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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Second periodic report

SLOVENIA*

[23 August 2004]

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Article 1

1. **The right to self-determination** is laid down in the Preamble and in Article 3, Paragraph 1 of the Constitution of the Republic of Slovenia. No amendments have been made to relevant legislation since the last report.

Article 2

2. Upon its independence in June 1991, the Republic of Slovenia committed itself to guaranteeing the exercise and protection of human rights and fundamental freedoms to all persons in its territory in accordance with its national law and assumed international obligations, without any discrimination whatsoever. This commitment was confirmed by the adoption of the Constitution in December 1991, which contains an extensive corpus of general human rights and fundamental freedoms and of special rights of the Italian and Hungarian national communities and the Romany community.

3. One of the most pressing issues relating to the status of aliens in the reference period was the issue of persons that lost their status upon Slovenia's independence. These are persons that had citizenship of other former Yugoslav republics upon independence, but had resided in Slovenia for several years or even decades; after the dissolution of Yugoslavia these persons became aliens. In accordance with the provision of Article 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Official Gazette RS, No. 1-6/91), those of the above persons that had registered permanent residence in the Republic of Slovenia as at 23 December 1990, the day of plebiscite on the independence and sovereignty of the Republic of Slovenia, and had actually lived in Slovenia, had the same rights and obligations as Slovenian citizens (with the exception of the acquisition of property), until they acquired citizenship under Article 40 of the Citizenship Act or until the expiry of deadlines set in Article 81 of the Aliens Act. In addition, these persons also retained all the vested rights, including property rights. The majority of them regulated their status by applying for Slovenian citizenship under less strict conditions pursuant to Article 40 of the Citizenship of the Republic of Slovenia Act. There were only two conditions for the acquisition of citizenship: applicants had to have permanent residence in Slovenia on the date of plebiscite and they had to actually live in Slovenia. The application had to be filed within six months after the Act entered into force.

4. According to data provided by the Ministry of the Interior, 171,120 applications were resolved positively. Pursuant to Article 81 of the Aliens Act (Official Gazette RS, No. 1/91-I and 44/97), the provisions of the Act became applicable to those that did not file the application for citizenship within the set time or that were issued a negative decision two months after the expiration of the date by which they could file their application for citizenship (i.e. on 26 February 1992) or two months after they were issued with the final decision in the procedure of acquiring citizenship and they became aliens. As aliens they were then transferred from the register of permanent residents and were obliged, according to the Aliens Act, to acquire residence permit (permanent or temporary residence permit) if they wanted to reside in Slovenia. At the time of entry into force of the Act, citizens of the successor states to the former SFRY could not fulfil the condition of an uninterrupted three-year stay in Slovenia on the basis of a temporary residence permit under Article 16 of the Aliens Act, which was the primary condition for acquiring permanent residence permit. The Government of the Republic of Slovenia

therefore adopted decision No. 260-01/91-2/5-8 on 3 September 1992, stipulating that the persons concerned fulfilled the above condition if they had registered permanent residence in the Republic of Slovenia for at least three years before the provisions of the Aliens Act became applicable to them and if they had actually resided in the Republic of Slovenia. Citizens of the successor states to the former SFRY that were permanent residents of the Republic of Slovenia prior to 26 February 1992 were thus enabled to acquire permanent residence permits, provided, of course, that they fulfilled other statutory conditions (well-founded reason for a long residence in the Republic of Slovenia, guaranteed means of subsistence and a valid identity document). As many as 1,468 permanent residence permits were issued under the above conditions to citizens of the successor states to the former SFRY in 1992. These persons did not apply for citizenship on the basis of the advantageous provision of Article 40 for various reasons, most common ones being failure to meet conditions (e.g. they did not have registered permanent residence), property in other former republics, to a lesser extent also inability to acquire the required documents in time. In some cases, it was also a personal decision of individuals not to apply for citizenship because they did not identify themselves with the new state. Of the total of 174,171 filed applications for Slovenian citizenship, only 2,150 were issued a negative decision, the proceeding was stopped in 540 cases, and 359 applications were dismissed.

5. As the body competent for deciding in the procedure of granting Slovenian citizenship, the Ministry of the Interior had to establish in each case whether the person concerned actually resided in Slovenia, since quite some applicants had a fictively registered residence and had never resided in Slovenia. There were furthermore no circumstances that would link these persons to Slovenia (e.g. family, employment, education). The Ministry of the Interior thus issued a negative decision in 1,683 cases due to the unfulfilled condition of the actual residence in the Republic of Slovenia. It should also be clarified at this point that the provision of Article 40 of the Citizenship of the Republic of Slovenia Act did not require that a person should renounce his/her current citizenship in order to acquire Slovenian citizenship. Furthermore, the dissolution of the former Yugoslavia did not result in statelessness (*de jure*). Consequently, the permanent residents of the Republic of Slovenia with citizenship of another republic successor to the former SFRY became dual citizens when they acquired Slovenian citizenship. There has been no occurrence of legal statelessness in the area of the former Yugoslavia since all the successor states applied the principle of continuity in their national legislation, or in other words, everybody that had the nationality of any of the republics in the former SFRY became *ex lege* citizen of the relevant new successor state. This commitment is laid down in provisions of citizenship laws of all successor states to the former SFRY. It should also be added that the Act Amending the Citizenship of the Republic of Slovenia Act of October 2002 provided for all persons with citizenship of other successor states to the former SFRY and citizens of third countries who had registered permanent residence in the Republic of Slovenia on 23 December 1990 and had resided in Slovenia since that date to apply for Slovenian citizenship under advantageous conditions within one year. These persons did not have to fulfil the conditions of guaranteed permanent source of income, regulated alien status and the release from their current citizenship. The Amending Act furthermore provides for the acquiring of Slovenian citizenship under more advantageous conditions for persons that have lived in Slovenia ever since their birth. These persons do not have to fulfil the conditions of the guaranteed source of income and of the regulated alien status either. They can also retain their original citizenship after acquiring the Slovenian one. Practically all successor states to the former SFRY carry out

extremely slowly all the procedures of releasing from citizenship their citizens that were born at the time of the former state outside the territory of the republic to which they belonged by citizenship.

6. It was, of course, possible to apply for and acquire citizenship after the expiration of the period set in Article 40 of the Citizenship Act; the applicants, however, had to fulfil stricter conditions. Due to the wars in certain regions and other political reasons, the Ministry of the Interior proposed to the government to adopt several measures that would facilitate the acquiring of citizenship. The policy of extraordinary naturalisation thus applied until the entry into force of the Amending Act of 2002 to those adult persons that had been born in Slovenia and had lived there. 600 persons acquired citizenship in this way. Upon the commencement of bombing of the targets in the Federal Republic of Yugoslavia in spring 1999, it was taken into in Slovenia that the FRY does not release its citizens from citizenship during the above mentioned actions. Further 600 persons acquired citizenship on this basis. This policy still applies to persons originating in Kosovo: in accordance with UN Security Council resolution 1244, UNMIK does not carry out the procedures of release from citizenship and the above persons, regardless of their ethnic origin, could not acquire Slovenian citizenship because they would not fulfil one of the set conditions.

7. On 4 February 1999, the Constitutional Court of the Republic of Slovenia adopted decision U-I-284/94 stating that the Aliens Act (Official Gazette RS, No. 1/91-I and 44/97) is contrary to the Constitution since it does not define the conditions for acquiring permanent residence permits by persons under Article 81, Paragraph 2 after the expiration of the period within which they could apply for citizenship of the Republic of Slovenia if they had not yet applied, or after the day when the decision of non-admission to citizenship of the Republic of Slovenia became final. The Constitutional Court instructed the legislator to remedy the established incompliance within six months after the publication of the above decision in the Official Gazette of the Republic of Slovenia.

8. A special act – Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia – was adopted in July 1999, which entered into force on 28 September 1999. The Act provided for the acquiring of permanent residence permits by:

- All those citizens of successor states to the former SFRY who had actually lived in Slovenia from the 1990 plebiscite on;

- Those citizens of the successor states to the former SFRY that had resided in Slovenia without interruption since 25 June 1991, even though only as temporary residents or as persons that had never been registered in Slovenia as temporary or permanent residents.

9. Applicants filing their applications under this Act acquired permanent residence permits in the Republic of Slovenia with prospective effect. The records kept by the Ministry of the Interior of the Republic of Slovenia on the basis of Article 7 of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia show that 13,134 applications have to date been filed on the basis of this Act (according to Constitutional Court decision No. U-I-246/02-28 of 3 April 2003, applications under the Act can still be filed).

Permanent residence permits have been issued to 10,928 applicants, 308 decisions were negative, 1,085 decisions to stop a procedure have been issued and the application has been dismissed in 123 cases.

10. In 2002, the provisions of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia were submitted to constitutional review since the Act did not provide for a retroactive effect of the issued permanent residence permits, i.e. as of 25 February 1992.

11. On 3 April 2003, the Constitutional Court of the Republic of Slovenia established that part of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was contrary to the Constitution and instructed the legislator to adopt a law that would remedy the established non-compliance of the Act with the Constitution. It also detailed the Ministry of the Interior to issue supplementary decisions relating to permanent residence to those persons who, on 25 February 1992, were deleted from the register of permanent residents. In accordance with this decision, the Ministry of the Interior and the Government of the Republic of Slovenia as the proposer submitted to the parliamentary procedure two draft laws, namely a draft law implementing Item 8 of Constitutional Court decision No. U-I-246/02-28 and a law on the permanent residence in the Republic of Slovenia of aliens with citizenship of other successor states to the former SFRY who had registered permanent residence in the Republic of Slovenia on 23 December 1990 and 25 February 1992.

12. The Ministry of the Interior invited a wide circle of legal experts in constitutional and administrative laws to get involved in the formulation of the draft law implementing Item 8 of Constitutional Court decision No. U-I-246/02-28. Almost all of these experts shared the position that the fulfilment of the obligation deriving from the decision of the Constitutional Court of the Republic of Slovenia required the adoption of an appropriate law. The Government of the Republic of Slovenia and the Ministry of the Interior have established that, according to Article 153, Paragraph 4 of the Constitution of the Republic of Slovenia, individual administrative acts can only be issued on the basis of a law or a legal regulation. The Act Implementing Item 8 of Constitutional Court Decision No. U-I-246/02-28 was adopted in the National Assembly of the Republic of Slovenia on 24 November 2003 and it applies to the category of persons whose actual residence in the Republic of Slovenia is not contestable. This Act, however, did not take effect since a request was filed to call a subsequent legislative referendum on the Act. The National Assembly called the referendum on 4 April 2004. According to the data provided by the National Election Commission, 94.59 per cent of those qualified voters that attended the referendum (the turnout was slightly over 30 per cent of the electorate) voted against the implementation of the Act concerned.

13. The Constitutional Court decision of April 2003 did not exclude the possibility of regulating this issue by a law. In its formal decision of 22 December 2003, by which it dismissed the request of a group of deputies for the review of the constitutionality of the referendum on the Act Implementing Item 8 of Constitutional Court Decision No. U-I-246/02-28, the Constitutional Court of the Republic of Slovenia adopted a position that the decision of 3 April 2003 provides the legal basis for issuing decisions on permanent residence. Since the decisions of the Constitutional Court are binding according to the principle

of the rule of law, the Ministry of the Interior had to initiate the procedure of issuing decisions on permanent residence to those entitled persons to whom the Act would apply, which, however, cannot take effect due to the referendum initiative.

14. At the beginning of October 2003, the Ministry of the Interior submitted to the Government for adoption a law regulating permanent residence in the Republic of Slovenia of aliens with citizenship of other successor states to the SFRY who had registered permanent residence in the Republic of Slovenia on 23 December 1990 and 25 February 1992. The law was to regulate all the issues deriving from the Constitutional Court decision of 3 April 2003. It defined the entitled persons, determined the effect of the issued administrative acts as of 25 February 1992, and set the criteria of the actual residence in the Republic of Slovenia, which the Ministry had to take into account. In accordance with the Constitutional Court decision, the draft law re-opened a limited period within which the applications for the issue of permanent residence permit could be filed by all those that had not used this opportunity in 1999 on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia. The law furthermore set the conditions and the procedure for issuing administrative decisions establishing permanent residence of persons in the Republic of Slovenia, and defined the measures necessary for the protection of personal data and for producing records. The second reading of the law in the National Assembly was on 30 January 2004. Immediately after the reading, however, a request for calling a preliminary legislative referendum was filed. The National Assembly submitted the request to the Constitutional Court for a review, and the Constitutional Court took the decision on 26 February 2004 that six of eight indents of the referendum question concerned were contrary to the Constitution. In its decision of 20 April 2004 the Constitutional Court stated that the referendum question relating to the settlement of the permanent residence issue provided in the above draft law was contrary to the Constitution. Further two requests for calling a preliminary legislative referendum had been called before the third reading scheduled for 22 May.

15. **Asylum**. Article 2 of the Law on Asylum (Official Gazette RS, Nos. 61/99, 66/00 (Constitutional Court decision), 113/00 (Constitutional Court decision), 124/00 (amendment), 67/01 (amendments)) stipulates that the Republic of Slovenia grants asylum to aliens who request protection on the grounds stipulated in the Geneva Convention Relating to the Status of Refugees and the Protocol relating to the Status of Refugees (Official Gazette RS – IT, No. 9/92 – hereinafter: the Geneva Convention). The Geneva Convention stipulates that the term "refugee" applies to any person who, as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political belief, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

16. The Republic of Slovenia also grants asylum on humanitarian grounds to aliens who request protection, if their return to their country of origin might pose a threat to their safety or physical integrity in the sense of the Convention on Human Rights and Fundamental Freedoms as amended by Protocols No. 3, 5 and 8 and complemented by Protocol No. 2 as well as its Protocols No. 1, 4, 6, 7, 9, 10 and 11 (Official Gazette RS – IT, No. 7/94) under circumstances not laid down in the Geneva Convention.

17. **Refugees**. The Republic of Slovenia has granted refugee status to 89 persons.[1] Refugees have a recognised right to permanent residence, financial assistance, basic housing, health care, schooling and education, assistance to integrate, right to work and inclusion into programmes for active search of work.

Article 3

Institutions guaranteeing the right to equality between women and men in the Republic of Slovenia

18. The first initiatives to institutionalise a policy on women in Slovenia were launched in the 1980s, when representatives of women's movements requested that a special ministry be established in this area. When the Government Act was amended in 1989, this amendment was also proposed but rejected by the Government and Parliament. The Commission for Women's Policy was nevertheless established as a working body within the National Assembly after the 1990 elections. The Commission was competent for monitoring the status of women and submitting proposals to improve their status. Members of the Commission reiterated the request that a ministry or an office competent for this area be established. These endeavours resulted in the establishment of the Office for Women's Policy in July 1992, which was renamed as the Office for Equal Opportunities at the beginning of 2001. With the entry into force of the Equal Opportunities Act, the ministers appointed coordinators for equal opportunities of women and men, who guarantee that the principle of equal treatment for women and men is considered when shaping and implementing policies; such coordinators have also been appointed by several local communities. Within the Office for Equal Opportunities, an advocate for equal opportunities for women and men is active to hear individual cases of alleged gender discrimination. An initiative to hear possible violations of the principle of equality of genders, particularly the provisions of the Employment Relationship Act, may be given by individuals, non-governmental organisations, trade unions, other civil society organisations and other legal entities. The advocate hears the initiative and issues a written opinion drawing attention to the irregularities found, provided a person was not equally treated due to gender; the advocate may also recommend how to rectify such discrimination and call upon the violator to inform him/her of its measures within a fixed time limit. An equally important institution in regard to gender equality is the Human Rights Ombudsman, functioning in Slovenia since 1 January 1995. Equality is a human right, defined in the Constitution, and individuals who think they have been discriminated against on the basis of sex may submit a petition to the Ombudsman. The Ombudsman's competence, however, is limited to violations committed by public agencies in exercising their powers. The following institutions are therefore responsible for ensuring the right to gender equality and for elimination of violations in the Republic of Slovenia:

1. Human Rights Ombudsman;

2. Office for Equal Opportunities (government office) and the advocate for equal opportunities for women and men;

3. Coordinators for equal opportunities for women and men within ministries and local communities.

19. In addition to the formal institutions above, non-governmental organisations, women's groups within political parties, trade unions and other organised civil society movements also endeavour to improve the status of women. There are more than 50 non-governmental women's groups in Slovenia, which can be divided into five subgroups: professional women's groups, politically engaged women's groups, independent women's groups, women's groups abroad, and groups providing assistance to female victims of violence.

Measures aimed at improving the status of women

20. Slovenia was the first among Central and Eastern European countries to start preparations for the implementation of the integration strategy for the equal opportunities principle. In 1997, the Office for Women's Policy drew up a project entitled Strengthening Women's Participation in Decision-making and Policy Development Processes in Slovenia, which was co-financed by the UNDP (United Nations Development Programme). The main focuses of the project were education, training and awareness-raising.

21. In 2002, the Office for Equal Opportunities, together with several ministries and in consultations with social partners and non-governmental organisations, drafted the Equal Opportunities Act, which was adopted in June 2002. The Act comprehensively governs equal opportunities for women and men in all areas of life and establishes mechanisms to monitor the implementation of the principle in practice. The most important feature of the Act is the establishment of bodies and institutions that will monitor the implementation of the Act, develop policy in this area, and take action in the event of violation. In 2004, the Office for Equal Opportunities drafted the Implementation of Equal Treatment Act, which was adopted in May 2004. The Act is a general, umbrella act prohibiting discrimination, also that based on gender. It determines common bases and starting points "for guaranteeing equal treatment of any person in exercising their rights and obligations and fundamental freedoms in all areas of social life, particularly in employment, labour relations, membership of trade unions and interest associations, education, social security, access to goods and services and their supply irrespective of their personal circumstances such as nationality, race or ethic affiliation, gender, health state, disability, language, religious or other belief, age, sexual orientation, education, material standing, social status or other personal circumstances." The Act also sets punishment for the violations of the equal treatment principle, persons entrusted with individual tasks and their competences associated with the implementation of the Act. It introduces, inter alia, a new national agency: the Council for the Implementation of the Equal Treatment Principle. The Council is appointed by the government and has the following responsibilities: to supervise the implementation of the Act by monitoring, establishing and assessing the status of individual social groups in terms of equal treatment principle; to propose or recommend the government the adoption of new regulations, and to propose activities promoting education, awareness-raising and research. It is composed of representatives of ministries and government services and representatives of non-governmental organisations and professional institutions.

22. Criminal legislation was also amended in the reference period in order to improve responses to the problem of violence against women. Violence in the family did not constitute a special criminal offence in Slovenian criminal legislation, but could be included in certain criminal offences against honour and reputation and in criminal offences against life and limb,

depending on the type of inflicted injuries. The state prosecutor had the duty of proposing ex officio the institution of proceedings only in the case of serious bodily injuries, while other criminal offences were prosecuted on a private action. The majority of women that requested intervention by the police because of violence, which however did not constitute an ex officio prosecutable criminal offence (since injuries were not defined as serious), did not bring a private action against their violent partners for various reasons and the law enforcement bodies could not initiate the proceedings. The criminal offence of violent conduct (Article 299 of the Penal Code) was amended in 1999 and now also includes violence in the family (i.e. when no serious bodily injuries are yet inflicted); violence in family is thus prosecuted ex officio. The amended article reads:

> Whoever insults another person, or treats him/her badly or violently or endangers his/her security, thereby endangering the public or family, or provoking indignation or fear in the public or family shall be sentenced to imprisonment of not more than two years.

23. Shelters, homes for mothers, safe houses and similar institutions are designed for women and mothers with children who are victims of violence. In the regular 1999 report, the Human Rights Ombudsman emphasises: "Unfortunately there are too few shelters and homes in Slovenia, and at the same time they are unevenly distributed. This means that in some parts of the country they do not exist, which prevents women from remaining in the environment where they are employed and where their children attend school. Stays in these institutions should only be short-term and temporary, but the success of the women staying in these institutions in resolving fundamental problems, particularly the problem of housing, is more the exception than the rule." According to data from 2004, there are 8 programmes of safe houses or shelters, one programme of crisis centre for women victims of violence intended for stays over weekend, 6 programmes of homes for mothers, and five units of crisis centres for children and youth. Safe houses are located in the area of Maribor, Ljubljana, Celje, Slovenj Gradec, Velenje, Ljutomer, Novo mesto, Krško, and in the Gorenjska region. A crisis centre is located in Ljubljana. Total number of beds in the above safe houses is 153; there are 5 beds in the crisis centre. A safe house in Ptuj is scheduled to start functioning in October 2004. There are no safe houses in the Primorska region; however, a safe house is planned to be set up in one of the coastal municipalities. In addition, 6 operators in Slovenia carry out programmes of safe houses: 2 in Ljubljana, and the other four are located in Postojna, Solkan near Nova Gorica, Celje and Maribor. The six operators have a total of ten units with 53 rooms and 129 beds. All programmes of homes for mothers have a total of 287 beds, thus already guaranteeing the number of beds foreseen in the national programme by 2005.

Gender equality in the field of work

24. In Slovenia, the field of employment was regulated, until 1 January 2003, by the following acts: the Basic Rights Stemming from Employment Act, and the Employment Act. These acts did not contain provisions particularly regulating gender equality in employment. Provisions on this matter are included in the new Employment Act, which entered into force on 1 January 2003.

With regard to guaranteeing gender equality, the draft law has been entirely harmonised with the following EC directives in the field of equal treatment of women and men:

- 75/117/EEC (equal pay for women and men);
- 76/207/EEC (equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions);
- 92/85/EEC (safety and health at work of pregnant workers and workers who have recently given birth);
- 97/80/EC (burden of proof);
- 2000/43/EC (equal treatment of persons irrespective of racial or ethnic origin).

25. **The prohibition of discrimination in employment** results directly from the following provisions of the new Employment Act:

Article 25 (equal treatment for men and women)

The employer may not announce an employment vacancy for men only or for women only, except in case a certain gender is essential for discharging the work.

The announcement of an employment vacancy must also not imply employer's preference for a particular gender, except in the cases mentioned above.

Article 26 (rights and obligations of the employer)

(1) The employer may request that the candidate submit only the documents certifying that he/she fulfils the conditions for work.

(2) When concluding an employment contract, the employer must not request the candidate to provide information on his/her family, marital status, pregnancy, family planning and other information, unless it is directly connected with the job.

(3) The employer must not make the information in the above paragraph a condition for concluding an employment contract, or place additional conditions regarding the prohibition of pregnancy or postponement of motherhood or by signing the cancelling of the contract on the part of the employee in advance.

In case of a violation of the prohibition of discrimination, the employer is liable to damages to the candidate not chosen.

26. New employment legislation also provides for the realisation of the **principle of equal pay for the same work** with a special provision:

Article 133 (equal pay for the same work)

(1) The employer must provide equal pay for the same work and for the work of the same value to workers regardless of their gender.

(2) The provisions of the employment contract, collective contract and/or general act of the employer, which are contrary to the above paragraph, shall not apply.

27. A small number of women have the most demanding, influencing and best paid posts; as a result, salaries of women are lower than those of men although they have the same level of qualifications. An additional factor influencing lower average salaries of women is employment of women in branches that are poorly paid. According to data on gross wages of those employed in enterprises, companies and organisations according to levels of qualifications (year 2000), women earned at average 87.8 per cent of a wage of men, or 12.2 per cent less. The greatest difference is among persons with higher education (20.7 per cent), and the least among those without qualifications (12 per cent).

