SLOVAK NATIONAL CENTRE FOR HUMAN RIGHTS

REPORT
ON THE OBSERVANCE OF HUMAN RIGHTS INCLUDING THE OBSERVANCE OF THE PRINCIPLE OF EQUAL TREATMENT IN THE SLOVAK REPUBLIC FOR THE YEAR 2009

BRATISLAVA 2010

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INTRODUCTION

The Slovak National Centre for Human Rights (the Centre) as an independent legal entity fulfils tasks of the greatest importance in the area of human rights and fundamental freedoms including the rights of the child and observance of the principle of equal treatment. The Centre was established by the Act of the National Council of the Slovak Republic (NC SR) No. 308/1993 Coll., with effect from January 1st 1994 based on international treaty and an Agreement between the Government of the Slovak Republic and the United Nations Organisation on the Establishment of the Slovak National Centre for Human Rights – Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 29/1995 Coll.

Pursuant to Act No. 365/2004 Coll. on Equal Treatment in certain areas and on protection against discrimination and on amending and supplementing certain other laws as amended (Anti-Discrimination Act) the Centre operates also as the only Slovak institution for equality i. e. in evaluating the observance of the principle of equal treatment under the Anti-Discrimination Act.

Considering the mentioned legislative regulation the Centre has in the organisation of the Slovak society an extraordinary, special position. In the framework of the UN structures, the Centre assumes the position of a National Human Rights Institution (NHRI) with a B status in compliance with the Paris Principles[1] and acts within the European Union (EU) as a specialised institution in the area of anti-discrimination, the so called National Equality Body. Although such combination of roles is not quite common on international scene, it can be stated that having a special anti-discrimination agenda interconnected with the universal basis of support and protection of human rights indeed brings positive results.

Based on this position, the Centre monitors and evaluates the observance of fundamental rights and freedoms including the rights of the child, as well as the observance of the principle of equal treatment in the Slovak Republic. Under § 1 par. 2 to 4 of the Act No. 308/1993 Coll. on the Establishment of the Centre as amended (Act on the Centre) the Centre for this purpose in particular:

- monitors and evaluates the observance of human rights (including the rights of the child) and the observance of the principle of equal treatment under the Anti-Discrimination Act,
- gathers and provides information on racism, xenophobia and anti-Semitism in the SR,

[1] Resolution of the General Assembly of the United Nations No. 48/134 of 20th December 1993.

- carries out researches and surveys necessary for the provision of data concerning human rights (including the rights of the child), gathers and disseminates information in this area,
- develops educational activities aimed at increasing awareness of human rights, application of the principle of equal treatment, and prohibition of discrimination,
- renders legal aid to the victims of discrimination and manifestations of intolerance (including mediation),
- represents the parties in proceedings relating to violation of the equal treatment principle,
- issues expert opinions concerning compliance with the principle of equal treatment under the Anti-Discrimination Act,
- carries out independent investigations concerning discrimination,
- draws up and publishes reports and recommendations on the issues related to discrimination,
- provides library services,
- draws up reports on the observance of human rights including the principle of equal treatment in the SR, and publishes (in the printed version) and releases them via Internet.

The competences, which the Centre fulfils on the international scene, relate to the membership of the Centre in international institutions and the Centre gained them through their active and incentive-full operation in the said institutions:

- as the National institution for the protection and promotion of human rights (NHRI) and a member of the European Regional Group of NHRIs, the Centre participates in the elaboration of analyses and preparation of evaluation reports and strategies, as well as the concept materials of the European Regional Group of NHRIs,
- as the Equality Body and a member of the Equinet (European Network of Equality Bodies) it participates in the activity of working groups and participates in the elaboration of analyses and evaluation reports concerning the observance of the principle of equal treatment,
- in addition, the Centre participates in research and monitoring within ChildONEurope – the European network of institutions examining children's rights with the seat in Florence, and as a permanent member participates in the elaboration of expert materials, recommendations and conclusions of AGE (The European Older People´ s Platform) at the EC in Brussels.

The activities of the Centre logically result in certain outputs, conclusions, and findings. The most important outputs of the Centre, which are published every year, are the Report on the Observance of Human Rights including the principle of equal treatment in the Slovak Republic and the Report on the Observance of the Rights of the Child. The competence necessary for the annual elaboration of the Report on the Observance of Human Rights in the Slovak Republic follows from § 1 par. 4 of the Act on the Centre, according to which the said reports are elaborated and published every year until 30th April, as well as from point 3 letter a – iii) of the Paris Principles. The extended content of the Report in the assessment of the principle of equal treatment is governed now under the amended Act on the Centre (Act No. 85/2008 Coll. in effect since 1st April 2008) and the competence to publish independent reports concerning discrimination has been entrusted to the Centre being the Equality Body under the so called anti-discrimination directives of the European Union.[2]

Based on the opinion of the UN Committee on the Rights of the Child, which pointed out the absence of regular monitoring and assessment of the application and observance of the rights of the child, this year, the Centre already the third time elaborated and submitted to the public also a separate Report on the Observance of the Rights of the Child in the Slovak Republic.

The concept intent of the submitted Report on the Observance of Human Rights including the principle of equal treatment in the Slovak Republic in 2009 (Report) is to provide general, but at the same time exhaustive evaluation of the observance of the fundamental human rights in the general part and a more detailed (and comprehensive) view of the observance of the principle of equal treatment, in the given limited space of this Report, in the special part.

As for the structure of the Report (the selection of fundamental human rights), in the general part, we decided to choose the theoretical background of human rights: rights are divided by topics, which was – where required by the nature of the examined right – sometimes combined with the understanding of human rights according to the contents thereof. The Report is thus in the first – the general part aimed at:

1. Personal rights and freedoms
2. Civic, political rights and the right of aliens
3. Economic, social and cultural rights

[2] For example Article 12 par. 2 letter c) of the Council Directive 2004/113/EC and Article 20 par. 2 letter c) of the Directive of the European Parliament and of the Council 2006/54/EC.

4. The rights of national and other minorities
5. The rights concerning the enforcement of human rights
6. Extremism

The structure of the special part "The principle of equal treatment and the prohibition of discrimination" reflects the reasons and areas protected under the Anti-Discrimination Act.

In compliance with the defined structure negotiated and agreed by the Administrative Board of the Centre[3] – Resolution No. 200 of 12th October 2009, the contents of the Report include those fundamental human rights and freedoms, the insufficient protection or violation of which stirred moods in our society in 2009 and which were subjects of criticism or public and expert discussion, as well as discriminatory proceedings with accent laid on the reasons and areas protected under our anti-discrimination legislation. Considering the extent of the monitored issue and the lack of space, in the introduction to every chapter there is only brief general information on the rights which are being dealt with in the said chapter, and the guarantee thereof under the most important international regulation and national constitutional regulation. The particular legal regulations or other generally binding legal regulations are mentioned only in case there was a change thereof in 2009, which influenced the application of the examined rights, or where it seemed necessary considering the nature of the examined right.

In some cases there are stated also the judgements of the European Court of Human Rights in relation to the Slovak Republic from the year 2009. Although the proceedings decided by the European Court in 2009 were held much earlier than in 2009, the said judgements are stated as an important precedent, pointing out the acting/failure to act,

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[3] The members of the Administrative Board of the Centre under § 3a par. 1 of the Act No. 308/1993 Coll. on the Establishment of the Centre as amended, in 2009:
JUDr. Juraj Horváth – Head of the Administrative Board, appointed by the Speaker of the National Council of the Slovak Republic,
Prof. PhDr. Marcela Gbúrová, CSc. – Vice Head of the Administrative Board, appointed by the President of the Slovak Republic,
Prof. PhDr. Gustán Dianiška, CSc., appointed by the Dean of the Faculty of Law of Trnava University
JUDr. Alena Mátejová, appointed by the Minister of Labour, Social Affairs and Family of the Slovak Republic,
Mgr. Anton Martvoň, PhD., (until 2. June 2009 JUDr. Marek Števček, PhD.), appointed by the Dean of the Faculty of Law of Comenius University in Bratislava,
Mgr. Marián Meszároš, (until 24. July 2009 JUDr. Henrieta Antalová), appointed by the Ombudsman,
Ladislav Richter, appointed by the Head of the Government of the Slovak Republic based on a proposal of non-governmental organisations,
Prof. PhDr. Jaroslav Straka, DrSc., appointed by the Dean of the Faculty of Law of Matej Bel University in Banská Bystrica,
Doc. JUDr. Vladimír Vrana, PhD., appointed by the Dean of the Faculty of Law of Pavol Jozef Šafárik University in Košice.

activeness/passiveness, which, from the point of view of the human rights protection, must be eliminated.

While elaborating the Report, the main ambition of the Centre was to reflect objectively and truly the observance of human rights in Slovakia during the year 2009. Therefore the Centre applied to a broad range of non-governmental organisations operating in the area of human rights and to the academic community for cooperation in the assessment of the observance of human rights. Simultaneously, under § 1 par. 5 of the Act on the Centre, the Centre asked for the provision of background documents and data also the state administration bodies, authorities of territorial self-government, authorities of self-governance of interest groups and bodies governed by public law. The Centre addressed the total of 231 authorities, organizations and institutions, out of which 120 replied and provided relevant data and underlying documents.[4]

A great part of valid and topical data was gained by the Centre also as a result of its monitoring and research, or other expert activity within the fulfilment of its tasks, in examining complaints and information of clients, who had addressed the Centre with applications for consultancy and assistance, as well as from own knowledge and the experiences of the employees of the Centre and its regional offices.[5]

We believe that the submitted Report shall be of contribution not only for the general public, but also for the further development of the system of human rights protection in the Slovak Republic.[6]

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[4] The list of cooperating authorities and institutions is attached hereto in Annex No. 1.

[5] Within the Project "Consultancy Services for the Purpose of Building Regional Administration Capacities of the Slovak National Centre for Human Rights", carried out with the financial support of the EU within the programme Tranition Fund, the Centre in 2007 opened 7 regional offices (in Nové Zámky, Kysucké Nové Mesto, Dolný Kubín, Kežmarok, Humenné, Rimavská Sobota and Zvolen).

[6] In compliance with the principle of equal treatment under § 2 par. 1 of the Act No. 365/2006 Coll. on Equal Treatment in certain Areas and Protection from Discrimination as amended (Anti-Discrimination Act) all names of positions and professions in this Report are given equally in masculine and feminine gender.

