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HUMAN RIGHTS COMMITTEE  
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 40 OF THE COVENANT**

**Second periodic report of States parties due on 31 December 2001**

**SLOVAKIA\***

[30 July 2002]

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\* This report is issued unedited, in compliance with the wish expressed by the Human Rights Committee at its sixty-sixth session, in July 1999.

## **The Second Periodic Report of the Slovak Republic to the International Covenant on Civil and Political Rights**

1. The Slovak Republic being a State party to the International Covenant on Civil and Political Rights (hereinafter the “Covenant”) presents this Second Periodic Report to the International Covenant on Civil and Political Rights (hereinafter the “Report” pursuant to article 40, paragraph 1, subparagraph b) of the Covenant and according to the Recommendations of the Concluding Observations of the Human Rights Committee CCPR/C/60/SLO/3 (hereinafter “Concluding Observations”) adopted after consideration of the Initial Report of the Slovak Republic to the International Covenant on Civil and Political Rights (CCPR/C/81/Add.9, hereinafter the “Initial report”) covering the period from August 1997 till the end of November 2001. The presented report was elaborated in compliance with Guidelines for State Reports under the International Covenant on Civil and Political Rights CCPR/C/66/GUI/Rev.2, and it is composed of two parts - in the first part the Slovak Republic presents general information on the latest developments in the area governed by the Covenant and responds to some recommendations made by the Human Rights Committee (hereinafter the “Committee”) resulting from the Concluding Observations; the second part is structured as to follow the articles of the Covenant and presents information on the degree of their implementation into the national legal order and on all relevant legislative changes the Slovak Republic adopted since the consideration of the Initial Report in 1997 and also on measures and concrete steps by the Government and State authorities taken in order to promote the respect for human rights in the Slovak Republic (hereinafter either “Slovakia”).

2. The Report was elaborated by the Ministry of Foreign Affairs of the Slovak Republic in close cooperation with the Office of the Government of Slovak Republic, other ministries, central bodies of State administration, the Prosecution General of the Slovak Republic and other institutions. Many questions were consulted with human rights NGOs; the draft texts of the Report were given to the Slovak National Centre for Human Rights that commented on the text. Draft texts of the Report were published on the web site of the Ministry of Foreign Affairs of Slovak Republic and they were available to Slovak NGOs.

### **I. GENERAL**

#### **Recommendations Nos. 6, 7, 11, 13, 14, 26**

3. The International Covenant on Civil and Political Rights adopted in New York on 19 December 1966 was signed by the Czechoslovak Socialist Republic on 7 October 1968 and after its ratification on 23 December 1975 it was subsequently promulgated in the Collection of Laws under No. 120/1976. The dissolution of the Czech and Slovak Federal Republic on the basis of Constitutional Statute No. 542/1992 Coll. as of 31 December 1992 and the subsequent establishment of the Slovak Republic resulted in the so-called “general succession” of the Slovak Republic to adopted international treaties on 1 January 1993. The basis for this is article 153 of the Constitution of the Slovak Republic No. 460/1992 Coll. as amended<sup>1</sup> (hereinafter the “Constitution”) within the meaning of which the National Council of the Slovak Republic (hereinafter the National Council or the Parliament) made a declaration to the parliaments and nations of the world confirming the binding nature of multilateral and bilateral

treaties for Slovakia from 1 January 1993. By Notification of the Ministry of Foreign Affairs of Slovakia No. 53/1994 Coll. the notification of Slovakia's succession to multilateral United Nations instruments where the Czech and Slovak Federal Republic was a State party, was effected from 1 January 1993.

4. The Covenant that is an international human rights treaty is, thus, not only a part of the valid legal order of Slovakia but with view to the application of article 11 of the Constitution<sup>2</sup> - the so-called reception clause - its prevalence over the laws of the Slovak Republic is ensured when it guarantees a greater scope of constitutional rights and freedoms because Slovakia ratified and promulgated it in the manner as laid down by law. This article regulates the relationship between national and international law in such a way that some international treaties, namely international human rights treaties, prevail over the laws of the Slovak Republic.

5. The Slovak Republic avails itself of the occasion of drafting this presented report to inform the Committee that on 23 February 2001 the National Council adopted Constitutional Statute No. 90/2001 Coll. (hereinafter the "amendment to the Constitution") amending and supplementing the Constitution of the Slovak Republic as amended. In the whole text of the presented Report this amendment to the Constitution is several times referred to and analysed when identifying the degree of relevant Covenant articles implementation. In this context and also with respect to the Recommendation under Point No. 13 of the Concluding Observations it is necessary to state that by adopting the Amendment to the Constitution continuity of application of so far adopted international human rights and fundamental freedoms treaties has been ensured within the meaning of amended article 154c, paragraph 1 of the Constitution, (entered into force on 1 July 2001). Under this article international treaties on human rights and fundamental freedoms which the Slovak Republic ratified and promulgated in the manner laid down by law prior to 1 July 2001 shall be a part of its legal order and shall prevail over its laws if they provide a greater scope of constitutional rights and freedoms. The reason for this amendment of transitory and final provisions of the Constitution was the change of the then existing legal provisions concerning the legal status of international treaties in the Slovak legal order after the adoption of the quoted law. Selected categories of international treaties (article 7, paragraph 5 of the Constitution) from those international treaties that require assent by the National Council prior to ratification by the Slovak President (article 7, paragraph 4 of the Constitution) concluded after the day of effect of the Amendment to the Constitution prevail over the laws of the Slovak Republic and their status in the hierarchy of legal norms is between the Constitution or constitutional statutes and acts. This category includes international treaties that directly give rise to rights or duties of natural persons and/or legal entities and also all international human rights and fundamental freedoms treaties. Another change resulting from the Amendment to the Constitution is the possibility of the President of the Republic or the Government to lodge a petition with the Constitutional Court of the Slovak Republic to consider compliance of an international treaty with the Constitution or constitutional statutes under article 7, paragraph 4. The petition may be filed before the Government of the Slovak Republic (hereinafter the "Government of Slovakia" or the "Government") submits a negotiated international treaty to the National Council for deliberation. This case is the so-called preventive verification of constitutionality, i.e. the purpose of this provision is to prevent potential differences or conflicts between the constitutional provisions and the provisions of an international treaty. They could arise from a provision in the international treaty that fails to be

in compliance with a provision of the Constitution or constitutional statute. Hereto it is only necessary to state that article 11 of the Constitution was repealed by the effect of the concerned constitutional statute. The Slovak Republic responds to Recommendation No. 13 of Committee's Concluding Observations also in the information on the implementation of article 2 of the Covenant.

6. In the period under consideration institutional mechanisms for the protection and observance of human rights were strengthened in the Slovak Republic and in this context and with respect to Point No. 6 of Committee's Concluding Observations Slovakia submits the following pieces of information:

6.1 In 1998 the Government of Slovakia established the post of the Deputy Prime Minister for Human Rights, Minorities and Regional Development who is coordinating government's activities in this field. At the same time he is the coordinating umbrella entity for human rights and rights of minorities and ethnic groups, churches and religious societies, NGOs, minority organizations and regional development. In the framework of this competence he is responsible for the comprehensive creative, policy-making, methodological, expert, analytical, advisory and initiative-taking activities with a State-wide coverage while taking into account foreign policy orientation of Slovakia.

6.2 In February 1999 the Government established the post of the Plenipotentiary for solving the Problems of the Roma National Minority. The Plenipotentiary of the Government was recalled in March 2001, the new plenipotentiary was appointed in July, and in September 2001 the statute and the organization of the Secretariat were changed. The new statute of the office established an Inter-Ministerial Committee for Roma Community Affairs. This advisory body is chaired by the Plenipotentiary of the Slovak Government for Roma Communities. The new statute also enlarges the scope of Plenipotentiary's competences and it now also includes co-decision in the use of State budget funds for solving the problems of Roma communities. The Plenipotentiary of the Government for Roma Communities proposes, coordinates and controls activities targeted to addressing the problems of Roma communities, proposes and after approval by the Government implements systemic solutions to achieve equal status of citizens - persons belonging to the Roma minority. The Plenipotentiary pursues observing of fundamental rights and freedoms guaranteed by the Constitution of the Slovak Republic and international human rights conventions. Plenipotentiary is appointed and recalled by the Government. Plenipotentiary's Secretariat is an organizational part of the structure of the Office of the Government of Slovakia. In order to give support to the Plenipotentiary in the East Slovak region, in particular in collecting information from the field and in assessing the effects of individual governmental measures a branch office of the Secretariat of the Plenipotentiary of the Slovak Government for Roma Communities was established in Prešov in October 2001.

6.3 In September 1999 the Slovak Government approved the Strategy of the Government of the Slovak Republic for the Solution of the Problems of the Roma National Minority and the Set of Measures for its Implementation - 1st Stage. The preparation of further implementation measures included breaking down of the Strategy to the levels of individual sectors, regions and districts including financial coverage of projects from the State budget. Thus, the 2nd stage of

the Strategy of the Government (Elaboration of the Strategy of the Government for Solving Problems of the Roma National Minority into a Set of Concrete Measures for the year 2000) approved by Resolution of the Government No. 294/2000 was drafted. It includes 282 concrete activities with a financial coverage of regional and sectoral programmes from the regional authorities and ministries budgets amounting to more than SKK 165 million.

6.4 In 1999 the Council of the Government of the Slovak Republic for National Minorities and Ethnic Groups (hereinafter the Council), which is an advisory, initiative-taking and coordinating body of the Slovak Government for the area of State national minority policy, was newly established. All national minorities living in Slovakia (11 national minorities) are represented on it. The Deputy Prime Minister for Human Rights, Minorities and Regional Development is the chairman of the Council and Minister of Culture is its deputy chairman. The Council has a total of 24 members; out of them 14 members represent national minorities and ethnic groups, which is the majority of its members. Each minority has one representative on the Council with the exception of the Hungarian minority (three representatives) and the Roma minority (two representatives), who was appointed to the Council by associations, unions and societies of the concerned national minority. Representatives of State administration (at the level of State secretaries) and the Chairman of the Parliamentary Committee for Human Rights and Minorities are also members of the Council. Representatives of NGOs and experts on relevant issues are also invited to attend the meetings (without a voting right). Meetings of the Council are held at least four times a year. The Council also prepares, discusses and submits to the Government summary reports on the situation and conditions created for citizens belonging to national minorities and ethnic groups, on maintaining their identity, and proposes and recommends the Government solutions. The Council prepares positions to draft laws and governmental decrees concerning citizens belonging to national minorities for the Government and presents the government proposals concerning reallocation of State funds earmarked for national minority culture, etc.

6.5 A parliamentary committee with identical focus - the Committee of the National Council for Human Rights and Minorities - was established by the National Council. This Committee established the Commission for the Rights of the Roma Minority as its advisory body and the membership of the Commission is composed not only from the members of parliament but also selected representatives of the Roma minority.

6.6 Other institutional mechanisms in the area of human rights include the Division of Minority Cultures established at the Ministry of Culture of the Slovak Republic in December 1998 and the Department of National Minorities Education at the Ministry of Education of the Slovak Republic.

6.7 The Slovak Republic formed the following joint intergovernmental commissions the scope of which also includes issues of human rights and rights of persons belonging to national minorities on the basis on international bilateral treaties with Hungary and Ukraine:

- Slovak-Hungarian Commission for National Minorities Issues;
- Slovak-Ukrainian Commission for National Minorities, Education and Scientific Relations Issues.

7. Another important institutional mechanism in the protection of human rights is the institute of the ombudsman and in the context of Point No. 11 of Committee's Concluding Observations the Slovak Government submits the following information concerning developments in this area:

7.1 In August 2000 the Slovak Government tasked the Deputy Prime Minister for Legislation in cooperation with the Deputy Prime Minister for Human Rights, Minorities and Regional Development to submit the Government a draft law on the public defender of rights (Ombudsman) for discussion after the adoption of the Amendment to the Constitution. In this context a public discussion on the preparation of the Ombudsman Act was conducted (e.g. in May 2001 the Office of the Slovak Government in cooperation with the National Council organized international conference "The Establishment of the Institute of Ombudsman and his Status in the Legal System of the Slovak Republic".

7.2 In article 151a the Amendment to the Constitution introduced a new institute of the public defender of rights (ombudsman) that was absent in the constitutional system of Slovakia. This provision that makes room for parallel involvement of several constitutional bodies in the protection of fundamental rights and freedoms of natural persons and legal entities shall enter into force on 1 January 2002. This article of the Constitution has also another provision that includes powers to issue a law that will regulate in detail his appointment and removal, status, scope, basic rules of operation and other issues related with the performance of the office.

7.3 The Slovak Government elaborated the draft law on the public defender of rights linking up with the relevant article of the Constitution and approved it in September 2001. Under this draft the public defendant of rights should be an independent body who should participate, in addition to judicial protection, in the protection of fundamental rights and freedoms of natural persons and legal entities in the form of extrajudicial protection in case of actions, decisions or inactivity of public administration bodies or in cases when such actions, decisions or inactivity of public administration bodies is in conflict with the legal order or the principles of a democratic State with the rule of law. The draft law was prepared in cooperation with NGOs and during its preparation several international experts on the issue were consulted. The draft law on the public defendant of rights was submitted to the Parliament and it may be assumed that the law will be adopted at the December 2001 session of the Parliament.

8. Information on other institutional mechanisms is stated in the comments to the relevant articles of the Covenant.

9. In the field of human rights, in addition to these mechanisms, the Government collaborates with NGOs that are active in the area of protection of victims of violence (also with respect to the Recommendation in Point No. 14 of the Concluding Observations). The Pomoc obetiam násilia (Help to Victims of Violence) civic association provides counselling to victims of crime with the objective of legal and psychological assistance and crime prevention. It registers some 1,200 clients out of whom one quarter are victims of domestic violence. In 2001 the Government made funds available for opening counselling centres for victims of violence in eight regional capitals. Experts for the work in these counselling centres are trained and ready to start their activities.

10. With respect to Point 7 of Committee's Concluding Observations Slovakia presents additional information concerning the creation of the Department for Documentation of Crimes of Communism within the Ministry of Justice of the Slovak Republic from 1 April 1999 with these main tasks:

- collecting and processing of all types of information, records and documents related to the communist past;
- documenting all forms of persecution and violence committed against the citizens of the Slovak Republic by the communist regime, on the basis of materials in the archives and oral testimonies;
- analysing archival materials concerning repressive actions, identifying persons mentioned in them and acquiring references on them;
- informing the public on the results of their activity, publishing information on communist past, on actions and individual histories and issuing publications.

11. In compliance with Point No. 11 of Committee's Concluding Observations and Recommendation in Point No. 26 of Committee's Concluding Observations the Government of Slovakia submits that Committee's Concluding Observations presented after the assessment of the Initial Report were closely analysed by the Slovak Government and competent ministries and the Government adopted Resolution No. 519/1998 at its session on 4 August 1998 on its basis. Individual Ministers of the Government were tasked to follow the recommendations in Committee's Concluding Observations in order to achieve further progress in the implementation of the provisions of the Covenant into the national order of Slovakia and the protection of human rights in the Slovak Republic. The text of Committee's Concluding Observations as a part of the material discussed by the Slovak Government is a publicly accessible document available to look at or to make copies. The text of the Concluding Observations was also published on the web site of the Ministry of Foreign Affairs of the Slovak Republic and made available to the Slovak National Centre for Human Rights and Slovak human rights NGOs.

## **II. IMPLEMENTATION OF INDIVIDUAL ARTICLES OF THE COVENANT**

### **Article 1**

12. The Slovak Republic informed on the implementation of article 1 of the Covenant in its Initial Report. To complete the presented information the Slovak Republic submits that it respects the right of peoples to self-determination in the spirit of article 1, paragraphs 1 and 3 of the Covenant in compliance with its international political obligations as well as the relevant provisions of the United Nations Charter and United Nations resolutions.

13. Article 4 of the amended Slovak Constitution according to which "Mineral resources, caves, underground waters, natural healing sources and streams are a property of the Slovak Republic" is linked with the provisions of article 1, paragraph 2 of the Covenant. Natural

wealth and resources are disposed in Slovakia without prejudice to any obligations arising out of international economic cooperation on the basis of which trade with other countries is performed under international treaties in this area.

## **Article 2**

### **Recommendation No. 13**

14. General provisions of the Constitution stipulate equal status of all persons in their dignity and rights, where article 12 explicitly provides for: “All human beings are free and equal in dignity and in rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible and irreversible. Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.”

14.1 The quoted provision defines in a positive way on which grounds persons must not be differentiated and it ensures equal status of all persons. Article 13 of the Constitution further defines that the scope of fundamental rights and freedoms can be regulated only by law under conditions provided for in this Constitution as well as that legal restrictions of fundamental rights and freedoms apply to all cases that satisfy stipulated conditions, i.e. to all without any difference.

14.2 Fundamental human rights and freedoms granted by the Constitution apply to everyone, thus also to aliens save expressly granted only to citizens who are to be understood the nationals of the Slovak Republic in the meaning of article 52 of the Constitution. In most cases the citizens of the Slovak Republic are granted only rights linked with the creation of the State power. This article also states that whenever the term “citizen” is used in any previous legal regulation, it means everyone, provided the rights and freedoms are guaranteed by this Constitution, irrespective of the citizenship.

15. If the constitutional rights and freedoms or rights guaranteed by this Covenant failed to be respected in practice or were violated e.g. by a wrong application of a piece of legislation then in this case the provisions of Title Two Section Seven of the Constitution - Right to Judicial and Other Legal Protection, article 46 provides that “Everyone may claim his or her right by procedures laid down by a law at an independent and impartial court or, in cases provided by a law, at other public authority of the Slovak Republic.”

15.1 Everyone who claims imperilment or infringement of his/her rights has the right to seek protection of the right before a court and may, thus, file a petition with a court with the objective to achieve remedy of the unlawful situation in compliance with the provisions of Act No. 99/1963 Coll. - the Civil Procedure Code as amended (hereinafter the “Civil Procedure Code” or “CivPC”). This Code is the basic formal source of civil procedural law and it regulates the procedures of the court and the parties to civil proceedings in such a way as to ensure fair protection of rights and legitimate interests of all parties to the proceedings.



15.2 The provisions of the CivPC regulate the possibility of filing regular remedy or also extraordinary remedy against a rendered judgement. Regular remedy - an appeal - is filed against a judgement by a first instance court that is not final yet, provided the law does not exclude this possibility. Extraordinary remedies that are filed against a final court judgement include retrial, an appeal on points of law and extraordinary appeal on points of law. A party may file a petition for retrial under the terms and conditions provided for in the CivPC. Final judgement of an appeal court may be challenged with an appeal on points of law when the law permits it. The Prosecutor General of the Slovak Republic files an extraordinary appeal on points of law upon a petition by a party affected by the judgement of the court or a person aggrieved by the judgement of the court. It is lodged when the Prosecutor General found a violation of law by the final court judgement or when the protection of rights and interests of natural persons, legal entities and the State requires it and when this protection cannot be achieved with other legal means. A delivered judgement that cannot be challenged with an appeal is final and its decision is binding for the parties and all bodies.

15.3 The Constitution gives everyone who claims to suffer detriment to his rights by a decision made by a public administration body the possibility to file a petition to have such a decision reviewed with a court provided the law does not stipulate otherwise. However, review of decisions concerning fundamental rights and freedoms must not be excluded from the jurisdiction of the court. Based on this constitutional right the mentioned Amendment to the Constitution supplemented article 142, paragraph 1 of the Constitution in such a way that the courts shall also review the lawfulness of decisions made by bodies of public administration and lawfulness of decisions, measures or other actions by bodies of public power, if laid down by a law. This area is regulated in Part Five of the CivCP under Administrative Judiciary where the courts review lawfulness of decisions made by bodies of State administration, local government bodies and bodies of interest self-administrations and other legal entities when the law entrusts them with decision-making in rights and duties of natural persons and legal entities in the area of public administration (hereinafter "decision by administrative body"). Currently, amendment to the Civil Procedure Code is prepared mainly with a focus on administrative justice.

16. The status of the Constitutional Court of the Slovak Republic (hereinafter the "Constitutional Court") as an independent judicial body vested with the protection of constitutionalism, its competences and also matters that can be brought before the Constitutional Court, conditions for commencing such proceedings, requirements for appointment a Judge of the Constitutional Court, conditions of the performance of this office are stipulated in Title VII of the Constitution and also in Act No. 38/1993 Coll. on the organization of the Constitutional Court, on the proceedings before the Constitutional Court and the status of its Judges as amended (hereinafter the "Constitutional Court Act") that regulates more concretely issues concerning the organization of the Constitutional Court, the manner in which proceedings before it are conducted and the status of its judges.

16.1 The Constitutional Court adopts its decision in the form of finding when deciding on the merits of the case, then in the form of resolution and in one case in the form of judgement (in impeachment proceedings of the President of the Republic). Individual provisions of Chapter Two of the Constitutional Court Act regulate in detail the way in which these decisions should be applied.

17. Considering Committee's Recommendation in Point 13 of Concluding Observations Slovakia presents an explanation of the legal provisions on proceedings concerning constitutional complaints and petitions before the Constitutional Court here due to the changes introduced by the latest amendment to the Constitution and for the sake of better understanding.

**Legislation regulating proceedings on constitutional complaints and petitions in effect (valid to 1 January 2002)**

17.1 Article 127 of the Constitution and Fourth Section of Part Three of the Constitutional Court Act regulate the proceedings on constitutional complaint that may be lodged against final decisions by State administration and local government bodies by a natural person or legal entity claiming infringement of fundamental rights or freedoms of citizens with this decision if no other court should decide on the protection of these rights and freedoms. If the Constitutional Court admits the constitutional complaint then in its finding it will identify which fundamental right or freedom were violated and it will quash the decision causing the infringement of the right. Consequently, the body deciding the case in the first instance has the obligation to hear the case again and to decide while being bound by the legal opinion of the Constitutional Court. So far 309 constitutional complaints have been lodged with the Constitutional Court during its existence. In 6 cases the Constitutional Court decided in the form of finding, 8 proceedings were discontinued and in 295 cases the constitutional complaint was rejected.

17.2 Article 130, paragraph 3 of the Constitution regulated the possibility of the Constitutional Court to commence proceedings also upon a petition lodged by legal entities and natural persons if they alleged infringement of their rights. In this context it is necessary to mention the amendment of Constitutional Court Act No. 293/1995 on the basis of which the provisions on constitutional complaints in the Constitutional Court Act started to be applied to the proceedings and decision-making concerning the admitted petition as appropriate. When the panel of the Constitutional Court admitted a motion then in its finding it stated which fundamental rights and freedoms and which provisions of the Constitution or constitutional statutes were violated and what proceedings gave rise to it. This means that the decisions rendered by the Constitutional Court had only declaratory effect, i.e. they would state the infringement of the right but the Constitutional Court would not cancel the concerned decisions made by administrative or other bodies. And in this case it was upon the sued body to adopt appropriate measures remedying the unlawful or unconstitutional situation. Altogether 892 petitions (as of 31 December 1999) were filed with the Constitutional Court during its existence. In 82 cases the Constitutional Court decided the petitions with a finding.

**Legislation regulating proceedings on constitutional complaints and petitions in effect from 1 January 2002**

17.3 Under amended article 127 of the Constitution (in effect from 1 January 2002) the Constitutional Court decides on complaints by natural persons or legal entities alleging infringement of their fundamental rights and freedoms or human rights and fundamental freedoms resulting from an international treaty ratified by the Slovak Republic and promulgated in a manner provided for by a law save another court shall decide on the protection of these

rights and freedoms. When the Constitutional Court admits the complaint then it will hold in its decision that the rights or freedoms were infringed by a valid decision, measure or by other action and it shall quash such a decision, measure or other action. When the infringement of rights or freedoms emerges from inactivity, the Constitutional Court may order the one who has infringed these rights or freedoms to act in the matter. The Constitutional Court may, at the same time, return the matter for further proceedings, prohibit continuing in the infringement of fundamental rights and freedoms or human rights and fundamental freedoms resulting from the international treaty which has been ratified by the Slovak Republic and promulgated in the manner laid down by a law, or if possible, to order the one who has infringed the rights or freedoms to reinstate the situation before the infringement. The Constitutional Court may in its decision admitting the complaint, award the complainant an adequate financial satisfaction.

17.4 Under article 127a of the Constitution the Constitutional Court decides on complaints of the bodies of territorial self-government against unconstitutional or unlawful decision or against other unconstitutional or unlawful action into the matters of self-government, save another court shall decide on its protection. If the Constitutional Court admits a complaint of a body of territorial self-government, it identifies the essence of the unconstitutional or unlawful decision or other unconstitutional or unlawful action into the matters of self-government, which constitutional statutes or law was infringed and which decision or action caused this infringement. The Constitutional Court quashes the challenged decision, or if the infringement of the right consisted in an action different than a decision, it prohibits continuing of infringement of the right and orders, if possible, to reinstate the situation before the infringement.

17.5 Under section 57 of the Constitutional Court Act proceedings concerning the above-mentioned constitutional complaint can be commenced upon a motion filed by the qualified person. Under article 130 of the Constitution the qualified person to lodge a motion is at least one fifth of the Members of the National Council, the President of the Slovak Republic, the Government of the Slovak Republic, a court, Prosecutor General of the Slovak Republic and everyone whose rights should be adjudicated in cases provided for in article 127 and 127a of the Constitution. When the Constitutional Court admits a constitutional complaint then in its finding it will state which fundamental right and freedom and which provisions of the Constitution or constitutional statutes were violated and what proceedings gave rise to it. The Court quashes the challenged decision and consequently, the body deciding the case in the first instance has the obligation to hear the case again and to decide while being bound by the legal opinion of the Constitutional Court.

### **Article 3**

#### **Recommendations Nos. 6, 9, 14**

18. As already stated in the Initial Report the Slovak legal order guarantees equal civil and political rights to women and men. The Slovak Republic pays great attention to the issue of equal opportunities. This aspect has been included in all newly drafted laws. Currently, an equal treatment law is under preparation and it will, inter alia, include also equal treatment of women and men. Information on this law under preparation is presented in the point on the implementation of article 26 of the Covenant.

19. In 2001 the Slovak Government approved Concept of Equal Opportunities between Men and Women. The policy defines equal opportunities in labour market, in political and public life and the family. Measures and recommendations for implementing equal opportunities in labour market, reconciliation of professional and family life and in all areas of social life form an important part of it. Ministries and other central bodies of State administration, regional and district authorities are tasked with measures and the recommendations are addressed to self-governments on all levels, NGOs and social partners and research institutions are called to cooperate. The achievement of measures and recommendations of the Policy shall be evaluated at the highest tripartite level on an annual basis.

20. Legal guarantees for the equality of men and women and the factual situation are the content of the Initial Report of the Slovak Republic to the Convention on the Elimination of All Forms of Discrimination against Women. Currently Slovakia prepares the Second Periodic Report to the Convention on the Elimination of All Forms of Discrimination against Women that will contain topical information and progress achieved in this area.

21. In its Concluding Observations, Points Nos. 6 and 9 the Committee appreciated the establishment of institutions and programmes dealing with women-related issues; on this occasion Slovakia submits additional information to these points of the Concluding Observations and also information to the Recommendation in Point No. 14 of the Concluding Observations.

21.1 In 1996 a Coordinating Committee on Women Issues was established and in 1997 it elaborated the National Action Plan for Women in the Slovak Republic with the objective to improve the status of women in several areas of life. The Slovak Government evaluates the fulfilment of this action plan on an annual basis. Representatives of State bodies, women's NGOs, churches, trade unions and independent experts are members of this Coordination Committee.

21.2 In 1998 the National Centre for Equality between Women and Men was established as an independent non-governmental organization on the basis of an agreement between the United Nations Development Programme (UNDP) and the Slovak Government. It works as an information, documentation and coordination centre in the area of equal opportunities for women and men. The objective of this activity is to support NGOs in their activities, to improve the conditions for their mutual dialogue and cooperation, for their dialogue with the Government and State institutions and to carry out NGOs and State institutions cooperation-based projects focusing on gender equality in all areas of life. The establishment of the Centre was one of the activities to accomplish the recommendations of the United Nations Conference on Women held in Beijing to which the Slovak Government committed itself. The Centre regularly organizes seminars and training focusing on domestic violence prevention and elimination attended, inter alia, also by Police Force officers.

21.3 The Equal Opportunities Department was established as another element of gender equality institutional mechanisms in the Slovak Republic at the Ministry of Labour, Social Affairs and Family in 1999. It performs tasks in the area of equal opportunities for women and men and in the prevention of violence committed against women and domestic violence, it elaborates policy materials, draft measures and initiates promotion actions to improve the situation in equality of opportunities and supports the implementation of NGO equal

opportunities projects. The Equal Opportunities Department is involved in the alignment of Slovak legislation with the EU law in the area of equal opportunities for women and men, it coordinates the enforcement of the principle of equal opportunities for women and men in the centre of politics based on gender mainstreaming principles.

22. In the context of point No. 9 of Committee's Concluding Observations Slovakia submits the following information:

The Council of the Government of the Slovak Republic for Crime Prevention that is a coordinating, initiative-taking and advisory body to the Slovak Government in the area of crime and other anti-social activity prevention established an Expert Group for the Prevention of Violence against Women and in Families in 1999. This expert group is preparing a draft of the National Strategy for the Prevention and Elimination of Violence Committed against Women and in Families that should be completed in December 2002. The Council arranged the translation, publishing and distribution of these essential international documents and United Nations manuals:

- Model strategies and practical measures to eliminate violence against women and in the area of crime prevention and penal justice, March 1999;
- Violence against women elimination strategy (United Nations Office for Drug Control and Crime Prevention), November 2000;
- Justice for victims (Handbook to the application of the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power - (United Nations Office for Drug Control and Crime Prevention), November 2000;
- Handbook to the implementation of the United Nations Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power (for policy makers) (United Nations Office for Drug Control and Crime Prevention)), November 2000;

with the aim to speed up their implementation in Slovakia.

23. In this context Slovakia submits that on 1 August 2001 the amendment to the Criminal Code entered into force (Act No. 140/1961 Coll. as amended, hereinafter the "Criminal Code"), and section 241a, which contains legal provisions concerning the crime of sexual violence, was amended accordingly. The elements of this crime are formulated in a general way - "the person who by use of violence or threat of direct violence forces another person to oral intercourse, anal intercourse or other sexual practices or who abuses this person's vulnerability for such an act" - which means that it grants protections not only to women, however, this information is presented in the context of the implementation of Article 3 because women more often become victims of sexual violence. In addition, the provisions of the Criminal Code also sanction other unlawful conduct of this nature, which includes e.g. rape (section 241), sexual abuse (section 242), trafficking in women (section 246) and other.

24. Since 1999 several seminars and conferences in the field of violence against women and children and trafficking in women and children were organized in Slovakia. Some of them were organized by the relevant Slovak ministries, some by NGOs (e.g. Národné centrum pre rovnoprávnosť žien a mužov - the National Centre for Equality between Women and Men, Aliancia žien Slovenska - the Alliance of Women of Slovakia, the Pro Familia Civic Association, the Fenestra Civic Association, Interest Association of Women Aspekt and other) with an active participation of the representatives of State authorities.

25. The Slovak Republic also informs the Committee that in 2000 the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women was ratified and published in the Collection of Laws of the Slovak Republic under No. 343/2001 Coll. The Optional Protocol entered into force for Slovakia on 17 February 2001.

#### **Article 4**

##### **Recommendation No. 12**

26. Slovakia refers to information provided in the Initial Report and adds that the above-mentioned Amendment to the Slovak Constitution also changed conditions concerning the declaration of the exceptional state. Article 102, subparagraph m of the amended Constitution reads: the President “may, upon a proposition of the Government of the Slovak Republic, order a mobilization of the military forces, declare a state of war or declare an exceptional state and their termination”.