Table 1

Average monthly gross earnings of women in paid employment in enterprises, companies and organisations in comparison to earnings of men by level of professional qualification

	Total	Higher professional qualification			Post-secondary professional qualification	Secondary professional qualification	Lower professional qualification	Highly skilled	Skilled	Semi-skilled	Unskilled
		Doctor's degree	Master's degree	Total							
1991	88.57	86.85	88.77	86.53	89.80	90.67	87.86	97.44	86.28	88.51	84.33
1998	88.90	82.14	86.79	87.35	89.98	88.14	89.33	93.63	81.02	85.66	81.81
2000	87.8	85.9	83.2	79.3	87.5	88.5	85.9	83.0	80.1	84.8	88.0

Note: 1991 data do not include private companies and organisations.

Source: Statistical Office of the Republic of Slovenia, Rapid Reports.

28. Research data on wages by level of professional qualification in 1996, published by the Statistical Office of Slovenia, showed that the average gross earnings of men employed in companies and other organisations in Slovenia were in most cases higher on average than earnings of women employed in the same place, for all levels of professional qualification. By levels of professional qualification, the wages of men were on average by 17.7 per cent higher. The least differences in wages were recorded in the secondary level of professional qualification (lower-level schools – 8.6 per cent).

29. **Table 2**

Index of average gross earnings of women compared to average gross earnings of men by level of professional qualification, Slovenia, 1996

Level of professional qualification	Index women/men
Total	85.4
Higher professional qualification	82.6
Ph.D.	82.7
M.Sc./M.A.	83.4
Post-secondary professional qualification	86.4
Secondary professional qualification	88.5
Lower professional qualification	92.0
Highly skilled	88.1
Skilled	81.7
Semi-skilled	85.9
Unskilled	81.6

Source: Rapid Reports, No. 37/1998, Statistical Office of the Republic of Slovenia.

Statistical data showing the status of women in Slovenia in employment, education and representation in public life

30. **Women and employment**

Table 3

Share of women among population in employment by fields of activity, Slovenia 1997/2-2002/2

	1997/2	1998/2	1999/2	2000/2	2001/2	2002/2
Total	46.3	46.3	46.0	46.2	45.6	45.8
Agriculture	48.2	47.2	46.9	46.7	44.6	45.9
Industry	34.9	35.2	33.8	34.8	34.3	33.9
Mining and quarrying				13.7		
Processing industry	41.0	40.9	39.2	40.5	40.3	39.6
Electricity, gas and water supply	15.4	12.5		18.4	11.1	((14.0))
Construction	10.9	11.7	8.9	9.9	11	(9.4)
Services	56.0	55.2	55.0	54.3	54.5	54.8
Wholesale, retail, certain repair	52.3	50.3	51.4	52.1	50.2	52.1
Hotels and restaurants	65.8	60.0	55.9	57.9	62.8	62.1
Transport, storage and communication	19.6	24.3	20.4	22.7	24	22.9
Financial brokerage	66.7	72.7	71.4	67.7	63.7	62.6
Real estate activities, rental and business services	50.0	45.0	49.0	42.9	44.2	44.5
Public administration, defence, compulsory social security	52.8	53.9	49.0	50.1	52.2	50.6
Education	78.5	77.1	76.7	78.7	76	76.4
Health and social care	81.1	79.3	80.0	79.9	78.1	76.6
Other public and personal services	49.7	49.8	52.8	50.6	49.7	51.4

Source: Statistical Office of the Republic of Slovenia, questionnaire on labour force (calculation made by the Statistical Office itself), 2002.

31. Of all women in employment, 91.7 per cent had full-time employment in 2002, which is somewhat less than men (94.8 per cent). Women work on average 40.3 hours per week (men: 42.5 hours).

32. Women prevail in employment such as service sector, public servants, shop assistants, experts, technicians and other technical assistants. 29.1 per cent of women occupy the highest positions such as legislator, senior officials and managers (2002).

Table 4

Annual average of employees of companies and other organisations according to gender, 1996

	Total	Women	Share of women in employment (%)
Total	581 106	283 584	48.4
Health and social care	54 575	44 702	81.9
Education and culture	52 022	34 993	67.3
Hotels, restaurants and tourism	15 478	10 352	66.9
Trade	55 223	33 834	61.3
Financial, technical and business services	38 182	20 741	54.3
Public administration, funds, associations and organisations	41 661	20 286	48.7
Agriculture and fisheries	8 348	3 617	43.3
Industry and mining	227 940	96 403	42.3
Craft and personal services	14 785	6 119	41.4
Transport and communications	29 402	6 564	22.3
Housing and public utility activities	11 504	2 317	20.1
Forestry	2 285	332	14.5
Construction	28 613	3 508	12.3
Water management	1 091	133	12.2

Source: Office for Equal Opportunities.

33. **Women and higher education**

Table 5

Students enrolled in and graduated from universities and free-standing higher education institutions by sex

Year	Enrolled			Graduated		
	Total	Women	% of women	Total	Women	% of women
1995	45 951	26 126	56.9	6 419	3 809	59.3
1996	50 667	28 660	56.6	7 724	4 658	60.3
1997	64 678	36 149	55.9	8 011	4 929	61.5
1998	74 642	42 507	56.9	8 612	5 043	58.5
1999	77 609	44 459	57.3	9 345	5 499	58.8
2000	82 812	47 460	57.3	10 232	6 060	59.2
2001	88 100	51 800	58.8	10 375	6 434	62.0

Source: Statistical Yearbook 2002.

34. Women still prevail in post-secondary and higher education institutions and faculties connected with health and social work and teaching. The share of female students considerably exceeds the share of male students at the following faculties: the Faculty of Economics, Faculty of Social Sciences, Faculties of Pharmacy and Medicine and in some departments of the Faculty of Natural Sciences and Engineering, and the Biotechnical Faculty. The smallest share of women is enrolled in the Faculty of Mechanics, Faculty of Electrical Engineering, and the Faculty of Computer and Information Science.

35. The difference between genders studying for master's and doctor's degrees is reducing year by year. In 2001, more women than men held master's degree: there were 454 women among 905 masters (50.1 per cent). Among 298 doctors, there were 146 women, totalling 48.9 per cent.

Table 6

Graduates from universities and free-standing higher education institutions by sex

Year	Total	Women	Women in %
1995	6 419	3 809	59.3
1996	7 724	4 658	60.3
1997	8 011	4 929	61.5
1998	8 612	5 043	58.5
1999	9 345x	5 499	58.8

Source: Statistical Yearbook 2000.

36. **Representation of women in public life**. In the Republic of Slovenia, women represent 51.13 per cent of the total population. Despite being in the majority, the proportion of women occupying the highest positions in state authorities and decision-making processes is low. Although Article 43 of the Constitution provides for a general and equal right to vote and to be elected for every person of age with citizenship, the number of women on the lists of candidates for public functions shows that women are evidently in a minority. The proportion of women deputies in the National Assembly varies, i.e. 11 per cent in 1990, 13.3 per cent in 1992, 7.8 per cent in 1996 and 13.3 per cent in 2000. In the first Slovenian government, eight per cent of ministers were women, in the second 6.7 per cent, in the third none and in the latest 18.7 per cent. In order to change this situation, a civil society coalition to enforce the balanced representation of women and men in public life was established on 20 February 2001. The objective of the coalition is to bring about in the electoral legislation provisions that would guarantee equal opportunities for the candidature of women and men for all types of elections. In December 2001, a group of deputies in the National Assembly (the proposal was signed by 77 deputies out of 90) proposed to initiate a procedure to amend the Constitution. The objective of the amendment is to "lay the foundations for equal opportunities for the participation of men and women in the procedures of running as a candidate for the elected bodies of representative authorities at the national and local levels" (explanation of the proposal of amendments). The proposed amendment refers to Article 44 of the Constitution, which at present reads: "Every citizen has the right, in accordance with the law, to participate either directly or through elected representatives in the management of public affairs." It was proposed that a new paragraph be added to this article which would read as follows: "The law may lay down measures to promote equal opportunities for men and women in running as candidates for election to state authorities and local community bodies." The expert services of the National Assembly supported the proposal, which is to be discussed and decided upon in the National Assembly. The Election of Slovenian Members to the European Parliament Act has recently been amended, thus providing the first legal provision guaranteeing greater representation of women on the lists of candidates. The Act Amending the Election of Slovenian Members to the European Parliament Act was adopted on 26 February 2004. It stipulates that "no gender shall have less than 40 per cent representation on the list of candidates". The Act also stipulates that at least one candidate of each gender shall be placed in the upper part of the candidate list. The candidate lists that are not in compliance with these two provisions shall be invalid. The principle of balanced representation (at least 40 per cent representation of both genders) shall apply to the lists of candidates submitted by political parties and voters. This legal norm ensured that 45 per cent of candidates on the candidate lists for the election to the European Parliament (13 June 2003) were women.

37. **Table 7**

Women and men in the National Assembly of the Republic of Slovenia by their functions (after elections in 1992, 1996 and 2000)

	1992		1996		2000	
	Total	Women	Total	Women	Total	Women
Deputies	90	13	90	7	90	12
President of Parliament	1	0	1	0	1	0
Vice-presidents	3	0	3	1	3	1
Secretary General	2	1	1	1	1	1
Heads of parliamentary groups	10	0	9	1	8 + 2 minority represent-atives	1

Article 4

38. "Human rights and fundamental freedoms provided by this Constitution may exceptionally be temporarily suspended or restricted during a war and state of emergency. Human rights and fundamental freedoms may be suspended or restricted only for the duration of the war or state of emergency, but only to the extent required by such circumstances and inasmuch as the measures adopted do not create inequality based solely on race, national origin, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance," (Article 16 of the Constitution). Even during a war and state of emergency, the following rights and/or principles may not be suspended: the right to inviolability of human life, the right to the protection of human personality and dignity, presumption of innocence, the principle of legality in criminal law, legal warranties in criminal procedure, freedom of conscience and prohibition of torture. There is no capital punishment in Slovenia (Article 17 of the Constitution). As already explained in the initial report, Paragraph 12, Slovenia neither temporarily suspended nor restricted any of the basic human rights even at the time of the aggression by the Yugoslav Army in June 1991.

39. Since the last report, Slovenia has not declared war or a state of emergency, and no constitutional rights (particularly not those mentioned above) have been restricted or temporarily suspended for any other reason.

Article 5

40. International treaties and agreements have special status in Slovenia's legal order. Laws and other regulations must be in conformity with generally accepted principles of international law and with valid treaties ratified by the National Assembly (Article 153, Paragraph 2 of the Constitution). Ratified and published treaties "shall be applied directly" (Article 8 of the Constitution), which means that everyone may base their complaint on the right acknowledged by a treaty, even if such a right does not exist in Slovenia's legal order. If a law does not comply with internationally accepted obligations, the Constitutional Court may annul such a law (Article 21 of the Constitutional Court Act). Slovenian legislation has otherwise not changed since the last report.

Article 6

Measures for the prevention of arbitrary deprivation of life

41. In the Republic of Slovenia, conditions for the use of individual coercive means are set in the Police Act. Since 24 June 2000 a new executive regulation of the Police Act has been in force in Slovenia: the Rules on Police Powers (Official Gazette RS, No. 51/2000). The Rules govern in detail the method of implementing police powers. According to Article 4, Paragraph 2 of the Rules, police officers may use only "such powers as least affect the individual and the public". Coercive means may only be used until their purpose is achieved or until it is obvious that the purpose cannot be achieved. According to Article 5 of the Rules, police officers must always use the most lenient of the existing coercive means, and stricter means only "if the use of lenient coercive means was unsuccessful or was impossible to use due to the circumstances and for reasons of life protection, personal safety and protection of property of persons". The Rules also regulate in detail the method of the exercising and use of individual police powers (general police powers, coercive means and police powers on water). Due to the importance of provisions relating to the protection of human rights and the prevention of misuse of powers by officials, common provisions of the Rules on Police Powers are stated concerning the use of coercive means (Articles 108-112) and the use of firearms (Articles 134–138):

Article 108

When carrying out their duties, police officers shall have the right to use legally defined coercive means if, in the legally defined cases, they cannot in any other way control the resistance of a person, establish public order, which has been severely or massively breeched, or avert an attack.

Article 109

Resistance shall mean any action by which a person prevents police officers from performing a police task defined by law.

Resistance may be passive or active.

Passive resistance shall include a person disregarding a call from a police officer or his/her lawful order, or acting in a manner that prevents the police officer from performing a police task. Passive resistance includes a person's escape.

Active resistance shall mean resistance by weapons, tools or other items or by physical force, whereby the person resisting intends to prevent the police officer from performing his/her police task. The call to resist shall be considered as active resistance.

Article 110

The attack shall mean any unlawful attack by weapons, tools or other items or by physical force, whereby the person attacking intends to disable, injure or take the life of the police officer, the person protected by the police officer or any other person. The attack on the facility protected by the police officer shall be considered as an attack.

Article 111

A police officer, who performs work and tasks under the direction of a police officer in charge, may use coercive means only by order of the police officer in charge, except in case when he/she or another police officer or person is attacked.

A police officer in charge is a police officer who has a higher rank or whose task is to direct one or more police officers when performing police tasks or the one who is authorised to direct specific tasks.

Article 112

Police officers must warn a person that they will use coercive means unless such a warning would disable the performance of an official task or if the circumstances do not allow such a warning.

Use of firearms

Article 134

While carrying out their tasks, police officers shall, in accordance with legal provisions, use firearms only if there is no other way to:

1. Protect human life;

A police officer may use firearms if life of one or more persons is directly threatened to avert or prevent an unlawful attack initiated by the attacker.

Imminent danger shall be estimated according to the manner and means used in the attack and according to physical force and number of attackers.

2. Prevent a person who has been caught committing a criminal offence for which the law prescribes a sentence of eight or more years of imprisonment from escaping;

According to these Rules, to apprehend a person while committing a criminal offence means to apprehend him/her at the scene of a crime or in its immediate vicinity while committing a criminal offence or immediately after that.

3. Prevent a person deprived of freedom, or for whom an arrest warrant has been issued because he/she has committed a criminal offence defined in Item 2 from escaping, if a warrant to arrest, bring in and/or escort a person permits the use of firearms by a police officer in the event that a person attempts to escape;

In cases when a police officer may use firearms against a person that he/she leads or escorts if that person intents to escape, he/she must warn the person prior to the lead or escort that he/she will use firearms in such a case.

4. Avert an attack on the person or facility under protection;

An attack on a person protected is any direct attack with firearms, dangerous tool or other means by which the life of this person is threatened, or an attack of one or more attackers who are stronger or use special skills during the attack.

An attack on the facilities protected is any act intended to severely damage or destroy the facility, its individual part, or to severely damage or destroy installations in the facility.

5. Avert a direct, unlawful attack on himself/herself which puts his/her life at jeopardy. Such an attack is an attack with firearms, dangerous tools or other objects by which the life of a police officer may be threatened, or an attack of two or more attackers, attack at a place and time when a police officer cannot expect assistance, and an attack by a person who is physically stronger or a person who uses special skills during the attack.

An attack with firearms is considered also the drawing of firearms or an attempt at drawing firearms.

Article 135

The same conditions as apply to the use of firearms also apply to string weapons.

Article 136

Before a police officer shoots, he/she must, whenever the circumstances allow, in accordance with legal provisions, warn the person against whom the weapon is to be used, by calling out, “POLICE, STOP OR I WILL SHOOT!” and fire a warning shot.

Article 137

A warning shot, the use of arms against animals, an object or for the purpose of exercise are not deemed as use of firearms as coercive means.

A police officer may use a warning call and a warning shot only in cases when the conditions for use of firearms as a coercive means are fulfilled.

Article 138

If a person against whom firearms may be used runs towards a group of people and if there is a danger that one of them may be shot, a police officer is not allowed to shoot.

If a person against whom firearms may be used runs towards the state border, a police officer may shoot only in the way that the projectile does not go beyond the state border.

42. Coercive means may also be used by military police according to Article 66 of the Defence Act, except for water jets and mounted police. By 2002 the military police were not allowed to use truncheons but with the amended Defence Act of that year the use of truncheons is included in the coercive means of military police. When using coercive means, military police is restricted to facilities and districts of special importance for defence; in the area of a camp, if a unit, agency or institution is situated outside military barracks and only against military personnel (Article 67 of the Defence Act). According to the assurance of the Ministry of Defence, the military police did not exceed its powers in the period 1995–2001 (information from the Ministry of Defence of 14 March 2002).

43. **The frequency of the use of coercive means by the police** is given in the following table:

Table 8

Use of coercive means by the police 1991-2003

Year	Number of uses	Number of cases
1991	931	433
1992	987	498
1993	1 461	739
1994	1 460	1 138
1995	2 915	1 775
1996	4 006	2 418
1997	4 443	2 511
1998	6 331	3 179
1999	6 134	3 210
2000	6 428	3 430
2001	6 747	3 717
2002	7 061	3 801
2003	8 448	3 997

Source: www.policija.si, and the 1999 Statistical Yearbook of the Ministry of the Interior and the Ministry of the Interior.

44. These data show that in the last 6 years the use of coercive means by the police has increased; however, it needs to be taken into account that the number of criminal cases which fall within the competence of the police is increasing. To interpret the data correctly, the frequency of the use of certain coercive means and measures has to be emphasised. According to the data for the period until 1998, handcuffing prevails (used in about 50 per cent of cases); this is one of the lenient coercive means. Handcuffing and physical force represent a total of 97 per cent of all coercive means used. It has to be taken into account that the police uses repressive measures against 880,000 persons every year (yearly, around 10,000 persons are deprived of their freedom); coercive means are used only against 4,000 persons. In the opinion of the Ministry of the Interior, this means that the principles of proportionality and gradualism were considered; these are two basic principles in the use of coercive means.

45. **Table 9**

Use of individual types of coercive means in the Republic of Slovenia from 1991 to 2003

Coercive means	Year											
	1991	1992	1993	1994	1995	1996	1997	1998	2000	2001	2002	2003
Firearms	1	3	5	8	9	6	9	24	9	9	4	7
Truncheon	33	16	10	42	62	44	164	210	58	47	76	114
Physical force	571	614	835	733	1 608	1 986	2 071	2 775	2 894	2 778	3 038	4 010
Police dog	11	5	-	26	22	21	21	81	79	45	29	36
Handcuffing	300	319	586	605	1 164	1 860	2 121	3 125	3 244	3 792	3 829	4 188
Gas spray	15	21	25	46	50	89	57	113	141	69	1	0
Other	-	9	-	-	-	-	-	1	3	7	84	93
Total	931	987	1 461	1 460	2 915	4 006	4 443	6 331	6 428	6 747	7 061	8 448

Source: 1999 Statistical Yearbook of the Ministry of the Interior, www.policija.si; Ministry of the Interior.

The coercive means used least frequently was firearms, and when used, it was usually used as a warning shot; only in rare cases was it used against a person.

46. **Table 10**

Complaints of citizens due to the use of coercive means for the period from 1997 to 2003

Year	Complaints upheld	Complaints rejected	Total
1997	27 (12.6%)	187	214
1998	13 (6.8%)	177	190
1999	9 (5.1%)	167	176
2000	26 (11.7%)	196	222
2001	5 (2.9%)	166	171
2002	7 (5.6%)	117	124
2003	11 (8.9%)	113	124

Source: 1999 Statistical Yearbook of the Ministry of the Interior, www.policija.si; Ministry of the Interior.

47. In 2003, Article 28 of the Police Act was amended; this article regulates the resolving of complaints against police officers. On the basis of amendments, the Ministry of the Interior drafted the Rules on Resolving Complaints; the Rules have been applicable since 2004. Therefore all the complaints in 2003 were resolved under the existing instruction on resolving complaints. In accordance with this instruction, the police guaranteed complainants the right to complain and smooth exercising of their rights in complaint procedures. Representatives of the public and the police trade union participated in panel sessions, thus ensuring fairness, impartiality and legal protection for the persons involved in police proceedings; the police also obtained feedback information on the quality of the work of police officers, which was used in planning their work. Complainants were informed of final conclusions and measures taken also in cases when complaints failed to fulfil the conditions for the resolution under Article 28 of the

Police Act and the Instruction on the resolution of complaints; the basis for the establishment of disciplinary or moral and ethical violations of the Code of Police Ethics. Good cooperation with the public has been established, thus enabling control over the work of the police, particularly with the professional public, represented by the Human Rights Ombudsman and various organisations engaged in protecting human rights and freedoms. (Annual Report on the Work of the Police 2003).

48. **The consequences of police measures**. From 1999 to 2003, seven persons died in the course of police actions, including three foreign citizens. Four persons were killed by police officers using firearms (an armed murderer during an attempt of arrest; a person against whom a warrant of arrest was issued, during an attempt of arrest; a person who threatened police officers to use arms, an illegal immigrant when the firearms went off by accident during an attack against a police officer). Two persons committed suicide with their own weapons during an attempt of arrest, in one case a person died for health reasons during a house search. Three persons therefore died as a result of police use of firearms as coercive means. In all the described cases of death, a procedure was initiated to establish the factual situation and liability for the death. According to the assurances of the Ministry of the Interior, all investigatory and other actions were carried out, provided by the Code of Criminal Procedure (crime scene search, collecting information, seizure of items, expert opinions, house and personal search, etc.). In compliance with the provisions of the Code of Criminal Procedure, the state prosecutor was informed about the facts and circumstances in a report or criminal information.

49. In all the cases described the Director General of the Police or the Director of the Police Directorate, in which the police officer who used coercive means worked, designated, in compliance with the provisions of the new Rules on Police Powers, a three-member commission investigating the circumstances surrounding the use of coercive means, drafted a record and gave its opinion whether the use of coercive means was lawful and professional. In one case (when the police officer shot the person, against whom a warrant of arrest was issued, during the attempted arrest), the state prosecutor initiated an investigation under the Criminal Procedure Act. In other cases no irregularities were established in the conduct of police officers.

50. In 2003, 119 persons and 113 police officers were injured as a result of use of coercive means and assaults on police officers. In addition, external signs of the use of coercive means were visible with 253 persons and 32 police officers (scratches, abrasions, other minor skin injuries, irritated eyes due to the use of gas spray).

Table 11

Types of injuries of police officers and other persons as a result of the use of coercive means in 2003

	Police officers	Violators	Total
Minor bodily injury	113	117	230
Serious bodily injury	0	2	2
Extremely serious bodily injury	0	0	0
Death	0	0	0
Total	113	119	232

Source: Ministry of the Interior.

51. Prison guards have special powers provided in the Enforcement of Penal Sanctions Act and Rules laying down the duties of prison guards. Article 239 of the Enforcement of Penal Sanctions Act stipulates that guards have the right to use coercive means against convicted persons if they can otherwise not prevent their flight, attack, self-injury or substantial material damage and enumerates the following coercive means: handcuffing and tying devices, physical force, gas spray, truncheon, a warning shot, firearms with rubber or sharp ammunition and the use of police dogs. In Articles 54-81, the Rules lay down in detail the powers of security officers concerning the use of coercive means.

Measures to eliminate epidemics

52. **Measures to prevent the spread of HIV infections.** There are relatively few persons infected with HIV in Slovenia; according to assessments there is fewer than one per 1'000 inhabitants, probably about a few hundred. According to the data on cases registered with the Institute of Public Health at the end of 2003, there were at least 137 persons in Slovenia who were HIV infected, of whom 32 had AIDS.