General Part

FUNDAMENTAL HUMAN RIGHTS

1. PERSONAL RIGHTS AND FREEDOMS

Personal rights and freedoms (traditional personality rights) are those fundamental human rights that have been created or formulated in the principal international documents on human rights. Along with civic and political rights, they constitute the basic pillar of human rights and are historically perceived as first generation rights. The said rights are understood as the basic normative of the whole international and legal protection of human rights, from which national protection thereof is derived.

The Slovak Republic as a standard democratic state guarantees the observance of international standard fundamental human rights, and just like in the previous years, also in 2009 we have not recorded serious system violation of fundamental human rights in this area. However, it does not mean, that in this area, predominantly in the application, enforcement and protection of these rights, there were no problems, shortcomings or changes, which should be pointed out.

1.1. Right to life

"The right to life is the most fundamental human right and the basis of them all. "[7] It is therefore always embodied in the introductory norm-setting provisions of the most important international documents on human rights.[8]

At the national level this right is guaranteed under Article 15 of the Constitution of the Slovak Republic, which acknowledges the right to life to everybody and at the same time acknowledges the right not to be deprived of life. The protection from arbitrary deprivation of life is provided predominantly under the Criminal Code in a Separate Part – Chapter 1.

The legal regulation criminalising the killing of a human being has not changed in the monitored period. As results from the statistics of the Ministry of Interior of the Slovak Republic, in comparison with the previous two years there was a decrease in the number of

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[7] Svák, J.: Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburgských orgánov ochrany práv) [Protection of Human Rights (from the point of view of the case law and doctrine of Strasbourg human rights protection authorities)]. 2nd enlarged ed. Žilina : Poradca podnikateľa, 2006, p. 149.

[8] Such as Article 3 of the General Declaration of Human Rights, Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the Protocols thereto No. 6 a No. 13, Article 6 of the International Covenant on Civil and Political Rights and the Optional Protocols thereto, Article 4 of the American Convention on Human Rights.

murders determined in 2009, and that to 80 (in 2007 to was 89 and in 2008 94). The percentage of clarified cases in 2009 was around 86 %, which is an increase in clarification approximately by 6 %. However, there is a disturbing fact that between the perpetrators of these crimes were also three minors.

In connection with the right to life and the protection thereof under the so called positive obligation of the state it is necessary to mention decision European Court of Human Rights (the European Court) in the case Dvořáček and Dvořáčková against the Slovak Republic. It was a case of a young woman, who died at the age of 23 years, since her heart failure had not been duly treated right after birth.

Already in 1987 Mr. and Mrs. Dvořáček together with their daughter brought the case before the court, where they claimed damage compensation due to the fact that the health of their daughter had been severely and irreparably damaged as a result of shortcomings in post-natal care, which was provided to het in health care facilities. The court of first instance in 1990 dismissed the claim. After the revoking of the decision the case was returned before the district court, which is still deciding in the matter. The complainants in their complaint claimed that the failure to act on the side of the district court resulted in denial of justice. The European Court in its decision of 28th October 2009 noted that Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention) orders the state not only to refrain from "arbitrary" deprivation of life, but also take appropriate steps to protect the life of persons, who are subject of its jurisdiction (positive obligation). The said principles are applied also in the area of public health, and therefore the European Court decided on the violation of Article 2 of the Convention in the procedural part thereof, and on violation of Article 6 par. 1 of the Convention and ruled that the state in question is obliged to pay the complainants jointly a just compensation and the compensation of costs and expenditures.

1.2. Prohibition of torture, inhuman or degrading treatment or punishment

"The roots and background of all human rights and freedoms are connected with the existence of a human being and with human dignity."[9] Therefore the respect for physical and mental integrity forms the base of human rights protection, whereby the fact is most significantly reflected in the prohibition of torture.

[9] Zachová, A.: Ochrana osobnej slobody v zmysle článku 5 Dohovoru o ochrane ľudských práv a základných slobôd [Protection of personal freedom under Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms]. In: Právo na ochranu osobnej slobody : Zborník z celoštátneho odborného seminára s medzinárodnou účasťou k príležitosti 60. výročia založenia Rady Európy. Bratislava : Akadémia Policajného zboru, 2010, p. 17.

The prohibition of torture, inhuman or degrading treatment or punishment is at the international level embodied in Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 7 of the International Covenant on Civil and Political Rights. The observance and control mechanism thereof is within the European room safeguarded European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and within universal system of protection of human rights under the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In connection with the international regulation of the prohibition of torture within universal system of protection of human rights the Centre repeatedly, just like in previous years, mentions that the accession processes to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted UN in 2002 and which (according to official statistics UN) until the end of the year 2009 was signed by 64 and ratified by 50 member states of the UN, should be accelerated.

At the national level the protection from torture and inhuman treatment is safeguarded under Article 16 par. 2 of the Constitution of the SR. Under Art. 16 par. 2 of the Constitution of the SR nobody may be tortured or subjected to cruel, inhuman or degrading treatment or punishment.

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Convention against torture) created a control mechanism of respect for the human dignity of persons, which are deprived of personal freedom or punished, and to by establishing the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The members of CPT are elected by the Council of Ministers of the Council of Europe (one to represent every member state of the Convention against torture) out of independent and impartial experts from various areas "for their high moral standing and recognised expertise in the area of human rights".[10] The members of CPT in regular intervals pays visits in the member states with the aim of strengthening the protection of persons deprived of personal freedom before torture and inhuman treatment or punishment. By visiting places accommodating persons deprived of freedom, the CPT strives to detect eventual shortcomings, point them out to the competent authorities and in form of permanent dialogue with the other party to the agreement to help improve the situation in the area in question. The CPT is not an inspection authority and their role is not to impose sanctions.

[10] Article 4 par. 2 of the European Convention against Torture.

In 2009 the CPT paid their fourth periodical visit to the Slovak Republic.[11] The visit took place between 24th March and 2nd April 2009 and in those days the committee also visited 18 police stations, 3 facilities of police detention for aliens and 6 imprisonment facilities. The recommendations of the CPT refer for example to the techniques used during the detention process and the related police training, or the increasing of effectiveness and independence during the investigation into complaints objecting ill-treatment by the police. The CPT did not omit the case of ill-treatment of the Roma boys at the police station in Košice, which occurred only 3 days before the visit. In this connection CPT stated that *"in comparison with the previous visits in Slovakia the CPT received only few accusations of ill-treatment during a police hearing and/or imprisonment. However, the widely discussed incident of 21. March 2009 of the ill treatment of six minor Roma boys at the police department in Košice pointed out to the fact that Slovak authorities must remain vigilant and continuously promote and uphold the principle of zero tolerance of ill-treatment by the policemen".*[12]

The said case is discussed in detail in a separate subchapter 1.2.1.

Despite the fact that the CPT report mentioned above contains several calls and broad range of recommendations, in the introductory notes in Point 2. it is stated that: *"The results of visits in 2009 show that in comparison with the previous visits of CPT in Slovakia in general the treatment of persons with restricted personal freedom by the members of law enforcement agencies improved. Predominantly, the CPT delegation was delivered fewer accusations of ill-treatment and it seemed that the members of law enforcement agencies are more aware of the fact that ill-treatment of detained persons is inacceptable."*[13] Another positive finding is the fact that the CPT report for the first time contains no calls or recommendations to safeguard the awareness of *law enforcement agencies* of the Convention against Torture and tasks and the powers of CPT during the visit.[14]

In connection with the prohibition of torture and inhuman or degrading treatment or punishment it is necessary to mention again, that not only under Strasbourg case law, but also according to the decisions of the Constitutional Court of the Slovak Republic it is obvious, that

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[11] The first regular visit was held in 1995, the second in 2000 and the third visit in to the Slovak Republic was held by the CPT from 22. February to 3. March 2005.

[12] Point 16, p. 13 of the Report to the Government of the Slovak Republic on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

[13] Point 13, p. 12 of the Report to the Government of the Slovak Republic on the visit to the Slovak Republic carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

[14] The whole wording of the Report to the Government of the Slovak Republic on the visit to the Slovak Republic carried out by the CPT is available at http://www.cpt.coe.int/documents/svk/2010-01-inf-svk.pdf.

the protection provided under the prohibition of torture relates also to cases of expulsion and extradition of a person into a country, where there is risk of such treatment. In the Slovak Republic the case of Mustafa Labsi was discussed already the second year, which is dealt with in a separate subchapter 1.2.2.

1.2.1. Ill-treatment of the Roma boys at the police station in Košice

On 21st March 2009 the policemen of Košice arrested six Roma boys who robbed a woman, and brought them to the district department for a security check-up. From the video record, which was broadcast by the Slovak Television on 7th April 2009, it is obvious that the policemen made the boys aged 10 to 16 years, threatening violence to them, remove their clothes and n smack each other. Moreover, dogs were used to threaten the boys.

The Centre qualified such practices used by the police clearly as violation of Article 16 par. 2 of the Constitution of the SR and Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Simultaneously, the Centre turned to the Ministry of Interior of the Slovak Republic, to the section of control and inspection services, with an application for information on the steps taken by the responsible authorities in the given case including the examination into a racial motive of such act as an extraordinary serious circumstance of the said case and on the adoption of prophylactic and preventive measures aimed at preventing such failures. The answers of the section of control and inspection services of the MI SR of 22nd June 2009 and 8th March 2010 revealed that the case is investigated into by the department of inspection services. Supervision is performed by the prosecutor of the General Prosecutor's Office of the Slovak Republic. During the investigation seven policemen - members of the Police Corps in Košice were charged with accusation of the crime of abuse of the authority of a public officer under § 326 of the Criminal Code (CC) and of the crime of blackmail under § 289 of the Criminal Code. According to other (media-provided) information nine members of the police – five from the Flying Squad (FS) and four members of professional cynology – were dismissed from service based on the order of the Minister of Interior of the Slovak Republic and the president of the Police Corps of the Slovak Republic due to suspected abuse of the authority of a public officer under § 326 of the CC and blackmail under § 189 of the Criminal Code. Also the director and the deputy director of the FS, the director and the deputy director of the district department of

the Police Corps of the Slovak Republic Košice – South, as well as the head of the department of service cynology of Košice were removed from office.[15]

Considering the fact that the investigation into this event has not been completed, the section of control and inspection services of the Ministry of Interior of the SR has not issued an official opinion on a possible racial motive.

