



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

Distr.
GENERAL

CAT/C/SVN/3
16 March 2009

Original: ENGLISH

COMMITTEE AGAINST TORTURE

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

Third periodic reports of States parties due in 2006

SLOVENIA* ** ***

[22 January 2009]

* The second report submitted by the Government of Slovenia is contained in document CAT/C/43/Add.4.

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

*** Annexes to the present report are available with the Secretariat of the Committee.

CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
List of abbreviations		3
I. INTRODUCTION	1 - 4	4
II. NEW INFORMATION BASED ON THE IMPLEMENTATION OF INDIVIDUAL ARTICLES OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT	5 - 141	5
Articles 1 and 4	5 - 7	5
Article 2	8 - 36	6
Articles 3 and 6 to 8	37 - 50	15
Article 10	51 - 62	18
Articles 11 and 12	63 - 115	21
Article 13	116 - 141	35

Annexes

I. Report of the Republic of Slovenia on the implementation of criminal sanctions		41
II. House rules of the Dob pri Mirni Prison		41
III. The Annual Report of the Human Rights Ombudsman for the years 2004 and 2005 available at: http://www.varuh-rs.si/index.php		41

List of abbreviations

Ur. l. Official Gazette of the Republic of Slovenia

RS Republic of Slovenia

KZ Criminal Code (of the Republic of Slovenia)

Other abbreviations are explained in the text.

I. INTRODUCTION

1. Based on the provision of Article 19, Paragraph 1 of the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention against Torture), the Republic of Slovenia as a State Party to the Convention against Torture hereby submits its third report on the implementation of the Convention. Slovenian Government sent its initial report to the Committee against Torture in 1999 (the amendment to the initial report in May 2000) and second periodic report in 2001. The latter was discussed by the Committee against Torture on 5 and 6 May 2003.

2. Taking into account conclusions and recommendations that were submitted by the Committee against Torture to Slovenian Government after its consideration in May 2003, the Slovenian Government submitted the periodic report on the implementation of the Convention against Torture in the Republic of Slovenia to the Committee against Torture in compliance with the provisions of Article 19 of the Convention. The present periodic report covers the period subsequent to the consideration of the previous periodic report, i.e. from 6 May 2003 to 31 March 2006, and is drawn up in accordance with guidelines set down by the UN Commission against Torture in terms of the form and content of the report (CAT/C/4/Rev.3 and HRI/GEN/2/Rev.3).

3. The following authorities took part in drawing up the report: the Ministry of Foreign Affairs, Ministry of Justice, Ministry of the Interior, Ministry of Health, Ministry of Labour, Family and Social Affairs, Office for Nationalities and Faculty of Law of the University of Ljubljana - Chair of Criminal Law. Their reports are summarised in this report and/or included as annexes in full wording to this text. This material was also discussed by the members of the Interdepartmental Working Group for Monitoring Human Rights Issues whose members are representatives of the following institutions: the Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Culture, Ministry of Education and Sport, Ministry of Labour, Family and Social Affairs, Ministry of Health, Ministry of Justice, Ministry of Defence, Government Office for Nationalities, Government Office for Equal Opportunities, Ombudsman's Office, Institute for Ethnic Studies, Faculty of Law of the University of Ljubljana, Faculty of Law of the University of Maribor, Faculty of Social Sciences in Ljubljana, Legal-information Centre for NGOs.

4. Statistics and data "on practice" are taken from official written reports of the above ministries and/or their special services, from available annual and special interim reports and press releases of Slovenian Ombudsman's Office and publications of the Statistical Office of the Republic of Slovenia. Where possible and reasonable, these sources are appropriately referenced in the report. Texts of Slovenian legal theories are summarised only in parts, where they serve as an argument of theoretical protection of standards enshrined in the UN Convention against Torture, particularly regarding issues, about which the Slovenian judicature and administration have not yet taken their stand.

II. NEW INFORMATION BASED ON THE IMPLEMENTATION OF INDIVIDUAL ARTICLES OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Articles 1 and 4

5. The Republic of Slovenia amended its criminal legislation (the Criminal Code amendments, Official Gazette *RS No. 40/04*¹) in the period, to which this report refers, among others in the special part in chapters entitled *Criminal Offences Against Official Duties and Public Authorisation* (Chapter Twenty-Six) and *Criminal Offences Against Humanity and International Law* (Chapter Thirty-Five), however, amendments do not include such alterations that would be particularly relevant within Article 1 of the Convention against Torture and particularly not new, special criminalisation of torture. Thus, it still applies that Slovenia has neither in the central Slovenian substantive criminal law - the Criminal Code (among definitions of individual criminal offences²) - nor in any possible criminalisation standard that could be considered as secondary criminal legislation, a special definition of torture (special transformation of a definition from the Convention against Torture) or a special sentence prescribed for it. Formally, no legislative procedures for such amendments to Slovenian positive law have been initiated.

6. It is believed that within mergers of criminal responsibility for criminal offences against life and limb, official duties and others, any conduct is prohibited under Slovenian law that may be covered, within the requirements of Article 4 of the Convention against Torture, by the description from its Article 1, and that criminalisation standards may remain within the framework of the principle of legality in criminal law and its particularly strict requirements for the determination of standards.

7. Apart from the limitation of criminal offences against sexual integrity of juveniles and certain criminal offences against juveniles, which are within the Convention against Torture obviously of a secondary nature (in the Criminal Code amendments, a limit is added stating that the limitation of these criminal offences cannot expire before the expiration of five years when the injured party³ becomes an adult), the Slovenian legislator did not interfere - in the reference period - either with general periods of limitation in Slovenian criminal law or particularly with the prescribed types and extent of punishment, with which it would indirectly prolong periods of limitation of specific criminal offences which are particularly relevant within the Convention against Torture. In connection with concerns expressed by the Committee against Torture related to relatively short periods of limitations in Slovenian criminal legislation in its last opinion on

¹ See official consolidated text of the Criminal Code (*KZ UPB1*) as is published in *Official Gazette RS, No. 95/04*.

² See the presentation of this code in the initial Slovenian report submitted to the Committee against Torture.

³ New paragraph 3 of Article 111 of the Criminal Code.

Slovenia (Para C 5.b of the opinion of 6 May 2003), it needs to be highlighted that this issue is closely linked to judicial backlogs in criminal proceedings which the Slovenian judiciary has been struggling with in the last years and regarding which the Supreme Court of the Republic of Slovenia and the Slovenian Ministry of Justice drafted several programmes aimed at reducing (Herkules, Lukenda) and fully eliminating such backlogs in the period of the next few years.

Article 2

General

8. In 2004, the Slovenian Police published the brochure *Notice of rights to the person who has been arrested*. The brochure includes the notice of rights in case of the deprivation of liberty in 22 languages, taking into account all most important world languages and those languages which are in the majority of cases spoken or understood by persons that the Police deal with in the Slovenian territory (particularly when illegally crossing the border). The brochure was favourably accepted by police officers as a welcome tool for every day work and is obviously useful. It is true, however, that the Slovenian Human Rights Ombudsman criticized the content of this brochure to a certain extent in his regular annual report for 2004.⁴ In his opinion, the brochure includes incorrect caution about the content of rights of a detained person. The English text of the notice does not include the right of a detainee to inform his closest relatives of his arrest, although this is one of fundamental rights known to all democratic legal orders. The brochure also includes the impermissible limitations of rights of a detainee in all languages contained in the notice “if requested by the attorney and the arrested person, the police officer should not listen to their conversation”. The Slovenian Human Rights Ombudsman underlines in his report that confidentiality of the conversation between the defence counsel and the detainee may not be subjected to such a request. The conversation between them should always be held outside the police officers’ auditory field, otherwise the purpose of legal assistance of a defence counsel is to no avail.

9. The Police believe that the Notice of rights to legal assistance, which is criticised by the Human Rights Ombudsman, is appropriate. The Police explain that the confidant and the detained person do not only have contact in detention facilities, but also during a house search and other procedural issues in the pre-trial criminal procedure. In these cases it is logical that they specially request confidential contact since during these events they always communicate in the presence of police officers. Article 47 of the New Rules on Police Powers (Official Gazette RS, No. 40/2006, it entered into force on 15 May 2006) clearly stipulates that the police officer should not listen to their confidential conversation between the defence counsel and the detained person, he may supervise them visually.

10. As regards the notice of rights in English to inform the closest relatives, the Police point out that on page 11 of the brochure it is clearly stated: “... and that they may demand their closest relatives be informed of their arrest”. It is true, however, that Paragraph 7 on the same page, where it is stipulated that the detainee shall have this right for the entire period of the arrest

⁴ Pp. 73-74 of the report.

procedure, the informing of closest relatives is left out by mistake; the Police will take this into account in case of possible reprint and the text on its webpage will be amended as soon as possible.

11. In connection with the latest findings and recommendations of the Committee against Torture - submitted to the Government of the Republic of Slovenia in May 2003 - regarding preventing the detainees to freely choose their doctor, the Slovenian Police point out that amendments were proposed in the part that refers to freely choosing a doctor. An article with the following content was added to the Act Amending the Police Act, which took effect on 10 November 2005: "If the detainee requires emergency medical care, the latter shall be guaranteed to the person in accordance with the regulations governing emergency medical care. The detainee shall have the right to be examined, at his expense, by a doctor of his choice. The medical examination shall take place in the absence of police officers unless otherwise requested by the doctor."

12. The aforementioned was taken into account when preparing amendments to the Rules on Police Powers that in Articles 55 and 75 set out the manner of exercising the mentioned rights of persons: "A sick or injured person who obviously needs medical care, or a person showing signs of severe alcohol poisoning or poisoning with other substances, cannot be held in detention facilities. The police officer has to guarantee emergency medical care to such a person in accordance with the regulations governing emergency medical care. When the detainee himself requests medical care, the police officer facilitates this in detention facilities or takes care of the transfer to the closest public health facility. The police officer should take all necessary measures to prevent the detainee from escaping during transfer or during his stay in a health facility. The police officers decide on further detention of a person according to doctor's opinion. If the detainee requests he should be examined by a doctor of his choice, the police officer should inform the chosen doctor and warn the detainee that he must himself cover all the costs. The police officer who brought the detainee to the health facility, or the police officer in a police unit - if medical care is guaranteed in detention facilities - should not be present at the medical examination or listen to the conversation between the detainee and the doctor, unless otherwise requested by the doctor."

13. If due to the usage of means of restraint injuries occur, the injured person should be - as soon as possible as the circumstances allow - provided with first aid or medical care. If the injured person remains in the health facility for the purposes of treatment, the police officer shall inform his closest family accordingly.

14. Police officers respected the aforementioned right of a detainee to choose his doctor freely already before amendments to the Act and Rules. On 1 October 2001, a form Official note of arrest - detention was changed which states that the detainee was informed of the right to freely choose his doctor for the purpose of medical care.

15. Psychiatric hospitals submitted their explanation as regards the exercising of rights to freely choose a doctor. According to their report, all patients in principle have the possibility to freely choose a doctor, however, specific practical limits as to where the desired doctor works and his workload have to be taken into consideration.