27. Under section 35 of Act No. 351/1997 Coll. (hereinafter the “Conscription Act”) as amended the Slovak President may order call-up of soldiers in reserves to perform extraordinary service for time necessary in numbers not exceeding the number of troops in reserves in the two youngest groups of date of birth and provision of necessary material means in case of occurrence of events presenting a threat to the independence, sovereignty, territorial integrity or inviolability of the borders of the Slovak Republic or in case of emergency endangering human lives or property on a large scale. Based on this law the President may order mobilisation of armed forces upon a proposal of the Government in case of events presenting higher risk to the independence, sovereignty, territorial integrity or inviolability of the borders of the Slovak Republic or a direct attack on the Slovak Republic by an external enemy.

27.1 In case of declaring universal mobilization under section 30, paragraph 1, of the Conscription Act the conscripts, recruits, soldiers performing compulsory military service, advanced and professional service as well as soldiers who have their compulsory service or alternative service interrupted have the obligation to start extraordinary service. Under section 37 soldiers performing their compulsory military service, alternative service or additional military service staying abroad have the obligation to immediately report to their military service after universal mobilization of armed forces was declared. Under section 38 soldiers in reserve and soldiers who have their compulsory service or alternative service interrupted and who are staying abroad have the obligation to report immediately to the place of their permanent residence on the territory of the Slovak Republic. Soldiers shall be discharged from the extraordinary service after terminating defence alert of the State.

27.2 Under Act No. 42/1994 Coll. on civil protection of the population as amended natural persons have the obligation to participate in the civil protection tasks by performing personal actions. The quoted law defines what is meant under personal actions: it is any physical or mental activity that is required for the sake of protecting life, health and property in times of contingencies. A district authority can either directly or through a municipality impose the obligation to give material satisfaction necessary to cope with the tasks caused by the contingency upon legal entities or natural persons. Under the quoted act natural persons have the obligation to perform tasks in units and facilities of civil protection according to specification and position and to prepare for their performance in advance, to perform time-limited works for civil protection linked with direct protection of life, health and property, to make things they own or use available, to make premises and means for temporary accommodation of evacuated persons available. Participation in personal actions in civil protection is considered another action in public interest for which free time corresponding the average earning is given.

28. Because Slovakia still does not have sufficient regulation of certain aspects, which may occur in situations when some human rights and freedoms may be limited, the Slovak Republic has started to work on draft Constitutional Statute on Security of the State in Wartime, State of War, Crisis and Emergency. The draft law shall regulate the potentially necessary restriction of human rights and freedoms in these situations and, at the same time, it will cancel currently valid Constitutional Statute No. 10/1969 Coll. on the State Defence Council as amended.

29. In this context Slovakia also presents that after proclamation of an exceptional situation the Police Force was not performing any activities that would call for adopting measures softening the obligations resulting from the Covenant in an extent required by such situations so far.

### **Article 5**

30. The adopted Amendment to the Constitution defined in more detail the competences of the Constitutional Court concerning decision making on conformity of legal provisions. As stated in article 125 of the Constitution the Constitutional Court decides upon a motion presented by the qualified person (who is: at least one fifth of the Members of the National Council, the Slovak President, the Slovak Government, court and Prosecutor General) on the conformity of:

- Laws with the Constitution, constitutional statutes and international treaties to which the National Council expressed its assent and which were ratified and promulgated in the manner laid down by a law (i.e. under Act No. 1/1993 Coll. on the Collection of Laws as amended);
- Government regulations, generally binding legal regulations of Ministries and other central State administration bodies with the Constitution, with constitutional statutes, with international treaties to which the National Council of the Slovak Republic expressed its assent and which were ratified and promulgated in the manner laid down by a law and with laws;

- Generally binding by-laws of municipalities with the Constitution, with constitutional statutes and international treaties to which the National Council expressed its assent and which were ratified and promulgated in the manner laid down by a law, and with laws, save another court shall decide on them;
- Generally binding regulations of local bodies of State administration and generally binding by-laws of bodies of territorial self-government with the Constitution, with constitutional statutes, with international treaties to which the National Council of the Slovak Republic expressed its assent and which were ratified and promulgated in the manner laid down by a law and with laws, with government regulations and with generally binding regulations of ministries and other central State administration bodies, save another court shall decide on them.

30.1 This article stipulates that when the Constitutional Court accepts the motion for the above proceedings, it can suspend the effect of challenged legislation, their parts, or some of their provisions, if fundamental rights and freedoms may be threatened by their further application, if there is a risk of serious economic damage or other serious irreparable impact. If the Constitutional Court finds inconformity between the above regulations then the respective regulations, their parts or some of their provisions lose effect and, the bodies that issued these regulations are obliged to harmonize them within six month from the promulgation of the decision of the Constitutional Court. If they fail to do so, they lose validity. (By adopting this Constitutional Statute article 132 of the Constitution was repealed.)

30.2 When a court assumes that other generally binding regulations, its part, or its individual provisions which concern a pending matter contradicts the Constitution, constitutional law, international treaty pursuant to article 7, paragraph 5, or law, it may file a motion to have proceedings on legislation conformity according to article 144, paragraph 2, commenced. In this case the proceedings shall be suspended. Legal opinion of the Constitutional Court contained in the finding is binding for the court.

## **Article 6**

### **Recommendation No. 8**

31. In Slovakia the right to life is protected by the Constitution. Article 15, paragraph 1, of the Constitution stipulates that “everyone has the right to life”. Under article 15, paragraph 2, of the Constitution “No one shall be deprived of life”.

32. Article 15, paragraph 3, of the Constitution stipulates that “The death penalty shall be inadmissible”. This absolute punishment was abolished with Act No. 175/1990 Coll. amending and supplementing the Criminal Code entered into force on 1 June 1990. Under this amendment the maximum sentence a court may impose is life imprisonment. Under the valid legal order of Slovakia the sentence of life imprisonment and the sentence of 25 years of imprisonment are classified as extraordinary sentences.



33. The Slovak Republic is a State party to several international human rights conventions that do not permit or that prohibit the death penalty. They have become a part of the Slovak legal order as a consequence of Slovakia's succession to these conventions after the dissolution of the Czech and Slovak Federal Republic. Slovakia is a State party to the Convention for the Protection of Human Rights and Fundamental Freedoms and also to the Additional Protocol No. 6. Article 1, of protocol No. 6 explicitly stipulates that the death penalty shall be abolished and that no-one shall be condemned to such penalty or executed.

34. On this occasion the Slovak Republic informs the Committee of ratifying the second Optional Protocol to the International Covenant on Civil and Political Rights in 1999 and its publishing in the Collection of Laws of the Slovak Republic under No. 327/1999 Coll. in compliance with point No. 8 of Committee's Concluding Observations. This Protocol entered into force for Slovakia on 22 September 1999.

### **Article 7**

#### **Recommendation No. 16**

35. Under article 16, paragraph 2, of the Slovak Constitution "No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment". The Slovak Republic is a State party to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and also to the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment. Both above-mentioned conventions have been reflected in the national law. In Slovakia torture and other cruel, inhuman and degrading treatment or punishment is considered one of the most severe violations of human rights. Failure to observe the prohibition of torture and other cruel, inhuman and degrading treatment or punishment are classified as criminal offences and they are punished according to the provisions of Criminal Code No. 140/1961 Coll. as amended (hereinafter the "Criminal Code") and Act No. 141/1961 Coll. on criminal court proceedings as amended (hereinafter the "Criminal Procedure Code").

36. Under section 89, paragraph 4, of the Criminal Procedure Code evidence obtained by means of unlawful duress or threat of duress cannot be used in the criminal proceedings with the exception of the case when it is to be used as evidence against a person who has used duress or threat of duress.

37. The Criminal Code stipulates the elements of crime of torture or other inhuman and cruel treatment in section 259a in Part X under the title "Crimes against Humanity". This provision punishes the person "who causes another person physical or mental suffering by torture or other inhuman and cruel treatment in connection with the exercise of the power of a State body or territorial self-government body". This crime constitutes specific elements to make punishment of such conduct by a State authority or territorial self-government body possible. A stricter sentence applies to the one who commits this crime as a public official or at least with two other persons or who is committing such crime for a longer period of time or when such act results in severe damage to health or death. Elements of the crime if war atrocities and persecution of population are stipulated in section 263 and 263a of the Criminal Code. Attempt, complicity and participation in these crimes is also culpable. These crimes must be committed during war.

38. Under section 215 of the Criminal Code ill-treatment of significant others and person in one's care is also punishable. This provision grants protection not only to minors but also to all persons who are depending on the care of other persons for any reason (old age, disability, sickness and alike). Under the Criminal Code ill-treatment shall mean causing physical or mental suffering, repeated beating, unjustified locking up, causing excessive fear or stress or any other improper or unjustified punishment or similar conduct specified in the Criminal Code. An offender shall be imposed a more severe sanction when this crime was committed in an exceptionally brutal way or against several persons. The offender shall equally be punished when by committing this crime he violated a special responsibility resulting from his employment or a responsibility he specifically undertook or when he continued committing this crime over a longer period of time or he causes serious bodily harm or death.

39. The Criminal Code also regulates other crimes and, thus, it makes sanctioning of individual types of conduct in violation of this Article punishable in dependence on concrete circumstances of the case. They include e.g. the crime of harm to health or deprivation of personal liberty, extortion, brutal duress and other.

### **Prevention of torture in policing**

40. With respect to the Recommendation under point No. 16. of Committee's Concluding Observations Slovakia submits that Police Force officers have the duty to respect the Constitution, laws and other regulations, in particular Act No. 171/1993 Coll. on Police Force as amended (hereinafter the "Police Force Act") in the performance of their duties. Police officers including investigators conduct the following acts within their competence regulated in relevant legal norms in the meaning of the Criminal Procedure Code and the Police Force Act: bringing persons into police official rooms in order to take explanations apprehending, detaining and arresting suspect or accused of committing a crime, interviewing witnesses and suspects prior to laying charges and also after it and performing other procedural acts of criminal proceedings.

41. Under section 8, paragraph 1, of the Police Force Act police officers shall respect the honour, esteem and dignity of the person and their own while performing their duties and to prevent any damage to the person and potential interference into his rights and freedoms, exceeding the necessary level for achieving the objectives pursued by performing police duties, be caused in the context of law enforcement. Police officers have the right to use means of restraint specified in section 50 of the Police Force Act (i.e. grip and hold, self-defence hits and kicks, means to overcome resistance and to avert attack, handcuffs, police dogs, vehicle and mounted crowd control, technical means hindering vehicle to drive off, stopping lane and other means to stop a vehicle by force, special water gun, stun device, hitting with firearms, threat of using arms, warning shots, weapons) while performing their duties resulting from the law. Means permitted to overcome resistance and avert attack are batons, defence sticks, defence shields, tear gas devices and electric shock devices.

42. The use of a particular means of restraint is decided by the police officer according to concrete circumstances. The manner and intensity of use of means of restraint has, however, to correspond the circumstances and they may be used only in situations stipulated by law. Prior to their use the police officer has the duty to call the person concerned to stop his unlawful conduct and caution of using means of restraint. The call and warning may be omitted only in case the

police officer is attacked or life or health of another person are imperilled and no delay is possible or other circumstances prevent it. The provisions of the Police Force Act clearly define the powers of police officers with respect to detention of persons, aliens, seizure of things, taking identification characteristics, taking away of arms, banning entry to certain locations, and other.

43. Under section 64 of the Police Force Act the police officer has the duty to immediately report any intervention with use of means of restraint during duty to his superior. When the police officer finds that the person concerned was injured while means of restraint were used he has the obligation, when possible under the given circumstances, to give first aid to the injured person and arrange for medical treatment of the person. When doubts arise as to the justification or appropriateness of use of means of restraint or when death, health injury or damage to property caused by their use occurred the superior has the obligation to determine whether they have been used in compliance with the law. An official report of the finding shall be written. In addition, provisions of section 158 of the Criminal Code covering the crime of abuse of power by a public official provide protection against the abuse of means of restraint by Police Force officers.

44. In the supervision of performance of first line officer's duties due attention is paid to the observance of Police Force Act provisions including the knowledge, conditions and manner of use of means of restraint. Inspection and supervisory activities in individual police services are included in the planning documents for individual levels of management. Increased attention is paid to the public order police as its officers are the first to come into contact with citizens and perpetrators of various crimes.

45. With respect to the Recommendation in point No. 16 of the Concluding Observations where the Committee recommended to set up appropriate training programmes for law enforcement and custodial personnel in the field of human rights, especially on articles 7, 9 and 10 of the Covenant, information on training programmes for individual groups of professions is given in the text on the implementation of article 9.

46. In 1996 the Slovak Ministry of Interior and the Slovak Ministry of Justice signed an Agreement on Cooperation between the Office of the Inspection Service of the Police Force and the General Directorate of the Corps of Prison and Court Guard regulating procedural issues concerning reporting of injuries of the accused and sentenced in cases when these persons allege that these injuries were caused by Police Force officers as well as reporting of ill-treatment on the side of Police Force officers during the period of detention. At the time of signing this agreement 196 cases were referred to the Office of the Inspection Service of the Police Force. Fifty-six cases of them were discontinued after police investigation under section 159, paragraph 1, of the Criminal Procedure Code as it were cases not based on suspicion of crime. In six cases the Office of the Inspection Service of the Police Force documented crime committed by police officers when using excessive force against citizens. The documentation was transferred to the Regional Police Force Investigation Offices with a motion to start prosecuting. According to statistics most complaints come from those accused of and sentenced for violent crime who breached the law already in the past, whose allegations are fabricated with the intention to avoid prosecution and to mislead criminal justice agencies.

**Measures to prevent torture during detention and the sentence of imprisonment**

47. Protection of the accused during detention and of the convicts during imprisonment sentence against torture or cruel, inhuman or degrading treatment is ensured by strict observance of the provisions in Act No. 156/1993 Coll. on Enforcement of Pre-trial Detention (hereinafter the "Detention Act") and Act No. 59/1965 Coll. on Enforcement of the Sentence of Imprisonment as amended (hereinafter the "Imprisonment Sentence Act") by Corps of Prison and Court Guard.

48. Serving of detention must respect the principle of presumption of innocence. An accused may be restricted during detention only in a manner that ensues from the purpose of detention, securing safety of persons and protection of property and order in places where detention is served. Section 2, paragraph 2, of the Detention Act explicitly provides that "the manner in which detention is served must not degrade accused's human dignity". Questions linked with detention are regulated in more detail in Decree of the Ministry of Justice of the Slovak Republic No. 114/1994 Coll. issuing the rules for serving detention. The accused is searched and guarded during the search by a person of the same sex. If traces of physical violence or injuries are detected on the body of the accused he shall make a report and forward it to a medical doctor. In case the doctor confirms the finding the administration of the establishment informs a court or the judge who decided about the detention and the prosecutor responsible for the oversight of detention in the establishment concerned. Each such report that contains reference of physical violence is subsequently submitted to the Office of the Inspection Service of the Police Force for review. Findings that would indicate use of physical violence during investigative detention by a law enforcement body or arrest of a person suspect of committing crime by the investigator can result in commencing of prosecution for the crime of torture or other inhuman and cruel treatment under section 259a of the Criminal Code as well as for the crime of abuse of power by a public official under section 158 of the Criminal Code. In addition commission of crime of torture and other inhuman and cruel treatment under section 259a of the Criminal Code is without prejudice to the culpability in the meaning of section 67a of the Criminal Code or barring of criminal prosecution by the statute of limitation. In this context we submit that so far no final judicial decision has been rendered for such crime.

49. Provisions of section 2, paragraph 2, of the Imprisonment Sentence Act directly stipulate that "during the sentence of imprisonment natural dignity of a human being must be respected, no treatment or punishment that is cruel or degrading human dignity may be used". Material and cultural living conditions ensuring appropriate physical and mental development are created for inmates during the imprisonment sentence. Corps of Prison and Court Guard officers have the duty to care for having appropriate physical and mental development of inmates ensured. The officers have the duty to respect the maintenance of the rights convicts enjoy while serving their imprisonment sentence, and under section 61a of the Imprisonment Service Act while performing their tasks they consistently observe the Constitution, laws and other regulations, they have the duty to respect requirements of human and civil dignity and mind the good repute and honour of an officer of the Corps in their work, and mainly in their conduct and actions.

50. Under the law prosecutors perform oversight of observance of law in places where pre-trial detention and imprisonment sentence are served. The bodies of the Corps of Prison and Court Guard have the obligation to allow a prosecutor entrance into all premises where the sentence is served, to talk with the inmates in the absence of any third person, to send the prosecutor inmate's complaint or request addressed to him within 24 hours, to report without delay to the prosecutor all events or facts that could be of detriment to a successful treatment of the sentenced, to implement prosecutor's orders concerning the observance of imprisonment sentence regulations and to give the prosecutor necessary explanation, files and other documents concerning serving of the imprisonment sentence upon his request.

### **Prevention of torture in the Armed Forces of the Slovak Republic**

51. In the meaning of the provision of section 139, paragraph 1, of Act No. 370/1997 Coll. on military service as amended (hereinafter the "Military Service Act") soldiers have the right to the protection of human dignity in service and private communication with the service body, superior soldier and other soldiers. Under section 74, paragraph 3 of this act a military order must not be issued in contradiction with the Constitution, constitutional statutes, other generally binding regulations and internal by-laws.

52. Chapter XII of the Criminal Code called Military Criminal Offences and its provisions sanctioning conduct that is unlawful and presents a threat to the society and that is a violation of soldiers' rights and protected interests (provisions of section 277-279b of the Criminal Code protect the soldiers against violence and also violations of rights and soldiers' interests protected by law) protects the person of soldier against any manifestations of inhuman or degrading treatment.

53. Placing in the department of disciplinary punishments is the only extrajudiciary restriction of soldier's personal liberty that is in compliance with section 79 and section 80 of the Military Service Act. A soldier serving compulsory military service, alternative service and improvement service in the rank of a "soldier" can be sanctioned with the above punishment for a period not longer than 21 days, non-commissioned staff in compulsory military service, alternative service and improvement service for a period not longer than 14 days. Soldiers in other ranks cannot be imposed this disciplinary punishment. The scope of disciplinary powers of service bodies and superior soldiers is exhaustively listed in the Fundamental Order of Conduct of Armed Forces of the Slovak Republic. This internal regulation emphasizes the protection of soldier's personhood in several places. As stated in article 40 ("General Obligation of Commanders") a commander is responsible for the observance of valid regulations, respect for rights and justified interests of soldiers, their human rights and freedoms.

54. On 29 September 1994 the "Concept of the Creation and Implementation of Military Chaplaincy and Religious Service in the Armed Forces of the Slovak Republic" was adopted with a resolution of the Government in the context of the tasks in the sector of the Ministry of Defence of the Slovak Republic. Since 1995 this service is an organizational element under the competence of the Ministry of Defence of the Slovak Republic and it is a part of the Military Chaplaincy Office. The introduction of chaplaincy and religious service in the Armed Forces of

the Slovak Republic supports the propagation and enforcement of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in the Armed Forces of the Slovak Republic.

### **Prevention of torture in health care**

55. Act No. 277/1994 Coll. on health care as amended (hereinafter the “Health Care Act” regulates the provision of health care. Under section 13 of this act examination and treatment can be conducted only with patient’s consent. If the patient refuses necessary medical care in spite of receiving due explanation medical doctor will ask him to give this refusal in writing or other demonstrable form. Such an action may be performed without consent only when it is a necessary action that cannot be delayed and it is not possible to obtain consent of the patient, his representative at law, the court or expert medical panel.

### **Care without patient’s consent**

56. Examination and treatment actions including institutional health care can be performed also in case when it is not possible to ask the patient because of health condition or his/her representative at law to give consent, however, the consent can be assumed. Prosecutors perform oversight of observance of law in places where institutional and protective treatment are given as a part of their regular inspection activity. Prosecutors of district prosecution authorities carry out regular checks in health-care facilities every three months and prosecutors of regional prosecution authorities every six months. This inspection activity focuses on the examination of conditions under which the patient was placed in the institution and whether in case of placement not out of patient’s own will the institution filed a motion for placement without patient’s consent within 24 hours.

57. Under section 14 of the Health Care Act patient may be received by a health-care institution without his/her consent when the disease concerned falls under mandatory treatment, when the patient manifesting symptoms of a mental disease or, as a consequence, endangers himself or his surrounding or there is a threat of serious deterioration of his health condition or it is a situation where vital functions are imperilled and life-saving action and uninterrupted monitoring of vital functions are necessary. In case of receiving a patient into institutional care without his/her consent the health care institution has the duty to inform a court of this fact within 24 hours and the court will decide on the lawfulness of grounds for receiving the person into institutional health care.

### **Provision of psychiatric care**

58. Under article 17, paragraph 6, of the Constitution and section 38 of the Health Care Act examination and treatment actions of psychiatric care are carried out with the consent of the patient, his representative at law or legal guardian. Opinion of an expert panel and court’s consent are needed to perform exceptionally serious psychiatric interventions. A patient can be received in institutional psychiatric care without consent only in the above-mentioned cases and such measure must be reported to a court within 24 hours. Under article 17, paragraph 7, of the Constitution “examination of mental condition of a person charged with a criminal offence is permissible only upon a written court order”. If the mental state cannot be examined in another

way then the court and, in pre-trial proceedings, a judge upon prosecutor's motion may order to have the accused observed in a health-care institution or in case of detention in a separate department of the correctional facility. A complaint with a suspensive effect is admissible against this resolution.

### **Provision of health care to persons addicted to alcohol or to other addictive substances**

59. Persons addicted to alcohol or to other addictive substances are given health care when their state of health requires it. In case these persons were imposed protective treatment by a court they have the obligation to undergo this treatment when this treatment could not be performed while serving the sentence of imprisonment.

### **Verification of new medical knowledge in humans**

60. Verification of new medical knowledge in humans may be carried out only when the life or health of the person participating in the verification is not endangered. When such threat occurs during verification it is necessary to immediately cease the verification. Verification may only be performed on the basis of a written or otherwise demonstrable consent of a patient who is over 18 years of age and has legal capacity. The patient must be instructed of all medical actions and potential risks that may affect his/her health. In case verification is conducted in a healthy person or a person suffering from another disease than the one verified then this verification cannot be performed in pregnant women, minors or persons without legal capacity, human foetus and embryos, detained persons or persons serving imprisonment sentence, soldiers or persons serving civil service and aliens. The health-care institution concerned is liable for the damage caused in verification.

### **Removing and transferring of tissue and organs**

61. Removal can be conducted only under the condition that the donor has a full legal capacity and expressed his consent with such a removal in writing. The donor may recall his consent any time prior to the removal. Removal may be executed only after assessment by an expert panel. Removal may not be executed when there is reason to believe that donor's health condition is in peril even if there is donor's written consent. Removal may not be executed when the donor serves his imprisonment service, either. Transfer of organs from the body of a living donor for their implantation into recipient's body or removal for another purpose for money is prohibited.

62. Under conditions stipulated by law for removing and transferring tissue and organs the valid wording of the Criminal Code allows to sanction such unlawful conduct. Under section 209a in the meaning of which the one who illegally removes an organ or tissue from a living person shall be criminally liable. The same sentence shall be imposed on a person who procures such an organ or tissue for him or another person. The offender shall be imposed a more severe sentence when such crime results in heavy bodily harm and the most severe sentence is imposed when he causes death. Under section 209b the one who illegally procures an organ or tissue from a dead person shall be criminally liable.

63. More detailed information on issues covered by article 7 of the Covenant was submitted by Slovakia in its initial and second periodic report on the implementation of the International Convention against Torture and other Cruel or Degrading Treatment or Punishment in February 2000.

### **Article 8**

64. The Slovak Republic is a State party to the Convention for the Protection of Human Rights and Fundamental Freedoms and thus obliged to observe the commitment stipulated in article 4 that “no one shall be held in slavery or servitude”.

65. The Slovak Republic is also a State party to International Labour Organization Convention No. 29 concerning forced or compulsory labour of 1930 (ratified by the former Czechoslovak Republic in 1957, the Slovak Republic from 1 January 1993, published in the Collection of Laws under No. 506/1990 Coll.) and Convention No. 105 concerning the Abolition of Forced Labour of 1957 (ratified on 27 June 1997 published in the Collection of Laws under No. 340/1998 Coll.).

66. The legal order of the Slovak Republic does not know the notion of slavery or servitude and the forms of such oppression are not occurring and are not permitted in the framework of individual kinds of sentences, either. Article 18, paragraph 1, of the Constitution, however, stipulates the prohibition of forced labour or forced service in the following way: “No one shall be sent to perform forced labour or forced services”. The second paragraph of this article gives an exhaustive list of cases to which the quoted provision does not apply. The exemption includes these cases:

- Labour lawfully imposed on prisoners or on persons serving a sentence, which is replacing imprisonment;
- Military service or other service performed instead of compulsory military service;
- Service lawfully required in cases of natural disasters, accidents or other danger, which is a peril to the lives, health or considerable property values;
- Activity imposed by law for the protection of life, health or rights of other people;
- Minor municipality services on the basis of a law.

67. Depending on the circumstances of a concrete case unlawful demanding of forced labour can be evaluated e.g. as a crime of restriction or deprivation of personal freedom, abduction to a foreign country, extortion, oppression and other crimes in the meaning of the Criminal Code.

68. The Detention Act regulates the employment of the accused. Under section 16 of the above law an accused may work when the condition in the establishment make it possible and the accused and criminal justice agencies agree. Under the Rules of Detention those accused that have the duty of maintenance are preferred. The accused are entitled to remuneration according to the work they perform.



69. Employment of the sentenced is regulated in the Imprisonment Sentence Act, in particular Part 5 called "Employing the Sentenced". Under section 25 of the quoted law the employment of the sentenced is a positive educational element in the imprisonment sentence. Its objective is mainly to provide for conditions that allow acquiring and improving qualifications and to create prerequisites for successful integration of the sentenced into civil life after release. Each sentenced who is assigned to work has the duty to work and unreasoned refusal to work is considered a breach of fundamental duties of the accused.

70. Under section 26, paragraph 1, of the Imprisonment Sentence Act the sentenced are assigned to work in compliance with the purpose of the imprisonment sentence in legal entities with the exception of those listed in ILO Convention No. 29 or with the correctional facilities while taking into account their health and the best use of their skills. Legal entities and correctional facilities have the obligation to create prerequisites for due performance of work assignments by the sentenced and to provide for their health and safety at work. Under section 26 corporations give the facilities agreed settlement for the work. Work hours and work conditions are the same for the sentenced as for other employees. The governor of the correctional facility may order the sentenced overtime in the scope and under conditions provided for in a generally binding regulation. The work spent for cleaning and other similar work necessary to ensure everyday work of the facility is not included into work time. However, this work must not be ordered at the expense of the time needed for the rest of the accused. Under section 29 of the Imprisonment Sentence Act the accused are entitled to remuneration according to the work performed and they are not entitled to remuneration for the time when they did not work.

71. The above-quoted provision of article 18, paragraph 1, of the Constitution does not apply to military service or other service performed instead of compulsory military service by law. The duty to perform military service and national service is regulated in section 6 of the Conscription Act. Under this law the basic duties of a citizen of the Slovak Republic include the duty to submit to enrolment, to perform compulsory military service and to perform extraordinary military service. Article 25, paragraph 2, of the Constitution is the guarantee for the freedom of religion in the legal order of the Slovak Republic with respect to the compulsory military service that guarantees that no one shall be forced to perform military service if it is contrary to his conscience or religion.

72. In case a citizen of the Slovak Republic refuses to perform the compulsory military service referring to the provisions of the quoted law has the obligation to perform civil service under Act No. 207/1995 Coll. on Civil Service as amended. A citizen performs civil service within employer organizations of the State and municipalities in the area of health care, social services, schools, culture, protection of the environment and disaster relief actions, and members of rules in churches and religious societies registered by the State. A citizen may perform civil service with other employers only when there are no vacancies available in State and municipal employer organization. Citizen performing civil service has the obligation to perform physical work corresponding his fitness and condition of health according to employer's instructions and while performing civil service he must not be engaged in gainful activity under an employment contract or similar labour relation and he must not be a member of management and supervisory bodies of legal entities doing business.

73. Information concerning the duties of natural persons in civil protection under Act No. 42/1994 Coll. on civil protection as amended is presented in the point on the implementation of article 4 of the Covenant.

## Article 9

### Recommendations Nos. 16 and 17

#### Personal freedom and safety

74. The guarantee of personal freedom in the meaning of article 17, paragraph 2 of the Constitution is one of the basic constitutional principles in the Slovak Republic: "Personal liberty of every individual shall be guaranteed. No one shall be prosecuted or deprived of liberty save for reasons and by means laid down by a law. No one shall be deprived of liberty merely for his or her inability to fulfil a contractual obligation." Grounds on which personal liberty may be restricted are exhaustively listed in Part IV of the Criminal Procedure Code because this is undoubtedly one of the most serious interferences in the rights and freedoms guaranteed by the Constitution. Restriction of personal freedom in the meaning of the Criminal Procedure Code either in the form of investigative detention (sect. 75-76) or pre-trial detention (sect. 68) is always optional, except for investigative detention of a suspect caught in the act of committing a crime or immediately thereafter (sect. 76, para. 2), and is linked with grounds strictly determined in the law, in particular in section 67 of the Criminal Procedure Code, and it is limited in time and the competences of criminal justice agencies are defined.

75. A person whose personal liberty was restricted on certain grounds may be placed in a police cell, detention, correctional facility (for serving imprisonment sentence), military correctional facility, protective and institutional medical treatment, diagnostic centre and youth re-educational institution. Conditions under which persons may be placed and may stay in mentioned facilities are regulated in separate regulations.

76. The body that is authorized to restrict the right to personal freedom in situations defined by law is first of all the police. The Police Force Act stipulates who and under which conditions can be placed in police cells and the law also lays down which basic criteria police cells must meet.<sup>3</sup>

77. Prosecutors perform oversight of observance of law in places where personal liberty is restricted. In compliance with section 18 and consecutive ones of Act No. 153/2001 Coll. on Public Prosecution Office the prosecutor oversees that persons are held only on the basis of a decision made by a competent authority in places of detention, imprisonment sentence, protective treatment and institutional treatment ordered by a superior State authority, body of protective education and institutional education ordered by a State authority, in police cells, military prisons, and other places where decisions of State authorities on personal liberty restriction are implemented and that the regulations applicable to execution of personal liberty restriction are adhered to consistently. The prosecutor inspects these places as a part of his inspection powers and he has the obligation to immediately release the persons held there without a ruling or in contradiction to the decision of the competent body to discontinue execution of orders and decisions of the administration of the above places or their superior

authorities or to cancel the orders and decisions of these administrations if they are in conflict with the law or another regulation. When performing the oversight responsibility the prosecutor has the right to visit all places concerned at any time while having free access to all their premises, he has the right to look in the documentation on the basis of which these persons were deprived of liberty and to talk with such persons in the absence of any other person and to check whether the decisions and orders made by the administration of places are in conformity with the law and other regulations, to request the staff of the administrations to give necessary explanations and to present files and decisions concerning the restriction of personal liberty. Under the law the prosecutor has the obligation to carry out regular monthly inspections in individual establishments where detention and the sentence of imprisonment are served. Under section 26 of the Detention Act inspection of detention is performed by the bodies of the National Council, Minister of Justice and persons tasked by the Minister and the Director General of the Corps of Prison and Court Guard and persons tasked by him in the establishments. Prosecutors perform oversight of observance of lawfulness in places where the sentence is served in compliance with section 18, paragraph 6 of the State Prosecution Act in the meaning of which the employees of the bodies performing administration of these establishments have the duty to execute prosecutor's orders, to enable him to perform his duties and to exercise his powers.

