Covenant.

190. A person may be deprived of liberty not only because he or she committed a criminal offence, but also for reasons of health. Article 17, paragraph 6, of the Constitution stipulates that “A law shall lay down in which cases a person may be committed to or held in a health care institution without his or her consent. Such cases shall be reported to the court within 24 hours and the court shall make a decision on such placement within five days.” More details are given about this provision in the section concerning article 7 of the Covenant.

191. A specific procedure of committing a person to institutional care is applied in case of persons charged with a crime. Article 17, paragraph 7, of the Constitution states that “Examination of the mental condition of a person charged with a criminal offence is permissible only upon a written court order.”

192. Persons whose personal liberty was restricted for certain reasons may be placed in a police detention cell, a remand establishment, an establishment for sentenced persons, an institution providing protective and institutional treatment, a diagnostics centre, or a youth re-education home. Conditions for committing persons to and holding them in these establishments are laid down in the relevant legislation.

193. Compliance with the law in places where persons deprived of their liberty are held is overseen by prosecutors.

194. § 18 of Act No. 153/2001 Coll. on public prosecution provides that prosecutors oversee compliance with the laws and other generally binding legal provisions in places where persons are held for the purposes of remand custody, execution of custodial sentences, disciplinary punishment of soldiers, protective treatment, protective education, institutional treatment or institutional education ordered by court, and in police detention cells, making sure that persons are being held in these places only based on a decision on deprivation or restriction of personal liberty issued by a court or other competent State authority.

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<sup>38</sup> Article 17, paragraph 3, of the Constitution.

<sup>39</sup> Article 17, paragraph 4, of the Constitution.

<sup>40</sup> Article 17, paragraph 5, of the Constitution.

195. In keeping with their supervisory powers, prosecutors perform checks in these establishments and are obliged to immediately release any person held in such establishments without a decision or in conflict with a decision of the court or other competent State authority, and to quash or stay the execution of decisions, orders, or measures of the bodies that perform administration of these establishments or their superior bodies if they are in conflict with a law or other legal regulation. At the same time, prosecutors are obliged to ensure that complaints or communications lodged by persons held in establishments referred to in paragraph 1 are served without delay on institutions or officials to which or whom they are addressed. The boxes that are placed at the disposal of detainees for this purpose can be only emptied by a prosecutor at the time of monitoring observance of the laws in the establishment.

196. Prosecutors overseeing these establishments have the right to visit them at any time, and have free access to all their premises, the right to inspect the documents on the deprivation of liberty, to speak with persons deprived of their liberty without the presence of other persons, to verify the conformity of the decisions and measures taken by the administration of these establishments with the laws and other legal regulations, and to request their staff to provide relevant explanations, documents and decisions on the cases of restriction of personal liberty. The law provides that prosecutors must carry out regular inspections in establishments for remand and sentenced persons on a monthly basis.

197. According to § 60 of the Remand Custody Act, execution of custody in remand establishments is overseen by the relevant bodies of the National Council of the Slovak Republic, the Minister of Justice and persons authorised thereby, and the general director of the Corps of Prison and Court Guard and persons authorised thereby, or by legal and natural persons where so prescribed by the relevant legislation or international conventions binding on the Slovak Republic.

198. Prosecutorial supervision over observance of the laws in these establishments is carried out pursuant to § 18, paragraph 6, of the Public Prosecution Act which stipulates that the staff of the bodies performing administration of these establishments are obliged to execute the orders issued by supervising prosecutors and to enable the latter to fulfil their duties and exercise their powers.

199. Personal liberty and the right to have one's case heard without unreasonable delay, i. e. within an appropriate time limit, belong among the fundamental rights and freedoms protected, inter alia, by the Public Defender of Rights.<sup>41</sup>

200. One of the forms of depriving a person of personal liberty is the detention of aliens carried out to prevent their escape and thus to ensure the execution of the decision on their expulsion from the territory of the Slovak Republic or their surrender in accordance with relevant international treaties. Article 1, paragraph 17, of the Constitution prohibits prosecuting or otherwise depriving persons of liberty for other reasons and in other manners than those provided for by law. This means that certain rights, including the right to personal liberty, may be overruled and/or weakened, but only subject to the fulfilment of the conditions defined by law. These conditions are specified and set out in the National Council's Act No. 48/2002 Coll. on stay of aliens and on amending and supplementing other relevant acts (hereinafter the "Act on the Stay of Aliens").

201. The Slovak Republic, one of the signatories to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol 11, gave the

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<sup>41</sup> On the powers of the Public Defender of Rights and cooperation with the Public Prosecution Service, see also article 7; see the reports on the activities of the Public Defender of Rights, section on personal liberty.

undertaking to respect the rights laid down in these international legal instruments; this means that the alien detention procedure must comply with article 5, paragraph 1(f), of the Convention. Furthermore, article 5, paragraph 4, of the Convention provides that an alien is entitled to take proceedings by which the lawfulness of his or her detention shall be decided by a court and his or her release ordered if the detention is not lawful.

202. It follows from the above that during lawful detention imposed in compliance with § 62, paragraph 1, of the Act on the Stay of Aliens and with the commitments of the Slovak Republic under international legal instruments referred to in article 1, paragraph 2, of the Constitution, the free movement of aliens outside of the limits of the detention facility is restricted, save for the circumstances referred to above.

203. In case of a decision to detain an alien, the alien is placed in a police detention facility for aliens for a maximum of 180 days; this time limit does not apply if there are pending proceedings on surrendering the alien to a neighbouring State's authorities under the relevant international agreement (the readmission agreement). In the latter case, the detained alien may be placed in a police detention cell for a maximum of 7 days.

204. The procedure of placing aliens in detention pursuant to § 62, paragraph 1, of the Alien Stay Act is carried out by police detention units for aliens of the Office of Border and Alien Police of the Ministry of the Interior (hereinafter "police detention units for aliens"). A uniform procedure of and the conditions for placing detained aliens in holding facilities of police detention units for aliens are laid down in Ordinance No. 26 of the Ministry of the Interior of 23 May 2007. These facilities are used to hold aliens detained for the purposes of administrative expulsion, execution of expulsion sentences, transfers under relevant legislation ("the Dublin procedure") or for the purpose of return under the relevant legislation (readmission agreements) of aliens who have illegally entered or are illegally staying on the territory of the Slovak Republic.

205. According to § 1, paragraph 3, of the Alien Stay Act, the Act also applies to aliens who lodged applications for asylum or for subsidiary protection on the territory of the Slovak Republic, and aliens who were granted asylum or subsidiary protection on the territory of the Slovak Republic.

206. The legality of placing and holding aliens in police detention units for aliens is overseen by prosecutors in conformity with Act No. 153/2001 of the National Council of the Slovak Republic on public prosecution as amended. Prosecutors of district prosecution offices having territorial jurisdiction for the facility perform supervision at least once a month, and prosecutors of regional prosecution offices at least once in 6 months.

207. Police detention units for aliens cooperate with various non-governmental and charitable organisations. Non-governmental organisations (the Human Rights League – HRL, the Slovak Humanitarian Council, the Slovak Catholic Charity, the IOM) monitor police detention facilities for aliens to ascertain whether they respect the principles of detention and stay of aliens, and the principles of healthcare provision to aliens. These organisations offer various activities to detained aliens, which may be also seen as prevention activities and as a kind of control mechanism.

208. The importance of communication is stressed at daily instruction sessions for police officers who are encouraged to engage in communication with the detained aliens with a view, among other things, to preventing discrimination, racism or other expressions of intolerance.

209. Regular monthly meetings of police officers assigned to police detention units for aliens are also used to provide them with training and information on relevant legislation, including the legislation guaranteeing the rights of detainees. Every alien is entitled to a personalised approach and has the right to lodge applications, complaints, motions or

information with the director of the police detention facility for aliens. As from 1 January 2006, a post of independent advisor was created with the aim of providing necessary assistance and counselling to detained aliens so as to help them deal with their personal problems and ensure day-to-day communication with detained aliens.

210. A detained alien (asylum-seeker) who is a victim of or a witness to a criminal offence or misdemeanour can report this fact also within the given facility. An initial interview is conducted with every alien placed in a detention facility. The interview is administered by a specialised alien police officer who has acquainted himself with the detained person's file (detention decision, expulsion decision, police interview record). If the examination of the detained person's file by a specialised alien police officer reveals a fact which could give rise to criminal proceedings, this fact is reported to the law enforcement agency having substantive and territorial jurisdiction for the facility pursuant to § 196, paragraph 1, of the National Council's Act No. 301/2005 Coll. (the Code of Criminal Procedure).

211. The conditions of aliens' detention were examined also by the staff of the Slovak National Centre for Human Rights whose visit in 2006 did not reveal any violation of generally binding legal acts governing the prohibition of discrimination and observance of fundamental human rights.

*Compensation for damage caused by unlawful court decisions*

212. Liability for damage caused by an unlawful decision on detention, punishment or protective measure is laid down in Act No. 514/2003 Coll. on liability for damage caused in the exercise of public authority and on amending other relevant acts, repealing Act No. 58/1969 Coll. on liability for damage caused by a decision or improper official action of a public authority. Subject to the conditions set out in the aforesaid Act the State is liable, save for part three of the Act, for the damage caused in the exercise of public authority by unlawful decision, unlawful arrest, detention or other deprivation of personal liberty, a decision on punishment, protective measure or remand in custody, or improper official action. This liability is not renounceable on any grounds. For the purposes of the Act, the authorities deemed to act on behalf of the State include, besides central State administration authorities, local State administration authorities and public authorities and law enforcement agencies, also the National Council of the Slovak Republic, the Judiciary Council of the Slovak Republic and the National Bank of Slovakia, if the damage was caused by the latter institutions' unlawful decision or improper official action, as well as public service institutions, self-governing associations or legal persons upon which the State conferred the authority to decide on the rights, legally protected interests and obligations of natural and legal persons in the area of public administration, if the damage was caused by their unlawful decision or improper official action.

213. According to § 8 of the Act, compensation for damage caused by a sentencing decision may be claimed by a person who has wholly or partly executed his or her sentence and whose sentencing decision was reversed as unlawful during the subsequent proceedings; the person was acquitted; the prosecution was discontinued on the grounds of new facts or evidence that had not been known to the court; or the matter was referred to another body; this shall not apply if the fault for not revealing unknown facts in time has been proven to lie wholly or partly with the person subject to the sentence. Compensation for damage may also be claimed by a person whose sentence imposed in the subsequent proceedings is more moderate than the sentence he or she served on the basis of the subsequently reversed judgment; for the purposes of this Act, a suspended custodial sentence is not considered to be more moderate than an unconditional custodial sentence. Compensation is granted only in respect of the difference between the sentence served

under the judgment that was subsequently reversed and the sentence imposed by the new judgment.

214. Compensation for damage caused by the decision on a protective measure can be claimed by the person in respect of whom the protective measure has been wholly or partly executed, or the decision on protective measure against whom was reversed as unlawful in the subsequent proceedings.

215. Compensation for damage caused by the decision on remand custody can be claimed by the person remanded in custody if the prosecution against that person was discontinued, the person was acquitted or the matter was referred to another body.

216. No entitlement to compensation arises:

- To the person who was rightly sentenced or subjected to a protective measure, or who was rightly detained
- If the sentence was erased, remitted or commuted by individual pardon or amnesty granted by the President of the Republic
- If the victim or the competent State authority withdraws the consent to opening or continuing the prosecution where such consent is required under the relevant legislation
- If the prosecution was discontinued because the prospective sentence was absolutely insignificant in comparison with the sentence imposed or likely to be imposed on the accused for another offence, or if another body has already taken a decision on the offence committed by the accused through disciplinary proceedings, or a decision has already been taken by a foreign court or a foreign authority and is considered to be adequate
- If the prosecution was conditionally stayed in accordance with the relevant legislation
- If a settlement was approved in accordance with the relevant legislation
- If the person was acquitted or the prosecution was discontinued due to the lack of criminal liability; if the act no longer carried criminal liability after the date when the decision became final; if the prosecution was barred by virtue of an international treaty promulgated as prescribed by law or of an amnesty declared by the President of the Republic; if due to a legislative change the act no longer constitutes a criminal offence; or if the sentence was commuted as a result of newly introduced lesser penalties for the criminal offence concerned, or
- If the damage was caused by a decision of a foreign body that was recognised by or transferred for implementation on the territory of the Slovak Republic

### **Recommendation 11**

217. According to the Police Corps Act,<sup>42</sup> police officers must carry out their duties with due regard to the honour, reputation and dignity of the person, and make sure that the interference with the rights or liberties of a person is not disproportionate to the purpose of their official action.

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<sup>42</sup> § 8 of National Council's Act No. 171/1993 Coll. on the Police Corps as amended (hereinafter the "Police Corps Act").



218. Any infringement of the above provision gives rise to a procedure of examining the unlawful action, depending on its gravity, as a disciplinary infraction or a criminal offence. This means that the legislation in force prevents racial discrimination by police officers or police services against criminal offenders, crime suspects, or witnesses.

219. One of the steps towards eliminating racial discrimination is the formulation and implementation of the Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance.

220. The action plan envisages systemic solutions to critical situations (such as the training of medical staff on informed consent in connection with allegations of sterilisation of Roma women, or the training of police officers in connection with riots in east Slovak settlements at the beginning of the year).

221. The action plan helps devote systematic and permanent attention to the observance of human rights and prevention of discrimination across individual sectors. The experience gathered by non-governmental organisations constitutes the optimum source of information and a starting point for the systematic training of members of professional groups and for revising the measures implemented by the public administration in relevant areas.

*Status of the police force in relation to persons belonging to the Roma national minority and prevention of racially motivated violence*

222. To step up the fight against racially motivated violence against the Roma, the Government supports State prevention programmes for suppressing racially motivated violence.

223. Since 2007, cooperation between the Office of the Slovak Government Plenipotentiary for Roma Communities and the Ministry of the Interior and its services has been growing in intensity. A series of working meetings were held with a view to enhancing cooperation in providing support to disadvantaged municipalities and in the areas of drug education and prevention, in the fight against antisocial phenomena and crime, and in the protection of citizens' property and rights. Among their outcomes is the setting up of a police station at Lomnička and steps taken to create another one at Stráne pod Tatrami.

224. Another instrument for improving cooperation between the police and the Roma community is the project of police specialists on working with Roma communities. The number of these police specialists is gradually growing. A Commission on Coordinating the Action to Eliminate Racially Motivated Crime was created within the Ministry of the Interior. Expressions of racial violence and incitement to racial hatred are criminalized also in the new Criminal Code which introduced even stricter penalties for racially motivated criminal offences in 2004. The efforts at pro-active building of confidence between the Roma communities and the police led to the creation of the posts of police officers for Roma communities deployed in the areas with higher concentrations of members of those communities. Police officers assigned to these positions receive specialised training where, in addition to essential communication skills, they also learn the Romani language. The objective is to create an adequate space for communication between the police and members of the Roma community.

225. The implementation of the project of police specialists on working with Roma communities will be evaluated by the end of 2008 and the project will be enlarged in cooperation with the Office of the Slovak Government Plenipotentiary for Roma Communities by deploying another approximately 82 police specialists. Parallel discussions are taking place with the Association of Community Centres in the Slovak Republic with a view to developing and implementing a project on the "Prevention of Crime in Roma Communities in the Slovak Republic (Police and Roma – Efficiently and Decently)"

focusing on the activities of police specialists on working with the communities and of Police Corps members carrying out prevention work. The project is to be financed from the funds of the European Union and its main goal and partial objectives are practically identical with the already approved and implemented Project of Police Specialists on Working with Communities. Target groups of the proposed project are police specialists on working with communities, the Roma and the staff of community centres in selected communities, i. e. the groups that are already involved in the Project of Police Specialists on Working with Communities. The project will not have a pilot stage and will be directly implemented, complementing the activities of police specialists on working with communities and of the staff of community centres in selected communities in the regions of Banská Bystrica, Prešov and Košice. This project is expected to produce measurable indicators that could be used to evaluate changes in attitudes, lifestyle and behaviour of the Roma in selected communities compared with similar communities that do not have community centres and do not participate in the Project of Police Specialists on Working with Communities.

226. Another project aimed at strengthening the trust of persons belonging to the Roma national minority in the criminal justice system is the mediation and probation service project developed by the Ministry of Justice in cooperation with the Office of the Government Plenipotentiary for Roma Communities, which offers an alternative way of addressing criminal activities with the aim of enhancing the trust of the public in the criminal justice system. The aim of the institution of mediation and probation services is to enable the rehabilitation and correction of criminal offenders, to motivate them to take responsibility for their actions and to involve them in the proposal of repairing the harm they caused. It also takes account of the interests of crime victims by offering them the possibility to participate in proposing the manner of repairing the harm they suffered.

227. The probation and mediation service attaches special attention to juvenile offenders and persons close to juvenile age. Probation and mediation officers receive training in civil law with emphasis on family law and, in particular, training in criminal law; the training is also provided to Roma assistants.

*Education in human rights and treatment of persons deprived of their liberty*

228. Education in human rights and treatment of persons deprived of their liberty is incorporated into the various courses offered in the study programme at the Police Corps Academy and of specialised police training for trainee investigators. In the Police Corps, this education is part of continued training activities.

229. Since 2005, a member of the judicial police department of the judicial and criminal police office of the Police Corps Presidium is a permanent member of the National Commission on Education in Human Rights created within the Slovak National Centre for Human Rights in the framework of the United Nations Decade for Human Rights Education.

230. The Commission, an independent professional body for human rights education in the Slovak Republic, develops and coordinates the National Plan for Human Rights Education. It was created within the Slovak National Centre for Human Rights for the period 2005–2014.

231. No reports were made in connection with criminal proceedings during the last five years of inappropriate police harassment or ill-treatment during police investigation, especially as regards the Roma minority.

*The Karol Sendrei case*

232. Based on the results of a demanding and extensive investigation, the prosecutor laid charges against seven police officers for the criminal offence of torture and other inhuman and cruel treatment pursuant to § 259a, paragraphs 1 and 2(a) and (b), paragraphs 3 and 4, of the Criminal Code No. 140/1961 Coll. as amended. The main trial continued at the Regional Court of Banská Bystrica on 17 December 2007 and the Court gave its judgment convicting the defendants on 28 February 2008. The judicial panel of the Regional Court in Banská Bystrica entered an unconditional imprisonment sentence of eight years and six months against former policeman Miroslav S. (36) whom it convicted of the death of Karol Sendrei (51), a Roma from Magnezitovce in the Revúca district. According to the court, Miroslav S. committed the crime of torture and other inhuman and cruel treatment in his capacity of public officer. An equivalent sentence was handed down for the same crime to Ján K. (30), Ladislav K. and Roman R. (33), who committed the same crime as Miroslav S., received a seven- and a four-year imprisonment sentence, respectively.<sup>43</sup>

**Article 10***Remand custody – treatment of the accused*

233. The execution of custody on remand is governed by Act No. 221/2006 Coll. on remand custody as amended by Act 127/2008 Coll. amending and supplementing Act No. 221/2006 Coll. on remand custody. The details of the execution of remand custody are set out in Decree No. 437/2006 Coll. of the Ministry of Justice issuing remand custody rules, and in Decree No. 361/2008 Coll. of the Ministry of Justice amending and supplementing the above decree. The decree expands the exercise of basic civil rights of the accused in conformity with the amended Remand Custody Act in the wording of Act No. 127/2008 Coll.

234. § 2 of the Remand Custody Act sets out the basic rules of custody on remand. These rules provide that it is possible to restrict only those rights of the accused that cannot be exercised in view of the purpose of custody, safety of persons and protection of property and order in places of detention, and the rights whose exercise would interfere with the execution of custody. The Remand Custody Act sets forth the principle according to which the human dignity of the accused must be respected at all times and any cruel, inhuman or degrading treatment or punishment is prohibited. All the rights set forth in the Remand Custody Act are guaranteed for all the accused so as to guarantee equal treatment according to Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination and on amending and supplementing other relevant acts (the Anti-Discrimination Act).

235. Remand custody is carried out in remand establishments or in separate remand custody wards that may be set up or dismantled by the general director of the Corps in remand establishments or in prisons for sentenced persons; separate remand custody wards are part of the organisational structure of the establishment concerned. Where the health condition of the accused requires medical care that cannot be provided in the establishment or where it is necessary for the criminal proceedings, remand custody is carried out for the time strictly necessary in the hospital for accused and sentenced persons. If the type of medical treatment required by the accused cannot be provided in the establishment or in the

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<sup>43</sup> According to a media report, the sentenced police officers appealed the judgment.  
<http://aktualne.centrum.sk/domov/kauzu/clanek.phtml?id=1153370>,  
[http://www.spectator.sk/Articles/view/30968/2/\\_cops\\_get\\_jail\\_for\\_torture.html](http://www.spectator.sk/Articles/view/30968/2/_cops_get_jail_for_torture.html).

hospital for accused and sentenced persons, remand custody is carried out for the time strictly necessary in another health establishment; the guarding and surveillance of the accused is carried out by officers of the Corps.

236. Admission to and release from remand custody is performed daily round the clock. Accused persons may be placed in remand custody only by a written court order issued on the basis of a remand custody decision, subject to the verification of the accused person's identity; if the identity of the accused cannot be reliably established, the verification focuses on other data given in the written court order. Accused persons taken into custody undergo a body search, medical examination, hygienic and antiepidemic measures and medical interventions, the extent and conditions of which are laid down in the relevant legislation. The accused must surrender items that could endanger the life, health, property or safety of other prisoners or other persons, prejudice the purpose of remand custody or house rules, and items that could be misused for escape, audiovisual devices and addictive substances that the law defines as items that the accused may not have in their possession.

237. When taking the accused into custody, they must be advised of their rights and obligations in accordance with the Remand Custody Act. The remand establishment is obliged to advise aliens and stateless persons of the rights, obligations and conditions of remand custody in a language they understand. The aliens taken into custody are informed by the staff of the remand establishment of their right to contact the consular office of the country of which they are nationals; stateless persons are informed of their right to contact a diplomatic mission, a consular office or an international organisation that pursues the protection of their interests. The establishment informs the aliens and stateless persons of their right to receive a visit by the representatives of the bodies mentioned in the preceding sentence; the aliens or stateless persons taken into collusion custody (see below) can be visited only subject to a prior consent by the law enforcement agency or the court. These visits are not considered to be the visits within the meaning of the provisions governing contacts of the accused; as a rule, they have the form of direct contact in the presence of a member of the Corps. On this occasion, the representatives of the above bodies may bring aliens or stateless persons newspapers, journals or books in the relevant language. Remand establishments make sure that aliens and stateless persons receive medical care as necessary in accordance with Act No. 580/2004 Coll. on health insurance and on amending and supplementing Act No. 95/2002 Coll. on insurance and on amending and supplementing other relevant acts as amended.

238. Accused persons may be transferred to other establishments only upon a written order issued by a prosecutor or a court; for reasons of order and security, or the protection of health or life of the accused or other persons, the transfer may be ordered in writing also by the general director of the Corps and notified to the competent law enforcement agency or court. The transfer of the accused is notified without delay to his or her lawyer and, if the accused is transferred for more than 48 hours, also to his or her relative. The accused requiring medical treatment that cannot be provided in the establishment are transferred to a hospital or other medical establishment on a doctor's recommendation, subject to prior consent of the law enforcement agency or court; in case of immediate danger to the accused person's life, the establishment will request the consent additionally.

239. When placing accused persons in cells, due regard is taken of the purpose of custody. Women are placed in cells separately from men, juveniles separately from adults, persons taken into custody on the grounds of § 71, paragraph 1(b) or paragraph 2(b), of the Code of Criminal Procedure (hereinafter "collusion custody") separately from other accused persons, persons prosecuted for criminal offences under § 47, paragraph 2, of the Criminal Code separately from other accused persons, persons prosecuted for criminal offences committed by negligence and persons who had not received previous unconditional custodial sentences separately from other accused persons, persons in

collusion custody accused of interrelated criminal offences or subject to joint proceedings and persons suspected of spreading contagion separately from other accused persons, accused persons separately from finally sentenced persons.

240. The accused may be placed in a single cell at his or her request where the situation in the establishment allows, at the request of the law enforcement agency, or by decision of the director of the establishment taken for reasons of security of the accused, other persons, or for other serious reason. The accused who are aggressive, violate house rules, present a security threat inside the establishment, or are prosecuted for criminal offences set out in § 47, paragraph 2, of the Criminal Code are usually placed in security cells. The accused who endangers his or her own health or life by uncontrollable and aggressive behaviour is placed in a “cooling-off cell” by decision of the director of the establishment on a doctor’s recommendation. The director of the establishment carries out monthly checks of the accused placed in single cells in order to verify whether the placement in a single cell is still warranted; a record is made of the result of such verification. Where justified, the procedure applied to the placement in cells of juveniles, of persons prosecuted for criminal offences committed by negligence, and of persons who had not been previously unconditionally sentenced may differ from that applied in respect of the other accused, and the procedure applied to the placement of the accused may differ from that applied to the placement of finally sentenced persons. Such justification may include the protection of a juvenile — victim of bullying by other juveniles — who is psychologically unfit for being held in a single cell where there are no other juveniles in the remand establishment.

*Execution of custodial sentences – treatment of sentenced persons*

241. The execution of custodial sentences is governed by Act No. 475/2005 Coll. on the execution of custodial sentences and on amending and supplementing other relevant acts as amended by Act No. 93/2008 amending and supplementing Act No. 475/2005 Coll. (hereinafter the “Act on Custodial Sentences”). The details of the execution of sentences are set out in Decree No. 664/2005 Coll. of the Ministry of Justice issuing the rules for the execution of custodial sentences.

242. § 3 of the Act on Custodial Sentences lays down basic principles for the execution of sentences. These principles enshrine the respect for the human dignity of sentenced persons and prohibit the use of cruel, inhuman or degrading treatment or punishment. All the rights provided for in the Act on Custodial Sentences are guaranteed to all sentenced persons in conformity with the equal treatment principle laid down in Act No. 365/2004 Coll. on equal treatment in certain areas and on the protection against discrimination and on amending and supplementing other relevant acts (the Anti-Discrimination Act). Special efforts are made to promote the attitudes and skills of persons serving their custodial sentences that will later help them reintegrate into society and learn to respect the legal order. The restrictions imposed on persons serving custodial sentences may not be reduced to a degree that would weaken the protection of society from criminal offenders or diminish the deterrent effect of imprisonment sentences on other members of society. The execution of sentences is subject to differentiation. The movements, contacts, surveillance and exercise of the rights of sentenced persons are differentiated depending on the degree of security. Internal differentiation is applied and specialised wards are created in order to increase the effectiveness of the execution of sentence.

243. Persons serving custodial sentences are obliged to accept restrictions of their fundamental rights and freedoms whose exercise would interfere with the purpose of the sentence or that cannot be exercised in the conditions of execution of a sentence. The rights of sentenced persons are restricted mainly as regards the inviolability and privacy of the person, freedom of movement and stay, secrecy of correspondence and of other communications and papers, and the right to the free choice of occupation. Persons serving

custodial sentences do not have the right to strike, to freely assemble and associate in circles, societies or other associations, to set up and join trade unions, to freely choose a physician or a health establishment. Sentenced persons serving custodial sentences cannot create and associate in political parties or movements and perform an elected or other public office.

244. Sentences are executed in minimum-security, medium-security or maximum-security prisons, in prisons for juvenile offenders and in sections for sentenced persons set up within remand establishments (hereinafter “prisons for sentenced persons”) and in the hospital for accused and sentenced persons (hereinafter the “hospital”). The general director of the Corps may set up an open ward within a remand establishment or a prison for sentenced persons. The open ward is an organisational part of the respective remand establishment or prison for sentenced persons. If the health condition of the sentenced person requires medical treatment than cannot be provided in the establishment, the necessary treatment will be provided in the hospital. If the medical treatment cannot be provided in the hospital, it is provided in other healthcare facilities for as long as necessary; in such cases sentenced persons, except for those placed in open wards, are guarded by officers of the Corps.

245. Sentences are executed separately by men and women, adults being separated from juveniles. Execution of sentences in prisons is differentiated in accordance with the security level determined by the court and, moreover, is subject to internal differentiation into three groups determined by the Corps on the basis of internal criteria for sentence execution. Sentenced persons who are subject to additional methods and procedures applied as a means of ensuring a more individualised execution of the sentence and sentenced persons under protective treatment are placed in specialised wards.

246. It is prohibited to make pregnant women or women who take care of their own child under one year of age serve imprisonment sentences. The physiological characteristics of women are duly taken into account in the execution of sentences.

247. No change in the terms of the execution of sentences, such as transfer to a medium- or minimum-security prison, release on parole or leave from prison, is allowed in case of persons sentenced to life imprisonment. It is, however, possible to ease certain restrictions imposed in connection with life imprisonment, respecting the rules of internal differentiation.

248. Juvenile offenders serve their sentences in prisons for juveniles. In exceptional cases worthy of special consideration, the general director of the Corps may decide that a juvenile serve his or her sentence in a different establishment which is more suitable for the implementation of the treatment programme. Prisons for sentenced persons create conditions for compulsory school attendance in conformity with the relevant provisions governing education in the Slovak Republic. Taking account of personal characteristics, level of mental aptitudes and potential for social reintegration of the juveniles, juveniles are assigned to different groups applying different forms and methods of treatment. The treatment programme for juveniles is always determined so as to enable them to acquire occupational qualifications, prepare for independent life and, in particular, alleviate the adverse effects of the prison environment. When arranging vocational training for juveniles and assigning them to work, the establishment cooperates with the parents or legal guardians of juveniles. Juveniles can be subjected to disciplinary punishment of solitary confinement or placement in a closed ward for no more than ten days, or disciplinary punishment of placement in a closed ward during out-of-work hours for no more than 14 days. Where appropriate for educational reasons, juveniles may participate in preventive, instructional or one-off and short-term educational activities even when they serve disciplinary punishment of full-time placement in a closed ward. Juveniles engaged in full-time education cannot be imposed disciplinary punishment of solitary confinement or

disciplinary punishment of full-time placement in a closed ward. The execution of disciplinary punishment by juveniles may be conditionally suspended for a trial period of up to three months.