16. As regards the recent findings and recommendations of the Committee against Torture submitted to the Slovenian Government in May 2003, regarding the keeping of statistics on ethnic affiliation of victims, exceeding police powers or unlawful conduct of police officers, the Slovenian Police explain that Chapter Four of the Police Act, *Gathering, Protection and Securing of Data*, sets out which data may be collected by the Police. The Police may only collect data on nationality (but not on ethnic affiliation - Roma) for suspects in criminal offences, but not for offenders, persons who filed a complaint against police officers procedures, persons whose identity was established and others. The Police thus do not have a legal basis for collecting, processing and saving data on nationality or ethnic affiliation. Based on the Police Act, police records may only contain the following personal data:

- Name and surname
- Birth data (day, month, year and place of birth)
- Personal registration number
- Sex
- Address of permanent and/or temporary residence
- Nationality

17. The Personal Data Protection Act (Official Gazette RS, No. 86/04), laying down the rights, obligations, principles and measures to prevent unconstitutional, illegal and unjustified intrusion in privacy and dignity of individuals when processing their personal data, stipulates that personal data may be processed only if the personal data and their processing are defined by law or if consent of the individual concerned is given for the processing of his data. The purpose of personal data processing must be stipulated by law. In case of data processing on the basis of individual's consent, the individual must be informed in advance in writing or other appropriate form about the purpose of the personal data processing. Ministries or other relevant institutions do not keep special records regarding ethnic affiliation.

18. Some members of the Roma community are citizens of the Republic of Slovenia, others reside in Slovenia as aliens, therefore they are recorded as citizens of the Republic of Slovenia or aliens in data processing. The Police state that they do not have an exact overview of the procedures police officers conduct against Roma.

19. With possible discrimination based on ethnic affiliation a police officer would commit a criminal offence of the violation of equal status under Article 141 of the Criminal Code from the chapter, which stipulates in Paragraph 1: "Whoever, due to differences in respect of nationality, race, colour of skin, religion, ethnic roots, gender, language, political or other beliefs, sexual orientation, material condition, birth status, education, social position or any other circumstance, deprives or restrains another person of any human right or liberty recognised by the international community or provided by the Constitution or the statute, or grants another person a special privilege or advantage on the basis of such difference."

20. In 2004 and 2005 the Police collected information in three cases based on grounds for suspicion that a police officer committed such a criminal offence. However, it failed to collect enough evidence that would substantiate the suspicion of committing a criminal offence and submitted reports under Article 148, Paragraph 10 of the Criminal Procedure Act to the competent State Prosecutor's Offices. In the reference period, the Slovenian Police did not lay a criminal complaint against employees of the Police due to the commission of a criminal offence.

Problems in practice

21. According to the last regular annual report by the Slovenian Human Rights Ombudsman for 2004,⁵ this institution devoted particular attention to the protection of rights to persons deprived of liberty. In 2004 representatives of this institution⁶ visited and inspected the Celje juvenile detention centre and prison, prisons in Celje and Koper, and divisions in Rogoza and Radovljica that are part of Maribor and Ljubljana prisons respectively. According to the report, during visits interviews were conducted with more than 100 inmates. During this time, they received 97 proposals in writing by inmates (31 detainees, 66 convicts) which is approximately 10 percent less than in 2003. They also received some calls by inmates to Ombudsman's (free) hotline which - according to the findings of the mentioned Human Right Ombudsman's report - prisons facilitate appropriately. Therefore inmates have the possibility of an immediate contact with Ombudsman's Office which is obviously an additional safeguard in providing respect for human personality and dignity during his deprivation of liberty and serving of a prison sentence.

22. The Human Rights Ombudsman particularly points out the issue of the period of detention. In 2004 he highlighted a case of a particularly protracted criminal procedure in which detention against the defendant was abolished due to the expiry of a 2-year detention period after the issuing of the indictment.

23. As the Slovenian Human Rights Ombudsman notes, the absolute limitation of the period of detention - according to the Criminal Procedure Act - amounts to two years and six months (Article 205 and Article 207, Paragraph 5 of the Act). Notwithstanding the existence of reasons for detention according to Article 201 of the Criminal Procedure Act, the period of detention cannot be extended. However, the amendment to the Criminal Procedure Act - E as of 13 June 2003 does not stipulate, *mutatis mutandis*, the application of Article 205 and Article 207, Paragraph 5 of the Criminal Procedure Act, when in Article 307, Paragraph 2 determines the conditions for ordering detention in order to ensure defendant's appearance at the main hearing. According to this statutory basis, the detention should not be longer than one month.

⁵ During preparation of the present report, Ombudsman's annual report for 2005 had not yet been published, subsequently it can be accessed at the web site: <http://www.varuh-rs.si/index.php> in the Annual reports section.

⁶ See pp. 27-41 of the 2004 report.

24. In the criminal procedure of the initiator, the court was of the opinion that detention - in order to ensure defendant's appearance at the main hearing - would not be taken into consideration in absolute limitation of detention according to the provisions of Criminal Procedure Act. This means that detention ordered under Article 307, Paragraph 2 of the Criminal Procedure Act may be longer than the allowed period of detention of two years and six months. The Slovenian Human Rights Ombudsman notes in his report that in case of such an interpretation, the Criminal Procedure Act does no longer provide for the absolute limitation of the period of detention, since the court may prolong detention for up to one month in order to ensure the defendant's appearance at the main hearing.

25. The possibility under Article 307, Paragraph 2 of the Act to detain a defendant also after the expiry of the longest admissible period of detention is therefore, in the opinion of the Slovenian Human Rights Ombudsman, a concession to the benefit of protracted criminal procedures. The Act stipulates limits on the period of detention since this is the intrusion in personal freedom in the criminal procedure phase, when the presumption of innocence applies. It binds the court and other institutions to act expeditiously if the defendant is in detention. The Slovenian Human Rights Ombudsman believes that under the legal explanation of Article 307, Paragraph 2 of the Act, the period of two years and six months is not long enough for the State to achieve, by repressive institutions, criminal conviction against the accused deprived of liberty. He opposes this statement with an argument that the period of detention may last only as long as there are legal grounds for it, whereby the deprivation of liberty, which encroaches upon the constitutional right to personal freedom, must be interpreted in a narrower sense. In his opinion detention - when reasons for detention exist - is ordered to ensure the defendant's appearance at the main hearing. The danger of escape and avoiding the main hearing are so related circumstances in practice that the court, after a 2-year detention, may prolong it under Article 307 of the Act, since the defendant does not appear at the main hearing. Formally, the court refers to another legal basis, statutory definition may be very similar if not fully equal and could apply to detention on the grounds of the danger of escape. This means that the court may order detention in an equal factual situation also after the expiry of the admissible period of detention on the grounds of reasons under Article 201 of the Act, only by referring to another legal basis. In a criminal procedure phase when the presumption of innocence applies, detention may be extended without limits which are otherwise prescribed by the Act for detention in Articles 205 and 207.

26. The Slovenian Human Rights Ombudsman has regularly pointed out in his reports that detainees should be guaranteed longer visits in more friendly conditions. In October 2004, the Rules amending the Rules on enforcement of detention provided detainees with more friendly conditions of visits. It has been determined that visits take place in a special room divided by a glass barrier or in a room without a barrier. The director of the prison decides whether the visit be open or closed. In the first 14 days after the detainee has been admitted to the institution, visits generally take place behind a glass barrier. The director of the prison may decide for a closed visit also later if there are reasonable security grounds or if there is a danger that the visitor will hand the detainee prohibited drugs, alcohol or other intoxicating substances and items intended for an attack or escape. Under the new system, open visits are determined, as a rule, after the expiry of 14 days of detention; they are also possible immediately after the person is admitted to the prison. The Human Rights Ombudsman notes in the mentioned report that this is a very positive novelty, and states that during his visit to Radovljica division he noted that none of 13 detainees had open visits behind the glass barrier. An open visit enables direct personal

contact of a detainee with a visitor, which according to the opinion of the Slovenian Human Rights Ombudsman underlines humanity and improves the quality of such contacts with the outside world, particularly relating to visits by parents, a partner and children. On the other hand, the amended regulation concerning food consignments under the same Rules on enforcement of detention is a step back in the opinion of the Slovenian Human Rights Ombudsman. The detainees may now receive food consignments only once a month, according to the previous regulation this was admissible every week.

Relevant parts of the mentioned Rules read as follows:

Article 3

Article 47, Paragraphs 1 and 2 shall be amended to read as follows:

“Visits to the detainee shall take place in a special room divided by a glass barrier, or in a room without a barrier, subject to the decision by the Director of the prison. For the first fourteen days after the person has been admitted to the prison, visits generally take place in a special room divided by a glass barrier. The Director of the prison may decide that visits take place in a room with a glass barrier also later if reasonable security grounds exist or if there is a danger that the visitor will hand the detainee prohibited drugs, alcohol or other intoxicating substances and items intended for an attack or escape.” Article 4.

Article 52, Paragraph 1 shall be amended to read as follows:

“The detainees may once a week receive consignments with clothes, underwear and other items which they are allowed to have under the Act and these Rules.” A new paragraph shall be added after Paragraph 1 which reads as follows: “The detainees may receive food consignments once a month.” In the current Paragraph 2 that shall become Paragraph 3, words “previous paragraph” shall be replaced by “previous paragraphs of this Article.”

The current Paragraphs 3 and 4 shall become Paragraphs 4 and 5 respectively.

Article 5

Article 70 shall be amended to read as follows:

“Article 70

If the detainee believes that prison staff treat him inappropriately, he may complain to the president of the relevant district court or to the director-general of the management board. The director-general shall respond to his complaint in writing within 30 days.”

Article 6

In Article 71, Paragraph 1, the text “after the preliminary opinion of the director of the management board the Director of the prison”. shall be replaced by the text “in agreement with the director of the management board the Director of the prison”.

Article 7

Prisons must harmonize their house rules with the above provisions within three months after their taking effect.

27. In the report, the Human Rights Ombudsman of the Republic of Slovenia criticizes some other inappropriate conditions of detention. During his visit to the Juvenile Detention Centre and Prison Celje he noticed that the capacity of the male detention unit is 18 persons, while at the time of his visit there were 33 detainees, which means the capacity was exceeded by 83%. On the average, one detainee has approximately 4m² of room at their disposal, and detainees are locked for 22 hours a day, while in the remaining two hours, they are allowed to be in the prison yard. According to the Human Rights Ombudsman, such accommodation of detainees without any organized activities and the possibility of staying outside detention cells is inappropriate. Detainees should have the possibility of staying outside their cells for several hours, for example 8 hours a day, during which time they could engage in organized activities, including work, recreation and other sports and social activities. During our visit, only three out of 33 detainees were enabled to work in the cellar workshop.

28. In the report cited, the Ombudsman adds that the 22 hour regime of staying in detention cells, without any pedagogical or educational activities, also applied to 3 juvenile detainees. Juvenile detainees were sharing cells with adult detainees, although by law this is only acceptable if it is to the benefit of the minor. In this particular case, the Ombudsman established that the minor was even sharing a cell with an adult drug addict. On the other hand, the Ombudsman commended the regime at the Prison Koper in the report. Apart from the possibility of a two-hour walk outside, detainees can make use of a fitness room or a gym several times a week. Detainees at the Prison Koper are thus already enabled to spend several hours outside their cells, despite the fact that all facilities are not yet in use. According to the Ombudsman, this is the first case in Slovenia where detainees are enabled to stay outside their cells for more than two hours a day.

29. In 2004, the Human Rights Ombudsman received 97 written complaints relating to police procedures. This is 36 per cent less than in 2003 (when the number of complaints against the Police was high above average). Most complaints related to the exercising of police powers during the performance of police tasks. Many complaints referred to the unlawful or improper use of instruments of restraint, in most cases physical force or handcuffing and binding, whereas the Ombudsman explicitly mentions a complaint relating to the presence of a police officer during a medical examination of the person detained.⁷

30. The complainant reported to the Human Rights Ombudsman that during detention at the Police Station Murska Sobota between 12 and 14 January 2004, police officers beat him up and ill-treated him. The doctor that performed the examination did neither notice nor note any injuries. The complainant claimed he had not told the doctor about the ill-treatment; neither did he draw his attention to visible injuries, inflicted upon him. Since it is possible that injuries were concealed by the complainant for fear of consequences, the Ombudsman devoted special attention to the complainant's statement that two police officers were present during the medical examination. According to his statement, the doctor carried out the interview and the examination in the presence of police officers. The Human Rights Ombudsman report states: "The police officer claimed that he and his colleague were waiting outside while only the doctor and the complainant were present during the examination. One of the nurses at the emergency

⁷ P. 66 of the report.

department of the Health Centre in Murska Sobota told us that in practice it also occurred that police officers were present in the room where a medical examination of the detained person was being performed. Later on, the doctor assured us that police officers were certainly not present during the “physical” examination of the complainant. At the Criminal Investigation Office of the Police Directorate Murska Sobota we found out that there are no exact instructions for the procedure; however, police officers are present only upon the doctor’s request.