In the framework of the prophylactic and preventive measures, the MI SR issued an Order of the Minister of Interior of the SR No. 21/2009 on the tasks of preventing violation of human rights and freedoms by the members of the Police Corps and by the members of the Railway Police in making interventions at work and in restricting personal freedom in effect from 24. July 2009, under which several measures of prophylactic nature were imposed and until the end of the year mostly also carried out (pre-evaluation of the psychological tests – stricter criteria, psychological evaluation of the policemen every five years, specialised training of policemen, continuous assessment of the behaviour of policemen during interventions, extended educational programme at the Academy of the Police Corps in Bratislava regarding human rights issues).

1.2.2. The Mustafa Labsi cause

In 2009 the cause of the Algerian citizen Mustafa Labsi, which was discussed in detail in the Report for the year 2008 continued to stir moods.[16]

Mustafa Labsi was originally supposed to be extradited to Algeria, where, however, as he had stated, he was at risk of being tortured or subjected to cruel, inhuman and degrading treatment. He therefore turned to the Constitutional Court, which already in 2008 decided on the violation of his right not to be tortured and the decision of the Supreme Court of the Slovak Republic (SC SR) on the permissibility of extradition to Algeria was reversed and the case was referred to further proceedings. Mustafa Labsi would at the same time turn also to the European Court of Human Rights (the European Court), which issued an interim measure, according to which Mr. Labsi should not be extradited to Algeria. The Algerian citizen thus found himself in a situation, where on the one hand he was banned from staying in Slovakia, but on the other hand, he could not be extradited or expelled. In 2009 the case was discussed especially in connection with the decision on his application for asylum. The Regional Court

[15] Source: Romano nevo ľil (Rómsky nový list). Available at: http://www.rnl.sk/modules.php?name=News&file=article&sid=15739.

[16] Report on the Observance of Human Rights including the Principle of Equal Treatment in the Slovak Republic for the year 2008. Bratislava: Slovak National Centre for Human Rights, 2009. 175. p.

in Bratislava in February 2009 revoked the decision of the Migration Office of the Ministry of Interior of the Slovak Republic (MOMI SR), which declined Labsi´s application for asylum in October 2008. The judge justified the decision by claiming that the office failed to provide a sufficient extent of information from Labsi´s country of origin and pointed out the fact that the MOMI SR failed to provide sufficient amount of evidence to justify why he should not be granted asylum.

In June 2009 the MOMI SR repeatedly decided not to grant asylum due to the fact that the applicant failed to meet certain legal conditions; in October 2009 the decision was affirmed by the Regional Court in Bratislava.[17] According to the information provided by the representative of the Slovak Republic before the European Court of Human Rights the complaint of Mr. Mustafa Labsi filed before the European Court has not been officially declared to the Government of the Slovak Republic.[18]

Despite the fact that Mr. Labsi repeatedly persuaded the public as well as the media, that it was his wish to live in Slovakia with his wife and son, at the end of the year 2009 he escaped from Slovakia and was detained in Austria. He was escorted back to Slovakia on 11. March 2010.

1.3. Personal freedom

The observance of physical and mental integrity of a human being is the fundamental attribute also of the right to personal freedom.

Personal freedom is at the international level guaranteed under Article 9 of the International Covenant on Civil and Political Rights and under Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. At the national level it is guaranteed under Article 17 of the Constitution of the SR.

The said provisions nearly identically guarantee personal freedom and state the reasons and ways of deprivation of personal freedom. Personal freedom may only be limited based on reasons and in ways embodied in relevant legal regulation.

[17] Mustafa Labsi azyl nedostane [Mustafa Labsi will not be granted asylum]. In: SITA news, 28. October 2009 [disk, internal database].

[18] Reply of the Ministry of Justice of the Slovak Republic, Office of the Representative of the Slovak Republic before the European Court of Human Rights registered on 17. February 2010.

1.3.1. Length of custody – the amended Code of Criminal Procedure

Custody represents a means to safeguard the presence of the accused person at the procedural acts of criminal proceedings, preventing them from committing repeated offences or crime and also from obstructing the evidence of crime. It seriously interferes with the personal freedom of an accused person, whereby under Article 17 par. 5 of the Constitution of the SR a person may be taken into custody only based on reasons and for the time constituted by law and based on the decision of the court. At the same time, however, it is necessary to mention again, that also a person taken into custody is protected by the presumption of innocence and custody is not a punishment for the committed deed. It is therefore necessary to have the maximum length of custody constituted by law. Simultaneously, it is the obligation of the courts to see to it that the length of custody does not exceed the maximum necessary period.

The maximum length of custody is stated in the Code of Criminal Procedure in part one, chapter four, section one thereof. The adjustments made to the decision making mechanism and length of custody in 2009 concerned two amendments of the Code of Criminal Procedure (Act No. 301/2005 Coll.). Act No. 5/2009 Coll., in force and effect as from 1. February 2009 also altered the decision making mechanism in custody matters and by Act No. 97/2009 Coll., in force and effect as from 20th March 2009 the maximum length of custody within the criminal procedure was prolonged from four years to five years, whereby however, the prolongation of the maximum length of custody in criminal procedure must be interconnected with the decision of the court so as to fulfil the criteria embodied in Art. 17 par. 5 of the Constitution of the SR. That means that the total length of custody in criminal procedure together with the prolongation must not exceed 60 months.

Whereas the regulation of the decision making mechanism of custody may be considered a positive development from the point of view of protection of the right to personal freedom, the prolongation of the maximum length of custody to five years must be perceived as an extraordinary measure aimed at the protection of the society from persons accused of having committed extraordinary serious crimes. We therefore presume that considering also the circumstances, which lead to the adoption of this amendment, it would be also advisable to adopt the measures to improve the efficacy and accelerate the pace of activities undertaken by the law enforcement agencies so that "crime is duly uncovered and the perpetrators thereof are justly punished by law, "[19] and while observing the fundamental rights and freedoms of natural persons and legal entities the length of custody will not be prolonged.

[19] See § 1 of the Act No. 301/2005 (Penal Procedure Code).

1.3.2. Establishment/non-establishment of a detention facility at the Psychiatric hospital in Hronovce

The process of establishing a detention facility, which would provide therapy to patients with protective therapy ordered by the court was discussed also in the Report for the year 2008.[20]

The Government of the Slovak Republic already at the meeting of 9th July 2008 by Resolution No. 489 decided on the establishment of the detention facility at the Psychiatric hospital in Hronovce. The detention facility may – according to the statement of the Ministry of Health of the Slovak Republic – accommodate patients displaying a whole spectrum of psychiatric diagnoses (F0 – F9) in case they classify based on their behaviour as fit for placement. Most often we deal here with personality disorders, behaviour disorder and adaptation disorders.

The capacity of the proposed detention facility was supposed to comprise 36 rooms. The project documentation was finalised based on the underlying documents of the Ministry of Health of the Slovak Republic (MH SR), Corps of Prison and Court Guard of the Slovak Republic and opinion of the major expert of the MH SR in the specialised branch of psychiatry. The construction works to build the detention facility in this period was planned for approximately 18 months. The operation of the facility should have been commenced until 31st December 2009. The establishment thereof was, however, delayed again, this time on the grounds of the lack of finances as a result of economic crisis.

A budgetary measure of the Ministry of Finance of the Slovak Republic No. 22/2009 of 2nd November 2009 the Ministry of Finance of the SR provided financial resources reserved for the purpose of establishing the detention facility at the Psychiatric hospital in Hronovce and to fulfil the tasks under the Resolution of the Government of the Slovak Republic No. 489/2008 to establish and start operating the detention facility at the Psychiatric hospital in Hronovce. The deadline was set to 31st December 2010.

While the Report for the year 2008 stated that "at present the constitutional facilities providing psychiatric care accommodate approximately 30 – 40 patients, who are adepts for placement in detention facility",[21] it must be added now that in 2009 another 13 persons were admitted in psychiatric hospitals after serving the sentence in prison for the purpose of providing psychiatric therapy ordered by the court.

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[20] Cited document in reference No. 16, p. 17 -18
[21] Ibidem, p. 18.

Despite the objective situation (economic crisis) the Centre has repeatedly evaluated the whole situation as unbearable and fears that it has become chronic in nature, indeed.

1.3.3. Trafficking in human beings. Prolongation of the period of tolerated stay granted to the victims of trafficking from the present 40 to 90 days

The Slovak Republic is from the international point of view considered a source and also a transit country of predominantly young people who are trafficked for the purposes of prostitution or other form of sexual exploitation. According to the information provided by the Office for Combating Organised Crime at the Presidium of the Police Corps[22] in 2009 there were registered 9 cases of trafficking in human beings, whereby 3 cases were clarified, which represents the clarification rate of 33.33 %. Among the victims of these crimes there were 7 women, whereby in one case the victim was younger than 18 years of age. Out of six perpetrators was there was one woman prosecuted, whereby 4 out of all perpetrators were serial offenders.

Although the last 3 years were marked with a decreasing tendency in crime,[23] this may more probably be attributed to the abolishment of borders and the related problems in detecting trans-border crime, than an actual improvement of the situation. In 2009 tolerated stay was granted to none of the persons who became a victim of the crime trafficking in human beings.[24]

In 2009 Act No. 594/2009 Coll., amending Act No. 48/2002 Coll. on the Abode of aliens was elaborated and adopted. With effect from 15. January 2010 the period of granting tolerated stay to an alien who is a victim the crime trafficking in human beings is prolonged to 90 days (before entering into effect of this amendment, i. e. until 15. January 2010, it was possible to grant such persons tolerated stay only for 40 days).

According to the explanatory report, this the proposal is in compliance with the National programme to combat trafficking in human beings for the years 2008 – 2010, adopted by the Government of the Slovak Republic in April 2008, including the recommendations of the United Nations Office on Drugs and Crime (UN ODC), to equalize the position of aliens in the provision protection of with the status of victims of trafficking in human beings, who are Slovak citizens.

An important role in the area of combating trafficking in human beings is played by preventive activities and the level of awareness among potential victims. In 2009 there was an

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[22] Reply of the Police Corps Presidium, Office for Combating Organised Crime registered on 25. February 2010.