53. In addition to the data on registered cases, a modest but highly informative system has been developed in Slovenia to monitor the number of those infected in certain easily accessible high-risk groups. These include injecting drug addicts entering programmes of treatment, men having sexual intercourse with men and patients treated for sexually transmitted diseases. Moreover changes in the proportion of infected pregnant women have also been monitored, i.e. a group of people with low risk for HIV infection. The largest proportion of those infected is the group of men having sexual intercourse with men; the share of those infected has however never been higher than five per cent.

54. The Institute of Public Health coordinates the first national survey on sexual conduct in a representative population sample of persons aged from 18 to 49 to provide relevant data on the size of high-risk groups and on merging these groups with the remaining population. The first results are scheduled to be published in 2004. Preliminary assessments of certain indicators of risk conduct which are the result of a pilot survey, carried out in 1997 on a representative population sample of persons aged from 18 to 54 show that groups of persons with high-risk conduct are relatively smaller than in many European Union Member States.

55. Slovenia has a high awareness level for the development of an epidemic since an appropriate national system of monitoring the epidemic of HIV infections has been set up. The UNAIDS/WHO Working Group on Global HIV/AIDS and STI Surveillance ranked it among the best in the world.

56. In 1986 routine and compulsory blood-testing began as well as the elimination and destruction of blood containing HIV antibodies. No HIV infection has been recorded since then from received transfusion. Under the 1995 Contagious Diseases Act the testing of blood donors and other tissue and organ donors is compulsory whenever human materials are taken for the purposes of transplanting, *in vitro* insemination and *in vitro* fertilisation for the presence of syphilis, Hepatitis, AIDS and other diseases transmitted via human materials. Human material testing is also compulsory prior to operations in case the sample was not taken in the Republic of Slovenia or if it has not been proven that the test made was negative.

57. **The compulsory vaccination of children against contagious diseases** is an important measure for limiting the spread of contagious diseases. Article 22 of the Contagious Diseases Act stipulates compulsory vaccination against ten diseases and determines a fine for any person evading or preventing compulsory vaccination.

58. The beneficial effect of vaccination on one's health and wider community surpasses the potential damage that could emerge due to mild side-effects associated with vaccination. To omit compulsory vaccination would mean great risk that, in case the level of vaccination fell under the critical limit, contagious diseases and epidemics would re-emerge. The Constitutional Court estimates that beneficial effects of compulsory vaccination on one's health and members of a wider community exceed the consequences of encroaching upon constitutional rights of an individual. Compulsory vaccination determined by the Contagious Diseases Act is therefore not an excessive measure. The legislator will regulate within a year the procedure and rights of those affected when determining the existence of legitimate reasons to omit compulsory vaccination and the right to damages of persons who suffer consequences harmful to their health as a result of compulsory vaccination.

Table 12

Percentage of children vaccinated against TB and diphtheria in the period 1985–2002

	1985	1990	1995	1997	1998	1999	2000	2001	2002
Percentage of children vaccinated against TB	92.6	94.3	99.0	97.2	97.6	96.9	97.54	96.71	97.15
Percentage of children vaccinated against diphtheria	92.4	97.9	98.0	92.0	90	92.40	91.36	92.39	93.20

Source: Public Health Institute.

59. **Child mortality.** Slovenia has recorded a decline in baby mortality and perinatal mortality.

Table 13

Baby Mortality in Slovenia 1993-2002

Year	Stillborns	Early neonatal mortality	Perinatal mortality	Baby mortality
1993	4.8	3.3	8.1	6.8
1994	5.3	2.8	8.1	6.5
1995	4.4	2.6	7	5.5
1996	5.6	2.4	7.9	4.7
1997	4.9	2.9	7.7	5.2
1998	6.5	2.9	9.4	5.2
1999	5.0	2.4	7.4	4.5
2000	3.7	3.3	7.0	4.9
2001	4.9	2.3	7.1	4.2
2002	5.3	2.4	7.1	3.8

Source: Medical report on death and cause, Perinatal information system of the Republic of Slovenia.

Article 7

60. Slovenian criminal legislation does not contain a special definition or incrimination of torture and consequently does not provide for special punishment for such an offence despite the fact that Slovenia is a Party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment[2]. No legislative procedures have formally been initiated to amend Slovenian positive law accordingly although the UN Committee against Torture, when dealing with Slovenia's Report, recommended to Slovenia to introduce special incrimination of torture into its criminal legislation (Conclusions and Recommendations of the Committee against Torture, 16 May 2000). The Ministry of Justice has been preparing an amendment providing for a special Article 271a of the Penal Code which should incriminate torture. The Slovenian Government will soon decide to formally request an independent expert and scientific institution to prepare an expert opinion on the possibility of including special incrimination of torture into positive national criminal law. This was done at the proposal of the Ministry of Foreign Affairs and endorsed by the Interdepartmental Working Group at the Ministry of Foreign Affairs on monitoring human rights issues as a special expert working body. This body is composed of representatives of different ministries and their specialised agencies, the Office of the Human Rights Ombudsman, civil society and research institutions.

Article 8

61. **Prohibition of enslavement**. Enslavement and trafficking in slaves has been defined as a criminal offence in Article 387 of the Penal Code:

> "(1) Whoever, in violation of international law, brings another person into slavery or a similar condition, or keeps another person in such a condition, or buys, sells or delivers another person to a third party, or brokers the buying, selling or delivery of another person, or urges another person to sell his freedom or the freedom of the person he supports or looks after, shall be sentenced to imprisonment for not less than one and not more than ten years.
>
> (2) Whoever transports persons held in the condition of slavery or in similar condition from one country to another shall be sentenced to imprisonment for not less than six months and not more than five years.
>
> (3) Whoever commits the offence under the first or the second paragraph of the present article against a minor shall be sentenced to imprisonment for not less than three years."

In the period from 1991 to 2003, the Police dealt with 31 cases of the criminal offence of bringing another person into slavery. (www.policija.si)

62. **Fight against trafficking in human beings**. In February 2002, a national coordinator for the fight against trafficking in human beings was appointed on the basis of a decision of the Government of the Republic of Slovenia. On 18 December 2003, the Government established an Interdepartmental Working Group on the fight against trafficking in human beings (the previous Interdepartmental Working Group was appointed by a decision of the Minister of Foreign Affairs

on 6 December 2001). In the Penal Code, the area of trafficking in human beings is incriminated with the criminal offences of "Pimping" (Article 185), "Presenting Persons for Prostitution" (Article 186), and "Enslavement" (Article 387).

63. In April 2004, the National Assembly of the Republic of Slovenia ratified the UN Convention against International Organised Crime and its supplementing Protocol to prevent, suppress and punish trafficking in persons, especially women and children. On 30 March 2004, the National Assembly adopted the Act Amending the Penal Code (Official Gazette RS, No. 40/2004), which introduced a new Article 387a, titled "Trafficking in Human Beings", while Article 185 was newly formulated as "Abuse of Prostitution". The adoption of the amendments was followed by the deletion of Article 186.

64. **Prostitution.** Until 2003, prostitution in Slovenia was defined as a misdemeanour in the Offences against Public Law and Order Act. This meant that such an act was dealt with in special proceedings by a petty offence judge. In July 2003, the Act Amending the Offences against Public Law and Order Act entered into force, which decriminalised prostitution and abolished all sanctions against those who prostitute themselves.

65. There are no official data on the number of prostitutes in Slovenia. The Police have ascertained that prostitution (organised, voluntary or forcible) is mainly practiced in night clubs, apartments and hotel rooms. Street prostitution has not been detected or has appeared in very small numbers. Apart from direct contacts between clients and prostitutes in night clubs, most sexual intercourses are arranged through mobile phones.

66. Decriminalising prostitution has not resolved the issue of prostitution itself. To that end, an interdepartmental working group tasked with regulating the issue of prostitution was established in 2001, in which representatives of the Police, the Office of the Government of the Republic of Slovenia for Equal Opportunities, the Ministry of Labour, Family and Social Affairs and the Ministry of Health cooperate. The interdepartmental working group should contribute to a successful and efficient solution to the issue of prostitution.

67. Pimping and procuring for prostitution are defined as more serious criminal offences on the grounds that the relation between a prostitute and a person procuring for prostitution is a form of exploitation, similar to slavery. Between 1991 and 2003, the Slovenian Police dealt with 44 criminal offences of pimping and 179 criminal offences of procuring prostitutes. Prostitutes involved in all cases were either Slovenian citizens or foreigners – most often citizens of Ukraine, the Czech Republic, Slovakia and Romania.

68. **Relations of dependency and exploitation relating to drug abuse.** The possession of drugs for personal use is defined as a misdemeanour under the Manufacture and Trafficking of Drugs Act. However, trafficking in drugs and creating relations between individuals similar to slavery relations are defined as criminal offences in the Penal Code.

Forced and Compulsory Labour

69. Slovenian criminal legislation does not include forced labour as a special criminal sanction; it however does provide for work to the benefit of the community as an alternative to a short prison sentence and as an independent educational measure:

– Since 1995 a court has been able to decide that a prison sentence of not more than three months be served by the convicted person performing work for humanitarian organisations. Article 107 of the Penal Code stipulates the minimum and maximum number of hours of such work.

– Since 1995 work for humanitarian organisations or local communities has also been provided as an educational measure that the court may impose in proceedings against a juvenile offender (14 to 18 years of age).

70. In 1995 the new Criminal Procedure Act significantly changed the role of the state prosecutor. In compliance with the provision of Article 162 of the Criminal Procedure Act, the state prosecutor may suspend prosecution of a criminal offence punishable by a fine or prison term of up to three years (minor crime), if the suspect is willing to perform certain actions as instructed by the state prosecutor. The state prosecutor may, inter alia, instruct the suspect to execute generally useful work. If the suspect fulfils the obligation undertaken, the criminal complaint shall be dismissed. The institution of suspended prosecution has often been used in practice (in 2000 District State Prosecutor's Offices dealt with 41,697 criminal complaints and dismissed 928 complaints using the suspended prosecution procedure)[3]. The suspect was however seldom required to perform generally useful work due to numerous outstanding issues, since not all the necessary executive regulations have been adopted yet.

71. **Work by convicts.** Prison sentences are served in prisons. The Enforcement of Penal Sanctions Act lays down that the work of a convict is his/her right and not duty. The provision under Article 15 of the Enforcement of Penal Sanctions Act stipulates that "a convict who is capable of working and wishes to work should be enabled to work in compliance with the possibilities of the institution". A convict's work shall as a rule be undertaken within the economic activities of the institution; moreover he/she may also take part in the activities required for normal operation of the institution and, under special conditions, also outside the institution with legal or natural persons (Article 52 of the Enforcement of Penal Sanctions Act). A convict shall enjoy any rights deriving from work: payment for work, right to leave (from 18 to 30 days), health insurance and disability insurance.

72. **Table 14**

Assignment of prisoners to jobs in 2003

Assignment to jobs	Male convicts	Female convicts	Detainees	Persons punished under administrative procedure*	Minors	Total
Public commercial institutions	679	29	111	55	27	901
In works within the institution	266	13	24	1	6	310
Outside the institution	117	11	0	0	0	128
In therapeutic workshops	11	0	0	0	0	11
Total	1 073	53	135	56	33	1 350
Impossible to provide work	340	0	791	1 498	14	2 643
Refused to work	81	7	197	58	1	344
Were unable to work	176	6	34	87	0	303
Total	597	13	1 022	1 643	15	3 290

Source: Prison Administration of the Republic of Slovenia, Annual Report 2003.

* Punishment imposed by a petty offence judge.

73. It is not possible to provide work for every convict wishing to work. Convicts however seldom complain about that according to the Prison Administration of the Republic of Slovenia. In most prisons there is not enough suitable work for detainees who have been given administrative sanctions (a sanction imposed by a petty offence judge due to the perpetration of a less serious criminal offence – misdemeanour) especially for those with a fine transmuted into a prison sentence. It is not possible to ensure appropriate work to such persons due to the short sentence term. Administrative sanctions will be abolished as of 1 January 2005, as the new Misdemeanours Act no longer provides for prison sentence.

74. **Military service – conscientious objection.** The Military Service Act stipulated that all male citizens assessed as being fit or partly fit for military service in the calendar year in which they have attained the age of 19 be sent to such service. Postponement was possible due to education (attending secondary school, higher or post-secondary education institutions, engaged in post-graduate studies) whereby men would be sent to perform military service when they had completed the relevant schooling but in any case by the end of the year in which they would have attained 30 years of age. The duration of military service was seven months; the President of the Republic of Slovenia as a rule decreed that soldiers were released from military service not more than 30 days before the end of the term referred to above if the combat readiness of the Armed Forces so permitted (Article 22 of the Military Service Act).

75. A citizen of the Republic of Slovenia had the right to conscientious objection if he/she opposed the use of weapons in all circumstances on religious, philosophical or humanitarian grounds (Article 38 of the Military Service Act). Such a person was allowed to serve military service in two forms: military service without weapons or civilian service as a substitute for military service. Decisions recognising the right to conscientious objection were made by special commissions composed of a social worker, a psychologist, a doctor and a representative of administrative authorities. In processing the request the commission verified all the statements of the applicant and, if necessary, collected appropriate evidence and held a discussion with him/her. The procedure had to be concluded in six months. The applicant could file a complaint against the decision within 15 days. The Commission of the Government of the Republic of Slovenia on Conscientious Objection to Military Service decided on the complaint.

76. On 25 April 2002 the Government of the Republic of Slovenia adopted the fundamental decisions on amendments to the system of modernising the Slovenian Army. With these decisions the Government determined the deadlines for the abolition of individual components of military service in peace and for the introduction of professional military with voluntary reserve. The deadlines for abolishing of individual components of military service in peace are defined in the Act Amending the Military Service Act (Official Gazette RS, No. 86/2002). The Act provides that medical and other examinations as well as psychological examinations of conscripts and the conscription in peace cease to be carried out by 31 December 2003 at the latest. Assignment to military service, to performing civilian service as a substitute for military service and to training for the discharge of duties in the police reserve forces in peace shall be carried out until 30 June 2004 at the latest. Compulsory service in the reserve forces and 30-day-training for the protection in peace for citizens whose application for conscientious objection was granted after the completed military service cease to be carried out as

of 31 December 2010. In accordance with the decision of the Government of the Republic of Slovenia, compulsory military service and the performing civilian service as a substitute for military service were abolished in 2003. The last generation of conscripts ended their compulsory military service in October 2003. The enforcement of provisions on conscientious objection in the period covered by the Report is described in the continuation.

77. On the basis of the public invitation for tenders, the Ministry of the Interior chose 47 organisations in which civilian service as a substitute for military service was to be performed. These include organisations in the field of health, fire fighting and rescue, handicapped rehabilitation, etc.

78. There was no difference in the length of service between military service and civilian service under the law. The duration of both was seven months, although there had been a difference in practice between the two until 1997. The law provided that the President of the Republic of Slovenia could shorten the duration of military service under certain conditions, while the law did not provide for such a possibility in the case of civilian service. Reducing the duration of military service had been regular practice until 20 March 1997. According to the Ministry of Defence this was followed by an extraordinary reduction on 24 December 1998, and after that a decree of the President of the Republic on pre-term dismissal from military service was published twice, i.e. on 17 October 2002 and on 17 January 2003. During the discharge of civilian service the conscientious objector had equal rights deriving from health and social insurance as soldiers on military service. The same applied to the period of employment.

79. Under the Decree on the Exercise of the Right to Conscientious Objection to Military Service and Performing Civilian Service, the Ministry of the Interior carried out inspection supervision over the exercise of the alternative civilian service (Article 19). The aim of inspection supervision was to check:

- if the organisation ensured the exercise of alternative civilian service in compliance with relevant legislation;

- if the citizen performing alternative civilian service performed it in compliance with applicable regulations.

The Ministry of the Interior reports that in the period between 1997 and 2001 the inspection authority had not recorded any major irregularities on the part of organisations carrying out civilian service. There were no cases in which a concession had to be withdrawn from an authorised organisation. In this period the inspection authority noted that there were differences in carrying out and conditions for civilian service in individual organisations, which however did not result in violations of legislation. Violations by citizens on civilian service were also monitored by inspectors. It was established that the most frequent reprimands were unjustified absence from work and leaving the organisation of one’s own accord.

80. **Table 15**

Number of applications for the recognition of the right to conscientious objection to military service in the period 1994–2000 and their processing

	1994	1995	1996	1997	1998	1999	2000	2001
No. of applications	706	264	759	1 038	1 937	2 504	2 687	3 445
Application granted	333	145	522	951	1 587	2 107	2 444	2 619
Application not granted	42	7	21	62	62	81	12	34

Source: Information from the Ministry of the Interior of 25 April 2002, www.mnz.si

81. The most frequent reasons for applications for conscientious objection to military service stated in 2000 were the following:

- philosophical (1,351);
- philosophical and humanitarian (607);
- philosophical and religious (150);
- humanitarian (139);
- philosophical, humanitarian and religious (100);
- religious (49);
- humanitarian and religious (48).

Article 9

82. Article 19, Paragraph 2 of the Constitution provides the general rule that no person shall be deprived of freedom except in such cases, and pursuant to such procedures, as are laid down by statute. Coercive measures depriving persons of the right of freedom in Slovenian criminal proceedings are deprivation of freedom, confinement (sometimes the term arrest is used), and pre-trial detention. The topic of deprivation of freedom is primarily regulated by the Criminal Procedure Act and Police Act.

83. Any person has the right to apprehend a person found in the act of committing a criminal offence subject to prosecution ex officio. The suspect must be handed over to the police or the investigating judge immediately. The police may deprive a person of freedom (apprehension) in order to bring him in, confine him or conduct some other activity in accordance with the law (the deprivation of freedom also includes a security search).

84. Police may confine a person who disrupts or threatens public order for 24 hours if order cannot be restored by other means and/or if the disruption cannot be otherwise prevented. A person handed over to the police by foreign law enforcement authorities to be handed over to a

competent authority may only be detained for 48 hours. The Criminal Procedure Act provides that police may also apprehend a person provided any of the grounds for pre-trial detention exist but must take him/her to the investigating judge without delay.

85. Police may confine persons found at the scene of a crime for six hours if such persons may supply information for the criminal procedure. The police may exceptionally confine a person (for a maximum period of 48 hours) if grounds for suspicion exist that he/she has committed a criminal offence liable to prosecution ex officio, if detention is necessary for identification, the checking of an alibi, the gathering of information and items of evidence about the criminal offence in question and if grounds for pre-trial detention exist pursuant to Article 201 (2) (a), (c) of the Criminal Procedure Act. Detention under Article 201 (2) (b) is only allowed if there is good reason to fear that the person might destroy traces of a criminal offence. After six hours a decision in writing must be issued to the person confined concerning the grounds on which he/she has been deprived of freedom. The person confined has the right to complain against the decision. After 48 hours the person confined must be released or sent to the investigating judge for a hearing.

86. Article 4 of the Criminal Procedure Act stipulates that the person who has been deprived of freedom must be immediately advised of his/her rights in his/her mother tongue or in a language he/she understands. These comprise: the reason for his/her deprivation of freedom, the right to remain silent, the right to legal assistance of a lawyer of his/her own choice and of the right that the police, upon his/her request, inform his/her immediate family (or in case of a foreigner – his/her embassy) of his/her deprivation of freedom. A suspect who does not have the means to retain a lawyer can be appointed one at the expense of the state if this is in the interest of justice.

87. **A pre-trial detention** must be ordered by the investigating judge, upon the written request of the state prosecutor (Article 201/1 of the Criminal Procedure Act and Article 19 of the Constitution). The hearing is organised in an adversary form. A person may be detained given reasonable grounds for suspicion (probable cause) that a certain person has committed a criminal offence and one or more of the following reasons for detention (Article 201/1 of the Criminal Procedure Act):

- if the person is hiding, if his/her identity cannot be established or if other circumstances exist which point to the danger of his/her attempt to flee;

- if there is ground for concern that he/she will destroy the traces of criminal offence or if specific circumstances indicate that he/she will obstruct the criminal procedure by influencing witnesses, participants or receivers;

- if the severity of the criminal offence, the mode of accomplishing it or the circumstances under which it was committed, the personal characteristics of the person in question, the environment and circumstances in which he/she is living, or any other special circumstances warrant concern that he/she will repeat the criminal offence, bring to completion an attempted criminal offence or commit the criminal offence he/she is threatening to commit.

88. The general provision under Article 200, Paragraph 2 of the Criminal Procedure Act lays down that pre-trial detention shall be of the shortest possible duration. The pre-trial detention order shall be served on the person concerned at the time of apprehension or no later than 48 hours from the time of his/her deprivation of freedom. The detainee may file a complaint against the order that has to be decided by a panel of 3 judges within 48 hours (Article 20, Paragraph 3 of the Constitution, Article 202, Paragraphs 3, 4 and 6 of the Criminal Procedure Act). The detainee may remain in pre-trial detention for a maximum of three to six months from the date he/she was deprived of freedom – depending on the severity of charges.

89. Under the order of the investigating judge the detainee may be held in pre-trial detention for the first month. After that period he/she may be kept in pre-trial detention only under the order on the extension of the pre-trial detention. An extension ordered by the panel of 3 judges may prolong the duration of detention for a maximum of two months. If there are reasonable grounds to believe that the detainee committed a criminal offence subject to five years imprisonment, the panel of judges of the Supreme Court may extend custody to not more than another three months. Before filing a summary charge in the summary proceedings the pre-trial detention may not exceed the period of fifteen days.

90. The investigating judge may release a person from pre-trial detention with the consent of the state prosecutor. If agreement cannot be reached, a panel of 3 judges decides on the matter. A review may be requested by the defendant and his/her counsel at any time during the duration of the detention. The panel of judges is also required to examine every two months from the last order whether the reasons for the remand in pre-trial detention still exist. The extraordinary legal remedy “request for protection of legality” the filing of which is otherwise reserved for final judgments may be filed with the Supreme Court to rule on the decision on pre-trial detention.

91. Following the decision of the Constitutional Court U-I-18/93 stipulating that the legislator was obliged to introduce a number of alternative measures to detention, the Act Amending the Criminal Procedure Act of 1998 laid down more lenient measures to ensure the presence of the accused at the trial and an unimpeded course of proceedings. These include inter alia house arrest, which was re-regulated. This may be ordered if reasons for pre-trial detention exist, but the detention is not absolutely necessary to ensure the safety of people or the course of criminal procedure. House arrest may also be decreed by an investigating judge by a written order at the state prosecutor’s request. The provisions on pre-trial detention shall apply to extensions of house arrest, the duration of such arrest and deducting the time spent in house arrest from a prison sentence.

92. The Criminal Procedure Act lays down a special procedure for compensation, rehabilitation and the exercise of other rights of persons whose conviction or deprivation of freedom were unjustified (Articles 538–546). In accordance with this procedure any person whose remand in pre-trial detention or deprivation of freedom was unjustified may exercise the right to compensation.