78. In the meaning of article 17, paragraph 6 of the Constitution "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."

78.1 This provision is regulated in more detail in section 14 of the Health Care Act in the meaning of which a patient may be received into institutional care without his/her consent if:

- The disease concerned falls under compulsory medical treatment,
- The patient is a danger to himself/herself or his/her surrounding as a consequence of his/her mental disease or symptoms of mental disorder or a mental disease or if there is a danger of serious deterioration of his/her health,
- It is a situation where vital functions are imperilled and life-saving action and uninterrupted monitoring of vital functions are necessary.

78.2 In such cases the health-care institution has the obligation to report this fact to the court in which jurisdiction the health-care institution is located within 24 hours. The court shall decide on the lawfulness of grounds for admission into institutional health care. In the period till the court decides only such examination or treatment may be performed that is necessary for saving life or secure his/her surrounding.

79. The procedure concerning persons charged with a criminal offence is a specific case of receiving a person into institutional health care. Under article 17, paragraph 7 of the Constitution "examination of mental condition of a person charged with a criminal offence is permissible only upon a written court order". (More information is given in point 58.)

**Investigative detention, arrest and pre-trial detention**

80. With respect to Recommendation in Point 17 of Committee's Concluding Observations we submit that the Criminal Procedure Code distinguishes between investigative detention of an accused and the investigative detention of a suspect. Investigative detention is understood to mean a short-term deprivation of personal liberty of an accused or of a person suspect of committing a criminal offence or of a person caught while committing a crime. Its purpose is a temporary physical arrest of the accused with the objective of ensuring decision concerning person's pre-trial detention. The investigator or the prosecutor have the right to apprehend the accused or the suspect. A police body that is technically better equipped to do this action can apprehend the person physically.

81. The amendment to the Constitution has formulated anew article 17, paragraph 3 that stipulates "a person charged with or suspected of a criminal offence may be detained only in cases provided by a law. A detained person must be immediately informed of the grounds thereof, and after interrogation at the latest within 48 hours must be either released or brought before a court. A judge must within 48 hours and, for especially serious criminal offences within 72 hours from bringing the detained person before him or her, hear the person and decide on his or her detention or release." Provisions of the Criminal Procedure Code were also amended in this context and they entered into force on 1 August 2001.

82. Investigative detention of an accused in the meaning of the provisions of section 75 of the Criminal Procedure Code can only be applied when there is one of grounds for detention under section 67 of the Criminal Procedure Code<sup>4</sup> and when no decision on detention can be procured in advance due to the urgent nature of the matter. When an investigator apprehends then he has the obligation to immediately report this fact to the prosecutor and to submit him a copy of the minutes taken during investigative detention and also other materials the prosecutor needs in order to file a possible detention motion. The motion must be filed in such a manner that the accused can be surrendered to a court within 48 hours from the restriction of personal liberty otherwise he must be released.

83. Investigative detention of a suspect (i.e. of a person that was not accused) under section 76, paragraph 1 of the Criminal Procedure Code can be applied when there is one of grounds for detention under section 67 of the Criminal Procedure Code. A prior consent by prosecutor is needed for investigative detention. Without such consent the investigator may apprehend only when the matter does not allow any delay and consent cannot be procured in advance, in particular when such person was caught in the act of committing a crime or when escaping.

84. Under section 76, paragraph 2 of the Criminal Procedure Code anyone may restrict personal freedom of a person caught in the act of committing a crime or immediately thereafter if this is necessary for establishing person's identity, preventing escape or securing evidence. However, he has the duty to hand over such person to an investigator or police; a member of the armed forces may be handed over to the nearest military unit or garrison commander. If such person cannot be immediately handed over, one of the above bodies should be promptly notified

of the restriction of personal freedom. If such person was taken over by a body different than the investigator, this body would have the duty to immediately hand the person over to an investigator. The investigator shall promptly notify the prosecutor and draw up a report delivered to the prosecutor without delay.

85. Another means of restricting personal freedom of the accused is arrest. The purpose of the arrest is a short-term deprivation of personal liberty of the accused to bring the accused before the body that decided to order arrest. The amendment to the Constitution also amends article 17, paragraph 4 that stipulates “a person charged with a criminal offence may be arrested only upon a written order issued by a judge. An arrested person must be brought before a court within 24 hours. A judge must within 48 hours and, for especially serious criminal offences within 72 hours from bringing the detained person before him or her, hear the person and decide on his or her detention or release. “This amendment entered into force on 1 July 2001 and on its basis provisions of the Criminal Procedure Code were amended with the effect from 1 August 2001. Law enforcement agencies carry out arrest on the basis of a warrant and they have also the obligation to find accused’s residence if it is necessary to enforce the order. Requirements for issuing an arrest warrant under section 69, paragraph 1 of the Criminal Procedure Code are as follows and they must be met on a cumulative basis:

- There is one of grounds for detention under section 67 of the Criminal Procedure Code;
- The person concerned was accused; and
- The accused can neither be summoned, brought before or apprehended.

86. Under article 17, paragraph 5 of the Constitution: “Pre-trial detention can be imposed only on the grounds and for the period provided by a law and determined by the court.” Under the valid legislation pre-trial detention is as a matter of principle an optional measure. Pre-trial detention cannot ever be presumed but it must always be reasoned with concrete facts of every single case. Grounds on which an accused may be detained are provided for in section 67 of the Criminal Procedure Code.

87. The pre-trial detention must not last longer than necessary. If it should last more than six months and if the release of the accused could frustrate or prejudice the purpose of criminal proceedings a judge may decide to extend this period up to one year but not to more than two years, however, the decision on any further extension can only be taken by a panel of judges (section 71, paragraph 1 of the Criminal Procedure Code).

88. If, because of the complexity of the case or other serious reasons, it was not possible to complete criminal prosecution by that time and if the release of the accused could frustrate or seriously prejudice the purpose of criminal proceedings (these two conditions must apply concurrently) the Supreme Court can, upon a motion filed by the Prosecutor General (in pre-trial proceedings) or the Presiding Judge of a panel (in proceedings before a court) decide on extending the pre-trial detention by the time necessary and it may do so also repeatedly. The total period of pre-trial detention must not exceed three years and in exceptionally serious criminal offences five years (section 71, paragraph 2 of Criminal Procedure Code).

89. These periods cover pre-trial proceedings including the proceedings before a court and the period of pre-trial detention always starts to run with the moment of restriction of personal liberty.

90. In the meaning of section 70 of the Criminal Procedure Code a notification on detention must be delivered without delay by criminal justice agencies to a member of accused's family or another person the accused designates and his counsel another person designated by the accused can be notified only if this does not prejudice the purpose of the pre-trial detention. The notification on detaining a member of the armed forces or army corps shall be delivered on his commanding officer or chief. The notification on the pre-trial detention of a job applicant shall be delivered to the respective employment office.

91. The essential piece of legislation regulating pre-trial detention is Act No. 156/1993 Coll. on Enforcement of Pre-trial Detention as amended.

91.1 Pre-trial detention as an institute serving the purpose of arrest of the accused for the purposes of criminal prosecution execution can be replaced with a guarantee or assurance (section 73 of the Criminal Procedure Code) or a bail (section 73a of the Criminal Procedure Code).

91.2 Under section 73 of the Criminal Procedure Code detention may be replaced with a guarantee or assurance when there is any of grounds for detention set out in section 67, paragraph 1, subparagraphs (a) or (c) - i.e. collusion or prevention detention, present, a court or a judge may decide not to arrest the accused or to release him if

- The association described in section 4, paragraph 1, of the Criminal Procedure or a trustworthy person capable of exerting a positive influence on the accused person's conduct offer to assume a guarantee for the conduct of the accused and his appearance before the court, prosecutor or investigator when summoned, for giving advance notice of leaving the place of residence and provided that the court or, in pre-trial proceedings, a judge considers such guarantee to be sufficient in view of personal characteristics of the accused and of the nature of the tried case and accepts it, or if
- The accused makes an assurance in writing that he shall lead a decent life and, in particular, that he shall refrain from criminal activities, fulfil the obligations and comply with restrictions imposed on him, and if the court or the judge in pre-trial proceedings considers the assurance sufficient in view of personal characteristics of the accused and of the nature of the tried case and accepts it. The accused is always imposed the obligation to notify the investigator, prosecutor or the court of any change of the place of residence.

91.3 Under section 73a, paragraph 1 on the bail if there are grounds for detention under section 67, paragraph 1, subparagraphs (a) or (c), i.e. collusion or prevention detention, the court or, in pre-trial proceedings, a judge may issue a decision not to arrest the accused or to release him if the accused deposits a pecuniary assurance and if the court or the judge accepts it. The accused is always imposed the obligation to notify the investigator, prosecutor or the court of any change of the place of residence. If the accused agrees, the bail can be paid by another person; before

accepting the bail, however, such person shall be informed of the nature of the charges, the facts of the case including grounds for detention. If the accused is prosecuted for a crime laid down in section 62, paragraph 1 of the Criminal Code (exceptionally serious criminal offences) bail cannot be accepted. In deciding about the amount of bail money and the manner of deposit, the court or a judge shall consider the personality characteristics and property status of the accused or of the person offering to pay the bail for the accused, nature of the offence and the extent of inflicted damage.

92. As already stated under article 17, paragraph 5 of the Constitution “Pre-trial detention can be imposed only on the grounds and for the period provided by a law and determined by the court.” The provisions of the Constitution stipulate that with respect to detention only an accused person may be detained (section 163 of the Criminal Procedure Code), i.e. when he is already accurately informed on grounds of criminal prosecution and the decision on detention is exclusively made by a court (judge) upon a prosecutor’s motion (section 68, paragraph 1 of the Criminal Procedure Code). Grounds for pre-trial detention are laid down in section 67 of the Criminal Procedure Code and their existence must be supported with particular circumstances and facts of the case.

#### **Guarantees against unjustified detention, possibilities of release from detention**

93. As already mentioned only a charged person may be placed under pre-trial detention. Detention decision must always be substantiated with concrete facts that must create a sufficient and reasonable base for reasoning the conclusion. Under section 68, paragraph 1 of the Criminal Procedure Code a detention decision must also be substantiated with facts of the case.

94. Under section 72, paragraph 2 of the Criminal Procedure Code the accused has the right to apply for release at any time. The criminal justice agencies must evaluate the application on the basis of its content even when it is called incorrectly. If a prosecutor in pre-trial proceedings denies such application, he shall immediately submit it to the court. Such an application shall be decided without any delay. If the application is denied, the accused may not submit it again, unless he states other grounds, earlier than fourteen days after the decision became final. The purpose of this provision is the attempt to prevent malicious repetition of the application in cases when the accused presents the same grounds. Time limitation concerning accused’s repeated application shall not apply to cases where the accused presents different grounds from the original application.

95. The valid criminal procedure legislation also assumes that under section 72, paragraph 1 all criminal justice agencies, i.e. the investigator, prosecutor and judge have to verify at every stage of criminal proceedings whether grounds for detention are still present or whether there was any change. If the grounds for detention are no longer present the accused should be immediately released.

96. Under section 74, paragraph 1 of the Criminal Procedure Code a complaint may be filed against detention decision. Persons that could file an appeal on behalf of the accused have also the right to lodge a complaint against a detention resolution in favour of the accused. The law also permits lodging of complaint by prosecutor. If the accused were to explicitly waive the right

to file a complaint then he cannot lodge it anymore, however, this is without prejudice to lodging of a complaint by anyone from among the entitled persons. The time limit for filing a complaint is 3 days from the notification of the resolution. The complaint has no suspensive effect. This is fully justified because if it had a suspensive effect the purpose of detention could be frustrated in many cases.

### **Compensation of damage caused by unlawful arrest or detention**

97. Under article 46, paragraph 3 of the Constitution “everyone shall have the right to compensation of a damage caused by an unlawful decision of a court, of other public authority or of a body of public administration or by improper official procedure”.

98. The provisions of the Criminal Procedure Code lay down several means that should guarantee no unfounded extension of detention. If this were exceptionally to happen the one who suffered such detention has a right to compensation for suffering detention innocent. The issue of damages is regulated in a special provision - Act No. 58/1969 Coll. on liability for damage caused by a decision of a State authority or by its erroneous official action.

98.1 Under section 5, paragraph 1 of the quoted law only the one who suffered detention and his/her criminal prosecution was discontinued or was acquitted has the right to compensation of the damage caused by the detention decision from the State:

98.2 The law lays down two groups of cases where the injured party has no right to compensation of damage. Under section 5, paragraph 2 of the law the following groups of persons have no right to compensation of the damage:

- The one who inflicted detention upon himself/herself especially by attempting escape or by conduct that gives rise to concern that was the reason for detention or for its prolongation;
- The one who is acquitted or against whom criminal prosecution was suspended only because he/she was not criminally liable for the offence or was granted pardon or the crime was pardoned.

98.3 In case the detention was extended due to an erroneous procedure by a criminal justice agency, by a detention establishment or other State authority the victim is entitled to compensation of damage caused by this procedure even without being acquitted or without having criminal prosecution discontinued. In this context the erroneous official procedure may mainly include in particular failure to release the accused from detention immediately after criminal prosecution was discontinued or immediately after an acquitting judgement became final.

98.4 The entitlement to the compensation of damage must be discussed with the Slovak Ministry of Justice in advance. The law does not lay down any time limits for processing the application directly. However, if the Ministry of Justice fails to satisfy accused's entitlement within six months from filing the claim, the injured person may claim recognition of the entitlement or of the unsettled part thereof before a court.



98.5 However, the injured party must claim his entitlement on time. The entitlement to compensation of damage is subject to 1-year statute of limitations from the day when the decision of acquittal or the decision discontinuing criminal prosecution became final. With a view to the fact that the act on liability for damage caused by a decision of a State authority or by its erroneous official action has no special provisions on the content, extent and manner of compensation for damage, the provisions of the Civil Code (Act No. 40/1964 as amended, hereinafter the "Civil Code") shall be applied. Currently the Ministry of Justice of the Slovak Republic is working on a new draft law regulating liability for damage caused by a decision of a State authority or by its erroneous official action that should make the whole compensation procedure more effective.

99. In the context of the implementation of article 9 of the Covenant it is also necessary to add that substantive criminal law defines the elements of the crime of restriction and also deprivation of personal liberty in case of preventing a person from enjoying personal liberty or depriving a person of personal liberty in an unlawful manner in section 231 and 232 of the Criminal Code.

100. In the Recommendation in Point No. 16 of the Concluding Observations the Committee stated its concern about cases of excessive use of force as well as maltreatment of detainees. In this context the General Prosecution Office of the Slovak Republic submits that the President of the Police Force is responsible for the activities of the Police Force and its components and the President reports to the Minister of Interior. Prosecutors do not oversee this activity but in co-operation with the Inspection Service of the Police Force they verify and, if necessary, identify criminal liability of officers suspect of use of inappropriate methods and excessive force during service interventions that are linked with interfering in fundamental rights and freedoms.

100.1 To illustrate we present some cases that are registered by the Prosecution Authority in the stage after commencing criminal prosecution from the beginning of 2001:

- Investigator of the Regional Investigation Authority of the Police Force at Trnava commenced criminal prosecution and laid charges for the criminal offence of abuse of the power by a public official together with the criminal offence of health impairment against five officers of the Criminal Police who beat P. S. brought before the Police Force department to give explanations concerning suspicion of crime, all over his body with batons and kicked him, and thus caused him light concussion of the brain, fracture of nasal small bones and numerous contusions of the soft tissue of the chest wall, back, abdomen, posterior and upper and lower extremities that resulted in 16 days of incapacity for work. The case is still pending.
- The police department of the Inspection Service of the Police Force in Košice commenced criminal prosecution of the criminal offence of the abuse of power by a public official and health impairment against suspect (still unidentified) police officers based on the fact that J. H., M. M. and R. T. who were brought before the competent Police Force department in order to establish their identity were handcuffed to the heating body and repeatedly slapped in face to confess crime they were suspect of (illegal transfer of immigrants). This case is also still pending.

- On 12 August 1999 L. Š. brought before the district department of the Police Force at Poprad took the service gun of lieutenant M. F. shot himself and then succumbed to his injury in the hospital. Criminal prosecution was conducted against lieutenant for the criminal offence of negligence health impairment that resulted in death under section 224, paragraphs 1 and 2 of the Criminal Code. On 11 October 2000, after the prosecutor charged, the Poprad District Court held lieutenant F. M. guilty of this crime and imposed a 1-year imprisonment sentence. The execution of the sentence was conditionally suspended for a two and half year probationary period. In this context it is necessary to mention that the sentenced M. F. deceased in January 2001.

100.2 The Slovak Republic deeply regrets to state that in July 2001 a criminal offence was committed in the municipality of Magnezitovce and during this event victim K. S. Sr. lost his life and other persons were injured. Currently, 7 officers of the Police Force are prosecuted for the criminal offence of torture and other cruel treatment under section 259a of the Criminal Code, for the criminal offence of abuse of power by a public official under section 158, criminal offence of health impairment under section 221. This action takes also into account the fact that while bringing three persons before the competent department of the Police Force and also while being in this department the accused police officers used physical violence which caused serious bodily harm resulting in death to the victim K. S., victim P. S. suffered serious bodily harm and victim R. G. bodily harm. The investigation is still pending. After this tragic events the Slovak Government tasked the Minister of Interior to prepare, without any delay, measures that would restore the trust in the officers of the Slovak Police Force as guardians of law and order.

100.3 In this context the President of the Police Force adopted measures to improve the professional training and education of police officers, to strengthen inspection with a thrust on compliance with the Police Force Act and to ensure respect for citizen's rights in order to prevent similar negative events. Police Force officers have the obligation to pass proficiency tests once in two years where they must prove their knowledge of the law referred to, in particular of the provisions concerning the rights and duties of officers, mainly use of arms and means of restraint with an emphasis on the appropriateness of the interference and treatment of persons apprehended, presented and detained. The examination also includes testing of knowledge of the Criminal Code and Criminal Procedure Code in particular the provisions on circumstances excluding unlawfulness of the action, mainly on defence of necessity and self-defence. Officers in all departments of the Police Force are regularly trained on laws and internal regulations and their knowledge is tested on a monthly basis. In case the tests identified insufficient knowledge on the side of police officers their supervisors should implement relevant implications under Act No. 73/1998 Coll. on civil service of the members of Police Force, Slovak Intelligence Service, Corps of Prison and Court Guard, Railway Police as amended with respect to officers concerned. In this context a methodology for service interferences was issued. At the same time police officers attended a Slovakia-wide course called "The Police and Ethnic Minorities" to improve the quality of police work with national minorities.

101. In its Recommendation in Point 16 of the Concluding Observations the Committee also recommended setting up appropriate training programmes for law enforcement and custodial personnel in the field of human rights, especially on articles 7, 9 and 10 of the Covenant, setting up training programmes for professional groups (such as judges, lawyers and civil servants). In this respect Slovakia submits the following information.

101.1 The Ministry of Justice of the Slovak Republic regularly organizes training seminars and courses focusing on the observance of human rights in everyday work of judges, as well as on combating racism and xenophobia in compliance with:

- The adopted Programme Manifesto of the Government in which the Slovak Government undertook to support all forms of education to mutual ethnic respect and to create a legal framework preventing of various forms of discrimination and exclusion of larger groups of citizens from civilized environment;
- The adopted Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance for the 2000-2001 Period (more information on Action Plan see in information on the implementation of article 26 of the Covenant).

101.2 The Slovak Ministry of Justice organizes training seminars on this issue for judge candidates and judges in co-operation with international organizations (the Office of the United Nations High Commissioner for Refugees, Council of Europe, American Bar Association CEELI) and also Slovak NGOs (the Slovak National Centre for Human Rights/(Slovenské národné stredisko pre ľudské práva/, the Citizen and Democracy Foundation/Nadácia Občan a demokracia/, the Society of Lawyers and Friends of Law/Spolok právnikov a priateľov práva/, the Centre for Environmental Public Advocacy/Centrum na podporu miestneho aktivizmu/ and other).

101.3 Training of prosecutors on human rights issues is carried out on a permanent basis in the prosecution sector. The Prosecution authority conducted several training courses for prosecutors and prosecutor candidates on this topic. In 2001 a special seminar on human rights and national minority rights protection with an emphasis on identifying and sanctioning racially motivated crime was conducted.

101.4 The Corps of Prison and Court Guards prepared a training programme on this issue including lectures focusing on human rights, Roma minority and democracy in these topics:

1. The history and specific features of the Roma national minority;
2. Basic forms of treatment of detained persons belonging to the Roma national minority;
3. The system of law, civic society and the State;

4. Specific forms and methods of treatment of detained persons with an emphasis on persons belonging to the Roma national minority;
5. Democracy and its forms;
6. Fundamental rights and freedoms in the Constitution and the guarantee of their protection.

Special and specialized courses for Corps officers included lectures from the human rights area:

1. The history and specific features of the Roma national minority;
2. Specific forms and methods of treatment of detained persons with an emphasis on persons belonging to the Roma national minority;
3. Special form of groups identified in international instruments, the Constitution and the legal order of the Slovak Republic.

101.5 The Corps of Prison and Court Guards concluded Agreement of Co-Operation with the Citizen and Democracy Foundation. Under this agreement the following forms of co-operative activities will be carried out:

1. Training courses in human rights and inter-ethnic communication with an emphasis on the Roma national minority in the form of interactive and participative learning;
2. Training trainers from Corps officers who will be authorized to continue the Foundation training courses for prison staff;
3. Taking programmes of other NGOs co-operating with the Citizen and Democracy Foundation available;
4. Supplying Corps libraries with publications and brochures on human rights, legal awareness and training focusing on the culture of individual cultures and ethnic groups.

102. In November 2000 the Office of the Deputy Prime Minister for Human Rights, Minorities and Regional Development organized a specialized seminar called "Respect and Protection of the Human and Minority Rights and the Role of Law Enforcement Agencies" at Prešov. In addition to the representatives of the Government and State administration of Slovakia the conference was also attended by the representatives of the Dutch Police Institute, OSCE, the Slovak Police Force Headquarters, Investigation and Criminal Expertise section of the Slovak Police Force, representatives of the Supreme Court of the Slovak Republic.

103. In September 2001 the Slovak Ministry of Interior organized two seminars on "International Deontological Codes" under twinning co-operation project - assistance in the field of education and management of the Police Force. The seminars also included the issue of

human rights, education, policing as service to the public, professional culture, European Code of Police Ethics, etc. The seminar was targeted on participants coming from individual departments under the Slovak Ministry of Interior. The third seminar on this topic will be held in December 2001.

104. Information on education in the area of human rights at school is presented in the text on the implementation of article 24 of the Covenant.

105. Finally, in the context of this article we present information required in the Recommendation in Point 17 of Committee's Concluding Observations concerning asylum-seekers.

105.1 In Slovakia asylum-seekers related issues are governed by Act No. 283/1995 Coll. on refugees as amended (hereinafter the "Refugee Act") and fall under the competence of the Migration Office of the Ministry of Interior of the Slovak Republic. The Office of Border and Alien Police performs primary actions after an alien declares to be a refugee at one of their subordinate posts. This means that they arrange for taking the travel document from the person, issuing a temporary identity document and the transport to a reception refugee centre. After granting the refugee status it is involved in the permanent residence permission granting procedure.

105.2 Under section 23, paragraph 1 of the Refugee Act asylum seekers and de facto refugees granted temporary protection on the territory of the Slovak Republic stay in a reception refugee centre during quarantine measures unless the Ministry of Interior of the Slovak Republic decides otherwise. During their stay in the reception refugee centre the applicants for refugee status and the de facto refugees are given accommodation and board and basic health care for free. They also receive pocket money. After the quarantine period and until the decision in the asylum procedure is reached applicants stay in an accommodation refugee centre where they are given accommodation and board and basic health care for free. They also receive pocket money.

105.3 According to the UNHCR statistical data 11,091 persons sought asylum on the territory of the Slovak Republic from the creation of Slovakia in 1993 till the end of October 2001. In this period 501 applicants were granted refugee status. 43 persons granted asylum were granted citizenship of the Slovak Republic.

## **Article 10**

106. The Constitution, in article 19, paragraph 1 stipulates "everyone shall have the right to maintain and protect his or her dignity, honour, reputation and good name". Maintaining of human dignity, naturally, also applies to persons deprived of personal liberty.

107. Enforcement of pre-trial detention is governed by Act No. 156/1993 Coll. on Enforcement of pre-trial detention. Decree of the Ministry of Justice No. 114/1994 Coll. issuing Pre-trial Detention Rules governs the details of the enforcement of pre-trial detention.

108. Under section 2, paragraph 1 of the Detention Act the manner in which detention is enforced must respect the principle of presumption of innocence. During detention an accused may be restricted only in a manner that ensues from the purpose of detention, securing safety of persons and protection of property and order in places where detention is served. Under paragraph 2 of the quoted Act an accused may only be restricted in the exercise of those rights that cannot be exercised due to detention. The manner in which detention is enforced must not degrade accused's human dignity.

109. Pre-trial detention is executed in pre-trial detention facilities that are established and abolished by the Minister of Justice. Detention is executed in a special hospital for the accused and inmates for the necessary time when accused's health or the purpose of criminal proceedings requires it. When the health or life of the accused is in peril and he cannot be appropriately treated in the facility or hospital the detention shall be executed in another health-care facility where the Corps of Prison and Court Guard will ensure guarding of the accused.

110. The accused are received into and dismissed from detention 24 hours a day uninterrupted. After being received into detention the accused must be informed of their rights and duties. Under section 4 paragraph 5 of the Detention Act the accused has the obligation to undergo personal search, medical examination and necessary hygiene and epidemic measures. The accused is also taken away the things he cannot have with him and they are stored in the facility. A record is made of this. An accused under detention can be placed to another place only upon a written order issued by a prosecutor, court or judge and a member of accused's family and his defence counsel are informed thereof.

111. When placing the accused in cells the purpose of the detention shall be observed. Accused men, women, juvenile and those accused involved in interlinked crime are placed in cells separately. There must be a bed with a mattress, pillow and blanket, chair and cabinet for personal items for each accused in a cell. Further, there must be a table, wash basin and potable water, flush toilet, signalling call device and a radio in the cell. It must be possible to air the cell, to heat it, there must be day light and a functioning electrical lighting body. The housing area per inmate in a cell is at least 3.5 m<sup>2</sup>. If, as a consequence of contingencies, the number of the accused in the establishments were to increase in excess, the housing area per an accused in the cell can be reduced in justified cases for the necessary time.

112. The accused has the right to be in contact with his defence counsel, to receive and to send correspondence, to receive visits (once a month, juveniles 30 minute visits once in 14 days), to buy food, papers, journals, books and personal items in the shop of the establishment. Under the valid legislation the staff of detention establishments does not check the correspondence of persons apprehended or detained there, however, correspondence addressed to authorities and institutions is registered as registered mail. The accused can also exercise their right to chaplaincy services.

113. The accused are given food in quantities and quality that comply with recommended nutritional content three times a day. The accused has the right to eight hours of uninterrupted sleep, conditions created to allow personal hygiene and the right to at least one hour open air

exercise in an area serving this purpose daily. The accused has also the right to the necessary health care. An accused may work when the condition in the establishment makes it possible and the accused and criminal justice agencies agree.

114. The provisions of Detention Act also apply to the enforcement of pre-trial detention of juveniles taking into account their personality and age. Under Detention Enforcement Rules the juveniles are placed in cells separately from the adult accused. In justified cases specified in these Rules, mainly in situations of lack of space, the juvenile may be placed together with an adult accused in a cell when it is possible to believe that he will not have negative influence on the juvenile.

115. To have their rights ensured the accused can file complaints and requests with State bodies including the United Nations Committee against Torture and the European Committee for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment and the establishment has the duty to immediately ensure sending and register their mailing. When requested by the accused a talk with the governor of the establishment or an officer tasked by him is made possible, a talk with the person overseeing detention enforcement or its inspection is also made possible.

116. The accused has the obligation to observe the Detention Act, the Detention Enforcement Rules, rules of the facility, to perform the orders and instructions of the officers of the Corps of Prison and Court Guard, to undergo personal search and medical examinations, to carefully handle things and other items given and to observe the principles of decent conduct in communication and contact with people.

117. The essential piece of legislation governing the enforcement of the imprisonment sentence is Act No. 59/1965 Coll. on enforcement of the sentence of imprisonment as amended. Questions linked with imprisonment are regulated in more detail in Decree of the Ministry of Justice of the Slovak Republic No. 125/1994 Coll. issuing the rules for imprisonment sentence enforcement.

118. Under section 1 of the Imprisonment Sentence Act the purpose of the imprisonment sentence is to prevent the offender from continuing criminal activity and to train him to live a decent civil life. During the sentence of imprisonment natural dignity of human being must be respected, treatment or punishment that is cruel or degrading human dignity must not be used. Treatment with convicts serving imprisonment sentence makes use of means of special educational procedures, cultural work, employment of convicts, rules of order and discipline in places where the imprisonment sentence is served.

119. The imprisonment sentence is served in correctional facilities, juvenile correctional facilities and military correctional units. Correctional facilities and juvenile correctional facilities are established and abolished by the Minister of Justice. Military correctional units are established and abolished by the Minister of Defence. Imprisonment is executed in a special hospital for the accused and sentenced established by the Ministry of Justice of the

Slovak Republic for the necessary time when convict's health requires it. When the health or life of the sentenced is in peril and he cannot be appropriately treated in the facility or hospital the sentence shall be executed in another health-care facility for the necessary time where the Corps of Prison and Court Guard will guard the sentenced.

120. For the purpose of serving the imprisonment sentence inmates are split according to sex and according to age into juvenile and adults. In facilities the sentence is served in a differentiated way in three correctional groups. A court decides about the correctional group to which the convict is assigned. The purpose of serving the sentence in differentiated correctional groups is to have less disturbed convicts serving the sentence in separation from the more maladjusted inmates.

121. Pregnant women and women taking care of their own child younger than year of age are excluded from the execution of the imprisonment sentence. Women over 60 years of age are serving the sentence in a manner that is appropriate for their age and health and they are assigned to special teams.

122. The manner of the execution of the sentence cannot be changed in cases of convicts sentenced to exceptional imprisonment.

123. The accommodation conditions of convicts are specified in compliance with general hygiene requirements and standards. The housing area per convict in a cell must be at least 3.5 m<sup>2</sup>. The cells in the third (closed) correctional group are equipped with a lavatory and wash basin with drinking water. Accommodation areas of other convicts are usually equipped with common lavatories including a wash basin with drinking water. Clothes must be appropriate for the given climate and microclimate and must protect sufficiently.

124. Eight-hour sleep, time necessary for personal hygiene, one hour outdoor exercise and appropriate personal free time are guaranteed to the convicts. The sentenced may receive and send correspondence, receive visits of close persons in the scope laid down in the Rules of Imprisonment Sentence, get daily press, etc.

125. Under section 15 of the Imprisonment Sentence Act the sentenced may lodge complaints and requests with the competent bodies concerning the exercise of their rights. If requested, a talk with the governor of the facility is made possible for the convict. The sentenced has the right to legal assistance provided by a legal representative.

126. The sentenced are assigned to work in compliance with the purpose of the imprisonment sentence with legal entities or with the facility while taking into account their health and the possibility of using their work capabilities. Work hours and work conditions are the same for the sentenced as for the other employees. The convict who is not assigned to work in the above manner is assigned to other beneficial work in the facility or outside the facility and has the duty to perform this work for not more than four hours a day if his health permits.