31. The Ombudsman can only assent to such practice. According to rules, the medical examination must be performed out of the police officer’s visual or auditory field. Only when a doctor-patient relation of trust was established, the detained person will feel free to describe without hindrances their physical or mental state and say whether they had been exposed to ill-treatment or even unlawful use of physical force and other means of restraint during detention. The potential excuse that the detained person refrained from speaking about these circumstances from fear of becoming a victim of revenge would thus become irrelevant. Only when the doctor himself demands that police officers be present (for example for safety reasons) they can stay in the room during the examination. In such cases, however, a confidential exchange between the doctor and the detainee must be made possible, out of the police officer’s auditory field. We suggested to the heads of the Police to issue clear instructions so as to prevent a recurrence of the above case in practice.”

32. The General Police Directorate explained that this right has now been legally established by the above mentioned amendments to the Police Act (“The medical examination shall take place in the absence of police officers unless the doctor requests otherwise.”) and the Rules on Police Powers (“The police officer who brought the detainee to the medical centre or the police officer at the police unit, if medical assistance is provided there, is not allowed to be present during the medical examination, nor is he allowed to listen to the medical interview, unless the doctor requests otherwise.”).

33. According to the Human Rights Ombudsman, the Police do not have clear instructions or rules which would determine the police procedure of conducting interrogations. These should include the following: informing the detained person about the identity of the persons, present at the interrogation, its maximum duration, breaks and interruptions during the interrogation, indicating a room where interrogations can be conducted, interrogations of intoxicated persons, and other. Likewise, the Ombudsman believes that a detailed and systematic record should be kept, of the beginning and the end of the interrogation, possible requests of the detainee and the persons present. An electronic recording (videotaping or taping) of the interrogation of the suspect or detained person should be provided as the best possible proof of the circumstances in which it was carried out. Explanations of the Police regarding interrogations of suspects are cited in the part relating to Articles 11 and 12 of the UN Convention against Torture.

34. Police representatives stress that the Human Rights Ombudsman reports on police procedures are being dealt with very seriously. They point out that the report principally concentrates on describing well-known and complicated cases. Through various forms of cooperation with the Ombudsman, the Police are familiarized with the findings and envisaged measures of this institution already in the course of the year. Some of the starting points and conclusions are drawn up jointly. All findings are reported to competent services and organisational units, which carry out appropriate measures: they note the improper proceedings

of a police officer, instruct them on proper and legal procedures, submit or complete guidelines for further procedures, and consider the case at educational meetings or consultations. Some cases even required amendments to certain provisions of the Police Act or other implementing regulations. In this context, police representatives point out the amended Article 28 of the Police Act, which refers to the complaints procedure and herewith to the new Rules on Resolving Complaints, published in the Official Gazette of the Republic of Slovenia, Nr. 1/2004. Furthermore, they call attention to the amendments of provisions relating to police powers, namely the use of means of restraint, establishing a person's identity, confiscating and returning of items, deprivation of freedom and restriction of movement, as well rules concerning the equipment of detention facilities.

Disciplinary procedures in the police

35. The amendment to the Civil Servants Act (Official Gazette RS, No. 113/05), which entered into force on 31 December 2005, encroaches heavily upon disciplinary procedures in the Police, due to the attempt to harmonize disciplinary responsibility provisions in the public sector with provisions regulating the private sector, where a disciplinary measure may not permanently change the legal status of the employee. Prior to the amendment entering into force, the Police Act contained provisions on conducting a disciplinary procedure and defining minor or major violations of professional duties and responsibilities, which were applicable to police personnel in addition to provisions regarding violations, applicable to all public administration employees (legal provisions regulating disciplinary responsibility were thus stricter in case of police personnel than in case of other public administration employees.) Article 99 paragraph 2 stipulated explicitly that severe violations of professional duties and responsibilities can result in a decision on the termination of employment. Since 31 December 2005, police personnel are subject to the same provisions on disciplinary procedures as all other public administration employees. Since the public sector also adheres to the principle that a disciplinary procedure cannot permanently change the legal status of the employee, the Police, upon establishing disciplinary responsibility, are no longer allowed to apply the disciplinary measures of termination of the employment contract or employment, dismissal or degradation. After 31 December 2005, only two types of disciplinary sanctions may be imposed on police personnel, namely a public reprimand or a fine for minor violations and a fine for severe disciplinary violations. The fine for minor violations can amount to maximum 15 per cent of the full-time employment salary for the month in which the violation was committed, and to maximum 20 to 30 per cent of the equal sum for severe violations. As a consequence of harmonizing the legal status of public sector employees with that of private sector employees, two instruments from the Employment Relationship Act were transferred into the system of employment relationships by the amended Public Officials Act, which substitute for the disciplinary measures of employment contract or employment termination. These instruments include ordinary termination of contract to the worker by the employer for the worker's fault reason (Article 88, paragraph 1, indent 3 of the Employment Relationship Act) or extraordinary termination (Article 110).

36. In the period covered by the report, one extraordinary termination procedure was initiated on grounds of suspicion that a criminal offence of abuse of office or official duties by violating human dignity was committed under Article 270 of the Criminal Code. Neither a disciplinary violation of ill-treatment of employees nor a case of exceeding police powers with elements of inhuman or cruel treatment or torture was recorded. There were 27 cases of disciplinary

procedures on the grounds of exceeding police powers in the reported period. The following disciplinary sanctions were applied: public reprimand, conditional suspension of the employment contract and termination of employment. One severe reprimand prior to ordinary termination of the employment contract on the grounds of exceeding police powers under Article 83 of the Employment Relationship Act was recorded.

Articles 3 and 6 to 8

37. In the reference period, the Slovenian Police have participated in procedures of expulsion of aliens from the country on several occasions. The number of these measures is shown below (includes expulsion on grounds of minor offences or criminal law).

Year	2003	2004	2005
The number of measures	695	543	279

38. The Police carry out the expulsion from the country on the basis of enforceable judgements in minor offences or criminal proceedings, or in the reported statistical period on the basis of decisions of a minor offence judge (in accordance with the Minor Offences Act in force then). Deportation is carried out in accordance with Article 50 of the Aliens Act. On the basis of an enforceable decision, the Police carry out the deportation as soon as possible. If immediate removal is not possible, the Police order a stay at the Aliens Centre in accordance with Article 56 of the Aliens Act or a stay outside the Centre on a certain location in accordance with Article 59 of the Aliens Act and Chapter 6 of the Rules on the Stay and Movement of Aliens at the Aliens Centre and the Conditions for the Use of Milder Measures, but for no longer than six months. Under conditions stated in Article 58 of the Aliens Act the Police may extend the stay at the Centre for further six months. In July 2006, the amended Aliens Act (Ur. l. RS, No. 79/2006) introduced the so called principle of expeditious judicial protection while restricting movement or introducing stricter police supervision at the Aliens Centre. If a complaint is filed against the above orders, the Administrative Court must rule within eight days. Thus the recommendations of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe have been taken into account.

39. In line with administrative law, the Police do not keep statistical data on ordered expulsions or residence prohibitions for aliens; they perform these measures on grounds of enforceable decisions by administrative bodies. Administrative decisions on deportations are rare for various reasons, either due to judicial protection or absence of the party subject to the decision.

40. The Police also participated in cases of extradition to third states of aliens, against whom an international arrest warrant was issued; 12 times in 2003, 17 times in 2004 and 19 times in 2005.

41. In 2003, the Ministry of the Interior carried out a regular inspection at the Aliens Centre unit in Veliki Otok near Postojna. During the inspection it was established that the Police brought most recommendations of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment and the Human Rights Ombudsman into effect.

42. The recommendation to stop wearing firearms and batons inside the accommodation facilities was also fulfilled. In line with other recommendations, material conditions were improved, the facility has been renovated and now provides accommodation for 220 persons, the surroundings have been arranged; sufficient quantity of food is now ensured and nutritional needs of the residents at the Aliens Centre are being taken into account. Residents have a whole-day access to shared facilities, they are enabled to stay in contact with the outside world, medical workers are present at the centre and a psychiatrist has been contracted to offer psychological and psychiatric assistance. Since the number of aliens accommodated at the Centre has decreased in the past few years, the number of employees has also been reduced. In addition, the Ombudsman's recommendations regarding the living conditions of the aliens and their care, health care, contacts with the outside world, information accessibility, presence of professional services and organisation of work have been implemented to a large extent.

43. In 2005 the Ombudsman paid a visit to the Aliens Centre Unit in Prosenjakovci, where he witnessed a relaxed regime; among disadvantages, however, he mentioned that the room for visitors was unsuitable. The response to his reproach was a plan to build additional facilities, with the appropriate documentation already drawn up. In Prosenjakovci the Ombudsman noticed the lack of foreign newspapers to provide aliens with information, but at the same time he noticed that access to information is enabled through the internet. With the changed systematisation the unit in Prosenjakovci was closed down on 1 June 2006 and since then only the Aliens Centre in Veliki Otok near Postojna has been operating.

44. The Ombudsman drew special attention to the inappropriate accommodation of minors without parents or other legal representatives at the Aliens Centre, especially if a minor stays at the centre for a longer period of time. As a more appropriate solution, he proposed accommodation at a social security or educational institutions, as stipulated in Article 56 of the Aliens Act, which allows for an alien to be accommodated at a social security facility or be provided with other appropriate institutional care, if it is not possible to accommodate them at an Aliens Centre due to special reasons or needs. The Ombudsman established that the Centre does not provide the possibility for such accommodation for alien minors without parents or other legal representatives. Therefore he proposed to the Ministry of Labour, Family and Social Affairs to draw up a list of institutions for the accommodation of alien minors, which were deprived of freedom in line with the provisions of the Aliens Act.

45. While alien minors are waiting to be returned to their parents or legal representatives, they are being provided for at a special department of the Aliens Centre, where the personnel endeavours to respect their rights, provided by the Convention on the Rights of the Child. Article 60 of the Aliens Act stipulates that upon the arrival of an unaccompanied minor the social work centre is to be notified and must immediately appoint a temporary representative, who then makes sure that the minor's rights are respected and is their representative in all administrative procedures.

46. If complicated and lengthy procedures are required for the reunification of minors with their parents, non-governmental organizations assist in the process (e.g. the organizations Mozaik and Slovene Philanthropy). NGO's help organizing guardianship of the minor and provide for mentors and psychosocial assistance. There is also the possibility of placing the minor in a foster family, which is particularly advisable in case of younger minors.

47. Already in the introduction to his regular annual report for 2004, the Human Rights Ombudsman of the Republic of Slovenia noted that the human rights situation of asylum seekers had improved.⁸ While this report was being drafted, the Republic of Slovenia was in the process of amending its legislation on asylum (draft law amending the Asylum Act, Official Gazette RS, No. 61/99, 124/2000, 67/01, 98/03, 134/03 - official consolidated text and 17/06). Already during the process of ratification, the amended act was subject to harsh public criticism from legal experts, above all in relation to human rights protection of asylum seekers,⁹ while the President of the Republic, responsible for promulgating acts, even publicly expressed doubt in its suitability. Criticism by the legal profession conveys that the amendments are possibly questionable in relation to the CAT, therefore the full text of the Act is cited in the appendix.