Mental patients

93. The Human Rights Ombudsman established in his annual report (2003) that a law governing the area of mental health, including the rights of mental patients, must urgently be adopted. While all ombudsman's recommendations to date have not been sufficient (as they are not legally binding), an essential change nevertheless occurred in 2003 with the decision of the Constitutional Court of the Republic of Slovenia of 4 December 2003, No. U-I-60/03-20 (Official Gazette RS, No. 131/2003). The decision established that the provisions from Article 70 to Article 81 of the Non-Litigious Civil Procedure Act are contrary to the Constitution on the grounds mentioned in the explanation of the decision. The Constitutional Court therefore obliged the National Assembly to eliminate the established non-compliance with the Constitution within six months after the publication of the decision in the Official Gazette of the Republic of Slovenia, i.e. by 24 June 2004. The Constitutional Court further decided that until the established non-compliance is eliminated, the court must ex officio designate a counsel to the forcibly detained person upon instituting the procedure of detention. The notice of detention, which an authorised person from a relevant health institution must submit to the court, must state the grounds for detention.

94. The Constitutional Court set a six-month-deadline within which the legislator must re-regulate the procedure of forcible detention of persons in psychiatric hospitals. It could be understood from the Ombudsman's report that a draft law has already been drawn up which should comprehensively regulate the institution of detention in closed wards of psychiatric hospitals. The Ombudsman now expects that the National Assembly, having been admonished by the Constitutional Court, will take appropriate measures to eliminate all the established elements of non-compliance with the Constitution within the set period and will comprehensively regulate the conditions and procedures for the admission of persons to psychiatric hospitals and social security institutions, the status and rights of these persons during treatment and their treatment outside the hospital.

Article 10

95. The provision of Article 12 of the Constitution lays down that respect for human personality and dignity shall be guaranteed in criminal and in all other legal proceedings, as well as during the deprivation of freedom and enforcement of criminal sanctions. Violence of any form against any person whose freedom has been restricted in any way is prohibited. Detailed provisions allowing for this constitutional right to be exercised are laid down in legislation, e.g. in the Criminal Procedure Act and in the new Enforcement of Penal Sanctions Act. Other international instruments containing similar provisions which the Republic of Slovenia has either ratified or abides by are binding on Slovenia. These include the Convention for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Minimum Rules for the Treatment of Prisoners, and the European Prison Rules (Committee of Ministers of the Council of Europe, 1987).

Pre-trial detention

96. The Act Amending the Criminal Procedure Act, 1998 re-regulated the enforcement of pre-trial detention (Articles 209–213 of the Criminal Procedure Act); this area is regulated in detail by the Rules on Enforcement of Pre-trial Detention. The Act stipulates that detainees shall be remanded in detention in rooms that are separated from those in which convicts serve their sentences. Persons of the opposite sex must not be allocated the same room. While the accused is remanded in detention his/her person and dignity must not be abused; detainees must be treated in a humane manner and their physical and mental health must be protected. While remanded in detention the detainees are entitled to keep their personal belongings, as well as means of information, money and other items that are not dangerous and do not disturb other detainees. Detainees are entitled to eight hours of uninterrupted rest and to two hours of outdoor exercise per day.

97. A detainee may as a rule receive visits from close relatives once a week with the permission and under the supervision of the investigating judge; more frequent visits are allowed but not more than three times a week. Visits by consular officials of a foreign country of which a detainee is a national, the Human Rights Ombudsman, or a doctor may not be prohibited. On the basis of the recommendation made by the Human Rights Ombudsman the detainee's right to contacts with persons outside the detention centre have been extended by amending Article 213(4)(b) of the Criminal Procedure Act. This now stipulates that a detainee may in principle correspond and have contacts with persons outside the institution. If the reasons for which detention was ordered so require, the investigating judge may at the proposal of the state prosecutor order the supervision of letters and other consignments and detainee's contacts with persons outside the institution. The investigating judge may prohibit the sending or receiving of letters and other consignments and establishing contacts that may be detrimental to the proceedings, he/she, however, should not prohibit the detainee from filing an application or a complaint.

98. Disciplinary measures may be imposed on a detainee by the investigating judge or presiding judge of the panel for breach of discipline. The disciplinary measure is a prohibition or restriction on visits or correspondence. The restriction does not apply to communication between the detainee and his/her counsel, a doctor, the Human Rights Ombudsman or consular official of the country of which the detainee is a national.

99. Supervision of the treatment of detainees is performed by the president of the district court. The president or his/her deputy must visit detainees at least once a week and ask them how they are being treated. The detainee may lodge a complaint with the panel against improper treatment by the staff of the detention centre; the complaint is decided by the investigating judge or the president of the court.

100. **Table 16**

Number of detainees in the period 1992-2001

Year	Adult perpetrators			Juvenile offenders		
	Total	Decision at 1st instance	No decision to date	Total	Decision at 1st instance	No decision to date
1	2	3	4	5	6	7
1992	671	433	58	10	5	
1993	650	394	69	20	18	
1994	661	403	74	25	9	
1995	504	372	69	24	14	
1996	508	354	60	31	23	
1997	544	427	53	14	7	1
1998	601	421	74	16	8	4
1999	690	497	110	19	15	1
2000	781	552	164	18	14	2
2001	736	401	255	19	12	7
Total	6 346	4 254	986	196	125	15

Source: Supreme State Prosecutor General's Office of the RS.

Legend:

Columns 2 and 5: the total number of persons for whom detention was ordered by the investigating judge;

Column 3: the number of persons from column 2 against whom a judgement of condemnation was passed at 1st instance;

Column 6: the number of persons from column 5, against whom a judgement of condemnation was passed at 1st instance;

Column 4: number of persons from column 2 the procedure against whom is still pending since the final judgement has not been passed;

Column 7: number of persons from column 5 the procedure against whom is still pending since the final judgement has not been passed.

Prison

101. Prisoners in Slovenia serve their prison sentence in different institutions according to different criteria: according to sex (as a rule there are separate prisons for men and women, in some cases they are only separated within a prison); according to the duration of the prison sentence (prisons for serving long and short prison sentences); according to the age of convicts (prisons for adult prisoners and prisons for minors and junior minors (from 14 to 16 years), and according to the degree of security (closed, semi-closed and open institutions). Persons serving their prison sentence on the grounds of conviction for a criminal offence are separated from

prisoners who were incarcerated due to misdemeanour. There are no separate institutions for repeat or first time offenders. In all Slovenian prisons there is a vertical classification into closed, semi-closed and open wards. The regime in individual wards differs according to the degree of restriction of freedom of convicts. Prisoners are not classified by category of criminal offence or special categories of convicts (e.g. drug addicts).

102. Slovenian penology follows the principle of individualisation and differentiation in the enforcement of prison sentences. They attempt to adapt treatment to the individual. Convicts must be acquainted with their treatment, the purpose of which is to prepare convicts for normal life at freedom. During an introductory period, convicts must be acquainted with their rights and obligations as well as facilities in prison. They must be informed of disciplinary offences, sanctions imposed for such offences, and the course of disciplinary procedures. Convicts must also always have access to the law and executive regulations defining their rights and obligations.

103. The Implementation of Penal Sanctions Act stipulates that penal institutions must provide for the education and professional training of convicts. Convicts in prisons must be enabled to complete elementary school or to be educated in some other manner. Convicts who complete their schooling are issued with a certificate that must not indicate that it was acquired in prison. Prisons also provide opportunities for cultural and religious activities, physical education and information provision.

104. Penal institutions have a duty to provide treatment of convicts that enables them to lead a normal life at freedom. This is also the main purpose of treatment, which is conducted individually, in groups and in the community. A written agreement on treatment is concluded between the convict and the institution. In arranging for individual treatment, centres for social work, employment institutes, administrative bodies responsible for housing affairs and public institutes in the field of health and education as well as other associations and services are involved. An institution may propose to the relevant centre that an adviser be assigned to the convict for the purpose of individual treatment.

105. Convicts who are fully employed during the serving of their sentence are entitled to all the rights deriving from employment (salary, annual leave, etc.). Before being assigned to a job, they must undergo a medical check-up. The convict is assigned to work in compliance with his/her mental and physical abilities and the possibilities of the institution taking into account his/her wishes. A convict who attends schooling may be granted the right to a part time job. Apart from the regular working hours (eight hours per day) the convict may be employed for not more than two hours in maintaining cleanliness and order in the institution. Convicts are usually involved in the economic activities of the institution and exceptionally also outside it. The basis for payment of salary is 25 per cent of the basic salary of civil servants.

106. The convict must be allowed to spend at least two hours in the open air. Convicts are, like other citizens of the Republic of Slovenia, guaranteed the right to health care. Every institution must provide conditions for ensuring basic health and dental care and separate rooms for those who are ill. Convicts must be provided confidential testing for HIV and hepatitis infections as well as health consultations. Convicts are also provided with disability insurance.

107. Convicts must be guaranteed the right to unrestricted correspondence with state bodies, bearers of public authority and close family members; the right to any other correspondence may be determined by the administrator at the convict's request. The convict may receive consignments. The administrator may order supervision of consignments in cases of justified suspicion that items have been introduced which the convict should not possess. The convict has the right to visits by close family members twice a week and the right to telephone conversations with them. The convict is granted certain facilities if he/she proves to be cooperative during the treatment process (e.g. permission to leave the premises).

108. The director of the Prison Administration of the Republic of Slovenia may allow those convicted of criminal offences committed by negligence, for which a prison sentence of no more than six months is prescribed, and who are reliable persons and are regularly employed to continue to work or be educated or to stay at home except for non-working days.

109. The convict or his/her close family members may request a transfer to another penal institution; the director of the Prison Administration decides on the transfer. Any convict who believes that he/she was subject to torture or any other cruel treatment may request judicial protection; the institution is obliged to forward his/her proposal to the state prosecutor. The convict may file a complaint with the director of the Prison Administration in respect of any other violations and irregularities. If he/she does not receive an answer within 30 days or is not satisfied with the decision he/she may file a complaint with the ministry, responsible for justice. In case of violations and irregularities the convict may also file a complaint with the supervisory bodies within the institution.

110. The Enforcement of Penal Sanctions Act introduced a welcome innovation by regulating disciplinary procedures within the act itself. This stipulates that the convict may be given a disciplinary measure of public reprimand, assignment of another job, limitation of facilities, assignment to solitary confinement not exceeding 21 days with the right to work or assignment to solitary confinement not exceeding 14 days without the right to work if he/she commits a disciplinary offence in the institution. A convict serving the disciplinary measure of solitary confinement has the right to a two-hour daily walk in the open air. Disciplinary measures for more serious offences are imposed by a disciplinary commission of the institution designated by the director of the administration. The convict must be present at the disciplinary proceedings and has the right to an authorised representative. A complaint may be filed against the disciplinary measure imposed, on which the minister responsible for justice shall decide. Another welcome amendment to the new Enforcement of Penal Sanctions Act is found in Article 10, which for the first time in Slovenian legislation defines the concept of torture; this is defined in compliance with the definition of the UN Convention against Torture.

111. According to annual reports of the Prison Administration of the Republic of Slovenia (within the Ministry of Justice), 274 disciplinary measures were imposed on prisoners in 1995, 233 in 1996, 207 in 1998, 333 in 1999, 228 in 2000, 225 in 2001, 235 in 2002 and 154 in 2003. Until 2000 when the new Enforcement of Penal Sanctions Act entered into force a reprimand was issued in more than 30 per cent of cases. In 70 per cent of cases incarceration to solitary confinement for not more than 21 days was imposed with or without the right to work. If juveniles are excluded (on whom this measure should not be imposed) it can be stated that the measure of solitary confinement for not more than 21 days with or without the right to work was taken in 90 per cent of cases.

112. The rules regulating the carrying out of warden duties set out the duties and powers of wardens. They are derived from the principle that wardens should use the authority that least affects the individual in given circumstances and they are duty bound to exercise their powers in such a way as not to cause harm and to be proportionate to their purpose and aim. The Rules also provide for the use of the most lenient coercive means by which the desired effect is still achieved. In the course of their training, wardens must be acquainted with all regulations governing the enforcement of the prison sentence. These regulations must always be at the disposal of prisoners as well.

113. According to the data of the Ministry of Justice and the Prison Administration, the number of complaints about the work of prison staff in the years from 1995 to 1998 was between 46 (in 1995) and 81 (in 1998), 67 in 1999, 52 in 2000, 70 in 2001, 101 in 2002 and 100 in 2003. The Ministry does not consider their number to be on the increase, given that there is an ever greater number of prisoners. The reasons for complaints included: inadequate procedures and conduct of prison staff, inappropriate use of coercive means, failure to grant use of out-of-prison facilities, restriction of the freedom of movement, irregularities in exercising the right to visits and receiving mail, inappropriate assignment to work, inadequate salary for work done, violations of the Limitation of the Consumption of Tobacco Products Act, provision of medical care, inadequate food and lack of space. The complaints are considered by the Prison Administration of the Ministry of Justice. It first requires the report by the penal institution in which the person filing the complaint is incarcerated, has a personal interview with the complainant and gathers other relevant information. It then decides on the complaint and informs the complainant and the institution in which he/she is serving the sentence of its decision.

114. In recent years, the Human Rights Ombudsman in his report, in the chapter on the enforcement of prison sentences, drew attention to overcrowding in Slovenian prisons**.** The problem of overcrowding in prisons is being alleviated; a trend has been noted of slight decrease in the number of prisoners, particularly persons sentenced under the misdemeanour procedure and detainees**.** In 2002, the number of prisoners ceased to increase; in comparison with 2001 it has even slightly decreased**.** This trend also continued in 2003, when the average daily state in institutions decreased by 2 per cent compared with 2002**.** The number of new prisoners also decreased by 12 per cent**.** With reference to overcrowding in Slovenian prisons, it should be stressed that a new prison in Koper started operating in February 2004, which will essentially decrease the overcrowding in Slovenian prisons.

115. **Conditional release** cannot be one of the forms for resolving the problem of overcrowding in Slovenian prisons**.** The only legal condition, stipulated by the Penal Code, is a reasonable expectation that the convict will not commit the criminal offence again**.** The relation between the convict and the victim of a criminal offence also needs to be taken into account when deciding on conditional release**.** The criteria that should be taken into account when deciding on conditional release are defined in the Act Amending the Penal Code, adopted on 30 March 2004**.** One of the adopted criteria is also the relation between the offender and the victim**.** Thus the Human Rights Ombudsman's remark will be taken into account, i.e. that the legislation and executive regulations should be aimed at limiting to the greatest possible extent any subjective judgement of persons when deciding on conditional release**.**

116. At the end of 2001 the National Assembly adopted the Amnesty Act.

117. In his report on the problems of treatment of prisoners, the Human Rights Ombudsman establishes a relatively small number of violations and does not in general criticise the whole enforcement system. The only general finding is the following: some Slovenian prisons do not have adequate personnel for treatment or the implementation of the measure of compulsory treatment of drug addicts. The Ombudsman therefore proposes certain changes with a view of ensuring the implementation of this measure immediately after the convict starts serving his/her prison sentence. The Prison Administration explains that treatment of alcohol and drug addicts is carried out in all prisons according to the national programme based on expert positions. This means that the prisons carry out the same medical and psychosocial programmes of treatment as the centres for the treatment of alcohol and drug addicts outside the prison.

118. In accordance with Article 14 of the Enforcement of Penal Sanctions Act, one of the treatment phases includes the apprising of the convict of the treatment while he/she is serving the prison sentence, whereby the convict should be warned that certain forms of treatment may infringe upon his/her personal rights. The convict has the right to refuse the planned treatment (with the exception of the implementation of the measure of compulsory treatment of alcohol and drug addicts), but he/she should be warned about possible consequences of the refusal of treatment; the convict refusing such treatment may not be granted certain facilities or a conditional release.

119. The Prison Administration agrees with the position of the Human Rights Ombudsman that the prison is obliged to implement the measure of compulsory treatment of alcohol and drug addicts, imposed on the convict with the final judgement in addition to the prison sentence. The carrying out of this measure has also been hindered because the Ministry of Health has not drawn up an executive regulation on the implementation of the measure under Article 150 of the Enforcement of Penal Sanctions Act, despite numerous initiatives to this end.

120. **Table 17**

Number of prisoners in prisons in the period 1995-2003

Year	Adult prisoners	Minor prisoners	Persons punished for misdemeanours	Juvenile correctional facility	Total
1995	1 084	12	1 837	48	2 981
1996	932	11	1 838	34	2 815
1997	1 016	9	1 808	41	2 874
1998	1 162	10	2 729	37	3 938
1999	1 431	7	3 724	41	5 203
2000	1 629	10	3 733	31	5 403
2001	1 756	13	3 173	36	4 978
2002	1 697	5	2 151	25	3 878
2003	1 735	4	1 697	25	3 461

Source: Ministry of Justice, Prison Administration of the Republic of Slovenia.

Article 11

121. The Republic of Slovenia completely fulfils the obligations under Article 11 of the Covenant. A prison sentence may only be imposed by the court if the defendant is found guilty in criminal law cases and in cases when a petty offence judge finds the defendant guilty in the misdemeanour procedure but never in other procedures or on the grounds of inability to fulfil contractual obligations. Slovenia also ratified Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms whose Article 1 on prohibition of imprisonment for debt sets out that no one shall be deprived of freedom merely on the grounds of inability to fulfil contractual obligations.

Article 12

122. **The restrictions of free movement of citizens of the Republic of Slovenia on the grounds of suspicion that a criminal offence was committed.** Under the Criminal Procedure Act, free movement of the accused may be restricted in criminal procedures, if legal conditions are fulfilled, by the following measures:

- Pre-trial detention (Article 200);
- House arrest (Article 199.a);
- Temporary withdrawal of travel document (Article 195);
- Prohibition to approach a certain area or person (Article 195.a).

The above restrictions are set out in the Criminal Procedure Act, which also determines their duration. In addition to prison sentence, criminal legislation includes another criminal sanction restricting free movement in the most extreme form: deprivation of freedom; measures of correction and prevention of compulsory psychiatric treatment and custody in an appropriate institution. Until 1995, the duration of this preventive measure was not limited, however, with the new criminal legislation adopted that year its duration is limited to ten years.

123. **The restriction of free movement on the grounds of contagious diseases**. The Contagious Diseases Act includes two forms of restriction of free movement in case of contagious diseases:

- Isolation is a measure that enables the doctor treating the patient, the local health protection institute or the Institute of Public Health of the Republic of Slovenia to restrict the free movement of a person suffering from a contagious disease if this may cause a direct or indirect transmission of a disease to other persons. The type of isolation is determined on the basis of the mode of transmission of a contagious disease and the state of patient's infection, and may take place at a person's home, or in a health institution (hospitalisation) or in an area that is specifically intended for this purpose (Article 18). Non-observance of this measure is a misdemeanour and penalised by a fine.

- Quarantine is a measure by which free movement is restricted and medical examination is prescribed to healthy persons that have been and are suspected to be in contact with someone suffering from plague or virus haemorrhagic fever (Ebola, Lassa, Marburg) during his/her infection period. Quarantine is ordered by the minister responsible for health. No appeal is allowed against the decision on the quarantine (Article 19). Non-observance of this measure is a misdemeanour and penalised by a fine.

124. The minister of health may also prohibit or restrict movement of the population in the infected or directly threatened areas if other measures do not suffice to prevent the entry and spread of a certain contagious disease in the Republic of Slovenia (Article 39). When implementing this measure, the authorities responsible for internal affairs must cooperate within their rights and obligations (Article 51).

125. In exercising medical supervision on the state border, the medical inspection has the right and obligation (Article 48):

1. To prohibit movement of persons who are suffering or are suspected to suffer from cholera, plague or virus haemorrhagic fever;

2. To order other prescribed sanitary-technical and hygienic measures in accordance with law, international conventions and other international agreements.

126. The medical inspection must immediately inform the minister responsible for health and the minister responsible for internal affairs about the measures from the preceding paragraph.

127. The medical worker or health institution that received an alien for a compulsory treatment, ordered the alien's isolation or implemented the decision on the quarantine must immediately inform the authority responsible for internal affairs (Article 52).

Procedure for issuing travel documents and visas

128. **Table 18**

Number of travel documents issued in the period 1991-2000

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Total
Number of travel documents issued	27 686	630 189	605 338	140 543	100 370	68 046	127 997	140 355	84 919	70 644	2 027 864

Source: Information from the Ministry of the Interior of 25 April 2002.

129. The conditions and procedure for the issuing of travel documents are regulated by the Travel Documents of Citizens of the Republic of Slovenia Act. A travel document is issued by the administrative unit in the area in which the citizen applying for the travel document has permanent residence (Article 6). The authority with which an application for the issue of a travel document was filed may reject the application for three reasons (Article 26):

1. If a criminal procedure is instituted against the citizen applying for a travel document or if there is a procedure conducted in matrimonial disputes and disputes arising from the relations between parents and children until the procedure is pending - if this is required by the competent court;

2. If there are national defence interests determined by law - if this is required by the ministry responsible for defence;

3. If the citizen was sentenced to prison at least twice for criminal offences of the illicit production of and trafficking in drugs, international terrorism, the falsification of documents, smuggling, the illegal crossing of the state border, the illicit manufacturing of and trafficking in arms or explosives and for other serious criminal offences in connection with foreign countries - if this is required by the police.

If any of the above reasons becomes apparent after a travel document is issued, the competent authority withdraws the travel document issued.

130. In the period 1995-2000, the issuing of travel documents was refused in eleven cases, and 40 travel documents were withdrawn. The applicant for a travel document may file a complaint against the decision on the refusal of his/her application for a travel document and against a decision on the withdrawal of a travel document. The complaint is decided over by the Ministry of the Interior. In the period 1995-2000, such complaints were not filed. (Source: Information from the Ministry of the Interior of 25 April 2002.)

131. The Travel Documents of Citizens of the Republic of Slovenia Act of 2000 stipulated that all citizens must exchange their travel documents for new ones by 5 August 2002 when the validity of the old ones expired. The forms for new Slovenian travel documents are harmonised with the EU *acquis communautaire* in both standards and legislation. Forms are printed in Slovenian, English and French, and also in Italian and Hungarian in the areas determined by law where members of the Italian and Hungarian nationality, respectively, live.

Restriction of free movement of asylum seekers

132. The Asylum Act stipulates that the movement of asylum seeker can be temporarily restricted on the grounds of:

- Establishing the identity of asylum seeker; or
- Preventing the spread of contagious diseases; or
- Suspicion of misleading or abuse of procedure as stipulated in Article 36 of the Act; or
- Threatening other persons' lives or property.

Movement can be restricted by:

- The prohibition of movement outside a specific area; or
- The prohibition of movement outside the Asylum Home or its branch; or
- The prohibition of movement outside the border crossing if there are any possibilities for accommodation.

133. The restriction of movement shall be ordered by a decision issued by the ministry responsible for internal affairs. The restriction of movement may remain in effect until the grounds for it subsist, but not longer than three months. If the grounds for the restriction of movement still exist after that period, the limitation can be extended for a further period of one month. The restriction of movement on the grounds of preventing the spread of contagious diseases shall remain in effect until the grounds therefore subsist. The asylum seeker has the right to complaint against the decision on prohibition of movement with the Administrative Court within three days after its service. The Court has to decide on the complaint after the preliminary hearing within three days. The complaint does not stay the execution of the decision.

134. In the period between 13 and 25 May 2004, the restriction of movement due to establishing the identity of asylum seekers and suspicion of misleading or abuse of procedure as stipulated in Article 36 of the Asylum Act was imposed on 14 asylum seekers.