127. Questions linked with imprisonment are regulated in more detail in the Rules for Serving Imprisonment Sentence. Under section 3 the purpose of the treatment of the sentenced is to enhance and develop their positive personal features, respect for others, self-respect, positive



relation to the family and the sense of responsibility and to build foundations allowing them integration into civil life where they would respect the laws and public moral. Treatment of convicts also pursues limitations of negative effects of imprisonment sentence on their personality. To this end trained specialized prison staff involves the convicts in a whole range of educational, leisure time, therapeutic and work activities.

128. Under the law prosecutors perform oversight of observance of law in places where imprisonment sentence is served. The bodies of the Corps of the Prison and Court Guard have the duty to allow them access to any place where imprisonment is executed and to talk with the convicts in the absence of third persons, and subsequently, to carry out all instructions given by the prosecutor concerning the observance of the rules governing the execution of the imprisonment sentence, to give him necessary explanations and present written documents concerning the execution of the sentence for this purpose.

129. The judges are also authorized to visit the convicts, to talk with them in the absence of a third person and to look into their personal files and records. The National Council of the Slovak Republic is vested with civil control over the enforcement of the imprisonment sentence.

130. Church organizations and civic interest associations participate in the treatment of inmates mainly by maintaining personal contacts with the convicts through their representatives and by helping to create favourable conditions for their future life after the sentence is terminated. Correctional facilities may also organize common religious services during free time.

131. General provisions of the Imprisonment Sentence Act apply to the enforcement of the imprisonment sentence in juveniles unless this legislation provides otherwise. Juveniles under 18 years of age always serve their sentence separated from other sentenced in a correctional facility for the juvenile.

132. Under the law the juvenile serve their sentence of imprisonment separated from the adults in the facility for the imprisonment of the juvenile. The court may decide that juveniles over 18 years of age may also serve their sentence in such facility. In this category of the sentenced special emphasis is put on such treatment that minimizes negative effects of the isolation from the society. Treatment mainly aims at increasing the feeling of responsibility and independence, acquiring skills and a positive attitude to work, education and developing socially beneficial interest activities.

### **Article 11**

133. Article 17, paragraph 2, second clause of the Constitution stipulates that “No one shall be deprived of liberty merely for his or her inability to fulfil a contractual obligation.” Thus, the Slovak Republic fully respects the provisions of this Covenant article. With respect to the above it is necessary to add that provisions of a separate part of the Criminal Code fail to define or do not determine expresis verbis a criminal offence linked with violation of contractual obligations and thus, the essence of the constitutional right referred to is accomplished. In this context we submit that the consequences of violating contractual obligations either in civil or in commercial relations are subject to concrete and specific formulation of obligations between contracting

parties and it is up to the parties what contractual obligations they agree in case of their violations. However, provisions of the Commercial Code (Act No. 513/1991 Coll. as amended) and also of the Civil Code lay down general obligations that may be claimed by the parties before a court. They include e.g. claiming performance of the obligations resulting from the contract, compensation of damage in case of violating the contractual relation, withdrawal from the contract in cases laid down by the contract or the law, damages, as well as requiring default interests on the outstanding amount, contractual fines.

## Article 12

134. Article 23 of the Constitution in paragraphs 1 and 2 stipulates “Freedom of movement and residence shall be guaranteed. Everyone residing legally on the territory of the Slovak Republic has the right to leave its territory freely.” Article 23, paragraph 3, of the Constitution lays down that “freedoms defined in paragraphs 1 and 2 may be restricted by a law if it is necessary for national security, maintenance of public order, for the health protection or the protection of the rights and freedoms of others, and in the interest of the environment protection in specified territories”.

135. Act No. 381/1997 Coll. on travel documents regulates travelling by the citizens of the Slovak Republic abroad. Under section 2 of the above quoted law citizens have the right to freely travel abroad and the right to freely return back to the Slovak Republic. Under section 3 the citizen has the right to have a travel document issued. Section 19 of the quoted law regulates refusal or withdrawal of issuing a travel document to a citizen of the Slovak Republic. For instance, a citizen is refused issuing a travel document or withdrawn an issued travel document upon court’s or tax authority’s request when an enforcement of a decision concerning a maintenance duty negligence is ordered and the person avoids the enforcement of the decision or obstructs it or there is reason to believe that he will do so.

136. Act No. 73/1995 Coll. on the residence of aliens on the territory of the Slovak Republic as amended (hereinafter “Residence of Aliens Act”) governs the residence of aliens. This law regulates, inter alia, the entry of aliens to the territory of the Slovak Republic, permitting and prohibiting their stay including the determination of conditions and procedures in expulsion as well as procedures for the settlement of offences. Residence of aliens falls under the competence of the Border and Aliens Police Office of the Police Force Headquarters. On the basis of the Refugee Act some aspects of the residence of aliens concerning refugees and de facto refugees are also the competence of the Migration Office of the Ministry of Interior of the Slovak Republic.

137. An alien is each person who is not a citizen of the Slovak Republic. Residence of an alien on the territory of the Slovak Republic means his staying on the territory of the Slovak Republic on the basis of a permit issued according to the Residence of Aliens Act. An alien may be permitted short-term residence, long-term residence or permanent residence on the territory of the Slovak Republic.

138. Under section 6, paragraph 1, of the Residence of Aliens Act an alien is entitled to long-term residence on the territory of the Slovak Republic during the period specified in the long-term residence permit. Long-term residence may be permitted for the period of time

necessary to accomplish the purpose of residence, however, not longer than a period of one year. Upon alien's application this period can be extended, however, each time for not longer than a year. The long-term residence is always linked with a purpose and the permit may be granted for the purpose of employment, study, study stay, medical treatment, enterprising or maintaining alien's family.

139. Under section 7 the alien has the right to stay permanently on the territory of the Slovak Republic on the basis of a permanent residence permit. An alien can be granted the permit for the purpose of family reunion when reuniting with a spouse who is a Slovak citizen or with a child under 18 years of age or when it is in the interest of Slovak foreign policy.

140. Currently, the Border and Aliens Police Office of the Police Force in cooperation with the Slovak Ministry of Interior drafted a new act on the residence of aliens and on amending and supplementing certain other acts that is now in the National Council committee-commenting procedure and made ready for its second reading in the plenary session of the Parliament. This draft ensures implementation of EU aliens legislation, in particular in the area of entry, residence, expulsion, detention and offences involving third country aliens. The draft law includes provisions ensuring a specific regime for the citizens of EU member States. These provisions are a response to the need of making the permit granting procedure for the citizens of EU member States easier and less formal. Full compatibility with the EU aliens law can only be achieved on the day of EU accession.

141. Under section 12 of the Residence of Aliens Act a police department can prohibit residence of alien on the territory of the Slovak Republic when:

- He committed an act on the territory of Slovakia or in a foreign country that is a wilful crime;
- He failed to observe the requirements stipulated in section 3, paragraphs 1 to 3;
- He stays on the territory of the Slovak Republic without a valid travel document;
- The period of permitted long-term residence or short-term residence laid down in the visa or in a visa-free agreement or the validity of the permanent residence certificate expired and the alien continues to stay on the territory of the Slovak Republic;
- He is engaged in business or gainful activity illegally;
- He violated regulations on narcotic and psychotropic substances;
- It is necessary for national security, maintenance of public order, for the health protection or the protection of the rights and freedoms of others, and in the interest of nature protection in specified territories;
- The residence permit on the territory of the Slovak Republic was acquired on the basis of false or incomplete data.

142. A police department may prohibit an alien residence by means of a decision in administrative proceedings where regular and extraordinary remedies are admissible. If an alien fails with the administrative body he may claim his rights before a competent court by filing an application. Currently, the Supreme Court of the Slovak Republic is the competent court. Upon a decision prohibiting residence the alien has the obligation to leave the country within the time limit stipulated in the decision, however, not later than within 30 days. Alien who was prohibited residence will not be permitted to enter the territory of the Slovak Republic or to reside on the territory of the Slovak Republic at least for a year. If the alien fails to leave the country within the period determined in the decision prohibiting residence or cancelling residence on the territory of the Slovak Republic and the police department again apprehends him then procedures under section 14 of the Residence of Aliens Act (expulsion) and section 20, subparagraph (a) of the Police Force Act (detention prior to expulsion) are applicable. The police department shall also act accordingly in case there are reasons to believe that the alien will not leave the country on the basis of a decision prohibiting residence voluntarily but will obstruct such decision or he will illegally enter or illegally stay on the territory of the Slovak Republic. In these cases the police department issues a decision on alien's detention under section 20, subparagraph (b) of the Police Force Act and subsequently it will issue a decision on his expulsion after the issuance of the decision prohibiting residence.

143. Under section 16, paragraph 5 of the quoted act an alien can be denied leaving the territory of the Slovak Republic if, in the Slovak Republic, there is with respect to him:

- Ordered enforcement of a decision concerning negligence of maintenance duty or of financial obligations in particular to the Slovak Republic;
- Criminal prosecution or he failed to serve the imprisonment sentence imposed by a national court or the sentence was not pardoned or there is no statutory bar on the execution of the sentence.

144. Information concerning provisions regulating expulsion of aliens is presented in the part on the implementation of article 13 of the Covenant.

145. In addition to the decision prohibiting residence adopted in administrative proceedings the valid legal order of the Slovak Republic allows adopting court decision prohibiting residence pursuant to section 57 (a) of the Criminal Code. Such decision consists in a ban of convict's stay on a certain place or district and the requirement of having a permit for temporary residence in such place or in such district. The court may impose this sentence for a wilful criminal offence for the purpose of preventing the perpetrator from continuing the commission of the crime at a certain place when such sentence is required in the interest of public order, protection of family, health, decency or property. This sentence may be combined with appropriate restrictions for the purpose offender's decent life. However, the sentence may not prohibit residence in the locality or district of permanent residence of the offender. The sentence of prohibition of residence may be imposed as a single sentence, though the law does not stipulate such sentence in its special part, or in combination with another sentence stipulated for a certain criminal offence in a separate part of the law.

146. The Criminal Code protects the right laid down in article 12 of the Covenant also in the framework of individual elements of crimes, e.g. section 180 (c) hijacking aircraft to a foreign country, section 233 abduction to a foreign country, sections 171 (a) to 171 (c) unlawful crossing of the State border and alike.

147. Referring to paragraph 4 of article 12 of the Covenant Slovakia submits that article 23, paragraph 4 of the Constitution lays down: "Every citizen has the right to free entry on the territory of the Slovak Republic. A citizen must not be forced to emigrate or to be expelled from his or her homeland."

148. Under section 21 of the valid Criminal Code a citizen of the Slovak Republic cannot be extradited to a foreign State for criminal prosecution purposes or enforcement of a sentence; this does not apply when a promulgated international treaty or decision by an international organization binding upon the Slovak Republic lays down the obligation of extraditing own nationals. This provision was amended with the amendment to Criminal Code No. 253/2001 Coll. that entered into force on 1 August 2001.

149. The Slovak Republic is bound by bilateral and multilateral treaties that regulate mutual assistance in criminal matters. Out of them the most important are the European Convention on Mutual Assistance in Criminal Matters, European Convention on Extradition, European Convention on the Transfer of Proceedings in Criminal Matters and also treaties on legal assistance civil, family and criminal cases.

150. Chapter 24 of the Criminal Procedure Code regulates contacts with foreign countries in legal matters. Under section 375 the provisions of this chapter shall be applied only when a promulgated international treaty does not provide for another procedure and also when requested by an international court established by an international treaty binding upon the Slovak Republic or when there is a decision of an international organization that is binding for Slovakia.

### **Article 13**

151. Article 23, paragraph 5 of the Constitution stipulates that "an alien may be expelled only in cases provided by a law".

152. The sentence of expulsion regulated under section 57 of the Criminal Code can be imposed only when safety of persons and property or another general interest requires it and only with respect to an offender who is not a citizen of the Slovak Republic or person with a refugee status granted. This sentence may be imposed individually or with another sentence. Judicial extradition is executed by a police department in cooperation with the Corps of Prison and Court Guard. Decree of the Ministry of Justice of the Slovak Republic No. 135/1994 Coll. on the expulsion of persons who received an expulsion sentence regulates the enforcement of court decision.

153. Court expulsion should be differentiated from the so-called administrative expulsion that is executed by a police department - namely, the departments of Border and Aliens Police - i.e. an administrative body on the basis of a final decision rendered in compliance with the Residence of Aliens Act and Act No. 71/1967 Coll. on administrative proceedings as amended.

154. Section 14 of the Residence of Aliens Act gives an exhaustive list of grounds on which a police department shall expel an alien:

- When he unlawfully enters the territory of the Slovak Republic;
- When he unlawfully remains on the territory of the Slovak Republic; or
- When his permit for long-term residence or permanent residence on the territory of the Slovak Republic was cancelled and there is reason to believe that he will not voluntarily leave the country.

The police department shall expel an alien who was prohibited residence on the territory of the Slovak Republic under this law and who did not voluntarily leave the country within the given term.

155. Provisions of section 15 of the quoted law also lay down obstacles to expulsion. An alien cannot be expelled from the territory of the Slovak Republic to a State where his/her life or freedom would be threatened on account of his/her race, religion, nationality, and membership in a particular social group or political opinion. This shall not apply when alien's conduct presents a risk to the security of the State or when he/she was convicted of a particularly serious crime. Equally, an alien cannot be expelled to a State where he was imposed a death penalty or where there is reason to assume that such penalty could be imposed in pending criminal proceedings. Equally, an alien cannot be expelled to a country where he/she would be in danger of torture.

156. Under the Police Force Act (sect. 20) in justified cases the Aliens Police, when enforcing some provisions of the Residence of Aliens Act, restricts alien's personal liberty by detaining an alien who is subject to expulsion pursuant to an enforceable judgement. However, the experience of the Aliens Police is that detention of an alien for the purpose of establishing his/her identity because there is beyond any doubt reason to believe that the alien is staying on the territory of the Slovak Republic illegally is the most frequent case. In most cases aliens have no identity documents and therefore detention is necessary. However, an alien may not be detained longer than 30 days.

157. Aliens detained on grounds of illegal residence on the territory of the Slovak Republic and whose identity cannot be established while being detained are placed in the Medved'ov Police Detention Centre opened for this purpose. Conditions of residence in this department comply with the fundamental human rights and no violations of these rights were observed in the operation of this department so far.

158. The rights and terms and conditions required by article 13 of the Covenant were often asserted by the aliens in the form of an appeal against the decision made by the bodies of the Aliens Police concerning the cancellation of residence permit on the territory of the Slovak Republic. In this case procedures under Act No. 71/1967 Coll. on administrative proceedings, which stipulate the obligation of the appeal body to review the entire procedure previous to the appeal, are applied. Being represented by another person on the basis of

authorization to represent is an option fully made use of. In some cases appeals were also tried by the Supreme Court of the Slovak Republic, however, no violation of fundamental human rights has been determined so far, though the decisions made by the Aliens Police bodies were set aside. There are also cases of expulsion of aliens before they exercise the above rights. However, this occurs only when it is in the interest of public order or national security. In this case, however, certain lack of experience on the side of Aliens Police staff in the evaluation of threat to protected interests with respect to the period of time in which the alien has to leave the territory of the Slovak Republic, can be observed. Act No. 73/1995 Coll. on the residence of aliens on the territory of Slovakia lays down that an alien whose residence permit was cancelled can be granted an appropriate period of time that is not longer than 30 days to leave the country. Sometimes Aliens Police authorities do not consider objective personal interests of the alien with respect to the length of his stay on the territory of Slovakia, his personal or family interests and he is granted an inappropriately short period of time to leave the country.

159. To inform the Committee Slovakia presents an overview of the numbers of persons who were prohibited residence on the territory of Slovakia broken down per categories of expulsion:

Period	Court expulsion	Administrative expulsion	Total
1999	51	1 008	1 059
2000	53	578	631
As of 23 November 2001	53	377	430
Total	157	1 963	2 120

160. Concluding to this article we submit that the Slovak Republic is a State party to the United Nations Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees published in the Collection of Laws as Notification by the Slovak Ministry of Foreign Affairs No. 319/1996 Coll.

#### **Article 14**

#### **Recommendations Nos. 12, 18, 20**

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

161. In the meaning of 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.”

162. The system of courts of the Slovak Republic is composed of the Supreme Court of the Slovak Republic and other courts - general and military. General courts include 8 regional and 55 district courts that decide in civil and criminal matters and, at the same time, review decisions by public administration bodies on points of law and the lawfulness of decisions, measures and other interventions by bodies of public power if provided so by law. The military courts system comprises a higher military court and three military district courts that decide in all criminal cases concerning officers in armed forces and armed corps, prisoners of war and other persons as provided for by law. Slovakia has currently 1,240 judges.

163. Concerning the Recommendations in points Nos. 12 and 18 of Committee's Concluding Observations relating to the appointment of judges we submit that Slovakia adopted several legal changes for the sake of strengthening the principle of independence and impartiality of the judiciary.

164. Constitutional Statute No. 90/2001 Coll., i.e. the several times referred to amendment to the Constitution, established the Judiciary Council of the Slovak Republic with its article 141 (a). The Judiciary Council is composed of 18 members. The President of the Supreme Court of the Slovak Republic is the Chairman of the Judiciary Council. Its other members are:

- Eight judges, who are elected and revoked by judges of the Slovak Republic;
- Three members who are elected and revoked by the National Council of the Slovak Republic;
- Three members who are appointed and revoked by the President of the Slovak Republic;
- Three members who are appointed and revoked by the Government of the Slovak Republic.

The term of office of members of the Judiciary Council of the Slovak Republic shall be five years and the same person may be elected or appointed a member of the Judiciary Council for a maximum of two consecutive terms. Consent by majority of all its members is required to have its resolution adopted.

165. In the meaning of article 141 (a) of the Constitution the competence of the Judicial Council includes:

- To present to the President of the Slovak Republic proposals of candidates for appointment as judges, and proposals for recall of judges;
- To decide on the assignment or transfer of judges;
- To present to the President of the Slovak Republic proposals for appointment of the President of the Supreme Court of the Slovak Republic and the Vice-President of the Supreme Court of the Slovak Republic, and proposals for their recall;
- To present to the Government of the Slovak Republic proposals of candidates for judges who should act for the Slovak Republic in international judicial bodies;
- To elect and recall members of disciplinary panels and to elect and recall chairmen of disciplinary panels;
- To comment on a proposal for the budget of courts of the Slovak Republic during the preparation of the proposal for the State budget;
- Other activities if laid down by a law.<sup>5</sup>



166. Concerning Recommendations Nos. 12 and 18 we present that the above-mentioned amendment to the Constitution parts of which entered into force on 1 July 2001 significantly changed the appointment procedure applicable to judges. Under the new legislation judges are not elected by the National Council (Parliament) anymore but upon a proposal of the Government. Judges are appointed and revoked by the President of the Slovak Republic upon a proposal of candidates for appointment or revoked by the Judiciary Council of the Slovak Republic. Under article No. 145, paragraph 2 of the Constitution a citizen of the Slovak Republic who is eligible to be elected to the National Council of the Slovak Republic, who has attained the age of 30 years and has a university education in law may be appointed judge without any time limitations; thus the so-called four-year trial period was removed. The President of the Slovak Republic appoints the President of the Supreme Court of the Slovak Republic and the Vice-President of the Supreme Court of the Slovak Republic from judges of the Supreme Court of the Slovak Republic for a term of five years upon a proposal by the Judiciary Council of the Slovak Republic. The same person may only be appointed President of the Supreme Court of the Slovak Republic or Vice-President of the Supreme Court of the Slovak Republic for two consecutive terms.

167. Under article 147 of the Constitution the President of the Slovak Republic, upon a proposal of the Judiciary Council, revokes a judge or has the obligation to revoke the judge:

- On the basis of a final sentencing judgement for a wilful criminal offence;
- If he or she was finally convicted of a criminal offence and the court did not decide in his or her case on probationary suspension of the imprisonment sentence;
- On the basis of a decision by a disciplinary panel for an act which is incompatible with the discharge of the function of judge;
- If his or her eligibility for being elected to the National Council of the Slovak Republic has terminated.

168. The same grounds are also applicable to revoking the President or Vice-President of the Supreme Court of the Slovak Republic before the lapse of their term of office. The President of the Slovak Republic, upon a proposal of the Judiciary Council, may revoke a judge but does not have to, under article 147, paragraph 2 of the Constitution when his long-term health condition does not, for at least one year, allow him to perform his duties as a judge or when he has attained the age of 65 years. In the meaning of article 146 of the Constitution a judge may resign from his or her post by written notice to the President of the Slovak Republic.

169. The Slovak legal order differentiates between appointment to the office of a judge by the Slovak President and the appointment to judiciary offices of the president and vice-president of regional and district courts by the Minister of Justice under section 39 of Act No. 335/1991 Coll. on Courts and Judges as amended (hereinafter the “Court and Judges Act”). State administration of courts is ensured through these court officials in the scope defined in Act No. 80/1992 Coll. on the seats and districts of courts of the Slovak Republic, State administration of courts,

handling of complaints and election of lay judges as amended (hereinafter the “State Administration of Courts Act”). In this context it is necessary to state that in his effort to democratize and to strengthen the judiciary the Minister of Justice revoked all presidents and vice-presidents of regional and district courts in 1998 and after elections of court officials by secret ballot beginning 1999 he appointed presidents and vice-presidents of regional and district courts upon proposals submitted by the assembly of judges, judicial councils at courts and the Association of Slovak Judges. These court officials are released from the office upon their own application in compliance with section 50 of the Court and Judges Act. Under this provision a court official may also be released from this office by the body that appointed him to this office, i.e. the Minister of Justice.

170. The creation of judicial councils as self-administrative bodies of courts at regional courts, Higher Military Court and the Supreme Court of the Slovak Republic that act as advisory bodies to the presidents of these courts in performing State administration responsibility is, undoubtedly, contributing to the strengthening of the principle of independence and impartiality. Section 58 (a) of this law stipulates the scope and tasks of the Council of Judges of the Slovak Republic,<sup>6</sup> that is a coordinating body of judicial councils and at the same time a body that participates in the State administration of courts in the scope and manner laid down in the newly adopted Act No. 385/2000 Coll. on Judges and Lay Judges and on amending and supplementing certain acts (hereinafter “Judges and Lay Judges Act”) that entered into force on 1 January 2001.<sup>7</sup> Judicial councils established in this way and the Council of Judges of the Slovak Republic protect the rights and justified interests of judges and in the meaning of this act they also comment on the individual aspects (e.g. temporary assignment of judge, evaluation of judges, selection procedures to vacant judicial positions, review of a written statement and property statement, etc.) that have a bearing on the adoption of other measures. In case they fail to provide necessary statements or decisions the process is continued with the exception of allocation of judges to the Supreme Court of the Slovak Republic, transfer of judges to another court or appointment to a higher judicial function.

171. Under the valid legal order of the Slovak Republic judges are in the performance of their office independent and bound only by the Constitution and the law, international treaty under article 7, paragraphs 2<sup>8</sup> and 5, laws, finding of the Constitutional Court and under conditions stipulated by law also by the legal opinion of a higher instance court. The Court and Judges Act stipulates the principle of judicial immunity, i.e. a judge may be criminally prosecuted or detained for acts committed in the performance of his office or in its context only with the consent of the Constitutional Court. The amendment to the Constitution and also the Judges and Lay Judges Act strengthened the status of judges by stipulating the principle of non-transferability of judges except of cases when the judge agrees with the transfer or the transfer is based on a disciplinary panel decision. These pieces of legislation also regulate the principle of incompatibility of the exercise of the office of a judge and/or give an exhaustive list of cases of such incompatibility and stipulate the principle of apolitical position of judges, i.e. the obligation on the side of the appointed judge to give up membership in a political party or political movement prior to taking the oath.

172. With respect to Recommendation in point No. 20 of Committee’s Concluding Observations Slovakia submits that the issue of military courts jurisdiction of civilians will be changed in the framework of the prepared new codification of the procedural criminal law.

## **The right to a fair trial before a court**

### *Equality before a court, public nature of hearings*

173. The Slovak legal order guarantees and fully respects all rights enshrined in article 14 of the Covenant and at the same time provides legal means to ensure them. Under article 46, paragraph 1 of the Constitution “Everyone may claim his or her right by procedures laid down by a law at an independent and impartial court or, in cases provided by a law, at other public authority of the Slovak Republic.”

174. Article 47, paragraph 3 of the Constitution guarantees equality of all parties to the proceedings before the courts, other State authorities or bodies of public administration from the beginning of the proceedings. The principle of equality of parties to the proceedings is also regulated in section 7, paragraph 1 of the Judges and Lay Judges Act in the meaning of which all persons shall be equal before the law and court. Everyone has the right to the protection of one’s rights, freedoms and interests protected by law before a court provided the law does not entrust other bodies with this protection. Section 18 of the Civil Procedure Code equally stipulates that parties to civil court proceedings have an equal status. They have the right to use their mother tongue before the court. The court has the obligation to ensure them equal opportunities for the exercise of their rights. The principle of equality of parties to the proceedings is consistently applied in criminal proceedings.

175. Article 48, paragraph 2 of the Constitution regulates the right of every person to have his or her case tried publicly without undue delay, to be present at the proceedings and to comment on any evidences given therein. Under section 10, paragraph 2 of the Criminal Procedure Code the public may be excluded from the main trial and public hearing on an appeal only if the public hearing would imperil a secret protected under a separate law, undisturbed conduct of the trial or morality or safety or another important interest of witnesses.

176. Article 142, paragraph 3 of the Constitution lays down that “Judgements shall be announced in the name of the Slovak Republic and always publicly.”

### *Presumption of innocence*

177. Under article 50, paragraph 2 of the Constitution “everyone, who is being prosecuted, shall be presumed innocent until proved guilty by a final judgement of the court”. The quoted constitutional right is one of the fundamental principles of criminal procedure, which implies that the accused does not have to prove own innocence. Proving guilt is the responsibility of criminal justice agencies that should ex officio establish all facts in favour of the accused as well as all facts important for the decision on merits.

178. Presumption of innocence is stipulated in the provisions of section 2, paragraph 2 of the Criminal Procedure Code under which any person charged with a criminal offence shall be presumed innocent until proven guilty by a final sentencing judgement of a court.

179. The following rules follow from the principle of presumption of innocence:

- The accused has no burden of proof and has no obligation to prove his innocence, it is the criminal justice agencies that must establish all facts necessary for a decision on guilt, the accused has the right to present circumstances and evidence to such facts for his defence, the criminal justice agencies are obliged to consider such defence, the accused (defendant) must not be in any way forced to give a statement or confession;
- The rule “in dubio pro reo” on the basis of which in case of doubts as to the guilt of the accused a decision in favour of the accused shall be taken. In this context we submit that under section 172, paragraph 1 of the Criminal Procedure Code criminal prosecution is discontinued when it cannot be proved that the accused committed the crime. Equally in compliance with article 226 of the Criminal Procedure Code the court shall acquit the accused when it could not be proved that he committed the crime. This means that a court shall render a sentencing judgement only when the accused’s guilt is proved;
- The rule of “unproved guilt has the same meaning as proved innocence”.

180. Mass media, failing to respect the principle of presumption of innocence, quite often identify a person suspect of committing a criminal offence as the perpetrator and are a certain risk the presumption of innocence.

*Minimum guarantees in criminal proceedings*

181. Under section 50, paragraph 3 of the Constitution “everyone charged with a criminal offence shall be entitled to have time and facilities for the preparation of his or her defence and to defend himself or herself in person or through defence counsel”. All criminal justice agencies have always the obligation to instruct the accused of his rights and to give him a full possibility of their exercise.

182. The quoted constitutional right is identified as one of the main principles governing criminal procedure in section 2, paragraph 13 of the Criminal Procedure Code on the basis of which the person against who criminal proceedings are held must be instructed at every stage of the proceedings of the rights allowing full invocation of defence and also of the right to choose defence counsel; and all criminal justice agencies must allow the exercise of his/her rights.

183. Under section 33, paragraph 1 of the Criminal Procedure Code the accused has the right to comment on all facts he is blamed for and to evidence of them, however, he has no obligation to testify. He may present circumstances and evidence serving his defence, submit motions, petitions and remedies. He has the right to choose defence counsel and to consult him also during acts taken by a criminal justice agency. He, however, may not consult his defence lawyer on how to answer an already posed question during his interrogation. He may request to be interrogated at the presence of his defence counsel and to have his defence counsel present also at other acts of pre-trial proceedings. If he is detained or serving imprisonment sentence he may talk with his defence counsel in the absence of a third person. These rights belong to the accused also when he was incapacitated or his legal capacity was restricted.

184. A significant right of the accused is the right to choose defence counsel and to consult him also during acts taken by criminal justice agencies. If the accused fails to choose defence counsel his representative at law can do so; if he also fails to do so his significant others, i.e. brother or sister, adoptive parent, adoptive child, spouse, life companion and a participating party. These persons may do so also against his or her will if the accused is deprived or restricted of his or her legal capacity. The accused may choose another defence counsel than the one appointed or chosen by an authorized person. He may even choose another defence lawyer instead of the one he chose himself. The accused may have several lawyers in the same case. The accused make use of this possibility in cases with more complex elements of crime.

185. In practice, each accused is instructed, as a part of the mandatory instruction when accusation is laid, of his right to choose defence counsel and also of the possibility of free of charge defence. Under section 163, paragraph 1 of the Criminal Procedure Code the accused has also the right to request the investigator to have his first interrogation delayed for an appropriate period of time for the purpose of preparing his defence and the investigator must decide on it. Under section 165 of the Criminal Procedure Code defence counsel has the right to be present at all investigation acts and fully utilize all his powers under the Criminal Procedure Code since the accusation was laid. Except for mandatory legal representation the accused may waive this right.

186. To make the right of defence independent from the financial situation of the accused, those accused who do not have sufficient means to pay the costs of defence are entitled to free defence or defence at a reduced fee under section 33, paragraph 2 of the Criminal Procedure Code. It is a general principle valid in the case of mandatory legal representation (hereinafter "mandatory defence") (section 36 et sequentia of the Criminal Procedure Code), chosen defence counsel (section 37 of the Criminal Procedure Code) as well as appointed defence counsel (section 38 et sequentia of the Criminal Procedure Code). The above information explains that Committee's concern expressed in Point No. 19 of the Concluding Observation "the right to free legal assistance does not seem to be guaranteed in all cases, but only in cases for which the maximum penalty is more than five years' imprisonment" is a misunderstanding caused probably by an inappropriate wording of the relevant part in the Initial Report to this Covenant.

187. Under certain circumstances exactly defined in the Criminal Procedure Code the accused must have defence counsel. Under section 36, paragraphs 1-4 the accused must have defence counsel already during pre-trial proceedings when:

- He is detained, serves an imprisonment sentence or is held for observation at a medical institution;
- He is deprived of legal capacity;
- He is a juvenile; or
- He is a fugitive;
- The court or an investigator or a prosecutor in pre-trial proceedings deem it necessary because they are in doubt whether, in view of his physical or mental handicap, the accused is capable of proper defence;

- The proceedings on a criminal offence where the law provides for a sentence of minimum five years of imprisonment are held;
- Proceedings are held in respect of extradition and imposition of protective treatment, except for protective alcohol abuse treatment.

In the specified cases of mandatory defence the accused is given a period of time to choose defence counsel. If the accused fails to choose defence counsel in the period determined he shall have defence counsel assigned for the period in which the reasons for mandatory defence exist without delay.

188. When the accused is in detention he must have defence counsel from the moment of detention regardless of the sentence stipulated for the criminal offence he is prosecuted for in the Criminal Code. The reason for this provision is that an accused prosecuted without detention has, undoubtedly, better prerequisite for his defence than a detained accused. In all these cases the accused must have defence counsel regardless of his wish in this respect.