[23] In 2006 19 crimes of trafficking in human beings were recorded, in 2007 there were 13 and in 2008 11 such crimes.

[24] Reply of the Ministry of Interior of the Slovak Republic, Border and Aliens Police Office of 3. March 2010.

extensive information campaign organised to advertise the free National Help Line provided to victims of trafficking in human beings (advertising banners at www.azet.sk, A4 posters, and a media spot broadcast by the Slovak Television). Also the Association of Community Centres carried out preventive activities in Roma settlements in form of trainings, or seminars (with 245 persons participating in total).

In the framework of the programme to support and protect victims of trafficking in human beings financed by the Ministry of Interior of the SR the International Organisation for Migration has since 1st July 2008 been operating the National Help Line to the victims of trafficking in human beings. The free telephone line 0800 800 818 is aimed at the provision of assistance and information to persons who might get into risk situations and to prevent such situations from arising. In 2009 the line received 1073 calls, out of which 639 caused no response, as the person calling remained silent. From the said number of calls received, in 234 cases consultation was provided, the remaining cases were either a wrong number dialled, or the line was abused. The Minutes of the meeting of expert groups in the area of combating trafficking in human beings of 18. December 2009 read: *"It is an extraordinary success, that thanks to the said line 5 victims of trafficking in human beings were identified, which is unique also on international scale"*[25].

1.3.4. Violence against women and children; domestic violence

Despite the indisputable effort shown by international organizations, state authorities as well as non-governmental sector violence against women still exists, and represents a factor in our society, which may not be ignored.

Although the statistics of the Ministry of Interior of the SR show a decrease in the number of registered cases the crime of torture of a close relative under § 208 Criminal Code from 497 in the year 2008 to 369 in 2009, as well as in the crime of rape under § 199 of the Penal Code from 152 in 2008 to 136 in 2009[26], we believe, that considering the high latency of these types of crime it is necessary to continue to pay great attention to the issue of domestic violence and violence against women and children.

What may be considered a positive step in combating domestic violence is Act No. 491/2008 Coll., which with effect from 15. December 2008 amended Act No. 171/1993 Coll.

[25] Minutes of the Meeting of the Expert Group on Combating Trafficking in Human Beings, which was held on 18. December 2009.

[26] The number of crimes of sexual exploitation under §§ 201 and 202 of the Criminal Code has not changed (387 in 2008 a 385 in 2009).

on Police Corps. This amendment authorises a member of the Police Corps (policeman) expel from a flat or a house and ban from entering the flat or house and stay in the immediate vicinity a person who threatens violence to a person living with them in one household for the period of 48 hours.

The said amendment of the Act was for police purposes specified in greater detail in an internal regulation, namely the Order of the President of the Police Corps No. 95/2008 of 12. December 2008, which based on the said Act clearly sets out the conditions and the way in which a policeman may expel the person threatening or using violence out of the shared flat.[27]

The amended Act on Police Corps brought about also the changes relating to the Code of Criminal Procedure and the Code of Civil Procedure, and to predominantly shorten the deadline for the decision on the proposed interim measure under § 76 par. 1 letter g) of the Code of Civil Procedure from 7 days to 48 hours from the delivery of the proposal, which fulfils all necessary requirements.

According to the information provided by the Judicial and Criminal Police Officeof the Presidium of the Police Corps in 2009 in the territory of the Slovak Republic there were 229 expulsions from household, out of which there were 44 proposals to issue preliminary rule filed with the court and courts issued 28 preliminary rules out of the mentioned number of proposals. Only in one case a complaint was filed against the preliminary rule issued by the court, which, however, was dismissed by the Regional Court.

Considering the fact that the assessment of behaviour of the person threatening or using violence and the severity thereof in a specific case of domestic violence depends on professional qualification of the policeman who expels them out of the flat or house, great importance is attached to increasing of professional qualification of policemen engaging in the said interventions.

As regards the education of policemen in issue of identifying domestic violence while applying the authorisation of the policeman to expel the person threatening or using violence out of the household under § 27a of Act No. 171/1993 Coll. as amended, the most suitable method for the identification of domestic violence is the usage of the so called SARA method**,** which has with very positive result been used already for four years by the policemen in the Czech

[27] Nesvadba, A. – Duraj, M.: Právne aspekty vykázania z obydlia [Legal aspects of the expulsion from the dwelling]. In: Právo na ochranu osobnej slobody : Zborník z celoštátneho odborného seminára s medzinárodnou účasťou k príležitosti 60. výročia založenia Rady Európy. Bratislava : Akadémia Policajného zboru, 2010, p. 41–49.

Republic, as well as in other countries. The said method is protected by copyright, however, the civic association Assistance to Threatened Children – Centre Nádej in Bratislava has managed to get the exclusive licence for the training of policemen using the mentioned method in Slovakia. Under the supervision of specialists from the Police Corps of the SR and together with lecturers of the said method, the psychologists from the civic association mentioned above will organise trainings of teachers from all police academies in using the SARA methodology in identifying domestic violence.

The issue mentioned above is closely linked also with the fulfilment of the tasks resulting from the National Action Plan to Prevent and Eliminate Violence Against Women for the years 2009 – 2012, and to elaborate a monitoring report on the methods of the police in expelling violator from the household under § 27a of the Act cited above. Based on the monitoring report the Expert Group to Prevent and Eliminate Violence Against Women and in Families at the Council of the Government for Crime Prevention to consider a legislative proposal to change the duration of the period of expelling the violent person from the household which is at present 48 hours (for comparison: in the Czech Republic and in Austria the said period is 10 days).[28]

1.4. Right to maintain and protect human dignity, honour, reputation and good name

The right to maintain and protect human dignity, honour, reputation and good name is one of the fundamental personal rights. The protection from unjustified interference with the private and intimate sphere of every person, which includes human dignity, honour, good name and personal data, is at the national level embodied in Part 2, Art. 19 of the Constitution of the SR.

In the framework of the European legal environment the right to the protection of personal rights of an individual is among the most powerful rights. In connection with this right it might come, and in practice it also comes, to a clash with other human rights and freedoms, and predominantly with the right to information and the freedom of speech. According to the Constitutional Court of the Slovak Republic all fundamental rights and freedoms are protected only into a certain extent, unless the enjoyment of one right or freedom results in an inappropriate restriction or even violation of another right or freedom.

Biased, distortive, stereotypical and misleading information in the media are an example where the "application of the freedom of speech" causes violation of the right to

[28] Reply of the Judicial and Criminal Police, Office of the Police Corps Presidium of 12. April 2010.

maintain and protect human dignity, honour, reputation and good name.

In 2009 the Council of the Slovak Television registered two complaints related to the area of human rights. A female viewer pointed out the fact that the broadcast programme of the Slovak Television misses high quality Slovak TV shows for children and youth. In the second case there was a complaint on a subjectively elaborated contribution in a Roma magazine. The female complainant referred to incorrectness, lacking ethics, and suspected subjectivity of the author while preparing the report, claiming she had not been given a chance to express herself to the issue of placing a Roma girl in a special classroom in a school she represented.

The Council for Broadcasting and Retransmission, which supervises the safeguarding of the general aspect of information and plurality of opinion in broadcasting, as well as the objectiveness and impartiality of news programmes, received in 2009 in connection with the publishing of information in the media, 18 complaints on the violation of fundamental human rights and freedoms. Out of those 5 were substantiated and the Council imposed a sanction on the broadcasters in form of a fine, 1 complaint was unsubstantiated and 12 proceedings have not been finalised yet.

In 2009 the Council was delivered 8 complaints in connection with the reproduction of stereotypes and prejudice about minorities (related to nationality, ethnicity, sexuality, etc.) and intolerance towards certain groups of people (person with disabilities, the socially disadvantaged, etc.). All complaints including the complaint of the Centre of 30th July 2009 objecting a discriminatory tone of part of the morning show Teleráno, which was broadcast by the television Markíza on 29th July 2009, was assessed by the Council as unsubstantiated. Despite that, the Centre is of the opinion, that in one part of the show Teleráno they were making fun of female drivers in general, which is considered discrimination.

The Association of Regional Press Publishers in Slovakia (ARPP) in 2009 recorded no complaint on lacking objectiveness of information in regional and local press in relation to national or other minorities. In the experience of the Association the communication of the mentioned topics in regional and local press than in other media is marked less by intolerance, or stereotypes and prejudice. The Association has no information about the aggravation of the situation as regards the objectiveness of information provided on minorities by the Slovak regional and local press. No complaint on the regional press was recorded in connection with the publishing of information contrary to the fundamental human rights.

In 2009 the Centre was addressed by a number of complainants, who pointed out violation of the right to preservation of human dignity, personal honour, good reputation and

the protection of goodwill by some people working in the media. There were several complaints, also en bloc, regarding the working methods of an external editress of the TV Markíza. The citizen pointed out that the editress and the cameraman had recorded him on the street and used this footage in a reportage with negative contents. The citizen turned to the Council for Broadcasting and Retransmission and at the same time he filed a complaint with the police for impairment of his reputation and a wilful discrediting of his person. Another female complainant pointed out to the methods used by the same editress of the TV Markíza, who in a reportage published to discredit the female complainant, used a testimony of a witness, whom the cameraman had recorded without a head, with distorted voice and without the name being stated. The female client turned to the Council for Broadcasting and Retransmission, which imposed a sanction on the TV Markíza due to violation of the objectiveness of the said reportage.

It can be stated that in Slovakia some people working for the media do violate the journalists Code of Ethics and violate the right to the protection of personal rights of an individual.

The media have a significant opinion-forming influence on the society. Therefore the Centre sees it extremely important in order to maintain equilibrium between the mentioned constitutional rights, the right to information, the freedom of speech and the right to right to maintain and protect human dignity, honour, reputation and good name.

1.5. Right to privacy

At the international level the right to privacy is embodied in Article 17 of the International Covenant on Civil and Political Rights and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention).

The Constitution of the SR guarantees the right to privacy (unlike the international regulation) in a number of articles discussing the inviolability of a person and their privacy (Art. 16 par. 1) or on the protection from unjustified interference in their personal and family life (Art. 19 par. 2). An inseparable part of the right to privacy is also the protection from unjustified collection, disclosure and other misuse of personal data (Art. 19 par. 3), inviolability of home (Art. 21 par. 1 – 3) and protection of personal data and the secrecy of letters (Art. 22).