135. 220 decisions on the restriction of movement due to preventing the spread of contagious diseases were also issued. In accordance with the decision of the Health Inspectorate, the Asylum Home on Celovška cesta in Ljubljana had to be closed and reconstructed. The Ministry of the Interior placed these asylum seekers into a building in Vidonci in the north-eastern part of the Republic of Slovenia.

Article 13

Deportation of aliens residing lawfully on the territory of Slovenia

136. Aliens residing lawfully in Slovenia may be deported only on the basis of a final decision issued in the proceedings on the grounds of committing a criminal offence or misdemeanour. In the criminal procedure conducted against an alien for committing a criminal offence, deportation may be imposed on an alien as an additional penalty (in addition to prison sentence, fine or suspended sentence) - Articles 34 and 35 of the Penal Code. Under the Penal Code, the period of deportation ranges from one to ten years (Article 40). According to the Ministry of Justice of the Republic of Slovenia, the additional penalty of the deportation of an alien was imposed on 238 persons in 1998, and on 171 in 1999. The amended Misdemeanours Act sets out in Articles 35 and 40 that, in addition to the sentence, measures of correction and prevention may be imposed on the offender; these measures also include the deportation of an alien from the country for a period ranging from six months to two years.

137. **Table 19**

"Deportation of an alien" as a preventive measure imposed by a petty offence judge

Year	Preventive measure - deportation of an alien
1995	687
1996	837
1997	2 154
1998	3 106
1999	2 375
2000	3 422
2001	2 591
Total	15 172

Deportation of aliens unlawfully residing in Slovenia

138. It is deemed that an alien is residing in the Republic of Slovenia unlawfully if:

- He/she entered the country illegally;
- His/her visa has been annulled or the period of validity of the visa has expired or he/she is residing in the Republic of Slovenia contrary to the stated purpose of the entry, or time for residing in the Republic of Slovenia under law or international agreement has expired;
- He/she is not in possession of a residence permit or the permit has expired.

Such an alien must leave the country immediately or within the set deadline (it must not exceed three months).

139. Article 6 of the Asylum Act contained the same provision. By the Act Amending the Asylum Act that entered into force on 25 August 2001, Article 6, Paragraph 2 that stipulated exceptions of principle of non-refoulement was deleted. On this basis no one was returned to his/her native country.

140. The Ministry of the Interior has, in most cases, returned illegal aliens to the country from which they illegally entered the Republic of Slovenia. Slovenia has concluded international agreements with all its neighbouring countries, and these agreements enable the deportation of aliens that fulfil the relevant conditions and for whom there is enough proof that they resided on the territory of the state party prior to entry into Slovenia, or enough proof that they crossed the border between the state party and the Republic of Slovenia illegally.

Table 20

Number of aliens returned on the basis of international agreements in the period 1999-2003

Year	Number
1999	4 025
2000	5 740
2001	5 885
2002	2 372
2003	2 159

Source: Ministry of the Interior.

141. Aliens that are in the process of deportation from the country are accommodated at the Deportation Centre in Veliki Otok near Postojna (branch Prosenjakovci). In 2003, 1,908 persons were accommodated at the Centre. This year 55 official transfers were carried out, and 593 aliens were deported with an escort. The social service prepares aliens for their return, they are interviewed, they are examined by doctors, and the health service is available to them during their stay.

Table 21

Number of aliens accommodated at the Deportation Centre who were in the process of deportation from the country

Year	Total	Additional penalty of expulsion from the country	Deportation from the country as a preventive measure	Deported with an escort
1999	12 559	70	719	1 831
2000	14 576	22	1 286	3 115
2001	10 034	20	862	2 387
2002	3 272	29	346	1 671
2003	1 908	80	322	593

Source: Ministry of the Interior.

142. The Deportation Centre in Veliki Otok near Postojna is intended for all categories of aliens. The construction and renovation of facilities continues. When the construction is finished, special rooms will be intended for “vulnerable” groups: elderly people, minors without escort and mothers with children. Until the construction works are completed, appropriate conditions of stay (separate rooms) shall be provided in the existing facilities. The asylum seekers are accommodated at the Deportation Centre only if penalty of expulsion was pronounced or the measure of deportation of an alien from the country was imposed on them, even though they apply for asylum during their stay at the Centre. Otherwise they are sent to the Asylum Home immediately after they apply for asylum.

143. The police are responsible for refusing entry to aliens at the border, for deporting aliens and other measures and decisions related to aliens set out by the Aliens Act. Complaints against the measures of the police are decided over by the Ministry of the Interior (Articles 64 and 65 of the Aliens Act). According to the Ministry of the Interior, illegal aliens are dealt with individually during the whole procedure and may refer to Article 51 of the Aliens Act which reads as follows:

> "(1) The deportation or expulsion of an alien to a country in which his/her life or freedom would be endangered on the basis of race, religion, nationality, membership of a special social group or political conviction, or to a country in which the alien would be exposed to torture or to inhumane and humiliating treatment or punishment, shall not be permitted.
>
> By the Act Amending the Aliens Act, adopted on 27 September 2002, the National Assembly significantly amended Article 51 by deleting Paragraph 2, which read as follows:
>
> (2) The prohibition of deportation or expulsion of an alien referred to in the preceding paragraph of this Article shall not apply to an alien in relation to whom there are well-founded reasons for believing that they might threaten national security, or to an alien who has been convicted in a court of law of an exceptionally severe criminal offence and therefore poses a threat to the Republic of Slovenia."

According to the Ministry of the Interior, no alien was deported on the basis of Article 51, Paragraph 2 until the adoption of the Act Amending the Aliens Act. This exception from the principle of non-refoulement was deleted in the amended act that entered into force on 27 October 2002. This is also in line with the recommendation of the UN Committee against Torture, given to the Republic of Slovenia pursuant to the UN Convention against Torture.

Article 14

144. The concept of "criminal charge" in Article 14, Paragraph 1 of the Covenant is included in Slovenian law under criminal law legislation - this refers to criminal offences set out in the Penal Code, which are decided over in criminal procedures under the Criminal Procedure Act. Slovenian legislation also covers the criminal liability of legal entities, which is governed by the Criminal Liability of Legal Entities Act. This Act includes few procedural provisions; provisions of the Criminal Procedure Act are therefore applied mutatis mutandis (Article 42 of the Criminal Liability of Legal Entities Act).

145. The concept of a "suit at law" may be perceived as a proceeding of one or more parties against another party or other parties before the court under the procedures determined by law. In Slovenian law, this term comprises actions in civil cases governed by the Civil Procedure Act, actions in administrative cases governed by the General Administrative Procedure Act, and actions in non-litigious cases governed by the Non-Litigious Civil Procedure Act. Borderline cases between punitive and administrative law are misdemeanours to which a special procedure under the Misdemeanours Act applies.

Status of judges

146. The status of judges is governed by the provisions of the Constitution, the Courts Act, the Judicial Service Act and the Court Rules. The Constitution stipulates that the judges are independent in the performance of the judicial function and are bound by the Constitution and laws (Article 125 of the Constitution). The office of a judge is permanent and is not compatible with office in other state authorities and in bodies of political parties (Articles 129 and 133 of the Constitution). Judges are elected by the National Assembly on the proposal of the Judicial Council composed of 11 members: five members are elected by the National Assembly on the proposal of the President of the Republic from among university professors of law, attorneys and other lawyers, whereas six members are elected from among their own number (Articles 130 and 131 of the Constitution). There are no extraordinary or military courts in Slovenia (Article 126, Paragraph 2 of the Constitution) that would try civil persons.

147. Independence of the courts and equality before the law is provided for by several provisions of which only the most important will be mentioned. The conditions for election to the judicial function are the following: citizenship of the Republic of Slovenia and active command of the Slovenian language, legal capacity and general health capacity, a minimum age of 30, professional title “graduate lawyer” (acquired in the Republic of Slovenia or on the basis of authentication), bar exam, personal adequacy for judicial office (Article 8 of the Judicial Service Act). Judicial office is permanent.

148. Calls for vacant judicial posts are sent out by the Ministry of Justice (Article 15, Paragraph 1 of the Judicial Service Act), and the applications are then submitted to the personnel board of the court for which the public call for the post was published. The personnel board is composed of the chair of a court and 4-6 judges (dependant on the size of the court) elected by the judges from their own number (Article 33 of the Courts Act). The personnel board forms an opinion on all candidates and submits the opinion to the Judicial Council for consideration. The Judicial Council then chooses the candidate for the vacant post and is not bound by the assessment of the personnel board. When a candidate is elected to a judicial function for the first time, he/she has to be additionally elected by the parliament (National Assembly - Article 19 of the Judicial Service Act) based on the proposal of the Judicial Council. The personnel board also assesses the judicial service of a judge when he/she applies for promotion. It submits its assessment to the Judicial Council which decides over the promotion; in such a case, the decision of the board is final (Article 21 of the Judicial Service Act). An appeal against the assessment of the personnel board is possible, with the personnel board of the court of higher instance (Article 36 of the Judicial Service Act).

149. A judge is assigned to his/her legal area at the beginning of the calendar year (Article 14 of the Courts Act), and cases are distributed to him/her according to the daily order of entry of petitions for legal action, taking into consideration the alphabetical order of the initial letters of the names and surnames of the judges (Article 15, Paragraph 1 of the Courts Act and Articles 160-170 of the Court Rules). The Courts Act also defines in detail the Judicial Council, its composition and modus operandi.

150. The judicial function of a judge may cease if the personnel board assesses his/her work negatively, if he/she retires or reaches the age of 70, if he/she loses Slovenian citizenship, if he/she loses the legal or health capacity to perform his/her service, if he/she resigns from the

service, if he/she accepts a function or begins to perform an activity or takes up employment or, despite prohibition, performs work that is not compatible with judicial function. If a judge is sentenced to prison for more that 6 months, the Judicial Council proposes to the National Assembly that the judge be relieved of his/her duty. If a judge intentionally commits a criminal offence of abuse of his/her judicial function, a court must submit the final decision to the Judicial Council which informs the National Assembly thereof, and the National Assembly then relieves the judge of his/her duty. The judge may be transferred to another court or to another body only with his/her written consent. Exceptionally, he/she can be transferred on the grounds of conditions set out by law, e.g. if the court where the judge performs his/her judicial service is closed.

151. A judge may not carry out the duties of an attorney or notary, profitable activities, the business of management, and may not be a member of a board of directors or a supervisory board of a company, or carry out other work that would give the impression that he/she does not perform his/her service impartially.

152. The president of a court or the minister of justice may require that a disciplinary procedure be initiated against a judge if a judge violates judicial duties or irregularly performs judicial service. Disciplinary sanctions include: transfer to another court, suspension of promotion and reduction in salary. A judge may not bear disciplinary responsibility for the opinion given by him/her as a judge.

153. The main problem of the judiciary in Slovenia is court backlogs. This problem has also been highlighted by the Human Rights Ombudsman. In 2003, the Human Rights Ombudsman received 717 petitions relating to judicial procedures, which represents an increase by 5 per cent compared to 2002 and more than 26 per cent of the total intake of petitions. The largest share of these again relate to civil procedures. Thus, 409 received petitions relate to civil cases, non-litigious civil cases and execution cases, followed by 86 petitions relating to criminal matters. Apart from the lengthiness of judicial procedures, the petitions increasingly refer to other circumstances relating to the right to fair trial and also to (un)fair treatment of people who are parties to a court proceeding and thus under the authority of a judge.

154. In 2003, the Slovenian courts settled 570,236 cases. 586,424 cases have remained unsettled as at 31 December 2003, which is a 3.3 per cent increase compared with the previous year. Certain alternative mechanisms are being implemented, both in the civil and criminal procedures, to accelerate judicial proceedings, such as settlement.

Public trials

155. Trials in all kinds of judicial procedures are always public - this applies to criminal procedures, misdemeanour procedures, civil and administrative procedures (Article 294, Paragraph 1 of the Criminal Procedure Act, Article 156 of the Misdemeanours Act, Article 293, Paragraph 1 of the Civil Procedure Act, and Article 155, Paragraph 1 of the General Administrative Procedure Act). In the misdemeanour procedure, and in the administrative procedure, a decision may be passed in minor cases on the grounds of summary procedure (Article 159 of the Misdemeanours Act and Article 144 of the General Administrative Procedure

Act) if, for example, the decision is based on the immediate personal establishment by the authorised person or if the factual situation can be established on the grounds of official data that are in the possession of the body.

156. The conditions for the exclusion of the public in certain procedures are different in certain respects. In criminal procedures, the public may be excluded only if so required in the interests of protecting secrets, maintaining law and order, on moral considerations, for the protection of the personal or family life of the defendant or the injured party, for the protection of the interests of minors, or if - in the opinion of the panel - a public trial would be prejudicial to the interests of justice (Article 295 of the Criminal Procedure Act). In civil and non-litigious procedures, the public may be excluded if this is required in the interests of an official, business or personal secret or in the interests of law and order, and moral considerations or if regular measures for the maintenance of peace cannot ensure the uninterrupted continuation of the trial. In administrative procedures, the public may be excluded from an oral hearing if so required for reasons of moral considerations or public safety, or if a serious and immediate danger exists that the oral hearing would be obstructed, if there is a trial relating to the family or if circumstances are tried that bear significance to state, military, official, business, professional, scientific or art secrets. The judgement must always be pronounced in open court (Article 155, Paragraph 5 of the General Administrative Procedure Act), and the public may only be excluded when announcing the grounds of the judgement (Article 360, Paragraph 4 of the Criminal Procedure Act, and Article 322, Paragraph 3 of the Civil Procedure Act).

157. The defendant is protected by the **presumption of innocence** and can remain completely passive through the proceedings. Slovenian legislation does not provide for the specific standard of proof, such as the “beyond reasonable doubt” provision. If the prosecutor fails to prove guilt, the court has to decide *in dubio pro reo*. The act stipulates that a judgment by which the defendant is acquitted of the charge shall be pronounced (inter alia) when it has not been proven that the defendant has committed the act with which he/she has been charged. The burden of proof for all elements of a criminal offence is born by the prosecutor. Since proof may also be produced by the court to establish accurate facts necessary for the pronouncement of lawful judgement (inquisitorial maxim), the burden of proof is de facto borne by the court.

158. The defendant has **the right to know the content of the charges against** him and to **examine and copy the files of the criminal case** and to inspect items of evidence from the moment the file has been established. This means that he/she undoubtedly has the right to inspect the file from the moment the investigation has been initiated. In case formal investigative acts are being conducted before the investigation, he/she also has the right to inspect files (e.g. after a house search). He/she cannot, however, inspect police notes or the file of the prosecutor. In general, it can be said that the defendant has the same rights as his/her defence counsel.

159. The suspect has **the right to the services of a lawyer** from the moment of apprehension. When being deprived of freedom, a person suspected of committing a criminal offence must be immediately advised of his/her rights in his/her mother tongue or in a language he/she understands: the reason for his/her deprivation of freedom, the right to remain silent, the right to legal assistance of a lawyer of his/her own choice and of the right that the police, upon his/her

request, inform his/her immediate family of his/her deprivation of freedom. A suspect who does not have the means to retain a lawyer can be appointed one at the expense of the state if it is in the interest of justice.

160. If the suspect is not deprived of freedom, he/she can exercise the right to a lawyer from the moment the investigation has been initiated. Before that, he/she also has the right to a lawyer in case certain coercive measures are used against him/her (e.g. house search). The suspect can waive the right to a lawyer except in the cases when a council is obligatory (e.g. from the first hearing if the accused is accused of a criminal offence for which the highest prison sentence (30 years) can be imposed, during the proceedings determining whether to put the accused in pre-trial detention and during the time that he/she is in pre-trial detention, from the time indictment is filed in a case where he/she is accused of a criminal offence for which prison sentence of 8 years or more is imposed).

161. The Criminal Procedure Act does not contain any general provision regulating **the right to a fair and speedy trial,** but it includes several provisions enabling these rights to be exercised. This right is provided under Article 23, Paragraph 1 of the Constitution of the Republic of Slovenia stating: "Everyone has the right to have any decision regarding his rights, duties and any charges brought against him made without undue delay by an independent, impartial court constituted by law."

162. The fundamental principles of the Criminal Procedure Act **of a fair trial** defined in Article 1 are to determine the rules which provide that no innocent person is convicted and that the perpetrator of a criminal offence shall only be sentenced under the conditions provided for by criminal law and within a lawfully conducted procedure. The freedoms and rights of the defendant may only be restricted by law. Criminal sanctions may only be imposed by competent courts and in a procedure conducted in accordance with the Criminal Procedure Act. There are also other mechanisms providing for a fair trial, the most important being: the presumption of innocence, the right to a natural judge, *ne bis in idem*, the institution of the exclusion of a judge against whom a doubt is raised over his/her impartiality, etc.

163. A **speedy trial** is provided for by general principles of the Criminal Procedure Act that proceedings shall be conducted without unnecessary delays. Certain acts by the prosecution and judicial branch have time limits, which is probably best expressed by restrictive measures, such as the restriction of freedom: pre-trial detention, confinement, etc.[4]

164. The defendant must, as a rule, be tried **in his/her presence**. If a duly summoned defendant fails to appear at the main hearing without explanation, the panel of judges can order that the trial be held in his/her absence if his/her presence is not indispensable, if his/her defence counsel is present at the trial and if he/she has already been heard.

165. The general rule states that the accused and the prosecutor have the status of equal parties. They have the right to propose certain investigative acts to be conducted by the investigating judge, both can attend the conduct of the investigative acts, both can produce

evidence, produce rebuttal evidence, oppose the evidential claims of the other side, examine the witnesses and experts, file appeals, etc. The accused has **the right to confront the witnesses for the prosecution**. The parties (the accused, his/her counsel and state prosecutor) have the right to propose the evidence to the court.

166. In general, it may be said that all the above mentioned rights apply to aliens as well as to Slovenian citizens; both also have the **right to an interpreter free of charge**.

167. The general rule of Article 11 of the Criminal Procedure Act provides that it is **forbidden to force the confession** or any other statement from the accused by means of threats, force or any similar method. At the first hearing, the accused must be informed of the criminal offence with which he/she is charged and of the grounds on which the charge has been brought against him/her. The accused must be informed that he/she is not bound to make any statements; he/she is not obliged to incriminate himself/herself or to confess guilt. Generally, the court cannot base its decision on the statement made by the accused prior to his/her being informed of his/her rights or if the information of the rights is not stated in the minutes.

168. The Slovenian Criminal Procedure Act stipulates a special procedure against **juvenile offenders**. A minor is a person between 14 and 18 years - children under 14 are thus not criminally liable according to Slovenian legislation. Criminal courts specialising in minors are competent for the procedure against minors. For juvenile offenders, special criminal sanctions apply - educational measures. To minors whose age was between 14-16 when they committed criminal offence, only educational measures may apply (reprimand, instructions and prohibitions, supervision by social services, committal to an educational institution, committal to a juvenile detention centre, committal to an institution for physically or mentally handicapped youth). A fine or juvenile detention may be imposed on young adults (between 16-18) (Article 72 of the Penal Code). This procedure for juvenile offenders provides more rights than the procedure against adult perpetrators: a minor may not be tried *in absentia* (Article 453, Paragraph 1 of the Criminal Procedure Act); the principle of expediency in procedures of criminal offences with an imposed sentence of no more than 3 years or a fine; a minor is always tried separately, even if he/she committed a criminal offence together with an adult; social services participate in a procedure against minors; without the permission of the court, a judicial decision relating to juvenile offenders may not be published; lay judges are elected among occupations that have experience with the education of minors; a minor has to be detained separately from adults.

169. The defendant and his/her counsel may file an appeal against any non-final decision in first instance for reasons of substantial violations of the criminal procedure, violations of criminal law or erroneous or incomplete determination of the factual situation, or decision on criminal sanctions. The appeal is decided over by a higher court composed of 3 judges. An appeal is a suspensive remedy. A higher court may dismiss an appeal, dismiss it as unfounded, modify the judgement of first instance, annul the judgement and return the case to the court of first instance for retrial or only conduct the main hearing. The same rules apply to misdemeanour procedures. In a criminal procedure as well as in a misdemeanour procedure, there are extraordinary legal remedies by which a final decision may be reviewed.

170. The Criminal Procedure Act also provides for a special procedure for indemnification, rehabilitation and other rights of persons who have been wrongfully convicted of a criminal offence or deprived of freedom.

Article 15

171. The principle of legality and the prohibition of retroactive applicability of criminal legislation are included in both the Constitution and the Penal Code. The same substantive principles also apply to law on misdemeanours as a type of criminal offences (economic offences as the third category of criminal offences were abolished by the Act Amending Misdemeanours Act of 2000, and were included among misdemeanours).

172. In the reference period, courts often had to use the principle of prohibition of retroactive applicability of criminal legislation, or the principle of applying a less severe law to the perpetrator, as on 1 January 1995 a new Penal Code entered into force. In comparison to the previous criminal legislation, the new Penal Code included a number of new and amended incriminations, and sentences laid down were modified in a number of criminal offences.

Article 16

173. In this field, Slovenian legislation has not changed since the previous report.

Article 17

Residence

174. Article 35 of the Constitution stipulates that the inviolability of the physical and mental integrity of every person, his/her privacy and personality rights are guaranteed. Article 36 stipulates that dwellings are inviolable and that no one may, without a court order, enter the dwelling or other premises of another person, nor may he/she search the same, against the will of the resident. Any person whose dwelling or other premises are searched has the right to be present or to have a representative present. Such a search may only be conducted in the presence of two witnesses. Subject to conditions provided by law, an official may enter the dwelling or other premises of another person without a court order, and may in exceptional circumstances conduct a search in the absence of witnesses, where this is absolutely necessary for the direct apprehension of a person who has committed a criminal offence or to protect people or property.

175. The Criminal Procedure Act stipulates in detail the conditions under which a house search and personal search may be ordered (Articles 214–219 of the Criminal Procedure Act). A search of the dwelling and other premises of the accused or other persons may be conducted if there is likelihood of apprehending the accused during the search or of discovering the traces of a criminal offence or objects of importance for criminal procedure. A personal search may be made if it seems probable that traces and objects important for criminal procedure will be found during the search (Article 214 of the Criminal Procedure Act).

176. Both searches are ordered by the court in the form of a reasoned search warrant that has to be handed over to the person whose premises or person are to be searched prior to the search. The person to be searched is informed of his/her right to send word to his/her lawyer, the latter being entitled to be present during the search. Before starting the search, the person whom the

search warrant concerns is asked to surrender voluntarily the person or the objects sought. A search may be undertaken even without the prior presentation of the search warrant if armed resistance is expected, or the search has to be conducted instantly and without warning, or where a search is conducted on public premises. A search is, as a rule, conducted in daytime. It may also be conducted during the night provided it started but was not finished in daytime, or if reasons are given to carry out the search without a search warrant. The provisions of a house search also apply to searching hidden parts of a motor vehicle.

177. The person whose apartment or other premises are searched, or a representative of that person, has the right to be present during the search. When a house search or personal search is conducted, two adult persons are required to be present as witnesses. A female person may only be searched by a female person, and the witnesses of the act may only be females. A house search or personal search is to be carried out considerately, to avoid disturbing peace. Each house search or personal search is registered in a record which is signed by the person whose premises or person have been searched, his/her lawyer if present during the search, and persons whose presence is obligatory. The objects and documents seized are entered and accurately described in the record, and the same is indicated in the receipt which is immediately given to the person whose objects or documents have been seized (Article 216 of the Criminal Procedure Act).