189. In cases where no mandatory defence is needed the Criminal Procedure Code leaves it exclusively up to the discretion of the accused whether and when he chooses his defence counsel. Thus, it is up to the accused whether he will authorize defence counsel with representation immediately after criminal prosecution commenced by laying accusation, when informed of the results of the investigation, during main trial or a public hearing an appeal.

190. The amendment to the Criminal Procedure Code implemented with Act No. 366/2000 Coll. introduced the institute of substitute defence counsel (section 40a of the Criminal Procedure Code). Appointing substitute defence counsel in addition to the chosen or appointed one shall be applied when there is reason to believe that the summoned main trial or public hearing on appeal could be obstructed due to the absence of appointed or chosen defence counsel. Substitute defence counsel has the same rights and duties as chosen or appointed defence counsel, however, during the main trial or public hearing he may only exercise them at the absence of chosen or appointed defence counsel.

191. Article 47, paragraph 4 of the Constitution lays down that everyone who claims not to know the language used in the proceedings has the right to an interpreter.<sup>9</sup> In addition, under section 2, paragraph 14 of the Criminal Procedure Code every person is entitled to use his mother tongue before criminal justice agencies. In such case an interpreter who will be one of the persons participating in the proceedings is invited in compliance with the provisions of article 28 of the Criminal Procedure Code. The failure to invite an interpreter is curtailment of the right of the accused to defence. Such a lapse may therefore be grounds for returning the case to the prosecutor for additional investigation under article 188, paragraph 1, subparagraph (e) of the Criminal Procedure Code. When the accused is deaf-mute then under section 28 of the Criminal Procedure Code he is considered person not in command of the language of the proceedings. In such cases a sign language interpreter shall be invited.

## **Criminal Proceedings against Juveniles**

192. A person over 15 years of age and under 18 years of age is understood to be a juvenile. The Criminal Procedure Code regulates proceedings against juveniles as a specific type of proceedings under Part One, Chapter XIX and it essentially includes “above-standard” procedures compared with procedures against other offenders in the same kind of criminal offences.

193. In the meaning of this legislation a juvenile must have defence counsel from the moment of charge of criminal offence. In the meaning of provisions 301 of the Criminal Procedure Code “in proceedings against a juvenile investigation and also decision-making shall be given to persons who have experience and knowledge in education of the youth that will guarantee accomplishment of the educational objective of the proceedings. Criminal justice agencies act in the closest possible cooperation with psychiatric care facilities. An expert on child or juvenile psychology is usually invited to examine juvenile’s mental state.” If it is for the benefit of the juvenile the competent court may transfer the case to the court in the jurisdiction of which the juvenile has his residence or to the court where holding criminal proceedings would be for other reasons the most expedient for the juvenile. Joint proceedings against a juvenile and a person older than 18 years of age can be held only exceptionally when it is necessary for a full and impartial clarification of the matter or when there are other important reasons.

194. With respect to the detention of a juvenile then under section 293 of the Criminal Procedure Code a juvenile may be detained only when the purpose of detention cannot be achieved in another way even when there are grounds under section 67 of the Criminal Procedure Code present.

195. Main trials cannot be held in the absence of the juvenile. Under section 297, paragraph 2 of the Criminal Procedure Code the authority responsible for youth care shall also be notified of the main trial and public hearing. The prosecutor must always be present at a public hearing. At the main trial and public hearing against a juvenile:

- The court shall exclude the public also when it is for the benefit of the juvenile;
- Presiding judge of the panel may order the juvenile to leave the courtroom during certain parts of the main trial or public hearing if there is concern that this part of the proceedings could have a negative effect on his moral development; after the juvenile returns back to the courtroom presiding judge shall inform him of the main content of the hearing held in his absence to allow comments by the concerned juvenile;
- The representative of the youth care authority has the right to submit motion and to ask the interviewed persons questions, he has the right to the closing speech after the juvenile.

### **The right to review of evidence and judgement by a court of higher instance**

196. Valid legal order of the Slovak Republic regulates some possibilities concerning a remedy of alleged the violation rights by lodging with a regular legal remedy as a complaint against the decision of the investigator and law enforcement body except the decision concerning a commencing of prosecuting. The decision of the court and prosecutor can be challenged only if law provides it and if court or prosecutor decide as a first instance authority. The complaint has suspensive effect only if law provides it. The complaint is lodged with the authority the decision of which is challenged within three days from notice of the decision except the decision concerning a dismissal of pre-trial detention. This authority can allow the complaint, if not the complaint will be transferred to the superior authority.

196.1 An appeal, which has a suspensive effect, can be lodged against every first instance court judgement that has not become final. The appeal is lodged with the court the judgement of which is challenged within eight days from the delivery of the judgement. New facts and evidence may be submitted in the appeal. In the Slovak Republic justice is administered at two instances. Regional courts rule on appeals against district court judgements and the Supreme Court of the Slovak Republic rules on regional court judgements. No regular legal remedy is admissible against a final first instance court judgement. After the court judgement has become final change can be achieved only through an extraordinary remedy when conditions provided for by law are met. These include retrial under section 277 et sequentia of the Criminal Procedure Code or a complaint on points of law under section 266 et sequentia of the Criminal Procedure Code.

197. Retrial, as an exceptional legal remedy is applicable only when the final decision is in contradiction with the facts of the case because new facts or evidence that were unknown to the criminal justice agencies in the original proceedings emerged and thus they could not be considered in the final decision. The motion to admit retrial is filed with the court, which adjudicated the case as the court of first instance. It is necessary to stress that the principle of review does not apply to the proceedings concerning admission of retrial where the court is competent to consider only those verdicts in which the petitioner seeks admission of retrial. The decision on the motion for retrial admission must not, as a matter of principle, exceed the extent of the motion with the only exception being respect for the principle of beneficium cohaesionis where the judgement will also be changed in favour a person who did not file a motion for retrial when grounds on which the judgement was changed in favour of the person filing the motion are also in favour of that person. In addition to the accused a motion for admitting retrial in favour of the accused may be filed by all other persons who, under section 280, paragraphs 2 and 3 of the Criminal Procedure Code could file an appeal in his favour. Only prosecutor can file motion for admitting retrial to the detriment of the accused. Under section 279 of the Criminal Procedure Code retrial to the detriment of the accused is excluded when the culpability of the offence expired or when the accused deceased.

198. Under section 266, paragraph 1 of the Criminal Procedure Code, a complaint on points of law is filed by Prosecutor General or Minister of Justice against a final decision of a court that violated the law as well as against a final decision of a court that was made in erroneous proceedings. Prosecutor General can also file it against such decision made by prosecutor, investigator or law enforcement agency. A complaint on point of law against the sentencing



verdict can only be filed when the sentence is obviously out of proportion compared with the level of danger to the society of the crime or the situation of the perpetrator or when the kind of imposed sentence is in obvious discrepancy with the purpose of the sentence. If the challenged decision is of concern for several persons a complaint on points of law may also be filed against that part of the judgement that applies to one of these persons. No complaint on points of law against a decision on the complaint on points of law is admissible.

### **Compensation of damage in case of violation of law by a verdict of a court**

199. The issue of liability for damage caused by an unlawful decision on detention or sentence is regulated Act No. 58/1969 Coll. on liability for damage caused by a decision of the State authority or by its erroneous official action.

199.1 Under section 6, paragraph 1 of the quoted law only the one who suffered wholly or partially enforcement of the sentence, and he/she was acquitted or his/her criminal prosecution was discontinued has the right to compensation of the damage caused by the sentencing decision from the State. The one who was sentenced to a more moderate sentence than the one enforced on the basis of cancelled judgement in later proceedings has also a right to compensation of the damages.

199.2 Under section 6, paragraph 3 the one who wilfully inflicted sentencing upon him or whose criminal prosecution was later discontinued because he was pardoned or because the criminal offence on grounds of which the sentence was imposed was subject to amnesty after the original judgement became final has no right to compensation of damage.

### **The principle of Ne bis in idem**

200. The principle of Ne bis in idem is regulated in article 50, paragraph 5 of the Constitution as follows:

“When finally convicted or acquitted of a criminal offence, no one may be prosecuted for the same criminal offence again. This principle does not preclude exceptional remedies, according to the law.”

201. This principle may be breached only in cases when a final decision on discontinuing criminal prosecution, on acquittal or sentencing was set aside in proceedings on a complaint on points of law or when a retrial was permitted, i.e. when extraordinary remedies were used. The application of extraordinary remedies is elaborated in detail in the comments to paragraph 5 of this article.

### **Article 15**

202. Article 50, paragraph 6 stipulates that: “The punishability of any criminal conduct shall be determined and the punishment imposed under the law effective at the time of the commitment of the offence. A law adopted after the commission of the criminal offence shall apply if it is more beneficial to the offender.” This constitutional right is covered by section 16 of the Criminal Code in the meaning of which under paragraph 1 punishability is examined

according to the law effective at the time when the criminal offence was committed, it is examined according to a newer law when it is more favourable for the offender. Under paragraph 2 the offender may be imposed only such kind of sentence that is permitted by the law which is in effect at the time when the criminal offence is being judged.

### **Article 16**

203. In article 14 the Constitution recognizes everyone's capacity to have rights, i.e. to have the legal capacity, which applies to everyone, i.e. also to the one who is going to be born. In the Constitution this right is listed in the framework of fundamental human rights and freedoms and, thus, it belongs to every natural person. Civil Code No. 40/1964 Coll. as amended (hereinafter the "Civil Code") stipulates in section 7 that the capacity of a natural person to rights and duties arises by birth. A conceived child if born alive has also this capacity. This capacity extincts with death. In addition to the capacity to have rights the legal order distinguishes also legal capacity, which means the capacity to acquire rights and duties and to undertake obligations through own acts. In this case, however, it is possible to deprive or restrict the natural person in his/her legal capacity under conditions laid down by the law.

### **Article 17**

#### **Recommendations Nos. 22, 23**

204. The protection of the rights enshrined in article 17 of the Covenant is regulated in articles 16, 19, 21 and 22 of the Constitution and Slovakia informed on them in its Initial Report.

205. The provisions of the Criminal Procedure Code lay down in which legal conditions these rights guaranteed by the Constitution can be breached. The Criminal Procedure Code regulates the institute of house search, search of other premises and plots, personal search, seizure of deliveries, opening of deliveries, replacement of delivery content, intercepting and recording telecommunication, controlled delivery, and of other ones the implementation of which may result in a breach of rights guaranteed by article 17 of the Covenant, however, provided that the requirements laid down by law are met. The provisions of the Criminal Code also determine the consequences and/or sanctions in case of unlawful breach of these constitutional rights.

206. Article 19, paragraphs 1 and 2 of the Constitution guarantee the right to maintain human dignity, personal honour, reputation, protection of good name as well as against unjustified interference in private and family life. Provisions of section 11-16 of the Civil Code guarantee protection of personality, mainly life, health, civic honour and also privacy, good name and manifestations of personal nature to natural persons. They exactly define the conditions applied in case of violations of these rights and also what the aggrieved party may claim in proceedings on protection of personality under section 200i Civil Procedure Code. Provisions of Criminal Code, in particular section 206 legislating the criminal offence of defamation the elements of which consist in someone reporting a false information concerning a person and this false fact may significantly damage his respect among citizens, in particular it could damage the concerned person at work, disturb his family relations or cause another serious damage, also ensure protection of personality. Equally, this protection is also provided on the basis of section 174 of the Criminal Code that defines the criminal offence of false accusation. It consists in false

accusation of another person of a crime with the intention to inflict criminal prosecution upon this person. With respect to Recommendation in Point 22 of Committee's Concluding Observations concerning defamation lawsuits we submit that 15 final judgements on grounds of the criminal offence of defamation were rendered in 1999-2000. This low number can mainly be explained with the fact that the evidence taking procedure is rather complex and proving of the criminal offence of defamation quite difficult. This question is also linked with the issue of maintaining and/or respecting the so called political culture which in case of failure may consequently result in lawsuits. On this occasion the Slovak Republic also presents that in November 2001 the National Council discussed MPs' initiative of repealing the elements of the criminal offence of defamation of the Republic and its representative in the meaning of sections 102 and 103 of the Criminal Code. The National Council did not accept this change.

207. Article 19, paragraph 3 of the Constitution guarantees that "everyone shall have the right to be protected against unjustified collection, disclosure and other misuse of his or her personal data." Act No. 52/1998 Coll. on Protection of Personal Data in Information Systems as amended is linked with this article of the Constitution and its purpose is to protect the fundamental rights and freedoms of natural persons with respect to the processing of their personal data; to determine the rights and obligations of natural persons in supplying their personal data for information systems and the rights, obligations and responsibilities of legal and natural persons involved in personal data processing; to determine the rights and obligations of controllers of information systems, processors and data subjects with respect to the provision of personal data from an information system; to determine the conditions for transborder personal data flow; to determine the conditions relating to a method for the registration of information systems containing personal data; to establish the status and scope of authority of State supervision over the protection of personal data in information systems; to determine the sanctions for violating the act. The Criminal Code also protects against violations of this right by including the criminal offence of unauthorized handling of personal data in section 178.

208. Article 21 of the Constitution that stipulates the inviolability of home as well as no entry without resident's consent, regulates the right to the protection of one's home. Any interference in this constitutional right can be admitted only on the basis of grounds laid down by the Constitution and laws legislating this right in more detail. House search is admissible only with respect to criminal proceedings upon a written and reasoned judge's warrant issued upon prosecutor's motion. Section 82 of the Criminal Procedure Code stipulates grounds for house search based on the suspicion that a thing relevant for criminal proceedings may be found or a person suspect of crime is hiding in that house or other places used for residential purposes or premises attached to them. Section 85 of the Criminal Procedure Code stipulates the manner in which house search is conducted and conditions restricting its conduct. At the same time some provisions of the Criminal Code define the criminal offence of forcible entry into a dwelling as illegal entry of a house or dwelling of another person or unauthorized staying in it (section 238 of the Criminal Code - violation of house freedom).

209. With respect to the right of protection against unlawful interference with one's correspondence enshrined in the Covenant we submit that article 22 of the Constitution guarantees secrecy of letters, secrecy of other delivered communications and written documents

delivered and of personal data. No one may violate the secrecy of letters, of other written documents and recordings kept private or delivered by post or otherwise. The secrecy of messages communicated via telephone, wire, or in another way is guaranteed in a similar way. Interference in these constitutional rights is possible only under conditions stipulated by law, namely sections 86-87a of the Criminal Procedure Code - seizure and opening of deliveries and section 88 of the Criminal Procedure Code - interception and recording of telecommunication. In this context it is necessary to mention Act No. 366/2000 Coll. amending and supplementing the Criminal Procedure Code. This amendment to the Criminal Procedure Code changed - in compliance with Committee's Concluding Observations, in particular Recommendation in Point No. 23 - the institutes of seizure and opening deliveries and interception of telecommunication (the act entered into force on 3 November 2000).

209.1 Under this new legislation undelivered wires, letters or other deliveries (hereinafter "delivery") may be withheld only on the basis of a warrant issued by the presiding judge of the panel and in pre-trial proceedings by the prosecutor or investigator for the purpose of a needed clarification of facts important for criminal proceedings. An investigator needs prosecutor's consent for such act. Prosecutor or investigator, again with the prior consent by the prosecutor, may order surrender of delivery for the purpose of identifying its content in serious criminal offences stipulated in section 86, paragraph 2 of the Criminal Procedure Code. The criminal offences on grounds of which surrender of delivery to criminal justice agencies in criminal proceedings were legislated in a new manner. It must be criminal proceedings concerning violation of sections 91 to 115 of the Criminal Code (i.e. criminal offences against the foundations of the Republic, criminal offences against the security of the Republic, criminal offences against the defence of the homeland). Equally, it must be a conduct that results in the commission of serious criminal offences, the criminal offence of corruption and criminal offence under section 158 of the Criminal Code (abuse of power of a public official). Withholding without the relevant warrant may be only executed upon investigator's or law enforcement agency's order in cases not allowing any delay, however, also in this case it is necessary to procure the necessary warrant within three days. Presiding judge of a panel and prosecutor, in pre-trial proceedings, can only open the delivery. An investigator or a law enforcement agency may open a delivery only with a prior consent of the prosecutor. Prosecutor or investigator with the consent of the prosecutor may order change of the content of the delivery in cases laid down by law and a written report is made thereof.

209.2 Interception and recording of telecommunication can be ordered by judge or presiding judge of a panel and, in pre-trial proceedings, judge upon prosecutor's motion (this is a significant change because prosecutor's consent was replaced with judge's consent in pre-trial proceedings) when there is reason to believe that it will contain facts important for the criminal proceedings concerning an exceptionally serious offence of abuse of power by a public official or another wilful criminal offence where the proceedings result from a promulgated international treaty (the amendment defined the group of criminal offences anew). Interception and recording of telecommunication between defence counsel and the accused are inadmissible. This interception warrant must be in writing and reasoned individually for each main telephone line. It must also include identification of the person to who interception and recording of telecommunication apply and it must specify the time period of this action. The period of

interception and recording must not exceed six months and it can be extended by the presiding judge of a panel and, in pre-trial proceedings, by a judge upon prosecutor's motion for another period of six months. The warrant is treated as a document containing State secrecy.

Interception and recording of telecommunication is performed by competent Police Force agencies. As already stated this legislation was amended, also in view of Recommendation in Point 23 of Committee's Concluding Observations, with Act No. 366/2000 Coll. amending and supplementing the Criminal Procedure Code.

210. In this respect the already quoted Police Force Act grants power to forcibly enter a flat in section 29 or to use IT means under section 35-38. Police Force may use the IT means only with a written consent by a judge. Amendment to Act No. 353/1997 Coll. on the Police Force specified in the performance of which tasks these means can be used (sect. 36) and also the terms and conditions of their use (sect. 37).

211. On the other hand, the legal order of the Slovak Republic also grants protection to everyone if the secrecy of delivered communications was unlawfully violated. In the meaning of the Criminal Code this is considered criminal offence (sections 239 and 240 - breaching the secrecy of delivered communications).

### **Article 18**

#### **Recommendations Nos. 12, 21**

212. The Slovak Republic guarantees religious freedom with its Constitution and Act No. 308/1991 Coll. on freedom of religious faith and on the position of churches and religious societies as amended. These legal norms regulate the freedom of conscience and religion and provide guarantees for respecting these fundamental human rights and freedoms. At the same time they are the expression of binding acceptance of and respect for international obligations.

213. The right guaranteed in this article is defined in the legal order of Slovakia in article 24 of the Constitution that stipulates: "Freedom of thought, conscience, religion and belief shall be guaranteed. This right shall include the right to change religion or belief. Everyone has the right to refrain from a religious affiliation. Everyone shall have the right to express his or her mind publicly."

214. Under article 24, paragraph 2 of the Constitution "Everyone shall have the right to manifest freely his or her religion or belief either alone or in association with others, privately or publicly, in worship, religious acts, maintaining ceremonies or to participate in teaching." According to the explanatory notes to the Constitution these rights shall have an absolute nature in such meaning that no one may be subject to a measure that aims to change the process and manner of thinking and that no one shall be subject to coercion to change his thought, religion or belief. The protection of and respect for these rights thus exclude any coercion or influence on thought, conscience, religion or belief. These rights cannot be restricted by law.

215. These guarantees and other ones hereinafter are regulated in more detail in Act No. 308/1991 Coll. on freedom of religious faith and on the position of churches and religious societies as amended by Act No. 394/2000 Coll. This law regulates in more detail constitutional guarantees enshrined in article 24 of the Constitution and also the relationship with other rights guaranteed by the Constitution. Section 1 of this act further stipulates that everybody has the right to change one's religion or belief or to be of no religious confession. Everybody has the right to propagate freely one's religious faith or conviction or to be of no religious confession. Nobody must be forced to profess any religion or belief or to be of no religious confession. Naturally, this right must not be exercised in a manner that would disturb the legal order, rights of other citizens or religious tolerance. In section 2, paragraph 1 of the quoted law it is laid down that "profession of any religion must not impose limitations on one's constitutional rights and freedoms, especially the right of education, the right of choice and practice of one's profession and the right of access to information".

216. Under article 24, paragraph 3 of the Constitution "Churches and ecclesiastical communities shall administer their own affairs themselves; in particular, they shall establish their bodies, appoint clericals, provide for theological education and establish religious orders and other clerical institutions independent from the state authorities."

217. Under article 24, paragraph 4 of the Constitution "The exercise of rights under paragraphs 1 to 3 may be restricted only by a law, if it is regarding a measure necessary in a democratic society for the protection of public order, health and morals or for the protection of the rights and freedoms of others." The explanatory notes to the Constitution state that freedom of thought, conscience and religion or belief must not be subject to any limitations by law, however, the State may restrict the conditions of their exercise by law if the conditions stipulated in article 21, paragraph 4 are met.

218. The legal order of the Slovak Republic guarantees the rights and freedoms ensuing from article 18 of the Covenant to all persons including prisoners. Under section 17 of Decree of the Ministry of Justice of the Slovak Republic No. 125/1994 Coll. issuing the Rules for Serving Imprisonment Sentence the sentenced (prisoners) may directly take part in religious services in the correctional establishment according to their interest. Further, they have the right to individual talks with the clerics of the relevant church (according to their choice), to pastoral visits of the sentenced, confession and Holy Communion, explanation of religious literature and access to it.

219. In the meaning of article 24, paragraph 4 of the Constitution the constitutional rights of soldiers are restricted with Act No. 370/1997 Coll. on military service as amended. However, these restrictions do not apply to the rights under article 18 of the Covenant.

220. The legal order of the Slovak Republic does not include any provision that would restrict parents' will as to the religious and moral raising of their children according to parents' or guardian's own conviction. Religious education and ethical education are a part of the education provided by primary schools.

221. Legal guarantees for the freedom of thought, conscience and religion are also created with respect to the conscription duty. Under article 25, paragraph 2 of the Constitution “No one shall be forced to perform military service if it is contrary to his or her conscience or religion. A law shall lay down the details.” This act is Act No. 207/1995 Coll. on civil service and on the amendment and supplement of Act No. 347/1990 Coll. on the organization of ministries and other central bodies of state administration of the Slovak Republic as amended, of Act No. 83/ 1991 Coll. on scope of competence of authorities of the Slovak Republic in employment policy enforcement as amended and of Act No. 372/ 990 Coll. on offences as amended (hereinafter the “Civil Service Act”). Under section 1, paragraph 1 of this act a citizen may refuse to serve compulsory military service on the basis of a declaration stating that it is contradicting his conscience or religion; in which case he has the obligation to perform civil service. With respect to Recommendation in Point No. 12 of Committee’s Concluding Observations the Slovak Republic submits that Act No. 401/2000 Coll. of 31 October 2000 amending the Conscription Act has shortened the term of compulsory military service to nine months. Act No. 185/2000 Coll. amended the Civil Service Act and shortened the length of the civil service from the original length of twice the period of compulsory military service to 1.5-fold. Considering the restructuring of the Armed Forces of the Slovak Republic and the resulting legislative changes the introduction of professional military service is envisaged before 2010 and thus the compulsory military service and also related civil service will be abolished.

222. The valid Labour Code (Act No. 65/1965 as amended) which still applies to all employees of all sectors recognizes the right of natural persons to work and free choice of employment without any restrictions and discrimination - inter alia, according to religion, political or other views, political affiliation, national or ethnic status (article III of Fundamental Principles). Act No. 312/2001 Coll. on civil service and Act No. 313/2001 Coll. on public service adopted by the National Council in 2001 and enter into force on 1 April 2002 stipulate the same.

223. The breach of the constitutional right to the freedom of thought, conscience, religion and belief would constitute the elements of the criminal offence of restricting the freedom of religion under section 236 of the Criminal Code when a person by violence, threat or threat of serious harm would force another person to participate in a religious act, would prevent another person from such participation or from exercising the freedom of religion without any authorization.

224. Act No. 308/1991 Coll. on the freedom of religion and the status of churches and religious societies as amended quoted above regulates fundamental issues of the relation between the State and the Churches and it guarantees equal status of all churches and religious societies before the law. In addition to providing guarantees for respecting the freedom of conscience and religion, defining the status of churches and declaring their equality it also regulates certain conditions for the registration of churches. Act No. 192/1992 Coll. on the registration of churches and religious societies regulates additional conditions of registration. A church or religious society is to be understood as a voluntary association of persons professing the same religion in an organization made according to their belonging to a religion on the basis of internal rules of the persons belonging to the church or religious society. The condition for the

recognition of a church and religious society is its registration. However, it must be stressed that neither the registration of a church or religious society nor the recognition of the church or religious society by the State should be identified with the right of the individual to freely manifest one's religion or belief and the freedom of thought, conscience and religion. Thus, the requirement of church or religious society registration is not a restriction of the rights and freedoms guaranteed in article 24, paragraphs 1, 2 and 3 of the Constitution. Equally, neither does it restrict the rights and freedoms enshrined in article 18 of the Covenant because it is without prejudice to the rights and freedoms of the individual enshrined in this article of the Covenant.

225. There are 15 registered churches and religious societies operating in Slovakia as of 1 January 2001. Those churches and religious societies that were operating by law or on the basis of an approval by the State on the day of effect of Act No. 308/1991 Coll. are considered registered regardless of the number of their members. This applies mainly to the Central Union of Jewish Religious Communities and most Protestant denominations that have a membership from several hundreds to several thousands persons. In 1993 the Religious Society of Jehovah's Witnesses was registered. The Ministry of Culture of the Slovak Republic is the registering authority.

226. A church or religious society may apply for registration if it can prove that at least 20,000 adults with permanent residence on the territory of the Slovak Republic support it (Section 2 Act No. 192/1992 Coll.). The application for registration must include administrative particulars prescribed by law as well as a statement that the church will fully respect the laws and generally binding regulations and that it will be tolerant to other churches and persons of no religious confession.

227. Registered churches and religious societies are legal entities with their own structure, bodies, internal regulations and rites. They may associate, set up communities, orders, societies and similar communities. Churches and religious societies administer their own affairs themselves; in particular, they set up their bodies, appoint clerics and establish religious orders and other institutions independent from State authorities. They establish and maintain contact with members of other religious communities and organizations abroad. Churches and religious societies have guaranteed e.g. the right to subsidies from the State budget, to the teaching of their religion at State schools, to enter public health care facilities, to appear in public media, etc.

228. A new piece of legislation that should replace the obsolete Act No. 218/1949 Coll. on economic security of churches and religious societies by state as amended is prepared today. This legal norm continues to rely on direct funding of clerics and headquarters of churches but in such a way that the maximum number of clerics to have the funds for their salaries coming from the State is specified. The churches have expressed their consent with the above principle and the draft law was made in a working group composed of representatives of all involved parties.



229. These churches and religious societies were operating on the basis of Act No. 308/1991 Coll. as amended on the territory of the Slovak Republic on 1 January 2001:

Name of the church and religious society	According to the census of 3 March 1991	According to the census of 26 May 2001
	Membership	Membership
Roman Catholic Church in Slovakia	3 187 383	3 708 120
Evangelical Church of the Augsburg Confession in Slovakia	326 397	372 858
Greek Catholic Church in Slovakia	178 733	219 831
Reformed Christian Church in Slovakia	82 545	109 735
Orthodox Church in Slovakia	34 376	50 363
Religious Society of Jehovah's Witnesses	10 501	20 630
United Methodist Church, Slovak district	4 359	7 347
Church of the Seventh-day Adventists, Slovak Association	1 721	3 428
Baptist Union in Slovakia	2 465	3 562
Brethren Church in Slovakia	1 861	3 217
Apostolic Church in Slovakia	1 116	3 905
Central Union of Jewish Religious Communities in Slovakia	912	2 310
Old Catholic Church in Slovakia	882	1 733
Christian Corps in Slovakia	700	6 519
Czechoslovak Hussite Church in Slovakia	625	1 696
Other	6 373	6 294
Total Persons with confession	3 840 949	4 521 549
No confession	515 551	697 308
Unidentified	917 835	160 598
Number of inhabitants of the Slovak Republic	5 274 335	5 379 455

230. The amendment to School Act No. 171/1990 Coll. supplementing Act No. 29/1984 Coll. on the system of primary and secondary schools creating legislative room for founding church schools is the legislative basis for the recovery of church schools in Slovakia. This act has expanded the promoting function of the State also to churches and religious societies. Church schools fall under the category of alternative schools to state schools due to their founders. These schools form an integral part of the school system and education acquired there is equal to the education at state schools. At church schools religion is taught as a compulsory subject two classes a week.

231. From school year 1993/94 religion started with 1 class a week at Slovak schools. At primary schools, grades 1 to 4, it was an optional subject included in the timetable, and in grades 5 to 9 it was a compulsory optional subject as an alternative to ethical education. Similarly, religion is taught as a compulsory optional subject in grades 1 and 2 at all types of secondary schools from schools year 1993/94. In grades 3 and 4 of church secondary schools religion is included as compulsory optional subject with a possibility of a school-leaving exam.

232. Freedom of religion is a universal and fundamental right of the individual and it is one of the decisive criteria when evaluating the application of democratic principles in practice. In Slovakia the idea of religious freedom and tolerance supercedes national jurisdiction because they represent international obligation the Slovak Republic undertook by incorporating the Charter of Fundamental Rights and Freedoms into its legal order. By creating the category of the “registered church” the State does not violate its confessional neutrality granted by the Constitution because equality of individual churches can be characterized as equality of freedoms and not equality of entitlements. A church acquires entitlement rights upon its registration as recognition of its establishing and socially beneficial nature by the State. Churches and religious societies can de iure and also de facto operate freely regardless of being or not being registered. The proliferating presence of many untraditional religious groups is a proof of this.

233. With respect to Recommendation in Point 21 of Committee’s Concluding Observations it can be stated that in the Slovak Republic the legislation relevant for churches and religious societies is satisfactory.

## **Article 19**

### **Recommendation 22**

234. The freedom of expression and the right to information are guaranteed by article 26 of the Constitution. 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 the State borders. No approval process shall be required for press publishing. Entrepreneurial activity in the field of radio and television broadcasting may be subject to permission from the State. Censorship shall be prohibited. Freedom of expression and the right to seek and disseminate information may be restricted by a law only if it is

regarding measures necessary in a democratic society to protect the rights and freedoms of others, national security, public order, protection of health and morals. Public authority bodies shall be obliged to provide information about their activities in the appropriate manner in the official language. The terms and form of the execution thereof shall be laid down by a law.”

235. Constitutional guarantees for the freedom of expression and the right to information are regulated in detail in the following laws.

236. Act No. 81/1966 Coll. on periodicals and other mass media as amended.

236.1 Under this law the citizens make use of periodicals and other mass media to publicly express their views. The freedom of expression, speech and press and the social mission of press and other mass media are materially covered by making publishing and printing facilities, radio, television, film and other mass media available to the citizens.

236.2 The authorization to publish periodicals is conditional upon registration with the competent state administration authority. Censorship and other interference by state authorities in the freedom of speech, image and their dissemination by mass media is prohibited. The law prohibits the publishers of periodicals to disseminate information promoting war or describing cruel and otherwise inhuman conduct in a manner that is belittling, apologizing or approving, as well as promoting the use of narcotic or psychotropic substances in a manner that is belittling, apologizing or approving.

236.3 Under section 16 of the quoted act the citizens who make use of the freedom of expression, speech and press guaranteed by the Constitution enjoy full protection according to the valid legislation. Publishing information that puts interests of the society or citizens protected by law at risk is the misuse of the freedom of expression, speech and press. The obligation to correct false information is laid down in section 19 of the quoted act. The manner in which the periodicals are distributed is up to the publisher. Under sections 22 to 26 of the act the freedom of information between Slovakia and other states as well as conditions for a free information exchange are guaranteed.