48. The amended Asylum Act foresees the obligatory participation of the Police in the so-called pre-asylum procedure in cases of illegal migration. In such cases, the Police act in accordance with the Aliens Act, which means that they initiate deportation procedures, if the intention to apply for asylum does not comply with conditions for international protection; if the alien refuses to give a statement upon the request of the competent body; or if they leave the asylum home for the accommodation of aliens, who expressed the intention to apply for asylum. The right to free legal assistance was abolished or restricted to appeal procedures. According to Articles 12, 15 and 16, appeals do not have a suspensive effect.

49. In the review of the constitutionality of the amended Asylum Act, initiated by a group of deputies of the National Assembly, and in the procedure for the review of the initiative, introduced by a group of citizens, the Constitutional Court decided in the session on 3 April 2006 that until it adopts a final decision, the implementation of Article 26, paragraphs 1-4, Article 37, paragraph 2, second sentence and Article 41, paragraph 2, second sentence of the Act, should be withheld.

50. Moreover, the Constitutional Court decided that until a final decision is adopted, the bodies responsible for border crossings control and other state and local bodies must immediately direct to the Asylum Home any alien who enters the Republic of Slovenia or resides there illegally and expresses the intention to apply for asylum. The application for asylum or the official record of the alien's intention to apply for protection on the basis of Article 1, paragraphs 2 and 3 of the Asylum Act, along with other data, must be immediately submitted to the competent body.

⁸ P. 9 of the report.

⁹ See, e.g. *Pravna praksa* 2006, 3; 2006, 4; 2006, 2!

Article 10

Education and training of police personnel

51. Representatives of the Slovenian Police have explained that regular professional education and training is organised for police officers at several levels. As a rule, those employed with the Police are Slovenian citizens, who have concluded elementary and secondary education in educational institutions in Slovenia, where their curricula comprised also courses dealing with the bases of the national legal order as well as human rights and freedoms (ethics, civic education).

52. Slovenian citizens who enrol on the police officer curriculum possess certain basic knowledge, which is then upgraded within the curriculum. Retraining programme is filled with legal courses as these are urgent for the work of a police officer. Upon concluding the basic police officer programme, police officers regularly attend further education and training. Within the Police, adequate education is ensured at a post-secondary vocational college, where police officers receive further education.

53. Regular professional education of police officers also comprises everyday education on topical issues and changes in the legal field. In addition to what has been stated, police officers also receive legal education through the intranet, as the Slovenian Police regularly updates its website with legal contents and links to topical sites for legal education (Official Gazette of the Republic of Slovenia, National Assembly, Government, ministries, Constitutional Court, case-law of the Supreme Court and Administrative Court, the European Court of Human Rights, Human Rights Ombudsman, *Pravna praksa*, etc.). Another magazine (*Varnost*), which all police officers can access, can be considered as part of professional education as well as all other publications issued by the Police, Ministry of the Interior, Slovene Road Safety Council and other. The Police annually issue a publication entitled *Primeri iz prakse*, which contains instructive examples regarding the powers and human rights, and a quarterly, entitled *Praksa*, comprising cases of substantiated complaints by citizens. The Police strongly emphasises the importance of education, training and further training of police officers in the legal field, which was also demonstrated through the opening of two libraries within the Police with an extensive book collection.

54. All Slovenian police officers must be familiarised with the Convention against Torture, as it constitutes a mandatory part of the police officer curriculum (subjects: police organisation and tasks, police powers, practical procedure and skills, and social skills) and senior police officer curriculum (subjects: police powers with practical procedure, professional ethics, border issues and aliens, criminal law). In both curricula, outside experts in communication and conflict-management take part as well as representatives of the AIS (Amnesty International Slovenia) and Youth Centre in Ljubljana. The Human Rights Ombudsman plays an important role in informing police officers and frequently participates in the education process (lectures and workshops - the role of the Ombudsman, resounding human rights violations, importance of protection of human rights and freedoms in the course of police work). Members of the Police become acquainted with the Convention through numerous other programmes of further training. In June 2006, a seminar entitled Law Enforcement Authorities against Discrimination was conducted at Ombudsman's proposal in cooperation with the Police, as well as Ombudsman's project entitled Let's Face Discrimination. The seminar was intended for police personnel, who

face discrimination issues at their work. The project of training of police officers for work in a multiethnic society has been underway. In addition to police officers, these trainings are also attended by representatives of the Roma community. The Institute for Ethnic and Regional Studies in Maribor organised Training and Education for Combating Discrimination project. The seminar was intended for police personnel, prison guards, customs officers and members of the Slovenian Army.

55. Representatives of the Slovenian Police submitted a list of documents regulating police work (internal instructions, circulars), relevant in combating cruel, inhuman and degrading treatment, which are not available in the Official Gazette of the Republic of Slovenia. Since their nature is internal, the documents have not been submitted. The documents include:

- (a) Instructions for police measures on abduction, hostage taking, building invasion and similar security issues;
- (b) Implementation of the restraining order measure (prohibition of coming near a certain area or person) - guidelines;
- (c) Operative information on grounds for suspicion that police officers or police employees have committed, are committing, or are making preparations for or organising a criminal offence - information;
- (d) Violence against children and minors - informing social work centres;
- (e) Guidelines for detection and investigation of criminal offences involving elements of violence (security threats);
- (f) Handbook for the use of instruments of restraint;
- (g) Unprofessional police procedures - findings, warning;
- (h) Guidelines for treatment of criminal offence victims.

56. In connection with the latest findings and recommendations of the Committee against Torture - submitted to the Government of the Republic of Slovenia in May 2003 - regarding the excessive use of force by police officers, particularly against ethnic minorities, representatives of the Slovenian Police confirmed the awareness that continuous professional education and training for the exercise of police powers and practical procedures is one of the most important mechanisms for the prevention of human rights and freedoms violations. They emphasized that a self-defence and practical procedure course, which all police officers have to attend, was introduced in the Slovenian Police in 1996. The theoretical part of the course (3 lessons monthly) delivered by assistant commanders at the police stations is to acquaint the attendants with concrete examples and warn them of irregularities or of the exceeding of police powers and, in particular, of means of restraint. Important emphasis is put on consistent respect of the principles of legality, professionalism, humanity and proportionality in the use of means of restraint. Of all principles, the principle of proportionality is most frequently violated in procedures, thus warnings that police officers may only use the instruments of restraint that shall enable them to perform the tasks by inflicting the least amount of harm to the person, against whom such

measures have been applied; in addition police officers must immediately cease using instruments of restraint when the reasons for their use cease to exist. In addition to the theoretical part, police officers are trained for practical procedures and self-defence, training being conducted by instructors at police directorates (5 compulsory lessons monthly) and comprising for example identification, security check, arrest, basic self-defence techniques and similar. In the recent years, trainings for police officers in communication and social skills as well as stress prevention programmes have been conducted.

57. Police representatives further state that a new computer application was developed, which facilitates improved control and monitoring of the use of instruments of restraint, and that several analyses were made of the use of these means.

58. According to Police statements, success of permanent police training is evident from the reduced proportion of complaints due to the use of instruments of restraint (in view of the scope of their use) and in the reduced proportion of injuries of citizens after these instruments have been applied. In order to substantiate their statements, the Police prepared a special table (see section relating to Article 13 of the UN Convention against Torture).

59. The findings of the Human Rights Ombudsman of the Republic of Slovenia are used by the Police Academy in its education process.

Education and training of medical staff and other civilian staff

60. Numerous actions and programmes take place in Slovenia in the field of public awareness raising aimed at destigmatising the disabled, which are carried out by the NGOs and the public sector; however, they are not linked and are thus uncoordinated. Due to the inadequate organisation, the result of the endeavours is not as positive as it could be. The Government Office for the Disabled and Chronically Sick of the Republic of Slovenia (which falls within the scope of the Ministry of Health since the 2004 reorganisation of state administration) thus published a series of brochures within the *Lastovka* project (The Swallow), the main purpose of which was public awareness raising and destigmatisation of the disabled; the brochures comprise data on the functioning of all entities in the field.

61. The rights of the chronically sick and persons having the status of the disabled in the framework of the Slovenian legislation are provided for in more than 85 acts and implementing regulations, which makes them in transparent. Therefore, the above mentioned Government Office for the Disabled and Chronically Sick and the Government Public Relations and Media Office issued a Guide to the Rights of the Disabled in 2002, which provides a clear guidance to the relevant regulations and institutions and is available online.

62. In addition, the Ministry of Health indirectly supports the activities of awareness raising and promotion of the rights of all sick persons, including persons with mental disorders, by co-financing actions and projects of various actors, among which NGOs prevail, which take part in the Ministry's calls for applications. The Ministry of Family, Labour and Social Affairs drafted the Vocational Rehabilitation and Employment of Disabled Persons Act, which entered into force in June 2004. The Act regulates employment of the disabled and has introduced new forms of their employment.

Articles 11 and 12

General

63. As regards the recent findings and recommendations of the Committee against Torture, which were submitted to the Slovenian Government in May 2003, on the improvement of police interrogation methods in line with the Convention against Torture, representatives of the Slovenian Police say that they have drafted a document entitled *Policijsko zaslihanje - začasni priročnik* (Police interrogation - provisional handbook), which is published on the intranet of the Police, under internal documents section, and thus available to all police officers.

64. It should be particularly stressed that in 2003 the Slovenian Criminal Procedure Act was amended¹⁰ in a way that allows the Police to obtain the possibility to interrogate the suspect and prepare the record, which can be used as evidence at the main hearing. The following three paragraphs were added to Article 148:

“(4) When in the course of information gathering the police establish that there are grounds to suspect that a particular person (the suspect) has perpetrated or participated in the perpetration of a criminal offence, they shall inform that person, before starting to gather information from him, what criminal offence he is suspected of and the grounds for suspicion, and shall instruct him that he is not obliged to give any statement or answer questions and that, if he intends to plead his case, he is not obliged to incriminate himself or his close relatives or to confess guilt, that he is entitled to have a counsel of his choosing present at his interrogation, and that whatever he declares may be used against him in the trial.

(5) If the suspect declares that he wants to retain counsel, the interrogation shall be put off until the arrival of the counsel or until the time determined by the police which, nevertheless, may not be shorter than two hours. Other acts of investigation, except for those which it would be unsafe to delay, shall also be put off until the arrival of the counsel. The interrogation of the suspect shall be conducted according to the provisions of Article 148.a of this Act.

(6) If the suspect states that he does not want to retain counsel or the counsel does not arrive until the time determined by the police, an official note of the statement of the suspect shall be made. The note shall include the legal instruction given, the statement of the suspect and, in the event that the suspect wants to declare himself on the offence, the essence of his statement and comments thereon. The official note shall be read to the suspect and a copy thereof shall be delivered to him; the suspect shall acknowledge the receipt of the copy by his signature. The statement of the suspect may be recorded by a sound and picture recording device after the recording has been announced to the suspect.”

¹⁰ ZKP-E, Official Gazette. RS, 56-2770/2003.

Furthermore, Article 148a was added, which reads as follows:

“(1) The interrogation of the suspect may only be conducted in the presence of the defence counsel. The interrogation may be attended by the state prosecutor and he shall be properly informed thereon by the police.

(2) The interrogation of the suspect shall be conducted by the police according to the provisions of this Act applying to the interrogation of the defendant (Articles 227 to 233). The record of the interrogation shall be drawn up according to the provisions of Articles 79 to 82 of this Act. This record may be used as evidence in criminal proceedings. The interrogation of the suspect may be recorded by a sound and picture recording device after the recording has been announced to the suspect.