## **Article 11**

249. No change has been recorded during the relevant period in the Slovak legal system as regards the area covered by article 11.

250. The deprivation of personal liberty is defined in a negative manner, i. e. article 17, paragraph 1, of the Constitution stipulates that no one shall be deprived of liberty merely on the ground of inability to fulfil a contractual obligation.

## **Article 12**

251. Article 23, paragraphs 1 and 2, of the Constitution guarantee freedom of movement and residence. Everyone residing legally on the territory of the Slovak Republic has the right to freely leave its territory. Article 23, paragraph 3, of the Constitution provides that the freedoms set out in paragraphs 1 and 2 may be restricted by law if this is necessary to protect national security, public order, public health or the rights and freedoms of others, or if it is in the interest of environmental protection in specified areas.

252. The terms of the stay of aliens on the territory of the Slovak Republic were laid down in the National Council's Act No. 73/1995 Coll. on stay of aliens on the territory of the Slovak Republic, and issuance of travel documents was governed by Act No. 381/1997 Coll. on travel documents.

253. The issues related to movements and residence of aliens are currently regulated by the National Council's Act No. 48/2002 Coll. on stay of aliens and on amending and supplementing other relevant acts (hereinafter the "Act on the Stay of Aliens"). This legislation sets out the conditions under which an alien may enter or leave the territory of the Slovak Republic, the terms of stay of aliens on the territory of the Slovak Republic, and the issuance of travel documents to aliens, the rights and obligations related to entry and residence, conditions and procedures of administrative expulsion, detention and placement of aliens in facilities for aliens, conditions of police transfer, air transit, as well as misdemeanours and other administrative delicts connected with entry and stay.

254. The Act provides for the creation of mechanisms for suppressing illegal migration, for the issuance of residence permits linked to employment of aliens on the territory of the Slovak Republic with emphasis on the protection of the labour market, mechanisms for the control of aliens' residence and expulsion of aliens, respecting freedom of movement and residence. The Act has transposed the provisions of the European Union law regarding the aliens, especially those governing the entry, residence, expulsion, detention of and infractions committed by third-country nationals. It also contains provisions on special regimes for the citizens of the EU and of the European Economic Area (hereinafter the "EEA") and their family members (terms of entry, residence, other terms applying to the refusal of entry, prohibition of entry and administrative expulsion, and residence permit procedures). The Act that has transposed the legal acts of the European Communities and of the European Union has undergone further amendments and adaptations not only in the light of the needs of the Slovak Republic, but also in the light of legal norms and legal system of the EU.

255. On 21 December 2007, the Slovak Republic became a full-fledged member of the community of the European Union by entering the Schengen space. As of that date, border

checks were abolished on all border crossings between Slovakia and its neighbours. The citizens of the Slovak Republic have thus been able to exercise one of the basic freedoms of EU citizens, i. e. the right to freely travel from one country to another and to choose the country where they want to take up residence and live.

256. With the entry of Slovakia among the States of the Schengen space, State borders with the neighbouring States became internal borders that may be crossed at any point without border checks of persons irrespective of their nationality. The control of borders, i. e. border checks and border surveillance, is performed on the external borders by police officers of the Border Control Department of the Police Corps (hereinafter the “Border Control Department”). Border control units of the Police Corps (hereinafter “border control units”) operating on the internal borders with the neighbouring States carry out the tasks in the regions adjacent to internal State borders and perform the duties of mixed joint patrols formed together with law enforcement agencies of the neighbouring countries. In addition to these tasks, they also fulfil the duties of joint contact points. They carry out their duties in conformity with the internal regulations drawn up in accordance with international agreements on cooperation between neighbouring States.

257. Slovakia’s external Schengen border is represented by its 97.9 km border with Ukraine and the international airports of Bratislava, Košice and Poprad.

258. The crossing of external borders, the crossing of internal borders, the terms of entry and exit, a temporary resumption of checks on internal borders, the performance of border checks, border surveillance, the terms of denying entry, and the rules applying to border checks of persons crossing external borders of the EU Member States are set forth in Regulation of the European Parliament and Council (EC) No. 562/2006 of 15 March 2006 establishing the Community Code on the rules governing the movement of persons across borders, which entered into effect for Slovakia on 13 October 2006 (the Schengen Border Code).

259. This regulation provides that aliens may cross external borders only at border crossing points and during the fixed opening hours and must be subjected to border checks. Third-country nationals entering the territory of Schengen States must possess a valid travel document and a valid visa where required. If they are holders of a residence permit issued by a Schengen State, this residence permit is considered to be equivalent to a Schengen visa. On entering the territory of Schengen States, third-country nationals are obliged to justify the purpose and terms of their stay, to have adequate means of livelihood for the period of their stay and for the return to their country of origin. Third-country nationals entering the Slovak territory must not be included on the national list of alerts published in the Schengen Information System for the purposes of denying entry and must not be persons considered a threat to public order, internal security, public health or international relations of any of the Schengen States. These conditions do not apply to the citizens of the European Union and to other persons enjoying the Community right to free movement (citizens of EU Member States, of EEA States and of Switzerland and their family members when they accompany or join them irrespective of their nationality) who may normally freely enter the territory of any Member State simply on the presentation of an identity document or a passport. In case of infringement of stipulated conditions or of obligations under the national legislation, measures applied against individuals concerned include their detention, prohibition of entry, denial of entry, administrative expulsion or monetary fines.

260. Travel of Slovak citizens abroad and their return, types of travel documents, terms of their issuance, revocation or withdrawal, rights and obligations, conditions of crossing national borders of the Slovak Republic and sanctions for their infringement are set out in the National Council’s Act No. 647/2007 Coll. on travel documents and on amending and supplementing other relevant acts.



261. The above Act that transposed the legal acts of the European Communities and of the EU<sup>44</sup> underwent several amendments and modifications. According to §§ 2 and 3 of the Act, citizens have the right to freely travel abroad and to freely return to the Slovak Republic. § 4 stipulates that citizens have the right to be issued a travel document. The refusal to issue or the revocation of a travel document to or from a citizen of the Slovak Republic is governed by § 23 of the Act.

262. The Slovak Republic does not place any obstacle on the exercise and observance of the right of entry to its territory and free movement, the right to freely leave its territory, and the rights laid down in its Constitution and applicable laws, provided that these rights are not exercised against the interests of its national security, with the intent to harm or endanger security and public order of the State, or to restrict the rights and freedoms of Slovak citizens.

263. The body competent to deal with the issues of the stay of aliens is the Border and Alien Police Office (hereinafter the “Border and Alien Police Office”). Certain issues connected with the stay of aliens, namely those concerning refugees and de facto refugees, fall also under the responsibility of the Migration Office of the Ministry of the Interior on the basis of the Act on Refugees.

264. The Border and Alien Police Office applies the mechanisms it has at its disposal to verify the enforcement of the rights of aliens and applicants for asylum in Slovakia at the level of its basic units. The Border and Alien Police Office fulfils its duties under the Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance approved by the Slovak Government, plans its activities for the future period, and cooperates with the Human Rights and Minorities Section of the Slovak Government Office.

265. Among the eleven types of penalties laid down in § 32 of the Criminal Code is the ban from residence, which prohibits the stay in a particular place or in a particular district and makes any temporary stay in such place or district for urgent personal matters conditional on a permit. The court may impose this penalty for a term of one to five years on the offender convicted of an intentional criminal offence, so as to prevent the repetition of the criminal offence in a particular place where, given the offender’s way of life and place of commission of the crime, this is necessary for the protection of public order, family, health, morality or property. The court may impose appropriate restrictions and duties on the offender with a view to making him or her lead an orderly life. However, the ban may not apply to the place or district of the offender’s permanent residence. The residence ban may not be added to a community service sentence if the community service is to be performed in the place from which the offender is banned, and it cannot be imposed against a juvenile.

266. The right set forth in article 12 of the Covenant is enforced also in connection with other criminal offences established in the Criminal Code such as § 293 – hijacking of aircraft to a foreign country, § 187 – abduction abroad, § 357 – illegal crossing of the State border, etc.

267. According to § 501 of the Criminal Code, extradition of a person is inadmissible, inter alia, also in cases of citizens of the Slovak Republic except where the obligation to extradite one’s own national is laid down by law, an international treaty or the decision of an international organisation binding on the Slovak Republic. Moreover, criminal judgments issued in third countries cannot be executed or have different effects on the

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<sup>44</sup> EP and Council Directive 2004/38/EC on the right of the citizens of the Union and their family members to move and reside freely within the territory of the Member States.

territory of the Slovak Republic unless a promulgated international treaty binding on the Slovak Republic provides otherwise. Extradition proceedings are governed by the provisions of title two (“extradition”) of part five (“international legal contacts”) of the Criminal Code (§§ 489–514). This provision follows up on the previous provision of § 21 of the Criminal Code, which was introduced as part of the amendment to the Criminal Code No. 253/2001 Coll. effective from 1 August 2001.

268. The Slovak Republic is bound by bilateral and multilateral treaties on mutual assistance in criminal matters<sup>45</sup>

269. Part five of the Criminal Code governs legal contacts with other countries. According to § 478, the provisions of this part apply only if an international treaty does not provide otherwise. This expresses the principle of subsidiarity of national laws in relation to the provisions of international treaties, i. e. the provisions of the Criminal Code apply only if an international treaty does not provide otherwise, and they apply only to the extent to which the international treaty does not provide otherwise. Moreover, the above provision also underlies the principle “of direct applicability” (enforceability) of international treaties, which means that the provisions of international treaties are directly applicable. No transposition of the provisions of an international treaty into the national legislation is required for a treaty to be implemented.

270. Regarding paragraph 4 of article 12 of the Covenant, Slovakia refers to article 23, paragraph 4, of its Constitution which stipulates: “Every citizen has the right to freely enter the territory of the Slovak Republic. A citizen cannot be forced to leave his or her homeland and may not be expelled.”

#### *Asylum procedure*

271. In the legal system of the Slovak Republic, asylum issues are governed mainly by Act No. 480/2002 Coll. on asylum and on amending and supplementing other relevant acts as amended (hereinafter the “Asylum Act”), which complies with the Convention relating to the Status of Refugees (Geneva, 1951) and the Protocol relating to the Status of Refugees (New York, 1967), and transposes 4 asylum directives of the EU Council. Slovakia is bound since 1 May 2004 also by Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

272. Asylum issues fall under the purview of the Migration Office of the Ministry of the Interior of the Slovak Republic (hereinafter the “Migration Office”), i. e. competent

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<sup>45</sup> Conventions of the Council of Europe such as the European Convention on Extradition (Paris, 13 December 1957, Communication No. 549/1992 Coll.), the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 20 April 1959, Communication No. 550/1992 Coll.), the European Convention on the Transfer of Proceedings in Criminal Matters (Strasbourg, 15 May 1972, Communication No. 551/1992 Coll.), the Convention on the Transfer of Sentenced Prisoners (Strasbourg, 21 March 1983, Communication No. 553/1992 Coll.), Additional Protocol to the European Convention on Extradition (Strasbourg, 15 October 1975, Communication No. 10/1997 Coll.), the Second Additional Protocol to the European Convention on Extradition (Strasbourg, 17 March 1978, Communication No. 11/1997 Coll.), Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 17 March 1978, Communication No. 12/1997 Coll.), the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (Strasbourg, 8 November 2001, Communication No. 165/2005 Coll.), Additional Protocol to the Convention on the Transfer of Sentenced Persons (Strasbourg, 18 December 1997, not yet published), the European Convention on Supervision over Conditionally Sentenced or Conditionally Released Offenders (Strasbourg, 30 November 1964, Communication No. 412/2003 Coll.).

authority for the first-instance administrative procedure on asylum applications, which performs all the activities assigned to the Ministry of the Interior under the Asylum Act.

273. The asylum procedure is initiated with the declaration made by an alien before the competent police unit to the effect that he or she applies for asylum or for subsidiary protection on the territory of the Slovak Republic (hereinafter the “asylum application”), unless the Asylum Act provides otherwise. Asylum applications are processed and decided by the Ministry of the Interior which conducts the asylum procedure.

274. According to § 22, paragraph 1, of the Asylum Act, asylum applicants have the right to stay on the territory of the Slovak Republic unless the Act or the relevant legislation provide otherwise.

275. According to § 23, paragraph 3(a), of the Asylum Act, asylum applicants referred to in § 3, paragraph 2(c), of the Asylum Act (i. e. aliens who arrive on the territory of the Slovak Republic by air and do not satisfy the terms of entry to the territory of the Slovak Republic) must stay in a reception centre, unless the Ministry of the Interior decides otherwise. According to the Asylum Act, reception centres are the facilities set up within the transit areas of international airports for the purpose of holding applicants referred to in § 3, paragraph 2(c), or designated areas in other asylum facilities for holding applicants referred to in § 3, paragraph 2(c), who cannot be placed in the transit area of an international airport; the placement in the reception centre is not considered to constitute the entry to and the stay of the applicant on the territory of the Slovak Republic. The Ministry of the Interior transfers such applicants from the reception centre to a holding centre if the Ministry of the Interior does not decide on their asylum applications within seven days of the completion of the questionnaire (initial interview), or the court does not decide within 30 days of the date it has been served the complaint against the Ministry’s decision in the asylum procedure.

276. Unless the Ministry of the Interior decides otherwise, § 23, paragraph 3 (b) to (d), of the Asylum Act provides that asylum applicants are obliged to undergo a medical examination arranged by the Ministry without unreasonable delay upon their arrival at the holding centre, to stay in the holding centre until they are notified of the result of medical examination, and not to leave the asylum facility if they are placed under isolation or quarantine to prevent the dissemination of transmissible diseases.

277. According to § 22, paragraph 2, of the Asylum Act, applicants who are no longer required to stay in the holding centre are placed in an accommodation camp or are permitted to reside outside of the accommodation camp. The Ministry of the Interior may place the applicant in an integration centre for the necessary time (an integration centre is a migration office’s facility used for temporary accommodation of asylum-seekers).

278. On the basis of § 22, paragraph 3, of the Asylum Act, the Ministry of the Interior may grant the applicant permission to stay outside of the accommodation camp on his or her written request if:

(a) The applicant has the necessary financial means to cover all his or her expenses incurred by the stay outside the accommodation camp;

(b) A citizen of the Slovak Republic with permanent residence on the territory of the Slovak Republic or an alien possessing a residence permit on the territory of the Slovak Republic submits a written solemn declaration that he or she shall ensure accommodation for the applicant and cover all expenses incurred by the applicant’s stay on the territory of the Slovak Republic.

279. According to § 23a of the Asylum Act, the applicant may leave the asylum facility only on a permit issued by the Ministry of the Interior. The applicant may apply to the Ministry of the Interior for a permit to leave the asylum facility for more than 24 hours but

no more than seven days, granted subject to an interview with the applicant; the application must give his or her intended whereabouts; the Ministry of the Interior may refuse to issue the permit only for reason of public order or because the applicant's personal presence is required for asylum procedure purposes. According to an internal instruction of the Migration Office, no leave permit is required for a stay of less than 24 hours within the territorial limits of the municipality in which the centre is located; the entry on leaving the centre made in the journal of absentees is deemed to constitute a leave permit.

280. § 22, paragraphs 4 to 6, of the Asylum Act stipulates that unless the Act provides otherwise, asylum applicants receive free accommodation, board or boarding-out allowance, and basic sanitary products and other essential survival items during their stay in the asylum facility or integration centre. Unless the Act provides otherwise, asylum applicants are also provided pocket money for the time of their stay in the asylum facility or integration centre. The costs of urgent medical care for applicants who do not have public health insurance coverage are borne by the Ministry of the Interior; moreover, if individual evaluation of the applicant's health condition performed in the cases worthy of special consideration reveals the need for medical treatment, the Ministry of the Interior covers also the costs of such medical treatment. The Ministry of the Interior ensures that adequate healthcare is provided to minor asylum-seekers who are victims of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment or who suffered from the consequences of an armed conflict. For the purposes of the provision of healthcare, the Ministry of the Interior provides the applicant with a document on his or her entitlement to healthcare provision.

281. According to § 8 of the Asylum Act, the Ministry of the Interior grants, unless the Act provides otherwise, asylum to applicants who:

- (a) Have well-founded fears of being persecuted in their country of origin for reasons of race, ethnic origin or religion, for holding a particular political opinion or for membership of a particular social group, and are unable or, owing to such fear, unwilling to return to such country;
- (b) Are persecuted in their country of origin because of the exercise of their political rights and freedoms.

282. Based on § 9 of the Asylum Act, the Ministry of the Interior may grant asylum on humanitarian grounds even when no reasons referred to in § 8 are established during the asylum procedure.

283. According to § 13a of the Asylum Act, the Ministry of the Interior grants subsidiary protection to the applicant to whom it denied asylum if there are good reasons to believe that the applicant would face a real risk of serious harm if returned to his or her country of origin, unless otherwise stipulated by the Act. Serious harm referred to in § 2 (f) of the Asylum Act means:

- Imposition or execution of a death penalty
- Torture or inhuman or degrading treatment or punishment
- Serious and individual threat to life or inviolability of a person by reason of arbitrary violence in situations of an international or internal armed conflict

284. According to the Asylum Act, asylum-seekers are considered to be aliens granted a permanent residence permit, and aliens provided subsidiary protection are considered to be aliens granted a temporary residence permit. Asylum-seekers and aliens granted subsidiary protection are issued certificates of residence by the competent police department in accordance with Act No. 48/2002 Coll. on stay of aliens and on amending and

supplementing other relevant acts as amended; the certificate bears, inter alia, the designation “asylum applicant” or “subsidiary protection”.

285. Between 1 January 2003 and 30 April 2008, a total of 31,040 asylum applications were lodged within the territory of the Slovak Republic (including repeated applications); only 5,196 of them were decided on the merits because most asylum procedures were discontinued since the applicants left the Slovak Republic before their applications were decided on the merits. During the relevant period, asylum was granted in 75 cases and subsidiary protection in 101 cases. Slovak citizenship was granted to 91 applicants.

Table 6

**Asylum information relating to the period 2003 to 30 April 2008**

	2003	2004	2005	2006	Until 30 2007 April 2008		Total
Number of asylum applications	10 358	11 395	3 549	2 849	2 642	247	<b>31 040</b>
Asylum granted	11	15	25	8	14	2	<b>75</b>
Asylum denied*	531	1 592	827	861	1 177	133	<b>5 121</b>
Subsidiary protection granted**	–	–	–	–	82	19	<b>101</b>
Asylum applicants granted the citizenship***	42	20	2	5	18	4	<b>91</b>

\* Denials of asylum also include dismissals of asylum applications as manifestly unfounded or inadmissible.

\*\* Subsidiary protection is being granted since 2007.

\*\*\* Decisions on granting citizenship of the Slovak Republic to aliens (including asylum applicants) are issued by the Ministry of the Interior – the General Internal Administration Department of the Public Administration Section.

*Amendment to the Asylum Act*

286. Act No. 451/2008 Coll. amending and supplementing Act No. 480/2002 Coll. on asylum and amending and supplementing other relevant acts was published in the Collection of Laws, Part 451, on 21 November 2008. The amendment entered into effect on 1 December 2008.

287. The primary objective of the amended legislation is the transposition of article 15 of Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status, and updating certain provisions of the Asylum Act and of other relevant acts.

288. The new legislation (inter alia):

- Authorises the Ministry of the Interior to decide on transfers of asylum applicants from a reception centre to a holding centre
- Extends the cases where the cards of asylum applicants issued on applicants' arrival to the holding centre are used as identity documents also by applicants holding temporary or permanent residence permits on the territory of the Slovak Republic
- Provides that the parties to the asylum procedure may be represented, in addition to natural persons, also by the Legal Aid Centre
- Extends the current seven-day time limit to 20 days in case of:

- Complaints lodged against decisions on dismissing asylum applications as manifestly unfounded or inadmissible
  - Administrative appeals lodged against decisions to discontinue the procedure on the ground that a final decision had already been reached in the asylum procedure
  - Administrative appeals lodged against decisions to withdraw asylum on the ground that the applicant did not file the asylum application for indefinite time within the fixed time limit
  - Administrative appeals lodged against decisions to lift subsidiary protection on the ground that the alien enjoying subsidiary protection did not apply for its extension within the fixed time limit
- Provides for placing the asylum-seeker in an accommodation camp for the necessary time also on his or her written application; at the same time, it introduces the applicant's obligation to cover as appropriate the costs connected with his or her accommodation<sup>46</sup>

289. The objective of the amended Asylum Act is to align the Slovak asylum legislation with that of the European Union. Article 15 of EU Council Directive 2005/85/EC lays down the obligation of the Member States of the European Union to provide free legal aid to unsuccessful asylum applicants who lodge an appeal against the dismissal of their application in the asylum procedure. This service is provided by the Legal Aid Centre, an organisation of the Ministry of Justice.

290. The latest amendment to the Act, which took effect on 1 December 2008, grants entitlement to free legal aid also to asylum applicants to whom the Ministry of the Interior denied asylum or dismissed the asylum application as manifestly unfounded; withdrew the asylum; lifted or denied the extension of subsidiary protection; or terminated the asylum procedure on the ground of *res iudicata*. The amendment was approved by the National Council at its October session.

291. The draft amendment to the Asylum Act modifies certain existing provisions in the light of the experience gained in the application practice. For instance, it removes the problem of double consideration of obstacles to administrative expulsion, since these obstacles were first considered by the Ministry within the asylum procedure and subsequently by the police departments under the Act on the Stay of Aliens. The only authority that decides on the existence of obstacles to expulsion in all cases is the competent police department. The time limit for seeking judicial redress against the decision on dismissing an asylum application as inadmissible and manifestly unfounded has been extended from 7 to 20 days.<sup>47</sup>

#### *Temporary shelter*

292. The Asylum Act also stipulates that the Slovak Republic provides temporary shelter to aliens for the purposes of their protection from war conflicts, endemic violence, consequences of humanitarian disasters, and systematic or massive violations of human rights in their countries of origin. The details concerning the granting, conditions and termination of temporary shelter are to be specified by the Government of the Slovak Republic in conformity with the decision of the Council of the European Union. A de facto

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<sup>46</sup> <http://www.portal.gov.sk/Portal/sk/Default.aspx?CatID=42&NewsID=725>.

<sup>47</sup> <http://www.minv.sk/?tlacove-spravy-6&sprava=od-decembra-mozu-ziadatelia-o-azyl-vyuzivat-moznost-bezplatnej-pravnej-pomoci>.

refugee is a person granted temporary shelter by the Ministry of the Interior (the Migration Office) based on the decision of the Government. A de facto refugee receiving protection under a temporary shelter arrangement is entitled to a tolerated stay on the territory of the Slovak Republic according to the Act on the Stay of Aliens and is issued a tolerated stay permit by the police department with the text “DE FACTO REFUGEE”. In the relevant period (2003–2008), the Slovak Republic was not granting temporary shelters.

### Article 13

293. Article 23, paragraph 5, of the Constitution provides that “An alien may be expelled only in cases provided for by law.” The expulsion penalty pursuant to § 65 of the Criminal Code may be imposed where it is necessary for ensuring the security of persons and property or protecting other public interests, but only against offenders who are not the citizens of the Slovak Republic and are not persons granted refugee status.

294. Act No. 451/2008 Coll. amending and supplementing Act No. 480/2002 Coll. on asylum and amending and supplementing other relevant acts effective from 1 December 2008 entailed important amendments also to Act No. 48/2002 Coll. on stay of aliens, such as:

- Extension of the categories of persons who are legally entitled to be issued a visa and who are not notified of the grounds for denying a visa, by including also family members of aliens enjoying subsidiary protection
- The Ministry of the Interior is authorised to extend short-term visas to aliens who are unable to leave the Slovak territory for reasons of natural disasters or for humanitarian or serious personal reasons to no more than 90 days within a six-month period
- Students may be granted temporary residence permits for the entire anticipated duration of study, but for no more than five years
- Aliens possessing long-term residence permits are no longer required to submit a document certifying that they are free of a disease presenting a public health risk
- Aliens are entitled to apply for extension of their temporary residence permits and to file a new application for permanent residence permit at any time during the validity of their first permit
- Aliens are obliged to undergo medical examination for age determination purposes where this question is at issue

#### *Forced returns*

295. For the purposes of executing decisions on the expulsion of aliens, police detention centres for aliens cooperate with diplomatic missions concerned and with the consular section of the Slovak Ministry of Foreign Affairs. The centres file applications for emergency travel documents directly with the diplomatic missions of third States represented on the territory of the Slovak Republic and with the consular section of the Slovak Ministry of Foreign Affairs, which ensures that the applications are delivered to diplomatic missions of third countries not represented in the Slovak Republic. Police detention centres for aliens have no possibility of influencing individual diplomatic missions. The application for an emergency travel document is submitted within the shortest time possible after the alien has been placed in a police detention centre for aliens.

296. Given the fact that police detention centres for aliens hold aliens who do not possess travel documents, identification of aliens is essential for executing decisions on their

expulsion. The degree of certainty about a person's identity and nationality depends on whether the alien is to be repatriated under a readmission agreement to the territory of the other State party, or is to be expelled to his or her country of origin in accordance with § 59, paragraph 2, of the Act on the Stay of Aliens. In the former case, intergovernmental agreements give an exhaustive list of documents to be submitted to the contracting parties based on which citizenship is considered to be established without any further checks, or reliably established with possible further checks. In expulsion cases, the identity of the alien must be confirmed by the diplomatic mission concerned, which subsequently issues an emergency travel document serving for the alien's return to his or her country of origin. An individual procedure is initiated for every alien whose diplomatic missions are represented on the territory of the Slovak Republic; staff members of some diplomatic missions also make consular visits to the premises of detention centres.

297. During these visits, they may conduct direct personal interviews to verify the linguistic, cultural, and regional knowledge of aliens about their presumed country of origin. The problems encountered during identity checks of third-country nationals and in procuring emergency travel documents are addressed by means of diplomatic channels, i. e. through the intermediary of the consular section of the Slovak Ministry of Foreign Affairs which assesses the level of cooperation with individual diplomatic missions and produces a list of the most problematic countries. In the past, diplomatic notes were sent to diplomatic missions of the most problematic countries urging them to improve cooperation.

298. The checks performed with a view to establishing the alien's identity are performed also under international police cooperation arrangements, through the intermediary of police attachés within Slovakia's diplomatic missions, and through the National Interpol Office. The results of these checks may also be used as background information for cooperation with diplomatic missions and consular offices of the aliens' countries of origin.

299. When an emergency travel document issued by a diplomatic mission is delivered to the police detention centre for aliens, the centre must make a decision on the form of expulsion that will be the most effective in the light of the provisions of § 59, paragraphs 2 and 3, of the Act on the Stay of Aliens. This means that the police detention centre for aliens either transports the alien subject to administrative expulsion to a neighbouring State to a border crossing point or, in the case of administrative expulsion carried out by air or by transiting the territory of a third State under an international agreement, to the territory of the State that guarantees the reception of the alien.

300. The responsibility for actually carrying out the expulsion of aliens placed in accommodation facilities of police detention centres for aliens lies with the alien police unit of the police detention centre for aliens, which organises the transport of aliens, procures travel tickets, air tickets, performs risk assessment of persons subject to expulsion and ensures police escort where necessary. The means of travel used in the expulsion are trains, buses, aircraft or passenger motor vehicles, depending on the country of origin to which the alien is to be expelled. In case of expulsion by air, use is made of aircraft used for scheduled flights of the airlines concerned.

301. Aliens subject to expulsion are always escorted and accompanied by police officers assigned to the police detention centre for aliens. Escort is carried out on the basis of an escort order approved by the director of the police detention centre for aliens. Escort is carried out under the command of the alien police officer who is in charge of administrative and legal aspects of expulsion and ensures compliance with the Interior Ministry's Ordinance No. 49/1993 on escorting persons. The composition and number of other members of the escort team are determined on the basis of the number, nature and health condition of the aliens to be expelled. All escort team members are duly instructed in conformity with the abovementioned ordinance. Before the termination of their stay in the detention centre, aliens undergo a final medical check performed by a physician; the same



applies to aliens before their transport for the purpose of expulsion. In cases where an alien's personal belongings and financial means have been deposited for safekeeping at the police detention centre for aliens pursuant to § 66, paragraph 3, of the Act on the Stay of Aliens, these personal belongings will be returned to the alien pursuant to § 60 of the Act on the Stay of Aliens subject to the reimbursement of the costs of expulsion; the alien will confirm their reception with his or her signature on the alien's personal card.

#### *Voluntary returns*

302. In general, it needs to be stated in connection with measures involving the return of aliens to their countries of origin that the Slovak Republic attaches great significance to voluntary returns.<sup>48</sup> This significance is also legally relevant, since this form of return nowadays has also the necessary legislative backing.

303. The competent authority for voluntary returns of aliens to their countries of origin is the Border and Alien Police Office of the Ministry of the Interior of the Slovak Republic (its alien police department). The organisation that actually carries out voluntary returns is the International Organisation for Migration (hereinafter the "IOM").

#### *Provisions on voluntary return in the Act on the Stay of Aliens*

304. According to the provision of § 2(j) of the Act on the Stay of Aliens, voluntary return means the return to the country of origin or last residence of the alien who has applied for the return.

305. According to the provision of § 43, paragraph 2, of the Act on the Stay of Aliens, tolerated stay is the period of no more than 90 days between the date on which the alien filed his or her application for voluntary return and the date of departure, or the date of withdrawal of the application; this does not apply to detained aliens or aliens authorised to reside on the territory of the Slovak Republic under the relevant legislation (the Asylum Act).

306. According to the provision of § 59, paragraph 4(b), of the Act on the Stay of Aliens, the police department does not execute the decision on administrative expulsion in the case of aliens who had applied for voluntary return before the decision on administrative expulsion was enforced; this does not apply if voluntary return is not carried out within 90 days.

307. The voluntary return programme has been carried out by the IOM in close cooperation with the staff of police detention centres for aliens who identify the aliens interested in voluntary return and/or assess the need to organise voluntary returns, and subsequently ask the IOM to arrange the return. The IOM also cooperates with the Alien Police Department of the Interior Ministry's Border and Alien Police Office which escorts the aliens subject to voluntary return from the Migration Office's facility to the airport where the aliens are taken over by the IOM staff.