236.4 Members of Parliament who are on the parliamentary Committee for Culture and Media submitted a MP's draft Mass Media Act that passed the first reading in the National Council and was returned to drafters for additional drafting in the second reading. The drafters repeatedly contacted journalists' associations and other entities and are currently finalizing the draft law and then the draft law will again be submitted for second reading to the Parliament.

237. Other related laws in this area are the Slovak Television Act and the Slovak Radio Act. The original legal provisions applying to these two media established under public law - i.e. Act No. 254/1991 Coll. on the Slovak TV and Act No. 255/1991 Coll. on the Slovak Radio as amended - remain to be valid. The Slovak Ministry of Culture drafted and submitted new draft laws on the Slovak Radio and Slovak Television in compliance with the 2001 Legislative Plan. Both draft laws passed their first reading in the Parliament and are scheduled for second reading. As already stated above the National Council decided not to continue discussing these draft laws

presented by the Government upon the proposal of the parliamentary Committee for Culture and Media on 7 November 2001. As there was no debate held on these points it is difficult to determine the exact reasons for rejecting these draft laws. However, the practical implications of this are that a new draft law cannot be submitted earlier than 6 months from the day of disapproval with the original draft laws.

237.1 Under current legislation and both mentioned draft laws the Slovak Radio and the Slovak Television are institutions established under public law serving public interest and responsible (inter alia) also for free and independent broadcasting and dissemination of information guaranteed by the Constitution while respecting plurality of views. Both draft laws lay down in detail the mechanisms of independent and free broadcasting.

238. Act No. 308/2000 Coll. on broadcasting and retransmission and on the amendment of Act No. 195/2000 Coll. on telecommunications as amended by Act No. 147/2001 Coll. on advertising and on the amendment and supplement of certain acts effective from 1 May 2001 (hereinafter the "Broadcasting Act"). The Broadcasting Act repealed the following acts: Act No. 468/1991 Coll. on the operation of radio and television broadcasting, Act No. 160/1997 Coll. on the Council of the Slovak Republic on Radio and Television Broadcasting and Section 1 of Act No. 166/1993 Coll. on measures in the area of radio and television broadcasting presented by Slovakia in its Initial Report.

238.1 The Broadcasting Act lays down, inter alia, mechanisms for safeguarding interests of the public in the exercise of the right to information, freedom of expression and the right to access to cultural values and education as well as mechanisms for ensuring plurality of information in the news programmes of the broadcasters broadcasting on the basis given by law or on the basis of a licence granted according to this law. The Council for Broadcasting and Retransmission has been established to guarantee broadcasting in the spirit of the right to information and freedom of expression. The members of the Council are elected by the National Council from candidates nominated by members of parliament, professional associations, civil associations, churches and religious societies. The law also regulates the rights and duties of broadcasters and operators of retransmission and legal entities and natural persons who are not broadcasters but whose activity is linked with broadcasting and decisions concerning the composition of their programme service taken in an European Union Member State or which make use of a frequency allocated to the Slovak Republic.

238.2 The quoted law imposes duties and limitations with respect to the content of the programme service in these areas: protection of plurality of information and content, balanced and impartial news and current affairs programmes, protection of human dignity and minors and in broadcasting of advertising, teleshopping and sponsored programmes.

238.3 The law regulates the right to correction when a false or distorting information was broadcast and also broadcaster's duty to broadcast the correction.

238.4 The law also regulates aspects of European works broadcasting and the conditions of their independent production in the broadcasting of a television programme service.

238.5 Articles 29 to 31 regulate access of public to information in the broadcasting of the television programme service. Under these provisions the exercise of a broadcaster's exclusive rights to live coverage or earlier recorded coverage of political, social, cultural or sport events may not restrict the access of the public to information on those events.

238.6 These provisions of the law further regulate the details of the right to short news reports and the right of access of the public to important political, social and cultural or sport events provided by television programme service broadcasting.

238.7 The Broadcasting Act elaborates aspects of plurality of information and transparency of property and personal relations in broadcasting by determining the possible concentration of ownership among the broadcasters and publishers of periodicals.

238.8 From the procedural aspect the law regulates two different permitting procedures - licensing procedure to acquire a permit of programme service broadcasting and registration procedure to acquire permit to operate retransmission (broadcasting of programme services of original broadcasters via cable distribution systems or other equipment). As Section 1 of Act No. 166/1993 Coll. was repealed the law also regulates the basic conditions of division of the analogue frequency spectrum for broadcasting by public broadcasters and licensed broadcasters. Final parts of the law regulate sanctions for the failure to comply with the law - the Council may apply these sanctions - warning, fine, broadcasting of an announcement of infringement of law and suspension of the broadcasting of the programme or a part thereof for a period of maximum 30 days. The current number of broadcasters and operators of retransmission is as follows (as of 1 August 2001):

- 24 licences for radio broadcasting (out of them: 7 multiregional radio stations),
- 77 licences for television broadcasting, out of them 8 terrestrial, 5 terrestrial and in CDS  
a 64 only in CDS (CDS = cable distribution systems); out of these licences only 3 have a multiregional coverage,
- 111 registrations for retransmission operation, i.e. registrations to operate retransmission, which is a 40.6 per cent coverage of Slovak households.

239. With respect to Recommendation in Point No. 22 of Committee's Concluding Observations where the Committee expressed concern of risk of violation of article 19 of the Covenant due to interference by the Government with the direction of the state owned television we submit.

239.1 The Slovak Republic made efforts aimed at drafting of new legislation concerning broadcasting - draft law on broadcasting and retransmission and draft law on the Slovak Television and Slovak Radio. The above-mentioned Broadcasting and Retransmission Act that entered into force on 4 October 2000 was adopted the first. This act lays down the rights and duties of all broadcasters with respect to the content of broadcasting and with respect to the business conditions in electronic media. As far as the public broadcasters - STV and SrO are concerned it stipulates their mission and other tasks with respect to the materialization of the right of the public to information and freedom of expression. At the same time the law defines competences of the regulatory body and allocates frequency spectrum to public services (the Slovak Television and Slovak Radio) and to commercial operators.

239.2 Two draft laws - the Slovak Radio Act and the Slovak Television Act - are at the stage of second reading in the National Council. The drafter - the Slovak Ministry of Culture - strived to limit extensively the threat of potential interference by State and the politicians in the public media broadcasting. The draft law envisages the creation of individual councils - the Council of the Slovak Television and the Council of the Slovak Radio on which representatives of non-political entities should have majority - as a way of achieving this goal. The director who, under the draft law is not elected by the Parliament anymore but appointed and removed by the Council of the Slovak Television, is the statutory body. The draft laws, of course, also include other measures to ensure independence of broadcasting by public media. Both draft laws passed their first reading in the Parliament and are scheduled for second reading. As already stated above the National Council decided not to continue discussing these draft laws presented by the Government upon the proposal of the parliamentary Committee for Culture and Media on 7 November 2001.

239.3 In this period attempts by politicians to influence the operation of these institutions and to maintain their interests were seen in practice, though, in a significantly lesser degree than in the previous period when the Slovak Television was openly misused. According to medialised statements made by the opposition they still do not have adequate room in the broadcasting - in particular, in the Slovak Television. Public institutions, however, faced greater problems linked with insufficient financial resources. After 1998 the debt to the Slovak Telecommunications that is the operator of transmitters grew and after the privatization of the Slovak Telecommunications, collecting the debts from both institutions in a distraint procedure became a threat that could result in a cooked privatization of these media. In the end the Slovak Government took a decision that ensured funds to cover the liabilities of the Slovak Radio and Slovak Television to Slovak Telecommunications. This problem unleashed a discussion on financing of public media (concessionary fees, advertisement and earmarked transfers from the state budget) and resulted in preparing a draft law that should amend the Concessionary Fees Act. This draft was prepared as a MP's bill and similarly to the above draft laws on the Slovak Television and Slovak Radio it was debated in a second reading in the National Council. The National Council decided not to continue discussing this draft law upon the proposal of the parliamentary Committee for Culture and Media on 7 November 2001.

240. Act No. 445/1990 Coll. regulating the conditions for selling printed media and other items that could endanger morality should also be mentioned in the context of application of Article 19 of the Covenant.

240.1 This law restricts selling and distributing of periodical and non-periodical printed media, audiovisuals, images and other items the content and nature of which may endanger morality or cause public annoyance. The restriction is based on confining the selling of these items to special shops or other designated means; these must not be located in the vicinity of schools and school facilities and premises for religion services. These items must not be publicly advertised or sold to persons less than 18 years of age.

241. Another related act is Act No. 211/2000 Coll. on free access to information and on the amendment and supplement of certain acts (Freedom of Information Act).

241.1 The law lays down conditions, procedure and scope of free access to information state authorities, municipalities and legal entities and natural persons given authority by law to decide on rights and duties of natural persons and legal entities in the area of public administration in the scope of their decisions-making power, have the obligation to give. Under section 3 of the quoted law everyone has the right to access to information the obliged persons have available. The law explicitly stipulates the scope of obligatory information individual state authorities and municipalities have the obligation to provide. Sections 6 to 13 define the conditions for restricting access to information. Restrictions apply to the protection of confidential information (state secrecy, service secrecy, facts subject to encoded protection of information, information falling under banking or tax secrecy) and to the protection of personhood and personal data and protection of business secrecy.

242. The Slovak legal order does not restrict disseminating of, seeking for and receiving of information in the form of art.

243. In the context of the right to freedom of expression the Criminal Code stipulates elements of some criminal offences that “restrict” this freedom, e.g.:

Section 105 espionage,

Section 106, 107 endangering State secrecy,

Section 122 endangering business secrecy, banking secrecy or tax secrecy,

Section 173 endangering service secrecy,

Section 178 unauthorized handling with personal data,

Section 199 spreading alarming news,

Sections 205, 205a endangering morality,

Section 205 c dissemination of child pornography. Amendment to the Criminal Code No. 183/1999 Coll. regulated the criminal offences linked with endangering morality and pornography in a new way and introduced significantly stricter sentences. Punishing production, dissemination and keeping of child pornography is stricter,

Section 257 and damage and misuse of recording on information carrier.

244. In this context it is also necessary to add that in November 2000 the National Council approved the amendment to the Criminal Code stipulating a new criminal offence, namely infirming and approving crimes of fascism through which it will also be possible to sanction the propagators of the so called Auschwitz lie.

245. Another related law in this area is Act No. 52/1998 Coll. on the protection of personal data in information systems. It regulates protection of personal data in their processing in information systems and protection of every person against unauthorized collecting of data on his/her person. Its purpose is, inter alia, protection of fundamental rights and freedoms of persons in processing of their personal data. Another law is Act No. 241/2001 Coll. on protection of classified materials that entered into force on 1 July 2001.

246. With respect to Recommendation in Point No. 22 of Committee's Concluding Observations we submit that section 98 of the Criminal Code - subversion of the republic - was repealed with amendment No. 175/1990 Coll. Criminal Code and since then this criminal offence has never been re-introduced or has never become a part of the valid legal order of the Slovak Republic. In this context it is, however, necessary to state that in 1996 there were some political efforts to have the crime of "dissemination of false information abroad which harms the interest of Slovakia" re-introduced in the Criminal Code. These efforts, however, failed because the President of the Slovak Republic did not sign and returned the concerned amendment to the Criminal Code to the National Council for repeated discussion, and this amendment was repeatedly not adopted by the Parliament.

247. As already mentioned in the Report under implementation of article 17 of the Covenant the National Council did not accept MPs' bill concerning the deletion of the elements of the criminal offence of defamation of the Republic and its representative in the meaning of sections 102 and 103 of the Criminal Code in November 2001.

## **Article 20**

### **Additional information to the Initial Report**

248. Provisions of Criminal Code in section 260 stipulate the element of the criminal offence of supporting and promoting movements leading towards the suppression of rights and freedoms of citizens in the meaning of which everyone who supports or promotes movement that evidently aims at suppressing the rights and freedoms of citizens or who advocate ethnic, racial, class or religious hatred shall be sentenced. Stricter sanction shall be applied to the one who commits such crime through printed media, film, radio, television or in another similarly effective manner or if he commits such crime as a member of an organized group or if he commits such crime in time of defence alert of the State. Under section 261 of the Criminal Code it is equally possible



to prosecute and subsequently sanction everyone who publicly manifests fellow feelings for fascism or other similar movement in section 260 of the Criminal Code. Eleven persons were convicted with a final judgement on the base of this provision in 1999-2000.

249. The Criminal Code contains several provisions against advocating ethnic, racial and religious hatred. Under section 198 of the Criminal Code - defamation of nation, race and conviction are elements of the criminal offence that are present when a person “publicly defames a nation, its language, a race or ethnic group or a group of people of the Republic because of their religion or because they have no religion”. The offender is liable to a stricter sentence when he commits such crime in company of at least two persons.

250. Under provisions of section 198a of the Criminal Code the person “who publicly incites hatred against a nation or race or ethnic group or to the restriction of rights and freedoms of their members” committed the criminal offence of instigation to ethnic and racial hatred. The same sentence shall be imposed on any person, who associates or assembles with others to commit such act.

251. The valid Criminal Code defines under some forms of participation in crime in section 164 of the Criminal Code instigation that consists in public instigation to committing criminal offence or to disturbing public order or to a mass failure to perform an important duty imposed by law. This provision applies to all criminal offences laid down in a separate part of the Criminal Code and, thus, also to the crimes referred to above.

252. It is necessary to state that to have the elements of some criminal offences in the meaning of the Criminal Code met they must be committed in public. Section 89, paragraph 3, of the Criminal Code links up with the above said and defines that a criminal offence is committed in public when it is committed “through the content of a printed matter or a disseminated written material, through a film, through radio, television or using the means of similar effect in the presence of more than two persons at the same time”. The valid law currently does not define the possibility of disseminating information via internet in the quoted provision but the term “means of similar effect” makes it possible to include this ways of information dissemination, which means, that the concerned provision of the Criminal Code enables to include in particular this way of information dissemination, and consequently, the concerned provision of the Criminal Code allows prosecuting this manner of racist materials dissemination.

253. Section 221, paragraph 2, subparagraph (b), of the Criminal Code that lays down sanctioning of an offender of the criminal offence of harm to health if it resulted in wilful bodily harm or serious bodily harm under section 222, paragraph 2, subparagraph (b) because of victim’s political conviction, nationality, race, belonging to an ethnic group, religion or because of having no religion, provides protection against racially motivated and xenophobic crime under criminal law. Amendment to Criminal Code with Act No. 183/1999 introduced stricter sanctioning of the perpetrator of the criminal offence of murder under section 219, paragraph 2, subparagraph (f) on the basis of “wilful killing of a person because of race, belonging to an ethnic group, nationality, political conviction, religion and for having no religion”.

254. Section 196 of the Criminal Code defines, inter alia, also the elements of the criminal offence of violence against a group of inhabitants or against an individual on the basis of which prosecution against any person who “uses violence against a group of inhabitants or individuals or threatens them with death, bodily harm or causing extensive damage on grounds of their political conviction, nationality, race, religion or for having no religion” or “who gangs or associates for the commission of such crime” will be initiated.

255. Elements of criminal offences under section 236 restricting freedom of religion and section 263a persecution of the population also apply the racial hatred and violence against racial and ethnic groups.

256. Answer to the Recommendation in Point No. 15 of Committee’s Concluding Observations:

On 1 August 2001 amendment to the Criminal Code aiming at the enlargement of possibilities to prosecute and/or sentence for committed crime by adding to the elements of crime the one of “belonging to an ethnic group” in case of racially motivated crime and attacks linked with manifestation of racial intolerance (section 196, section 198, section 198a, section 219, paragraph 2, section 221, paragraph 2, section 222, paragraph 2 of the Criminal Code) entered into force. This change was necessitated by practical need as it was unclear whether belonging to the Roma minority is belonging to another race or nationality. Another change aimed at amending the above elements of criminal offences in such a way that racially motivated attacks against the significant others of persons of another race and against other persons for their anti-racist involvement also when they belong to the same race to make their sanctioning according to these provisions possible.

257. The Ministry of Justice of the Slovak Republic presents official data on final judgements rendered by the courts of the Slovak Republic in case of racial, anti-Semitic and xenophobic crimes. Twenty-three final judgements in racially motivated crimes were rendered in 1998, 12 in 1999 and 13 in 2000. Two final judgements were rendered in xenophobic crimes in 1998 and 2 anti-Semitic crimes were registered in 1999.

258. As mentioned in the Report under information concerning the implementation of article 22 of the Covenant, under section 4 of Act No. 83/1990 Coll. on the association of citizens as amended associations having the purpose to deny or restrict personal, political or other rights of citizens on grounds of their nationality, sex, race, origin, political or other convictions, religion or social status; to incite hatred and intolerance for these same reasons; and to promote violence or otherwise infringe the Constitution and laws are not permitted.

259. Under section 4 of Act No. 424/1991 Coll. on association in political parties and political movements as amended political parties and movements that tend to suppress equality of citizens e.g. by advocating racial hatred are not permitted.

## Article 21

260. The Slovak Constitution guarantees the right to peaceful assembly in article 28.

261. The conditions for the exercise of this right are laid down in Act No. 84/1990 Coll. on the right to assemble as amended. Under section 1, paragraph 4 of the quoted law no previous permission by a State authority is needed to assemble. The act regulates the rights and duties of conveners of assemblies, participants in assemblies and of the body of territorial self-government, which must be notified by the convener in writing of each such assembly.

262. In the context of right to assemble and associate guaranteed by the Constitution, section 238a of the Criminal Code lays down the criminal offence of violating the freedom of assembly and association the elements of which are met when any one who “restricts another person by violence, threat of violence or threat of another severe detriment in the exercise of the right to assemble or associate”. This criminal offence equally applies to the person who, by violence or threat of direct violence, resists public order measures of the convener or designated organizers of such assembly subject to notification duty.

263. In the area of the right to assembly no legislative changes were introduced in the period from the observations of the Initial Report by the Committee in 1997. In everyday life the freedom of assembly is exercised by the inhabitants of Slovakia without any problems and interference by the State. The area of the right to assembly was not a matter of concern for the Committee.

## Article 22

### Recommendation No. 21

264. In Article 29 the Constitution of the Slovak Republic stipulates: “The right of free association shall be guaranteed. Everyone has the right to associate freely with others in unions, societies or other associations. Citizens may establish political parties and political movements and associate therein. Political parties and political movements, as well as unions, societies or other associations shall be separate from the State.”

265. Conditions for exercising this right are regulated in separate laws. In 1997 new regulations in the area of NGOs were adopted in addition to existing Act No. 83/1990 Coll. on the associations of citizens as amended (hereinafter the “Citizens Association Act”) that makes association of people and interest activities in various spheres of social life possible and Act No. 207/1996 Coll. on foundations. These pieces of legislation include Act No. 147/1997 Coll. on non-investment funds and Act No. 213/1997 Coll. on non-profit organizations providing generally beneficial services.

265.1 Under the Non-Investment Fund Act a fund is a non-for-profit legal entity that associates pecuniary means for the performance of a generally beneficial purpose or for an individually

determined assistance for an individual or group of persons who are in threat of life or who need urgently assistance when hit by a natural disaster. Under the quoted law a generally beneficial purpose is understood to mean mainly:

- development and protection of spiritual values;
- protection of human rights;
- protection and creation of the environment;
- preservation of natural and cultural values;
- protection and support of health and education;
- development of social services.

265.2 Under Act No. 213/1997 Coll. on non-profit organizations a non-for-profit organization is a legal entity with the activity subject being provision of generally beneficial services. Generally beneficial services are only:

- provision of health care;
- development and protection of spiritual and cultural values;
- supplementary education of children and youth including organizing of physical training and sport for children and youth;
- humanitarian care, creation and protection of the environment;
- provision of social services.

266. Today 16,561 civic associations, 527 foundations, 310 non-investment funds and 150 non-profit organizations providing generally beneficial services are active in the Slovak Republic. In the period from the 1997 consideration of the Slovak Republic by the Committee the number of civic associations rose from 12,000 to 16,561 (situation as of 20 November 2001).

267. Section 4 of the Citizens Association Act imposes restriction that only apply to such associations the purpose of which is to deny or restrict personal, political or other citizen's rights on grounds of their nationality, sex, race, political or other thinking, religion and social status, instigate hatred and intolerance on the same grounds, support violence or otherwise breach the Constitution and laws or which pursue achieving of their goals in a way that is in conflict with the Constitution and the laws and which are armed or have armed elements except for sport and hunting. No one may be forced to associate, to be a member of associations or to participate in them.

268. Act No. 300/1990 amending and supplementing Act No. 83/1990 on association of citizens regulates the area of trade unions and employers organizations.

268.1 In contrast to the registration procedure applicable to all civic associations that want to be a legal entity and thus be a subject of law the trade unions and employers' organizations are subject to a recording procedure that means that trade unions and employers' organizations become a legal entity on the day after the day of delivery of the application for entering in the records to the Ministry of Interior.

268.2 Five hundred and eleven trade union organizations and employers' organizations (situation as of 20 November 2001) are active in the Slovak Republic today.

269. In addition to civil associations that become subject of law on the basis of registration and, thus, are legal entities there are many civic initiatives, groups established for various purposes to support certain campaign for advocating a concrete group long-term or short-term interest, e.g. in the area of the protection of the environment, etc., that are not interested in being registered and thus become subjects of law, active in Slovakia.

270. The Skinheads movement could be ranked among such informal groupings of citizens that are not registered under the Association Act and, thus, it is not a legal entity. On these grounds it is not possible to apply section 13, paragraph 3 of the Citizens Association Act allowing a registered state authority - the Ministry of Interior - to dissolve a civic association in case it pursues activities contradicting the law and the Constitution of the Slovak Republic.

271. Civic associations are established by registering with the Slovak Ministry of Interior, thus, there is no permitting procedure by the State involved. In case the Ministry of Interior would refuse registration the Supreme Court of the Slovak Republic is competent to review the decision on refusal of registration. In view of the above explanation we respectfully submit that we do not agree with the criticism expressed by the Committee (Recommendation No. 21 in Committee's Concluding Observations) as to the presence of restrictive aspects limiting the right to freely associate. In the evaluated period the Slovak Ministry of Interior did not refuse any application for registration in the registration procedure.

272. Another important piece of legislation in the area of the association right is Act No. 424/1991 Coll. on the association in political parties and political movements as amended (hereinafter the "Political parties Association Act"). The exercise of this right serves the citizens to participate in the creation of the National Council of the Slovak Republic and of the bodies of territorial self-government.

272.1 Parties and movements are voluntary organizations subject to registration under the law. They are legal entities. State authorities may interfere in their status and activity only on the basis of a law and within its limits. The Ministry of Interior of the Slovak Republic is the registering body for political parties and political movements.

272.2 As already stated in the Report under the implementation of article 20 of the Covenant under section 4 of the Political Parties Association Act following movements are prohibited:

- those that violate the Constitution and the laws or that pursue the objective of dismantling democratic foundations of the State;
- those that do not have democratic charters or do not have bodies appointed in a democratic way;
- those that pursue taking and keeping the power preventing other parties and movements to compete for power with constitutional means or those that tend to suppress equality of citizens;
- those that have a programme or activities presenting a threat to morality, public order or the rights and freedoms of citizens;
- those that have a programme aimed against the sovereignty and territorial integrity of the Slovak Republic.

272.3 In the evaluated period no application for registering a political party or movement was rejected.

273. 106 political parties and political movements are currently active in Slovakia (situation as of 20 November 2001). In the plural political system of the Slovakia there are also political parties and political movements established by citizens - persons belonging to national minorities living in the Slovak Republic. Nineteen political parties and political movements were established by persons belonging to the Roma national minority, four political parties and political movements were established by persons belonging to the Hungarian national minority and one political party is established by the Ruthenian and Ukrainian national minority as of 20 November 2001. The programmes and charters of all these political groupings include the protection of rights and identity of these citizens, support and development in the area of culture and economy in order to stabilize them.

274. For completeness sake it is necessary to state that 15 deputies from the Party of the Hungarian Coalition were elected to the National Council in the last 1998 parliamentary elections.

### **Article 23**

275. In the area of the protection of family no legislative changes were introduced in the period from the observations of the Initial Report by the Committee in 1997. The area of the protection of the family and the right of men and women of marriageable age to marry and to found a family was not a matter of concern for the Committee. To complement the information presented in the Initial Report Slovakia presents that article 41 of the Constitution lays down that marriage, parenthood and family are protected by law. The amendment to Family Act No. 234/1992 Coll. that entered into force on 1 July 1992 gave church and civil forms of wedding equal status.

## Article 24

### Recommendations Nos. 6, 9, 25

276. To supplement the information presented by Slovakia on the implementation of this article in its Initial Report we submit that the Constitution in its article 41 sets out that “Special protection of children and minors shall be guaranteed. Equal rights shall be guaranteed to the children born both in a legitimate matrimony and those born out of lawful wedlock. Childcare shall be the right of parents; children shall have the right to parental upbringing and care. The rights of parents may be limited and minor children may be separated from their parents against the parents’ will only by a court decision, based on the law. Parents taking care of their children shall have the right to assistance provided by the State.”

277. Legal provisions of child protection are included in the following laws:

- Act No. 94/1963 Coll. on family (hereinafter only the “Family Act”) as amended that regulates family law aspects, marriage, relations between the parents and children and also maintenance;
- Act No. 195/1998 Coll. on social assistance as amended defines social protection of children as the protection of protected rights of children through education, organizing substitute care, deciding on educational measures and other activities;
- Act No. 265/1998 Coll. on foster care and foster care contributions that aims to give the child a substitute natural family environment. The law also regulates financial contributions paid by the State to children in foster care and the remuneration of foster parent.

278. The State pays families with children state social assistance benefits that are regulated in the following laws: Act No. 193/1994 Coll. on child allowances and benefit allowance benefit as amended, Act No. 235/1998 Coll. on child birth allowance, on allowances to parents who have three or more children born at the same time or who have twins repeatedly born in two years, Act No. 382/1990 Coll. on parent allowance and Act No. 300/1999 Coll. on housing allowance.

279. This applies to assistance in tackling situations of life recognized by the State like e.g. birth of child, during his/her training for a vocation or in situation when one of the parents personally cares for a small child and the family must live only from one income from work. Under the valid legal situation child allowances are granted per dependant child according to the income situation and the age of the children. The level of aggravation of the family situation e.g. the family cares for a severely handicapped child or a single parent with a dependent child, is also taken into account. Families with several children are provided immediate assistance when more children are born at the same time by increasing the childbirth allowance and a special social benefit granted in case when the family cares for at least three children under 15 years of age who come from three or more children born at the same time or repeatedly born twins in two years.

280. Information with respect to the special status of juveniles (persons from 15 to 18 years of age) in criminal proceedings is presented under the implementation of article 14 of the Covenant. Serving of sentence by the juveniles is reported under the implementation of article 10 of the Covenant.

281. More information on the implementation of the rights of the child is presented in the 1998 Initial Report of the Slovak Republic to the Convention on the Rights of the Child. Slovakia is currently preparing the Second Periodic Report the Convention on the Rights of the Child.

282. With respect to Point No. 6 of Committee's Concluding Observations the Slovak Republic presents information on further mechanisms concerning the protection of children and youth.

282.1 The Slovak Committee on the Rights of the Child was established in 1998; representatives of central bodies of state administration, other institutions and NGOs are its members. It is an advisory body to the Minister of Labour, Social Affairs and Family that presents the Minister conclusions and findings concerning concrete problems in the area of the observance of the rights of the child in Slovakia and proposes measures for addressing them. It drafts proposals of prevention programmes and policies pursuing solutions as a matter of principle concerning the status of children in the society with special attention paid to the protection of children against physical ill-treatment and mental ill-treatment, sexual abuse, drug addiction and other socio-pathological phenomena, and to the development of children in institutional or protective education and some forms of substitute care, to children in social and material need, children with behavioural disorder and children participating in criminal proceedings in the position of a witness and victim. The Committee submits the Minister ideas for amending generally binding regulations concerning the protection of the rights of child and their exercise; it is responsible for international coordination and it cooperates with rights of the child NGOs.

282.2 In 1993 the Ministry of Labour, Social Affairs and the Family established the Centre for the International Law Protection of Children and Youth that performs tasks of a central body of the Slovak Republic in ensuring enforcement and implementation of international conventions on enforcement and collection of due maintenance, international abduction of children and international adoptions ratified by the Slovak Republic (e.g. the 1993 Convention on the Protection of Children and Co-operation in Inter-Country Adoptions, the Convention on Civil Law Aspects of International Abduction of Children, the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children). Act No. 195/1998 Coll. on social assistance as amended sets out its scope of competence as a state social assistance authority.

283. The Slovak Republic signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflicts on 30 November 2001. Slovakia is prepared to take necessary steps to ratify both protocols.



284. With respect to the Recommendation in Point No. 6 of Committee's Concluding Observations Slovakia presents information on human rights education at schools.

284.1 The Slovak Republic pays great attention to issues of peace, democracy, tolerance and humanity i.e. the human rights area in its school system. This process starts as early as pre-school education in kindergartens where children learn to live in teams and acquire experience in mutual help and considerateness regardless of ethnic origin (the educational process follows a basic educational document that accepts and fulfils the Declaration of the Right of Child - "Programme of Education of Children in Kindergartens" approved by the Ministry of Education of the Slovak Republic in 1999).

284.2 The process continues at the first level of primary schools (grades 1 to 4) where several subjects (e.g. learning about the society, ethics, religion, learning about the home country ...) are taught in the spirit of democracy, humanity and tolerance. Various relevant themes are elaborated at the second level of primary schools (grades 5 to 9) in literature, history and ethics but mainly in a separate subject - civic education that is an obligatory subject taught once a week in grades 6 to 9 where the pupils learn about fundamental human rights, freedoms and rights of child. The textbook of Civic Education for grade 8 elaborates on the issues of human rights in three out of its four chapters: The Citizen and the State, Fundamental Human Rights and the Citizen and the Law. In 1997 the Ministry of Education approved the syllabi for Civic Education and Ethics Education.

284.3 Human rights issues are integrated in several subjects (ethics, sociology, aesthetics, history) and in particular in 2 separate obligatory subjects - Civic Education and Society Science - at secondary schools. In 1995 the textbook Law ABC for Secondary Schools and in 1997 the syllabus for the society science were approved; the students have the possibility to learn and analyse the evolution of human rights and fundamental freedoms legislation and its current form, the basic division of human rights, important documents and activities of institution ensuring their exercise and protection.

284.4 The "Human Rights Olympiad for Secondary School Students", a result of a close cooperation of its organizers e.g. the Ministry of Education, the Office of the Government, UNHCR, Information and Documentation Centre of the Council of Europe, Slovak NGOs - the Slovak Helsinki Committee (Slovenský helsinský výbor), the Citizen and Democracy Foundation (Nadácia Občan a demokracia), Milan Šimečka Foundation (Nadácia Milana Šimečku), IUVENTA, Slovak universities and the United States Embassy annually since the 1996/97 school year. From 1998/99 school year this event is organized on a state-wide basis. The core of the issues are human rights instruments and the main topic of the third national round of this event held on 19 to 20 April 2001 was "Tolerance - the Right to be Different."

284.5 The Slovak Republic is participating in the ASP UNESCO - Associated School Project - international project. The ASP programme gives the pupils an opportunity to exchange

information, contacts and experience beyond the framework of the curriculum, to organize seminars, debates, exhibitions and other events focusing on human rights, democracy, education against racism and xenophobia. Twenty schools - 5 primary schools and 7 secondary vocational schools are currently engaged in the ASP project in Slovakia.

284.6 UNESCO - Chair of Human Rights is active at Comenius University School of Philosophy since 1992 and the Centre in cooperation with Comenius University Department of Political Sciences participated in 12 international projects that also covered human rights issues since 1995.