(3) If the suspect has not been informed of his rights under the fourth paragraph of the preceding Article, or the instruction and the statement of the suspect in respect of his right to defence counsel have not been noted down in the record, or the suspect was interrogated without his counsel being present, or the interrogation was conducted contrary to the provisions of Article 227, paragraph 8 of this Act, the court may not base its decision on the statement of the suspect.”

65. As regards the treatment of detainees, detention facilities were particularly problematic in Slovenia in the past. In 2002, the Ministry of the Interior produced new norms for the construction, adaptation and furnishing of the detention facilities, which follow the recommendations of the CPT and Human Rights Ombudsman. Detention facilities, where security and health conditions for living are not ensured, are no longer used by the police. Certain buildings only deviate from the set standards as far as equipment of detention facilities and daylight are concerned. All these deficiencies are in the process of elimination through construction and technical adaptation. During the last three years, 33 detention rooms were renovated at the Slovenian police stations:

PS Sežana	2 rooms
PS Nova Gorica	5 rooms
PS Postojna	3 rooms
PS Maribor	3 rooms
PS Celje	2 rooms
PS Velenje	2 rooms
PS Novo mesto	2 rooms
PS Dravograd	4 rooms
PS Tržič	2 rooms
PS Lj. Vič	2 rooms
PS Idrija	2 rooms
PS Bežigrad	2 rooms
PS Krško	2 rooms

66. In addition to the above adaptation, new detention facilities were built along with the construction of police stations in Ptuj (6 detention rooms) and Ljubljana Moste (20 detention rooms); another detention facility is under construction in Murska Sobota (6 detention rooms). Renovation of detention facilities at three police stations was foreseen for 2006.

67. Moreover, by the end of 2007 approx. 50 detention rooms will be built or renovated along with the construction or adaptation of police unit facilities due to the establishment of the Schengen border.

68. Some patients at psychiatric hospitals faced a similar problem (inadequate living conditions). In 2001, Psychiatric hospital Ormož and Psychiatric ward of the General Hospital Maribor (Pohorski dvor) received a visit by the Commission of the European Committee against Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe. As regards the latter, the Commission expressed *a number of comments concerning the living conditions and the condition of rooms, shared facilities and bathrooms, as the Psychiatric ward was located in an old castle, which could not provide adequate living conditions and was in addition too small to cover all needs.*

69. In 2004, Psychiatric ward of the General hospital Maribor was moved from Pohorski dvor (12 km away) to the new premises near General hospital Maribor. This resolved not only the living conditions issue but also the marginalisation problem as the ward is now located in the immediate vicinity of the city centre. It is consequently easier to maintain contacts with family and others and, what is more, it is now possible to carry out laboratory and radiological checks or expert medical board examinations in a much shorter period of time. The level of care is now equal to that at other wards of the General hospital Maribor and this Psychiatry ward today is one of the best institutions of the kind in a broader Central European area.

70. In its letter No 925-1/01-UK-1 of 23 June 2003 sent to all psychiatric hospitals and to the Extended professional board for psychiatry, the Ministry of Health - in connection with the 2001 visit by the CPT Committee - pointed to Slovenia's commitment to respect human rights in line with the European guidelines and to the fact that the European Union may send its inspection service to any EU Member State in order to establish the factual situation. In this letter, the Ministry requested the Extended professional board for psychiatry and the psychiatric hospitals and wards to draft - using equal methodology - a brochure on the rights of the mentally ill, which would include the presentation of each individual institution or ward, all health care programmes and perhaps even a list of other forms of protection and assistance at disposal. The letter also contains an instruction that CPT comments should be respected, particularly those relating to special protection measures in psychiatry.

Detention in practice and statistics

71. Nobody died in police detention in the reference period. Criminal offence suspect in custody at the Tržič Police Station tore a bed sheet and tied it to the ceiling light. This was noticed on the video monitoring system by a police officer, who immediately ran to the detention room to prevent the hanging.

72. 7,276 persons were detained in 2005 compared to 8,886 in 2004, which constitutes an 18.1% decrease. 3,682 (3,306) persons were detained due to criminal offences, which constitutes an 11.4% increase compared to 2004; to prevent the continuation of minor offences or for other reasons, 3,594 (5,580) persons were detained, which is by a 35.6% less than in 2004.

Table 1

Persons detained under the Police Act, Minor Offences Act and Criminal Procedure Act in the period 2003-2005¹¹

Detention time	2003	2004	2005
Up to 24 hrs (43/1 ZPol)	11	39	98
Up to 48 hrs (43/2 ZPol)	623	585	573
Up to 12 hrs (108/2 ZP)	2 860	2 583	2 219
Up to 24 hrs (109/2 ZP)	2 629	2 373	-
Up to 12 hrs (110/2 Art. ZP-1)*	-	-	704
Up to 6 hrs (157/2 ZKP)	1 814	1 951	2 087
Up to 48 hrs (157/2 ZKP)	1 333	1 355	1 595

* Enforcement of new law on minor offences.

Table 2

Professional and general supervision of detention, conducted by the General Police Directorate

Year	Number of prof. supervisions	Number of gen. supervisions
2003	2	2
2004	2	2
2005	2	2

In addition to the supervisions in the above table, police directorates carried out 21 general supervisions in 2003, 24 in 2004 and 25 in 2005. In the reference period, one person died during the procedure of compulsory production.

73. On 21 April 2004, on the basis of court's decision, police officers intended to ensure compulsory attendance of the defendant at the main hearing. When police officers entered his apartment, the defendant started shooting and hurt two of them. The police officer fired in self defence several shots at the defendant, which resulted in the latter's fatal injuries. The inspection of the scene was carried out by the investigating judge of the District Court in Ljubljana. After information and evidence were collected, criminal police filed a report with the competent State Prosecutor's Office.

74. The Police possess the following statistics regarding serious consequences of the exercise of police powers (the Police submitted data for years 2003, 2004 and 2005):

¹¹ Source: Annual reports by the Police for 2003-2005 (available online on www.policija.si).

Table 3
Consequences of the exercise of police powers

Year	Police Officers		Persons in procedure	
	Serious bodily injury	Death	Serious bodily injury	Death
2003	2	0	2	0
2004	2	0	2	1
2005	1	0	2	0
Total	5	0	6	1

75. As regards formal measures in such cases, police representatives explain that investigation and other acts are taken, which are provided for in the Criminal Procedure Act (inspection of the place of the incident, collecting information, seizure of items, expert opinions, house and personal search, etc.). In compliance with the provisions of the Criminal Procedure Act, the state prosecutor - who manages and directs the pre-trial criminal procedure - is informed about the established facts and circumstances in a report or crime report. The competent State Prosecutor is informed of fatalities in exercising police powers, and inspection of the place of the incident is carried out by the investigating judge. The Rules on Police Powers stipulate: If a police officer shoots a warning shot or uses firearms or instruments of restraint and this results in aggravated or grievous bodily harm, or when instruments of restraint were used against five or more persons - except for tying and handcuffing devices - ,the Director General of the Police or the Director of the Police Directorate in which the police officer who used instruments of restraint worked, designates a minimum three-member commission to investigate the circumstances surrounding the use of instruments of restraint, draft a record and give its opinion whether the use of instruments of restraint was lawful and professional. The use is assessed by the person, who designated the Commission. If the use of instruments of restraint resulted in a fatal injury, the commission must be designated by the Director General of the Police or their deputy. Heads of the two organisational units of the Police can also designate a commission for the investigation of other cases of the use of instruments of restraint.

76. The Police keep a record of crime reports filed against police officers with the State Prosecutor's Office. The data for the reference period are the following:

Table 4
Crime reports filed against police officers with the State Prosecutor's Office

Criminal offence	2003	2004	2005
Unlawful deprivation of liberty	3	1	/
Unauthorised personal search	2	/	/
Abuse of personal data	1	4	10
Abuse of office or official rights	12	20	8
Misconduct in office	2	2	/
Unauthorised use at work	/	2	/
Counterfeiting or destroying official documents, books or files	3	4	3
Disclosing official secret	/	4	/
Bribe taking	/	/	1
Illegal intervention	3	1	/
Violation of human dignity by abusing office or official rights	15	10	10
Extorting a statement	2	1	/

Supervision of work in psychiatric hospitals¹²

77. In the last four years, there were four death cases at the University Psychiatric Hospital Ljubljana, when death was proclaimed a suicide; the cases were immediately reported to the Police and/or the investigating judge. In all cases, the Hospital also carried out internal professional supervision, which concluded that the patients received appropriate medical treatment and that their suicides could not have been prevented.

78. In the last four years, the Human Rights Ombudsman paid one visit to the University Psychiatric Hospital Ljubljana; there were no international or foreign inspections during this period.

79. Other psychiatric hospitals reported up to two cases of suicide annually. All such cases were immediately reported to the Police and/or the investigating judge. It was established in each case that suicide was not a result of a criminal offence or inappropriate or negligent treatment.

80. In 2004, the Human Rights Ombudsman received 22 petitions of persons confined in psychiatric hospitals or social welfare institutions. He also dealt with the complaint of a petitioner who asked for assistance to “leave” the Hrastovec-Trate Institute for the Mentally and Nervously Ill. Owing to its exceptional illustration of issues faced by Slovenia in monitoring and implementing regulations in the field of mental health, and which are potentially relevant even within the scope of the UN Convention against Torture, the report on this case is summarised in its entirety.¹³

81. “After the intervention, the Lenart Local Court communicated that the confinement procedure of the complainant was carried out ‘in compliance with legal provisions’. As the information collected raised doubts as to the justification of such a conclusion, we examined the non-litigious court record of the complainant’s confinement case [and] established that the court was notified of confinement on 11 February 2004. In confinement procedure, the court must without delay and in three days after receiving the notification of confinement visit the person confined at the institution and examine him/her. In the complainant’s case, the statutory time limit of three days expired on 14 February 2004; it is evident from the court record that the visit was made only on 25 February 2004. When we pointed to the violation of the statutory time limit, the judge dealing with the case sent us a photocopy of her ‘personal notes’ of 11 February 2004, which show that the visit was made on the day when the court received the notification of confinement.

82. The court record must include all documentation and material related to the processing and adjudication in the procedure. The court record must also contain all minutes (also potential official notes) on any procedural act of the court. The court may rule on the case only on the basis of material contained in the court record. It may be concluded from the ‘minutes on forensic examination of the confined patient’ in the court record that it is based on a text drawn

¹² See also the *section relating to Article 13 of the UN Convention against Torture*.

¹³ Pp. 35-36 of the report.

up in advance. The minutes include a section according to which the doctor introduces the person under examination to the court. However, the section is empty, which shows that this did not occur. The minutes also show that the court expert provides expert opinion after examining the confined person and the medical staff of the institution, although the content of the minutes does not show any such activities taking place at the hearing. The minutes of the hearing only show that the evidence was taken by the court by examining a court expert psychiatrist who put his expert findings and opinion on record.

83. According to Article 74 of the Non-litigious Civil Procedure Act, the court must examine the confined person, unless the examination could have adverse effects on his/her health or if his/her health condition does not permit it. The Act requires this so that the judge might form his/her own opinion on the state of the confined person. The court must enable the confined person in any case to give a statement in the procedure and at the same time take into account and assess all his/her legally relevant statements when deciding on further confinement. The patient has the right to actively participate in the procedure and defend his/her rights. The court register contains no mention of the court having examined the patient or having given him/her the possibility to make a statement. The court did appoint a defence counsel, whose participation in the procedure was limited to the mere presence - as may be concluded from the record.

84. In a confinement procedure, the court must issue a confinement decision without delay, and within 30 days following the receipt of notification of confinement at the latest. In the complainant's case, the court received the notification of confinement on 11 February 2004, while the confinement decision was dated 16 March 2004. This shows that the statutory time limit for the issue of the confinement decision was exceeded, although the court concluded the procedural acts (as evident from the data in the court register) by a hearing on 25 February 2004.