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<sup>48</sup> The legal basis for voluntary returns:

- 1998 – Agreement on cooperation between the Ministry of the Interior of the Slovak Republic and the IOM on the returns of unsuccessful asylum applicants and illegal migrants to their countries of origin
- 2002 – Act No. 480/2002 Coll. on asylum – § 44 (cooperation with the IOM)
- 2005 – Act No. 48/2002 Coll. on the stay of aliens – § 2 (the concept of "voluntary return")

## Article 14

### Recommendation 14

308. As regards the rights provided for in article 14 of the Covenant, the Slovak Republic has introduced several legislative changes aimed mainly at strengthening the application of the principle of judicial independence and impartiality. No changes have been recorded in the Slovak Republic since the presentation of the second periodic report in other areas of rights covered by article 14 of the Covenant.

#### *Independence and impartiality of the judiciary*

309. According to article 141, paragraphs 1 and 2, of the Constitution, “The judiciary in the Slovak Republic shall be administered by independent and impartial courts. The judiciary shall be independent of other State authorities at all levels.

310. Article 141a of Constitutional Act No. 90/2001 Coll. amending the Constitution provides for the creation of the Judiciary Council of the Slovak Republic. The Judiciary Council is composed of 18 members. They are the Chairman of the Judiciary Council and its other members. The Council is chaired by the Chief Justice of the Supreme Court of the Slovak Republic. According to § 3, paragraph 2, of Act No. 185/2002 Coll. on the Judiciary Council of the Slovak Republic and on amending and supplementing other relevant acts as amended, only a person of integrity holding a university degree in law and with at least 15 years’ professional experience can become a member of the Judiciary Council. Members are appointed by the National Council, the President and the Government of the Slovak Republic. The office of a member of the Judiciary Council is incompatible with that of the president or vice-president of the Supreme Audit Office of the Slovak Republic, a prosecutor, a member of the Police Corps or a member of the Slovak Intelligence Service.

311. The Ministry of Justice submitted a legislative proposal to amend and supplement Act No. 185/2002 Coll. on the Judiciary Council of the Slovak Republic amending and supplementing other relevant acts as amended. The National Council of the Slovak Republic passed the bill.

312. The objective of the amended Act is to adapt the provisions of Act No. 185/2002 Coll. on the Judiciary Council of the Slovak Republic and on amending and supplementing other relevant acts as amended to the provisions of Act No. 757/2004 Coll. on courts and on amending and supplementing other relevant acts, since the latter law introduced a new structure and composition of judicial self-government bodies, which was not reflected in Act 185/2002 Coll. on the Judiciary Council of the Slovak Republic.

313. The Act also responds to the practical requirements arising from the application practice and to the need to address the problems encountered in the interpretation and application of the existing legislation, especially as regards the need for more precise provisions on electing the Chief Justice and Deputy Chief Justice of the Supreme Court of the Slovak Republic. It clearly sets out the time limit for holding new elections for the Chief Justice and Deputy Chief Justice of the Supreme Court of the Slovak Republic in the event that no candidate was elected even in repeated elections.

314. On 5 November 2008, the National Council approved Act No. 757/2004 Coll. on courts and on amending and supplementing other relevant acts with effect from 1 January 2009.

315. The following acts were amended by the aforesaid Act:

- Act No. 757/2004 Coll. on courts and on amending and supplementing other relevant acts

- Act No. 385/2000 Coll. on judges and lay judges and on amending and supplementing other relevant acts as amended
- Act No. 514/2003 Coll. on liability for damage caused in the exercise of public power and on amending and supplementing other relevant acts as amended by Act No. 215/2007 Coll.
- Act No. 549/2003 Coll. on court clerks as amended by Act No. 757/2004 Coll.
- Act No. 550/2003 Coll. on probation and mediation officers and on amending and supplementing other relevant acts
- Act No. 371/2004 Coll. on seats and circuits of courts of the Slovak Republic and on amending Act No. 99/1963 Coll., the Code of Civil Procedure, as amended

316. The main purpose of the above legislation was to respond to practical problems that have arisen in the application practice and to the gaps in the current legislation governing issues relating to the status of judges and to the organisation, administration and management of courts (amendments to Act No. 385/2000 Coll. and Act No. 757/2004 Coll.). As regards the status of court clerks, the legislation reflects the needs of the application practice on the one hand and responds to the envisaged amendment to Act No. 548/2003 Coll. on the Judicial Academy and on amending and supplementing other relevant acts as amended on the other hand.

317. The purpose of the amendment to Act No. 514/2003 Coll. on liability for damage caused in the exercise of public authority and on amending other relevant acts is to respond to the findings of courts and of other public authorities concerning gaps in the current legislation and their possible negative consequences for the decision-making and independence of the judiciary. The amendment to the Act on seats and circuits of courts of the Slovak Republic applies to courts with jurisdiction for the custody of minors in matters of wrongful removal or retention of a minor child.

318. Since the entry into effect of the constitutional amendment on 1 July 2001 judges are no longer elected by the National Council (Parliament) on a proposal from the Government. Judges are currently appointed and recalled by the President of the Slovak Republic, and nominations of candidates to judicial office and proposals for the recall of judges are put forward by the Judiciary Council of the Slovak Republic.

319. The legal system of the Slovak Republic makes a distinction between appointments to judicial office by the President of the Slovak Republic and appointments of judges to court functions, i. e. the functions of presidents and vice-presidents of regional and district courts according to § 36 of Act No. 757/2004 Coll. on courts and on amending and supplementing other relevant acts as amended.

320. Except for the Chief Justice of the Supreme Court and presidents of military courts, presidents of courts are appointed from among the body of judges by the Minister of Justice for a five-year term on the basis of a selection procedure announced by the Minister of Justice pursuant to § 37, paragraph 1, of Act No. 757/2004 Coll. The same person may be appointed president of a court for no more than two consecutive terms. For the duration of absence of the president of court, or where no court president was appointed, full rights and obligations of the president are exercised by the vice-president of the court. The court president may authorise the court vice-president to act on his or her behalf also on other occasions and to exercise his or her full rights and obligations. The function of vice-president is created within all courts; at district courts, it is created only if the number of judges is higher than 15. If the function of vice-president has not been created, the president of the court may authorise any judge of the competent court to perform certain duties falling under the president's purview.

321. A motion to recall a judge may be submitted to the Minister by the Judiciary Council, by the judges' council of the court concerned, or by the president of the superior court. However, the Minister of Justice is not bound by the motion and decides on the motion within 60 days of its receipt. The Minister may recall a judge from the function of president of court even without a motion if the latter fails to fulfil his or her duties under the law. The Minister may recall a judge from the function of president of court even without a motion if the judge's health or other impediments prevent him or her from properly performing the court president's duties over a longer period, but not less than for six months. Vice-presidents of courts are appointed by the Minister for a five-year term on a motion from the president of the court concerned. The same person may also be appointed to the office of court vice-president repeatedly. The termination of the court vice-president's function is governed as appropriate by the provisions of § 38; a motion to dismiss the vice-president may be filed with the Minister also by the president of the court concerned.<sup>49</sup> These court officials perform management and State administration of courts as provided for in Act No. 757/2004 Coll. on courts and on amending and supplementing other relevant acts, and Act No. 371/2004 Coll. on seats and circuits of courts of the Slovak Republic and on amending Act No. 99/1963 Coll., the Code of Civil Procedure as amended.

322. The principle of independence and impartiality of the judiciary is undoubtedly strengthened also by the existence of judges' councils which, in their capacity of judicial self-governing bodies, participate in the management and administration of courts. Judges' councils are created within district courts, regional courts, the Supreme Court, the Special Court, and the Higher Military Court. The competences of judges' councils at district courts with less than 15 judges and at military circuit courts are exercised by the full court. The creation of the Judiciary Council of the Slovak Republic resulted in the dissolution of the Council of Judges of the Slovak Republic,<sup>50</sup> the former coordination body of judges' councils and the body taking part in the State administration of court to the extent and in the manner prescribed in Act No. 335/1991 Coll. on courts and judges as amended, repealed by Act No. 385/2000 Coll. on judges and lay judges and on amending and supplementing other relevant acts (hereinafter "Act on Judges and Lay Judges"), which entered into effect on 1 January 2001.<sup>51</sup>

323. Judges' councils created in this manner defend the rights and legitimate interests of judges; the Act provides that they can give their opinions on various aspects (such as temporary assignment of judges, assessment of judges, selection procedure for vacant judicial positions, examination of written statements and property returns, assignment of a judge to the Supreme Court, transfer of judges to another court, etc.) that will have a bearing on their subsequent decision-making. Where the relevant judges' council does not give its opinion or does not make a decision within 30 days on matters submitted for its consideration or decision under the Act, further proceedings on the matter are conducted without the opinion or decision of the judges' council. However, the judges' council must be always involved in the case of promoting a judge to a higher judicial function.

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<sup>49</sup> Under the approved amendment to Act No. 757/2004 Coll. on courts (see at <http://www.nrsr.sk/Default.aspx?sid=zakony/zakon&MasterID=2532>), the list of the reasons for recalling a court president is to be expanded by adding "other serious reasons" with effect from 1 January 2009.

<sup>50</sup> Pursuant to Act No. 185/2002 Coll. on the Judiciary Council of the Slovak Republic, the Council of Judges of the Slovak Republic was abolished and its competences were transferred to the Judiciary Council of the Slovak Republic.

<sup>51</sup> Except for certain provisions concerning the deepening and upgrading of judges' qualifications (in effect from 1 January 2002) and provisions on the remuneration of judges (in effect from 1 January 2003).

324. As provided for in the relevant provisions of the Constitution, Act No. 385/2000 Coll. on judges and lay judges as amended lays down the obligation of judges to be independent in the exercise of judicial office, to interpret the laws and other generally binding legal provisions to the best of their knowledge and conscience, to hear and decide matters impartially, fairly, without undue delays, and solely on the basis of facts established in conformity with the law. Judges are independent in the exercise of their office and are bound only by the Constitution and the law, by international treaties in accordance with article 7, paragraphs 2<sup>52</sup> and 5, by the laws, by the findings of the Constitutional Court, and act in conformity with legally prescribed conditions and with the legal opinion of higher-instance courts. Courts are also bound by legal opinions of the Constitutional Court expressed in the decisions issued in the proceedings pursuant to article 125, paragraph 1, of the Constitution. Act No. 757/2004 Coll. on courts and on amending and supplementing other relevant acts as amended lays down the principle of judicial immunity, i. e. that judges may be subjected to criminal prosecution or remanded in custody for acts committed in the exercise of their office or in connection therewith only with the consent of the body that appointed or elected them. The constitutional amendment and the law on judges and lay judges strengthened the status of judges by laying down the principle of non-transferability of judges except where the judge agrees with the transfer or where the transfer is affected by a decision of a disciplinary panel. These legal provisions also lay down the principle of incompatibility of the exercise of judicial office, i. e. they exhaustively enumerate the cases where such incompatibility could occur and lay down the principle of the non-political exercise of judicial office, i. e. the obligation to renounce membership in political parties or political movements at the time of appointment to judicial office even before taking the oath of office.

#### *Criminal proceedings against juveniles*

325. The new Criminal Code lowered the age of criminal liability to 14 years. The custodial sentences for minors were reduced by one half. This means that a minor offender cannot receive the exceptional sentence of life imprisonment. Unconditional sentences may be imposed on juveniles only where, taking account of the circumstances of the case, the personality of the juvenile and the previously imposed measures, a different penalty would manifestly fail to achieve the purpose of punishment.

326. On the other hand, the Code has expanded the range of custodial penalties below the minimum sentencing rate without any restriction, and introduced a broad spectrum of options to imprisonment and/or alternatives to custodial penalties. Acts such as rape, sexual violence, sexual abuse, abandonment of a child, desertion of a child, non-fulfilment of the maintenance obligation, ill-treatment of a significant other or of a person in one's care, endangering the moral education of young persons, production, dissemination and possession of child pornography, endangering morals, and the like are established as criminal offences. The Criminal Code also establishes the criminal offences of trafficking in children and abduction. All its provisions lay down stricter punishments for offences against protected persons, including children.

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<sup>52</sup> Article 7, paragraph 2, of the Constitution: "The Slovak Republic may, by an international treaty, which was ratified and promulgated in the way laid down by a law, or on the basis of such treaty, transfer the exercise of a part of its powers to the European Communities and the European Union. Legally binding acts of the European Communities and the European Union shall have precedence over the laws of the Slovak Republic. The transposition of legally binding acts which require implementation shall be realized through a law or a regulation of the Government according to article 120, paragraph 2."

327. The new Code of Criminal Procedure that entered into effect on 1 January 2006 contains special provisions on proceedings against juveniles. For instance, juveniles must have a lawyer already at the moment of being charged and may be remanded in custody only if the purpose of custody cannot be achieved in a different manner, even where statutory grounds for remand custody are present; the main trial and the public hearing on plea bargaining cannot be held in the absence of the juvenile.

328. The current legislation does not require the consent of the victim for opening or continuing prosecution for the criminal offences of violence against a group of inhabitants or an individual, restriction of personal liberty, extortion, violation of the home, or rape.

329. Acts of domestic violence, abuse and ill-treatment including corporal punishment are monitored by designated officers of general crime departments of judicial and criminal police offices at regional and district Police Corps directorates; they address the issues of crime committed by and against juveniles, maintain relevant documentation and conduct prevention work in cooperation with police prevention officers.

330. According to § 94 of the Criminal Code, a juvenile is a person who, at the time of commission of the offence, is older than fourteen and younger than eighteen years of age. The Code of Criminal Procedure contains special provisions governing the proceedings against juveniles in division one of chapter XIX which, in essence, set out “more favourable” procedures compared with those applicable to the proceedings against other offenders.

#### **Recommendation 14**

331. No change was ultimately introduced in the recast criminal law under the new Code of Criminal Procedure as regards the jurisdiction of military courts over civilian persons; according to § 12, paragraph 3, of the Code of Criminal Procedure, military courts continue to exercise jurisdiction also over civilians, but only in respect of the criminal offences of war treason, service in foreign armed forces, and failure to report for service in the armed forces. However, a “commission for the dissolution of military courts” was created within the Ministry of Justice at the beginning of 2008 with the task of carrying out the envisaged merger of military courts with the courts of general jurisdiction and amending relevant provisions of the Code of Criminal Procedure in the sense of abolishing the jurisdiction of military courts over civilians.

#### **Article 15**

332. No changes have been recorded in the legal system of the Slovak Republic during the relevant period as regards the area covered by article 15 of the Covenant.

#### **Article 16**

333. No changes have been recorded in the legal system of the Slovak Republic during the relevant period as regards the area covered by article 16 of the Covenant.

#### **Article 17**

#### **Recommendation 19**

334. The rights laid down in article 17 of the Covenant are provided for in articles 16, 19, 21 and 22 of the Constitution.

335. The legislation that governed the area of personal data processing in Slovakia between 1 June 1992 and 1 March 1998 was Act No. 256/1992 Coll. on the protection of personal data in information systems. In the process of the transposition of Directive 95/46/EC of the European Parliament and of the Council of 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, Slovakia adopted Act No. 52/1998 Coll. on the protection of personal data in information systems. According to Act No. 52/1998 Coll., supervision over the protection of personal data was performed by the plenipotentiary for the protection of personal data in information systems.

336. A substantial change was introduced with new Act No. 428/2002 Coll. on personal data protection effective from 1 May 2005, which provides for this field at a much higher level of quality. The Act assigns responsibility for the supervision over personal data protection to the newly established Office for Personal Data Protection (hereinafter the "Office"), a State administration authority with nation-wide competence that has the duty to carry out its tasks in complete independence.

337. The changes that have taken place, especially those connected with Slovakia's accession to the EU, and the need to achieve alignment with the European legislation led to relatively extensive amendments of Act No. 428/2002 Coll., in particular amendment through Act No. 90/2005 Coll. The latest amendment to the Act introduced the modifications that were required in connection with the accession of the Slovak Republic to the European Union. The name of the Office was changed to that of the Office for Personal Data Protection of the Slovak Republic.

338. The latest wording of the Act is fully harmonised with legally binding European instruments on personal data protection both of the European Union and of the Council of Europe.

339. Under the Personal Data Protection Act, personal data related to violations of criminal law, misdemeanour law or civil law, and to the execution of final judgments or decisions may be processed only by persons authorised thereto under relevant legislation, i.e. Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on amending and supplementing other relevant acts (the Anti-Discrimination Act) as amended.

340. Personal data of persons subject to prosecution and of victims, data on committed or alleged criminal offences and directly related data are processed in the course of criminal proceedings (investigation and prosecution of crime) by prosecution offices, the General Prosecutor's Office of the Slovak Republic, courts, and the Ministry of Justice. Act No. 153/2001 Coll. on public prosecution gives an exhaustive list of personal data that are to be processed and thus predetermines the particulars of prosecuted persons and victims that may be subject to processing.

341. According to Act No. 153/2001 Coll., personal data of persons subject to prosecution include the person's name, surname, maiden surname, birth identity number and residence, and the name, surname and maiden surname of the prosecuted person's mother; original surname is required in case of persons under prosecution who changed their name or surname. Data on race, ethnicity or nationality are not recorded. Personal data of victims are the name, surname, birth identification number and residence of the victim; original name and original surname are required in case of victims who changed their name and/or surname. They include the data revealing racial or ethnic origin of victims, their political opinions, religious or philosophical beliefs and membership in political parties or political movements if the criminal offence was motivated by the victim's political conviction, nationality, race, ethnicity, religion or having no religion. Racial and ethnic

origin of the victim is recorded only if this particular characteristic of the victim was related to the commission of the criminal offence or motivated its commission.

342. Other laws (such as the Act on Courts and the Misdemeanour Act) do not give a list of personal data that can be processed by courts, police, or district authorities when handling misdemeanour cases or complaints. The scope of personal data processing in these cases is in line with the tasks of these bodies as set out under the relevant legislation.

343. The compilation and maintenance of medical records is regulated by § 22 of Healthcare Act No. 576/2004 Coll. The responsibility for ensuring medical records lies with the provider. The provider is obliged to maintain and protect medical records from damage, loss, destruction or misuse while they are in the provider's possession pursuant to § 22, paragraph 2, of the Act. The provider is obliged to ensure that access to confidential medical records is limited only to the attending physician and other healthcare personnel as may be necessary, and to protect medical records against damage, loss, destruction or misuse until they are taken over by another physician.

344. The provider is obliged to hand over confidential delivery records (§ 19, paragraph 4) to the Ministry of Health without undue delay within six weeks from the date of delivery, unless the woman withdraws in writing her request that her identity not be disclosed within this time limit. The Ministry of Health keeps in its strong box a total of 49 medical records concerning confidential deliveries. In case of transfers of medical records, these must be protected from damage, destruction or misuse. The data contained in medical records may be inspected by persons and institutions duly authorised under § 25 of the above Act.

345. The secrecy of letters and of other communications delivered by post is guaranteed under article 22 of the Constitution. Observance of the secrecy of letters and of other communications delivered by post is regulated under § 8 (postal secrecy) of Act No. 507/2001 Coll. on postal services as amended and Act No. 610/2003 Coll. on electronic communications as amended. The legal system of the Slovak Republic protects all persons against intentional violations of the secrecy of communications delivered by post, which is established as a criminal offence under the Criminal Code (§§ 196–198, violation of secrecy of communications).

346. On 15 February 2008, the National Council approved the Act on periodic press and news agencies and on amending and supplementing other relevant acts (the Press Act). The Act entered into effect on 1 June 2008. It lays down the obligation of protecting the source and content of information. Periodic press publishers and news agencies are obliged to maintain and respect the confidentiality of their sources of information that is to be published in periodic printed media or as agency news, and the confidentiality as regards the content of that information that could lead to the identification of its source, if such is the wish of the natural person who provided the information, and to prevent infringements of the rights of third parties by revealing the content of information; they are obliged to prevent the disclosure of the source of information when handling written documents, printed matter and other data carriers, especially video recordings, audio recordings and audio-video recordings, which could reveal the identity of the natural person who provided the information. This obligation also applies to the employees of periodic press publishers and employees of news agencies; the employees are released from the obligation of confidentiality when this obligation ceases to apply to their employers, i. e. when their employer is relieved of that obligation by the natural person who provided the information; after the death of the latter, the right to grant relief from the obligation is transferred to the significant others. Where there are none, the obligation becomes extinct.

347. In conformity with international treaties and recommendations and respect of the freedom of expression and protection of personal integrity regarding published information, Act No. 167/2008 Coll. on periodic press and news agencies and on amending and



supplementing other relevant acts introduced the right of reply and the right to supplementary information, which were added to the right to correction. The right to correction is exercised in connection with untruthful factual claims concerning natural or legal persons published in the periodic press or by news agencies. The right of reply means that the subjects of information may demand that their reply be published free of charge if the periodic press media or news agencies publish a factual claim that may harm the honour, dignity or privacy of a natural person or the name or reputation of a legal person. If the periodic press media or news agencies bring a report about the proceedings against a natural or a legal person conducted before a public authority, that person has the right to request that supplementary information be published after the final decision has been taken in the proceedings. Furthermore, the Act defines the terms of and the time limits for exercising the right to correction, the right to reply and the right to supplementary information and the circumstances where the publisher or the news agency is not obliged to publish a correction, reply or supplementary information.

348. In 2007, the Public Defender of Rights dealt with a complaint concerning the use of a camera system in the premises of a boys' toilet at a primary school (allegedly installed to prevent bullying). Because this was not a "publicly accessible place", the Public Defender of Rights found a violation of article 19, paragraphs 2 and 3, of the Constitution, providing protection against unlawful collection, publication or other misuse of data on one's person. As requested by the Public Defender of Rights, the director of the primary school took action to remedy the situation and removed the cameras from the boys' toilet.

### **Recommendation 19**

349. The provision of § 8, paragraph 1, of Act No. 428/2002 Coll. on personal data protection prohibits the processing of personal data that reveal racial or ethnic origin, political opinions, religious or political beliefs, membership in political parties or political movements, membership in trade union organisations and data concerning health or sexual life.

350. The processing of a special category of personal data that reveal racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership and data concerning health or sex life is governed by relevant acts.

351. Nationality data obtained in the population census are processed on the basis of voluntary declarations by citizens of their national affiliation.<sup>53</sup>

### **Article 18**

352. In the Slovak legal order, the right guaranteed in this article is enshrined in article 24 of the Constitution, which stipulates, "Freedom of thought, conscience, religion and belief shall be guaranteed. This right shall also include the right to change religion or belief. Everyone shall have the right to refrain from a religious affiliation. Everyone shall have the right to express his or her thoughts in public."

353. In the last census of population and housing conducted in May 2001, 84% of country's population identified themselves with churches and religious societies registered

<sup>53</sup> Constitutional Act No. 23/1991 Coll. of 9 January 1991 introducing the Charter of Fundamental Rights and Freedoms as a constitutional Act of the Federal Assembly of the Czech and Slovak Federal Republic provides in article 3, paragraph 2: "Everybody has the right freely to choose his nationality. It is prohibited to influence this choice in any way, just as is any form of pressure aimed at suppressing a person's national identity."

in the Slovak Republic. Surveys of public trust show that churches and religious societies rank among those institutions with stable and sustained high levels of trust. This high percentage of religious affiliation, as well as the scope of activities by churches in the social domain, education and charity, imply that the State needs to clearly define its relationship with these entities and the principles of their cooperation.

354. In this context, the Slovak Republic has enacted a relatively broad range of legal provisions defining the status and functioning of registered churches and religious societies. These legal provisions comply with international human rights commitments of the Slovak Republic. The confessional law in force respects and guarantees the constitutional commitment to the freedom of thought, conscience, religion and/or belief.

355. The State's policy on registered churches is based on the recognition of their social and legal status as *sui generis* entities under the law, applying a specific approach to and cooperating with them according to the principles of partnership cooperation.

356. The Slovak Republic has implemented its obligations arising under the International Covenant on Civil and Political Rights in the following areas.

*General principles of the relationship between the churches and the State*

357. The Slovak Republic guarantees the freedom of religion in its Constitutional Act No. 460/1992 Coll., the Constitution of the Slovak Republic, Constitutional Act No. 23/1991 Coll. implementing the Charter of Fundamental Rights and Freedoms, and Act No. 308/1991 Coll. on the freedom on religious faith and the position of churches and religious societies as amended. These legal provisions provide the legal basis for the freedom of conscience and religion and stipulate guarantees for compliance with these fundamental human rights and freedoms. At the same time, they are also the expression of binding acceptance of and respect for international commitments.

358. Act No. 308/1991 Coll. as amended legislates the fundamental issues in the relationship between the churches and the State. In addition to providing guarantees for upholding the freedom of conscience and religion, defining the status of churches and declaring their equality, this law also lays down certain conditions for registering a church. The quoted Slovak legislation guarantees equality to all churches and religious societies before the law. A church or a religious society means a voluntary association of persons of the same religion in an organisation created on the basis of their affiliation with the religion and in compliance with internal regulations of members of the church or the religious society.

359. By 1 May 2008, eighteen churches and religious societies were registered in the Slovak Republic. The latest registrations were granted to: the Church of Jesus Christ of Latter-day Saints in the Slovak Republic (18 October 2006) and the Bahá'í Community in the Slovak Republic (19 April 2007).

360. By 1 May 2008, these churches and religious societies work in the Slovak Republic according to Act No. 308/1991:

Table 7

**Registered churches and religious societies in the Slovak Republic**

<i>Name of the church or of the religious society</i>	<i>According to the census of 3 March 1991</i>	<i>According to the census of 26 May 2001</i>
	<i>Number of members</i>	<i>Number of members</i>
The Roman Catholic Church in the Slovak Republic	3 187 383	3 708 120
The Evangelical Church of the Augsburg Confession in	326 397	372 858

<i>Name of the church or of the religious society</i>	<i>According to the census of 3 March 1991</i>	<i>According to the census of 26 May 2001</i>
	<i>Number of members</i>	<i>Number of members</i>
Slovakia		
The Greek Catholic Church in the Slovak Republic	178 733	219 831
The Reformed Christian Church in Slovakia	82 545	109 735
The Orthodox Church in Slovakia	34 376	50 363
The religious society Jehovah's Witnesses in the Slovak Republic	10 501	20 630
The Evangelical Methodist Church, Slovak District	4 359	7 347
The Seventh-Day Adventist Church	1 721	3 429
The Brotherly Union of Baptists in the Slovak Republic	2 465	3 562
The Brethren Church in the Slovak Republic	1 861	3 217
The Apostolic Church in Slovakia	1 116	3 905
The New Apostolic Church in Slovakia	*	*
The Central Union of Jewish Religious Communities	912	2 310
The Old Catholic Church in Slovakia	882	1 733
The Christian Corps in Slovakia	700	6 519
The Czechoslovak Hussite Church in Slovakia	625	1 696
The Church of Jesus Christ of Latter-Day Saints in the Slovak Republic	*	*
The Bahá'í Community in the Slovak Republic	*	*
Other	6 373	6 294
Members	3 840 949	4 521 549
Without confession	515 551	697 308
Non-specified	917 835	160 598
Number of inhabitants of the Slovak Republic:	5 274 335	5 379 455

\* Not surveyed.

#### *Partial treaties and agreements between the churches and the State*

361. The ratification of the Basic Treaty between the Slovak Republic and the Holy See signed in the Vatican on 24 November 2000, published under No. 326/2001 Coll. with relevance for the Roman Catholic Church and Greek Catholic Church, and the approval of the Treaty between the Slovak Republic and Registered Churches and Religious Societies on 11 April 2002, published under No. 250/2002 Coll. stipulating the status of eleven churches, have significantly affected the relationship between the churches and the State after the year 2000. Upon the ratification of the national treaty between the eleven churches and the State, the Government took a decision, on 16 July 2003, to establish a specialised commission for the implementation of this treaty concluded between the registered churches and religious societies and the Slovak Republic. The commission became an advisory and initiative-taking body of the Slovak Government both to facilitate the coordination of the process of concluding partial agreements between these non-Catholic churches and the State and to serve as a broader platform for reviewing mutual unresolved issues.

362. Undoubtedly, shaping of the law on denominations in the Slovak Republic is also determined by the provisions of these treaties. It has to be emphasised that the international treaty with the Holy See and the conclusion of a national treaty between the churches and the State introduce a new element into our legal order which is in the spirit of declared harmonious cooperation between the State and registered churches and religious societies. Such legislation fully reflects modern trends in the arrangement of these relationships.

363. The treaty framework builds on the principles of guarantees of the independence and religious freedom of churches and religious societies as entities under the law of the Slovak Republic, and the cooperation of the churches and religious societies with the Slovak Republic for the benefit of all citizens in the field of culture, education and healthcare and in the social, charitable and pastoral domains. Specific provisions in selected areas of common interest shall be implemented through obligations resulting from 4 partial treaties.

364. Addressing the work of churches in the armed forces, the police force and in prisons to continue the already developed and successful activities of churches in this area was a priority interest of the churches and the State. In this context, the Agreement between the Holy See and the Slovak Republic concerning pastoral care for Catholics in the armed forces and armed corps, signed in Bratislava on 21 August 2001, came into effect and, based on its provisions, the Holy See established an Ordinariate of the Armed Forces and Armed Corps for the pastoral care of worshipers in the armed forces and armed corps of the Slovak Republic pursuant to the canon law, as well as a specific bishopric within the church on 1 March 2003. The State also concluded agreements in this respect with other churches. On 28 April 2005, the contracting parties signed the agreement between the registered churches and religious societies and the Slovak Republic on pastoral care for their worshippers in the armed forces and armed corps of the Slovak Republic, and the Ecumenical Pastoral Service Headquarters was established.

365. The second partial agreement that passed the approval procedure was the Treaty between the Slovak Republic and the Holy See concerning Catholic upbringing and education, while an agreement with other churches was approved in parallel proceedings. Both these documents mainly stipulate the establishment procedure and work of church schools and the requirements on religion education at public schools. Both treaties were ceremonially signed on 13 May 2004.

366. Treaties on financial arrangements for churches and the exercise of conscientious objection have not been approved yet and their preparation is an issue of mutual agreement between the churches and the State.