In connection with the objected violation of some of the stated articles of the Constitution of the SR, the Constitutional Court of the Slovak Republic (CC SR) in 2009

passed the total amount of 25 decisions, but only in one case it was decided on the violation of the right to privacy. It was the case of eavesdropping and recording of phone calls of an ordinary court judge, which was done based on a number of decisions of the regional court in the years 1999 and 2000. In this specific case, the relation between eavesdropping and the right to privacy was commented on by the Constitutional Court of the SR as follows: *"Eavesdropping and recording of telecommunication to the subject of the matter may be considered interference with the right to privacy of a natural person. In connection with the development of telecommunication technologies, and especially the development of mobile network, communication between various persons via telecommunication channels must be considered one of the main channels of interpersonal exchange of information. Part of the right to privacy is without doubt also the confidentiality of the content of information disseminated in such way, not only in verbal form, but also in form of forwarded text or picture messages."*[29] The mentioned case was in 2009 investigated by the district courts in Bratislava and Senica, to which the judge turned in connection with the leakage of eavesdropping records, since the said records also appeared in the media. The courts awarded the judge a non-pecuniary damage amounting to more than 280 thousand Euros (eight and a half million Slovak crowns). The decisions are not valid yet, since the MI SR filed an appeal in both cases.[30]

The violation of the right to privacy in relation to the Slovak Republic was stated also by the European Court in their decisions of9. June 2009 in the case Kvasnica vs. the Slovak Republic.

In his complaint the complainant objected, that the eavesdropping of his phone in 2000 violated his right to privacy guaranteed under Art. 8 of the European Convention. He got to know about being eavesdropped from an anonymous letter, and was later informed that the copies of the records form eavesdropping got into the media and even were freely accessible on the internet. The right to the respect of personal and family life is not absolute, under Art. 8 par. 2 of the European Convention the state may interfere with this right in cases which are not in compliance with the law and when it is necessary in a democratic society in the interest of national security, public security, economic welfare of the country, to prevent unrest and crime, protection of health or morals or protection of rights and freedoms of others. The Government admitted eavesdropping, at the same time however, they claimed that the interference with the rights of the complainant was lawful and justifiable. The court however,

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[29] Finding of the Constitutional Court of the Slovak Republic I. ÚS 117/07-33. *(Findings of the CC SR marked with "ÚS" denotes the finding of the bench of the CC SR, those marked with "PL. ÚS" denotes findings of the plenary session thereof)*

[30] Source: http://www.sme.sk/c/5187901/vnutro-ma-platit-za-odposluchy.html. Cited on 4th April 2010.

in deciding in the case, pointed out the several shortcomings, which were not in compliance with the requirement of the lawfulness and necessity of the intervention. The judge of the regional court himself, who gave his consent to eavesdropping admitted, that the applications for eavesdropping may have been submitted in writing, but the police would usually justify them orally and the judge usually had no time to study the whole file and verify the reasons stated by the police. The judges therefore had to rely on information stated in the application, which required a certain amount and level of trust. It was further stated that he consented with the decision to eavesdrop, even though the suspicion against the complainant could be lifted in the end. This allegedly was quite usual and would happen in approximately in 10 – 20 % of cases.

Based on what has been stated above, the European Court came to the conclusion that the decision making process and supervision in connection with the eavesdropping was not in compliance with the requirement of the law and interference with the complainant's right to privacy failed to comply with requirement of "necessity in a democratic society". The complainant claimed no financial compensation, and considers the decision of the European Court itself a sufficient satisfaction.

1.5.1. Protection of personal data

The Protection of personal data at the national level has been entrusted into the competence of an independent authority, which is the Office for Personal Data Protection of the Slovak Republic (Office).

According to the Office for Personal Data Protection of the SR the cases of violation of the Act on the protection of personal data are examined within inspection activities carried out by the office. In 2009 the office recorded 108 of such notifications made by natural persons and 36 motions by other subjects; on the whole 144 notifications were delivered. Most often those related to unauthorised handling of personal (unspecified) data by operators and agents. The Office stated that 47 complaints were evaluated as unsubstantiated. The Office in 2009 imposed 19 fines amounting to the total of 27 446,19 Euros. The Office issued 161 measures to remove the determined shortcomings and remedy the situation in compliance with § 46 par. 1 letter b) of the Act on the Protection of Personal Data, which is increase compared to previous the year by more than 120 %.[31] The Office in 2009 initiated also one notification delivered to the law enforcement agency.

[31] Reply of the Office for Personal Data Protection of the Slovak Republic of 1st March 2010.

The Office in 2009 provided 674 clarifications, whereby the most often tackled issues related to the consent of the affected persons, responsible persons, monitoring of premises by a camera system, obligations of operators, security of processing of personal data and birth number. The Office tackled also issues in connection with personal data protection, which go beyond national borders in cooperation with partner organisations from the EU member states and the Council of Europe.

1.6. Right to property

The right to own property is at the national level guaranteed to everyone under Article 20 par. 1 of the Constitution of the SR. Ownership covers the authorisation of property owner to hold, use, enjoy and handle property and the fruit and benefits thereof.

In the European context of human rights protection the equivalent to the right to property is the right to peaceful enjoyment of possessions, which is granted under Art. 1 of the Additional Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms to every natural person or legal entity, whereby nobody may be deprived of their property with the exception of public interest and subject to the conditions provided for by law and by the general principles of international law.

The enjoyment of property right must not harm human health, nature, cultural monuments and the environment beyond the level constituted by law, the property may under certain conditions be subject to restrictions, or even be voidable. The property right is thus not an absolute right. Expropriation or restrictions of right in property may be imposed only to the necessary extent and in public interest, based on the law and for a valuable consideration.

In connection with the restriction of the property right, or in connection with expropriation, or forced restriction of property right the mood among the general public in 2009 was stirred by the issue of measures being applied to accelerate the preparation of the construction of highways and motorways.

In 2009 there were no changes in legislation in connection with the construction of highways and motorways.

1.6.1. Expropriation, the observance of the property right in the construction of highways

The construction of highways and motorways is an issue, which is perceived in a positive way by the majority of general public. The construction of highways is clearly in the public interest. New motorways shall bring our society economic advantages, foster regional development etc. In order to achieve this objective, however, the communication must cross lands, the owner of which is not the state in the majority of cases. If however, there is public interest, the property right may in an inevitable extent, be restricted based on law and for an appropriate compensation (forced restriction), or even abolished (expropriation).

Whereas in the years 2007 – 2008 optimum legislative base for an accelerated construction of highways and motorways was being formed, the year 2009 brought about the first results in form of the first kilometres of new communications and construction activity in localities planned new thoroughfares.

The process of preparation of the construction of highways and motorways got significantly accelerated in 2007. The then valid legislation governed the expropriation proceedings, which was very lengthy in practice, and based on a proposal by the Ministry of Transport, Posts and Telecommunication of the Slovak Republic (MTPT SR) several measures were adopted,[32] which were meant to help accelerate the finalised construction of the basic network of highways and motorways within the deadline until the year 2010.

In 2008 through Act No. 86/2008 Coll.,[33] Act No. 219/2008 Coll.[34] and mainly through the key Act No. 540/2008 Coll.[35] several further accelerating measures on the level of legislative changes were adopted.[36]

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[32] Amendment of the Act of the National Council of the SR No. 129/1996 Coll. on Certain Measures to Accelerate Preparation of Construction of Highways and Motorways as amended by Act SR No. 160/1996 Coll. and on amending and supplementing certain other laws (Act No. 275/2007 Coll.); the adoption of Act No. 669/2007 Coll. on One-off Extraordinary Measures in Preparation of some Highways and Motorways and on the amendment of Act No. 162/1995 Coll. on Land Registry (Land Registry Act) as amended; a non-legislative measure - decision of the Ministry of Transport, Posts and Telecommunications of the SR to construct highways through the so called PPP projects (public-private partnerships).

[33] Act No. 86/2008 Coll., amending Act No. 57/1998 Coll. on Railway Police as amended and on amending and supplementing certain other laws

[34] Act No. 219/2008 Coll., amending Act No. 220/2004 Coll. on Protection and Exploitation of Agricultural Soil and on the amendment of Act No. 245/2003 Coll. on Integrated Environment Pollution Prevention and Control and on amending and supplementing certain other laws as amended by Act No. 359/2007 Coll.

[35] Act No. 540/2008 Coll., amending Act No. 669/2007 Coll. on One-Off Extraordinary Measures in Preparation of some Highways and Motorways and supplementing of Act No. 162/1995 Coll. on Land Registry (Land Registry Act) as amended, amended by Act No. 86/2008 Coll. and on amending and supplementing certain other laws

[36] Further legislative changes of the National Council of the Slovak Republic Act No. 129/1996 Coll. on Certain Measures to Accelerate the Preparation of Construction of Highways and Motorways, of Act No. 669/2007 Coll. on One-Off Extraordinary Measures in Preparation of some Highways and Motorways and on

The amendments of Act No. 669/2007 Coll.[37] adopted during the year 2008 were aimed not only at a major expansion of the list of highways, which were subject to one-time extraordinary measures (from 5[38] to 12), but also to the introduction of mechanisms, which set the contract on the purchase of land or building at a disadvantage, compared to expropriation.

The Act No. 669/2007 Coll. itself stirred moods among opposition and coalition representatives, and the wave of criticism and disapproval resulted on 10. January 2008 in the filing of a proposal to commence the proceedings on the compliance of the legal regulation before the CC SR.[39] The complainants in the proposal to commence the proceedings on the compliance of the contested provisions with the relevant articles of the Constitution and the Additional Protocol to the Constitutional Court of the SR requested to stay the effect of the contested provisions until the case is decided on its merits.

The CC SR at the closed meeting of the Plenum held on 11. November 2009 preliminarily discussed the proposal of a group of 36 representatives of the National Council of the Slovak Republic and decided on the adoption thereof for further proceedings without staying the effect of the contested provisions. To the resolution they attached a joint differing opinion the female judge Ľudmila Gajdošíková and the judges Juraj Horváth, Ján Luby, and Lajos Mészáros.[40] Therein, they justify their disapproval of the decision of the Plenum of the Constitutional Court of the SR to reject the proposal to stay the effect.