178. The police may enter without a search warrant of the court and, if necessary, search the dwelling and other premises of a person if the occupant so desires, if someone is calling for help, if a perpetrator caught in the act of committing a criminal offence is to be apprehended, if reasons of safety of people and property so require, and if a person whose apprehension or compulsory production under an order of the competent state authority, or a person being prosecuted, is to be found in the dwelling or on other premises. In such an instance, the occupant is instantly issued a certificate. The police may search a person without a search warrant and witnesses present when acting under an order to bring a person before the court or when apprehending a person, provided grounds exist to suspect that the person is carrying weapons for attack or that he/she will throw away, hide or destroy objects that must be taken away from him/her as evidence in criminal proceedings.

179. Where authorised law-enforcement bodies have carried out a search without a search warrant, they are bound immediately to submit a report thereof to the investigating judge, or to the competent state prosecutor where proceedings are not yet pending. If the search was carried out without a written court order or persons that have to be present during the search, or if the search was conducted contrary to the provisions on search without a court order, the court cannot base its decision on evidence acquired in such a manner.

180. The principle of protecting secrecy may be waived in taxation and customs procedures governed by the following acts: Taxation Procedure Act, Tax Administration Act, Customs Service Act and Customs Act.

181. Tax inspection in tax matters, which is as a rule conducted on the premises of a taxpayer, is performed by tax inspectors who have several investigative powers. When conducting an inspection with the purpose of establishing the amount of a tax base, the inspector has the

following powers restricting the right to secrecy: the right to inspect business and other premises, facilities, goods, objects, books of account, book-keeping documents, computer data bases, contracts and other documents giving insight into the business operations of a taxpayer; the right to seize documents, objects, samples and other goods for no more than 15 days, if required to secure evidence.

182. Tax offices have to keep records with information relevant for the establishment of a tax base. The information is classified, but it can be shared with other investigative bodies (police, state prosecutor, etc) if they need this information for the prosecution of the person (legal or natural) suspected of involvement in criminal offences or misdemeanours concerning violations of tax legislation.

183. The customs offices have to supervise, control and inspect all customs matters. These three tasks are performed by customs officers and customs inspectors. Both have basically the same investigative powers but customs inspectors deal with more demanding cases, and it is only customs inspectors who can carry out customs inspections. Their powers restricting the right to secrecy are: to check the identity of persons who enter or leave the country; to require that book-keeping documents, documents, business correspondence, computer files or any other document are submitted for the purpose of customs control or inspection; to enter business and other premises for the purpose of customs control or inspection, to stop and search any person or means of transportation for the purpose of investigating possible violations of customs regulations if reasons for suspicion exist. If reasons for suspicion exist that the person who is being searched is smuggling illegal substances in his/her body, customs officers or inspectors must inform the police thereof; to search business and other premises and inspect book-keeping documents, documents and computer files found on these premises for the purpose of investigating possible violations of customs legislation. Customs officers and inspectors must ask for a court warrant to search the above mentioned premises if the persons responsible for these premises do not voluntary agree with the search.

Correspondence

184. The privacy of correspondence and other means of communication must be guaranteed (Article 37, Paragraph 1 of the Constitution). Only a law may prescribe that on the basis of a court order the protection of the privacy of correspondence and other means of communication and the inviolability of personal privacy be suspended for a certain time where such a breach of privacy is necessary for the institution or course of criminal proceedings or for reasons of national security (Article 37, Paragraph 2 of the Constitution).

185. All correspondence must be private (Article 17, Paragraph 1 of the Postal Services Act). The postal service must guarantee the confidentiality of correspondence. The Postal Services Act also includes telegraph messages in the term “correspondence”. The employees of the postal service must not come to know the content of postal or telegraph messages in an unauthorised way or hand it over to an unauthorised person or conceal it. They may not disclose known content to an unauthorised person or the time of sending or receiving the message, the identity of the sender or receiver of the message or its size or weight. The employee must not enable others

to access the information (Article 17, Paragraph 3 of the Postal Services Act). The postal service may not violate the confidentiality of the correspondence principle except on the basis of the court order (Article 17, Paragraph 2 of the Postal Services Act).

186. The Telecommunications Act places upon the operator of the telecommunication services the duty to ensure the confidentiality of the transmitted messages and of personal data, known only to them (Article 18, Paragraph 1 of the Telecommunications Act). Confidentiality may be breached only on the basis of the court order (Article 18, Paragraph 2 of the Telecommunications Act).

187. Confidentiality of the correspondence may also be breached in compliance with the Slovenian Intelligence and Security Agency Act (Article 23 of the Slovenian Intelligence and Security Agency Act). Control of letters and other consignments, surveillance and recording of telecommunication must be approved by the president of the district court upon the proposal of the director of the Slovenian Intelligence and Security Agency if there exists grave danger for the security of the country (Article 24, Paragraph 1 of the Slovenian Intelligence and Security Agency Act). There must also exist a well-founded expectation that correspondence regarding that activity is used or will be used and that there is no other way to obtain evidence or any other way would endanger the lives and health of others (Article 24, Paragraph 1 of the Slovenian Intelligence and Security Agency Act). The proposal and the court order must specify the person whose correspondence will be controlled, the reasons for surveillance, the duration and extent of the surveillance and other important facts (Article 24, Paragraph 2 of the Slovenian Intelligence and Security Agency Act). The surveillance may last for three months and can be extended to a maximum duration of six months (Article 24, Paragraph 3 of the Slovenian Intelligence and Security Agency Act).

188. Until the law regarding the parliamentary supervision of the activities of the Slovenian Intelligence and Security Agency is adopted, the Agency must enable the parliamentary commission controlling the security and intelligence agencies to exercise permanent supervision (Article 49, Paragraph 1 of the Slovenian Intelligence and Security Agency Act). The Agency must prepare a plan of activities for the next year and report about the activities in the past year (Article 49, Paragraph 2 of the Slovenian Intelligence and Security Agency Act). The Agency must report to the commission every month, or even more frequently if the commission so requests. The commission may request the Agency's report at any time (Article 49, Paragraph 3 of the Slovenian Intelligence and Security Agency Act). Upon the commission's request, the Agency must allow examination of gathered information and the inspection of the devices and facilities used in the control of telecommunications, letters, and other correspondence (Articles 20-23 of the Slovenian Intelligence and Security Agency Act).

189. Violation of the confidentiality of correspondence may constitute a criminal offence. Criminal liability applies to anyone who, without authorisation, opens a letter, telegram or any other sealed piece of writing or consignment belonging to others. Such an act can be punished by a fine or a sentence of imprisonment not exceeding six months (Article 150, Paragraph 1 of the Penal Code). A person is also criminally liable if he/she learns in any way (e.g. by means of technical instruments or chemical agents) of the content of a foreign letter or a message transmitted by telephone or any other means of telecommunication or if he/she opens any closed

object in which a message is kept and is thereby informed of the contents of such a message (Article 150, Paragraph 2 of the Penal Code). The penalty prescribed is either a fine or imprisonment not exceeding one year. The prosecution shall be initiated upon complaint (Article 150, Paragraph 6 of the Penal Code). If the above mentioned offences have been committed by an official through the abuse of an office or of official authority or by a postal worker or any other official authorised to accept, transport or deliver letters, telegrams or other pieces of writing or consignments, he/she shall be sentenced to imprisonment not exceeding two years (Article 150, Paragraph 5 of the Penal Code). Whoever publishes a letter or any other piece of writing belonging to others without the due official permission shall be punished by a fine or sentenced to imprisonment not exceeding one year (Article 151, Paragraph 1 of the Penal Code). Prosecution shall be initiated upon private action (Article 151 of the Penal Code.)

190. It is also a criminal offence to eavesdrop or record a private conversation or statement by the use of special device, or to transmit such a conversation or statement to a third person or otherwise directly allow him to learn of such a conversation or statement. The penalty is a fine or imprisonment not exceeding one year (Article 148, Paragraph 1 of the Penal Code). The prosecution shall be initiated upon a complaint (Article 148, Paragraph 4 of the Penal Code). If a person records a private confidential statement without the consent of the other party or parties in order to abuse it, or if one directly transmits or presents such a statement to a third person or otherwise directly allows him to learn of it, he/she shall be punished by a fine or imprisonment not exceeding one year (Article 148, Paragraph 2 of the Penal Code). The prosecution shall be initiated upon a private action (Article 148, Paragraph 4 of the Penal Code). If the criminal offences defined in Article 148, Paragraphs 1 and 2 are committed by an official through the abuse of the office or of official authority, such an official shall be sentenced to imprisonment not exceeding two years (Article 148, Paragraph 3 of the Penal Code).

191. Confidentiality of correspondence and other means of communication may be breached only on the basis of the court order if this is provided by law (Article 37, Paragraph 2 of the Constitution, cf. Article 17, Paragraph 2 of the Postal Services Act). In the course of criminal proceedings, the investigating judge may order the so-called special methods and measures provided for by Articles 150-155 of the Criminal Procedure Act. The special methods and measures are formalised acts whose results are admissible as evidence in court. Those provisions have been amended recently (1998) after the Constitutional Court of the Republic of Slovenia annulled previous provisions on special methods and measures[5] since it deemed that they did not match the required standard for the constitutional rights of the accused (the standard of proof was too low, the order did not have to be specified, etc.).

192. The special methods and measures are: surveillance of telecommunications with tapping and recording, the control of letters and other consignments, the access to computer system of a bank or similar institution, the tapping of a telephone conversation with the consent of at least one of the involved parties and control of electronic mail or other forms of information technology (Article 150, Paragraph 1, Item 1 of the Criminal Procedure Act). The special methods and measures can be conducted when well-founded reasons for suspicion[6] exist that a certain person has committed, is committing, is preparing to commit, or is organising the commission of certain criminal offences[7] and upon the existence of the well-founded suspicion that certain communication devices or computer systems are being used as communication

devices while preparing or committing the mentioned- criminal offences and under the condition that it can be reasonably concluded that evidence cannot be discovered by using other (milder) measures or if their discovery in some other way could threaten the life or the health of people (Article 150, Paragraph 1 of the Criminal Procedure Act).

193. Tapping and observation of premises with the use of technical devices for documenting and, if necessary, with the right to access the premises can be ordered in the existence of stricter conditions: when well-founded reasons exist for a suspicion that a certain person has committed, is committing, is preparing to commit, or is organising the commission of certain criminal offences[8] and upon the well-founded conviction that evidence can be obtained in the specifically defined area and could not be discovered by milder measures (including the ones mentioned earlier) or their discovery in another way could threaten the life or the health of the people.

194. The special methods and measures must be ordered by the investigating judge in written form upon the reasoned proposal of the state prosecutor. Exceptionally, the special methods and measures can be ordered orally by the investigating judge on the condition that the written order cannot be acquired in time or if there is the existence of a danger in delaying those measures. In such a case, the written order must be issued within 12 hours after the oral order has been given. The written order must include reasons why the order was given orally.

195. The special methods and measures can be ordered for the maximum duration of one month; upon well-founded reasons it can be prolonged for a month, but not exceeding a maximum duration of 6 months for tapping with the consent of one of the participants and 3 months for tapping without the consent of any of the parties. If the special methods and measures were conducted without the written order of the investigating judge or in violation of the issued order, the court cannot base its decision on evidence so obtained.

196. The police may conduct the special methods and measures of a simulated purchase or simulated acceptance or giving of gifts, or simulated acceptance or giving of bribes. Those measures can be conducted by the police on the basis of a written order of the state prosecutor on the existence of a well-founded conviction that a certain person is involved in the criminal activity connected with listed criminal offences.[9]

197. If there are grounds to believe that a person has committed a criminal offence which must be officially prosecuted, or if such a person is committing the criminal offence, or organising or planning to commit it, and the police cannot find any other way to reveal, prevent or prove this, or it would be extremely difficult to do so, the police may apply the following measures: covert surveillance and 'tailing' with the use of technical equipment for the purposes of documentation, undercover work, undercover cooperation, altered documentation and identification insignia. Permission for the described measures can be granted in writing by the director general of police or his/her deputy, except in cases when police officers use altered documentation and identification insignia, where the permission is issued by a competent state prosecutor. The implementation of these measures may only last three months, although a three-month extension may be allowed if just cause is given (Article 49 of the Police Act).

198. **Table 22**

Criminal offences against human rights and freedoms, committed by adults (in the period 1992-2001)

Year	Number of persons accused		Number of persons convicted	
	Under the Penal Code SRS (Articles 60-75)	Under the Penal Code RS (Articles 141-160)	Under the Penal Code SRS (Articles 60-75)	Under the Penal Code RS (Articles 141-160)
1992	408	1	199	-
1993	481	22	260	-
1994	373	73	184	8
1995	25	567	29	157
1996	9	864	17	215
1997	5	1 139	8	297
1998	3	1 282	6	391
1999	-	1 536	-	449
2000	-	1 437	-	468
2001	-	1 580	-	518
Total	1 304	8 501	703	2 503

Source: Supreme State Prosecutor General's Office of the RS.

Table 23

Supplement to Table 19 (Criminal offences against human rights and freedoms, committed by adults in the period 2002-2003)

Year	Number of charges	Number of judgments of conviction
2002	1 691	550
2003	1 788	516
Total	3 479	1 066

Source: Supreme State Prosecutor General's Office of the RS.

199. **Table 24**

The use of special methods and measures

Year	Number of persons		First instance court	Not yet final judgement
	All special methods and measures	Tapping		
1	2	3	4	5
1992	-	-	-	-
1993	-	-	-	-
1994	-	-	-	-
1995	180	117	20	21
1996	191	97	29	11
1997	266	151	45	39
1998	197	132	54	22
1999	181	113	50	24
2000	191	165	37	99
2001	218	198	1	144
Total	1 424	973	236	360

Source: Supreme State Prosecutor General's Office of the RS.

Legend:

Column 2: the number of all persons against which special methods and measures were ordered by the investigating judge

Column 3: the number of persons under column 2, against which tapping was used

Column 4: the number of persons under column 2, against which the judgement of conviction was pronounced in the first instance

Column 5: the number of persons against which the proceedings have not yet been concluded and the final judgement pronounced

200. **Table 25**

House searches under the Criminal Procedure Act in the period 1990-2003

Year	House searches under the Criminal Procedure Act
1990	567
1991	522
1992	816
1993	804
1994	951
1995	1 314
1996	1 846
1997	2 143
1998	2 268
1999	2 680
2000	2 958
2001	1 861
2002	2 035
2003	1 615

Source: Ministry of the Interior.

Table 26

House searches under the Misdemeanours Act in the period 1996-2003

Year	House searches under the Misdemeanours Act		
	Total	Successful	Unsuccessful
1996	665	372	293
1997	691	355	336
1998	714	417	297
1999	686	379	307
2000	661	363	298
2001	618	296	322
2002	639	321	318
2003	653	427	226

Source: Ministry of the Interior.

201. **Table 27**

Complaints against the work of police officers in the period 1991-2003

Year	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003
Complaints received	354	589	998	1 212	1 150	1 443	1 363	1 672	1 853	1 552	1 240	1 222	1 309

Source: Ministry of the Interior.

202. **Table 28**

Substantive grounds for complaints in the period 1997-2003

	Total	Unjustified	Justified	Justified in %
Use of powers				
1997	1 116	980	136	12.1
1998	1 150	1 077	73	6.3
1999	1 330	1 231	99	7.4
2000	1 366	1 212	154	11.3
2001	984	924	60	6.1
2002	1 080	996	84	7.8
2003	1 002	917	85	8.5
Use of coercive means				
1997	214	187	27	12.6
1998	190	177	13	6.8
1999	176	167	9	5.1
2000	222	196	26	11.7
2001	171	166	5	2.9
2002	124	117	7	5.6
2003	124	113	11	8.9
Other grounds				
1997	1 316	993	323	24.5
1998	1 902	1 588	314	16.5
1999	1 934	1 687	247	12.8
2000	1 729	1 417	312	18.0
2001	1 037	905	132	12.7
2002	1 059	889	170	16.1
2003	1 163	990	173	14.9
Total				
1997	2 646	2 160	486	18.4
1998	3 242	2 842	400	12.3
1999	3 440	3 085	355	10.3
2000	3 317	2 825	492	14.8
2001	2 192	1 995	197	9.0
2002	2 263	2 002	261	11.5
2003	2 289	2 020	269	11.8

Source: Ministry of the Interior.

Article 18

203. The provision of Article 7 of the Constitution stipulates that state and religious communities shall be separate. At the same time, it stipulates that religious communities shall enjoy equal rights; they shall pursue their activities freely. Article 41 stipulates that religious and other beliefs may be freely professed in private and public life and that no one shall be obliged to declare his religious or other beliefs. Parents have the right to provide their children with a religious and moral upbringing in accordance with their beliefs. The religious and moral guidance given to children must be appropriate to their age and maturity, and be consistent with their free conscience and religious and other beliefs or convictions. In compliance with Article 14 of the Constitution, in Slovenia everyone shall be guaranteed equal human rights and fundamental freedoms, irrespective of inter alia religious, political or other conviction.

204. The legal status of religious communities is laid out in more detail in the Legal Status of Religious Communities in the Republic of Slovenia Act and the Act Amending the Legal Status of Religious Communities in the Republic of Slovenia Act. Anyone may declare their religion freely and may belong to any religious community. No-one may be forced to become or to remain a member of a certain religious community and to participate in its rituals. It is prohibited to abuse any religious activity for political purposes and to incite or inflame religious intolerance or hatred. According to Article 300 of the Penal Code, stirring up ethnic, racial or religious hatred constitutes a criminal offence.

205. The establishment of religious communities, which all have equal legal status, is free. Religious communities are free in carrying out religious rituals (Article 2 of the Legal Status of Religious Communities in the Republic of Slovenia Act). However, religious communities are separate from the state, which means that they are also separate from public schools and educational institutions and nurseries (Article 3 of the Legal Status of Religious Communities in the Republic of Slovenia Act). Thus, religious rituals may only be performed on the premises designated by a religious community for performing religious rituals; religious rituals outside these premises may only be performed on the basis of a written permit of a body responsible for internal affairs (Article 12 of the Legal Status of Religious Communities in the Republic of Slovenia Act).

206. Religious instruction may be performed on the premises specially designed for performing religious rituals and at other locations where a religious community permanently performs the religious activity. The religious ritual of marriage may only be performed after the marriage has been contracted before the competent state authority.

207. Public schools in Slovenia have no religious education. In compliance with the public schools system reform, a non-confessional subject entitled Religions and Ethics is being introduced into primary schools, and it is intended for acquainting students with all major world religions. Religious communities may establish private educational institutions, nurseries and schools of all levels. As a rule, the state co-finances the activity of such kindergartens and schools to the amount of 85 per cent of costs of the programme in a comparable public institution, provided that the mentioned institutions of religious communities are organised in compliance with the law and implement a publicly valid programme. Religious communities may also issue publications for the general public. As legal entities, they may establish other legal entities dealing with publishing, bookselling, etc.

208. There are 31 religious communities registered in the Republic of Slovenia. As the Constitution stipulates that no one shall be obliged to declare his religious belief, there is no accurate data on the number of members of a certain religion. Different public opinion polls show that there are 65–72 per cent members of the Catholic Church, 25–35 per cent atheists, 1.0–2.4 per cent members of the Orthodox Church and 1–2 per cent members of Islam. Less than 1 per cent of people belong to other religions. It must be mentioned that the Islamic religious community desiring to build a mosque in Slovenia have had problems for a long time, and they have not acquired relevant permits for several years.

209. In December 2001, the "Agreement between the Republic of Slovenia and the Holy See on Legal Issues" was signed, regulating the legal status of the Catholic Church in Slovenia. The Agreement stipulates that both signatories are independent and that the Catholic Church in Slovenia acts freely according to canon law and in compliance with the legal order of the Republic of Slovenia. The Republic of Slovenia acknowledges the legal personality of the Catholic Church. The legal order of Slovenia guarantees to the Catholic Church freedom of action, worship and catechesis. The Catholic Church has full freedom of possessing its own means of information and has the right to access all public media. According to Slovenia's legislation, the Catholic Church may establish associations, have ownership rights over movable property and real estate, and may establish and manage schools and educational institutions and nurseries of all kinds.

Article 19

210. Freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression are guaranteed by the Slovenian Constitution. Everyone may freely collect, receive and disseminate information and opinions (Article 39, Paragraph 1 of the Constitution). Except in such cases as are provided by law, everyone has the right to obtain information of a public nature in which he/she has, under law, a well-founded legal interest (Article 39, Paragraph 2 of the Constitution). Article 40 of the Constitution guarantees the right to correct published information that has damaged a right or interest of an individual, organisation or body, as well as the right to reply to such published information. Article 39 of the Constitution guarantees the freedom of the press and other forms of public communication and expression.

211. The Public Media Act defines public media as newspapers and magazines, radio and television stations, electronic publications, teletext and other forms of editorially formulated programming published daily or periodically through the transmission of written material, sound or pictures in a manner accessible to the public. Advertising, commercial communication, information on the internal work of legal entities, official gazettes (of the state and of local communities) or low-circulation periodical press do not fall under the category of public media (Article 2 of the Mass Media Act).

212. In order to carry out activities of disseminating programming, a legal or natural person may be founded or entered in the court register in the Republic of Slovenia if, in addition to the general conditions, the person also fulfils the following extra conditions: the person's head office or address of permanent residence is located in the Republic of Slovenia; and the editorial board is based in the Republic of Slovenia. These conditions shall not apply if the Ministry of Culture of the Republic of Slovenia gives written consent for such (Article 10 of the Mass Media Act).

213. The Mass Media Act emphasises the duty of state authorities, bodies of local communities, individuals and organisations performing public function or public service to publish truthful, complete and timely information on issues within their field of work. They are obligated by law to ensure that their work is public, the method of releasing their information to the public, and the selection of the person responsible for ensuring that the work is public. Perhaps the most important provision in that regard guarantees to journalists the right to access information under equal conditions (Article 45 of the Mass Media Act).

214. The release of information may only be denied when the information is defined by a prescribed method as a state, military, official or business secret, or if this would mean an infringement of confidentiality of personal data, or would negatively affect court proceedings. In cases where the release of information has been denied, the reasons for such denial must be explained in writing within eight days, if a journalist has demanded an explanation (Article 45, Paragraph 4 of the Mass Media Act). The public authority releasing the information is responsible for the truth and accuracy of information released to the public (Article 45, Paragraph 7 of the Mass Media Act). A journalist relying on the information received in this way cannot be subjected to criminal prosecution. The Mass Media Act states clearly that the journalist who has received information from a person responsible for ensuring that the work is public bears no legal responsibility under the Penal Code if he/she reports the exact content of this information through a public medium (Article 45, Paragraph 7 of the Mass Media Act).

215. The access to information is guaranteed to radio and television organisations which have the right to provide “short reports” on important events and developments which are open to the public and of general interest. Short reports are considered to be those not exceeding one and a half minutes and broadcast within the scope of the informative programme (Article 74, Paragraph 2 of the Mass Media Act). The Mass Media Act refers to this right as the emanation of the right of the public to information, but nevertheless it guarantees at the same time the journalists’ right to access information. Permissible restrictions include the payment of an admission fee and the duty of the journalist not to disturb or hinder that particular event (Article 74, Paragraph 3 of the Mass Media Act).