#### *Funding of churches and religious societies*

367. The State significantly supports the activities of churches and religious societies by providing direct financial subsidies to the salaries of clerics and to the operation of church headquarters. Act No. 218/1949 Coll. on funding of churches and religious societies as amended covers this area. Based on the above Act, the State provides churches and religious societies the means for the salaries of their clerics, contributions to social and health insurance funds, and partial coverage of the operation of church headquarters (bishop's offices). The churches cover all other costs linked with the operation of church entities through donations from their members, sponsors and sister churches abroad. Six out of the eighteen registered churches do not claim the State budget contribution to the salaries of their clerics and the operation of their headquarters, mainly for doctrinal reasons.

#### *Restitution of church property*

368. The process of mitigating property wrongs caused to natural and legal entities was gradually implemented as a part of societal democratisation after 1989. The Act of the

National Council of the Slovak Republic No. 282/1993 Coll. on mitigating certain property wrongs caused to churches and religious societies achieved significant progress in this matter. The law only envisaged mitigation of the consequences of certain property wrongs. This means that the Act did not give rise to the right to have all property of the church or religious society that was transferred to the ownership of the State and/or other concerned persons during the relevant period returned. The original Act was amended with Amendment No. 97/2002 Coll. which laid down in more detail and more extensively the possibility of church property restitution.

369. From among the registered churches and religious societies, the Roman Catholic Church and the Greek Catholic Church, the Evangelical Church of the Augsburg Confession, the Reformed Christian Church and the Jewish religious communities were eligible for restitution. Few cases involved the Seventh-Day Adventist Church and the Brotherly Union of Baptists.

370. The Act stipulated a 12-month time limit for the claims. In many cases, the time limits, however, could not be observed because collecting all the necessary documents was quite difficult for objective reasons and the concerned persons as well as relevant public authorities failed to provide the necessary level of cooperation laid down in the Act. The lack of preparedness for managing the process on the part of church administration also caused serious problems. In the context of the legislative extension of the time limits (Act No. 503/2003 Coll.) for restitution claims by natural persons, Act No. 161/2005 Coll. on the restitution of ownership of real estate to churches and religious societies and on the transfer of ownership of certain real estate was submitted. The law made it possible for the churches to repeatedly lodge restitution claims and it addressed certain contentious property cases.

*Registration of churches and religious societies under the legal order of the Slovak Republic*

371. Act No. 308/1991 Coll. as amended sets forth that the State only recognises churches and religious societies that are registered under this law. Those churches and religious societies that carried out their activities by virtue of law or with the consent of the State on the date of effect of this Act, i.e. on 1 September 1991, were deemed to be registered. Churches and religious societies have legal personality. Thus, they may appear under their name in public, and they may acquire and own movable and immovable assets, other property and intangible rights. They manage their own affairs independently from State authorities. Within their powers, they appoint their representatives, clerics, teachers at church schools, teachers of religion, as well as their bodies and monastic and other institutions. They freely decide their religious teaching and religious ceremonies. They issue their internal rules without any approval by the State; however, they must be compliance with generally binding legal provisions. They have the right to teach and educate their clerical and lay workers in their own schools and other facilities and schools of theology. The Ministry of Culture of the Slovak Republic is the central State administration authority in issues concerning the churches and religious societies; however, it is not their superior authority, as it neither interferes with their internal affairs nor provides methodological guidance for their activities.

372. Equality of all churches and religious societies before the law is guaranteed in § 4, paragraph 2, of Act No. 308/1991 Coll. as amended. A church or religious society is a voluntary association of individuals of the same religious faith organised based on their common adherence to that religious faith and according to the internal regulations of a particular church or religious society (§ 4, paragraph 1). The requirement for having a church or a religious society recognised is its registration. It is necessary to emphasise that neither the registration of a church or religious society as such nor the recognition of the

church or religious society by the State can be considered identical with the right of the individual to free expression of his/her religion and faith or the freedom of thought, conscience and religion. Thus, the requirement of church or religious society registration does not constitute a restriction of the rights and freedoms guaranteed in article 24, paragraphs 1, 2 and 3, of the Constitution because it is without prejudice to the individual rights and freedoms enshrined in this article.

373. Both the members of registered and non-registered churches and religious societies have their fundamental human rights and freedoms guaranteed in the same way. Thus, the churches and religious societies can, *de iure* and *de facto*, act freely regardless of whether they are registered or not.<sup>54</sup> This is also evidenced by the expanding activities of many untraditional religious groupings. Experts estimate their number to be around 50.

374. A church or religious society may apply for registration when it can prove that it has at least 20,000 full-aged members who have permanent residence in the territory and who are nationals of the Slovak Republic. This requirement is not applied to churches and religious societies which carried out their activities by virtue of law or with the consent of the State on the date of effect of Act No. 308/1991, i.e. on 1 September 1991. Since the effect of this Act, the Religious Society of Jehovah's Witnesses in the Slovak Republic, registered in 1993, the Church of Jesus Christ of Latter-Day Saints (registered in October 2006) and the Bahá'í Community in the Slovak Republic (registered in April 2007) have complied with this requirement.

375. The most frequent objection against current legislation on the registration of churches in the Slovak Republic is the high number of members required compared with the legislation of other countries. An alternative generally proposed to the current system of registration is the introduction of the so-called two-step church registration. In the first step, the churches would acquire legal personality at the level of currently existing civil associations when they have approximately 300–500 members; after the lapse of a certain time limit, e.g. ten years, and after satisfying certain other requirements (e.g. 10,000 members, regular submission of annual reports and financial reports) they could achieve the status of the currently registered churches and religious societies. This system can be considered one of the compromise solutions.

376. A full liberalisation of conditions for registration is currently not feasible because the Slovak Republic does not envisage a full financial separation of registered churches from the State. Other aspects to be considered are cultural and historic specificities of the country (the system of registration and/or recognition of the church by the State was implemented as early as the beginning of the 19<sup>th</sup> century in the time of the Austro-Hungarian monarchy; the status and the role of the church in society has an institutionalised character, etc.). Registered churches and religious societies consider current situation satisfactory and they do not request any change.

377. The present Government coalition has maintained a similar position. By adopting Act No. 201/2007 Coll. (amendment to Act 308/1991 Coll. passed by a constitutional majority in parliament) the registration requirements have become even stricter as the amendment stipulates that an application for registration must be supported at least by 20,000 members and not only supporters, as was the case before 1 May 2007.

378. Since 1 May 2007, the law governing registration of churches has been amended because of an attempt to abuse advantages resulting from registration. It was a response by members of parliament to a failed attempt to register the Atheistic Church of Nonbelievers. Another reservation against current legislation concerns restrictions applied to the

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<sup>54</sup> See article 22.

acquisition of legal personality (e.g. its mandatory form, the minimum number of members or the time of operation) that are often considered incompatible with human rights in this area. The Slovak Prosecutor General who filed a petition with the Constitutional Court of the Slovak Republic,<sup>55</sup> in which he objected to the lack of compliance in the registration of churches with the freedom of association and assembly of citizens guaranteed by the Constitution of the Slovak Republic, also expressed this view. The Constitutional Court has not heard the case, yet.

379. The Ministry of Culture of the Slovak Republic has always held that the members of registered and non-registered churches and religious societies have their fundamental human rights and freedoms guaranteed in the same way. Everyone has the right to freely express his /her religion or belief alone or in association with others, either privately or publicly, in worship, teaching, religious acts and by maintaining ceremonies. A church acquires its entitlement rights upon its registration as recognition by the State of its establishment and social usefulness. These entitlements include mainly the possibility to ask the State for financial support to the salaries of clerics and to the operating costs of church headquarters and the teaching of religion at State schools, a presence in the public media and prisons, etc.

380. To our knowledge, there has been no case of violation of religious freedom of members of non-registered churches before the courts of the Slovak Republic. The Constitutional Court of the Slovak Republic has not considered a petition concerning religious freedom in the context of the number of members required for registration, either. However, the Czech Constitutional Court considered registration conditions at a time when the Czechoslovak federal legislation on church registration (Act No. 308/1991 Coll.) was still effective.

381. Both previous and current legislation respect the status of churches and religious societies on the basis of the Charter by guaranteeing non-registered churches and religious societies, which for this reason have no legal personality, the right to be organised and to exercise freedom of religion in so far it complies with the constitutional and legal order.

382. Non-registered churches and religious societies can conduct their religious ceremonies and other acts of religious freedom, but they have no status as legal entities. Thus, they are considered associations of persons without legal personality. Acquiring the status of a legal entity is not an act that would have any link with the exercise of the right to freedom of religion under the Charter and laws governing the status of churches and religious societies. Registration is of no relevance to the right to establish a church; it is only an act through which the church acquires legal personality and, consequently, many advantages from the State, including a contribution from the State budget. The State should therefore be given the authority to exclude churches with a membership below the threshold set by the State from benefits arising from registration. Therefore, setting a numerical limit is not unconstitutional. This was explicitly upheld by the Constitutional Court of the Czech Republic in its finding Ref. Pl. ÚS 6/02, where the Court held that no aspect of the provisions of § 11 of Act No. 3/2002 Coll. was unconstitutional, i.e. including the provision for a numerical census of members (1 per 1,000 adult citizens of the Czech Republic), which is the figure for acquiring identical rights to those of the churches and religious societies registered under Act No. 308/1991 Coll.

383. Further, it is concluded that the freedom to manifest one's religion or faith should be distinguished from the right to register a church or religious association, i.e. from the right to a favourable decision by State authorities. Article 20, paragraph 1, of the Charter

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<sup>55</sup> <http://www.genpro.gov.sk/index/go.php?id=728>.

includes a general guarantee of the State to respect the right to freedom of association, i.e. the right to establish formal and informal associations. The second clause relates to the right to establish associations with legal personality. In these cases, legal norms regulate the guarantees of the right to freedom of association in more detail. Likewise, this applies to associating in churches and religious societies, where involvement by the State in formal associations is possible under conditions set forth by law. This involvement by the State in the form of registration terms and conditions has no direct effect on the rights of persons to manifest their religion or faith laid down in article 16, paragraph 1, of the Charter. The provisions of articles 15, 16 and 20 of the Charter do not link the exercise of rights stipulated therein with registration; neither do they lay down conditions for registration. The statutory requirements governing the registration of churches in no manner restrict the exercise of the freedom to manifest one's religion or faith as set forth in the quoted articles of the Charter. By being refused registration for failure to comply with the statutory requirements, a church is not established as a legal entity; however, this does not restrict the exercise of the fundamental rights of its members. The Ministry of Culture, that is, the registration authority of the State by virtue of law, fully identifies with these statements.

*Exercise of freedom of religion in remand custody and during custodial sentence*

384. In the Slovak Republic, conditions for enjoying freedom of religion have been ensured for accused and sentenced persons. Pastoral care is legislated in the Act on Remand Custody and the Act on the Execution of Custodial Sentences. Pastoral care is provided by clerics who serve in the corps or by clerics and other persons authorised by a church or religious society recognised by the State.

## **Article 19**

### **Recommendation 15**

385. Within the meaning of article 26 of the Constitution, freedom of expression and freedom of information shall be guaranteed to all. Under this article, everyone has the right to express his or her opinion in words, writing, print, images or by other means, and also to seek, receive and disseminate ideas and information freely, regardless of State borders. Publishing of print media is not subject to any permission procedure. Business activities in the radio and television sector may be subject to permission by the State under conditions provided for by law. Any censorship is prohibited.

386. Freedom of expression and the right to seek and disseminate information may be restricted by law only if it concerns measures necessary in a democratic society in the interest of protecting the rights and freedoms of others, national security, public order, and for the protection of health and morals. Public authorities have the duty to provide information on their activities in the State language in an appropriate manner. The conditions and implementation shall be provided for by law.

387. The following acts govern constitutional guarantees of freedom of expression and freedom of information in detail.

*The Press Act*

388. Act No. 167/2008 Coll. on periodicals and agency news service and on amending other relevant acts (hereinafter the "Press Act") came into effect on 1 June 2008. Complying with international conventions, respecting the freedom of expression and the freedom to information as well as the right to the protection of personal integrity and the right to privacy with respect to publishing information, the new law added the right of reply and to additional notice to the right to correction. Complying with Parliamentary Assembly



of the Council of Europe Resolution No. 1003/1993 on the ethics of journalism, the Act respects the rights of publishers and journalists, defines social responsibility for published content and, at the same time, defines basic obligations in publishing periodicals and press agency news, acquisition, processing and public dissemination of information.

389. The scope of this legislation also includes the obligation of public authorities, budgetary and semi-budgetary organisations established by them and of legal entities established by law to give publishers of periodicals and press agencies information on their activities based on equality to allow informing the public in a true, timely and comprehensive fashion.

390. The law replaced the registration of periodicals with an entry in the list of periodicals. This list is a public record of periodicals published in the territory of the Slovak Republic. The Ministry of Culture shall make the entry in the list of periodicals when the application for entry has all necessary information or it will invite the applicant to furnish missing data. The Ministry of Culture shall also change the data in the list and delete the data when the periodical ceases to be published in the territory of the Slovak Republic. Complying with Recommendation No. R/94/13 of the Committee of Ministers to Member States on measures to promote media transparency, the law stipulated the obligation to inform of and publish the structure of periodical ownership relationships, which builds on the existing legislation on broadcasting. This will allow comparing and improving transparency in media ownership relationships.

391. The previous Act No. 81/1966 Coll. on periodicals and other mass media as amended included a ban on publishers of periodicals disseminating information promoting war or describing cruel and other inhuman actions in a manner that trivialises them, justifies them or indicates approval of them, as well as information promoting the use of narcotic or psychotropic substances in a manner that trivialises such use, justifies it or indicates approval of it. The Government of the Slovak Republic proposed a similar text in the newly adopted Press Act. Upon the protest by the Organisation for Security and Cooperation in Europe, which considered that the proposed provision contained the possibility for restricting freedom of press, the text was removed from the draft Act.

392. In June 2008, the President of the Slovak Syndicate of Journalists wrote to the Public Defender of Rights of the Slovak Republic and asked him to embrace the legal argumentation of the syndicate concerning the incompatibility of the Press Act with the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms. In September, the Public Defender of Rights informed that he would not avail himself of his right to file a motion with the Constitutional Court of the Slovak Republic on the compliance of legal provisions. Subsequently, a group of members of the National Council of the Slovak Republic filed a motion with the Constitutional Court to open review proceedings on the compliance of certain provisions of the Press Act with the Constitution and the Convention for the Protection of Human Rights and Fundamental Freedoms by the end of September 2008. The Constitutional Court has not yet rendered a final ruling in the matter.<sup>56</sup>

#### *Public media*

393. Act No.16/2004 Coll. on Slovak Television and Act No. 619/2003 Coll. on Slovak Radio entered into effect on 1 February 2004 and on 1 January 2004 respectively.

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<sup>56</sup> [http://www.spectator.sk/articles/view/33032/10/opposition\\_takes\\_press\\_code\\_to\\_constitutional\\_court.html](http://www.spectator.sk/articles/view/33032/10/opposition_takes_press_code_to_constitutional_court.html).

394. The main objective of both legal norms was to improve the effectiveness and efficiency of financial management, control and management of both Slovak Television and Slovak Radio in order to improve the quality of programmes and competitiveness vis-à-vis commercial stations. The new legislation on the status and operation of public broadcasters in Slovakia also intended to create appropriate conditions for the provision of services to the public in the field of television and radio broadcasting. The main measures for achieving this goal included transfer of State assets under the administration of Slovak Television and Slovak Radio to their ownership, define the mission and main tasks of Slovak Television and Slovak Radio, create more possibilities for business activities, modify the rules of financial management, change the rules governing the election of the members of the Council of Slovak Television and Slovak Radio as their supreme bodies, change the rules governing the election of directors general of both public media, and create supervisory commissions as advisory bodies to the Council of Slovak Television and the Radio Council in the field of financial management.

395. Newly adopted Act No. 68/2008 Coll. on payments for public service provided by Slovak Television and Slovak Radio and on amending and supplementing other relevant acts effective from 1 April 2008 is related to the status of public media. The objective of this new piece of legislation is to ensure an appropriate source of public finance through a collection mechanism of set payments for public service provided by Slovak Television and Slovak Radio that would be inexpensive for the population. The core principle is solidarity among payers and among public broadcasters. The law ensures actual collection of payments for public service and, thus, fair participation of the population in the funding of the public media that play an irreplaceable role in the dual broadcasting media system in the Slovak Republic necessary for the exercise of citizens' constitutional rights. The law maintains exemptions from payment for households with severely disabled persons, as well as reduced half-payment for pensioners and introduces this rate for households in material need.

396. The new legislation lays down funding rules for public broadcasters, building on the basic principles of ensuring the independence of public broadcasting according to Recommendation (96) 10 of the Committee of Ministers of the Council of Europe binding the member States to maintain and, where necessary, establish an appropriate, secure and transparent funding framework which guarantees public service broadcasting organisations the means necessary to accomplish their missions.

397. Other pieces of relevant legislation in this area are, mainly, Act No. 428/2002 Coll. on the protection of personal data as amended. This Act governs the protection of personal data of natural persons during processing. It lays down the principles of personal data processing, security of personal data, protection of the rights of the persons concerned, cross-border flow of personal data, registration and record-keeping of information systems, and the establishment, status and scope of the Office for Personal Data Protection of the Slovak Republic. Personal data mean any data relating to an identified or identifiable natural person, while such person is an individual who can be identified, directly or indirectly, in particular by reference to a general identifier or to one or more factors specific to this person's physical, physiological, mental, economic, cultural or social identity.

398. Act No. 215/2004 Coll. on the protection of classified information and on amending and supplementing other relevant acts as amended effective from 1 May 2004 is relevant in this respect, too. This law stipulates the requirements for the protection of classified information, the rights and duties of legal entities and natural persons with respect to this protection, the remit of the National Security Authority (hereinafter the "Authority") and the remit of other State bodies with respect to classified information, and the liability for violations of the obligations set forth in this Act. Classified information is any information or item determined by the originator of the classified information which must be protected,

in the interests of the Slovak Republic, from disclosure, misuse, damage, unauthorised duplication, destruction, loss or theft and which only may originate in fields stipulated by the Government of the Slovak Republic in a regulation.

*Restrictions on freedom of expression*

399. The National Security Act provides for the possibility of restricting fundamental rights and freedoms and of imposing duties in the necessary scope and for the necessary time depending on the development of the situation in the whole territory of the State or a part thereof.<sup>57</sup>

400. In the context of the right to freedom of expression, the Criminal Code stipulates these elements of crime that “restrict” this freedom, e.g.:

- § 211 endangering moral education of young persons
- § 264 endangering business, bank, postal, telecommunication and tax secrecy
- § 318 espionage
- § 319, §320 endangering classified information
- § 353 endangering confidential information and exclusive information
- §361, 362 spreading alarming news
- §369 dissemination of child pornography (the Criminal Code also includes the crime of production of child pornography, § 368 and possession of child pornography, § 370)
- § § 371 – 372 endangering morals
- § 373 slander
- §374 unauthorised personal data handling
- § 377 violation of the confidentiality of oral communications or another expression of a personal nature
- §247 damage to and misuse of recordings on media carriers

401. In November 2001, the National Council of the Slovak Republic did not pass a proposal, submitted by group of members, on the deletion of the criminal offence of defamation of the republic and of its representative within the meaning of § 102 and §103 of the Criminal Code Act No. 140/1961 Coll. as amended. Later, the Constitutional Court of the Slovak Republic suspended the effect of these provisions of the Criminal Code with its resolution of 10 January 2002. The valid Criminal Code, effective from 1 January 2006, no longer includes such element of crime.

402. In this context, it is also relevant to mention that the National Council approved an amendment to the Criminal Code in November 2001, which stipulates a new criminal offence of putting in doubt and approving the crimes of fascism. This provision allows sanctioning the protagonists of the “Auschwitz lie”. By adopting the recast Criminal Code, this provision has been included in § 422.<sup>58</sup>

<sup>57</sup> See text to article 4.

<sup>58</sup> Any person who publicly demonstrates, in particular by using flags, badges, uniforms or slogans, his/her sympathies for movements that by using violence, threat of violence, or threat of other serious harm leading to the suppression of fundamental rights and freedoms of individuals shall be liable to a

**Recommendation 15**

403. In its concluding observations, the Human Rights Committee held that in spite of oral and written answers by the Slovak delegation, the Committee remained concerned at reports of forced sterilisation of Roma women allegedly performed in the eastern part of Slovakia and the threat of criminal prosecution of the authors of the “Body and Soul” publication under article 199 of the Criminal Code, for “spreading false rumours”.

404. The investigators of the Police Corps cooperated closely with the Ministry of Health’s specialists in the field of obstetrics. All those who were involved in this joint endeavour pursued the common goal of investigating the matter as objectively as possible and of laying charges against potential offenders and, should criminal liability be established, bringing them to justice before the competent court.

405. Several dozen physicians, medical patients and women having the procedural standing of witnesses or victims were interviewed in the case of alleged forced sterilisation of Roma women in the eastern part of Slovakia. Several Roma women who volunteered to give their depositions were interviewed. The authors of the “Body and Soul” publication were also interviewed. At the same time, other important evidence and materials of relevance for criminal proceedings were procured. Following the presentation of the expert opinion prepared by renowned health sector specialists, evidence was examined according to the rules of criminal proceedings. In summary, the results of the investigation did not confirm the commission of a criminal offence (of genocide or other offence established by law) and no case was found of a Roma or a non-Roma patient having undergone sterilisation without her written consent.

406. In the context of this case, it is also necessary to point out that the authors of the “Body and Soul” publication, which was one of the sources of information on the alleged unlawful sterilisation of Roma women in eastern Slovakia, were never sanctioned by law enforcement agencies nor were they prosecuted.

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407. Act No. 300/2005 Coll., the Criminal Code, which replaced the then valid Act No. 140/1961 Coll., entered into effect on 1 January 2006.

408. The Criminal Code includes penal sanctions for behaviour that constitutes a violation of human rights and fundamental freedoms as a consequence of discrimination on grounds of nationality, race or religion and the related expressions of hostility and hatred, and it also sanctions expressions promoting war.

409. Expressions promoting war and national, racial and religious hatred are sanctioned individually as elements of criminal offences stipulated in Chapter 12 – a separate part of the Criminal Code on crimes against peace, humanity and war crimes.

410. In § 417, the Criminal Code defines promoting war as a criminal offence against peace according to which any person who intentionally disturbs peace by inciting to war, promoting war in any manner or otherwise supporting war propaganda shall be liable to a term of imprisonment of between one and ten years. An offender shall be liable to a term of imprisonment of between ten and twenty-five years or life imprisonment when such crime

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term of imprisonment between six months and three years. Any person who publicly denies, puts in doubt, approves or tries to apologise for the Holocaust shall be liable to the same sentence.

was committed in association with a foreign power or foreign official or in the capacity of a member of a dangerous group or in a crisis situation.

411. Any person who with the intention to destroy, in whole or in part, any nation or national, ethnic, racial or religious group, causes serious bodily harm or death to a member of such group, imposes measures intended to prevent births within the group, forcibly transfers children of the group to another group or inflicts on the group conditions of life calculated to bring about its physical destruction, in whole or in part, has committed the crime of genocide under § 418 and shall be liable to a term of imprisonment of between fifteen and twenty years. An offender shall be liable to a term of imprisonment of between twenty and twenty five years or life imprisonment when such crime was committed in times of war or armed conflict. An offender shall be sentenced to life imprisonment when such crime caused the death of several persons.

412. Any person who supports and promotes a group of persons who by using violence, threat of violence, or threat of other serious harm aim at suppressing fundamental rights and freedoms of individuals has committed the crime of supporting and promoting groups suppressing fundamental rights and freedoms under §421 and shall be liable to a term of imprisonment of between one and five years. An offender shall be liable to a term of imprisonment of between four and eight years when committing such crime in public, in an aggravated manner or in a crisis situation.

413. Any person who publicly demonstrates, in particular by using flags, badges, uniforms or slogans, his/her sympathies for movements that by using violence, threat of violence, or threat of other serious harms aim at suppressing fundamental rights and freedoms of individuals has committed the crime of supporting and promoting groups aimed at suppressing fundamental rights and freedoms under § 422 and shall be liable to a term of imprisonment of between six months and three years. Any person who publicly denies, puts in doubt, approves or tries to apologise for the Holocaust shall be liable to the same sentence.

414. Any person who publicly defames a nation, its language, a race and/or ethnic group or a group of individuals because of their denomination or because of being without a denomination has committed the crime of defamation of a nation, race or conviction under §423 and shall be liable to a term of imprisonment of up to one year. The offender shall be liable to a term of imprisonment of up to three years if he/she commits such an act in association with at least two more persons, with a foreign power or foreign official, as a public official or in a crisis situation.

415. Any person, who publicly threatens an individual or a group of persons with restricting their rights and freedoms because of their belonging to a nation, nationality, race or ethnic group or because of the colour of their skin, or who committed such restriction or who incites to restrict the rights and freedoms of a nation, nationality, race or ethnic group has committed the crime of inciting to national, ethnic or racial hatred under § 424 and shall be liable to a term of imprisonment of up to three years. The same sentence shall be imposed on any person who associates or assembles with others with a view to committing such offence. The offender shall be liable to a term of imprisonment of between one and five years if he/she commits such an act in association with a foreign power or foreign official, as a public official or in a crisis situation.

416. Any person who commits inhuman acts on the grounds of national, racial or ethnic discrimination or who terrorises a helpless civilian population by violence or the threat of violence during wartime has committed the crime of persecution of the population under § 432 and shall be liable to a term of imprisonment of between four and ten years. The same sentence shall be imposed on any person who, in the time referred to, destroys or seriously damages the source of elementary necessities of life of the civilian population in an

occupied territory or buffer zone, or who wilfully refuses to provide the population the assistance they need for their survival, delays without justifiable reasons the return of the civilian population or prisoners of war, resettles without justifiable reasons the civilian population of the occupied territory, settles the occupied territory with the population of his own country or wilfully denies the civilian population or prisoners of war the right to have their criminal offences decided by impartial courts. An offender shall be liable to a term of imprisonment of between ten and twenty-five years or to life imprisonment if, through the commission of such offence, serious bodily harm or death or other exceptionally serious consequence was caused.

*Special motive*

417. In its general part, §140, subparagraph d, the Criminal Code makes committing a crime because of hatred on the grounds of national, ethnic or racial origin, or hatred because of the colour of the skin one of the defining criteria for special motive. Attribution of this motive in individual elements of crime results in a stricter sentence than the sentence for the basic element of crime.

418. The commission of a crime because of hatred on the grounds of national, ethnic or racial origin or hatred because of the colour of the skin may occur in 89 elements of crime. This motive is most frequently manifested in crimes against life and health, crimes against freedom and human dignity and crimes against other rights and freedoms.

419. However, the Criminal Code also recognises the commission of a crime on the grounds of national, ethnic and racial hatred or because of hatred on the grounds of the colour of the skin in crimes against the family and youth, property crimes, economic crimes, general endangerment criminal offences, environmental crime and crimes against public order.

420. Under the recast Criminal Code, sentences for some of these crimes, e.g. incitement to national, racial and ethnic hatred under § 424 and bodily harm under § 155 and § 156, were aggravated.

*Statistics on crimes motivated by racial, ethnic or similar intolerance from 2003 to 30 April 2008*

421. One hundred and nineteen criminal offences with racial motives were registered in the Slovak Republic in 2003. Of the total, 77 criminal offences, i.e. 64.7%, were clarified. In total, 93 offenders were identified, of whom 16 persons were minors and 12 persons were juveniles.

422. In terms of specific crimes, 6 cases of bodily harm with a racial motive (§ 221/2b, § 222/2b, of the Criminal Code effective till 31 December 2005), 37 cases of violence against a group of inhabitants or an individual with a racial motive (§ 196/2, § 198, § 198a, of the Criminal Code effective till 31 December 2005) and 76 cases of other crimes with a racial motive (§ 259, § 260, § 261, § 263a, of the Criminal Code effective till 31 December 2005) were registered.

423. No racially motivated murder was registered.

424. Seventy-nine criminal offences with a racial motive were registered in the Slovak Republic in 2004. Of the total, 57 criminal offences, i.e. 72.2 %, were clarified. In total, 65 offenders were identified, of whom 10 persons were minors and 13 persons were juveniles.

425. In terms of specific crimes, 1 case of bodily harm with a racial motive (§ 221/2b, § 222/2b, of the Criminal Code effective till 31 December 2005), 23 cases of violence against a group of inhabitants or an individual with a racial motive (§ 196/2, § 198, § 198a, of the Criminal Code effective till 31 December 2005) and 55 cases of other crimes with a racial

motive (§ 259, § 260, § 261, § 263a, of the Criminal Code effective till 31 December 2005) were registered. No racially motivated murder was registered.

426. One hundred and twenty-one criminal offences with a racial motive were registered in the Slovak Republic in 2005. Of the total, 82 criminal offences, i.e. 67.8 %, were clarified. In total, 111 offenders were identified, of whom 7 persons were minors and 25 persons were juveniles.

427. In terms of specific crimes, 5 cases of bodily harm with a racial motive (§ 221/2b, § 222/2b, of the Criminal Code effective till 31 December 2005), 15 cases of violence against a group of inhabitants or an individual with a racial motive (§ 196/2, § 198, § 198a of the Criminal Code effective till 31 December 2005) and 101 cases of other crimes with a racial motive (§ 259, § 260, § 261, § 263a, of the Criminal Code effective till 31 December 2005) were registered. No racially motivated murder was registered.

428. One hundred and eighty-eight criminal offences with a racial motive were registered in the Slovak Republic in 2006. Of the total, 107 criminal offences, i.e. 56.9 %, were clarified. In total, 148 offenders were identified, of whom 8 persons were minors and 31 persons were juveniles.

429. In terms of specific crimes, 6 cases of bodily harm with a racial motive (bodily harm under § 155, paragraph 1, paragraph 2, subparagraph c, and § 156, paragraph 1, paragraph 2, subparagraph b, of the Criminal Code) 19 cases of violence with a racial motive (defamation of a nation, race or conviction under § 423 of the Criminal Code and incitement to national, racial or ethnic hatred under § 424 of the Criminal Code) and 163 cases of crimes against humanity (supporting and promoting groups aimed at suppressing fundamental rights and freedoms under § 421, § 422 of the Criminal Code) were registered. No racially motivated murder was registered.