285. The Citizen and Democracy Foundation has organized human rights, democracy and the rule of law training for secondary school teachers in cooperation with the Methodological Centre at Prešov, Banská Bystrica and Bratislava. In the framework of the Street Law programme students learn legal topics in an interactive way in a partnership based cooperation with secondary schools at Košice, Bratislava and Banská Bystrica under the supervision of the Citizen and Democracy Foundation. Since September 2001 the so-called Law Clinic for Everyday has started its operation at the Trnava University School of Law. In the framework of his optional subject the students of law go to learn law in an experience way by visiting classes at three cooperating secondary schools at Trnava. In the framework of the Law Clinic for Everyday, subject simulated trials will be organized at the Trnava Regional Court where the students from secondary schools will play active procedural roles under the guidance of law students. The above programmes aim at increasing legal awareness and dissemination of human rights knowledge at secondary schools.

286. With respect to Recommendation in Point No. 25 of Committee's Concluding Observations where the Committee asked for information on actions taken to ensure that school textbooks do not contain material tending to promote anti-Semitic and other racist views the Slovak Republic assumes that the object of criticism by the Committee is the book "The History of Slovakia and the Slovaks" written by professor Milan S. Ďurica, director of the Slovak Institute of History in Rome and professor the Padua University, and published in Slovakia. In this book the author outlined the history of Slovakia and the Slovaks in a chronological way. In his publication he applies a selective approach to historic facts by quoting in an indiscriminative way. A team of experts from the Institute of History of the Slovak Academy of Sciences (hereinafter the "SAV"), the Institute of Archaeology of the SAV, the Institute of Political Sciences of the SAV, the School of Pedagogy of Comenius University - Department of History, and the Military Institute of History analysed the book. In analysis authors' view the concerned book shows shortcomings as to the facts, terminology, interpretation and selection of facts. The publication was not published as a textbook because it lacks didactic and methodological attributes of a textbook. The Ministry of Education did not grant this book an endorsement it has to grant all textbooks. Schools do not use this publication as a textbook for pupils but it is used as additional teaching text for the needs of teachers.

## Article 25

287. Under article 30 of the Constitution citizens have the right to participate in the administration of public affairs directly - through referendum - stipulated in articles 93-100 of the Constitution or through free election of their representatives to the Parliament - the National

Council, bodies of territorial self-government and through electing the President of the Slovak Republic, and plebiscite on his recall. Elections must take place in intervals not exceeding the election periods stipulated by law.

288. The right to vote is universal, equal and direct suffrage by secret ballot. Citizens have access to the elected and public offices under equal conditions.

289. The following specific individual laws regulate the elections to the National Council, bodies of territorial self-governments, elections of the President of the Slovak Republic, plebiscite on his recall and the voting in referendum:

1. Act No. 80/1990 Coll. on elections to the Slovak National Council as amended;
2. Act No. 346/1990 Coll. on elections to the bodies of municipal self-governments as amended;
3. Act No. 46/1999 Coll. on the method of election of the President of the Slovak Republic, plebiscite on recall of the President and on amendments to certain laws;
4. Act No. 564/1992 Coll. on the method of holding referendum as amended;
5. Act No. 303/2001 Coll. on elections to the bodies of self-governing regions and the amendment to the Civil Procedure Code.

### **Elections to the National Council of the Slovak Republic**

290. The right to vote in the elections to the National Council is conditional upon the citizenship of the Slovak Republic and the age of 18 years. By not directly laying down the requirement of voter's permanent residence on the territory of the Slovak Republic this right is extended also to those citizens of the Slovak Republic who do not have permanent residence on the territory of the Slovak Republic and on the day of election come to the polling station and apply for the exercise of this right. They must, however, prove compliance with requirements.

290.1 Any citizen of the Slovak Republic who has the age of 21 years on the day of the elections and has permanent residence on the territory of the Slovak Republic may be elected member of the National Council of the Slovak Republic.

290.2 The law does not lay down the duty to vote - it is a right to vote. Impediment to the exercise of the right to vote is a limitation of personal freedom for the purposes of protection of a people's health, serving the sentence of imprisonment and divestiture of legal capacity.

290.3 The conditions for the exercise of active right to vote are equal for all citizens of the Slovak Republic regardless of their national origin or social status.

290.4 The Elections to the Slovak National Council Act is based on the proportional representation system. The law makes it also possible for small political parties to run for the elections and to be represented in the Parliament. The law enables creating election coalitions when complying with the requirements stipulated by law. The quorum for obtaining mandates in the National Council of the Slovak Republic is 5 per cent of received votes in case of a political party running alone, 7 per cent for an election coalition composed of two or three political parties and 10 per cent for a coalition composed of at least four political parties.

290.5 The term of members of the National Council of the Slovak Republic is four years.

### **Elections to the bodies of municipal self-governments**

291. Slovak citizens with a permanent residence on the territory of the municipality and at least of 18 years of age on the day of elections have the right to elect local self-governments and mayors (lord mayors of cities).

291.1 The citizen who has the right to vote has the right to be elected member of the self-government. The citizen who has the right to vote and is at least 25 years of age on the day of elections has the right to be elected mayor of the municipality (lord mayor of a city).

291.2 Under the amendment to the Constitution that entered into force on 1 July 2001 aliens having a permanent residence on the territory of the Slovak Republic have also the right to vote and to be elected into municipal self-governments.

291.3 Limitation of personal freedom for the purposes of protection of a people's health, serving the sentence of imprisonment and divestiture or limitation of legal capacity is an impediment to the exercise of the right to vote.

291.4 The conditions for the exercise of the right to vote are equal for all citizens, i.e. regardless of their national origin or social status. The law on elections into bodies of municipal governments also stipulates the right to vote and not the duty to vote.

291.5 This law on elections into these bodies is based on a relative majority voting system. In addition to political parties or their coalitions, independent candidates presenting the competent election body their own nomination supported with voters' petition have also the right to run for the elections. The term of the bodies of municipal self-governments is four years by law.

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

292. The citizens of the Slovak Republic who have the right to vote in the National Council elections have the right to elect the President. The citizens elect the President for a term of five years in direct elections by secret ballot.

292.1 Any citizen of the Slovak Republic who can be elected member of the National Council and is at least of 40 years of age on the election day can be elected President.

292.2 Candidates for the office of the President are proposed by at least 15 members of the National Council or by citizens who have the right to vote in the National Council elections on the basis of a petition signed by at least 15,000 citizens.

292.3 The candidate who received a qualified majority of the valid votes by the eligible voters is elected President. If none of the candidates has a qualified majority of the valid votes a second round of the elections with those two candidates that received the highest number of valid votes is held. The candidate who obtained the highest number of valid votes by participating voters is elected President in the second round. If there are no two candidates for the second round no second round should be held and new elections will take place.

292.4 Plebiscite on recall of the President is announced on the basis of a resolution by the National Council that was adopted by a three-fifth majority of all members of the National Council.

292.5 Eligible voters have the right to vote in plebiscite.

292.6 The President shall be recalled when a majority of all eligible voters voted for his removal in a plebiscite.

### **Voting in referendum**

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

293.1 Referendum shall be held to confirm constitutional statute on entering into a union with other States or the secession from it. A referendum may also be used to decide on other crucial issues of public interest. Fundamental rights and freedoms, taxes, levies and State budget must not be the subject of referendum.

293.2 A referendum shall be declared 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.

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

### **Elections to the bodies of self-governing regions**

294. The Slovak Republic is currently implementing the third stage of public administration reform in which a whole set of laws under which a broad scope of competences will be gradually transferred from the State to regional self-governments and municipalities in the period from 1 January 2002 to 1 January 2004 was adopted. The first law from this group adopted is Act No. 302/2001 Coll. on the self-government of higher territorial units that is linked with Act No. 303/2001 Coll. on elections to the bodies of self-governing regions.

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

294.2 Everyone who has the right to vote, has a permanent residence in the municipality within the territory of the constituency in which he/she runs and has no impediments to exercise the voting right can be elected member of the regional self-government.

294.3 Everyone who has the right to vote, who is at least 25 years of age on the election day and has no impediments to exercise the voting right can be elected chairman of self-governing region.

294.4 Impediment to the exercise of the right to vote is restriction of personal freedom for the purposes of protection of a people's health by law, serving the sentence of imprisonment, divestiture of legal capacity and serving compulsory or alternative or improvement service.

294.5 The conditions for the exercise of active right to vote are equal for all voters regardless of their national origin or social status.

294.6 The Election in the Bodies of Self-Governing Regions Act lays down a majority voting system with a relative majority for the election of members of self-government and absolute majority for election of the chairman of the self-governing region in the first round.

294.7 In addition to political parties independent candidates who submit the election commission of the self-governing region own nomination supported with voters' petition have the right to submit tickets.

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

## **Article 26**

### **Recommendations Nos. 14, 15**

295. All constitutional mechanisms and mechanisms institutionally established in the meaning of Slovak legislation respect equality of citizens before law and grant everyone the same protection without any discrimination on grounds of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status.

296. The principle of equality before law is constitutionally enshrined in article 47, paragraph 2 of the Constitution that reads: "Everyone shall have the right to legal advice from

the commencement of proceedings before courts, other public authorities or bodies of public administration, under the conditions laid down by a law.” All parties to the proceedings are equal in the meaning of paragraph 3 of the quoted article.

297. Equality before law applies both to civil and criminal proceedings. Section 18 of the Civil Procedure Code stipulates that parties to civil court proceedings have an equal status. Procedural rules of the Criminal Procedure Code define basic principles of criminal proceedings that seek to prevent any discrimination. The essential principle is “nullum crimen sine lege, nulla poena sine lege”, i.e. under section 2, paragraph 1 Criminal Procedure Code no one shall be prosecuted on other than legal grounds and in any other manner than that provided for under the present Criminal Procedure Code.

298. The Constitution includes the principle of prohibition of discrimination in article 12, paragraph 1 that sets out: “All human beings are free and equal in dignity and in rights. Their fundamental rights and freedoms are sanctioned, inalienable, imprescriptible and irreversible. Subsequent paragraph 2 of the quoted article lays down that “Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.”

299. The Slovak Republic is a State Party to the International Convention on the Elimination of All Forms of Racial Discrimination and with its declaration of 17 March 1995 under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination recognized the competence of the Committee for the Elimination of Racial Discrimination to receive and consider complaints by individuals or groups within its jurisdiction claiming to be victims of a violation of one of the rights set forth in this Convention.

300. During the 4 November 2000 Rome conference of European human rights ministers the Slovak Republic signed Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms that is the pillar of human rights instruments of the Council of Europe. Protocol No. 12 expands provisions of article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms with a general anti-discrimination clause, and thus, it is not only an important legal instrument in combating racism and intolerance but it also grants a level of protection that goes beyond the framework of rights and freedoms enshrined in the Convention, which enhances the existing European catalogue of human rights protection. The Protocol shall enter into force the first day following the period of three months from the deposition of the tenth ratification instrument. Slovakia is preparing all conditions to fulfil its obligations resulting from the Protocol so that the ratification process can be successfully completed.

301. As already presented under the implementation of article 18 of the Covenant the valid Labour Code (Act No. 65/1965 Coll.) recognizes the right of natural persons to work and the free choice of employment without any sort of restriction and direct or indirect discrimination on

grounds of sex, marital and family status, race, colour of skin, language, age, state of health, belief and religion, political or other conviction, trade union activity, national or social origin, national or ethnic group affiliation, property, lineage or other status (article III, of Fundamental Principles).

301.1 In July 2001 the National Council adopted a new Labour Code (Act No. 311/2001 Coll.) that shall enter into force on 1 April 2002 (except for section 5, paragraph 2-5 and section 241-250 that shall enter into force by Slovakia's accession to the EU). Section 13 of the new act lays down the prohibition of discrimination in the following way: "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, lineage or other status, except for cases stipulated by law or in case of substantial reason for the performance of work consisting in aptitudes or requirements and the nature of work that the employee is to perform."

301.2 Act No. 312/2001 Coll. on civil service was also adopted in July 2001 and in its section 3, paragraph 2 it stipulates that "Rights laid down by this Act shall be guaranteed equally to all citizens when entering and performing civil service, regardless of sex, race, colour of skin, language, faith or religion, political or other opinions, national or social origin, nationality or ethnic origin, property or other position." And similarly, Act No. 313/2001 Coll. on public service stipulates in section 1, paragraph 4: "The right and possibility to become under the same condition a public servant without any limitations and discrimination on grounds of sex, race, colour of skin, language, age, belief and religion, political or other conviction, trade union involvement, national or social origin, national or ethnic group affiliation, property, lineage or other status is guaranteed to a natural person. The rights stipulated by this law are ensured to all public servants equally."

301.3 To support combating discrimination in the area of employment Act No. 292/1999 Coll. amending and supplementing Act No. 387/1996 Coll. on employment was adopted. In its section 112, paragraph 1 the employment act sets out: "The employer is prohibited to publish offers of employment containing any restrictions and discriminative conditions based on race, colour of skin, language, sex, social background, age, religion, political or other opinions, political membership, trade union activity, membership of a nationality or ethnic group, or on any other status whatsoever."

302. The Criminal Code lays down sanctions and measures, i.e. sentences an offender of a racially, ethnically, religiously or otherwise motivated criminal offence may be imposed. Elements of these crimes and other related pieces of information together with responses to Recommendation in Point No. 15 of Committee's Concluding Observations are presented under the implementation of article 20 of the Covenant. To supplement these pieces of information with respect to other Recommendations in Points 14 and 15 of Committee's Concluding Observations the Slovak Republic submits information concerning the compensation of damage caused to a victim. Compensation of damage caused to a victim ("person suffering, as a cause of



crime, injury to health, damage to property, moral damage or other damage or suffering a violation or threat to his/her other rights and freedoms protected by law”) is regulated in a general way in section 43 of the Criminal Procedure Code under which the victim is entitled to compensation of damage caused by criminal offence. He is entitled to claim that in the final condemning sentence the court imposes the accused the duty to compensate this damage when a reasoned motion identifying the amount of the claim for damages was filed before the commencement of evidence-taking in the main trial. In case sufficient evidence to prove claim for damages is not presented during the court proceedings the court will under, section 229 of the Criminal Procedure Code, refer the victim to civil proceedings or proceedings before another competent body.

303. This valid legislation is supplemented with Act No. 255/1998 on compensation of victims of violent crimes that provides for a single financial compensation. Based on this general provision this compensation is given to persons who suffered damage to health as a consequence of wilful violent crime. In the meaning of this law damage to health is bodily harm, severe bodily harm, death and rape caused by a crime committed by a third person and the victim is not only the person suffering the damage to health but also the survivors maintained by this person or with respect to whom this person had the obligation to provide maintenance. A victim who is a citizen of the Slovak Republic or a stateless person with a permanent residence on its territory if the damage to health occurred on the Slovak territory under conditions stipulated by that law may apply for damages. Damages are granted by the Ministry of Justice of the Slovak Republic upon victim's application, however, it is necessary to add that there is no legal entitlement to these damages and they are not granted when the victim was compensated damage to health otherwise.

304. In the context of attacks against Slovak citizens of Roma origin the Slovak Government repeatedly assured all citizens of Slovakia of its commitment to take all necessary measures to successfully solve these cases and to consistently implement conclusions resulting from the already mentioned Strategy of the Government of the Slovak Republic for the Solution of the Problems of the Roma National Minority and the Set of Measures for its Implementation and Elaboration of the Strategy of the Government of the Slovak Republic for the Solution of the Problems of the Roma National Minority and the Set of Measures for the year 2000 and the further mentioned Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance for the Period of 2000-2001. The secretariat of the Plenipotentiary of the Government of the Slovak Republic for Roma Communities also monitors manifestations of racism and racial discrimination.

305. To influence the broadest possible public to become a more tolerant society a campaign against racism called “Colour Convicted” (“Usvedčený farbou”) was launched by NGOs (in particular Ľudia proti rasizmu/People against Racism/civic initiative) in close cooperation with the Government of the Slovak Republic that contributed financially to this campaign in August 2001.

306. Positions for the staff of the Police Force Headquarters and regional headquarters of the Police Force who will be assigned to extremism tasks were established within the Police Force by Order of Minister of Interior No. 34/2001 effective from 1 March 2001. On 27 March 2001 the Minister of Interior approved “Order of the Ministry of Interior of the Slovak Republic

No. 27/01 concerning Procedures in Combating Extremism” and the establishment of the “Racism and Xenophobia Monitoring Centre”. The purpose of this order is to improve the effectiveness of the work of the Police Force in preventing and documenting crime committed by extremists and to combat racism and xenophobia more efficiently. The mission of the Monitoring Centre will be monitoring and evaluating of the operative situation, elaborating of analyses and development trends of extremists’ activities, adopting measures to suppress extremism and provision of objective and reliable data at the level of the Ministry concerning manifestations of racism and xenophobia for the central authority. On 21 April 2001 the Slovak Minister of Interior issued an internal order tasking all police departments with the responsibility to monitor extremist groups on the whole territory of Slovakia.

307. The Slovak Government tasked the Minister of Labour, Social Affairs and Family with the establishment of a Racism and Xenophobia Monitoring Centre and monitoring of trends causing racial segregation. This Centre should function as the national centre for coordinating activities, summarizing and evaluating manifestations of all forms of intolerance, racism and xenophobia. Its strategic mission should be influencing public opinion with the objective to eliminate all forms of intolerance in the society. In the future it should also be responsible for the information flow to the Vienna based European Monitoring Centre on Racism and Xenophobia. Taking into account the drafting of the equal treatment law and the law on the establishment of the Equal Treatment Centre, the Ministry of Labour, Social Affairs and Family asked to have this task cancelled as it would mean duplication of activities, and it would be also important to have only one significant national institution established directly by law (more details under Point 311 et sequentia).

308. Effectiveness in combating crime also depends on the knowledge and skills of Police Force officers and Police Force investigators and therefore the Police Force Headquarters elaborated and issued “Methods of Clarifying and Documenting Crime based on Racial, Ethnic and Other Intolerance or Crime Committed by Extremist Groups” in 2001. In November 2000 the Investigation and Criminal Expertise Section of the Police Force also issued a methodological manual presenting some fundamental theoretical and practical issues of investigating racially motivated crime. This methodological manual should assist Police Force investigators to better orientate in this issue, to inform them of the most frequent forms and ways of committing racially motivated crime and recommended basic investigation procedures. It elaborates on characteristic features of racially motivated crime, its legal qualification as well as specific features of taking evidence in racially motivated crime and of certain procedural acts.

309. In order to strengthen the dialogue with NGOs a working group for tackling racially motivated crime composed of Police Force Headquarters staff and NGO activists (e.g. Nadácia Občan a demokracia/Citizen and Democracy Foundation/, Nadácia otvorenej spoločnosti/Open Society Foundation/, iniciatíva Ľudia proti rasizmu/People against Racism initiative/, ZEBRA - združenie afro-slovenských rodín/ZEBRA - Association of Afro-Slovak Families/) started to work in December 2000. Considering the positive results of this regular cooperation the Minister of Interior issued the order of 28 November 2001 establishing the Commission on Dealing with the Problem of Racially Motivated Violence to improve cooperation between the Police Force and NGOs in combating racially motivated crime and eliminating all forms and

manifestations of racial discrimination. The Plenipotentiary of the Slovak Government for Roma Communities is also participating in its meetings. The Commission concentrates on the exchange of information and experience in racially motivated crime with an emphasis on all forms of violence and coordination of a joint procedure in eliminating all forms and manifestations of racial discrimination. The Commission will meet the first time on 5 December 2001 and it will be attended by the Minister of Interior, President and Vice-President of the Police Force.

310. In the context of the Third World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in September 2001 and the International Year to Combat Racism and Discrimination the Slovak Government adopted the Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance for the period of 2000-2001 (hereinafter the "Action Plan"). In line with the Action Plan a National Conference against Racism, Xenophobia, Anti-Semitism and Discrimination was held under the auspices of the President of the Slovak Republic and the Deputy Prime Minister for Human Rights, Minorities and Regional Development in Bratislava on 18 May 2000 in addition to other activities. Recommendations to amend Slovak legislation in the area of all forms of discrimination, to introduce changes in the education of all age groups and also recommendations concerning the media and their role in combating discrimination and other were adopted at this conference. The Action Plan establishes other institutional mechanisms combating this undesired phenomena in the society and should ensure better awareness of the citizens of the Slovak Republic in the human rights area. Its objective is to contribute to creating an atmosphere of tolerance, mutual understanding and good coexistence of the inhabitants of the Slovak Republic. Members of the Government implemented various educational events and activities in line with the Action Plan, mainly: education to tolerance and mutual respect in the spirit of the United Nations Decade for Human Rights Education e.g. incorporating at least one lesson on prevention of all forms of intolerance; organizing discussions on this topic at selected primary and secondary schools (more information see under the implementation of article 24 of the Covenant); systemic education of professional groups who influence prevention of all forms of intolerance in the performance of their vocation (especially training of Police Force officers, judges, judge candidates, Corps of the Prison and Court Guard officers, prosecutors, social services employees and staff of social affairs units at district and regional authorities; more information see under implementation of article 9 of the Covenant). Under the Action Plan implementation an Internet site on intolerance prevention was created (on the web site of the Office of the Government of the Slovak Republic). Since 2000 the Slovak Government supports financially campaigns against racism, discrimination and other manifestations of intolerance. In case of Committee's interest the Slovak Republic is ready to present complex information on Action Plan compliance and progress.

311. In January 2001 a specialized legal colloquium called "Prohibition of Discrimination in the Legal Order of the Slovak Republic - Current Situation and Prospects for the Future" was held under the auspices of the Deputy Prime Minister for Human Rights, Minorities and Regional Development. Subsequently, an analysis comparing pieces of Slovak legislation that include provisions regulating the prohibition of all forms of discrimination with international human rights and freedoms instruments that are binding for the Slovak Republic was prepared.

This analysis also includes partial results from the area of application of regulations by courts and/or State administration authorities. Gradually the feeling evolved - in cooperation with NGOs and international organizations - that it is necessary also to establish an institution that would perform activities aimed at eliminating all forms of discrimination and ensuring equal treatment in labour relations and provision of services (monitoring, educational activities, analyses, issuance of decisions whether discrimination occurred or not and imposing sanctions).

312. In this context the Government submits that these days works on the preparation of a governmental draft Equal Treatment Law and a draft Law on the Establishment of the Equal Treatment Centre that should be a specialized public law institution focusing on a more effective enforcement and application of legal norms concerning prevention and elimination of all forms of discrimination, in particular in the area of labour law and provision of service, culminate.

312.1 The governmental draft Equal Treatment Law (the so-called anti-discrimination law) that was drafted in a close cooperation with NGOs sets out the content of equality and non-discrimination provisions in detail. It is based on the need to ensure the subjects of law such protection against all forms of discrimination based on the broadest (open) possible number of grounds that will ensure the aggrieved parties the possibility to claim adequate and effective judicial protection including damages and compensation of non-proprietary damage. Therefore, the Equal Treatment Act lays down definitions of all forms of discrimination and, thus, the law "updates" and further develops definitions already contained in the Slovak legal order in harmony with the latest view on this social problem and the requirements of law approximation.

312.2 The draft equal treatment law and the draft law on the establishment of the Equal Treatment Centre that should be adopted by the Government of the Slovak Republic before the end of 2001.

313. More detailed information concerning racism and racial discrimination issues are contained in the Initial, Second and Third Periodic Report of the Slovak Republic to the 1999 International Convention on the Elimination of All Forms of Racial Discrimination. Slovakia is currently preparing the Fourth Periodic Report of the Slovak Republic to the International Convention on the Elimination of All Forms of Racial Discrimination.

## **Article 27**

### **Answer to Recommendation No. 24**

314. In the Slovak legal order the rights ensuing from article 27 of the Covenant are enshrined in and guaranteed by articles 33 and 34 of the Constitution and further in article 1, paragraph 2, article 6, paragraph 2, article 7, paragraphs 4 and 5, articles 12, 13, 29, 32 and 43 of the Constitution and at the same time by international instruments ratified by the Slovak Republic.

315. Article 1, paragraph 2 of the Constitution amended with the last amendment to the Constitution reads: "The Slovak Republic acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations." (Information on provisions of article 7, paragraphs 4 and 5 of the Constitution applicable to international treaties are presented in the introductory part of the Report.)

316. As already stated in the Report article 12 of the Constitution lays down: “All human beings are free and equal in dignity and in rights.” (...) “Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of (...), race, colour, language, belief and religion, (...), national or social origin, nationality or ethnic origin, (...). No one shall be aggrieved, discriminated against or favoured on any of these grounds. Everyone has the right to decide freely which national group he or she is a member of. Any influence and all manners of pressure that may affect or lead to a denial of a person’s original nationality shall be prohibited. No injury may be inflicted on anyone, because of exercising his or her fundamental rights and freedoms.”

317. Under article 27 of the Constitution:

“(1) The right of free association shall be guaranteed. Everyone has the right to associate freely with others in unions, societies or other associations.

(2) Citizens may establish political parties and political movements and associate therein.

(3) The exercise of rights pursuant to paragraphs 1 and 2 may be limited only in cases laid down by a law if it is necessary, in a democratic society for national security, for the protection of public order, for the prevention of crimes or for the protection of the rights and freedoms of others.

(4) Political parties and political movements, as well as unions, societies or other associations shall be separate from the State.”

318. Under article 32 of the Constitution “The citizens shall have the right to resist anyone who would abolish the democratic order of human rights and freedoms set in this Constitution, if the activities of constitutional authorities and the effective application of legal means are restrained.”

319. Section Four of the Constitution called “the Rights of National Minorities and Ethnic Groups” includes articles 33 and 34 that are in relation with the preceding human rights article have a nature of *lex specialis*.

320. Under article 33 of the Constitution “Membership in any national minority or ethnic group may not be used to the detriment of any individual.”

321. Article 34 of the Constitution lays down:

“(1) Citizens belonging to national minorities or ethnic groups in the Slovak Republic shall be guaranteed their universal development, particularly the rights 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, to establish and maintain educational and cultural institutions. A law shall lay down details thereof.

(2) In addition to the right to learn the official language, the citizens belonging to national minorities or ethnic groups shall, under the conditions laid down by a law, also be guaranteed

(a) The right to be educated in their language;

(b) The right to use their language in official communications;

(c) The right to participate in the decision making in matters affecting the national minorities and ethnic groups.

(3) The exercise of the rights of citizens belonging to national minorities and ethnic groups guaranteed by this Constitution must not lead to threat to the sovereignty and territorial integrity of the Slovak Republic and to discrimination of other population.”

322. The rights of persons belonging to national minorities have an individual basis. The legal order protects persons belonging to minorities as individuals, which, of course, does not preclude common exercise of individually recognized rights, on the contrary, article 34, paragraph 1 of the Constitution anticipates it. These rights are guaranteed by the State that has the obligation to do everything for having these rights exercisable or apply sanctions in case of violations of this rights and freedoms. These constitutional rights are specified and set out in detail in several laws.

323. The acts referred to in article 34, paragraph 1 (“... a law shall lay down the details.”) are:

323.1 Act No. 384/1997 Coll. on theatrical activities as amended. Under this act theatres are divided into State professional theatres under the competence of the Ministry of Culture, State professional theatres under the competence of regional authorities, non-State professional theatres and amateur theatres. The law does not include specific provisions on national minority theatres, however, these exist, de facto, as State professional theatres. These theatres include: Jókaiho divadlo/the Jókai Theatre at Komárno, Thália at Košice (with performances in the Hungarian language), the Romathan Theatre at Košice (with performances in the Roma language) and the A. Duchnovič Theatre at Prešov (with performances in Ruthenian and Ukrainian languages). They are funded from the budget of the Ministry of Culture or regional authorities. In 1996 these theatres were transferred from the promoter’s competence of the Ministry of Culture under the promoter’s competence of regional authorities with Act No. 222/1996 Coll. In the framework of the public administration reform Act No. 416/2001 Coll. on the transfer of certain competences from State administration authorities to municipalities and higher territorial units (hereinafter the “Competence Act”) was adopted and these theatres should be transferred under the promoter’s competence of regional self-governments from 1 January 2002 on this basis.

323.2 Act No. 115/1998 Coll. on Museums and Galleries and on Protection of Objects of Museum or Art Gallery Value as amended. This law also divides museums and galleries into State, municipal and other non-State. Neither this law contains special provisions concerning national minority museums and galleries. However, there are State museums that also focus on

minority issues: department for Hungarian culture at the Podunajské múzeum/Danube Area Museum at Komárno, the Múzeum ukrajinsko-rudínskej kultúry/Museum of Ukrainian-Ruthenian Culture at Svidník, the structure of the Slovak National Museum includes the Múzeum kultúry karpatských Nemcov/Museum of Carpathian Germans' Culture/ in Bratislava, division of Croatian culture at the Historické museum/Historic Museum, the České dokumentačné stredisko/Czech Documentation Centre at Martin and divisions of Roma culture are established in the Vihorlatské museum/Vihorlat Area Museum at Humenné and the Gemersrko-malohontské museum/Gemer-Malohont Area Museum at Rimavská Sobota. Under the Competence Act the promoter's power of regional authorities shall be transferred to regional self-governments with the exception of the Museum of Ukrainian-Ruthenian Culture at Svidník as of 1 April 2002. The promoter's function with respect to the Museum of Ukrainian-Ruthenian Culture at Svidník will be transferred to the Ministry of Culture.

323.3 Act No. 61/2000 Coll. on adult education and cultural activities. This law does not include special provisions on educational and cultural facilities of national minorities and ethnic groups, either. These are divided according to their professional orientation into general adult education and cultural centres, specialized adult education and cultural centres and observatories and planetariums. The Ministry of Culture, regional authority, municipality or another legal entity or natural person can be the promoter. The development of minority cultures is, under this general regulation, materialized through the activities of regional education and cultural centres. Promoter's function with respect to education and cultural centres will be transferred from regional authorities to regional self-governments as of 1 April 2002 on the basis of the Competence Act.

323.4 Act No. 183/2000 on libraries and on the amendment of Act No. 27/1987 Coll. on State care for historic monuments and on the amendment and supplement of Act No. 68/1997 Coll. on Matica slovenská. Under this law the library system is composed of the Slovak National Library, scientific libraries, public libraries (municipal, district and regional), school libraries and specialized libraries. It is thus a general regulation. There are also libraries that have book stock in minority languages. Under the Competence Act the promoter's power with respect to district and regional libraries shall be transferred from regional authorities to regional self-governments as of 1 April 2002.

323.5 Act No. 254/1991 Coll. on the Slovak Television as amended includes a special provision concerning TV broadcasting in minority languages in section 3, paragraph 3 that reads: "The Slovak Television ensures the materialization of the interests on national minorities and ethnic groups living in the Slovak Republic through TV broadcasting in the respective mother tongue." Though the formulation of "materialization of rights" is very flexible the public TV broadcasting for individual national minorities is as follows:

For the Hungarian minority 206 programmes, 43.9 hours.

For the Roma minority: 27 programmes, 12.2 h;

For the Czech minority: 12 programmes, 5.7 h;

For the Ukrainian minority: 12 programmes, 5.5 h;

For the Ruthenian minority: 7 programmes, 3.7 h;

For the Polish minority: 5 programmes, 2.3 h;

For the Jewish minority: 5 programmes, 2.2 h;

For the German minority: 4 programmes, 1.9 h;

For the Bulgarian minority: 2 programmes, 0.9 h.

The Government submitted the Parliament a new draft law on Slovak television that specified, inter alia, this provision in more detail; as already mentioned in the report the Parliament, however, suspended the discussion on this draft law.