At a press conference of the CC SR in Košice on 24th February 2010 the Head of the Constitutional Court of the SR stated that the Plenum of the CC SR shall decide on the compliance of some provisions of the Act No. 669/2007 Coll. on one-off extraordinary measures in the elaboration of construction some highways and motorways (the so called Expropriation Act) *"at the end of spring or the beginning of summer"*. According to the words of the Head of the Constitutional Court of the SR: *"A decision passed immediately before the elections by could become a tool in the political struggle of the coalition, as well as*

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the amendment of Act No. 162/1995 Coll. on Land Registry (Land Registry Act) as amended and of Act No. 50/1976 Coll. on Territorial Planning and Building Guidlines (Building Act).

37 The acceleration of the construction of highways, which Act No. 669/2007 Coll. offers, is considered controversial by some experts in law, since in the application for the issuance of a building permit it will no longer be obligatory for the constructor to prove, that he is the owner of the land (or has other titles to the land, which would authorise him to build thereon). According to the § 2 par. 1 letter a) it will be sufficient to show that he "performed an act to require such right".

38 Status as to 1st April 2008.

39 See: http://www.concourt.sk/podanie.do?id_spisu=109435. Cited on 12th April 2010.

40 PL. ÚS 19/09-53 – A different opinion of the female judge Ľudmila Gajdošíková, the judges Juraj Horváth, Ján Luby and Lajos Mészáros on the case Ref. No. PL. ÚS 19/09. Available at: http://www.concourt.sk/rozhod.do?urlpage=dokument&id_ spisu=325090. Cited on 12th. April 2010.

the opposition. The Constitutional Court of the Slovak Republic does not want to and will not participate in the election campaign of any political party of whatsoever spectrum."[41]

We asked the Ministry of Transport, Post and Telecommunications of the Slovak Republic, the National highway company (Národná diaľničná spoločnosť, a.s.) and the regional building authorities to give us their opinion on the issue of expropriation in the Slovak Republic in 2009. Out of 8 regional building authorities, the regional building authority (RBA) in Bratislava and the RBA in Trnava did not give their opinion. The following information was extracted from the answers of particular organisations:

The present day practice of land expropriation due to the construction of highways and motorways was commented on by the MTPT SR [42] together with the NHC [43] in the following statement sent to the Centre: *"If the owner of property, under a valid zoning decision to have a line construction (road) built in public interest, fails to grant their consent to a voluntary transfer of property, or if an agreement between the property owner being the seller and the constructor being the purchaser is not made,[44] there follows the possibility of taking advantage of the institute of expropriation as a radical means of state intervention to acquire possessory title to a thing against the will of the owner thereof, however, based on law, in public interest, for an appropriate compensation and only in an inevitable extent. Since expropriation is a problematic and time consuming process, the constructor of highways and motorways – line constructions, prefers to achieve consensus when settling the property-related legal issues and ownership relations and this institute is used only as a last resort."*

The RBA in Banská Bystrica added that in those cases, where the owners of land and the construction investor fail to come to an agreement in the bidding proceedings, i. e. in a proceedings on the voluntary sale of land, or o temporary restriction of rights, the complainant is to submit the proposal for expropriation of land necessary for the construction of a road in question to the responsible building authority, which is, is according to of the Building Act No. 50/1976 Coll. the responsible RBA. In the expropriation proceedings, which is usually carried out by the building authority in the place of construction with the highest number of participants (land owners) at the responsible municipal authority (meeting hall or community centre), it is still possible, after providing an explanation of the issue, to enter into an agreement. A minutes is made of the proceedings, to include the objections raised by the participants, which may still be decided to their benefit, this thus means that it is possible to change the amount of

[41] Ibidem.
[42] Reply of the Minister of Transport, Posts and Telecommunications of the Slovak Republic of 4th March 2010.
[43] Reply of the "Národná diaľničná spoločnosť" (National highway company) of 2nd March 2010.
[44] Or an agreement to grant an easement, etc. (note).

compensation, swap the pieces of land, etc., except for the change of route, which had been determined already in the already issued and a valid zoning decision, which is valid for two years. This way of proceeding is governed by the relevant provision of the Building Act and thus after studying the said wording everybody can make their own opinion on the whole proceedings.[45] The RBA in Trenčín specified that they at the same time, being the second instance authority, examine and, if needed, also a remedy is made of the way of proceeding of building authorities in expropriation within their venue and subject matter. They also informed us of the elaboration of a new legal regulation – Act on expropriation of land and buildings,[46] the aim of which is to enshrine the legal regulation of expropriation in a separate legal regulation. The prepared new Building Act shall according to the sent information be discussed in the new electoral period.[47]

According to data provided by the National highway company - "Národná diaľničná spoločnost"', which safeguards the construction of highways and motorways, in 2009 recorded 176 complaints of expropriation proposals, 135 expropriation proceedings, 111 issued decisions and 9 appeals. All stated expropriation proceedings were held before the responsible RBA. As specified by the MTPT SR, ownership right may under the valid Building Act be restricted only in an inevitable extent (permanent occupation – the body of the road itself, temporary land occupation – moving the pipeline network), always in public interest, in compliance with the law. Compensation is provided according to an expert opinion elaborated by an authorised expert in the area of building industry.

At regional building authorities the following items of information were recorded:

The RBA in Prešov in 2009 recorded 143 proposals for expropriation, carried out 224 proceedings on expropriation, and issued 224 decisions on expropriation. An appeal was filed against 5 decisions on expropriation.[48]

The regional building authority in Banská Bystrica in 2009 received 120 proposals to carry out the expropriation proceedings and thus also for the issuance of expropriation decisions. In the course of expropriation proceedings agreement was achieved in 19 cases, i. e.

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[45] Reply of the Regional building authority in Banská Bystrica of 1st March 2010.

[46] By Resolution of the Government of the Slovak Republic No.196/2009 the draft Act on the Expropriation of Land and Buildings and on amending and supplementing certain other laws was passed on 11th March 2009, with comments adopted at the meeting of the Government. The Government of the SR commissioned the Prime Minister to submit the governmental draft act to the Speaker of the National Council of the Slovak Republic for further constitutional negotiation and the Minister of Construction and Regional Development to introduce this draft act in the National Council of the Slovak Republic. See: (http://www.rokovania.sk/appl/material.nsf/0/753015E1596A2BF3C12575700037A876?OpenDocument. Cited on. 12th April 2010.

[47] Reply of the Regional building authority in Trenčín of 1st March 2010.

[48] Reply of the Regional building authority in Prešov of 4th March 2010.

the complainant and the investor withdrew the expropriation proposal, as a result of which the expropriation proceedings were stayed by the building authority. Out of 101 expropriation proposals 95 expropriation decisions were issued and in 5 cases were the said proceedings were discontinued due to the fact that the participants provided their opposite opinions, which were submitted for assessment to the Institute of Forensic Engineering in Žilina. In one case was against expropriation decision of first instance an appeal was filed with the appellate authority, which in the given case was the central state administration authority, i.e. the Ministry of Construction and Regional Development of the Slovak Republic in Bratislava, which discharged the decision of the first instance and returned the case for a new proceedings and decision.

The RBA in Trenčín for the year 2009 recorded one proposal for expropriation of land due to the construction of highways. The proceedings has not been finalised by a valid decision.

The RBA in Žilina in 2009 carried out proceedings and issued 112 expropriation decisions for the purpose of construction of highways and motorways. The number includes also the decision on temporary restriction of the proprietary right for the purpose of construction of highways and motorways, which is valid only during the construction and for an appropriate compensation (the so called temporary and yearly occupations necessary for moving the pipeline networks, building sites etc.). No appeal against expropriation or temporary restriction of property right was filed.[49]

In the course of the year 2009 the RBA in Nitra recorded 42 proposals for expropriation and restriction of ownership right to land and buildings in order to construct a motorway "R1 Trnava – Nitra – Žarnovica – Žiar nad Hronom – Zvolen – Banská Bystrica – Ružomberok", the constructions "R1 Nitra, západ – Selenec","R1 Selenec – Beladice", "R1 Beladice – Tekovské Nemce".42 proceedings were carried out, 84 decisions on expropriation and 96 decisions on the restriction of ownership right were issued. Within the legal deadline the parties to the proceedings filed 9 appeals. 1 appeal was filed after the deadline, i. e. it was delayed. 7 decisions on expropriation, or restriction of ownership right were affirmed by the MCRD SR as the appellate authority. Two decisions were discharged and returned before the RBA in Nitra for new proceedings (2010). 131 decisions entered into effect, in the remaining cases the participants, after the issuance of decision on expropriation, voluntarily entered into purchase contracts, or future rental contracts. In these cases the proceedings were discontinued by making a record in the file.[50]

[49] Reply of the Regional building authority in Žilina of 25th February 2010.
[50] Reply of the Regional building authority in Nitra of 23rd February 2010.

In 2009 the RBA in Košice, being the responsible building authority with the subject-matter and local jurisdiction, recorded 1 expropriation proposal under § 108 par. 2 letter f) of the Building Act. 1 expropriation proceedings was carried out, based on which was issued 1 expropriation decision, under § 108 par. 2 letter f) of the Building Act. An appeal was filed against this decision. In the appeal proceedings the appellate authority (Ministry of Construction and Regional Development of the SR) affirmed the contested decision of the local office.[51]

In connection with the possibility of enshrining the right of property owner to negotiate directly with investor regarding the conditions of transferring property the MTPT SR stated that the valid legal regulation has in mind also the right of the owner of property affected by investment activities in public interest to negotiate directly with the investor under § 112 par. 4 of the Building Act. The owner is directly addressed by the investor with the call to make a purchase contract, whereby the call must contain all necessities according to the relevant provisions of the Building Act. Upon delivering this call (which is delivered into the hands in an envelope with a return receipt) a negotiation in writing is commenced with the owner on the draft purchase agreement, whereby if it is necessary and if the owner requires so, the investor also negotiate with them in person. The RBA in Košice added that under § 110 par. 1 of the Building Act, it is only possible to expropriate, if the objective of expropriation may not be achieved under an agreement or in another way. The provision of § 112 par. 3 of the Building Act governs the content the proposal to expropriation, which part of is as well as a proof that the attempt to acquire the right to land or building under an agreement was ineffective.