430. One hundred and fifty-five criminal offences with a racial motive were registered in the Slovak Republic in 2007. Of the total, 88 criminal offences, i.e. 56.8 %, were clarified. In total, 125 offenders were identified, of whom 11 persons were minors and 39 persons were juveniles.

431. In terms of specific crimes, 4 cases of bodily harm on grounds of national, racial or ethnic hatred or hatred on grounds of the colour of the skin (bodily harm under § 155, paragraph 1, paragraph 2, subparagraph c, and § 156, paragraph 1, paragraph 2, subparagraph b, of the Criminal Code), 23 cases of violence with a racial motive (defamation of a nation, race and conviction under § 423 of the Criminal Code and incitement to national, racial or ethnic hatred under § 424 of the Criminal Code) and 128 cases of crimes against humanity (supporting and promoting groups aimed at suppressing fundamental rights and freedoms under § 421, § 422 of the Criminal Code) were registered. No racially motivated murder was registered.

432. One hundred and fifteen criminal offences with a racial motive were registered in the Slovak Republic in the first four months of 2008. Of the total, 69 criminal offences, i.e. 60 %, were clarified. In total, 82 offenders were identified, of whom 11 persons were minors and 31 persons were juveniles.

433. In terms of specific crimes, 1 case of bodily harm on the grounds of national, racial or ethnic hatred or hatred because of the colour of the skin (bodily harm under § 155, paragraph 1, paragraph 2, subparagraph c, and § 156 paragraph 1, paragraph 2, subparagraph b, of the Criminal Code), 13 cases of violence with a racial motive (defamation of a nation, race and conviction under § 423 of the Criminal Code and incitement to national, racial or ethnic hatred under § 424 of the Criminal Code) and 101 cases of crimes against humanity (supporting and promoting groups aimed at suppressing

fundamental rights and freedoms under § 421, § 422 of the Criminal Code) were registered. No racially motivated murder was registered.

434. It can be concluded that offenders mostly committed the criminal offence of supporting and promoting groups aimed at suppressing fundamental rights and freedoms under § 422 of the Criminal Code which sanctions publicly manifested sympathy for movements aimed at suppressing fundamental rights and freedoms of individuals by violence, threat of violence or threat of other serious harm.

435. Tasks adopted under the approved Policy for Combating Extremism and worked out in the Order of the Minister for the Interior of the Slovak Republic No.32/2006 pursue containment of expressions of extremism, including the expression of racism, xenophobia, anti-Semitism, etc. Police Corps activities in the field of extremism focus on monitoring organised right-wing, left-wing and religious extremist groups. The right-wing extremist scene has remained the most difficult one. Increased attention is paid to screening persons suspicious of supporting and promoting groups aimed at suppressing fundamental rights and freedoms.

436. In the previous period, most of the right-wing extremist groups operated independently from each other in the form of separate “cells” while the “fight against the common enemy” was their bond. Their activities mainly included organising and attending concerts of music bands close to the right-wing extremist scene, and organising rallies and commemorative events. Right-wing extremist groups, generally known as skinheads, made themselves visible through physical assaults, by opening websites with questionable content, and distributing books and CDs with racist and/or xenophobic content.

Table 8

**Overview of racially motivated crime**

<i>Year</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>Until 30 April 2008</i>
Detected crimes	119	79	121	188	155	115
Clarified crimes	77	57	82	107	88	69

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437. Within the sector of the Ministry of the Interior of the Slovak Republic, close attention is paid to racial violence, as proved by the standard-setting activities in this area. The fight against racial violence is addressed within the area of the fight against extremism covered by these internal regulations:

- Ordinance of the Minister of the Interior of the Slovak Republic No. 45/2004 of 15 June 2004 on actions in the area of the fight against extremism and on tasks of the Monitoring Centre on Racism and Xenophobia, which governs activities of the units of the Ministry and of the Police Corps in the field of extremism
- Order of the Minister of the Interior of the Slovak Republic No. 30/2004 of 18 June 2004 on the establishment of the Commission for Coordinating Actions to Eliminate Racially Motivated Crime and Extremism and of regional commissions for coordinating actions to eliminate racially motivated crime and extremism
- Order of the President of the Police Corps No. 123/2004 of 15 October 2004 on the establishment of the Commission for Combating Spectator Violence and Rowdyism during Sporting Events



- Order of the President of the Police Corps No. 123/2005 of 26 October 2005 on measures to eliminate expressions of extremism and crimes with elements of extremism
- Instruction of the President of the Police Corps No. PPZ-871/JKP-2005 of 15 November 2005 introducing measures to enhance the activities and effectiveness of the Police Corps in the fight against extremism
- Order of the President of the Police Corps No. 40/2006 of 26 March 2006 on establishing an analytical coordination group in the area of racially motivated crime and extremism
- Order of the President of the Police Corps No. 43/2007 of 20 April 2007 on measures to prevent serious unlawful conduct by persons
- Order of the President of the Police Corps No. 12/2003 of 3 December 2003 on criminal police activities in the fight against motorcycle gangs
- Order of the President of the Police Corps No. 14/2006 on updating the Strategy of the Government of the Slovak Republic for Solving the Problems of the Roma National Minority and the Set of Measures for its Implementation in the wording of Orders of the President of the Police Corps No. 10/2007 a 13/2008. These documents give a breakdown of the tasks formulated by the Government of the Slovak Republic to the level of individual sectoral entities, in particular the units of the Police Corps.

438. To tackle the challenges of racially motivated violence and, in particular, its link to crime, the Ministry of the Interior of the Slovak Republic has established the following specialised entities.

*Commissions for the coordination of actions in the elimination of racially motivated crime and extremism*

439. To intensify cooperation between the Police Corps and the representatives of NGOs and individuals active on the Commission, the Commission for coordinating actions in the elimination of racially motivated crime and extremism and regional commissions for coordinating actions in the elimination of racially motivated crime and extremism were established at the central level within the Ministry of the Interior of the Slovak Republic and within regional headquarters of the Police Corps respectively by Order of the Minister for the Interior of the Slovak Republic No. 30/2004 of 18 June 2004 on the establishment of the Commission for coordinating actions in the elimination of racially motivated crime and extremism and of regional commissions for coordinating actions in the elimination of racially motivated crime and extremism. Its task is to collect and exchange information on instances of all forms of intolerance, xenophobia, expressions of extremism and racism, provide information to competent State authorities and coordinate activities in the elimination of all forms of intolerance, xenophobia, expressions of extremism and racism. The Commission may initiate verification of suspicions of racially motivated crimes and extremism, and request feedback from competent units of the Ministry of the Interior and the Police Corps, and forward notifications of instances of racially motivated crimes and extremism to other State administration authorities, law enforcement authorities or, where appropriate, to entities outside of the sector.

*Multidisciplinary integrated group of experts on the elimination of racially motivated crime and extremism*

440. A multidisciplinary integrated group of experts on the elimination of racially motivated crime and extremism continuing the activities of the commission for the

coordination of actions to eliminate racially motivated acts and extremism was formed at the margin of the inter-ministerial Expert Coordination Body for Combating Crime in 2007.<sup>59</sup>

441. This group:

- Proposes to relevant entities systemic measures aimed at protecting the society from antisocial acts of racially biased and extremist individuals, groups and movements, and eliminating expressions of racism and extremism
- Adopts measures to eliminate expressions of racism and extremism under its own competence
- Proposes and implements, in conformity with the legislation in force, appropriate and effective exchange of information concerning expressions of racism and extremism
- Ensures collecting and exchanging information on the forms, methods, and ways of committing racially motivated crimes and extremism
- Gathers and provides information and data from information systems in conformity with the legislation in force in the framework of group activities
- Forms expert working groups as needed
- Cooperates in the preparation and implementation of projects in the area of prevention
- Cooperates in designing and implementing:
  - Educational and training programmes
  - Training of the staff of organisations engaged in the fight against racism and extremism
  - Publications and aids dealing with racism and extremism and in their distribution

*Analysis and coordination group for racially motivated crime and extremism*

442. To assist in the accomplishment of the tasks in the context of detecting and clarifying racially motivated crime and extremism with a view to identifying, collecting and evaluating information on the crime situation and coordinating actions aimed at its elimination in the Slovak Republic, an analysis and coordination group for racially motivated crime and extremism was formed by order of the President of the Police Corps No. 40/2006 of 26 March 2006. The group is composed of Police Corps specialists on racially motivated crime and extremism assigned to individual units at the Police Corps Presidium and at regional Police Corps directorates.

<sup>59</sup> The members of the group are representatives of the Ministry of the Interior of the Slovak Republic, Ministry of Education of the Slovak Republic, Ministry of Justice of the Slovak Republic, Ministry of Culture of the Slovak Republic, Ministry of Labour, Social Affairs and Family of the Slovak Republic, Ministry of Health of the Slovak Republic, Ministry of Defence of the Slovak Republic, Ministry of Transport, Posts and Telecommunications of the Slovak Republic, Ministry of Finance of the Slovak Republic, Prosecution General of the Slovak Republic, Slovak Intelligence Service, Section for Human Rights and Minorities of the Slovak Government Office, Slovak National Centre for Human Rights and representatives of NGOs – *Ludia proti rasizmu* (People against Racism), *Občan a demokracia* (Citizen and Democracy) and *Liga aktivistov pre ľudské práva* (League of Human Rights Advocates).

*Division for the Fight against Racism and Extremism of the Department for Combating Terrorism in the Office for the Fight against Organised Crime within the Police Corps Presidium*

443. The need to methodically address racially motivated crime and extremism called for creating a specialised unit. The Division for the Fight against Racism and Extremism of the Department for Combating Terrorism in the Office for the Fight against Organised Crime at the Police Corps Presidium existing within the Police Corps structure since 1 January 2004 was chosen to fill this gap. The Division performs mainly tasks linked with detecting extremist crime and organised extremist crime with a focus on foreign and domestic extremist groups, their representatives, organisers of events and international connections of these structures. This unit also functions as the monitoring centre on racism and xenophobia for the units of the Ministry of the Interior of the Slovak Republic and the Police Corps as provided for in Ordinance of the Minister of the Interior of the Slovak Republic No. 45/2004 on actions in the area of the fight against extremism and on tasks of the Monitoring Centre on Racism and Xenophobia.

444. Considering the need for line management and coordination of actions in the fight against extremism and spectator violence, a proposal for establishing a division on extremism and youth within the Office of Judicial and Criminal Police of the Police Corps Presidium was prepared. This division would, in addition to its methodological and inspection functions with respect to the judicial and criminal police at district and regional directorates, also take on other tasks currently under the competence of the Division for the Fight against Extremism in the Office for the Fight against Organised Crime at the Police Corps Presidium.

*Assigned specialists of district and regional Police Corps directorates*

445. Complying with Ordinance of the Minister of the Interior of the Slovak Republic No. 45/2004 on actions in the area of the fight against extremism and on tasks of the Monitoring Centre on Racism and Xenophobia, one police officer of the Police Corps was assigned the implementation of actions in the fight against extremism within every judicial and criminal police department of district Police Corps directorates and within every judicial and criminal police department of regional Police Corps directorates. The task of these police officers is mainly to monitor and assess the security situation in connection with movements of extremist groups within their service areas, to document their criminal activities and, as the need might be, to adopt and propose appropriate measures.

*Youth and extremism divisions of the criminal police departments of the judicial and criminal police offices of the Bratislava and Košice regional Police Corps directorates*

446. Youth and extremism divisions specialised in youth crime and racially motivated crime and extremism were established within criminal police departments of the judicial and criminal police offices of the Bratislava and Košice regional Police Corps directorates.

447. The Policy of Fighting Extremism is another important document on racial violence. The Government approved this material in its Resolution No. 368/2006. The policy is the first complex document on extremism. It evaluates the current situation in the fight against extremism in the Slovak Republic and outlines the main directions for improving the effectiveness of this fight. It gives comprehensive insight into the issue. The objective pursued in the policy is to develop an effective system of measures and activities aimed at the protection of citizens and the society from antisocial acts of extremist individuals, groups and movements until 2010.

448. Expressions of violence with a national, ethnic and/or racial motive are monitored by the Police Corps daily as provided for in Instruction of the President of the Police Corps

No. PPZ-871/JKP-2005 of 15 November 2005 introducing measures to enhance the activities and effectiveness of the Police Corps in the fight against extremism. According to this instruction, daily reports on the cases of expressions of extremism, and on the measures adopted on the previous day, must be submitted to the President of the Police Corps.

449. Under Decree of the President of the Police Corps No.23/2005 of 28 November 2005 on the reporting and notification obligation in criminal cases, the offices of judicial and criminal police of district and regional Police Corps directorates submit to the Judicial and Criminal Police Office of the Police Corps Presidium specified decisions and information on criminal offences against peace and humanity set forth in Chapter Twelve of the Criminal Code and crimes committed with a special motive under § 140, subparagraph d, of the Criminal Code. The Judicial and Criminal Police Office of the Police Corps Presidium oversees investigation and summary investigation in these criminal cases and it makes use of received documentation for inspection and methodological guidance.

## Article 21

450. Article 28 of the Constitution of the Slovak Republic guarantees the right of peaceful assembly. The right of peaceful assembly is governed by Act No. 84/1990 Coll. on the right of assembly in the wording of Act No. 175/1990 Coll., Act No. 515/2003 Coll. and Act No. 468/2007 Coll. Act No. 84/1990 Coll. entered into effect on 27 March 1990.

451. Act No. 468/2007 Coll. amending and supplementing Act No. 84/1990 Coll. on the right of assembly as amended entered into effect on 1 November 2007.

452. It is necessary to point out that before adopting the amendment, the legal provisions of the quoted Act showed several serious technical legislative shortcomings, and in the context of the development of current social and legal relationships they were not adequate, mainly with regard to:

- The possibility available to persons convening the event of abusing the right of assembly by lodging the application well in advance, i.e. even several years, and thus blocking certain attractive public areas and consequently inhibiting other entities from the enjoyment of this right
- The failure to address the anonymity of aggressive individuals with covered faces who, during the assembly, disturbed public order, destroyed property and endangered life, health, and rights and freedoms of other participants in the assembly with their assaults
- An insufficient definition of potential sanctions for violating duties in the realm of the right of assembly.

453. The approved draft amendment removed continuing technical legislative shortcomings of the previous period, and amended and refined certain provisions of the Act on the right of assembly so that compliance with the current legal and social development in the Slovak Republic was ensured.

454. The amendment to the law imposes on municipalities the obligation to immediately inform the Police Corps of the holding an assembly, as well as of prohibiting the assembly after being served advance notice of the assembly or after issuing the decision prohibiting the assembly; the set of grounds on which a municipality may prohibit an assembly was enlarged; the manner in which the prohibition of an assembly has to be displayed was specified; and the fine for an infraction of the right of assembly was increased and the elements of other administrative delicts where the municipality may fine a legal entity — the person convening the assembly — with a fine of SKK 20,000 were defined.

455. Under § 1, paragraph 5, of Act No. 84/1990 on the right of assembly in the wording of Act No. 175/1990 Coll., Act No. 515/2003 Coll. and Act No. 468/2007 Coll., assembly in a radius of 50 m from buildings of legislative bodies or from the place where these bodies debate are prohibited. Under § 9 of Act No. 84/1990 Coll., a municipality may impose on the person convening an assembly held during evening hours the obligation to end the event without inappropriately disturbing peace at night time.

456. Under § 12 of the Act, an assembly that was not notified shall be dispersed if circumstances justifying its prohibition occurred. This also applies to assemblies that were not convened. The same procedure is also followed when an assembly held during evening hours continues after the agreed end. An assembly may also be dispersed if circumstances justifying its prohibition occurred during the assembly. An assembly may also be dispersed when its participants engaged in the commission of criminal offences and it was impossible to stop them in any other way, in particular by intervention against individual offenders.

457. Under Act No. 84/1990 Coll., the following are not considered assemblies:

- Assemblies of persons in the context of activities of State bodies set forth in other legal provisions
- Assemblies in the context of rendering services
- Other assemblies which are not held with the intention of facilitating enjoyment of the freedom of expression and of other constitutional rights and freedoms, exchange of information and opinions by citizens and of facilitating participation in public and other common affairs by expressing positions and opinions

458. Street processions and demonstrations are considered assemblies under Act No. 84/1990 Coll.

459. The following assemblies are not subject to the notification obligation:

- Assemblies organised by legal entities and which are only open to their members, staff and invited guests
- Assemblies organised by churches or religious societies in a church or other chapel, processions, pilgrimages and other processions for expressing religious faith
- Assemblies held in citizens' dwellings
- Assemblies held for invited guests in closed premises

460. No prior permission by a State authority is necessary for holding an assembly. Assemblies are subject to notification obligation. An assembly may be convened by a natural person older than 18 years of age, a legal entity and a group of persons. The person convening the assembly is authorised to take all measures necessary for convening an assembly. Complying with the requirement to notify of the assembly, the person convening the assembly may invite, in particular, participants personally, in writing or otherwise. The person convening the event also has the right to have the invitation to the assembly announced on the local radio at an appropriate time. Municipalities, State authorities and organisations render the person convening the assembly assistance according to their possibilities and circumstances.

461. If there are reasons to believe that the assembly will be disturbed, the person convening the event may ask the municipality or the appropriate Police Corps unit for protection of the assembly. The person convening the event has the right to give, directly or with the help of stewards, instructions to ensure that the assembly takes place in due course.

462. The person convening the assembly has the obligation to:

- Cooperate with the municipality, at its request, to the extent necessary to ensure that the assembly takes place in due course and to comply with the obligations laid down in specific legal provisions
- Arrange the necessary number of competent stewards older than 18 years of age
- Control the course of the assembly in such a way that it does not deviate significantly from the purpose of the assembly specified in the notification
- Give the stewards binding instructions
- Ensure the peaceful course of the assembly and to take preventive measures
- End the assembly

463. If the person convening the assembly fails to pacify the situation after a disturbance of a peaceful assembly, he/she shall seek necessary assistance from the municipality or a Police Corps unit. The person convening the event may also do so when the participants in the assembly do not leave peacefully after its end. The participants in the assembly have the obligation to follow instructions given by the person convening the event and stewards and to refrain from any action that could disturb the orderly and peaceful course of the assembly. The participants in the assembly have the obligation to leave peacefully after the end of the assembly. If an assembly is dissolved, the participants have the duty to immediately leave the venue of the assembly. Their leaving must not be hindered in any manner.

464. The participants in an assembly must not carry any firearms and/or explosives; neither may they carry other items that could cause bodily harm.

465. The law does not stipulate any requirements for seeing the person convening the event prior to holding the assembly. The only requirement is a notification of the assembly. Demonstrations require a prior notification.

466. The person convening the event has the obligation to notify the municipality, in writing, of the assembly a minimum of five days in advance. The municipality may accept shorter notice of notification in reasonable cases. Notification to be made by a legal entity shall be lodged by the person authorised to act on its behalf in this matter. A notification can also be filed in person on working days between 08.00 a.m. and 03.00 p.m. The municipality shall create conditions to properly receive notifications.

467. In the notification, the person convening the assembly must specify:

- The purpose of the assembly, its date and venue, the time of its beginning and the expected time of its end, if the assembly is to be held in public areas
- The estimated number of participants in the assembly
- Measures to be taken to ensure compliance of the assembly with the law, in particular the number of stewards and their identification
- The starting point, route and the end point of a street procession
- The name, surname, birth identification number and place of residence of the person convening the assembly; in case of a legal entity, the name, surname and place of residence of the person authorised to act on its behalf in this matter
- The name, surname, and place of residence of the person authorised to act on behalf of the person convening the assembly

468. When an open-air assembly is to be held outside public areas, the person convening the assembly has the obligation to attach the consent of the owner or user of the property to the notification.

469. When the notification is lodged in person, the municipality shall issue the person convening the assembly a written confirmation stating the day and time of receipt of the notification. When the notification is incomplete or inaccurate, the municipality shall inform the person convening the assembly and ask for correction or completion.

470. Assemblies are not subject to any permission procedure.

471. The notified municipality will prohibit the assembly when the notified purpose of the assembly aims at a call for:

- Denial or restriction of personal, political or other rights of citizens on grounds of their ethnic origin, gender, race, descent, political or other conviction, religious conviction, social status and/or incitement to hatred and intolerance on these grounds
- Violence or disorder
- Other violations of the Constitution and laws

472. The municipality shall also prohibit the assembly when it is to be held in a place posing serious health threat for the participants, or when an assembly is to be held in same place and at the same time as an assembly notified earlier and the persons convening the assemblies failed to arrive at an agreement on a change of time; when it is impossible to decide which notification was delivered first, the decision is taken by drawing lots in the presence of the representatives of the persons convening the assemblies.

473. A municipality may prohibit an assembly if it is to be held in a place where the necessary restrictions on transport and deliveries would be in serious conflict with the interest of the population and when it is possible to hold the assembly elsewhere without unreasonable difficulties and without frustrating the notified purpose of the assembly. The municipality shall normally decide on the prohibition of an assembly or on the time of its end immediately, but not later than three days from the time of receiving a valid notification.

474. The municipality shall display the written decision on its official board and inform of the decision on the local radio or in a similar manner. If the assembly is going to be held on the territory of two or several municipalities, the district authority shall ensure that the decision is announced in the municipalities where the assembly is to be held. The decision is considered served on the person convening the assembly by display on the official board. Upon request, the municipality will issue the person convening the assembly a written copy. If the municipality does not display a written copy of its decision on the official board the person organising the event may hold the assembly.

475. The person organising the assembly may apply for redress against the decision taken by the municipality within 15 days of its being served. Filing of redress shall have no suspensive effect. The court shall decide within three days.

476. The person convening the assembly or the participant in an assembly may be imposed a fine of SKK 1,000 for an infraction of the right of assembly. A person convening the assembly or a participant in an assembly may be sentenced within the range of individual elements of crime under the Criminal Code.

477. In the absence of a representative of the municipality, a Police Corps officer on duty may disperse a prohibited assembly. In the absence of a representative of the municipality, an assembly may also be dispersed by the chief of the competent Police Corps unit or the commanding officer when its participants engage in the commission of criminal offences and it is impossible to stop them in any other way, in particular by intervention against individual offenders. The person convening the assembly or a participant in an assembly may challenge the dispersal of an assembly in court within 15 days. The court will decide

whether the assembly was dispersed according to the law or not. The Act on the right of assembly does not stipulate these responsibilities. These are covered by other legal provisions (e.g. the Criminal Code).

478. Considering the right of assembly and association guaranteed by the Constitution, we submit that § 195 of the Criminal Code 300/2005 legislates the criminal offence of violating the freedom of association and assembly. This crime is considered accomplished when anybody “restricts another person in the exercise of his right of association or assembly by using violence, threat of violence, or threat of other serious harm”. This crime is equally applicable to any person who refuses, by using violence or the threat of violence, to follow measures imposed by the person convening the assembly or measures decided by the stewards of such assembly to maintain order in the context of an assembly subject to the notification obligation.

479. The Law on the Security of the State provides for the possibility of restricting fundamental rights and freedoms and of imposing obligations commensurate with the situation in the whole territory of the State or a part thereof in the scope and time needed.<sup>60</sup>

480. In their everyday life, the inhabitants of Slovakia exercise the freedom of assembly without any problems and interventions by the State. The right to freedom of assembly has not been an issue of concern for the Committee.

## **Article 22**

481. Under article 29 of the Constitution of the Slovak Republic, the right to freedom of association is guaranteed.

482. The conditions for the exercise of this right are laid down in specific laws. In addition to Act No. 83/1990 Coll. on the association of citizens as amended (hereinafter the “Association of Citizens Act”), which enables the association of persons and the development of interest activities in various areas of social life, and Act No. 207/1996 Coll. on foundations, other pieces of legislation on non-governmental non-profit organisations were passed in 1997. They include, in particular, Act No. 147/1997 Coll. on non-investment funds and Act No. 213/1997 Coll. on non-profit organisations providing generally beneficial services.

483. The citizens have the right to form political parties and political movements and to join them. The exercise of this right may be restricted only in cases laid down by law if it is necessary in a democratic society in the interests of national security, protection of public order, prevention of crime and the protection of the rights and freedoms of others. Political parties and political movements as well as clubs, societies and other associations are separated from the State.

484. Under article 37 of the Constitution of the Slovak Republic, everyone has the right to associate freely with others to protect his/her economic and social interests. Trade unions are established independently from the State. Any restrictions on the number of trade union organisations and privileges accorded to any of them, whether in a company or an industry, are inadmissible. The activities of trade unions and the establishment and activities of other associations for the protection of economic and social interests may be restricted by law only if it concerns measures necessary in a democratic society to protect national security, public order, or to protect the rights and freedoms of others.

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<sup>60</sup> See text to article 4.



485. Act No. 83/1990 Coll. on the association of citizens as amended governs the right of citizens to freedom of association. Permission by a State authority is not necessary for the exercise of this right. This law does not apply to the association of citizens in political parties and political movements, for gainful activity, or for ensuring proper performance of certain professions in churches and religious societies. Citizens may form clubs, societies, unions, movements and other civic associations, as well as trade unions, and join them. Legal entities may also be members of associations. Associations are legal entities and State authorities may intervene in their status or activities only within the law. Associating, being a member of an association, participating in its activities, supporting an association or staying outside an association shall not prejudice civil rights. Nobody may be compelled to associate, to membership in associations or participation in their activities. Everyone is free to resign from membership in an association.

486. Under the Freedom of Association Act, associations shall be prohibited that:

(a) Aim at the denial or restriction of personal, political or other rights of citizens on the grounds of their ethnic origin, gender, race, descent, political or other conviction, religious conviction or social status; the instigation of hatred and intolerance on these grounds; or the support of violence or other violations of the Constitution and laws;

(b) Pursue their goals in a manner contradicting the Constitution and the laws;

(c) Are armed or have armed units; associations whose members possess or use firearms for sporting purposes or the exercise of the right to hunt shall not be considered such associations.

487. An association is established by registration. The application for registration may be filed by three citizens of whom at least one must be older than 18 years of age (the preparatory committee). The application shall be signed by all the members of the preparatory committee who shall give their name, surname, birth identification number and place of residence, and it shall indicate who of the members older than 18 years of age is authorised to act on their behalf. Two copies of the statutes are attached to the application. The statutes must include:

- The name of the association
- Its seat
- The objectives of its activities
- The bodies of the association, the manner in which they are established, specification of the bodies and officials authorised to act on behalf of the association
- Provisions on organisational units if they are to be established and on whether and how they can act on their own behalf
- The principles of financial management
- The rights and duties of the members

488. The application for registration is to be filed with the Ministry of the Interior of the Slovak Republic. The registration proceedings shall commence on the day when an application, free of any shortcomings, was served on the Ministry. When an application fails to indicate all particulars set forth by law, the Ministry shall normally inform the preparatory committee immediately, but not later than 5 days after the receipt of the application, while also stating that registration proceedings shall not commence before the shortcomings are corrected. The Ministry shall reject an application for registration when the submitted statutes make it clear that it is an organisation not subject to the Act on the Freedom of Association, the statutes of the association do not comply with the law, it is not a permitted association, or the objectives of the association are in contradiction with the

law. The Ministry shall decide on the refusal of registration within 10 days from the beginning of the proceedings. The members of the preparatory committee may apply for redress against the decision on refusal of registration to the Supreme Court of the Slovak Republic. If the Ministry does not ascertain any reason for refusing registration, the registration shall be completed within 10 days from the beginning of the proceedings. The application for registration is subject to an administrative fee of SKK 2,000. No decision is issued on registration in administrative proceedings.

489. If the Ministry ascertains that after the registration, the association is engaged in activities contradicting the law, it will immediately inform the association and urge the association to discontinue such activity. If the association continues in this activity, the Ministry shall dissolve the association. A redress against this decision may be filed with the Supreme Court of the Slovak Republic.

490. In contrast to the registration principle applied to the formation of associations, the formation of trade unions and employers' organisations is entered in the records. These entities become legal entities on the day following the service of the application for entry in the records on the Ministry. The application for entry in the records is not subject to an administrative fee.

491. In the Slovak Republic, 29,084 associations, 959 trade union organisations, 61 trade union associations and 69 employers' organisations are registered. In the reporting period from July 2003 until May 2008, the Ministry of the Interior refused to register 3 associations and issued 2 decisions to dissolve associations that were not permitted and that pursued the achievement of their goals in contradiction with the Constitution of the Slovak Republic and the laws of the Slovak Republic. In one case, a redress against the decision made by the Ministry of the Interior on dissolving the association was lodged with the Supreme Court of the Slovak Republic. The case is being heard by the Court.

492. In the reporting period, a new law that entered in effect on 1 July 2005 replaced the then existing legislation on association in political parties and political movements.

#### *Political parties*

493. The conditions for associating in political parties and political movements are stipulated in Act No. 85/2005 Coll. on political parties and political movements. A political party is established on the day of entry into the register of political parties kept by the Ministry of the Interior of the Slovak Republic. An application for registration is submitted by a preparatory committee composed of a minimum of three members who must be nationals of the Slovak Republic having their permanent residence in the territory of the Slovak Republic, be at least 18 years of age and of full legal capacity.<sup>61</sup> The application

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<sup>61</sup> The preparatory committee attaches these documents to the application: list of citizens who agree with the foundation of the party (the list must be signed by at least 10,000 citizens who give their name, surname, address of permanent residence and the number of their ID card), 2 copies of the party statutes, confirmation of payment of the SKK 2,000 administrative fee, statement of the address of the seat of the political party specifying the name of the municipality, street and number of the house, signed by the proxy.

The statutes must include: the name of the party and its abbreviation if it is going to be used (the name of the party and its abbreviation must be different from the name and abbreviation of an already registered party), the programme of the party including the objectives pursued, the rights and duties of the members of the party, the bodies of the party, the manner of their election and scope of their powers, the manner in which the statutory body acts on behalf of the party, whether and in what scope other party members or its employees can perform legal transactions, the principles of financial management of the party, provisions on organisational units of the party if they are going to be

must be made in writing, signed by each member of the preparatory committee and the authenticity of signatures must be verified. The application must indicate the name, surname, birth identification number, address of permanent residence of all members of the preparatory committee and the proxy who will act on behalf of the preparatory committee.