85. The confinement decision contains no date (time) of the beginning of confinement in a social welfare institution. Only the time of confinement has been specified, which equals the statutory maximum (one year). It is therefore unclear when the one-year time limit begins and when it ends. The date of issue of the decision might give rise to the assumption that the confinement was ordered for a period of one year, starting on 16 March 2004, i.e. until 16 March 2005. However, given such understanding of the decision, it cannot be overlooked that the complainant was confined as of 9 February 2004. This would mean that the decision of 16 March 2004 actually provides for a confinement longer than the prescribed maximum statutory time limit.

86. The grounds of the confinement decision raise particular concern. These are very modest and contain no facts required for a legally permissible confinement. The first paragraph of the grounds concludes that mental disorder of the patient is considered as proven." At this point, it should be explained that mental disorder or the fact that it might be proven by no means meets the legal conditions for involuntary confinement. In the second paragraph, the grounds for the confinement decision only state that all conditions have been met under Article 70 of the Non-litigious Civil Procedure Act that stipulates "regarding the confinement of persons, the decision is thus justified". The confinement decision with such standard grounds contains no reasons regarding the key facts and cannot be tested."

87. It must be particularly underlined that the Constitutional Court of the Republic of Slovenia carried out some interventions in the reference period in the Slovenian legislation governing the confinement of persons in psychiatric institutions. Ruling U-I-60/03 annuls the Non-litigious Civil Procedure Act Official Gazette. SRS, No. 30/86 and RS, No. 87/02), Articles 70-81 of the Health Services Act (Official Gazette RS, No. 9/92, 37/95, 8/96, 90/99, 31/2000 and 45/01), Article 47, indent 6; Article 48; Article 49, paragraph 1; Article 51, paragraph 4 in the part relating to psychiatric treatment following involuntary confinement. The most relevant part of the ruling for the present report is quoted below:

88. The Human Rights Ombudsman expressed his concern regarding the actions of the court in the period following the issue of the decision of the Constitutional Court No. U-I 60/ 03-20 of 1 December 2003, which annulled the articles of the Non-litigious Civil Procedure Act regulating the conditions for and the procedure of involuntary hospitalisation of persons with mental disorders due to their non-conformity with the Constitution of the Republic of Slovenia. He established that in several cases, courts appointed no counsel ex officio for the confined person when instituting confinement procedure. He also pointed to the case when the same person defended 600 cases of confinement and detention in one year.

89. The provisions of Articles 70–81 of the Non-litigious Civil Procedure Act (Official Gazette SRS, No. 30/86 and Ur. l. RS, No. 87/02) are in non-conformity with the Constitution for reasons set out in the statement of grounds of this decision. Article 47, indent 6; Article 48; Article 49, paragraph 1 and Article 51, paragraph 4 of the Health Services Act (Official Gazette RS, No. 9/92, 37/95, 8/96, 90/99, 31/2000 and 45/01) are in conformity with the Constitution. The National Assembly must remedy the non-conformity under Item 1 of the operative part of the decision within six months as of the publication of the decision in the Official Gazette of the Republic of Slovenia. Until the non-conformity under Item 1 of the operative part of the decision has been remedied, the following must be provided in the procedure for the confinement of persons in psychiatric institutions: - the involuntarily confined person must be appointed a defence counsel ex officio when instituting the procedure; - the notification of confinement, which the authorised person of the health organisation must submit to the court, must also contain reasons justifying confinement.

90. Involuntary confinement in the closed ward of a psychiatric hospital constitutes a severe infringement of human rights and fundamental freedoms of a patient, particularly the right to personal liberty (Article 19, paragraph 1 of the Constitution) and the inviolability of the physical and mental integrity of every person (Article 35 of the Constitution), the right to voluntary health care (Article 51, paragraph 3, guaranteeing both the right to health care and the right to refuse it). The purpose of legal provisions is to regulate involuntary hospitalization of persons with mental disorders in closed wards of psychiatric hospitals in such a way as to ensure effective implementation of the legitimate purpose justifying such a measure (i.e. averting the risk caused by a patient's condition either to others or to himself/herself and the elimination of reasons causing this risk); at the same time, the respect for human rights and fundamental freedoms of patients should be provided in compliance with international standards of human rights protection and taking into account adequate solutions in comparable modern European legislations.

91. Involuntary confinement in a closed ward of a psychiatric hospital constitutes a measure to be used only in cases when risk cannot be averted with other measures outside (the closed ward) of a psychiatric hospital. As the legislator proposed to the courts no other measures than the ordering of confinement in a closed ward of a psychiatric hospital, it thereby violated Article 2 of the Constitution and infringed personal liberty provided for in Article 19, paragraph 1 of the Constitution. The mental patient must be explained, in an adequate manner, the reasons for which he/she has been committed to the psychiatric hospital. In addition, he/she must also be informed of his/her rights to legal aid and a counsel, which he/she may choose freely.

92. One of the fundamental rights to be guaranteed to every involuntarily hospitalized mental patient is the right to judicial protection regarding the legality of confinement. According to the Constitutional Court, the legislator should lay down deadlines of adequate length, as only an expeditious court supervision regarding the legality of confinement can guarantee effective protection of patients' rights.

93. The notification of confinement must contain details of the patient, his/her health condition and of the person who brought him/her to the medical institution. It is not explicitly defined by statute that the notification should also contain reasons that required the measure of involuntary confinement in a patient's case. Only on the basis of these reasons may the court decide whether in a certain case involuntary confinement was really necessary (*ultima ratio*). In view of the above, the Constitutional Court estimates that the challenged statutory regulation is in non-conformity with the right to (effective) judicial protection provided under Article 23, paragraph 1 of the Constitution.

94. A patient who cannot understand and exercise his/her rights in the procedure must be provided with adequate representation, which will effectively protect his/her rights and interests. As the challenged provisions of the Non-litigious Civil Procedure Act fail to provide for this, they are not in conformity with Articles 22 and 25 of the Constitution.

95. The measure of involuntary confinement of a patient in a psychiatric hospital is logically connected with treatment (therefore, it is carried out in a hospital). Its purpose is also to remove the reasons that called for this measure. The confinement of a patient in a psychiatric hospital therefore includes certain forms of treatment, which result from the very purpose and nature of the measure. Nevertheless, this cannot imply unlimited authorisation to carry out treatment of any type without adequate external supervision.

96. The legislator should, on the one hand, define those measures of treatment deriving from the very purpose and nature of the measure of involuntary confinement and bearing a logical connection with it; on the other hand, however, the legislator should define the measures of treatment beyond this scope and requiring explicit consent of a patient.

97. According to the Constitutional Court, legal confusion regarding the situation and rights of a patient during confinement in a psychiatric hospital constitutes an unconstitutional legal void which is not in conformity with the principle of legal security (Article 2 of the Constitution). The challenged statutory regulation is also in non-conformity with Article 51, paragraph 3 of the Constitution, which stipulates that no one may be compelled to undergo medical treatment except in cases provided by law.

98. Owing to the protection of patients' rights, the legislator ought to clearly define cases and conditions under which coercive and restraint measures are permissible. In addition, a certain form of supervision (supervisory mechanisms) of the application of such measures should be provided for.

99. As the Constitutional Court established that the Non-litigious Civil Procedure Act fails to regulate some important issues relating to involuntary confinement of persons in closed wards of psychiatric hospitals, it concluded, in compliance with the provision of Article 48 of the Constitutional Court Act, the unconstitutionality of provisions of Articles 70-81 of the Non-litigious Civil Procedure Act.

100. The following provisions of the Health Services Act are in conformity with the Constitution:

(a) Referral and admission for treatment in a psychiatric hospital even without the consent of the patient (Article 49, paragraph 1 of the Health Services Act), as the conditions laid down in this article are intended only for doctor's consideration. On the basis of objective health standards, he establishes the existence of mental disorder and, from the aspect of medical profession, assesses the risk of the patient either to others or to himself/herself. The question whether the nature of a mental disorder requires the restriction of freedom of movement of the patient and of his/her contact with the outside world is subject to legal assessment carried out by the court on the basis of the provision of Article 70 of the Non-litigious Civil Procedure Act; - Limited access to medical documents (Article 47, indent 6 of the Health Services Act): limited right of access to medical records must be considered as an exception applied only in urgent (exceptional) cases. As a rule, a doctor must always and unconditionally grant a patient access to all objective and original medical documents at his/her request and also enable the patient to copy the data. In exceptional cases, a doctor may limit or refuse access to his personal notes and assessments in the documents if release of the health documents would have an injurious influence on the patient's treatment or the relationship between the patient and the doctor. It is essential that a patient may in the case of dispute with the doctor assert his right to access health documents in court (in administrative dispute). - Emergency medical intervention without prior consent of the patient (Article 48 of the Health Services Act), when a patient's health condition does not allow him/her to declare his/her legally relevant will, and when medical intervention is urgent. In cases of emergency, a doctor must act in such a way as to save a patient's life;

(b) The competence of a doctor treating a patient for releasing information on the health condition of a patient to his/her closest relatives or guardians (Article 51, paragraph 4 of the Health Services Act: anyone can request that medical professionals and their colleagues release no data on their health condition without their explicit consent (not even to the closest relatives).

Lengthy adoption of legislation governing mental health

101. As already reported in previous regular reports of the Republic of Slovenia to the Committee against Torture, Slovenian legislation on mental health is being adopted at a very slow pace and is burdened with numerous procedural difficulties. The expert group of the Ministry of Health drew up the first draft law on mental health already in 1997. The draft has already been dealt with at the expert level. The proposed law on counselling and protection of rights in the field of mental health was submitted to the legislative procedure by a National

Assembly deputy on 25 November 1998. The proposed text differed from the draft drawn up by the Ministry of Health and regulated a narrower area. The Slovenian National Assembly carried out the first reading of the proposed law at its session of 22 March 2000 and adopted a decision stipulating that “the proposed law be prepared for the second reading by the proposer in cooperation with the Slovenian Government”.

102. The Minister of Health issued on 10 October 2001 a Decision on the appointment of a Committee for preparing amendments to the proposed law for the second reading and on 26 April 2002 forwarded to the proposer comments on the content of the proposed law and the procedures for its implementation. Furthermore, a joint meeting was proposed to harmonise the proposed text for the second reading at the National Assembly. According to the regulations on legislative procedure, the Minister of Health and/or the Government of the Republic of Slovenia cannot share the role of proposer of a law with a deputy or another proposer. Furthermore, the Government or another proposer cannot submit to legislative procedure another proposed law on the same issue, until the procedure of the already submitted proposed law has been concluded. Therefore, talks were held between the Ministry of Health and the deputy proposer for the latter to withdraw his proposal and the Slovenian Government to assume his role. However, this did not happen, the deputy proposer neither withdrew the proposal nor did he submit the proposed law to the National Assembly for the second reading, i.e. for further legislative procedure.

103. After the elections to the National Assembly in October 2004, conditions were provided enabling the competent ministry and/or the Slovenian Government to submit a new proposed law on mental health.

104. On 18 April 2003, the Government established a 28-member Government Committee on mental health (hereinafter: the Committee) as the highest professional body at the national level including both representatives of state and local administration and representatives of the profession as well as several non-governmental organisations (users, relatives and service providers).

105. The Ministry of Health desired to draft a new proposed law on mental health, therefore a commission was established on 19 July 2004 composed of representatives of ministries, experts and service providers. The commission operated until 24 January 2005 and held 12 working meetings within this period.

106. On 9 February 2005, an interministerial working group was established for the preparation of working material of the law on mental health; the working group was composed of representatives of the Ministry of Health, Ministry of Justice and Ministry of Labour, Family and Social Affairs.