The opinion on the requirement of a number of civil initiatives for transfer of the expropriation proceedings under the competence of the courts is not unanimous in case of the addressed entities. The Ministry of Transport, Posts and Telecommunications of the Slovak Republic and the NHC stated that the transfer of competences for proceedings on expropriation from the building authority as a state administration authority to courts required by civic initiatives, at their present work load, is not an optimum solution. Under the current organisation of judiciary, the number of cases before the courts and the time of their deciding, the Ministry does not support the idea of the expropriation proceedings being transferred on courts. The period of settlement and adjustment of the property in case of buildings in public interest, which the highways and motorways surely are under § 108 par. 2 letter f), would be prolonged intolerably. In this situation according to the MTPT SR it is sufficient, that the

[51] Reply of the Regional building authority in Košice of 22nd February 2010.

extraordinary legal remedy for the decisions of legal authorities on expropriation is the possibility of their examination by the court. It is an important institute, which fulfils the right to court and other legal protection (Art. 46 of the Constitution of the SR). This opinion is shared also by the RBA in Prešov and the RBA in Žilina. On the other hand, a supporting opinion on the possibility of the expropriation proceedings being transferred into the competence of the courts was expressed by the RBA in Banská Bystrica and the RBA in Nitra. An undecided opinion of the initiative was expressed by the RBA in Košice and the RBA in Trenčín, whereby in Trenčín they consider the transfer of second instance proceedings (i. e. appeal proceedings) quite real, and that according to the already elaborated new legal regulation.

The MTPT SR and the NHC stated that during the year 2009 in three cases of expropriation of the owner of the real estate a requirement was raised to provide compensation in form of material performance. Since the NHC (Národná diaľničná spoločnosť, a.s., NHC) has no free land at its disposal, the affected owner may only be provided reimbursement, according to the market price determined in an expert opinion. The regional building authority in Prešov and the RBA in Trenčín stated that a substitute real estate (material compensation) for the expropriated land was not provided in 2009, since the owners have not required such form of compensation. A substitute real estate for the expropriated land was on the level of the RBA in Banská Bystrica required by the owners from the investor in 2 cases, where however, the owner has not been satisfied by the investor. The RBA in Nitra and the RBA in Košice informed us that in 2009 only monetary compensation was provided for expropriation and restriction of property right.

The MTPT SR, the NHC or the regional building authority for the year 2009 recorded no complaint to the expropriation proceedings due to the construction of highways and motorways in public interest.

2. CIVIL AND POLITICAL RIGHTS AND THE RIGHTS OF ALIENS

The protection of civil and political rights is given significant attention at the international, as well as the national level. At the international level civil and political rights are governed under most international documents, which embody provisions of fundamental human rights and freedoms (for example the International Covenant on Civil and Political Rights, Convention for the Protection of Human Rights and Fundamental Freedoms or the Charter of Fundamental Rights and Freedoms).

At the national level the said rights and freedoms are embodied in chapter two, part three of the Constitution of the SR. The specific regulation and the enforcement and protection thereof are guaranteed under separate laws. Article 31 of the Constitution of the SR enshrines a unique constitutional principle, according to which the legal regulation of all political rights and freedoms and the interpretation and application thereof must allow for and protect free competition of political powers in a democratic society. According to the CC SR this principle does not have the nature of a right guaranteed to an individual, *"The content thereof is the obligation of the National Council of the Slovak Republic while adopting Acts governing political rights and freedoms to pass only such laws, which shall allow for and protect free competition of political powers in a democratic society"*.[52]

2.1. The right to vote

One of the basic preconditions of freedom and democracy in a society is also the application (introduction) of a general and equal voting right.

"The voting right includes especially the right to vote and to be elected, and the right to participate in the process of proposing candidates through political parties and movements, or in suggesting independent candidates via groups of citizens. This is connected also to the right to participate in the pre-election struggle and the right to information on political programmes represented by single candidates. The voting right also includes the right to require examination of the lawfulness of the course of elections." [53]

The active voting right (the right to vote) represents one of the forms of participation of inhabitants in the public governance; passive voted right (the right to be voted) is part of the right to access to public offices.

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[52] PL. ÚS 19/1998

[53] Nesvadba, A. – Zachová, A.: Teória štátu a práva [Theory of the State and Law]. 2nd suppl. ed. Bratislava : Akadémia Policajného zboru, 2008, p. 49.

At the international level these rights are governed for example under Article 25 of the International Covenant on Civil and Political Rights, Article 3 of the Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as Articles 39 and 40 of the Charter of Fundamental Rights of the European Union.

At the national level these rights are guaranteed under Article 30 of the Constitution of the Slovak Republic. The Constitution of the SR in Article 30 par. 1 guarantees restricted electoral right also to aliens with permanent residence in the territory of the Slovak Republic, who have the right to vote and to be elected into self government authorities of municipalities and into the authorities of self-government units (regions). The right to participate in the public governance by free choice is at present governed under 5 separate Acts,[54] which govern some of the conditions of the enforcement and the hindrances of enforcement of this right in a different way.

Considering the extraordinary significance of the voting right for the existence and functioning democratic society the Centre has repeatedly (just like in the Report for the year 2008) recommended to unify the "electoral" legislation.

2.1.1. Elections in 2009 and the deciding of the Constitutional Court of the Slovak Republic in cases relating to the elections

In 2009 several elections were held in Slovakia, namely the presidential elections, elections into the European Parliament, elections into the SGU and in some municipalities also supplementary municipal elections. The elections were held based on general, equal and direct voting right by secret ballot. Also in 2009 there was suspected manipulation of the course and the results thereof, and complaints, which due to these reasons were submitted by some citizens with the Constitutional Court of the SR.

In 2009 the Constitutional Court of the Slovak Republic received 11 complaints relating to the elections. 7 motions related to municipal elections, out of which 4 related to elections to self-government units (regions), 3 motions related to presidential elections and 1 motion related to the elections to the European Parliament (EP). In connection with these motions the CC SR has not decided yet and stated no violation of constitutionality or the rule of law.

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[54] Act No. 333/2004 Coll. on Elections to the National Council of the Slovak Republic.
Act No. 46/1999 Coll. on the Method of Election of the President of the Slovak Republic, on Referendum about Removal of the President from Office and on supplementing certain other laws.
Act No. 303/2001 Coll. on Elections to authorities of self-governing units and on supplementing the Code of Civil Procedure.
Act No. 346/1990 Coll. on Elections to the authorities of municipal self-government.
Act No. 331/2003 Coll. on Elections to the European Parliament.

The Constitutional Court of the SR among the complaints relating to the elections in 2009 recorded 4 objections in connection with the suspected vote buying.[55] Motions in connection with the election-related complaints were investigated by the CC SR within proceedings under Art. 129 of the Constitution of the SR, or in another way.

In the village of Žehra in the district of Spišská New Ves there were four elections held in 2009. Apart from presidential elections, elections to the EP and the elections into self-government units (regions), there were also supplementary elections of the mayor and the representatives of the municipal parliament, since the Constitutional Court of the SR in September 2008 revoked the validity of elections into self-governing authorities of the village. The supplementary municipal elections ended in a mass fight, which required an intervention of the police. In connection with supplementary municipal elections in Žehra the CC SR recorded two complaints. One election-related complaint was filed by a group, the number of which exceeded ten percent of the authorised number of voters and another complaint contesting the results of elections was filed by a mayor candidate, who ranked second. Both complainants claimed in that during the elections the secret ballot had been breached, because one hundred to two hundred voters were accompanied by other people to assist them while balloting, whereby between the accompanying persons there were also the candidates. They also claimed that there were further facts indicating that the election was manipulated. This case has not been decided by the Constitutional Court of the Slovak Republic so far.

2.2. Participation of women in the public governance

Another inevitable precondition of the functioning of a democratic society is an appropriate representation of particular groups of inhabitants in elected authorities of public power. Despite the fact that statistically women represent the majority of our society[56] their actual representation in decision making and managing positions has long been insufficient and in many cases rather symbolic.

In 2009 several elections were held, which had the potential to improve the representation of women in elected authorities. As regards the elections into the European Parliament, out of all 184 candidates there were 28,2 % of women, whereby 5 women made it

[55] Reply of the Constitutional Court of the Slovak Republic of 3rd March 2010.

[56] According to available data of the Statistical Office of the Slovak Republic, by 31. December 2009 women represented 51,39 % of all inhabitants. Information on the number of inhabitants is available at: http://portal.statistics.sk/showdoc.do? docid=4471. Cited on 11th April 2010.

into the EP in the end, which stands for the resulting 38 % representation of Slovak women in the EP. Slovakia is 3 % above the European average, since the representation of women in the European Parliament is 35 %. However, there are much worse indicators of the representation of women in politics at the national level. At present out of 150 representatives in the Parliament there are only 27 women, which represents 18 %, out of the 16 members of the Government only two positions have been entrusted to women, and the female Minister of Justice is at the same also the Deputy Prime Minister of the Government. The percentage of women in the government is 12,5 %.

In 2009 also the elections into self-government units (regions) were held. The major offices of heads were applied for by 57 candidates, whereby only 5 of them were women (less than 9 %), and in 4 out of 8 regions not a single woman applied. There was 20.4 % female candidates in total, the greatest number of women applied in the region of Bratislava (nearly 24 %), the lowest number of women applied in the region of Žilina (only 5.4 %).[57] The total representation of women in regional parliaments is at present on the level of 15 % (61 female representatives in comparison with 355 male representatives), the highest representation of women is in the region of Bratislava and Trenčín (24 %), the lowest number of women is in Prešov (only 6 %).[58]

On 8th April 2009 the National Strategy on Gender Equality for the years 2009 – 2013 was adopted by Resolution of the Government of the Slovak Republic No. 272/2009, whereby among the priority areas, which in the current situation in Slovakia require strategic and complex support and increased support by the decision making subjects there is also the area of public and political life, participation and representation. The major operational objective of the strategy is to achieve a balanced position and representation of women and men in decision making and power positions. Further problems in the area of public and political life strategy include, apart from others, for example the imbalanced representation of women and men in public and political life, gender stereotypes, low support of extending the scope of available services relating to the area of public and political life, representation and participation or insufficient application of gender perspectives in the creation of public policies and the formation of public budgets.

[57] Source: Statistical Office of the Slovak Republic. Available at: http://portal.statistics.sk/vuc2009/.
[58] Source: Database of the European Commission. Available at: http://ec.europa.eu/social/main.jsp?catId=774&langId =en&intPageId=657.