494. Proceedings for the registration of a political party shall commence on the day when the application is served on the Ministry. The Ministry of the Interior shall register the political party within 15 days from the beginning of the proceedings provided the application is without shortcomings and there is no reason for refusing to register the political party. No decision on political party registration is issued. One copy of the statutes with the date and the registration number of the political party indicated on it will be served on the proxy of the preparatory committee.

495. If the application and attached documentation have shortcomings which do not constitute grounds for rejecting registration, the Ministry of the Interior shall send the proxy, within 15 days from the commencement of the proceedings, a written notification stating all the shortcomings, calling for corrections within a certain time limit and instructing that failure to do so will result in staying the proceedings. The proceedings are suspended until the lapse of the time limit for correcting the shortcomings. No decision to suspend proceedings is issued.

496. The Ministry of the Interior will refuse registration of a political party within 15 days from the beginning of the proceedings if the list of citizens fails to comply with the law, the preparatory committee fails to comply with the requirements set by law, the seat of the political party is not in the territory of the Slovak Republic, the name of the political party and its abbreviation is not different from the name and abbreviation of an already registered political party and the statutes of the political party contradict the law. An action against the decision to refuse the registration of the political party may be filed with the Supreme Court of the Slovak Republic.

497. If the political party acts in contradiction to the law after its registration, the prosecutor general is authorised to lodge a motion to dissolve the political party. Such motion is decided by the Supreme Court of the Slovak Republic.

498. Today, 41 political parties and political movements are registered in the Slovak Republic. Since the effect of the new law, the Ministry of the Interior has refused one registration of a political party because of non-compliance of the list of citizens with the law. The prosecutor general lodged one motion requesting dissolution of a political party. The Supreme Court of the Slovak Republic satisfied this motion and dissolved the political party.

#### *Non-governmental non-profit organisations*

499. There are 7 legal provisions in the area of non-governmental non-profit organisations:

- Act No. 34/2002 Coll. on foundations and on the amendment to the Civil Code as amended (foundations)
- Act No. 83/1990 Coll. on association of citizens as amended (civil association)

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established, in particular, the definition of the extent in which they may acquire property, administer and dispose with it on behalf of the party, and/or acquire other property rights and the definition of the scope in which they may act and make commitments on behalf of the party (organisational units of the party are not legal entities), the manner of handling the asset balance after the liquidation of property, and liabilities after the abolishment of the party.

- Act No. 147/1997 Coll. on non-investment funds (non-investment funds)
- Act No. 213/1997 Coll. on non-profit organisations providing generally beneficial services (non-profit organisations)
- the Civil Code (interest associations of legal entities)
- Act No. 369/1990 Coll. on municipalities as amended (associations of municipalities)
- Act No. 116/1985 Coll. on the conditions for work of organisations with an international element (organisations with an international element)

500. A foundation is an association of assets set up for the purpose of advancing a public benefit goal. A natural person or legal entity may establish a foundation. To have a foundation established, the founder must invest a minimum endowment of SKK 200,000. This endowment may only be composed of pecuniary means and real estate. A foundation is established on the day of its entry into the registry of foundations. The Ministry of the Interior is the registry authority. Foundations are non-membership-based organisations. The rules governing the activities of the foundation are stipulated in the deed of the foundation.

501. A civic association is formed by citizens to satisfy their own interests based on the right to freedom of association. The membership principle applies to civic associations. The activity of the civic association and the rights and duties of its members are laid down in statutes of the civic association. A civic association is established by registration with the Ministry of the Interior. Trade unions and employers' organisations are an exception to this rule – their formation is entered in the records.

502. A non-investment fund associates pecuniary means allocated to the accomplishment of a general benefit purpose or to specific humanitarian assistance to individuals or a group of persons whose lives are in danger or who need urgent help after a natural disaster. A non-investment fund may be established by a natural person or a legal entity. To have a non-investment fund established, the founder must invest a minimum SKK 2,000 as a pecuniary deposit. A non-investment fund is a non-membership-based organisation; it is established by registration with the regional authority having territorial competence in the seat of the non-investment fund. A non-investment fund is established by a deed of establishment (establishment contract) and the statutes of the non-investment fund govern its activity.

503. A non-profit organisation provides general benefit services to all under the same conditions specified in advance. Its profit may not be used for the benefit of its founders, members of its bodies nor its employees. The whole profit must be used to secure general benefit services. A non-profit organisation may be established by a natural person, a legal entity and the State. Non-profit organisations are non-membership-based organisation. They are established on the day of the final registration decision. The regional authority having territorial competence in the seat of the non-profit organisation is the registry body. A non-profit organisation is established by a deed of establishment. The organisational structure, activities and financial management of the non-profit organisation are laid down in its statutes.

504. Interest associations of legal entities are formed by legal entities to protect their interests or to accomplish another purpose. An interest association is based on the membership principle and it is established by a contract of establishment or a constituent meeting of members. The statutes identify the organisational structure, the rights and duties of its members, the commencement and the end of membership, the manner in which the association is terminated and the handling of its liquidation balance. The association is established by an entry into the registry of associations kept at the regional authority having territorial competence in the seat of the association.

505. Associations of municipalities are formed by municipalities for the purpose of creating conditions conducive for the accomplishment of the tasks of municipalities and higher territorial units. The association of municipalities is a membership-based organisation and it is founded by contract to establish the association. The statutes lay down the details of the organisational structure, activities and financial management of the association. The association of municipalities is established by an entry into the registry kept at the regional authority having territorial competence in the seat of the association of municipalities.

506. An organisation with an international component is an international non-governmental organisation and an organisation of foreign nationals. Such organisation may be established, work and have its seat in the territory of the Slovak Republic only based on permission by the Ministry of the Interior. Its statutes stipulate the staff regulations and the content of the work of the organisation. An organisation with an international component is a membership-based organisation.

507. Considering that some provisions of Act No. 83/1990 Coll. on the association of citizens do not satisfy current needs, the Ministry of the Interior of the Slovak Republic prepared a new draft law (on clubs) in 2007. The draft law intended to introduce the registry and to regulate the registration procedure, the obligation of presenting annual reports to the registry body, financial management, a ban on business activities, reduction of the number of non-governmental non-profit organisation forms, and sanctions for failure to comply with the duties set forth in the law. In the cross-sectoral review, the NGOs disagreed fundamentally with the draft law, in particular with its parts on the prohibition of business activities and on annual reports. Due to strongly negative comments, further legislative work on the draft law was discontinued.

#### *Restrictions on certain constitutional rights of professional soldiers*

508. Act No. 346/2005 Coll. on civil service of professional soldiers in the Armed Forces of the Slovak Republic and on the amendment to certain acts, restricts the petition right of professional soldiers to individual applications in matters related to civil service, proposals and complaints of a professional soldier under §11 of the Restrictions on certain constitutional rights of professional soldiers. Professional soldiers may not be members of any political party or a political movement. Professional soldiers may not participate in assemblies organised by political parties or political movements. Professional soldiers may not associate in trade unions active in armed forces and workplaces where they perform civil service.

#### *Churches and religious societies*

509. Both the members of registered and not registered churches and religious societies have their fundamental human rights and freedoms, like the freedom of association, guaranteed in the same way in the Slovak Republic. The State does not interfere with these freedoms guaranteed by the Constitution. Thus, the churches and religious societies can work freely regardless of whether or not they are registered in the Slovak Republic, as proved by a wide range of activities, e.g. recruitment activities by Scientologists, peace activities of Moonists, music concerts and festivals of various Hindu societies.<sup>62</sup>

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<sup>62</sup> See article 18.

## Article 23

### *Family protection*

510. The Government of the Slovak Republic adopted the State Family Policy with basic strategic goals that are still valid: achieving relative economic independence of families as the basis of their civil independence and the exercise of their responsibility for and choice of their own future, the success of families in the performance of their function, stability and social equality in marital and parental relationships with a view to equality in the division of family roles in society, the creation of optimum conditions for the reproduction of society, the adoption of measures allowing a consistent application of the principle of choice and/or compatibility to a parent's decision to take parental leave, as early as 1996.

511. To ensure smooth continuation of reform measures and of extensive changes in society, the State Family Policy was updated, mainly in the areas of employment, education, housing and family legal protection policies, by Resolution of the Government of the Slovak Republic No.1091/2004 in 2004. Since 2004, basic priorities in the implementation of the Family Policy also include improved access to education, availability of housing, reconciliation of working and family life, legal protection of the family and assistance in crisis situation, in addition to the fundamental strategic goals.

512. The system of State social support to families with dependent children composed of single and recurring State social benefits is one of the tools for implementing the State Family Policy. Through these benefits, the State makes financial contributions to families at the birth of one or more children at the same time and to the education and maintenance of the child, during the child's study, during parental care for a small child, and at the outset of and during alternative care.

513. In 2003–2008, several fundamental pieces of legislation that responded to the needs of families in changing social conditions were implemented. Currently, a number of legal provisions regulate granting of State social benefits.<sup>63</sup> At the same time, Act No. 300/1999 Coll. on housing allowance — the housing allowance has become part of the system of assistance in material need, Act No. 236/1998 Coll. on maintenance allowance — as a consequence of building professional armed forces of the Slovak Republic, and Act No. 265/1998 Coll. on foster care and on allowances for foster care — replaced with Act No. 627/2005 Coll. on allowances to support alternative child care — were repealed.

514. In the reporting period, the most significant changes were introduced in the child benefit scheme where the income test of jointly assessed persons was cancelled and since 2004, the same child benefit is granted to all dependent children regardless of the income of their parents and the age of the child.

515. Important changes were also implemented in the granting of childbirth allowances where a bonus of SKK 11,000 to childbirth allowance at the birth of mother's first child, effective from 1 January 2007, was introduced. This bonus has been increased to SKK 20,440 with effect from 1 February 2008. This bonus is the contribution of the State to higher expenses of the family due to the birth of their first child. In this case, the support of the State together with the childbirth allowance granted at the birth of each child is SKK 25,000.

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<sup>63</sup> Act No. 600/2003 on child allowance and on amending and supplementing Act No. 461/2003 Coll. on social insurance as amended, Act No. 280/2002 Coll. on parental bonus as amended, Act No. 235/1998 Coll. on childbirth bonus and bonus to parents who have three or more children born at the same time or twins more than once in two years amending certain other acts as amended, Act No. 627/2005 Coll. on bonuses to support alternative child care.

516. The parental allowance to parents caring for a child younger than three years of age or younger than six years who is in long-term poor health has also been modified. The parent who, in addition to caring for the child, is also engaged in gainful activity and arranges care for the child by another natural person or legal entity during her/his absence continues to receive the State parental allowance in the full amount with effect from 1 July 2005. This parental allowance is SKK 4,780 since 1 September 2008. The amount of the parental allowance is adjusted proportionally to the change of the subsistence minimum every year.

#### *Family protection in asylum facilities*

517. Based on § 39, paragraphs 1 and 2, of the Asylum Act, the Ministry of the Interior shall create appropriate conditions for the accommodation and care of unaccompanied minors, families with children and persons requiring special care in asylum facilities. When placing a foreigner in an asylum facility, the Ministry of the Interior considers the age, health, family ties and religious, ethnic or national specificities of the person. Men, women, minors and adults are placed separately while taking into account family relationships. Foreigners are moved from one asylum facility to another facility only in necessary cases.

518. After satisfying the requirements set forth in §10 of the Asylum Act, the Ministry of the Interior shall grant asylum to the members of the family of the asylum-seeker for the purpose of family reunification unless provided otherwise in this law. After satisfying the requirements laid down in §13b of the Asylum Act, the Ministry of the Interior will grant subsidiary protection for the purpose of family reunification to the members of the family of the foreigner who was granted subsidiary protection unless otherwise provided in this law. Identically, the Ministry of the Interior shall grant temporary shelter for the purpose of family reunification to the members of the family of the de facto refugee after satisfying the requirements set forth under §31a of the Asylum Act.

## **Article 24**

519. Article 41 of the Constitution of the Slovak Republic stipulates, “children and youth are guaranteed special protection”. Children born both of marriage and outside marriage have equal rights. Care for children and their education is the right of the parents; the children have the right to parental care and upbringing. Parental rights may be restricted and minors may be separated from their parents against the will of their parents only by a court decision based on law. Parents caring for their children have the right to assistance provided by the State.

520. The Slovak Republic adopts and implements many legislative and non-legislative measures which aim at the protection of the rights and interests of the child. The best interest of the child is the principle preferred by all competent entities when taking measures in all areas, as also confirmed by the legislation regulating the individual areas.

521. In 2005, the Ministry of Labour, Social Affairs and Family of the Slovak Republic drafted the “Analysis of the improvement of the protection of the rights of the child and proposals for addressing the establishment of an institution for the rights of the child” approved by the Government of Slovakia and then by the National Council of the Slovak Republic. The objective of the Analysis of the improvement of the protection of the rights of the child was to introduce an institutional framework for ensuring protection of the rights of the child in Slovakia and to summarise the possibilities of improving the effectiveness of the protection of the rights of the child and to propose options for addressing the existing situation in the Slovak Republic.

522. In 2005–2007, several important measures having a significant impact on the protection of the rights of the child were adopted and implemented. The progress achieved in individual policies is visible. Adopting new legal provisions can be considered the most significant measure in the context of the concluding observations of the United Nations Committee on the Rights of the Child.

523. The Ministry of Labour, Social Affairs and Family of the Slovak Republic drafted and implemented the sectoral “2005–2006 Action Plan for Ensuring Protection of Children at Risk” which stipulated essential tasks linked with the implementation of new legislation where avoiding having to take children away from their families, alternative care and adoption were the priorities. The impacts of the legislation are continuously monitored by all stakeholders; results and experience gained have been reflected in the draft amendment to the social and legal protection of children, and social guardianship legislation.

524. One of the tools for the protection of the rights of the child is the provision of substitute maintenance to the child if the parent or obligor fails to comply with the maintenance obligation imposed by the court. The institution of substitute maintenance was introduced by Act No. 452/2004 Coll. on substitute maintenance effective from 1 January 2005 when the State started to provide funds for child maintenance in case of failure to comply with the maintenance obligation imposed by the court. The adoption of the new Family Act in 2005, the amendment to the Civil Procedure Code in 2005 and the experience gained from the application of the Substitute Maintenance Act necessitated the adoption of new legislation regulating substitute maintenance that shall enter into effect on 1 July 2008.

525. The new legislation enlarged the group of eligible persons by also including orphans whose orphan’s pension is less than the minimum maintenance set forth in Act No. 36/2005 Coll. on the family and on amending and supplementing other relevant acts, and orphans not entitled to orphan’s pension. Substitute maintenance also allows addressing the situation of children where the obligor cannot fulfil their maintenance obligation and the child cannot be covered by the system of social insurance, either. Granting substitute maintenance can be considered an important preventive component targeted to the prevention of material need by children.

#### *Minor asylum-seekers*

526. Financial assistance from the European Refugee Fund was used in the framework of comprehensive assistance to asylum-seekers and integration in society of asylum-seekers and persons under so-called subsidiary protection. The “Social, Legal and Psychological Counselling and Assistance, Material Care and Leisure Time Activities for Asylum-Seekers and Refugees with an Emphasis on Minors and Other Vulnerable Persons” (1 December 2006–30 November 2007) project was implemented in all asylum facilities of the Migration Office in the framework of the European Refugee Fund.

527. Since 1 December 2007, two projects with a similar content have been implemented in the framework of the European Refugee Fund: “Better Quality of Life for All” implemented by the Slovak Humanitarian Council NGO and “Asylum SK” implemented by the Society of Goodwill NGO.

528. Under the amendments to the Act on the Stay of Aliens, Police Corps units shall report finding a minor alien in the territory of the Slovak Republic and immediately refer the minor alien to the office of labour, social affairs and family in whose territorial jurisdiction the minor alien was found.

529. The authority for social and legal protection of children and social guardianship enforces measures concerning the unaccompanied minor during his/her stay in the territory of the Slovak Republic to ensure care appropriate to the child’s culture, language, religion



and traditions of the country of origin, and participates in the search for parents or other members of the family for the purpose of the unaccompanied minor's family reunification. The authority also notifies the embassy of the country where the unaccompanied minor has his/her habitual residence of measures adopted in the interest of his/her return when it is evident that the minor has a habitual residence in a safe country.

530. For the purpose of ensuring protection of unaccompanied minors' interests and interests protected by law, expansion of the Horné Orechové children's home for unaccompanied minors that increased the capacity of the facility to 38 beds was completed on 5 February 2007 and the facility is today in full operation. In this facility, the care for unaccompanied minors is the same as care for children who are nationals of the Slovak Republic in a children's home, in accordance with the principles of equal treatment and treatment appropriate to the child's age and mental development.

*Monitoring of and education on the rights of the child*

531. The Slovak National Centre for Human Rights monitors compliance with the rights of the child under the Convention on the Rights of the Child and, thus, fulfils the recommendation of the United Nations Committee and the international commitment of the Slovak Republic as well as the tasks resulting from the National Plan of Action for Children approved by the Government of the Slovak Republic by its Resolution No. 837 of 7 August 2002.

532. In 2007, the Centre monitored children's participation in the forming and functioning of children's parliaments and pupils' school councils. The monitoring aimed at identifying in which way children's parliaments and pupils' school councils function, and in the particular case of pupils' school councils, at identifying the actual differences in the ways in which they are established. The formation of children's parliaments and pupils' school councils is not covered by any legislation and their formation is mainly initiated by teachers. The Centre, which is engaged in the issue of the rights of the child by virtue of law, rendered specialised assistance and support to the representatives of children's parliaments and pupils' school councils of the schools concerned.<sup>64</sup>

533. In 2007, the Centre monitored international abductions of children by parents. The objective of this monitoring was to present the actual situation in Slovakia, to acquire information on methods and procedures applied to individual cases and the main impediments to reaching a successful and quick solution. In cooperation with the Centre for International Legal Protection of Children and Youth, they surveyed all offices of labour, social affairs and family that were involved in cases of international abductions of children. Monitoring confirmed a growing trend in children abductions from abroad to Slovakia by mothers while the number of international abductions of children from Slovakia abroad has remained unchanged.<sup>65</sup>

534. In March 2008, a training seminar for selected social workers from the offices of labour, social affairs and family and judges from district courts responsible for the enforcement of protection of the rights of the child was held. The training seminar was the first stage of the two-year project on the "Integrated System of Social and Legal Protection of Children and Families in Slovakia" organised on the basis of the Agreement on the Implementation of Projects Oriented on the Protection of the Rights of the Child Concluded between ARAI (Regional Agency for Intercountry Adoptions) in Piemonte, Italy and the Slovak National Centre for Human Rights.

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<sup>64</sup> The Centre published the details of findings and recommendations in the 2007 Report on the Rights of the Child in the Slovak Republic.

<sup>65</sup> Idem.

535. From May to December 2008, the Centre organised the so-called non-discrimination club for 636 secondary school students in 11 towns of the Slovak Republic. The participants learned about the main topics which included human rights, the rights of the child, non-discrimination, racism and intercultural dialogue through films, games and lively presentations. Through this activity, the Centre offers the youth an embracing, tolerant and informal platform where secondary school students have the possibility to express their views and confront them with peers and experts of the Slovak National Centre for Human Rights.

536. The Centre also participated in the formulation of the National Plan of Action for Children, both in the drafting of the part on the establishment of an independent organisation and of the answers to the questions resulting from the recommendations of the United Nations Committee on the Rights of the Child on the second periodic report on the implementation of the Convention on the Rights of the Child.

537. The representatives of the Centre are members of all the important European bodies for the protection and monitoring of the rights of the child: L'Europe de l'Enfance, Forum on the Rights of the Child at the EC in Brussels and ChildONEurope with its seat in Florence.

538. From the very beginning, the Public Defender of Rights has paid attention to children and youth, educational staff and mothers associated in mothers' centre in the framework of the cycle called the "Public Defender of Rights for Children and Youth". These events, where the Public Defender of Rights personally explains to the younger generation the issues concerning protection of fundamental rights and freedoms and, in particular, the provisions of the Convention on the Rights of the Child and their enforcement in practice, as well as the duties of children in the family and at school, are organised all year round.

539. The Public Defender of Rights facilitates acquisition of knowledge on fundamental rights and freedoms. The majority of cooperating schools also participated in the knowledge quiz organised by the Office of the Public Defender of Rights that aimed at testing the level of knowledge of the younger generation on the protection of rights and freedoms. The Public Defender of Rights has also paid attention to the protection of the rights of children in children's homes, re-education homes, diagnostic centres and therapeutic education sanatoria in the past six years.

540. Since September 2008, the Office of the Public Defender of Rights has implemented a pilot project called "To Make the Protection of the Rights of the Child in Slovakia More Effective", which aims at enhancing the participation of children and youth in the protection of their rights by instituting the so-called "children fellow workers of the Public Defender of Rights – the ombudsmen". In addition to increasing the level of education (including the need for education on tolerance and other values respected by the society), another goal pursued is enhancing the prestige of family education and of the quality of the school environment.

541. Six international conferences on the protection of the rights of the child were organised or co-organised by the Office of the Public Defender of Rights. The Office of the Public Defender of Rights cooperates with several non-governmental organisations and institutions active in the protection of the rights of the child.

542. On his own initiative, the Public Defender of Rights, together with the lawyers from his Office, provided legal guidance in more than 2,500 cases concerning the protection of the rights of the child, both at the seat of the office in Bratislava and at the regional branches in the Slovak Republic. Improving legal awareness of the rights of the child guaranteed specifically by the Convention on the Rights of the Child is one of the priority activities of the Public Defender of Rights targeted to children as well as professionals and

the public at large. The Office of the Public Defender of Rights has already organised five “Ombudsman’s Open Day for Children and Family” events during which the Public Defender of Rights and all his lawyers personally communicate with the office visitors, parents, children and other members of the public during extended office hours on the occasion of International Children’s Day.

543. The Public Defender of Rights raises awareness of the need to observe the rights of the child at press conferences. He has presented specific cases on television news programmes, and the lawyers from the Office of the Public Defender of Rights regularly answer questions concerning the protection of the rights of the child in live discussions on radio, morning or evening TV programmes and via an Internet portal. The Office of the Public Defender of Rights publishes information materials on the protection of the rights of the child. One of the issues of the Information Bulletin of the Office of the Public Defender of Rights was specifically devoted to the protection of the rights of the child.

544. Building on the mentioned activities, the Public Defender of Rights also actively participated in the drafting of the National Plan of Action for Children where he expressed interest in an independent institution for the protection of the rights of the child in the spirit of the recommendations by the United Nations Committee on the Rights of the Child.

*Protection of minors against undesirable content of audiovisual works*

545. Under Act No. 343/2007 Coll. on conditions of registration, public broadcasting and storage of audiovisual works, multimedia works and audio recordings of artistic performances and on amending and supplementing other relevant acts (the “Audio/Video Act”) which entered into effect on 1 January 2008, a unified labelling system for the whole audiovisual area, including broadcasting, has been introduced with a view to the protection of minors.

546. Decree of the Ministry of Culture of the Slovak Republic No. 589/2007 Coll. lays down details on a single labelling system for audiovisual works, audio recordings of artistic performances, multimedia works, programmes and other components of programme services, and on its application.

547. The decree, effective from 1 January 2008, laid down details of a single labelling system, namely the definition of basic and uniform criteria for the assessment of the content, resulting classification and labelling with graphic symbols of audiovisual works, audio recordings of artistic performances, multimedia works, programmes and other components of programme services with a view to restriction in terms of the inappropriateness or appropriateness for individual age groups of minors.

548. The objective of the legislation is the protection of minors considering the specificities of individual age groups, better information for the public and parents on offered content and unification of labelling. Uniform labelling of audiovisual works, audio recordings of artistic performances, multimedia works, programmes and other components of programme services with information on age appropriateness or inappropriateness for certain age groups is a significant contribution to the system of protection of minors against undesirable content offered by media or other IT.

549. The rights regulated in paragraphs 2 and 3 of the article are also reflected in the institution of baby hatches as envisaged by article 6 of the Covenant.

## **Article 25**

550. Under article 30 of the Constitution, citizens have the right to take part in the conduct of public affairs, directly, through a referendum as stipulated in articles 93–100 of

the Constitution, and through freely elected representatives to parliament — the National Council — and self-administration bodies, and through the election of the President of the Slovak Republic or a popular vote on his/her resignation. Elections must be held within time limits that do not exceed the regular election period provided for in the law.

551. The voting right is defined as universal, equal and direct suffrage by secret ballot. Citizens have access to elected and other public offices on an equal basis.

552. Elections to the National Council, the European Parliament, territorial self-government bodies, the election of the President of the Slovak Republic, a popular vote on his/her removal from office and voting in a referendum are regulated in these specific laws:

- Act No. 333/2004 Coll. on elections to the National Council of the Slovak Republic
- Act No. 346/1990 Coll. on elections to municipal self-government bodies as amended
- Act No. 46/1999 Coll. on the election procedure of the President of the Slovak Republic, plebiscite on his/her removal and on amending other relevant act
- Act No. 564/1992 Coll. on the procedure for holding referendums as amended
- Act No. 303/2001 Coll. on elections to the bodies of self-governing regions and on the amendment to the Civil Procedure Code
- Act No. 331/2003 Coll. on elections to the European Parliament as amended

*Elections to the National Council of the Slovak Republic*

553. The prerequisite for the right to vote in the elections to the National Council is citizenship of the Slovak Republic and a minimum age of 18 years. In the election law, the right to vote in the elections to the National Council of the Slovak Republic is not linked with the requirement of permanent residence in the territory of the Slovak Republic. The law provides for the possibility of voting abroad via the postal service for those voters who have their permanent residence abroad and for those voters with permanent residence in the Slovak Republic who are outside the territory of the Slovak Republic at the time of the election.

554. Any citizen of the Slovak Republic who is 21 years of age on the day of the election and has permanent residence in the territory of the Slovak Republic may be elected as a member of the National Council of the Slovak Republic.

555. The law does not stipulate the duty to vote; it is formulated as a right to vote. Disqualifications from exercising the right to vote include restriction of personal freedom for reasons of protection of public health, serving a custodial sentence and deprivation of legal capacity.

556. All citizens of the Slovak Republic, regardless of their national origin or social status, exercise their active right to vote on an equal basis.

557. The term of members of the National Council of the Slovak Republic is set at four years.

*Elections to the bodies of municipal self-governments*

558. Slovak citizens having their permanent residence in the territory of the municipality and who are at least 18 years of age on the election day have the right to elect municipal self-governments and mayors of municipalities (lord mayors of cities).

559. Citizens having the right to vote have the right to stand for election to the self-government bodies. Citizens having the right to vote and who are at least 25 years of age on

the election day have the right to be elected mayors of municipalities (lord mayors of cities).

560. Under the amendment to the Constitution that entered into effect on 1 July 2001, aliens having their permanent residence in the territory of the Slovak Republic also have the right to vote and to stand for election to municipal self-government bodies.

561. Disqualifications from exercising the right to vote include restriction of personal freedom for reasons of protection of public health, execution of a sentence of imprisonment and deprivation or restriction of legal capacity.

562. All citizens exercise their right to vote on an equal basis, i.e. regardless of their national origin or social status. Under the law, voting in elections to municipal self-government bodies is a right and not a duty.

563. The Act on elections to these bodies is based on the relative majority voting system. In addition to political parties or their coalitions, independent candidates who present to the competent election body their own nomination supported with a voters' petition also have the right to stand for election.

564. The term of the bodies of municipal self-government is four years.

#### *The election of the President of the Slovak Republic*

565. Citizens having right to vote in elections to the National Council of the Slovak Republic have the right to vote in the election of the president. The president is elected by the citizens for a five-year term by secret ballot in direct elections.

566. Any citizen of the Slovak Republic who is at least 40 years of age on the day of the election and is eligible to stand for election to the National Council of the Slovak Republic can be elected president.

567. Candidates for president shall be proposed by at least 15 members of the National Council or by citizens having the right to vote in elections to the National Council supported by a petition signed by at least 15,000 citizens.

568. The candidate who has received a qualified majority of the valid votes by the eligible voters is elected president. If none of the candidates has received the needed majority of valid votes, a second round of voting between the two candidates who scored the highest number of valid votes is held. The candidate who has the highest score of valid votes of participating voters is elected president in the second round. If there are not two candidates for the second round, no second round is held and new elections will take place.

569. A plebiscite on removal of president is announced based on a resolution by the National Council adopted by a three-fifths majority of all members of the National Council.

570. Eligible voters have the right to vote in a plebiscite.

571. The president shall be removed when a majority of all eligible voters voted for his removal in a plebiscite.

#### *Voting in a referendum*

572. Every citizen of the Slovak Republic having the right to vote in elections to the National Council, i.e. who is at least 18 years of age and who is present in the territory of the Slovak Republic on the day of the referendum, has the right to vote in a referendum. By voting in a referendum, the citizens of the Slovak Republic exercise their right to decide on issues stipulated by the Constitution.

573. Referendums shall be held to confirm a constitutional act on entering a union with other States or secession from such union. A referendum may also be used to decide on other crucial matters of public interest. Fundamental rights and freedoms, taxes, levies and the State budget are excluded from the scope of referendums.

574. A referendum shall be proclaimed by the President of the Slovak Republic upon a petition submitted by at least 350,000 citizens, or upon a resolution of the National Council.

575. The results of a referendum are valid when a majority of eligible voters participated in it and the decision was taken by a majority of voters participating in the referendum.

*Elections to the bodies of self-governing regions*

576. Elections to the bodies of self-governing regions were held in November 2005. In the first round of elections, held on 26 November 2005, members of eight assemblies of self-governing regions were elected.

577. Under Act No. 303/2001 Coll. on elections to the bodies of self-governing regions, citizens of the Slovak Republic and aliens with permanent residence in a municipality that is in the territory of the self-governing region or with permanent residence in a military district that is a part of the self-governing region for the purpose of elections and who are at least 18 years of age on the election day have the right to vote in elections to bodies of self-governing regions.