107. After five working meetings, the working group submitted the material to the Committee for consideration on 10 March 2005. The Committee appointed a working group at its session, which formulated a draft opinion after four working meetings. The Committee presented the opinion to the Ministry of Health on 3 June 2005.

108. On 27 September 2005, a representative of the profession and a representative of the family joined the interministerial working group at the proposal of the Committee on mental health. The interministerial working group drew up the proposed law by 6 December 2005.

109. On 15 December 2005, the Ministry of Health again called on the Committee on mental health to present its opinion and on 12 January 2006; the proposed law was upheld by the Committee, which however gave some minor recommendations that were taken into account by the Ministry. The working group is intensively dealing with the proposed law on mental health, which should also define all procedures regarding the limitation or protection of human rights, the right to defence counsel and the right to an independent life counsellor. The proposed law also provides the legal basis for drafting a special national programme on mental health.

110. The interministerial working group held 12 working meetings. When drafting the proposed law, the interministerial working group also took into account the decision of the Constitutional Court of the Republic of Slovenia (U-I-60/03-20, Official Gazette RS, No. 131/03), in which the Constitutional Court established that the provisions of the Non-litigious Civil Procedure Act governing compulsory hospitalisation of mental patients in psychiatric hospitals are not in conformity with the Constitution of the Republic of Slovenia. Such wording of the proposed law also includes provisions regulating anew the procedure for the confinement of mental patients in psychiatric hospitals and social welfare institutions as well as the right of a patient to defence counsel in all procedures, whereas in court proceedings, the proposed law maintains the right of a mental patient as a duty, which means that a patient must be assigned a counsel by the court *ex officio* unless he/she chooses one himself/herself.

111. The proposed law on the protection of rights of mental patients is being harmonised between the ministries, which will be followed by a public presentation. According to the Ministry of Health, the proposed law will also be considered by the Government and submitted to the National Assembly in the first half of this year.

The Ombudsman's control of disciplinary procedures against police officers

112. In his regular annual report for 2003, the Ombudsman points to the regular practice of insufficient or untimely disciplinary procedures against police officers. He particularly underlines the notification of the Postojna Police Directorate that no disciplinary procedure was instituted against their police officer "as criminal complaint was filed and, in agreement with the prosecutor, they were waiting for the existence of elements of criminal offence to be established and consequently for further action of the prosecutor". According to the Ombudsman, the statutory definition of disciplinary infringements and criminal offence, respectively is not the same; therefore, such delays have no legal basis in Slovenia. In the relevant report, the Ombudsman particularly underlines¹⁴ that delays and untimely institution of disciplinary procedures may result in limitation (according to Article 128 of the applicable Civil Servants Act, the institution of disciplinary proceedings for minor disciplinary violations shall lapse in one month after the date of discovery of minor disciplinary violation and the perpetrator, or in three months after the date the disciplinary violation was committed). Thus, the Ombudsman believes that the Celje Police Directorate in the specific case provided an unconvincing explanation stating that the police officer's case became statute-barred, as he was not served the written decision on the institution of disciplinary procedure in time.

¹⁴ P. 54 of the report.

113. As a case of ineffective examination of a complaint on the grounds of rough treatment by a police officer, the Ombudsman in his 2003 regular annual report particularly underlined the complaint of a citizen against the actions of the police, stating that a police officer had “pulled” him from his bicycle and “pushed him roughly against the police vehicle”. The complainant thereby sustained a “slashed lip and a broken tooth”, and these injuries were also evident from the medical certificate. The Ombudsman points to the fact that the Police do not deny these bodily injuries; they however state that the complainant had allegedly injured himself by hitting his head against the police vehicle. After examining the event, the Police established that the statement of the complainant and that of police officers regarding the way in which injuries had been sustained were conflicting, therefore “the Ljubljana Police Directorate could neither confirm nor deny them. Due to conflicting statements [...] and in absence of independent witnesses, the Ljubljana Police Directorate was unable to establish the factual situation and the police officer could not be punished”,¹⁵ which the Ombudsman considers to be a classic example of inefficient control over the work of the Police. He supports this by the following arguments included in the quoted report: “It cannot be excluded that the police officer also has an interest to describe the situation differently. Therefore, the Ombudsman believes that the Police may conclude the case by explaining that the factual situation could not be established due to conflicting statements of the involved parties; this can only be accepted in cases when all other options have been exhausted and when experience and logic yield no other result. Examination of the [file of the Ljubljana Police Directorate relating to the complaint] raised some doubts that the establishing of the factual situation and assessment of the entire case had not been as perfect and comprehensive as it could have been: According to the description of the act, which is an integral part of the proposal to institute infringement proceedings, the complainant shouted, whimpered, and (thus) attracted the attention of passers-by, which may be understood as a confirmation of the Police statement that the event was observed by at least a few unaffected witnesses. However, the Police failed to provide the name of a single witness of the event. It might be expected that the Police, after establishing that the complainant had injured himself by hitting against the vehicle, would protect itself by taking down the details of at least a few witnesses who might confirm its statement. However, there was no evidence of any witnesses, when these should have been called forth to confirm the statement on self-injury. The police officers’ statements in the proposal for instituting infringement proceedings to the effect that the procedure with the complainant and his self-injury was observed by several witnesses lose credibility by having failed to secure evidence and note down the details of these persons. According to the minutes of the session of the panel for resolving complaints, the panel did not confirm the complainant’s statements on sustaining injuries to his head during the use of instruments of restraint. The panel does not provide any explanation or grounds for its failing to confirm the complainant’s statements in the minutes. Nevertheless, the panel at the same time establishes that the police officer used instruments of restraint against the complainant. In the minutes, the complainant’s statement that he had sustained an injury as a result of (illegal) action of police officers is given very little attention. This decisive circumstance is only mentioned in one sentence stating that the complainant’s statement has not been confirmed. Much more space is devoted to the refund of travel expenses for members of the panel. In the proceedings, there was no confrontation between the two police officers and the complainant. It is hard to believe

¹⁵ P. 60 of the report.

that a reasonable person would cause himself a severe injury such as a broken tooth, even if he wanted to show the Police in a negative light. In the report submitted by the Police on the basis of Article 148 of the Criminal Procedure Act to the District State Prosecutor's Office, the complainant's statement, which is essential for the case, is not assessed, presented or at least recorded; according to the statement, he was "roughly pushed against the side of the police vehicle" by a police officer, and as a result sustained a slashed lip and a broken tooth. The report only states that the complainant "suddenly hit the police vehicle with his head and thereby injured his lower lip and broke a tooth". In the report, this text is formulated in such a way as to present the event as self-injury of the complainant". The Ombudsman concludes the presented case by a comment that in all cases when the Police cannot plausibly and sensibly explain the injuries sustained by a person dealt with in a procedure, the responsibility for the resulting state must be attributed to the Police. The excuse of self-injury in the police procedure of the person dealt with might otherwise become a too frequent conclusion in other similar cases. Representatives of the Slovenian Police explain that a new Article 75 of the Rules on Police Powers was added, stipulating that in case the use of instruments of restraint results in injury, the injured person must be immediately provided first aid or medical care. If the injured person remains in a medical institution for treatment, a police officer must inform his family. Amendments regarding the provision of medical care to a detainee were described in detail on pages 4 and 5 (ad Article 2 of the UN Convention against Torture). Together with constitutional rights of the person deprived of liberty to defence counsel and to informing the family, thus mechanisms have been set up to prevent and establish potential maltreatment of detainees. On the basis of adopted recommendations of the Slovenian National Assembly to the Slovenian Government relating to the consideration of Ombudsman's annual report, the General Police Directorate issued a warning to all police units to consistently and timely institute disciplinary procedure against police officers which allegedly exceeded their powers in performing their tasks.

114. In the reference period, Slovenia continues to deal with court backlogs, which threaten the human right to legal protection (trial without undue delay), also in criminal proceedings.¹⁶ As already mentioned above, in the section examining the status regarding Article 1 of the Convention against Torture, judicial and executive authorities are trying to reduce or eliminate court backlogs through various projects, (Hercules, Lukenda). However, owing to the complex nature of these issues, particularly the reasons for backlogs, there can be no instant success.

Concrete case

115. On 27 February 2006, during the final drafting of this report, Slovenian e-media and later also the press reported on the case of a suspect of the criminal offence of atrocious murder (a young woman was found tied and with slashed throat, with the first clues on the body indicating sexual violence), who was apprehended in a spectacular police action during an attempt to escape. The suspect has just finished serving a long prison sentence for a similar criminal offence and the public was very upset about the possibly repeated criminal offence. The

¹⁶ For such a statement, see almost any annual report of the Human Rights Ombudsman of the Republic of Slovenia, for the last one (2004 report), see page 9.

suspect was ordered detention by the investigating judge; however, already within the next hours, the e-media reported that he was taken to hospital for emergency medical care due to bodily injuries sustained in detention by one or more other detainees. According to the media, the state failed to provide sufficient protection for his personal safety, therefore the case is relevant for this report, particularly as regards the control over the implementation of regulations that should guarantee an individual the protection from torture owing to the passivity of the state - insufficiency or absence of its control mechanisms.

Article 13

Complaints against police conduct

116. The complaint procedure is a legal procedure independent from other legal procedures. It is defined in Article 28 of the Police Act. This Article was amended on 15 July 2003. On the basis of this amendment, the Minister of the Interior also approved the new Rules for resolving complaints which have been implemented as of 27 February 2004.

117. The statutory time limit for filing a complaint (which may be filed in writing, orally or in the electronic form) with the Ministry or any other organisational unit of the Police) is 30 days from the date of conclusion of the procedure, or the moment when the complainant became aware of the alleged violations of his rights and freedoms by a police officer. The complaint procedure is usually conducted and concluded prior to other legal procedures in the same matter (criminal, disciplinary, indemnity, minor violations procedure...). The complaint procedure has no direct influence on other procedures and vice versa. It happens in practice however that courts and prosecutors' offices require documents supporting the complaint and use them in resolving cases. In the complaint procedure, liability of the police officer is not established. Other procedures are intended for this purpose. Democratic public control over the Police work is exercised through participation of the public in the complaint procedure.

118. In comparison to the previously applicable procedure, the new complaint procedure transfers the decision-making to the panel outside the Police. The panel is composed of an authorised person of the Ministry of the Interior and two representatives of the public. The panel decides with a majority of votes. With the modification of the complaint procedure, any doubt as to the fairness of the procedure has been eliminated by impartial processing and objective decision-making. The primary role in dealing with the complaint and above all in the decision-making has been transferred to a body outside the Police.

119. The following organisations and actors were invited to and participated in the formulation of the new complaint procedure: organisations of the civil society, expert public, the Police Trade Unions and non-governmental organisations, e.g. international non-governmental organisation Amnesty International - Slovenia and the Human Rights Ombudsman who commended the proposed solutions and favourably assessed in writing the proposed mode of resolving complaints against police officers prior to the adoption of final solutions.

120. The new complaint procedure has also been considered in the Final Report of the Institute for Comparative Law Studies, Faculty of Law in Ljubljana on the results of a targeted research project Competitiveness of Slovenia 2001 - 2006; the project is entitled Comparative regulation and control of police and security systems (Ljubljana 2004). It is evident from the Report that

statutory solutions (Police Act) relating to the amended procedure of resolving complaints against the police work constitute, in comparison with the previous arrangement, an undoubtedly better foundation for the impartial resolving of complaints independently from the Police and involving representatives of the civil society and the public. The procedure of resolving complaints against police officers is conducted at two levels:

- (a) In the conciliation procedure conducted by the head of the organisational unit;
- (b) Within the panel of the Ministry.

121. In the conciliation procedure conducted by the head of the organisational unit, the latter must check all facts relating to the complaint and invite the complainant to an interview during which he/she is apprised of the findings and measures concerning the complaint. If the complainant agrees with the statements of the head, the complaint procedure may be concluded by signing the minutes. A police officer is also present during the interview with the complainant. It is important that the rules of mediation be applied in the conciliation procedure.