216. The Mass Media Act determines that the Republic of Slovenia shall in its territory ensure freedom in disseminating and receiving programming from other countries, and may in individual cases restrict such freedom only in accordance with an international treaty and the relevant acts (Article 7 of the Mass Media Act).

217. For the purpose of entry in the mass media register, the publisher must register the mass medium at the relevant ministry prior to commencement of activities (Article 12, Paragraph 1 of the Mass Media Act). The relevant ministry must enter a mass medium in the register and issue a ruling on entry in the mass media register within fifteen days of receiving the application, or, in case the application is incomplete, request supplementary information within the same period (Article 13 of the Mass Media Act).

218. The Ministry of Culture shall delete a mass medium from the register in the following cases: if, within 24 months of entry in the register, the publisher fails to obtain from the agency a licence for performing radio or television activities, or if the licence is permanently revoked or ceases to be valid; if, despite a warning, the publisher persists with serious infringements of the

law; if the mass medium does not operate for more than six months, except in cases when it is published at longer intervals; or if the publisher no longer fulfils the conditions for entry in the mass media register (Article 15 of the Mass Media Act).

219. The law defines the notion of a foreign press agency or a foreign media as a legal entity with a seat abroad and whose basic activity is to regularly collect and forward or disseminate informative programmes (Article 121 of the Mass Media Act). By the entry of foreign press agencies and correspondents in the register, a foreign press agency or a correspondent shall acquire accreditation in the Republic of Slovenia (Article 123, Paragraph 1 of the Mass Media Act). According to the data provided by the Slovenian Public Relations and Media Office, there are more than 1,272 foreign press editions imported into Slovenia.

Right to accurate reporting

220. Slovenian legal order does not expressly recognise the right to accurate reporting. It does, however, place emphasis on the need for reporting to be accurate. If the journalists receive information from official sources, i.e. by the persons responsible for ensuring that the work is made public, it is their responsibility to ensure that truthful, accurate and timely information is being reported to the public (Article 45, Paragraph 1 of the Mass Media Act). A journalist and chief editor, who received information from a responsible person, i.e. from an official source, cannot be liable for damages or subjected to criminal prosecution for accurate publication of the information in terms of its content. The public person who gave the information is responsible for the truthfulness and accuracy of the information.

221. Anyone has the right to demand from the chief editor of a public medium to publish free of charge the correction of any report published that has affected his/her right or interest. This right must be exercised within 30 days of the publication of the information or within 30 days of the day the person concerned learnt of the publication of the information if he/she could not have learnt of its publication for objective reasons within 30 days (Article 26 of the Mass Media Act). If the chief editor refuses or fails to publish the correction in the period and manner stipulated by this law, the person demanding the publication of the correction has the right to file a lawsuit against the editor responsible for the publication of the reply or correction with the competent civil court of law (Article 33 of the Mass Media Act).

Censorship

222. As a general principle, the Mass Media Act proclaims that the activities of the media are based on the freedom of expression, the inviolability and protection of the human personality and dignity, the free flow of information and openness of the media to various opinions, the autonomy of editors and journalists in conducting their profession, the respect for the code of journalistic ethics, and on the personal responsibility of journalists for the consequences of their work (Article 6 of the Mass Media Act).

Guarantee of a pluralistic structure of the media

223. The Mass Media Act contains several mechanisms for the protection of the pluralism and diversity of the media. In this context, the most important provisions include the limitations on ownership, the incompatibility of carrying out certain services and a limitation on concentration.

224. A publisher of a daily printed medium and a legal or natural person holding an ownership stake of more than 20 per cent or a share in the management or voting rights of more than 20 per cent of such a publisher may not also be the publisher or a co-founder of the publisher of a radio or television station and may not perform radio or television activities and vice versa. A publisher may hold an ownership stake of not more than 20 per cent or a share in the management or voting rights of twenty per cent in the capital or assets of another publisher, except in particular cases (Article 56 of the Mass Media Act). A single publisher may perform radio activities alone or television activities alone, except if he/she obtains an appropriate licence (Article 59 of the Mass Media Act).

225. The restriction of concentration requires that, in order to acquire an ownership or management stake in the assets of a publisher of a radio or television station of twenty per cent or more, it shall be necessary to obtain approval from the relevant ministry. In order to acquire an ownership or management stake in the assets of a publisher of a daily printed medium of twenty per cent or more, it shall be necessary to obtain prior approval from the relevant ministry (Article 58 of the Mass Media Act).

226. The relevant ministry shall reject the issuing of the approval specified in the previous item in the following cases:

- if, by acquiring the stake, the publisher of a radio or television station would have a dominant position on the advertising market such that the publisher's share of sales in the advertising space on a particular radio or television station would exceed thirty per cent with regard to the entire radio or television advertising space in the Republic of Slovenia;

- if, by acquiring the stake, the publisher of a radio or television station would create a dominant position in the media environment such that, either alone or together with subsidiaries, the publisher would achieve coverage of more than forty per cent of the area of the Republic of Slovenia with station signals, with regard to the overall coverage of this area by all radio and television stations;

- if, by acquiring the stake, the publisher of one or more daily printed media would alone, or via one or more subsidiaries, have a dominant position on the market such that the number of copies of the publisher's dailies sold would exceed forty per cent of all the copies of daily printed media sold in the Republic of Slovenia (Article 58 of the Mass Media Act).

227. An advertising organisation and a legal or natural person holding an ownership stake of more than ten per cent in the capital or assets of such an organisation or a share of the management or voting rights of more than ten per cent may not be the publisher or the founder of a publisher of a radio or television station, and may not hold a stake of more than twenty per cent in the capital or a share of more than twenty per cent of the management or voting rights in the assets of a publisher of a radio or television station (Article 60 of the Mass Media Act).

228. The provisions of pluralism and diversity shall also apply to foreign legal and natural persons, irrespective of the country in which their head office or permanent residence is located, unless stipulated otherwise by the present Act.

229. An operator that provides telecommunications services may not be the publisher of a radio or television station, and may not disseminate programming or advertising, unless the licence for performing radio or television activities is obtained.

230. By the end of February each year, a publisher must publish the following data in the Official Gazette of the Republic of Slovenia: name, surname and permanent residence of any natural person and/or the business name and head office address of any legal entity that in the publisher's assets holds a stake of five per cent or more of the capital or a share of five per cent or more of the management or voting rights, and the full names of the members of the publisher's board of directors or management body and supervisory board (Article 64 of the Mass Media Act).

231. The regulations on protection of competition shall apply to publishers and operators of mass media. The relevant ministry shall participate in the procedures of the body responsible for the protection of competition relating to the concentration of publishers of mass media and operators; the agency shall also participate in those procedures relating to publishers of radio and television stations (Article 62 of the Mass Media Act).

Independence from state influence

232. Independence of the private RTV broadcasters is legally guaranteed by the constitutional and statutory guarantees of the freedom of the media and, directly, through the protection of pluralism and diversity in the media. Such independence is also fostered by different kinds of sponsorship.

233. According to the Mass Media Act, sponsorship is any contribution by a natural or legal person not taking part in the creation of RTV programmes, towards financing RTV programmes with the intention of promoting their name, firm, trademark, image, activities, services or products. A sponsor may not influence sponsored programming and its distribution in the programming scheme in such an extent as to influence the editorial responsibility of a RTV organisation (Articles 52 and 53 of the Mass Media Act).

234. The independence from state influence is partly secured by the Broadcasting Council which is established by the National Assembly of the Republic of Slovenia. The Council is composed of seven members and a president appointed by the National Assembly from among experts in the field of broadcasting and among public workers, of whom four members are proposed by the Government of the Republic of Slovenia. Members of the Council may not be functionaries or persons employed in state authorities, deputies, members of leaderships of political parties and employees of RTV organisations. The president and members have a five-year term of office. They may be re-elected after the expiry of their terms of office. The Council conducts its work independently and autonomously and has the right to demand from state authorities, RTV organisations and cable operators the information and material necessary for their work (Article 100 of the Mass Media Act).

Article 20

235. The provision of Article 63 of the Constitution stipulates that any incitement to national, racial, religious or other discrimination, and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional. Any incitement to violence and war is unconstitutional. Article 5 of the Legal Status of Religious Communities Act stipulates that the abuse of religion and religious rituals and lessons for political purposes is prohibited. It is also prohibited to incite or inflame racial intolerance, hatred or dissention. Article 29 of the Associations Act stipulates that an association shall be deemed to have been dissolved if its activities have actually ceased or if the purpose of its activities is the unlawful destruction of constitutional order, the commission of criminal offences, encouragement of national, racial, religious or other forms of inequality, incitement of national, racial, religious or other hatred and intolerance, or the incitement of violence or war. Article 17 of the Political Parties Act stipulates that the registration body may remove a party from the register if the Constitutional Court decrees this by a decision. Article 8 of the Mass Media Act stipulates that the dissemination of programming that encourages ethnic, racial, religious, sexual or any other inequality, or violence and war, or incites ethnic, racial, religious, sexual or any other hatred and intolerance shall be prohibited.

236. In accordance with the Exercising of the Public Interest in Culture Act and the National Cultural Programme, the Ministry of Culture of the Republic of Slovenia supports, through a special programme, the projects and programmes of the various minority communities and creates the conditions for mutual understanding and a tolerant and peaceful coexistence of the members of different identities.

Article 21

237. The right of peaceful assembly and public meeting is guaranteed by the Constitution under human rights and fundamental freedoms. The Public Meetings and Public Events Act stipulates more specifically the conditions for organising public events. The provisions of the Road Transport Safety Act apply to the organisation of events on the streets as specific events.

238. A public event may be organised by any citizen and/or any domestic legal entity, or by an alien or a foreign organisation, provided they obtain a licence in advance. Events in the street may only be organised by a legal entity with its seat in the Republic of Slovenia. The public event must be declared at the administrative unit, in the area in which it is to be held, by the organisers, and for certain public events, a permit must be obtained (e.g. events with fireworks, events near the water, events involving animals or involving other increased risk).

239. In 2000, administrative units issued 7,850 certificates on application for public events (in 1999, the number issued was 9,154), and 3,814 permits for public events were issued. In 2000, administrative units prohibited a public event in 24 cases and refused to issue a permit. Due to applications submitted too late, they dismissed 94 applications and prohibited 2 public meetings.

Article 22

240. The right to association was explained in the initial report (Paragraphs 56–59). New labour legislation was adopted in the period covered by the second periodical report (Employment Act, Official Gazette RS, No. 42/02), which entered into force on 1 January 2003. The Act also contains a special chapter entitled "Operation and Protection of Trustees of Trade Unions". An important provision of this chapter stipulates that an employer may not lower a trustee's salary because of his/her activities relating to the trade union, initiate a disciplinary procedure or an action for damages, or put him/her in a less advantageous or subordinate situation in some other way. Within the framework of the provisions governing special legal protection from termination of employment, the Act also stipulates that the employer may not cancel the employment contract of an appointed or elected trustee of a trade union without the trade union's consent, if the employee acts in accordance with the law, the collective wage agreement and the contract of employment, unless the employee renounces, on business grounds, the appropriate employment that was offered to him/her, or if there is a termination in the procedure of the employer's liquidation. The mentioned protection from termination of employment is valid for the entire period of performing the function and one year after its termination.

Article 23

Definition of family

241. The Constitution guarantees the protection of the family. The term "family" is defined in the Marriage and Family Relations Act (hereinafter ZZZDR): "Family is a community of parents and children, enjoying special social protection to the benefit of children." The definition of family is also included in the Resolution on the Foundations of Formulation of Family Policy, adopted by the National Assembly of the Republic of Slovenia (Official Gazette RS, No. 40/93): "The family is a community of parents and children. It is the primary locus of life, providing optimal conditions for the emotional and social development of children and bearing responsibility for their well-being. Furthermore, the family plays an important role in the preservation of social cohesion, and – as an important production and consumption unit – also affects the economic development of the society. A community of children and adults taking permanent care of them is also considered to be a family: grandparents and grandchildren, foster parents and foster children, guardians and children under guardianship. Subjects of the proposed family policy are also couples and women expecting children." It is a child that constitutes a family. The Constitution stipulates that marriage is based on the equality of spouses. Marriage and the legal relations within it and within the family, as well as those within an extramarital union, are regulated by law.

242. Measures of the family policy or national measures for the protection of family in the areas of economic and fiscal affairs, social services, employment and the housing economy are defined in the Resolution on the Foundations of Formulation of Family Policy of 1993. These measures are carried out by national institutions and other organisations. The recent measures in the economic, fiscal and employment areas are included in the new Parenthood and Family Earnings Act. The Act defines the types of parental leave, such as: maternity leave (105 days), paternity leave (90 days), leave for nursing and caring for the child (260 days), adoption leave (150 or 120 days, depending on the age of the child). Persons on parental leave receive parental

compensation. In addition to the right to parental compensation, the Act also regulates the rights to family earnings, including: maternity allowance, package for newborn children, child supplement, supplement for a big family, childcare supplement intended for children that require special nursing and care, and compensation for maternity leave.

243. **Status of the extramarital union**. According to the Constitution, relations within marriage and within an extramarital union are regulated by law**.** The ZZZDR thus stipulates that under family law the consequences of cohabitation for a man and a woman who have lived together for a long time but have not entered into marriage are, under certain conditions, the same as those defined by law for spouses**.** These consequences are: interest in property acquired during their extramarital union, and duty of maintenance after the end of their union. Extramarital union also has consequences in other areas, such as the law of inheritance, housing law, tax law and criminal law.

244. Children born in extramarital union have the same status and rights as children born in wedlock. Until July 2001 the only, yet important, difference emerged in the event of the dissolution of the marriage or extramarital union of parents. Until that date, the caring for and raising of children born in wedlock in the event of divorce was decided upon by a court in a civil procedure. If an extramarital union was ended, the parents had to agree by themselves on caring for and raising their children. If parents did not reach such an agreement, the decision was taken by the Social Security Centre in administrative procedure. The professional literature severely criticised this regulation, but it was nevertheless transferred into the new Civil Procedure Act of 1999, which regulated anew the procedure in disputes arising from parent-child relations. The ZZZDR was amended and such differentiation remedied only on the basis of a Constitutional Court decision of 1999. The awarding of custody of children upon the end of the relationship of their parents is now decided on by a court in civil procedure, regardless of whether children were born in wedlock or in extramarital union. A court decides ex officio on this issue in the case of children born in wedlock when it decides on the dissolution of marriage, whereas the decision on the custody of children born in extramarital union is taken by a court upon a filed action. Court practice shows that the court also decides on the personal contact between the child and the parent who has not been awarded custody of the child and does not live with the child in certain cases when this was not decided in the divorce procedure, and in those cases of ending an extramarital union where one of the parents initiates the proceedings for the award of custody.

245. **Different genders as the basic element for marriage and extramarital union**.

The Constitution refers to two forms of cohabitation: marriage and extramarital union.

(1) The Constitution does not contain a definition of marriage and therefore does not stipulate that partners (in marriage or extramarital union) must be of different genders in order to enter into marriage or start an extramarital union. However, the Constitution authorises the legislator to regulate marriage and legal relationships within it and within an extramarital union (Article 53/II). In accordance with this authorisation, the ZZZDR defines marriage as a cohabitation of a man and a woman (Article 3/I) and sets the conditions for entering into marriage. One of these conditions is also the different genders of the partners (Article 16). If this condition is not met, the Act provides for the sanction of the invalidity of marriage (Article 32).

(2) The ZZZDR defines an extramarital union as "the cohabitation of a man and a woman who have lived together for a long time". This cohabitation has, for them, the same legal consequences as if they had entered into marriage, on the condition that there have been no reasons for which the marriage between them would be invalid (the legislator thus incorporated the condition of different genders into the definition of extramarital union).

An initiative for statutory equalisation of the status between the homosexual and the heterosexual cohabitation (a motion to formulate a law on the registration of a union of homosexual partners) is in reading (not yet in the legislative procedure). A special working group has been set up which deals with the proposed amendment to the ZZZDR.

246. **Table 29**

Marriages and Divorces

Year	Number of concluded marriages	Number of divorces
1991	8 173	1 826
1992	9 119	1 966
1993	9 022	1 962
1994	8 314	1 923
1995	8 245	1 585
1996	7 555	2 004
1997	7 500	1 996
1998	7 528	2 074
1999	7 716	2 074
2000	7 201	2 125
2001	6 935	2 274
2002	7 064	2 457

Source: Statistical Yearbook, Statistical Office of the Republic of Slovenia, 2001, 2003.

247. Changes in family and marital life, which are an accompanying phenomenon of all modern societies, are also noticeable in Slovenia, an include the plurality of family forms, a decrease in the number of concluded marriages, an increase in the number of single-parent families, and an increase in the number of reorganised families. This does not mean that family and family values are losing their significance. A number of surveys have shown that people attach great importance to the family. The survey, Slovenian Public Opinion 92/International Research of Values, showed that family belongs among the most important areas of people's lives, and was listed second, behind professional work. This is particularly true for the younger Slovenian population. A survey conducted among students has shown that students consider

settled life with their partner (family life) as their first priority. A decrease in the number of concluded marriages does not, therefore, indicate that people attach lesser importance to family life, but rather demonstrates the plurality of family forms.

248. **Procedure for concluding a marriage**. The Constitution stipulates that a marriage is solemnised before an empowered state authority, which means that the conclusion of a civil marriage is compulsory**.** A marriage can also be concluded in accordance with the rules of individual religious communities (after a civil marriage has already been concluded), but does not have any legal consequences pertaining to the civil marriage**.** The Constitution thus implements the principle of the separation between state and religious communities in the area of marriage**.** This regulation also complies with provision 18/II of the Covenant, under which no person can be subject to coercion which would impair his/her freedom of religion or belief of his/her choice.

249. **Divorces**. The number of divorces decreased in the period between 1992 and 1996. The reasons for this trend could include a disadvantageous economic situation at the micro level caused by social changes arising from the transition to a market economy. The number of divorces increased again after 1996.

Article 24

250. Children in Slovenia become of age at the age of 18, which is also the age of contractual capacity. A minor can have full contractual capacity in two instances:

1. By entering into marriage (a minor requires the consent of the Social Security Centre for entering into marriage – no age is defined by law under which it is not possible to enter into marriage but in practice, the age limit has been set at the age of 15).

2. By a court decision, issued at the proposal of the Social Security Centre, if a minor becomes a parent and important reasons exist for giving him/her full contractual capacity (Article 117 of the ZZZDR, Article 61 of the Non-litigious Civil Procedure Act).

Minors acquire certain rights and obligations even before they are 18 years of age:

- Criminal liability starts at the age of 14, but criminal liability of minors differs from criminal liability of adults. At the age of 14 persons fall within the competence of juvenile courts (younger offenders are dealt with by the social security bodies). Even though persons of 14 years of age can be tried in a court (in a special criminal procedure), a prison sentence can only be imposed on minors that were already 16 years of age when they committed the offence. Slovenian legislation recognises no exceptions in this regard;

- A minor may conclude a contract of employment at the age of 15. A contract of employment concluded by a person under 15 years of age is null and void;

- Deciding on medical intervention: At the age of 15, a minor decides himself/herself on any medical interventions; he/she gives consent to, or refuses, proposed interventions (Health Service Act);

- Testamentary capacity: Anybody who has the capacity of understanding and is at least 15 years of age has testamentary capacity (Inheritance Act);

- Acknowledgement of paternity: Paternity can be acknowledged by any person of sound mind and of at least 15 years of age (Article 89 of the Marriage and Family Relations Act).

251. Special care was devoted to Romany children in the reference period. Romany children enjoy special protection in Slovenia. The Programme of Measures for the Protection of Roma in the Republic of Slovenia was adopted by the Government in 1995. The Programme provides for the inclusion of Romany children in kindergarten educational programmes at least two years prior to their enrolment in school. The Programme also guarantees additional funds to schools attended by Romany children for performing educational activities that facilitate the socialisation of Romany children.

252. In the area of international cooperation, Slovenia ratified the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption and the European Convention on the Exercise of Children's Rights. With the Act Notifying Succession to the UN Conventions and Conventions Adopted by the International Atomic Energy Agency (Official Gazette RS, No. 35/92) the Republic of Slovenia has also succeeded to the Convention on the Rights of the Child together with the reservation to its Article 9, Paragraph 1. Slovenia withdrew this reservation in 1999 since the National Assembly established that the Republic of Slovenia fulfilled the general provisions of Article 9, Paragraph 1 of the Convention on the Rights of the Child. With the same Act Notifying Succession, the Republic of Slovenia has also succeeded to the Convention on the Recovery Abroad of Maintenance of 20 June 1956.

253. **Minors in custody**. Upon a request by the Human Rights Ombudsman, in 1996 the Constitutional Court initiated a procedure for the review of constitutionality and legality in which it was deciding on the compliance of Article 473 of the Criminal Procedure Act with the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child. According to this provision of the Criminal Procedure Act, a minor in a criminal procedure could be detained together with an adult.

Article 473 of the Criminal Procedure Act of 1995:

(1) A minor shall, as a rule, be separated from adults while in remand.

(2) The juvenile court judge may order that a detained minor be put in the same room as an adult if his/her isolation would otherwise last too long and the possibility exists to confine him/her in the same room with an adult who will not have a damaging influence on him.

The Constitutional Court first dealt with the relationship between the above international instruments and established that the Convention on the Rights of the Child is a more recent and special act in relation to the Covenant. It therefore only reviewed the compliance of the challenged provision with the Convention on the Rights of the Child, and focused on the question of whether the exceptions permitted by the Criminal Procedure Act with regard to the principal separation of minor and adult detainees corresponds to the Convention's requirement,

which only permits an exception if the separation was contrary to the minor's interests. The Constitutional Court stressed that this exception had to be interpreted in compliance with the general principles of proceedings against minors. In this context, the aim of the exception is to prevent harmful consequences of a young person's isolation and not the possible solution of overcrowding in prisons. The Constitutional Court was of the opinion that provision of Article 473 of the Criminal Procedure Act interpreted in this way was not in conflict with the Convention on the Rights of the Child. Simultaneously with the review of this provision by the Constitutional Court, an amendment to it had been drafted and then adopted on 23 October 1998. The Act still permits a minor being detained with an adult, but it emphasises that this situation should only be exceptional. In addition, the previous condition of "harmlessness" for the permission of such an exception was replaced by the "interest of and benefit to" the minor.

Amended Article 473 of the Criminal Procedure Act now reads:

(1) A minor shall be separated from adults while in remand.

(2) Regardless of the previous paragraph, the juvenile court judge may exceptionally order that a minor be detained in the same room as adults if this is in his/her interest and to his/her benefit because of the minor's personality and other circumstances of the specific case.

254. The statutory length of custody has not changed in the reference period. Despite possible long remand in custody (up to two years after the prosecutor files the charge sheet), remand in custody in practice, in most cases, does not exceed two months in this stage of proceedings (11 minors were detained in 1999, three of them for a period from two to three months).

255. **Child's capacity to sue and be sued**. In Slovenia's second report of 2001 on the adopted measures for the implementation of the Convention on the Rights of the Child, it is stated that a child's capacity to sue should be regulated more favourably, particularly in non-litigious civil and administrative procedures and in administrative disputes**.** A child does not participate in an administrative dispute as an "aggrieved party" and cannot perform procedural acts, either by himself/herself or through a representative**.** Children should be enabled to participate in an administrative dispute or to have a special representative or a defence counsel.