578. Everyone who has the right to vote, who has permanent residence in a municipality within the territory of the constituency in which he/she runs and who is not disqualified from the exercise of the right to vote can be elected as a member of the regional self-government body.

579. Everyone who has the right to vote, who is at least 25 years of age on the election day and who is not disqualified from the exercise of the right to vote can be elected chairman of a self-governing region.

580. Disqualifications from exercising the right to vote include restriction of personal freedom by law for reasons of protection of public health, serving a custodial sentence, deprivation of legal capacity, and serving compulsory or alternative or reservist service.

581. All citizens of the Slovak Republic, regardless of their national origin or social status, exercise their active right to vote on an equal basis.

582. The Act on elections to the bodies of self-governing regions stipulates a majority voting system with a relative majority for the election of members of assemblies and an absolute majority for the election of chairpersons of the self-governing regions in the first round.

583. In addition to political parties or their coalitions, independent candidates who submit to the competent election body their own nomination supported with a voters' petition also have the right to present tickets.

584. The term of the bodies of self-governing regions is four years.

585. The following statistics pertain to the first round of elections to the bodies of self-governing regions:

Number of eligible persons entered in the electoral roll	4,282,070
Number of voters issued ballot envelopes	771,951
Voter turnout	18.02

The following statistics pertain to the second round of elections to the bodies of self-governing regions:

Number of eligible persons entered in the electoral roll	4.281,486
Number of voters issued ballot envelopes	474,039
Voter turnout	11.07

586. In the second round of the elections held on 10 December 2005, chairpersons of eight self-governing regions were elected.

*Elections to the European Parliament*

587. Citizens of the Slovak Republic who are at least 18 years of age on the election day and who have their permanent residence in the territory of the Slovak Republic and citizens of other member States of the European Union who are at least 18 years of age on the election day and who have been granted permanent residence in the territory of the Slovak Republic have the right to vote in elections to the European Parliament. Citizens of the Slovak Republic who are at least 18 years of age on the election day and who do not have their permanent residence in the territory of the Slovak Republic nor in the territory of another member State of the European Union have the right to vote if they are in the territory of the Slovak Republic on the election day.

588. To stand for election to the European Parliament, the candidate must be

- A citizen of the Slovak Republic who is at least 21 years of age on the election day, who has permanent residence in the territory of the Slovak Republic, and who is not disqualified from exercising his/her voting right
- An EU citizen who is at least 21 years of age on the election day, who is granted permanent residence in the territory of the Slovak Republic, who is not deprived of the right to stand for election in his home member State of the European Union, and who is not disqualified from exercising his/her voting right

589. Disqualifications from exercising the right to vote include restriction of personal freedom by law for reasons of protection of public health, serving a custodial sentence and deprivation of legal capacity.

590. The voting right is defined as universal, equal and direct suffrage by secret ballot. All citizens of the Slovak Republic and citizens of other EU member States exercise their active right to vote on an equal basis.

591. The Act on elections to the European Parliament stipulates the principle of proportional representation. The quorum for political parties to be elected to the European Parliament is 5% of the valid votes cast.

592. First elections to the European Parliament were held in the territory of the Slovak Republic on 13 June 2004. Seventeen political parties ran in the election and 5 political parties won seats in the European Parliament. From the Slovak Republic, 14 members were elected to the European Parliament. The statistics pertaining to that election were as follows:

Number of eligible persons entered in the electoral roll	4,210,463
Of them, number of citizens of other EU member States	593
Number of voters issued ballot envelopes	714,508
Voter turnout	16.96

## Article 26

### Recommendations 16, 18

593. Under the Anti-Discrimination Act, legal protection is guaranteed to all persons who consider that their rights and interests protected by law have been violated because the principle of equal treatment has not been applied to them. In such cases, the person concerned may seek discontinuation of unlawful conduct and, where possible, rectification of the unlawful situation or adequate satisfaction (§ 9, paragraphs 1 and 2, of the Anti-Discrimination Act). Along with court proceeding, the amendment to Act No. 85/2008 (§ 9, paragraph 5, of the Anti-Discrimination Act) introduced mediation as a form of legal protection into the Anti-Discrimination Act.

594. At the same time, an exception to the general obligation of the burden of proof has been introduced in the Anti-Discrimination Act by reverting the onus of proof onto the respondent. Under § 11, paragraph 2, of the Anti-Discrimination Act, “the defendant has the obligation to prove absence of any violation of the principle of equal treatment when the evidence submitted to the court by the plaintiff gives rise to a reasonable assumption that such violation indeed occurred”.

#### *The Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance*

595. In the area of prevention and reduction of negative phenomena such as racism, xenophobia, intolerance or discrimination in society, the core systemic instrument available to the Government of the Slovak Republic is the Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, anti-Semitism and Other Expressions of Intolerance (hereinafter “Action Plan”) that has been regularly drawn up since 2000.

596. The Action Plan is a specific extensive initiative of the Government of the Slovak Republic in the protection and enforcement of human rights and it is also presented as such abroad. In addition to addressing the most urgent problems of society, the Action Plan also pursues long-term objectives in an effort to combat the above-mentioned negative phenomena in society with a view to enhancing the degree of tolerance among all persons living in Slovakia, including foreign nationals. Activities carried out, in parallel to those of State authorities, by non-governmental organisations or other entities active in this field, which significantly promote the dissemination of the values of tolerance, multiculturalism and non-discrimination in society, are an important component of the Action Plan.

597. Since the second periodic report of Slovakia under the Covenant, the Slovak Republic has adopted its fourth Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance.

598. The 2002–2003 Action Plan focused on preventing negative phenomena such as discrimination, racism, xenophobia, and other similar intolerance in society and on strengthening the legal awareness of Slovak citizens in the area of the effective use of protective measures.

599. The 2004–2005 Action Plan mainly focused on systemic education of persons belonging to professional groups who are able to influence the prevention of all forms of discrimination, racism, xenophobia, anti-Semitism and other expressions of intolerance in the exercise of their profession; systemic education and opinion-making activities of the representatives of State administration and self-governments and primary school pupils and secondary school students with respect to migrants; and social and cultural activities on human rights and prevention of all forms of discrimination, racism, xenophobia, anti-Semitism and other expression of intolerance. This Action Plan is the response by the Slovak Republic to the declaration of the Second United Nations Decade for Human Rights



Education (2005–2014) and to Slovakia's obligations arising from its membership in the EU and other international organisations.

600. The 2006–2008 Action Plan is targeted at raising knowledge among the citizens of the Slovak Republic on human rights; effective implementation of anti-discrimination legislation; addressing the status of migrants in Slovakia; as well as other specific activities in the field of prevention of negative phenomena in society. Its priorities are added activities in the area of preventing extremism and anti-Semitism, mainly by educating professional groups. The focus on education is a continuation of the United Nations Decade for Human Rights Education.

601. The priorities of the 2006–2008 Action Plan are:

- Regular training for members of professional groups who, in the discharge of their professional duties, can have an impact on the prevention of all forms of discrimination, racism, xenophobia, anti-Semitism and other expressions of intolerance
- Regular training and opinion-making activities in the area of prevention of discrimination in relation to migrants among professional groups and the general public
- Intensifying the fight against extremism by preparing legislative proposals and applying legislation, improving the effectiveness of identifying, clarifying, taking evidence of and punishing criminal acts motivated by racial or other intolerance, and through regular training and opinion-making activities in the area of preventing extremism
- Intensifying the monitoring, regular training and opinion-making activities in the area of preventing anti-Semitism
- Carrying out activities aimed at addressing the needs of disadvantaged groups of the population
- Supporting cultural and social science activities on compliance with human rights and the prevention of all forms of discrimination, racism, xenophobia, anti-Semitism, and other expressions of intolerance
- Work of the inter-ministerial group for implementing the Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance in the period from 2006 to 2008A

602. The Action Plan proved to be a very adequate instrument for ensuring cooperation between non-governmental organisations and State authorities in their common goal of preventing discrimination, xenophobia, racism, anti-Semitism and other expressions of intolerance, pursued through joint efforts of all components of civil society.

603. The Section for Human Rights and Minorities of the Slovak Government Office is responsible for the implementation and coordination of the Action Plan. Funding for projects carried out by non-governmental non-profit organisations comes from the budget chapter of the Slovak Government Office allocated to "Programme 06P0201 – Support Activities of the Government Office of the Slovak Republic – the Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other

Expressions of Intolerance”. (The 2007 allocation amounted to SKK 4,500,000; the allocation earmarked for 2008 amounts to SKK 9,500,000).<sup>66</sup>

604. The National Plan for the Implementation of the 2007 European Year of Equal Opportunities for All<sup>67</sup> on the Way to a Fair Society (hereinafter the “National Plan”) was the basic document of the 2007 European Year programme in the Slovak Republic and it gave a detailed description of the implementation of its goals and plans in Slovakia. Information on national goals and priorities and on the manner of their achievement, information on the selection procedure for national activities, the list of national activities and their brief description, expected results and information on their monitoring was also included.

605. During the approval by the European Commission, the National Plan was evaluated as one of the best prepared plans. It was drafted with a view to achieving balanced coverage of all grounds for discrimination under Article 13 of the EC Treaty and ensuring the implementation of all specific objectives of the 2007 European Year (rights, representation, recognition, respect).

606. Special attention was paid to the application of the gender equality principle and the multiple discrimination phenomenon while selecting project activities.

607. National activities focused on awareness-raising in the field of anti-discrimination continued the activities started under the 2007 European Year with EC and Slovak State budget co-financing in the framework of the Progress programme. The aim of the project was to address individual discrimination grounds in a holistic way. The project, in its objectives, approaches and activities, also looked at the phenomenon of multiple discrimination, its specificities and patterns through the prism of the gender aspect.

608. Media activities on the right to non-discrimination targeted at the public at large were an important part of the project within the effort to launch a society-wide discussion on diversity and its benefits.

#### *The Public Defender of Rights*

609. Within his remit, the Public Defender of Rights also informs public authorities of shortcomings, including alleged discrimination, identified in their activities and decision-making. Of the total number of petitions in the reporting period, approximately 150 petitions concerned discrimination. Of these submissions on alleged discrimination, approximately one third were handled as petitions and two thirds as legal guidance. Most submissions concerned discrimination by an entity other than a State authority and therefore the Public Defender of Rights was not competent to handle those cases. Nevertheless, the Office of the Public Defender of Rights rendered the petitioners legal guidance in all cases.

610. Gender discrimination (or gender in combination with another discrimination factor, e.g. age, social status or belonging to a national minority or ethnic group in cases of alleged multiple discrimination) had marginal incidence. Rather, the Public Defender of Rights came across this problem during informal meetings and discussions with citizens and media appearances with direct interventions by viewers and listeners. Experience with discrimination was mainly mentioned in the context of employment relations, in particular in the private sector. This problem is usually encountered in recruitment or at a workplace where a hostile environment is created.

<sup>66</sup> See the second ICESCR periodical report on the International Covenant on Economic, Social and Cultural Rights: Introduction, Recommendation No. 19 and Annex No.2.

<sup>67</sup> Resolution of the Government of the Slovak Republic No. 1057/2006 of 13 December 2006.

611. Media appearances are among the frequent activities of the Office of the Public Defender of Rights in the fight against discrimination. The staff of the Office of the Public Defender of Rights organised more than 20 thematic programmes informing about discrimination, its forms and possibilities of legal protection, in which listeners or viewers could ask questions. In addition, the Office of the Public Defender of Rights provided legal guidance, including in cases of racial discrimination, to Internet users in cooperation with some Internet portals.

612. In the field of education and training, the Public Defender of Rights organises meetings with children, young adults and teachers under his “Public Defender of Rights of Children and Youth” programme. These activities focus on education in human rights, tolerance and the fight against discrimination. Quiz shows on human rights protection that also focus on racial discrimination issues are organised on a voluntary basis. Within this project, visits to children’s homes, where most of children are of Roma origin, were also organised with a view to gaining first-hand information about the conditions in these facilities.

613. The Office of the Public Defender of Rights regularly issues the quarterly Public Defender of Rights Information Bulletin, in which the Public Defender of Rights presents facts and information on various areas of human rights protection. The Information Bulletin is distributed to State authorities and several non-governmental organisations; it is also available to the public in printed form in the Office of the Public Defender of Rights, on the website of the Public Defender of Rights, and it is sent to anybody on request.

614. On his own initiative, the Public Defender of Rights examined the situation surrounding Roma riots in eastern Slovakia in 2004, as well as the case of the eviction of non-payers of rent, most of whom were Roma, that received extensive media coverage, with a special focus on information concerning the use of physical force in the 2007 evictions at Nove Zámky. On his own initiative, he also monitored the developments concerning the Roma at Pezinok after the fire in the “flats at Glejovka” in March 2008. The Public Defender of Rights was also invited to speak on this topic in a discussion before the Committee on Human Rights, Minorities and the Status of Women of the National Council of the Slovak Republic.

#### *Social services*

615. Social services are rendered according to Act No. 195/1998 Coll. on social assistance which stipulates the legal terms and conditions for rendering individual types of social services and the substantive scope of necessary care, which are the standard of this assistance. Everyone who is in need of social services (regardless of, e.g. religion, gender or ethnic origin) and meets the requirements set by law will be rendered social services. It is in the interest of the relevant body or provider to give the recipients of social services clear and accurate information on the provision of social services (e.g. also in the Romany language if the recipient is a Roma).

616. In January 2009, the Social Services Act repealing the Social Assistance Act and introducing a new way to regulate terms and conditions for providing social services in compliance with the principle of equal treatment as stipulated by the Anti-Discrimination Act shall become effective. This means that anyone who complies with the substantive requirements for receiving social services has the right to be provided with them, regardless of, e.g. ethnic origin or race. At the same time, the law stipulates the right of all natural persons to have available all information concerning the provision of social services in a form they can understand.

*Access to employment*

617. Slovakia has consistently followed the principle of prohibition of discrimination in the labour market in the development of its legislation. Under § 62, paragraphs 2 and 3, of Act No. 5/2004 Coll. on employment services and amending and supplementing other relevant acts as amended (hereinafter the “Employment Services Act”), the employer must not publish any job postings that include any restrictions and discrimination on the grounds of race, colour of skin, gender, age, language, belief and religion, disability, political and other opinion, trade union involvement, ethnic or social origin, belonging to a nationality or ethnic group, property, lineage, marital and family status.

618. During the selection process of employees, the employer must not seek information concerning the nationality, racial or ethnic origin, political attitudes, membership in trade unions, religion, sexual orientation, indecent information and personal data that are not necessary for complying with the employer’s duties set forth in specific legal provisions. On request by the individual concerned, the employer has the obligation to demonstrate the need for requested personal data. Employee selection criteria must ensure equal opportunities to all citizens.

619. In the field of access to employment, the Employment Services Act regulates the rights and duties of citizens on the basis of the civil principle rather than ethnic or other ones.

620. The right of citizens to unrestricted access to employment is incorporated in the provisions of § 14 of the Employment Services Act in compliance with the equal treatment principle in employment and similar legal relationships. Any discrimination on the grounds of marital and family status, colour of the skin, language, political and other opinion, trade union involvement, ethnic or social origin, disability, age, property, lineage or other status is prohibited.

621. The exercise of the rights and duties derived from the right of access to employment must be in conformity with good manners. No person may abuse such rights and obligations to the detriment of another individual. No person shall be persecuted or otherwise adversely treated in the context of exercising their right of access to employment as a reaction to a complaint lodged with the office of labour, social affairs and family (hereinafter “office”), action or petition to start criminal proceedings against another persons or the employer.

622. Citizens have the right to submit a complaint to the office in connection with the violation of these rights and duties; the office is obliged to respond to such complaint without unreasonable delay, rectify or refrain from such conduct and eliminate the consequences thereof. The office may not sanction or disadvantage the citizen because of exercising his/her rights resulting from his/her right of access to employment in any way.

**Recommendation 16**

623. As stated in its Manifesto, the Slovak Government considers finding solutions to the problems of the Roma one of its priorities.

624. Marginalised Roma communities are included among the priorities of the National Strategic Reference Framework 2013–2013 (the strategic document of the Slovak Republic for the use of European Union funds). Increasing employment and improving education and living conditions are the most important objectives. The Medium-Term Concept of the Development of the Roma National Minority in the Slovak Republic (SOLIDARITY – INTEGRITY – INCLUSION 2008–2013) pursues these goals also through structural funds and the Cohesion Fund.

625. Funds in the amount approved in the National Strategic Reference Framework will be earmarked for the implementation of the marginalised Roma communities' horizontal priority by integrating projects from several operational programmes. This is a negotiated constant financial allocation amounting to €200 million. This approach to support tackling Roma concerns was applied in this amount for the first time in the history of this problem-solving process.

*Temporary equalising measures*

626. Embedding the institution of the so-called temporary equalising measures that may be applied by public authorities to ensure de facto equality is a significant contribution of the amendment to the Anti-Discrimination Act (Act No. 85/2008 Coll.).<sup>68</sup> These measures may be adopted when:

- Demonstrable inequalities exist
- The objective of these measures is to reduce or remove such inequality
- They are proportional and necessary for achieving the set goal

627. These measures may be adopted in employment and similar legal relationships, social security, healthcare, provision of goods and services, and in education. State authorities that adopted such measures have the obligation to monitor, evaluate and publish these measures with a view to reviewing justification of their continuation and to report to the Slovak National Human Rights Centre.

628. These temporary equalising measures include: the teacher's assistant, i.e. a member of the educational staff involved in the educational process at schools and pre-school establishments who takes part in the creation of conditions necessary for overcoming mainly linguistic, health and social barriers encountered by the child during and outside the educational process at schools; building of sanitary stations and laundry rooms; or subsidies to board and school aids for primary school pupils.

*Standardisation of the Romany language*

629. On 29 June 2008, the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities organised the Standardisation of the Romany Language in the Slovak Republic. Building on the 1971 codification of the Romany language and the historic legacy of Roma personalities engaged in the shaping of the Romany language as the essential tool for the upbringing and education of the Roma, the ceremonial Act of Standardisation of the Romany Language in the Slovak Republic took place.

630. The objective of Romany language standardisation is an official affirmation of the Romany language and its spontaneous development that would be tolerant to regional differences.

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<sup>68</sup> § 8a, paragraph 1 of the Anti-Discrimination Act sets forth that "adoption of certain temporary equalising measures by State authorities aimed at eliminating forms of social and economic disadvantage and disadvantage resulting from age and disability aimed at ensuring equal opportunities in practice shall not be deemed discrimination. These temporary equalising measures include mainly:

- (a) enhancing the interest of persons belonging to disadvantaged groups in employment, education, culture, health care and services,
- (b) measures aimed at creating equality in access to employment and education mainly through targeted preparatory programmes for persons belonging to disadvantaged groups or through dissemination of information on these programmes or possibilities to apply for a job or a place in the education system".

By affirming the standardisation of the Romany language, the foundations for creating conditions for upbringing and education in the Romany language — introduction of the teaching of the Romany language as a non-compulsory subject, compulsory optional subject (e.g. as the second foreign language) or as a part of out-of-school activities as required by legal guardians of pupils and the needs (as mother tongue or supporting language) — have been laid. Experimental verification of the Romany language and literature and of the curriculum of facts of life of the Roma at selected primary and secondary schools has been conducted under the coordination of the State Institute for Education since 2003. Conditions for training teachers of these subjects have been created. Currently, final preparatory work on the accreditation of a new day study specialisation — "Romany language and culture" — is being carried at the Constantine the Philosopher University of Nitra Institute of Romology Studies, in close cooperation with the Office of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities (OPGRC).

*The community social work development in municipalities support programme*

631. The 2005–2007 community social work development in municipalities support programme was approved by the Slovak Minister of Labour, Social Affairs and Family on 16 December 2004. The programme has continued smoothly as the field social workers programme. The Social Development Fund is implementing the programme.

632. The activities performed in the framework of community and field social work mainly respond to the needs and difficulties of individuals (clients) and groups. Practical activities performed by community social workers and their assistants make it possible to identify problems they have to deal with most frequently:

- (a) In the field of client's employment:
  - (i) Arranging participation in activation programmes;
  - (ii) Cooperation with local organisations;
  - (iii) Cooperation with the labour office in family restoration;
- (b) In the field of quality of life and housing of clients: negotiating timetables for instalment payments, and contributions to housing;
- (c) In the field of client education:
  - (i) Support to the education of children;
  - (ii) Pre-school education of children;
  - (iii) Cooperation with counselling institutions;
- (d) In the field of health care:
  - (i) Cooperation with medical doctors together with field health care workers and health centres;
  - (ii) Assistance to drug addicts;
- (e) In the field of social integration of clients:
  - (i) Cooperation with civic counselling centres, shelters and community centres;
  - (ii) Mitigation of socio-pathological phenomena in the community (crime, domestic violence, sexual abuse, etc.);
  - (iii) Assistance with arranging documents and pecuniary benefits;
  - (iv) Assistance in arranging alternative family care.

633. In 2007, monitoring was ensured through local coordinators of the community social work programme in cooperation with the OPGRC and the representatives of the management unit of the Social Development Fund in Bratislava.<sup>69</sup>

### **Recommendation 18**

634. In May 2008, the National Council of the Slovak Republic adopted Act No. 245/2008 on upbringing and education (hereinafter the "School Act") and on amending and supplementing other relevant acts effective from 1 September 2008.

635. Under the School Act, upbringing and education are mainly based on the principles of:

- Prohibition of all forms of discrimination and segregation in particular
- Free of charge education in kindergartens one year before the beginning of compulsory school attendance
- Preparation for a responsible life in a free society in a spirit of understanding and tolerance, equality between men and women, friendship among nations, national and ethnic groups, and religious tolerance

636. The rights of the child and the pupil include mainly these rights:

- Equal access to education
- Free of charge study at primary and secondary schools
- Free of charge education for five-year-old children in kindergartens before the beginning of compulsory school attendance
- Education in the State language and mother tongue in the scope provided for in this Act
- Respect for his/her religious confession, world view, and national and ethnic origin
- Organisation of upbringing and education appropriate for the child's age, capabilities, interests and health and in compliance with the principles of mental health

637. The legal guardian of a child or pupil or the representative of the facility has the right to:

- Choose for his/her child the school or school facility that gives education according to this Act, corresponding to the capabilities, health, hobbies and interests of the child, his/her confessional belief, world view, and national and ethnic origin; invoke the right to free choice of school or school facility in compliance with the possibilities of the school system
- Counselling services in the upbringing and education of his/her child

638. The legal guardian of a child or pupil or the representative of the facility has the duty to:

- Care for the social and cultural environment of the child and respect his/her special educational needs
- Enrol the child for compulsory school attendance and care for the child's regular and timely school attendance unless another form of education under this law is arranged

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<sup>69</sup> More information on: [www.fsr.gov.sk](http://www.fsr.gov.sk).

for the child; support the absence of the child from school with documents set forth in the school rules

639. The rights laid down in the School Act are guaranteed to all applicants, children, pupils and students on an equal basis in conformity with the principle of equal treatment in education provided for under separate legislation, which is Act No. 365/2004 Coll. – the Anti-Discrimination Act as amended.

640. An applicant, child, pupil or student who considers that their rights or lawfully protected interests have been violated due to the failure to apply the principle of equal treatment may seek legal protection before a court as set forth under a separate legal provision – Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination and on amending and supplementing other relevant acts (the Anti-Discrimination Act) as amended.

641. Under the School Act, the school or school facility must not impose any sanctions or disadvantage on an applicant, child, pupil or student because they have exercised their rights under this Act.

642. In accordance with compulsory school attendance, the pupil attends the primary school in the school district of his/her permanent residence (hereinafter the “catchment school”), unless the legal guardian chooses another primary school for his/her child.

643. A pupil without a permanent residence will attend a catchment school specified by the local school State authority to perform his/her compulsory school attendance.

644. The zero grade of primary school is designed for children who are six years of age on 1 September and who are not mature enough for school attendance, who come from a socially disadvantaged environment and who, considering their social environment, would have difficulties in coping with the education programme of the first grade of a primary school. A child may only be enrolled in the zero grade with the informed consent of the legal guardian of the child.

645. Pupils with special educational and training needs may be integrated into primary school classes. If the headmaster of the school or the relevant educational counselling and prevention facility determines that the education does not benefit the integrated pupil or pupils who are in the upbringing and education process, they propose a different education of the child to the legal guardian following a written consent by the local school State authority and the relevant educational counselling and prevention facility. The competent local school State authority shall reimburse the travel costs, equal to the costs of travel by public transport, of the child’s legal guardian to and from the school to which the child was transferred from the State budget. If the legal guardian does not agree with the change of the education of his/her child, a court shall decide about further education.

646. The headmaster of the school will decide on enrolling the child with special educational needs based on a written application by the legal guardian and a written opinion from the educational counselling and prevention facility issued based on a diagnostic examination of the child. Before accepting the child with special educational needs in a school with an educational programme for pupils with special educational needs, the headmaster will inform the legal guardian of all educational options for his/her child.

647. If the needs of the pupil change during his/her attendance of the school that provides special education for pupils with special educational needs or if the facility does not meet pupil’s needs, the headmaster of the primary school shall, after seeking an opinion from the competent educational counselling and prevention facility, recommend to the legal guardian of the child to lodge an application requesting transfer of the pupil to another school or, based on an application by the legal guardian, shall decide to exempt the pupil from the



obligation to attend school. If the legal guardian does not act in the interest of the child, a court shall decide about his/her further education.

648. If it becomes manifest after his/her enrolment in school that the child or the pupil has special educational needs and the child or pupil continues to attend the school to which he/she was admitted, the child's education or the education of a child or pupil with special educational needs is provided after submitting a written application requesting a change of the form of education and of a completed form to the headmaster of the school; if it is a minor or a pupil, the written application together with the form shall be submitted by his/her legal guardian.

649. The legislation in place clearly indicates that a primary school for pupils with a mental handicap is meant for pupils with mental handicaps. Pupils are placed in these schools on the grounds of their disability determined after relevant diagnostic examinations and their placement is not based on an ethnic principle. The legal guardian of the pupil is involved in the whole process. These schools as well as the whole process of placing pupils in these schools are supervised by the State School Inspection.

650. New laws, policies and measures pending implementation have been adopted in the field of education and they will be continuously evaluated. The new legislation creates, inter alia, means of guidance for the counselling system and parental informed consent.

651. In individual cases, headmasters or founders of schools may be failing; however, such individual failures cannot be taken as the basis for a generalisation of a structural failure of the whole educational system.

## **Article 27**

### *National minorities*

652. According to the last population census in the Slovak Republic of 2001, the number of persons who declared to be of other than Slovak nationality was 764,601, which is 14.2% of the 5,379,455 inhabitants of the Slovak Republic. Twelve national minorities have the largest presence in the ethnic structure: the Hungarian, Roma, Ruthenian, Ukrainian, German, Croatian, Czech, Moravian, Polish, Bulgarian, Russian and Jewish ones. The most numerous national minority in Slovakia is the Hungarian minority — 520,528 inhabitants of Slovakia identified themselves as belonging to the Hungarian national minority (9.7%). The second largest national minority in the Slovak Republic are the Roma — 89,920 persons identified themselves as belonging to this minority, which is 1.7%. Expert estimates that are more realistic refer to 320,000 persons. This latter figure was also confirmed by the 2004 sociographic survey of Roma settlements carried out with the support of the Slovak Government; its findings are used to improve the targeting of policy concepts and programmes at persons belonging to the Roma minority. Demographic estimates mention 380,000–400,000 Roma.

653. Human rights, including the rights of persons belonging to national minorities, are guaranteed by the Constitution. The fundamental national instrument stipulating fundamental human rights and freedoms, including the rights of persons belonging to national minorities, is the Constitutional Act (No. 23/1991 Coll.) implementing the Charter of Fundamental Rights and Freedoms and the Constitution of the Slovak Republic (Act No.460/1992 Coll. as amended).

654. More than 30 legal provisions from various areas of law concerning the rights of persons belonging to national minorities are developed on the basis of the Constitution. Thus, the legislation concerning the rights of persons belonging to national minorities is not concentrated in one law.

655. In the Constitution, minority rights are viewed as individual rather than collective rights. They are vested in the citizen, a person belonging to a national minority. It grants protection to persons belonging to a minority as individuals; it does not grant protection to minorities as entities and, at same time, it envisages a common exercise of individually granted rights.

656. Within the meaning of the Constitution of the Slovak Republic, the exercise of the rights of citizens belonging to national minorities must not result in a threat to the sovereignty and territorial integrity of the Slovak Republic and discrimination against other populations.

657. Under the Constitution of the Slovak Republic, every citizen has the right to freely decide about his/her nationality, while any influencing of this decision and any assimilation pressures are prohibited.

658. Under the Constitution, citizens of the Slovak Republic belonging to national minorities or ethnic groups have the guaranteed right to universal development, in particular the right to promote their culture together with other members of the minority or group, to disseminate and receive information in their mother tongues, to associate in national minority associations, and to establish and maintain educational and cultural institutions. A law shall lay down details thereof.

659. In addition to the right to learn the State language, i.e. the Slovak language, the citizens belonging to national minorities or ethnic groups are also guaranteed, under the conditions laid down by law, the right to be educated in their language, the right to use their language in official communication, the right to participate in the decision-making in matters concerning national minorities and ethnic groups.

660. Slovakia is a contracting party to the Framework Convention for the Protection of National Minorities of the Council of Europe<sup>70</sup> and the European Charter for Regional or Minority Languages.<sup>71</sup> The Slovak Republic has chosen provisions of the Charter for nine minority languages — Bulgarian, Czech, Croatian, Hungarian, German, Polish, Romany, Ruthenian and Ukrainian — and assumed very ambitious commitments.

661. Several advisory and coordinating bodies exist in the field of national minority policies in the Slovak Republic.

662. The Committee of the National Council of the Slovak Republic on Human Rights, Minorities and the Status of Women debates draft laws, international treaties and Government programmes with respect to their compliance with human rights and the rights of persons belonging to national minorities enshrined in the Constitution of the Slovak Republic and arising from international commitments of the Slovak Republic.