323.6 Act No. 255/1991 Coll. on the Slovak Radio as amended includes a special provision concerning radio broadcasting in minority languages in section 5:

“The Slovak radio ensures the materialization of the interests of national minorities and ethnic groups living in the Slovak Republic through radio broadcasting in the respective mother tongue.”

Broadcasting time is divided as follows:

- Individual broadcasting for the Hungarian national minority of 45 hours of programmes a week.

The public radio broadcasts programmes for other national minorities as follows:

- For the Ukrainian and Ruthenian minorities 13.5 hours a week and almost 80 per cent of the broadcasting is in the Ruthenian language. The station did not use literary Ukrainian as the language of the programmes in the past, either; the programmes were always in the language of the listener, i.e. Ruthenian Ukrainian enriched with dialects each listener was familiar with;
- For the Roma minority 30 minutes a week;
- For the German minority 30 minutes a week;
- For the Czech minority 30 minutes once in four weeks;
- For the Polish minority 30 minutes once in four weeks.

A new draft law on Slovak radio is also prepared and it should specify, inter alia, this provision in more detail; however, as in the case of the Slovak Television Act the Parliament suspended the discussion on this draft law.



323.7 Act No. 81/1966 Coll. on periodicals and other mass media as amended does not include any special provision periodicals, non-periodicals of national minorities and ethnic groups. In this case it is again a general regulation. These publications, however, exist and 40 of such journals are also supported with State subsidies (see overview below).

323.8 Act No. 83/1990 Coll. on the association of citizens as amended: the law lays down the details of the exercise of the right to associate. This law, of course, applies to all citizens of the Slovak Republic - i.e. also to the persons belonging to minorities. More information is presented in the text on the implementation of article 22 of the Covenant.

323.9 There are many civic associations founded by persons belonging to national minorities and ethnic groups and no case where the Ministry would refuse registering of such association is known. Out of the activities focusing on the development of the culture the largest civic associations of the persons belonging to the Hungarian national minority is CSEMADOK with its seat in Bratislava, which has 400 grassroots organizations. Out the Roma civic associations the Kultúrny zväz rómskej národnosti (Cultural Union of the Roma Nationality) at Košice, the Klub podnikateľov Rómov v SR (Club of Roma Entrepreneurs in the Slovak Republic) at Zvolen, the ROMIPEN civic association at Poprad, the Kultúrne združenie olašských Rómov na Slovensku (Cultural Association of the Walachian Roma in Slovakia) at Bratislava, the Klub rómskych žien na Slovensku (Club of Roma Women in Slovakia) at Detva, the UPRE ROMA Association at Klenovec, the Ženy bez národnostného rozdielu a farby pleti (Women without Difference of Nationality and Colour) civic association, the TERNIPEN Roma centre at Snina can be mentioned. Other well-known civic associations include the Český spolok na Slovensku (Czech Society in Slovakia) with its seat at Košice, the Rusínska obroda (Ruthenian Revival) with its seat at Prešov, the Zväz Rusínov - Ukrajincov SR (Union of the Ruthenians - Ukrainians in the Slovak Republic) at Prešov, the Spolok Moravanov (Club of the Moravians) at Nitra, the Karpatskonemecký spolok pre kultúru a vzdelanie (Carpathian-German Club for Culture and Education) at Prievidza, the Chorvátsky kultúrny zväz na Slovensku (Croatian Cultural Union in Slovakia), the Kultúrny zväz Bulharov a ich priateľov na Slovensku (Cultural Union of the Bulgarians and Their Friends in Slovakia), the Pľský klub (Polish Club) in Bratislava, the Zväz Rusinov na Slovensku (Union of the Ruthenians in Slovakia) with the seat in Bratislava. These civic associations are under those ones that have some of their activities subsidized from the State budget.

### **Use of minority languages**

324. Article ž, paragraph 2 of the Constitution stipulates: "The use of languages other than the official language in official communications shall be laid down by a law."

325. Responding to the Recommendation under Point No. 24 of the Committee's Concluding Observations Slovakia submits that on 10 July 1999 the National Council adopted Act No. 184/1999 Coll. on the use of national minority languages that entered into force on 1 September 1999. The High Commissioner on National Minorities of the OSCE, the

Council of Europe and the European Union welcomed the adoption of this law. The objective of the adopted law is to lay down rules for the use of minority languages in official communication in municipalities where the citizens of the Slovak Republic who are persons belonging to a national minority constitute at least 20 per cent of the population according to the last census. According to Order of the Slovak Government No. 221/1999 Coll. this legislation applies to 656 municipalities out of which 511 municipalities have a population where citizens of the Slovak Republic belonging to the Hungarian national minority make at least 20 per cent of the population, 18 municipalities where this share is made of persons belonging to the Ukrainian national minority, 68 municipalities where this share consists of persons belonging to the Ruthenian national minority, 57 municipalities with this share of the Roma national minority and 1 municipality with this share consisting of persons belonging to the German national minority.

325.1 The Act recognizes the right of citizens belonging a national minority to use the minority language apart from the State language. The law also regulates the rules of minority language in official use.

325.2 Under section 2 of this law, in municipalities where the citizens of the Slovak Republic, who are persons belonging to a national minority, constitute at least 20 per cent of the inhabitants, they may use the minority language in official communication including written submissions to State administration authorities and bodies of local self-governments. Bodies of public administration have the obligation to issue decisions and other official documents in minority language counterpart. The deliberations of the local self-government body in the municipality where at least 20 per cent of the inhabitants are persons belonging to a national minority, may be held in a minority language, subject to the consent of all present persons. The name of the body of public administration, important information, in particular warnings, cautions and health information, shall be displayed in the municipality in the publicly accessible areas in addition to the State language, also in the minority language. The body of public administration in such municipality has the obligation to provide upon request information on generally binding regulations also in the minority language.

326. Act No. 270/1995 Coll. on the State language of the Slovak Republic as amended: the law regulates the use of the Slovak language as the State language that shall have priority over other languages used on the territory of the Slovak Republic. The law does not apply to the use of liturgical languages or the use of minority languages. Under this law employees and officials of public bodies, transport and telecommunications, officers in armed forces, armed security corps, other armed corps and fire corps use the State language in official communication. Generally binding regulations, decisions and other public deeds are published, negotiations of public bodies are held and the entire official agenda is kept in the State language. Teaching of the State language is compulsory at all primary and secondary schools. A separate regulation stipulates the use of another language of instruction.

327. Act No. 38/1993 Coll. on the organization of the Constitutional Court, on the proceedings before it and the status of its Justices as amended stipulates in its paragraph 23 the right of every person to use his/her mother tongue in proceedings before it.

328. Under section 2, paragraph 14 of the Criminal Procedure Code every person is entitled to use his mother tongue before criminal justice agencies.

329. Under section 18 of the Civil Procedure Code the parties to the proceedings have the right to use their mother tongue before the court. Under section 141 paragraph 2 costs linked with the use of party's mother tongue are borne by the State.

330. Act No. 335/1991 Coll. on Courts and Judges as amended gives everyone the right to use his/her mother tongue before the court (sect. 7, para. 3).

331. Act No. 191/1994 Coll. on denomination of communities in the language of national minorities lays down the obligation of municipalities in which persons belonging to a national minority form at least 20 per cent of the population to have the municipality denominated in the language of the national minority on separate road signs indicating the beginning and end of a municipality.

332. The right of persons belonging to a national minority to use their language in official communication is an exemption from the rules of use of the State language on the territory of the Slovak Republic. This right is guaranteed by article 6, paragraph 2 of the Constitution under which the use of languages other than the official language in official communication shall be laid down by a law.

333. Act No. 29/1984 Coll. on the system of primary and secondary schools as amended: the law also lays down conditions for the exercise of the right to education in the minority language under article 34, paragraph 2, subparagraph (a) of the Constitution. The law guarantees this right to the citizens claiming Czech, Hungarian, German, Polish, Ukrainian and Ruthenian nationality in a scope that is adequate for the interests of their national development (sect. 3, para. 1). The Constitution (art. 42) guarantees every one the right to education (every citizen the right to free education at primary and secondary schools) while citizens - persons belonging to minorities are recognized the right to education in their language under conditions laid down by a law.

333.1 Based on parents' free decision a pupil can attend schools with the minority language of instruction, schools where minority language is taught and schools with the Slovak language of instruction in the Slovak Republic.,,At schools with the minority language of instruction all subjects are taught in the minority language and the State language is taught as a compulsory subject. At schools where minority language is taught the mother tongue subject is taught according to the needs of the national minority and other subjects are taught in the State language. At schools with the Slovak language of instruction classes with the minority language of instruction are opened according to the requirements of the minority - here, the State language is taught as a compulsory subject, other subjects are taught partially in Slovak and partially in the minority language or fully in the minority language according to the conditions at the school.

333.2 The situation in kindergarten, primary school and secondary school network in the 2000/2001 school year:

277 State kindergartens with the language of instruction Hungarian, 101 with Slovak-Hungarian language of instruction, 22 with Ukrainian language of instruction, 3 with Slovak-Ukrainian language of instruction and 1 with Slovak-German language of instruction and 2 church kindergartens with Hungarian language of instruction;

259 State primary schools with the language of instruction Hungarian, 29 with Slovak-Hungarian language of instruction, 7 with Ukrainian language of instruction, 1 with Slovak-Ukrainian language of instruction, 1 with German language of instruction, 1 private primary school with Bulgarian language of instruction and 12 church primary schools with Hungarian language of instruction;

11 State "gymnasia" with Hungarian language of instruction, 8 with Slovak-Hungarian language of instruction, 1 with Ukrainian language of instruction, 1 private "gymnasium" with Hungarian language of instruction, 4 church "gymnasia" with Hungarian language of instruction;

6 State secondary technical schools with Hungarian language of instruction, 14 with Slovak-Hungarian language of instruction, 1 private secondary technical school with Hungarian language of instruction;

5 State secondary apprentice schools with Hungarian language of instruction, 22 with Slovak-Hungarian language of instruction, 3 private secondary vocational schools with Hungarian language of instruction;

14 State special schools with Hungarian language of instruction and 17 with Slovak-Hungarian language of instruction.

333.3 Special schools are covered by Act No. 229/2000 Coll. amending and supplementing Act No. 29/1984 Coll. on the system of primary and secondary schools (the School Act) as amended.

334. Decree No. 217/1999 on pedagogical documentation entered into force on 1 September 1999 and section 3, paragraphs 1 and 2 regulate the manner in which teaching documentation is kept at schools with minority language of instruction as follows: "Schools which educate in minority languages keep the teaching documentation of the school bilingual, in the State language and in the respective minority language." Under the quoted school regulation bilingual school certificates are issued at schools with minority language of instruction since the 1998/99 school year and the entire teaching documentation is kept bilingual since the 1999/2000 school year.

335. At its session on 24 January 2001 the Slovak Government recommended Constantine the Philosopher University at Nitra to decide to found a school for education of teachers in the

Hungarian language. Currently, students belonging to the Hungarian minority are trained at Constantine the Philosopher University, section for the Education of the Hungarian National Minority at various schools of the university.

### **Educating Roma children**

336. As already stated the Slovak school system includes all levels of State budget funded minority education starting with kindergartens up to university studies.

337. Applying, accepting and respecting Slovak citizens' human rights, civil and national minority rights makes official statistical survey based specification of the real number of the Roma in Slovakia with respect to a locality and linguistic environment impossible. Therefore the Methodological Centre at Prešov conducts, with the aim to collect objective information, a research on the situation of a Roma child and pupil in the school system in from 2000 to 2001. (Government resolution No. 821/1999 subparagraph B to the above mentioned Strategy of the Government of the Slovak Republic for the Solution of the Problems of the Roma National Minority and the Set of Measures for its Implementation and Government Resolution No. 294/2000 to the Elaboration of the Strategy.) Research results are currently being processed and analysed per individual districts and regions.

338. Since 1992 the Roma language has been gradually used in the education and teaching process as a supporting language in kindergartens and preparatory grades for primary schools with a high concentration of Roma pupils; it is also used at the Secondary School of Arts at Košice; at the institution of higher education - the Department of Roma Culture at Constantine the Philosopher University at Nitra and its detached office at Spišská Nová Ves.

339. An Educational centre for the Development of the Roma National Minority is established for the children of the Košice region by the Košice Regional Authority since 1 October 1998.

340. In the framework of the Development of the Education of Roma Pupils project two classes of the Secondary Vocational Apprentice Agriculture School of Stará Ľubovňa are opened in the municipality of Lomnička. Such branch classes of a secondary vocational apprentice school in an almost 100 per cent Roma community make it possible for the Roma children to complete the 10-year compulsory school attendance in the place of residence and train them for a future profession.

341. Funds under the Ministry of Education title were earmarked in the 1992 State budget of the Slovak Republic for opening zero grades for children from linguistically disadvantaged environment at primary schools. The zero grades project was completed on this basis. In 1992 the Ministry of Education approved pilot zero grades of primary schools for children from linguistically disadvantaged environment and tasked the School Administration of Košice I to implement the project starting with the 1992/93 school year. To this end the Ministry of Education approved and ensured publishing of the Roma Primer in the Roma and Slovak languages for the zero grades in a pilot verification, and for the first and second grade of primary and special schools and Readers in the Roma-Slovak language for primary school pupils in 10,000 pieces issue.

342. In 1992 the Ministry of Education approved specialized studies for teachers from schools with high concentration of Roma children and pupils at the Methodological Centre at Prešov.

343. In 1992 the Department of Roma Culture was founded at the Nitra Pedagogical Institution of Higher Learning.

344. A conservatoire for Roma students with two studies - playing a folk musical instrument, and music and drama was opened at the Secondary School of Arts at Košice in the 1992/93 school year. Later the school became independent.

345. Curricula for Primary Schools with Roma Language of Instruction are approved with the date of effect since 1 September 1993. According to the findings of the Ministry of Education they are not used in practice because of lack of interest on the side of parents.

346. In 1995 "Amari abeceda - Our Alphabet" in Roma language for the third and fourth grades was approved and published by the Ministry of Education.

347. In 1995 Final Evaluation of the Pilot Implementation of Zero Grades at Primary Schools for Roma Children from Disadvantaged Environment was approved.

348. The School of Pedagogy of Constantine the Philosopher University at Nitra established its detached office at Spišská Nová Ves in 1995.

349. Supplementary teaching texts for history classes in fifth to eighth grade of primary schools called "Selected Chapters of the History of the Roma" were approved in 1995.

350. In regions with high concentration of Roma population (and also depending on the conditions in the district) preparatory grades have been opened for six-year-old children from socially disadvantaged and deprived environment, in which the Roma language has been used as a supporting language to overcome the language barrier, since the 1996/97 school year. Because this supporting education programme is still lacking legislative basis the Ministry of Education approved the Project for Experimental Verification of Preparatory Grades for Children from Socially and Linguistically Disadvantaged Environment at Primary Schools. This project was implemented in 22 districts at 70 primary schools in 89 classes with 1,178 pupils in the 1999/2000 school year.

351. The Ministry of Education approved basic pedagogical documents for apprentice schools in the Civil Construction experimental studies starting with the first grade from 1 September 1998. It is experimental studies for boys from socially deprived and insufficiently stimulating environment. In the same way basic pedagogical documents for Practical Woman experimental studies for girls were approved in 2000.

352. The Ministry of Education supported organizationally the project of the Educational Centre for the Development of the Roma Minority for the Children of the Košice Region established by the Košice Regional Authority at the Secondary School of Arts at Košice from 1 October 1998.

353. In 1998 the Ministry of Education tasked the Institute of Information and Prognoses of Education to draft the Analysis of Failure of Pupils from Socially and Linguistically Disadvantaged Environment at Schools.
354. In 1999 the Ministry of Education approved the Pre-school Education Development Policy with an emphasis on the year before compulsory school attendance.
355. In addition to these activities the Ministry of Education in cooperation with the Council of Europe organized four international seminars focusing on the education of children and youth from socially disadvantaged environment in 1996 to 2001.
356. In 2000 the tasks from the Strategy of the Government of the Slovak Republic for the Solution of the Problems of the Roma National Minority and the Set of Measures were continually implemented. In this context it is important to mention at least some concrete outputs e.g. the drafting and issuing of four separate methodological publications for the teachers in areas with high concentrations of Roma children published by the Methodology Centre at Prešov; the methodological material "Development of Mental Capacities and Social Communication of Children from Ethnically Mixed Territories" for primary school teachers drafted and issued by the Research Institute of Child Psychology and Patopsychology". The material also includes separately issued work sheets for younger pupils from socially disadvantaged environment.
357. A draft of a new School Act that should also apply to Roma teacher assistants and educators is under preparation. The working version of the draft law on education in schools and school facilities was presented to public discussion till 16 November 2001.
358. The Roma Children and Pupils Education Policy (adopted 19 March 2001) is elaborated in compliance with the long-term Education Development Policy in the Slovak Republic for the next 15-20 years - the Millennium Project and the National Programme of Education in the Slovak Republic.

The goals of the policy are:

- To increase the number of Roma children passing pre-school education from the age of three;
- To develop awareness and feeling of responsibility in representatives at law for the school attendance of the Roma children;
- To lay down the zero grades at primary schools in the new School Act and to include the function of a Roma teacher assistant in the catalogue of working activities
- To improve the quality of the education system on the basis of an effective pedagogic research;
- To ensure lifelong education of the Roma population.

359. The Slovak Republic is a State Party not only to United Nations conventions but also to the Council of Europe's national minority conventions and instruments:

359.1 The Slovak Republic ratified the Framework Convention for the Protection of National Minorities in 1995 as a third country (published in the Collection of Laws under No. 160/1998) and then, subsequently, presented the report on its implementation in the legal order of the Slovak Republic on May 1999.

359.2 On 1 January 2002 the European Charter for Regional or Minority Languages that is a framework multilateral international treaty of a cultural nature, will come into force for Slovakia. The Slovak Republic selected from 49 to 53 provisions from the third part of the Charter for nine minority languages (most of all countries) in particular: Bulgarian, Czech, Croatian, Hungarian, German, Polish, Roma, Ruthenian and Ukrainian, i.e. for all languages of all de facto recognized national minorities living in the Slovak Republic (with the exception of the Yiddish language of the Jewish minority, which has no written form). It can be expected that some legislative and other measures will be taken in this context.

### **Minority cultures**

360. The Slovak Republic cares for minority culture in a systemic way in compliance with its legal framework and international legal obligations as follows:

360.1 Institutions that are under the Ministry of Culture's promoter's powers and have the mission of developing the culture of a certain minority are financed and organized from the Ministry's budget title. It includes the semi-professional Hungarian minority ensemble Young Hearts (Mladé srdcia), Museum of Jewish Culture (Múzeum židovskej kultúry), Museum of Carpathian Germans Culture (Múzeum kultúry karpatských Nemcov) and Documentation Centre of Hungarian Culture at the SNM in Bratislava (Dokumentačné centrum maďarskej kultúry pri SNM). Further the department of Croatian culture and the SNM Museum of History (Historické múzeum SNM) and the Czech Documentation Centre at the SNM Ethnographic Museum at Martin (České dokumentačné centrum pri Etnografickom múzeu SNM v Martine).

360.2 Regional authorities finance and organize from their budgets these cultural institutions:

Hungarian national minority entities: Jókai Theatre at Komárno and the Thália Theatre at Košice;

The Romathan Romany Theatre at Košice;

The Ukrainian-Ruthenian A. Duchnovič Theatre at Prešov;

The Danube Area Museum at Komárno with a department for Hungarian culture (Podunajské múzeum);

The Museum of Ukrainian-Ruthenian Culture at Svidník (Múzeum ukrajinsko - rusínskej kultúry);



Division of Roma culture in the Vihorlat Area Museum at Humenné (Vihorlatské múzeum);

Division of Roma culture in Gemer-Malohont Area Museum at Rimavská Sobota (Gemersko-malohontské múzeum);

District educational centres, regional and district libraries, observatories and planetariums.

360.3. The purpose bound transfer from the Ministry of Culture is used to finance implementation of projects (of civic associations, foundations, interest associations of legal entities, natural persons - businesses, private companies) focusing on cultural activities and publishing periodicals and non-periodicals of ethnic groups.

The tables give an overview of the level of costs from these purpose bound Ministry of Culture's transfers. The financial distribution is based on the proportionality principle also from the smaller ethnic group protection aspect while taking into account the interests and needs of larger minority communities.

361. The 1999 funds given for cultural events, periodicals and non-periodicals from the Ministry of Culture's transfer - closing account:

Ethnic origin	Cultural activities	%	Periodicals	%	Non-periodicals	%	Total	%
Hungarian	7 848 135	42.6	9 770 000	47.1	6 195 800	77.2	23 813 935	50.5
Roma	2 787 750	15.2	4 908 800	23.6	150 000	1.9	7 846 550	16.6
Czech	661 000	3.6	970 000	4.7	447 400	5.6	2 078 400	4.4
Ruthenian	625 000	3.4	1 775 000	8.6	-	-	2 400 000	5.1
Ukrainian	1 119 990	6.1	1 136 000	5.5	34 000	0.4	2 289 990	4.9
Moravian	762 000	4.2	210 000	1.0	-	-	972 000	2.1
German	987 200	5.4	883 000	4.3	120 000	1.5	1 990 200	4.2
Croatian	1 153 400	6.3	-	-	-	-	1 153 400	2.4
Bulgarian	488 175	2.7	432 000	2.1	60 000	0.8	980 175	2.1
Jewish	910 000	5.0	-	-	1 010 200	12.6	1 920 200	4.1
Polish	350 175	1.9	264 025	1.3	-	-	614 200	1.3
Russian	204 200	1.1	385 000	1.9	-	-	589 200	1.3
Other <sup>1</sup>	487 200	2.7	-	-	-	-	487 200	1.0
Total	18 384 225	100	20 733 825	100	8 017 400	100	47 135 450	100

<sup>1</sup> Funds granted for disabled citizens' cultural activities.

362. The 1999 overview shows that SKK 47,135,450 were spent on the culture of national minorities and ethnic groups from the Ministry of Culture's budget, which is basically the average mean value of the last three years.

363. The next table showing the level of 2000 financial coverage confirms a similar trend of positive care and of the reliability of the existing functional system.

364. These tables also illustrate that the implementation of the Covenant in this important category, i.e. care for national minority cultures is conducted in compliance with the standard procedures applied in developed EU member States. The strong self-government elements involved in the process of redistribution of the State funds for national minority and ethnic group cultures briefly described below are also a proof of it.

365. The 2000 funds given for cultural events, periodicals and non-periodicals from the Ministry of Culture's transfer - closing account:

Ethnic origin	Cultural activities	%	Periodicals	%	Non-periodicals	%	Total	%
Hungarian	9 631 000	48.1	6 543 000	40.1	6 840 000	71.4	23 014 000	50.0
Roma	2 728 980	13.6	2 843 000	17.4	483 000	5.0	6 054 980	13.2
Czech	981 700	4.9	1 100 000	6.7	0	0	2 081 700	4.5
Ruthenian	647 000	3.2	1 573 000	9.7	170 000	1.8	2 390 000	5.2
Ukrainian	715 000	3.6	1 540 000	9.4	243 000	2.5	2 498 000	5.4
Moravian	590 000	2.9	400 000	2.5	0	0	990 000	2.2
German	1 267 500	6.3	800 000	4.9	0	0	2 067 500	4.5
Croatian	965 000	4.8	0	0	355 000	3.7	1 320 000	2.9
Bulgarian	500 000	2.5	400 000	2.5	0	0	900 000	2.0
Jewish	210 000	1.0	70 000	0.4	1 500 000	15.6	1 780 000	3.9
Polish	610 000	3.0	220 000	1.3	0	0	830 000	1.8
Russian	180 000	0.9	400 000	2.5	0	0	580 000	1.3
Other <sup>1</sup>	978 350	4.9	408 650	2.5	0	0	1 387 000	3.0
Total	20 004 530	100	16 297 650	100	9 591 000	100	45 893 180	100

366. The Ministry of Culture elaborated an efficient funding procedure from the purpose bound transfer from the Ministry of Culture title to national minority cultures in compliance with the requirement of transparent redistribution of State funds for national minority and ethnic group cultures.

366.1 It is a system with a strong self-government element implemented through an evaluation mechanism of projects by an expert commission and subcommission (grant system) composed exclusively of persons belonging to national minorities. Their activity is governed by rules of procedure approved by the Ministry of Culture. The expert commission is composed of 11 members with 1 representative from the Hungarian, Roma, Czech, Ruthenian, Ukrainian, German, Croatian, Bulgarian, Polish, Jewish and Moravian national minorities each.

366.2 Each national minority has one valid vote in the expert commission. Projects are evaluated, selected and approved by individual subcommissions (each minority has its subcommission) according to their quality, significance and importance for the development of the relevant national minority and its identity. Thus, the national minorities themselves decide on the priorities of their own cultural development and cultural life of the community, which is a guarantee for an effective system of maintaining the cultural and linguistic identity of national minorities and ethnic groups in the Slovak Republic.

367. The development of the Roma national minority and mother tongue in Slovakia is materialized through the activities of Roma civic associations - 114 of them and 19 political parties were registered as of 1 November 2001 according to the official data from the Ministry of Interior. There are four foundations, three non-investment funds and one non-profit organization providing generally beneficial services founded by persons belonging to the Roma national minority in Slovakia.

368. The Roma language is not officially codified. In 1971 the then Roma representatives in Czechia and Slovakia agreed to standardize it, i.e. on its written form and grammar. The Roma language is the bearer of the Roma cultural heritage and therefore it must be protected in the same way as the languages of other national minorities in Slovakia. The Coordination Council for the Roma Language and Literature was created at the School of Pedagogy of Constantine the Philosopher University at Nitra upon the initiative of Plenipotentiary the Slovak Government for Roma Communities and the Office of the Government. Its task and objective is to assess and make expert materials concerning the development of the Roma language with the participation of experts from the Slovak Academy of Sciences and relevant universities. There is currently no school in Slovakia where general subjects would be taught in the Roma language. The Roma language is taught at the Secondary School of Arts at Košice; at the Department of Roma Culture at Constantine the Philosopher University at Nitra and its detached office at Spišská Nová Ves and at P.J. Šafárik University at Prešov. The School of Pedagogy of Constantine the Philosopher University at Nitra in cooperation with the Plenipotentiary for Addressing the Problems of the Roma Minority, the Slovak Biblical Society and other church organizations has therefore prepared a project to train qualified specialists for social and missionary work among the Roma. It will enlarge the scope of the multifaceted support to the development of the Roma ethnic group. It is a five-year master study in "Social and Missionary Work among the Roma".

369. The development of the Hungarian minority culture is materialized through the activities of civic associations developing minority culture, by publishing periodicals and non-periodicals, through State theatres staging performances in the Hungarian language, professional folk ensemble "Young Hearts", regional education and cultural centres, regional and district libraries, Hungarian language broadcasting in public media. Presentation of minority culture in museums is a strong expression of cultural activities - a department for Hungarian culture was opened at the Danube Area Museum at Komárno for the Hungarian national minority. In 2000 Hungarian minority culture received funding for 315 projects - cultural projects amounting to SKK 9,613,000. In addition, the Ministry of Culture provided SKK 6,543,000 for periodicals to publish 19 periodicals. SKK 6,840,000 were given to publish 109 titles in the non-periodicals category. Altogether SKK 23,014,000 (50 per cent of the funds for minority cultures) were granted to the Hungarian minority culture from the purpose bound Ministry of Culture transfer. SKK 23,418,000 are expected to be granted to the Hungarian national minority under the redistribution scheme in 2001.

370. For information completeness sake Slovakia submits the last 26 May 2001 census results processed by the Slovak Statistical Bureau. A total of 5,379,455 inhabitants is living on the territory of the Slovak Republic and their ethnic composition is as follows:

Ethnic origin	Absolute numbers	Share in %
1. Slovak	4 614 854	85.8
2. Hungarian	520 528	9.7
3. Roma	89 920	1.7
4. Czech	44 620	0.8
5. Ruthenian	24 201	0.4
6. Ukrainian	10 814	0.2
7. German	5 405	0.1
8. Polish	2 602	0.04
9. Moravian	2 348	0.04
10. Croatian	890	0.02
11. Bulgarian	1 179	0.02
12. Jewish	218	0.01
13. Other <sup>1</sup>	5 350	0.01
14. Unidentified	56 526	1.1
Permanent residence		
Total	5 379 455	100.0

371. The Slovak Government supported the campaign for collecting credible census data. Financial contributions were granted to representative civic associations from individual national minorities and ethnic groups to prepare promotion materials.

372. In this context it is necessary to state that the number of inhabitants claiming to belong to the Roma national minority does not reflect the real number of the Roma living in Slovakia. Expert demographic estimates identify 350 to 400,000 Roma while according to the last census only 89,920 persons claimed Roma nationality. The possibility of claiming one's nationality is a free choice of each citizen. This significant difference is, probably, caused by several factors despite the fact that the representatives of Roma civic associations were very actively involved in various actions ("Claim Your Identity") through a direct contact with the Roma. The reasons may include no differentiation between citizenship and nationality, feeling of *déraciné* or loss of identity, assimilation, negative experience from the past. However, census results in the category of mother tongue, i.e. what language did the mother use in communication with the child, will be mainly important.

### Notes

<sup>1</sup> Article 153 of the Constitution: “The Slovak Republic shall be the successor to all the rights and duties resulting from international treaties binding on the Czech and Slovak Federal Republic to the extent laid down by a constitutional law of the Czech and Slovak Federal Republic or to the extent agreed between the Slovak Republic and the Czech Republic.”

<sup>2</sup> Article 11 of the Constitution: “International treaties on human rights and fundamental freedoms which the Slovak Republic ratified and promulgated in the manner laid down by a law shall have precedence over its laws if they provide a greater scope of constitutional rights and freedoms.”

<sup>3</sup> This area is covered in more detail in the Initial Report of the Slovak Republic to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and also to the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment.

<sup>4</sup> Under section 67, paragraph 1 grounds for the detention of the accused are as follows: There are concrete facts to believe that the accused:

1. Will escape or go into hiding to avoid criminal prosecution mainly when his identity cannot be immediately ascertained, when he has no permanent residence (the so-called escape prevention detention).
2. Will influence witnesses or co-accused or otherwise frustrate clearing of facts important for criminal prosecution (the so-called collusion detention).
3. He will continue criminal activity, he will accomplish the attempted crime or he commits the crime he had prepared or he threatened to commit (the so-called prevention detention).

The accused may also be detained when he is criminally prosecuted for a criminal offence where the law stipulates a minimum sentence of imprisonment of eight years and there are no grounds for detention under paragraph 1.

<sup>5</sup> The Ministry of Justice is currently drafting a law on the Judiciary Council of the Slovak Republic that will define the manner in which judges are appointed to the Judiciary Council, other competences of the Judiciary Council and its organizational aspects, in order to forward it in the legislative pipeline.

<sup>6</sup> Abolishing the Council of Judges of the Slovak Republic and the transfer of its competences to the Judiciary Council of the Slovak Republic is envisaged in compliance with the draft law on the Judiciary Council of the Slovak Republic.

<sup>7</sup> With the exception of some provisions referring to deepening and improving the qualifications of judges (these shall come into effect on 1 January 2002) as well as provisions regulating the salaries of judges (these will come into effect on 1 January 2003).

<sup>8</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 of the European Union shall have precedence over 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.”

<sup>9</sup> The status of interpreters is regulated in Act No. 36/1967 Coll. on experts and interpreters as amended. Interpreter is a person entered in the List of Interpreters. Interpreters are appointed by the Minister of Justice or President of a regional Court in the scope as authorized by the Minister of Justice. Lists of interpreters are held by regional courts in the jurisdiction of which the interpreter has his permanent residence.

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