256. **Proposals for the establishment of the institution of a special ombudsman for the rights of the child**. At a proposal of the Equal Opportunities Commission, the National Assembly proposed in the conclusions adopted upon the consideration of the Ombudsman's 1997 Annual Report that "a possibility of establishing the institution of a special ombudsman for the rights of the child should be examined with a view to benefiting children." A special ombudsman for the rights of the child has also been proposed by non-governmental organisations. At the proposal of the Human Rights Ombudsman, the National Assembly appointed in January 2003 the fourth deputy responsible for the protection of the rights of the child.

257. Under the Citizenship Act, citizenship of the Republic of Slovenia can be acquired in four ways: by origin, by birth in the territory of the Republic of Slovenia, through naturalisation, and in compliance with an international agreement (the relevant texts of the Articles of the

Citizenship Act are given in the Annex). Until the Citizenship Act was amended in 1994, minors could only be granted citizenship of the Republic of Slovenia if at least one of their parents acquired citizenship of the Republic of Slovenia. The amended act now provides for the naturalisation of minors also in cases when they do not have parents or if the child's parents have lost their paternal rights or their contractual capacity and the child has been placed under guardianship and has lived in the Republic of Slovenia since his/her birth. It must be stated that the Ministry of the Interior had applied the Convention on the Rights of the Child and taken into account its basic principle, i.e. the interest of the child, when resolving such cases prior of the amendment to the Act. Before the Act was amended, the Ministry of the Interior of the Republic of Slovenia had issued a decision on naturalisation on the basis of the Convention in 17 cases, even though the conditions set in the Citizenship Act had not been fulfilled. The decision on naturalisation was based directly on the Convention, more precisely, on the provision of its Article 3. After 1991, a total of 48 children were granted citizenship on the basis of the Convention. In its provisions, the Citizenship Act follows other principles of the Convention concerning the benefits of the child. In acquiring Slovenian citizenship by birth, the Act does not distinguish between legitimate and illegitimate children; if at the time of his/her birth, at least one of the parents is a citizen of the Republic of Slovenia, that child is considered a citizen of the Republic of Slovenia; if a child is born in a foreign country and only one of his/her parents is a citizen of the Republic of Slovenia, the child can be registered as a citizen of the Republic of Slovenia by the parent who is a citizen of the Republic of Slovenia (the acquisition of citizenship for a child older than 14 years requires his/her consent). The registration is not necessary if the child remained stateless. Citizenship of the Republic of Slovenia is also acquired by a person, who is older than 18 years, if he/she applies for the registration into citizenship of the Republic of Slovenia prior to reaching the age of 36 years. Statelessness is further prevented by the provision which provides for the acquiring of citizenship of the Republic of Slovenia by a child born or found in the territory of the Republic of Slovenia if his/her father and mother are unknown or of unknown citizenship, or stateless. The Act also protects the rights of an adopted child as it provides for the acquiring of citizenship of the Republic of Slovenia by a child – alien, if at least one of the adoptive parents is a citizen of the Republic of Slovenia, without requiring annulment of the original citizenship. In all the mentioned cases, a child is considered as citizen of the Republic of Slovenia from birth onwards.

Article 25

Limitations to, and the manner of exercising, the right to vote

258. The right to vote is defined in the Constitution (Article 43): "The right to vote shall be universal and equal. Every citizen who has attained the age of eighteen years has the right to vote and be elected." At the end of 2001, a group of deputies in the National Assembly put forward a motion to initiate a procedure for amending Article 43 of the Constitution so that people would have the right to vote and be elected at the age of 16.

259. **Right to vote**. In accordance with the universal suffrage principle, the only persons excluded from or temporarily limited in the exercising of this right in the Republic of Slovenia are those who cannot vote because of mental disorder (and who have been deprived of contractual capacity) or youth. This principle is included in the National Assembly Elections Act (Article 7: "Each citizen of the Republic of Slovenia who has on the date of elections attained the age of 18 and who has not been deprived of contractual capacity shall have the right

to vote and stand for election as a deputy."). The right to vote in all types of referendum recognised in Slovenian legislation, i.e. referendums on constitutional amendments, legislative referendums and consultative referendums on issues within the jurisdiction of the National Assembly, is regulated in the same manner (Referendum Act, Article 35). This also means that persons serving penal sanctions can vote (Enforcement of Penal Sanctions Act, Article 4), as well as persons serving their military duty on the date of elections (National Assembly Elections Act, Article 81), persons that are receiving hospital treatment on the date of elections (Article 82), and persons who are abroad on the date of elections because they have temporary or permanent residence there. The situation when voters cannot come to polling stations where they are enrolled on the electoral register is also specifically regulated by law. These voters can vote in their home before a polling board.

260. The last Act Amending the Local Elections Act, adopted by the National Assembly on 29 May 2002, grants to aliens with permanent residence in Slovenia a right to vote at local elections. They can vote for membership candidates of municipal councils and for mayors, but they cannot be candidates and they cannot be elected.

261. The National Assembly Elections Act explicitly stipulates that voters vote in person and that no one is allowed to vote by proxy (Article 9). However, a voter is entitled to be accompanied by a person who helps him/her to cast the vote and deliver the ballot if he/she is not able to vote due to a physical disability or illiteracy. The decision on this is made by the polling board and entered into the records (Article 79).

Limitations on the participation in the conduct of public affairs

262. People with certain professions and functions are limited in their participation in political life:

- Professional members of the defence forces and the police may not be members of political parties (Article 42 of the Constitution);

- Judicial office and the office of State Prosecutor are not compatible with office in other state authorities, in local self-government authorities and in bodies of political parties (Articles 133 and 136 of the Constitution).

Registration of voters

263. The act governing the voting rights register was adopted in 1992. In 1998, however, the Constitutional Court established that the Act did not comply with the Constitution because it violated the principle of the equality of citizens before the law for the following reasons: "The requirement made every time that a citizen without permanent residence in the Republic of Slovenia be entered in a special voters' list, places this citizen in an unequal position in relation to citizens that have permanent residence in the territory of the Republic of Slovenia, for whom general voters' lists are drawn up ex officio." (Constitutional Court's decision U-I-48/98). The Constitutional Court was of the opinion that this violated the principle of the equality before the law (contained in Article 25 of the Covenant). A permanent voting rights register should therefore be ensured for citizens of the Republic of Slovenia that do not have permanent

residence in the Republic of Slovenia. This register would be kept by a competent administrative authority on the basis of requests by citizens with permanent residence abroad. Voters' lists should thus be drawn up ex officio (as they are for voters in Slovenia).

264. The Constitutional Court instructed the National Assembly to remedy this non compliance of the Act with the Constitution within one year. However, the Government of the Republic of Slovenia submitted a new voting rights register Bill, which takes into account the findings of the Constitutional Court, into a parliamentary procedure only after this deadline had expired, on 14 September 2001. The new act was adopted and entered into force on 14 June 2002.

265. After this non compliance had been established, the President of the Republic of Slovenia called regular elections to the National Assembly for 15 October 2000. A special voters' list into which a voter was entered on the basis of a written claim was still not drawn up at these elections for Slovenian citizens without permanent residence in Slovenia. If the special voter's list of citizens with permanent residence abroad had been formulated on the basis of the Voting Register Act applicable at that time (and also at present), the elections would not have complied with the Constitution. The Ministry of the Interior therefore acted pursuant to the Constitutional Court's decision and – even though the Act had not been amended – collected all the claims for entry into the special voters' list for the 1996 elections to the National Assembly and for the 1997 presidential elections. A uniform list was then compiled on the basis of these claims, which included all citizens with permanent residence abroad. The national electoral commission informed all these citizens about the date of elections and about the possible methods for exercising their right to vote (2000 Report of the Office of Interior Affairs Administration). 2,601 citizens with permanent residence abroad were entered into this special voters' list. A further 144 certificates were issued on the date of the elections to citizens who had not been entered in the special voters' list, and who then voted at diplomatic missions and consular posts of the Republic of Slovenia on the basis of these certificates. However, according to information provided by the Government of the Republic of Slovenia (government's session on 10 January 2002) there are 68,500 Slovenian citizens with permanent residence abroad. Even though the Act did not comply with the Constitution at that time, the last elections to the National Assembly were conducted in accordance with the Constitutional Court's decision and thus also in compliance with the Constitution.

266. A new Act was adopted in 2002, which entered into force on 29 June 2002. The Voting Rights Register Act has thus been brought into compliance with the Constitution in that part governing the voting rights register of citizens of the Republic of Slovenia that do not have permanent residence in Slovenia. The new Act furthermore regulates the registering of voting rights of members of the Romany community, which was also required in the Constitutional Court's decision. The Act also had to be harmonised with the European Union *acquis* concerning the exercising of the right to vote at European parliamentary and municipal elections. Pursuant to the Act, each citizen of the European Union is entered into the permanent voting rights register if he/she has a right to vote under the Act. The right to vote is recorded in the permanent population register and in the Central Population Register. The Act also defines the manner of registering the voting rights of EU citizens with permanent residence in the Republic of Slovenia at both European parliamentary elections and at municipal elections.

Article 26

267. The initial report (Paragraphs 78–81) explains the constitutional provision of Article 14 referring to equality before the law. At the end of 2001, a group of deputies submitted a motion to the National Assembly to initiate a procedure for amending Article 14 of the Constitution. The Constitution cites only examples of personal circumstances that may not provoke discrimination, and the provision ends with words "or any other personal circumstance". Despite this general norm permitting an *intra legem* explanation (referring to other similar circumstances), the deputies proposed that disability be listed among the personal circumstances cited. They believe that "Constitutional and legal basis must be created for appropriate measures which would grant people with disabilities the possibility of full participation and ensure their equality in the Slovenian state." (From the explanation of the motion to initiate the procedure for amending the Constitution.)

Article 27

268. Slovenia has ratified all major international conventions on discrimination. Special mention should be made of the International Convention on the Elimination of All Forms of Racial Discrimination,[10] the European Charter for Regional or Minority Languages,[11] and the Framework Convention for the Protection of National Minorities (FCNM).[12] A detailed description of the situation concerning minorities was also provided in the Initial Report to the Committee on the Elimination of Racial Discrimination.[13]

269. A special characteristic of the regulation of the situation regarding individual national communities in Slovenia is also bilateral cooperation between neighbouring countries to the benefit of minorities. The Republic of Slovenia and the Republic of Croatia thus co-finance the operation of joint institutions of the Italian national communities that are based in Croatia but also cover the needs of Italians in Slovenia. The situation of both autochthonous national minorities, the Hungarian minority in Slovenia and the Slovenian minority in Hungary, is regulated by a special bilateral convention "on providing special rights for the Slovenian minority living in Hungary and for the Hungarian minority living in Slovenia".[14] In the Preamble, the Convention refers to the adopted UN, CoE and OSCE instruments. The two countries commit themselves to ensuring the possibilities for the preservation, development and free expression of the national identity of the two minorities in the fields of education, culture, media, publishing and research activity, the economy and others. Bilateral cooperation has also been established in the field of regulating the situation of Roma. Regular consultations are held at the bilateral and regional levels on the employment of Roma. Joint Slovenian-Austrian consultations on the situation of Roma in Slovenia and Austria were organised in 1997, and attended by government representatives and Roma from the two countries.

270. The rights of the autochthonous Italian and Hungarian national communities are guaranteed and protected by the Constitution (Article 5). Both minorities have the right to use their national symbols freely, establish organisations and develop economic, cultural, and scientific and research activities as well as activities in the field of public media and publishing. Members of the two minorities have the right to education and schooling in their own language; bilingual education is compulsory in certain geographic areas (Article 64, Paragraph 1 of the Constitution). In areas where Italian or Hungarian national communities reside Italian or Hungarian is also the official language in addition to Slovenian (Article 11 of the Constitution).

Members of the two national communities can establish their own self-governing communities in these areas. The two national communities are also directly represented in representative bodies of local self-government (Article 64, Paragraphs 2 and 3 of the Constitution). Each of the two national communities has its representative in the National Assembly (Article 80, Paragraph 3 of the Constitution).

271. The situation of the two national communities is also governed by extensive legislation. The "Review of the major regulations governing special rights of the Italian and Hungarian national communities in Slovenia" drawn up by the Office for Nationalities states that over 30 acts and executive regulations apply to this area. Institutional possibilities of involvement are provided by the Office for Youth (within the Ministry of Education, Science and Sport), Office for Nationalities, Migrations Directorate within the Ministry of the Interior and partly also by the Office for Religious Communities and the Department for Cultural Activities of the Italian and the Hungarian Ethnic Minorities, Romany Community, Other Ethnic Minority Groups and Immigrants in the Republic of Slovenia within the Ministry of Culture.

272. A special Article stipulates that the status and special rights of the Romany community are regulated by law (Article 65 of the Constitution). Such an act, however, has not yet been adopted.[15] The protection of special rights of the Italian and Hungarian national communities in Slovenia and of the Romany community is based on the territoriality principle and on the autochthonous settlement of the Italian, Hungarian and Romany communities in individual areas in Slovenia. We can thus establish that the Italian and Hungarian national communities enjoy special rights, the Romany community is partly specially protected.

273. In a review of constitutionality and legality of the Local Government Act and the Statute of the Novo mesto Municipality in 2001, the Constitutional Court took into account the opinion of the Office for Nationalities that the special protection of the Romany community provided for in the Constitution cannot be regulated by a single act but that the practice established for the Italian and Hungarian national communities must be followed, and the rights of the Romany community regulated in relevant acts. One of the first special rights of the Romany community defined in Article 65 of the Constitution is the right of the Romany community to representation in the representative bodies of local self-government. The basis of exercising this right is provided by the keeping of a voting rights register for members of the Romany community, which was regulated only by the Voting Rights Register Act of 2002 (Official Gazette RS, No. 52/2002). According to this Act, a special voters' list for citizens of the Republic of Slovenia who are members of the Romany community is kept in areas where this community resides. The list is composed by a special commission appointed by the municipal council. Whether a citizen of the Republic of Slovenia belongs to the Romany community is established on the basis of his/her declaration. The amended Local Government Act (Official Gazette RS, No. 51/2002) provided a list of the municipalities that had to guarantee to the Romany community residing in the municipality the right to one representative in the municipal council by the regular elections in 2002. At the latest local elections on 10 November 2002, 15 new Roma councillors were elected for the first time; in one of the municipalities, a Roma councillor was elected although the Acts had not been amended.

274. In 1995, the Government adopted the Programme of Measures for Assisting Roma, which defines the obligations of state authorities in regulating the Roma issue. The Organisation and Financing of Education Act, the Kindergarten Act and the Primary School Act provide for special conditions and special care for the education and socialisation of Roma.

275. The Local Government Act stipulates in Article 39 that the Italian and Hungarian national communities have at least one representative in the municipal councils in the ethnically mixed areas in which they reside. Direct representation of the national communities in other municipal bodies is defined in municipality statutes, and the issues relating to exercising the rights and financing of the national communities are regulated by special acts. Consent to these regulations is granted by the Council of the National Community through the representatives of the relevant national community in municipal councils. Prior to deciding on other issues relating to the exercising of the special rights of the national communities, municipal bodies must obtain the opinion of the self-governing national community. Commissions on nationality issues are established in ethnically mixed areas. Half of the members of the commissions are members of the national community. In autochthonous settlement areas of the Romany community, Roma have at least one representative in the municipal councils. Article 83 of the Act stipulates that the national communities have at least one representative each in the regional council.

276. The Organisation and Financing of Education Act stipulates that special preschool education is provided for the needs of children from national minorities. The same applies to primary and secondary education. Special norms and standards are also ensured for the needs of Romany children in preschool education, and programmes of additional education are provided for the needs of Romany children in primary school.

277. Special rights of national communities are also defined in the Special Rights of the Italian and Hungarian National Minorities in the Field of Education Act. The main aims of this Act are the preservation and development of Italian and Hungarian languages and cultures, the development of knowledge of historic, cultural and natural heritages of the Italian and Hungarian national communities and their mother nations, the development of the awareness of affiliation with the Italian or Hungarian national community, and the preservation and development of their own cultural traditions. The minorities can be culturally active: a special department for financing cultural activities of minorities has been set up within the Ministry of Culture (this is valid for the autochthonous Hungarian and Italian national communities, the Romany community (including Romany immigrants), members of the German speaking community, members of the societies of the peoples and nationalities of the former Yugoslavia, members of the Jewish, Arabic and African societies). In addition to financing, the department offers counselling and professional assistance to minority communities; it also follows the work of artists of the minorities, while constantly evaluating and improving the measures in the minority area.

278. The Penal Code stipulates in Article 141, entitled Violation of Right to Equality, that whoever, due to differences in respect of nationality, race, religion, ethnic roots, etc., deprives or restrains another person of any human right or freedom, or grants another person a special privilege or advantage on the basis of such discrimination is punished by a fine or sentenced to imprisonment of not more than one year. If such an offence is committed by an official through the abuse of office or official authority, such an official is sentenced to imprisonment for not

more than three years. Nobody has been convicted in Slovenia of committing this offence. There are no databases in Slovenia in which, for instance, the perpetrators of criminal offences would be included on the basis of their ethnicity.

279. **Table 30**

Slovenian population by ethnic affiliation (based on 2002 Census)

Nationality	Number	Percentage
Slovenians	1 631 363	83.06%
Unknown	126 325	6.43%
Serbs	38 964	1.98%
Croatians	35 642	1.81%
Bosnians[16]	21 542	1.10%
Muslims[17]	10 467	0.53%
Undeclared[18]	8 589	0.44%
Hungarians	6 243	0.32%
Albanians	6 186	0.31%
Macedonians	3 972	0.20%
Montenegrins	2 667	0.14%
Roma	3 246	0.17%
Italians	2 258	0.11%
Regionally determined	1 467	0.07%
Germans and less	499	0.03%

280. In Slovenia, ethnic communities of the persons originating from the former Yugoslavia do not enjoy the minority status, neither do they enjoy minority protection. In the Republic of Slovenia, minority rights do not depend on the number of members. Article 61 of the Constitution of the Republic of Slovenia stipulates: “Everyone has the right to freely express affiliation with his nation or national community, to foster and give expression to his culture and to use his language and script”; this provision applies to ethnic communities from the former Yugoslavia as well. All linguistic, national, religious and similar communities are granted certain special rights in other articles of the Constitution to protect their specific characters; especially pertinent in this context is the protection from all forms of discrimination. A number of other laws ensure various ways of supporting the activities of “non-Slovenian” communities whose members are fewer compared to the majority population.

281. The Exercising of the Public Interest in Culture Act (2002) and the Librarianship Act (2001) already create the normative conditions for the integration of the mentioned minority communities and their members into the cultural life in the Republic of Slovenia. Already in 1992, the Ministry of Culture set up a special programme for these ethnic communities and has been financing for 10 years the programmes for the preservation of their special cultural identities. By adopting normative, organisational and financial measures, the Ministry of Culture has endeavoured for a cultural policy with a more democratic attitude towards minorities and ethnic communities. The Ministry creates the conditions for all people to have equal opportunities for participation in the cultural life, regardless of their cultural identity.

282. Peoples of the former Yugoslavia have the possibility in territory of the Republic of Slovenia to follow television programmes in their own language through a cable TV system offered by cable operators. They also have the possibility to learn their mother tongue and be acquainted with their native culture in accordance with all relevant international regulations and in accordance with the Constitution of the Republic of Slovenia.

283. Peoples of the former Yugoslavia have the possibility to learn their mother tongue in accordance with the directive and recommendations of the European Union. This is stipulated by the national legislation and the bilateral agreements or interministerial protocols with the countries of origin of these peoples. Instruction of the mother tongue is organised in cooperation with the country of origin, which is also the practice elsewhere in Europe. Implementing this possibility therefore depends on the readiness of the country of origin for cooperation and also on the readiness of individuals to attend such classes. In the 2003/2004 school year, instruction in the Macedonian language has been organised; instructions in the Croatian and Albanian languages were also organised in past years. The possibility to learn one's mother tongue is also provided within the framework of optional classes in the primary schools. Croatian is already being taught in some schools, while the curriculum for the optional classes of Serbian is being prepared as well.

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Customs Service Act, Official Gazette RS, No. 56/99

Taxation Procedure Act, Official Gazette RS, No. 18/96

Tax Administration Act, Official Gazette RS, No. 18/96

Inheritance Act, Official Gazette RS, Nos. 15/76, 23/78

Employment Act, Official Gazette RS, Nos. 14/90, 5/91, 71/93

Employment Act, Official Gazette RS, No. 42/02

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Equal Opportunities Act, Official Gazette RS, No. 59/02

Enforcement of Penal Sanctions Act, Official Gazette RS, No. 22/00

Public Assembly and Public Events Act, Official Gazette SRS, Nos. 29/73, 42/86, 8/90

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Health Services Act, Official Gazette RS, No. 9/92

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Criminal Liability of Legal Entities Act, Official Gazette RS, No. 59/1999

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Rules on Carrying out the Tasks of Warders, Official Gazette RS, No. 78-4058/2001

Rules on Police Powers, Official Gazette RS, No. 51/2000

Decree on the Eligibility to Conscientious Objection and Performance of Civil Service, Official Gazette RS, No. 34/96

Human Rights Ombudsman, Annual Report 2003, Ljubljana, March 2004.

Notes

[1] Information as on 30 April 2004.

[2] Official Gazette RS, No. 7/93.

[3] Joint Report on the work of State Prosecutor's Offices for 2000, Ljubljana 2001.

[4] Court backlogs are, however, present.

[5] The Constitutional Court decision annulling previous Articles 150 and 156.

[6] The legislator introduced the new standard of proof "well-founded reasons for suspicion."

[7] Criminal offences for the investigation of which the special methods and measures can be ordered are (inter alia) the following: Unjustified acceptance of gifts (Article 247 of the Penal Code), Unjustified giving of gifts (Article 248 of the Penal Code), Money laundering (Article 252 of the Penal Code), Acceptance of a bribe (Article 267 of the Penal Code), Giving of a bribe (Article 268 of the Penal Code), Undue influence (Article 269 of the Penal Code), Criminal association (Article 297 of the Penal Code), or other criminal offences punishable by eight or more years imprisonment.

[8] Article 150, Paragraph 2 of the Criminal Procedure Act.

[9] Article 150, Paragraph 2 of the Criminal Procedure Act.

[10] Official Gazette SFRY, No. 6/67.

[11] Ratified on 4 October 2000, Official Gazette RS, No. 17/00.

[12] Ratified on 25 March 1998, Official Gazette RS, No. 4/98.

[13] http://www.sigov.si/mzz/zunanja_poli/lovekove_prav/cerd-00.doc (14 March 2003).

[14] Signed on 6 November 1992, instruments on ratification exchanged on 29 April 1994. Text in English is published in the supplement to the publication "Ethnic Minorities in Slovenia".

[15] This was also noted by the European Commission and mentioned in its report. However, the Commission assessed that "the rights of Roma community are covered in various sectoral laws". 2000 Regular Report from the Commission on Slovenia's Progress towards Accession, 2000, p. 19.

[16] Declaration as Bosnian was introduced by the Constitution of the Federation of Bosnia and Herzegovina in 1994.

[17] Includes persons who declared themselves as Muslims in the sense of ethnic and not religious affiliation.

[18] 527 persons (0.03%) declared themselves as Yugoslav and 8,062 persons as Bosnians (0.41%).

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