663. The Committee of the National Council for Social Affairs and Housing formed a Standing Commission for the Integration of the Roma of the Committee of the National

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<sup>70</sup> The Framework Convention for the Protection of National Minorities was opened for signature in Strasbourg on 1 February 1995. The Slovak Republic signed the Convention on 1 February 1995. The National Council of the Slovak Republic approved the Convention by Resolution No. 128 of 21 June 1995 and the President of the Slovak Republic ratified it on 14 July 1995. Notification by the Ministry of Foreign Affairs of the Slovak Republic on signing the Framework Convention for the Protection of National Minorities was published in the Collection of Laws under No. 160/1998 Coll. The Convention came into effect on 1 February 1998 on the basis of article 28, paragraph 1.

<sup>71</sup> The European Charter for Regional or Minority Languages was signed in the name of the Slovak Republic in Strasbourg on 20 February 2001. The President of the Slovak Republic ratified it on 20 July 2001. The Charter came into effect in general on 1 March 1998 on the basis of article 19, paragraph 1, and for the Slovak Republic on 1 January 2002 on the basis of article 19, paragraph 2.

Council for Social Affairs and Housing. Its main task is to consult on issues and to give expert opinions on topics relevant for the integration of the Roma in society in the context of the parliamentary legislative process.

664. In the Slovak Republic, issues concerning national minorities are the responsibility of Dušan Čaplovič, Deputy Prime Minister of the Slovak Republic for the Knowledge-Based Society, European Affairs, Human Rights and Minorities.

665. The Council of the Government of the Slovak Republic for National Minorities and Ethnic Groups (hereinafter the “Council”) was formed in 1999 as an advisory and coordinating body of the Government of the Slovak Republic for national minority policy and the implementation of the European Charter for Regional or Minority Languages.

666. In 2007, the statutes of the Council were amended and its membership adjusted.<sup>72</sup> The amendment to the statutes resulted in a more proportional representation of civil associations of national minorities on the Council and the possibility of inviting experts on minority issues.

667. Twelve officially recognised national minorities have parity presence on the Council. Minority representatives are nominated by national minority associations, unions and societies. The Council is chaired by the Deputy Prime Minister of the Slovak Republic for the Knowledge-Based Society, European Affairs, Human Rights and Minorities. The vice-chairman of the Council is the Minister of Culture. Officials from central State administration authorities and independent experts (one expert each from Hungary and the Czech Republic) are also invited to Council meetings. In the Council, only representatives of national minorities may vote and issues concerning a specific national minority or ethnic group may not be considered in the absence of the representative of the minority concerned. Invited officials from central State administration authorities and experts on minority issues do not have voting rights.

668. The Council coordinates tasks arising from the Constitution of the Slovak Republic, international treaties binding on the Slovak Republic and other generally binding legal provisions with respect to the persons belonging to national minorities and ethnic groups, and cooperates in their implementation mainly with the ministries and other central State administration authorities, bodies of territorial self-government, human rights NGOs, scientific workplaces and academic institutions.

669. According to its statute, the Council has mainly competence for:

(a) Drafting proposals of Government measures aimed at the protection and exercise of the rights of persons belonging to national minorities and ethnic groups;

(b) Preparing, discussing and presenting summary reports to the Government on the situation and conditions of persons belonging to national minorities and ethnic groups, preservation of their identity, especially the development of their authentic culture and education in their mother tongue, formulating and recommending solutions for the Government;

(c) Formulating positions on generally binding legal provisions with implications for citizens belonging to national minorities and ethnic groups prior to submitting them for Government deliberations;

(d) Proposing topics for scientific analyses, studies and expert assessments on national minorities and ethnic groups by institutions and experts;

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<sup>72</sup> Resolution of the Government of the Slovak Republic No. 830 of 3 October 2007.

(e) Discussing and proposing the reallocation of financial means earmarked for national minorities and ethnic groups in the State Budget Act.

670. State authorities mainly cooperate with NGOs through the Council of the Government of the Slovak Republic for NGOs, which is a coordinating and advisory body to the Government of the Slovak Republic on issues of support to activities of NGOs and non-profit organisations that perform general benefit activities mainly in the field of humanitarian and charitable affairs, and care for children, youth and sport, education, human rights protection, healthcare, culture, protection of the environment and regional development. Representatives of non-governmental non-profit organisations, officials from ministries and other central State administration authorities of the Slovak Republic are members of the Council. On 20 June 2007, the Government of the Slovak Republic adopted new statutes and a membership structure of the Council of the Government of the Slovak Republic for non-governmental non-profit organisations by Resolution of the Government of the Slovak Republic No. 536/2007.

671. The Section for Human Rights and Minorities of the Slovak Government Office deals with the issues of human rights, national minorities and ethnic groups as well as with the issues of cooperation with non-governmental non-profit organisations.

672. The Plenipotentiary of the Government of the Slovak Republic for Roma Communities (hereinafter the "Plenipotentiary") has the status of an advisory body to the Government of the Slovak Republic for Roma issues. The Plenipotentiary implements tasks aimed at finding solutions to the concerns of Roma communities and systemic measures for improving their position and integration in society through the OPGRC.

673. In June 2007, Anina Botošová was appointed Plenipotentiary of the Government of the Slovak Republic for Roma Communities; she replaced Klára Orgovánová.

674. The Plenipotentiary of the Government of the Slovak Republic for Roma Communities as the advisory body to the Government of the Slovak Republic implements tasks aimed at finding solutions to the concerns of Roma communities and systemic measures for improving their position and integration in society. OPGRC is included in the organisational structure of the Government Office. The Government of the Slovak Republic appoints the Plenipotentiary on a proposal by the Deputy Prime Minister of the Slovak Republic.

675. The Plenipotentiary forms the Inter-Sectoral Commission for the Affairs of Roma Communities which is chaired by him/her. The Plenipotentiary may establish advisory bodies. He/she is responsible for the activities of the OPGRC and he/she implements Government's policies in addressing the concerns of Roma communities through this office.

676. He/she also awards and evaluates programmes targeted at the improvement of the status of persons belonging to Roma communities in society with an emphasis on:

- The improvement of the level of education and vocational training
- The improvement of living conditions in municipalities with Roma settlements
- Legal awareness-raising
- Increasing active participation by the Roma in public life and the governance of public affairs
- The use of human and working potential
- Scientific study of Roma communities

- Active participation in international projects focused on the improvement of the life of Roma communities

677. He/she also proposes and comments on the use of State budget funds earmarked for addressing the concerns of Roma communities.

678. The OPGRC also has five regional offices (Banská Bystrica, Košice, Prešov, Rimavská Sobota, Spišská Nová Ves).

679. On 12 November 2008, the Government of the Slovak Republic approved the change of the statutes of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities. The amendments and supplements do not change the status and competence of the Plenipotentiary; they mainly enhance the status of the OPGRC in the financial and administrative areas in the context of drawing funds from the European Union in the framework of accomplishing the Marginalised Roma Communities Horizontal Priority. The Plenipotentiary is responsible for the activities of the OPGRC and its operation, through which he/she implements systemic measures for improving and integrating a part of the Roma in society. He/she is fully accountable for the accomplishment of the relevant subject matter to the Government of the Slovak Republic.

680. The Section for Minority and Regional Cultures at the Ministry of Culture of the Slovak Republic ensures State administration in the field of culture of national minorities and disadvantaged groups of the population.

681. The Ministry of Education of the Slovak Republic has established a division for schools with instruction in the minority language and education of Roma communities.

682. The right to education in the minority language is provided for in the Constitution of the Slovak Republic and in the School Act. Children and pupils are educated at primary and secondary schools with instruction in the minority language, teaching of the minority language and with the Slovak language of instruction based on a free decision of the parents or the legal guardian.

683. As foreseen in the Slovak Government Manifesto, the Plan of Legislative Tasks of the Government of the Slovak Republic and the Activity Plan of the Government of the Slovak Republic, the following policy concepts and legislative texts with relevance for persons belonging to national minorities are pending adoption or have been adopted:

- Act No. 245/2008 Coll. on upbringing and education (the School Act) and on amending and supplementing certain other acts
- Two amendments to Act No. 365/2004 Coll. on equal treatment in certain areas and on protection against discrimination and on amending and supplementing certain other acts (the Anti-Discrimination Act) as amended
- The Concept of Education and Instruction of National Minorities
- The Concept of Upbringing and Education of Roma Children and Pupils Including the Development of Secondary and Tertiary Education
- The Medium-Term Concept of the Roma National Minority Development in the Slovak Republic, 2008–2013 SOLIDARITY-INTEGRITY-INCLUSION.

684. The Government of the Slovak Republic prepares the following draft laws and policy concepts:

- Draft law on financing of culture (which will also include financing of minority cultures)
- The Concept of Assistance to Marginalised Roma Communities in Slovakia Using Structural Funds and the Cohesion Fund in 2007–2013

- The Report on the Implementation of the Roma Inclusion Decade 2005–2015
- The National Action Plan for Children 2008-2012

#### *Culture of national minorities*

685. In this sector, care for minority cultures is realised mainly through two grant programmes in the framework of the grant system of the Ministry of Culture of the Slovak Republic – the National Minority Culture programme and the Disadvantaged Population Groups Culture programme. The objective is to develop, preserve and present minority cultures. The cultures of national minorities in the Slovak Republic are promoted by issuing periodical and non-periodical print media for persons belonging to national minorities, through State theatres giving performances in the minority languages, State museums presenting minority issues, civil associations promoting all 12 minority cultures, the activities of the professional folk ensembles, regional educational centres, regional and district libraries and broadcasting in the languages of national minorities in public media – Slovak Radio and Slovak Television (in 2007, the development of cultural activities of the Hungarian minority received SKK 51,562,000 and in 2008, SKK 53,144,000; the culture of the Roma national minority was supported with SKK 11,482,000 and SKK 4,000,000).

686. In its 2006 Manifesto, the Government of the Slovak Republic committed itself to drafting a comprehensive law on culture financing (including national minorities and disadvantaged groups).

#### *National minority cultural institutions*

687. Four national minority theatres exist in the Slovak Republic: two Hungarian theatres (the Thália theatre in Košice and the Jókai theatre in Komárno), the Ruthenian Aexander Duchnovič theatre in Prešov and the Romany Romathan theatre in Košice. In 2001, they were transferred under the competence of higher territorial units. Considering the difficult situation of these theatres, the Ministry of Culture of the Slovak Republic decided to support them through a grant system.

688. Within the Slovak National Museum, an organisation established by and reporting to the Ministry of Culture of the Slovak Republic, the culture of national minorities is developed by specialised nationality institutions: the Museum of Jewish Culture, the Museum of Culture of the Carpathian Germans, the Museum of Culture of the Hungarians in Slovakia, the Museum of Ukrainian Culture, the Museum of Ruthenian Culture, the Museum of Culture of the Croats in Slovakia, the Museum of Czech Culture and the Museum of Romany Culture.

689. The National Centre for Culture and Education (hereinafter the “NCCE”) is another organisation established by and reporting to the Slovak Ministry of Culture that plays an important role in the field of protection against discrimination. In the field of prevention of all forms of discrimination, racism and anti-Semitism, the NCCE has targeted its educational activities mainly at persons belonging to all nations and nationalities living in Slovakia, youth, elderly persons and pensioners, women (above 50 years of age) and disabled persons by organising several courses attended mostly by women (also above 50 years of age) and disabled persons.

690. In 2005, a working group was formed at the Ministry of Culture which concluded that the current priorities of Slovakia in this field were the Roma challenge and migration. Today, the Ministry of Culture of the Slovak Republic implements the National Strategy for the Implementation of the European Year of Intercultural Dialogue.

691. The Act on the use of national minority languages (No. 184/1999 Coll.), which lays down the rules for the use of minority languages also in official communication in

municipalities where the citizens of the Slovak Republic who are persons belonging to a national minority form at least 20% of population in the municipality according to the last census of population, has been in effect since 1 September 1999.

692. Under § 2 of the quoted Act, citizens may use a minority language in official communication, including submission of written applications to State administration authorities and territorial self-government bodies, in municipalities where persons belonging to a national minority form at least 20% of its population. Public authorities have the obligation to issue their decisions and other official documents in the minority language at request. In a municipality where persons belonging to a national minority form at least 20% of its population, sessions of a body of the territorial self-government may also be held in the minority language when all persons present agree. In these municipalities, nameplates of public authorities and important information, mainly warnings, notices and health-related communications, are displayed in both the State and minority languages in public places. In such municipalities, public authorities also have the obligation to provide information concerning generally binding legal provisions in the minority language upon request.

693. After the last population census in 2001, the Section of Minority and Regional Cultures started to work on a draft Government ordinance issuing the list of municipalities in which the citizens of the Slovak Republic belonging to national minorities form at least 20% of the population. The ordinance updates the currently valid and effective list of municipalities in which citizens of the Slovak Republic belonging to a national minority form at least 20% of its population. This ordinance was drafted as provided for in § 2 of Act No. 184/1999 Coll. on the use of languages of national minorities. However, the ordinance of the Government was not approved in coalition negotiations.

694. The updated list includes 652 municipalities in which persons belonging to 5 national minorities – the Hungarian, Ruthenian, Roma, Ukrainian and German nationalities – live.

Table 9

**Number of municipalities in which citizens of the Slovak Republic belonging to a national minority form at least 20% of its population**

<i>National minority</i>	<i>Number of municipalities in 1991</i>	<i>Number of municipalities in 2001</i>
Hungarian	512	501
Ruthenian	68	91
Romany	57	53
Ukrainian	18	6
German	1	1

695. The Public Defender of Rights Act makes it possible to also use regional and minority languages in communications with the Public Defender of Rights outside the districts with the 20% limit of population claiming national minority origin. In case of petitions in a language other than Slovak, the Office of the Public Defender of Rights also arranges the translation of the answer into the language of the petition or into another language if so requested in the petition. Under the Public Defender of Rights Act, persons filing petitions may use their mother tongue in communications with the Public Defender of Rights.

696. To prevent discrimination in access to public services provided by his Office on grounds of belonging to a national minority, the Public Defender of Rights carries out a

project on “Making the Activities of the Public Defender of Rights Accessible to Minorities”. In order to simplify the filing of petitions by persons belonging to national minorities, the Office of the Public Defender of Rights prepared a submission form meeting all the statutory substantive particulars of a petition. The form was then translated not only into the languages of all national minorities in the Slovak Republic that are covered by the ratified provisions of the European Charter for Regional or Minority Languages, i.e. The Bulgarian, Czech, Croatian, Hungarian, German, Polish, Romany, Ruthenian and Ukrainian languages, but also into the English, French, Spanish, Russian, Serbian and Arabic languages. The Office distributes the forms for filing submissions in the framework of its activities in the territory of Slovakia and during visits abroad; the forms are also published on the website of the Public Defender of Rights, [www.vop.gov.sk](http://www.vop.gov.sk), where it is possible to send submissions electronically directly after completion. In addition to the form, the Office of the Public Defender of Rights also prepared information materials on the activities of the Public Defender of Rights, his scope of competence, frequently asked questions and answers, and contact addresses. This document was also translated into all the languages mentioned above.

697. The data on belonging to a national minority or an ethnic group are not included among personal data required for review of the petition by the Public Defender of Rights. However, membership in a national minority or ethnic group is often evident from the content of the petition, especially where the applicant considers such status to be a discriminatory factor.

698. Complaints alleging discrimination on grounds of ethnicity are mostly filed by persons whose personal freedom is restricted and who are placed in remand establishments and prisons for sentenced persons. Many complainants consider their national minority status and expressions of racial discrimination to be the cause of unreasonable delays in their proceedings.

#### *Support to culture in marginalised Roma communities*

699. In the context of the support to the integration process of Roma communities in settlements, the Ministry of Culture of the Slovak Republic in cooperation with the Department for Churches formed a working group composed of representatives of civil associations and registered churches. The working group made the preparation of calls for grants for model cultural projects for marginalised Roma settlements its priority. In the future, the projects should be financed from the Slovak Ministry of Culture grant scheme and the structural funds. One of the objectives of these initiatives is to deepen and improve the effectiveness of the care of the State for the development of cultural needs of disadvantaged population groups, in order to create equal opportunities in the field of culture and conditions to facilitate access to culture for marginalised population groups living in Roma settlements.

#### *Missionary work in Roma settlements project*

700. One of the priority objectives of the Ministry of Culture in the field of Roma culture development is the development of institutional mechanisms that would ensure systemic work with children and youth directly in Roma settlements and prepare them for the possibility of becoming integrated, i.e. also to live better. The Roma cultural missions could be one of such integration tools. Missionary work with the youth could become the foundation facilitating easier acceptance and implementation of social and educational programmes of the State and NGOs. The spiritual and cultural life of Romany children and youth can be developed through social programmes; however, in the isolated world of Roma settlements, missionary work can play an irreplaceable role. In 2007, the Slovak



Ministry of Culture supported the project of the Roma Mission at Lomnička with SKK 200,000 from the grant system.

*Community Travelling Theatre project*

701. One of the partial solutions leading to improved quality of life of Romany children and youth is the Travelling Theatre project that would explain to the children, in an illustrative way, the meaning of certain values, e.g. hygiene, education, etc., the acquisition of which is necessary for the implementation of social programmes and the development of the whole integration process. The Travelling Theatre is a project modest in its financial and material requirements and its objective is to communicate, in an illustrative form, lessons and understanding of a different system of values, and it offers children the possibility to take part in the play, i.e. also in the process of understanding and realising what has to be changed, in a natural way. A coordinated procedure in the framework of inter-ministerial cooperation in the implementation of these model cultural projects could deliver specific results in the effort to find solutions to the concerns of Roma communities, and it could become a part of the cultural tools conducive to the endeavour to tackle these challenges in a more comprehensive manner. In 2006, the Ministry of Culture of the Slovak Republic supported the Travelling Theatre project with SKK 250,000, and in 2007, it supported two projects with an amount of SKK 450,000.

Table 10  
**Support to the culture of individual national minorities in individual years**

<i>Minority culture 2007</i>									
<i>Minority</i>	<i>Live culture</i>			<i>Periodicals I</i>		<i>Non-periodicals II</i>		<i>Amount</i>	
	<i>No.</i>	<i>Subsidy</i>	<i>%</i>	<i>No.</i>	<i>Subsidy</i>	<i>No.</i>	<i>Subsidy</i>	<i>No.</i>	<i>Subsidy</i>
Hungarian	360	30 162 000	63	25	9 280 000	114	12 120 000	499	51 562 000
Roma	65	7 722 000	13	2	1 200 000	6	1 410 000	73	1 148 200
Czech	45	2 867 000	5	1	1 200 000	0	0	46	4 450 000
Ruthenian	45	3 079 000	5.1	5	980 000	7	400 000	57	5 283 000
Ukrainian	11	1 545 000	3.2	3	1 104 000	3	166 000	17	3 430 000
German	38	1 327 000	2.8	1	800 000	5	90 000	44	3 007 000
Polish	8	650 000	1.4	1	600 000	0	0	9	1 550 000
Moravian	2	200 000	0.4	0	0	0	0	2	390 000
Croatian	5	922 000	2	1	428 000	0	0	6	1 450 000
Russian	13	355 000	0.7	1	436 000	0	0	14	919 000
Bulgarian	6	420 000	0.9	1	360 000	0	0	7	780 000
Jewish	10	1 120 000	2.4	2	100 000	2	600 000	14	1 850 000
Cultural policy									1 607 000
<b>Total</b>	<b>604</b>	<b>47 621 000</b>	<b>100</b>	<b>43</b>	<b>16 488 000</b>	<b>137</b>	<b>14 391 000</b>	<b>784</b>	<b>87 750 000</b>

Table 11  
**Support to the culture of individual national minorities in 2007**

<i>Minority</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>2005</i>	<i>2006</i>	<i>2007</i>	<i>No. of persons of the particular minority</i>	<i>%</i>
Hungarian	39 142 300	40 977 500	53 078 000	51 639,000	87 801 000	51 562 000	520 528	73.86
Roma	7 303 900	7 387 800	8 232 000	7 905,585	13 005 000	11 482 000	89 920	12.76
Czech	2 599 200	3 078 000	3 794 800	3 921,814	4 555 000	4 420 000	44 620	6.33
Ruthenian	3 399 000	4 280 000	4 139 000	3 824,298	5 100 000	5 283 000	24 201	3.43
Ukrainian	2 590 000	2 970 000	2 738 000	2 754,000	3 564 000	3 430 000	10 814	1.53
German	2 373 000	2 591 800	2 201 500	2 217,600	3 010 000	3 007 000	5 405	0.77
Polish	1 300 000	912 000	995 000	1 065,600	1 250 000	1 550 000	2 602	0.37
Moravian	1 000 000	432 000	0	950,400		390 000	2 348	0.33
Russian	520 000	710 000	657 100	662,400	784 000	919 000	1 590	0.23
Bulgarian	900 000	1 133 100	852 000	489,600	576 000	780 000	1 179	0.17
Croatian	1 879 000	1 475 000	1 050 000	936,000	1 350 000	1 450 000	890	0.13
Jewish	2 066 400	2 535 800	1 486 000	1 512,000	1 455 000	1 850 000	218	0.03
Other disadvantaged	1 993 000	11 517 000	776 600	3 011,000				
<b>Total</b>	<b>67 470 800</b>	<b>80 000 000</b>	<b>80 000 000</b>	<b>80 889 298</b>	<b>122 450 000</b>	<b>86 123 000</b>	<b>704, 315</b>	<b>99.94</b>
Cultural policy					3 010 000	1 607 000		

*Support to the culture of the Hungarian national minority*

702. Earmarked funds for cultural activities, periodicals and non-periodicals are allocated to individual minorities, including the Hungarian one, through the grant scheme of the Ministry of Culture of the Slovak Republic. Minorities and ethnic groups are given room to develop and use their own language as the medium of their cultural heritage and preservation of their linguistic identity.

703. In 2008, the Ministry of Culture of the Slovak Republic had more funds available for the Culture of National Minorities programme; electronic registration processes became more transparent and simpler; the internal approval procedure of individual applications became significantly faster; the time limits for application processing from the date of filing the application to allocating funds to individual applicants were shortened; a more detailed structure of the programmes ensuring more conceptual preparation, processing and work of technical commissions was drafted, hence a higher level satisfaction of applicants for grants should be achieved; the electronic application registration system was improved (all forms are now available in electronic form); the number of eligible items in the budgets increased; and all technical grant commissions got a special code which gave the members of individual commissions a period of two months to study the projects, thereby making their decision-making more professional, conceptual and fair.

*New subprogramme structure*

704. The area of supported live culture is subdivided for all national minorities into support to art festivals and shows, folk activities and events, theatre activities, art contests, creative art workshops, child and youth camps, exhibitions and literary activities.

705. In the field of periodical print media the focus is on financial support for the publishing of dailies, weeklies, monthlies and bimonthlies, quarterlies, irregularly published press and support to electronic periodicals.

706. The support to non-periodical print media is directed to publishing of original works by national minority authors, translations of literature, support to social sciences literature, monographs on towns and villages and CDs.

707. In 2008, the Ministry of Culture of the Slovak Republic appointed two separate grant commissions composed of persons belonging to the Hungarian national minority for the Hungarian national minority, one for the area of live culture and the other for periodical and non-periodical print media. By adding this new grant commission, the Ministry of Culture of the Slovak Republic satisfied a request of the Hungarian national minority in Slovakia. The Hungarian grant commission decides on the amount of financial contributions to individual projects based on priorities and criteria set for the pertinent year by the commission in an independent manner.

708. A significant area of support covers presentation activities of individual national minorities for the majority with a view to education in tolerance, multiculturalism, and prevention of all forms of racism and intolerance. Support is also given to technical seminars, research on the culture of national minorities and the production of national minority documentaries.

Table 12

**Support to the Hungarian national minority culture in 2007**

<i>Type of support</i>	<i>Number of projects</i>	<i>Amount (SKK)</i>
Live culture	359	30 162 000
Periodicals	25	9 280 000

<i>Type of support</i>	<i>Number of projects</i>	<i>Amount (SKK)</i>
Non-periodicals	114	12 120 000
<b>Total</b>	<b>498</b>	<b>51 562 000</b>

709. In the field of periodical literature, the grant system of the Ministry of Culture is the vehicle for supporting culture pages in and supplements to newspapers and journals as well as periodicals covering the cultural life of the Hungarian national minority, journals relating to literature, art, sciences, art reviews and students, university journals and magazines for children.

Table 13

**Number of titles and the financial volume of supported periodicals in the Hungarian language**

<i>Year</i>	<i>Number of titles</i>	<i>Amount (SKK)</i>
2005	23	11 898 000
2006	27	18 290 000
2007	25	9 280 000

710. In 2007, the Ministry of Culture of the Slovak Republic supported these periodicals: *Ateliér, Dunatáj, Fórum, Gömörország, Itthon, Irodalmi szemle, Jó gazda, Kalligram, Kassai Figyelő, Katedra, Kulisszák, Kürtös, Literárny Dunatáj, Partitúra, Régió, Szabad Újság, Szőrös Kő, Tábornút, Tücsök, Új Nő, Új Szó, Vasárnap, Žitný ostrov, Eruditio-Educatio, Pedagógusforum.*

711. In 2007, the support from the Ministry of Culture of the Slovak Republic to the *Új Szó* daily published in the Hungarian language amounted to SKK 1,000,000.

Table 14

**Support from the Ministry of Culture of the Slovak Republic to cultural activities of the Hungarian national minority**

<b>Year 2007</b>	SKK 51 562 000
<b>Year 2008</b>	SKK 56 515 000

712. The Hungarian Ifjú Szívek – Young Hearts ensemble is the only national minority artistic ensemble receiving contributions from the budget of the Slovak Ministry of Culture. In 2007, the ensemble received financial support amounting to SKK 6,748,000 for its activities and in 2008, the amount was SKK 7,000,000. The Ministry of Culture of the Slovak Republic tries to send this ensemble to cultural events organised by various cultural organisations of the majority population according to its possibilities. In the past, the ensemble was on a tour in the United States and Australia, has performed in Austria, and has given several performances in Hungary every year.

713. The Ministry of Culture of the Slovak Republic has supported amateur ensembles representing the Hungarian national minority in Slovakia with a substantial amount every year. The objective of this support from the Ministry of Culture of the Slovak Republic is to foster and develop the national minority culture of the Hungarians living in Slovakia, be it through NGOs, amateur ensembles, publishing houses, or organisations of Csemadok – the Hungarian Social and Cultural Union in Slovakia, which present and promote Hungarian language and culture. In 2007, the support from the Ministry of Culture of the Slovak Republic to live culture of the Hungarian national minority amounted to SKK 30,162,000 for 359 supported projects.

*Culture of disadvantaged population groups*

714. Since 2004, the Ministry of Culture has had a Department for the Culture of Disadvantaged Population Groups. Its task is to facilitate the integration of these groups into society, prevent violence and create equal opportunities for a life of dignity of marginalised persons through support mechanisms for culture. These activities of the Ministry of Culture of the Slovak Republic also support solidarity in the process of social inclusion. Preparation of the draft Strategy of Development of Cultural Needs of Disadvantaged Population Groups until 2007 is a part of the initiative of creating legitimate tools for the support and development of culture of the disadvantaged population groups and equal opportunities in access to cultural values. The main purposes of the document were to define the cultural needs of disadvantaged population groups, to find alternatives for support to and development of their cultural needs, to look for mechanisms for developing and enhancing the sensitivity of society to disadvantaged population groups and to create equal opportunities for disabled persons, marginalised Roma communities, elderly persons, children and youth, homeless persons, sexual minorities and asylum-seekers in the field of culture.

*Culture of disadvantaged population groups grant programme of the Ministry of Culture of the Slovak Republic*

Table 15

**Overview of funding for the culture of disadvantaged population groups from the Culture of Disadvantaged Population Groups grant programme of the Ministry of Culture of the Slovak Republic, 2004–2008**

<i>Year</i>	<i>Distributed subsidy (SKK)</i>
2004	398 700
2005	3 011 000
2006	3 010 000
2007	6 000 000
2008	6 000 000

715. In improving conditions in the accessibility of culture, an important role is played by music and theatre companies like the Slovak Philharmonic, the Košice State Philharmonic and the Žilina State Chamber Orchestra which present their art to all age groups of the population, including the disadvantaged groups, children in children's homes, socially weaker groups and long-term patients in hospitals. The Theatre Institute (an organisation established by and reporting to the Slovak Ministry of Culture) participates in the creation of equal opportunities through the Divadlo z pasáže (Theatre of the Arcades) (which is a part of the Institute) by developing the cultural needs of mentally handicapped persons, homeless persons, etc. The Theatre Institute also closely cooperates with the Nota Bene homeless persons' theatre that functions under the Proti prúdu (Against the Stream) civil association. The International House of Art for Children – Bibiana plays an important role in satisfying the cultural needs of children and youth by paying systemic attention to the development of cultural rights and equal access to the culture of disabled children, children in material need and street children.

*The development of international cultural relations*

716. The competence of the Ministry of Culture of the Slovak Republic is defined in the Manifesto of the Government of the Slovak Republic and determined by the objectives of Slovak foreign policy as well as international legal bilateral and multilateral commitments.

The basic task of international activities is presenting Slovak culture abroad, attracting partners for cooperation and initiating projects at the level of the State, regional and local levels. It is a systemic initiative to create a broad facilitating cultural and social environment for Slovak culture within international relations.

*Intercultural dialogue*

717. In the reporting period, the Ministry of Culture of the Slovak Republic paid attention to issues like intercultural dialogue, multiculturalism, cultural pluralism, cultural diversity, relation between the old and the new minorities, cultural integration of migrants, etc. In 2005, a working group for the preparation of a strategic document on multiculturalism was established to treat these issues in more detail. Meetings of the working group considered issues of the approach to new and old minorities, the Roma challenge, migration, as well as the search for a harmonised policy with the European Union. The initiative aimed at reviving a discussion that would produce sufficient information on various models of multiculturalism and outlined a model applicable to Slovakia. The Roma challenge is the priority issue for Slovakia in this field today. The Ministry of Culture of the Slovak Republic drafted the National Strategy for the Implementation of the European Year of Intercultural Dialogue in compliance with EU activities.

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