122. If the complainant who has been duly invited to an interview fails to respond to the invitation and does not inform the Police in writing that he/she intends to pursue the procedure, his/her silence shall be considered as a waiver of the complaint, which shall be entered in the minutes on processing the complaint.

123. If the complainant does not agree with the findings of the head or if the complaint gives rise to a suspicion that a criminal offence has been committed which is prosecuted ex officio, the complaint shall be dealt with by a three-member panel composed of a person authorised by the minister and two representatives of the public appointed by the Minister of the Interior at the proposal of civil society organisations, professional public, non-governmental organisations or local communities.

124. In the procedure of resolving the complaint by the panel, the matter shall be first submitted to the person authorised by the minister who shall thoroughly examine it. If he/she finds that the procedure has been duly carried out by the head of the organisational unit and that all questions and dilemmas have been clarified, he/she proposes to the Head of the Complaints Division that the complaint be dealt with without delay by the panel. In this case the head of the organisational unit is a rapporteur at the panel session.

125. If the person authorised by the minister assesses that in order to clarify individual facts and pieces of evidence, additional evidence is required and further activities need to be carried out to clarify the factual situation, or that certain procedures or the entire procedure of verifying the complaint must be repeated, he/she proposes to the head of the relevant organisational unit of the ministry to assign a rapporteur from the ministry or the Police to examine the complaint and draft a report to be considered by the panel. If there is suspicion on the grounds of the complaint of a criminal offence committed by a police officer subject to public prosecution, a rapporteur shall be assigned in any case, who must, as a rule, be a ministry's staff member.

126. The complainant and the police officer against whom the complaint has been filed are also invited in writing to attend the session of the panel. The invitation states that the panel will decide on the complaint even if the two invitees do not take part in the session and that they

themselves shall cover the expenses incurred by their attendance of the panel session. They may present the merits of the complaint at the panel session. Experts in individual fields may also be invited to the panel session, if necessary, in order to clarify certain technical questions. Witnesses to the incident may also be invited as well as other persons that may be able to provide important facts to decide whether the complaint is substantiated. The panel decides by voting whether the complaint is substantiated. The panel takes its decision unanimously or with the majority of votes.

127. In compliance with the decision of the panel, the president of the panel drafts and signs the reply to the complainant in writing giving substantive grounds for the decision. In the conclusion of the reply, the complainant is informed that the complaint procedure has been concluded; the complainant still has all legal and other remedies at disposal to protect his/her rights and freedoms.

Complaints against the use in practice of instruments of restraint by the police and statistics

128. Police statistics show that the number of complaints as a result of the use of the instruments of restraint by the Police is the same and that the number of cases involving injuries of citizens due to the use of such instruments has decreased (see also the section relating to Article 10 of the UN Convention against Torture, above). The following table shows the number of and grounds for complaints by citizens:

Table 5
Complaints of citizens due to the use of instruments of restraint (2003-2005)

	2003				2004				2005*			
	Total	Unfounded	Founded	% of founded	Total	Unfounded	Founded	% of founded	Total	Unfounded	Founded	% of founded
Physical force	69	61	8	11.6	55	51	4	7.3	70	62**	8	11.4
Typing and handcuffing devices	46	45	1	2.2	41	40	1	2.4	46	41***	5	10.9
Gas spray	5	4	1	20	5	4	1	20.0	3	2	1	33.3
Other	4	3	1	25.0	33	29	4	12.1	7	7	0	-
Total	124	113	11	8.9	134	124	10	7.5	126	112	14	11.1

* For 2005, statistics for complaints are shown by persons and not by motives for filing a complaint as in the years 2003 and 2004.

** In four cases there is no evaluation because the procedure under Articles 9 and 12 of the Rules on resolving complaints was concluded before time.

*** In two cases there is no evaluation because the procedure under Articles 9 and 12 of the Rules on resolving complaints was concluded before time.

Table 6

Survey of motives for complaint due to the use of instruments of restraint (2003-2005)

	2003				2004				2005*			
	Total	Unfounded	Founded	% of founded	Total	Unfounded	Founded	% of founded	Total	Unfounded	Founded	% of founded
Instruments of restraint**	124	113	11	8.9	134	124	10	7.5	126	112	14	11.1
Remand in custody	36	32	2	5.75	33	24	2	7.7	26	23	3	11.5

* For 2005, statistics for complaints are shown by persons and not by motives for filing a complaint as in the years 2003 and 2004.

** In 2003 the number of motives for complaint due to the use of instruments of restraint amounted to 124, in 2004 to 134, and in 2005 to 126, or by 6.0 per cent less compared to 2004.

129. The Police report that they have also drafted a new Rules on Police Powers which, according to their statements, are aimed at better protecting human rights and freedoms, and a Catalogue of standards for police procedures. Several technical manuals have also been prepared relating to the use of instruments of restraint to improve the professional work of police officers.

Complaints by psychiatric services users

130. The Ministry of Health of the Republic of Slovenia has received in the last two years less than 10 letters by individuals whose rights have been allegedly violated. An employee of the ministry examines every individual case by calling on alleged violators to respond to charges. According to the ministry's statements, the employee of the ministry seeks a solution or a compromise on a case by case basis.

131. The Ministry of Health points out that the processing of complaints has not been systematically regulated. The ministry has no control over the factual state of complaints and their resolution in individual medical institutions.

132. There are six psychiatric hospitals or wards in Slovenia. All have adopted the rules on the patients' rights and duties, defining the path of complaint which varies only in relation to the size and organisation of individual services or wards of a clinic or psychiatric hospital. The complaint procedure is defined in such a way that it is, as a rule, resolved on the location of the alleged violation of fundamental human or other patients' rights. Patients may only exceptionally use other paths for protecting their rights and may also formally file a complaint with the Ministry of Health, Human Rights Ombudsman or with the relevant court.

133. Example 1 of processing a complaint: The Rules on the patients' rights and duties at the University Psychiatric Hospital Ljubljana:

- (a) "Any individual who believes that his/her rights relating to his/her treatment have been violated may file a complaint, either informally or formally;
- (b) A formal complaint in writing shall as a rule be addressed to the head of the organisational unit. The head is obliged to respond to the complaint within 7 days following its receipt;
- (c) Should the content of the complaint relate to health care, an individual may address it to the director responsible for health care, who is obliged to respond within 7 days. In the event the individual is not satisfied with the decision of the head of the organisational unit or director of health care, he/she may file a written complaint addressed to the Director of the University Psychiatric Hospital who is obliged to decide on the matter within 7 days from the receipt of the complaint;
- (d) Should the complaint relate to the method of treatment, it shall be submitted to the expert team of the organisational unit which shall decide on the complaint within 8 days. The decision must be motivated."

134. Example 2 of processing a complaint: Rules on patients' rights of the Psychiatric Hospital Ormož:

- (a) "Complaints may be made informally (orally) with the treating doctor who shall decide on the matter within 48 hours. In case the complainant does not receive the reply within 48 hours or if he/she is not satisfied with the reply, he may file a complaint with the head of the department or hospital or the person responsible for complaints or with a commission designated by the hospital management;
- (b) A formal complaint in writing shall as a rule be addressed to the head of the organisational unit of the Psychiatric Hospital Ormož. Should the content of the complaint relate to health care, an individual may address it to the principal nurse of the relevant organisational unit. In both cases a reply to the complaint shall be made within 7 days. Should the complainant not be satisfied with the decision, he/she may file a written complaint addressed to the director or principal nurse of the Psychiatric Hospital Ormož who shall decide on the matter within 8 days;
- (c) If a person believes that the method of treatment was not correct, he/she may file a complaint in writing addressed to the Expert Board of the Psychiatric Hospital Ormož;
- (d) If a person believes that his/her human rights have been violated, the method of treatment was not appropriate, or that the conduct of the hospital staff was inappropriate, he/she may file a complaint with the director of the hospital who shall decide on the complaint within 8 days. The decision must be motivated."

Complaints by psychiatric services users in practice

135. In reporting on specific cases, the Ministry of Health has chosen the University Psychiatric Hospital Ljubljana since this is the only hospital of that kind in Slovenia and at the same time also the largest.

136. The University Psychiatric Hospital Ljubljana conducts regular surveys among patients. It is evident from the minutes of the meeting of the Medical Board of the Clinical Psychiatry Department of 24 February 2005 that according to the results of the survey, in which 60 out of approx. 4000 patients took part, one half of patients was satisfied in all respects with the provided care, one half believed that they did not receive enough information on medicines; ten were of the opinion that there was too much food and ten suggested that they should have more contacts with the medical staff. In two cases patients complained about the lack of respect on the part of nurses.

137. On the basis of the above findings a decision was adopted that medical staff should be relieved of administrative work as much as possible in order to enable them to communicate more often with patients. Any complaint (including an informal one) should be considered forthwith.

138. The University Psychiatric Hospital Ljubljana submitted, for the purposes of this report, a typical example of a complaint filed by a patient in 2005 and relating to the performance of duties by a ward nurse:

(a) The patient complained that the ward nurse had given him a smaller ration than to other patients. On another occasion, she disputed with the patient, requiring that he should use the word "release" when referring to going home. It is a term in general use, but the dispute made the patient angry, which the nurse commented by saying that she had to provoke patients since patients had to be prepared to hard life when leaving the hospital;

(b) It is evident from the minutes of the Expert Board of the Clinical Psychiatry Department of 2 August 2005 that the complaint was assessed as grounded and the nurse was given a written reprimand.

139. In the period from 2001- 2005, three complaints had elements of a criminal complaint (the Ministry of Health has not submitted any data which would refer to the reference period alone; therefore, cases presented below cover a more extensive period of time). In two cases, the crime report was submitted by the Psychiatric Hospital and the employees, to whom the crime report referred, gave notice themselves. In one case the procedure was initiated by the patient's son, but he later abandoned the complaint. In addition to the above, three disciplinary procedures have been conducted on the grounds of violating the patient's rights. In all cases the employment contract was terminated.

140. Psychiatric hospitals do not keep any records which would show the number of procedures where there was no other evidence than the conflicting statements of the patient on the one hand and employee on the other. Their replies were as follows: there are very few such complaints, not more than two cases annually (Psychiatry Ward, General Hospital Maribor); due to the personal and confidential nature of the relation between the patient and medical staff, the majority of complaints were of this kind (Psychiatric Hospital Ormož).

141. Apart from the University Psychiatric Hospital Ljubljana, which, for the period of the last four years, reported only three complaints with elements of a criminal offence (see above), all other hospitals replied that no such complaints had been recorded. Psychiatric hospitals control the work of their employees also where there are no particular complaints. Control is carried out in compliance with the size of the institution. The University Psychiatric Hospital Ljubljana has special Rules on the supervision of the work of organisational units on the basis of which a Standing Commission for ensuring quality and providing professional supervision has been set up. Other hospitals supervise the work of the employees through regular meetings and extraordinary supervision. At the Psychiatry Ward of the General Hospital Maribor e.g., the supervision of the work of employees - if there are no complaints - is conducted by the principal through regular visits to each ward in the form of main rounds, visits to wards without notice and in the form of "open door" visits, which means that conversation with patients is possible also where there are no particular complaints. The work of employees is similarly controlled by the main ward nurse who systematically supervises the work of medical staff in compliance with the relevant protocols. In none of the institutions was there a case of mass rebellion of patients.

Annexes

- I. Report of the Republic of Slovenia on the implementation of criminal sanctions.
- II. House Rules of Dob pri Mirni Prison.
- III. The Annual Report of the Human Rights Ombudsman for the years 2004 and 2005 available at: <http://www.varuh-rs.si/index.php>.