2.3. Participation of the representatives of minorities in the public governance

Participation in the public governance is one of the fundamental rights of national minorities. At the international level the participation of minorities in the public governance is embodied in the international documents of the UN, for example the International Covenant on Civil and Political Rights, as well as the documents of the Council of Europe, for example the Framework Convention for the Protection of National Minorities. At the national level the rights of national minorities are governed under Articles 33 and 34 of the Constitution of the SR, whereby the right of the members of national minorities to participate in the handling of cases relating to the national minorities and ethnic groups is explicitly guaranteed under Article 34 par. 2 letter c) of the Constitution of the SR.

The advisory and coordination authority of the Government of the Slovak Republic in the area of national policy and in the area of implementation of the European Charter for Regional or Minority Languages under Article 7 par. 4 thereof, is the Council of the Government of the Slovak Republic for National Minorities and Ethnic Groups (the Council).

The Council coordinates the tasks, which result for the Government of the Slovak Republic in relation to the members of national minorities and ethnic groups from the Constitution of the SR, international treaties, which are binding on the Slovak Republic, and from other generally binding regulations and cooperates in the application thereof especially with the ministries and other central state administration authorities, self-governance authorities, non-governmental organisations operating in the area of human rights, scientific centres and academic institutions. In 2009 the Council held four meetings.

Despite the fact that the elections into self-government units (regions) in 2009 were marked by low electoral participation, there was a remarkable relatively high electoral participation of the Roma, who had a chance to influence the situation in regional parliaments. Based on the results of the elections however, it is necessary to state that while the Hungarian minority managed to get their way and participate in public decisions, the Roma minority was not successful.

The regional parliaments welcomed only two members of the Roma minority. One representative got into the regional parliament of the self-government unit (region) of Prešov and the other into the SGU of Košice. The office of the head of SGU was applied for by four Roma candidates. None of them succeeded.[59]

[59] Source: Romano nevo ľil (Rómsky nový list). Available at: http://rnl.sk/modules.php?name=News&file =article&sid=16987.

According to the information provided by the Statistical Office of the Slovak Republic data relating to ethnic and national composition of the representatives, as well as heads of regions or mayors and lord mayors is not followed statistically, since data on ethnic and national background are not stated on any list of candidates in no type of elections. Not a single electoral Act imposes such obligation on the candidates.

2.4. Civic participation – the influence of citizens on the process of decision making in public matters

Civic participation is at present a frequently used term in the vocabulary of many regional and local politicians, but also various civil activists. Many inhabitants, however, wrongly assume that their possibility to participate in the decision making processes is limited only for the period of elections or referenda. Civic participation is a broad term, which allows persons to participate in the decision making processes, control the said processes, express their opinion, associate with other inhabitants and promote their incentives.

One of the ways in which citizens may point out to the existing problem, express their opinion to the intentions of the municipality or propose specific activities is also the possibility to speak before the local council or municipal corporation. We addressed the offices of the selected towns with the question, asking about the extent in which citizens take advantage of this possibility to participate in or influence the activities of the municipal parliament. The meetings of the municipal are public by law, and if during the meeting a representative of the NC SR asks for the floor, the representative of the Government or of a state authority, shall give them the possibility to speak. According to the Act the floor may be given also to any inhabitant of the municipality.[60]

The letter of the Lord Mayor of Bratislava suggests that the meetings of the town council of the capital of the Slovak Republic Bratislava, the citizens often do take advantage of the possibility to speak. In case they ask for the floor, they may enjoy the possibility in full extent. The citizens often have the floor at the meeting and mostly express their opinions to the matters relating to the zoning plan of the town, the property of the town, to the environment, the transport within the town, as well as to public transport, to problems related to cemeteries, especially to the fees to be paid for tombs and the issues relating to the cultural development of the town.

[60] § 12 par. 4 a 5 of Act No. 369/1990 Coll. on Local Government as amended.

The statement of the town of Banská Bystrica reveals that citizens are invited to meetings of the municipal corporation in form of an invitation letter published on the official board of the town of Banská Bystrica, as well as on the website of the town. For the citizens all submitted materials are displayed on the internet, and also directly in the meeting room the citizens have at their disposal also the material sin writing. There are seats reserved for them directly in the meeting room and as well as on the balcony. The citizens participate in meetings of the MC in a small number, however, if serious problems are discussed, they participate in a greater number, for example in case of problems with public transport, adopting GBR, abolishment of schools, an in solving the issue of deteriorating environment. At the meetings of the town council the citizens may express their opinion on single points based on the docket, which states that the floor is given to an interested person from the public based on a decision of the representatives made by voting. By voting, the representatives allowed the citizens to express their opinion on the tackled issue. At the meeting of the town council on 24. June 2008 the representatives adopted Resolution No. 236/2008 of the town council, in which they guaranteed that within the programme of the town council there is the point called "Slovo pre verejnosť – Word to the public" which takes 30 minutes, where the citizens may present their problems, proposals, etc., without the need to have their speech passed by the representatives of the town council. This possibility was used by 23 citizens and civic associations of the town in the period from 24. June 2008 to 26. January 2010.

A different experience regarding the interest of the inhabitants in this form of participation was made by Košice – Old Town. The meetings of the town council are public and accessible to every citizen interested in participating, despite that, the participation of citizens in the meetings of the town council is sporadic and low. In the course of the meeting of the town council, in compliance with the adopted docket, the citizens have the possibility to take the floor and present their proposals, or pose requirements relating to the programme, this possibility is not used by the citizens. The citizens may raise their suggestions, comments and applications also during the personal meeting with the mayor of the town part and on the premises of the office there is a mailbox into which written incentives may be thrown by the citizens.

Apart from that the citizens may in the course of the "days of the representatives" present their proposals and requirements directly to the responsible representatives who were elected in the given area, in which the citizen lives. This form communication is most widely used and is annually used by approximately by 110 citizens. Most often the requirements of the citizens deal with the self-governing functions of the town part and of the town and are

aimed at solving the problems of transport and transport infrastructure, town mobiliary, public order and maintenance public greenery, cleaning of public spaces or facilities used for sports and recreation.

The possibility participate at the meeting of the municipal parliament was taken advantage of also by the inhabitants of the town of Trenčín. In 2009 they asked for the possibility to speak at the meeting of the municipal parliament in three cases, whereby according to their docket the municipal parliament in Trenčín a citizen is allowed to speak at the meeting of the municipal parliament after their speech has been approved by the representatives. The speeches related to the petition "For the preservation of the present status and surface area of the forest park Brezina and areas covered with public greenery of the town of Trenčín" (1 citizen) and civic petition against the construction of the shopping mall AUPARK in the town of Trenčín, where two citizens took the floor.

In Trnava, in the course of year 2009 two requirements were posed to speak at the meeting, in both cases the possibility was given to the citizens. The discussed issue was the provision of a contribution of the town for the activities of an organisation and the amount of grant; in both cases these were directors of private kindergartens.

The importance of citizens engaging in the decision making processes is also an issue at the European Local Democracy Week, which is since the year 2007 organised by the Council of Europe. The objective of these activities is to raise awareness of local democracy and promotion of the idea of democratic participation of citizens in local life. In 2009 the European Local Democracy Week was organized in all member states of the Council of Europe from 12. to 18. October 2009. The purpose thereof was to increase awareness of the European citizens on the work of the local self-government and inform them of the possibilities to participate in the decision making process on the local level.

In Slovakia several regions got engaged in the activities, the list of the carried out activities may be found on the website Ministry of Interior, in the section of Public Administration.[61] The activity was joined also by several schools, for example in the SGU of Banská Bystrica where 27 schools participated. Many of them organised an open day, visited various facilities which are managed by the self-governance, radio programmes as well as information panels. During the whole week forums were held in schools in particular districts of the region with the elected representatives, lord mayors or mayors.[62]

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[61] Detailed information on the carried out activities available at: http://www.minv.sk/?europsky-tyzden-miestnej-demokracie.

[62] Source: http://www.bbsk.sk/ganet/vuc/bb/portal.nsf/pages/DE5DEFC1F9ABC22FC12574DE003664D6.

2.5. Freedom of speech and the right to information

The freedom of speech is one of the main pillars of a democratic society and one of the fundamental conditions of its development and the development of every human being.[63]

At the international level it is guaranteed in the majority of international documents governing the fundamental human rights and freedoms (for example under Article 19 of the International Covenant on Civil and Political Rights, Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms or Article 11 of the Charter of Fundamental Rights of the EU).

At the national level the freedom of speech and the right to information are governed predominantly under Article 26 of the Constitution of the SR. The freedom of speech and the right to information include also the right freely search, adopt and disseminate ideas and information regardless of the borders of the state.

In connection with the application of the freedom of speech it is necessary to mention again, that also in 2009 there were individual cases of application of the freedom of speech, which are being dealt with in another part this of the Report (see part 1.4. The right to preservation of human dignity, personal honour, good reputation and the protection of goodwill, page. 23, as well as Part 6.4. The abuse of the right of assembly and association and the right to freedom of speech, page 118).

The attention of the public in 2009, not only in relation to the freedom of speech, was caught by the publishing of the declaration "Päť viet – five sentences", which was signed by 105 male and female judges, with an attached call addressing the President, the Prime Minister and the members of parliament. By this declaration the signed male and female judges expressed their inner belief that they "work in a room, where their right to freedom of speech and the freedom of opinion are being violated". [64] Apart from characterising the problems and the causes thereof, which, according to their opinion allowed for a negative status to arise within the judiciary system, submitted to the Constitutional Committee of the NC SR as well as proposals of solutions (for example the proposal of legislative changes to be made in professional Acts of judges). At their discretion they informed also the competent authorities of the European Union, the Council of Europe and the International Association of Judges (IAJ-UIM). Based on the incentives, the United States Department of State in their Report on the

[63] Decision of the European Court of Human Rights in the case of Handyside vs. The United Kingdom of 7th December 1976.

[64] Stovka sudcov: Pracujeme v strachu a neslobode [One Hundred Judges: We work in fear and lack of freedom]. ČTK agency news of 2nd October 2009. Available at: http://hnonline.sk/slovensko/c1-38496560-stovka-sudcov-pracujeme-v-strachu-a-neslobode.

observance of human rights for the year 2009[65] expressed certain concerns related to integrity of the judiciary in the Slovak Republic. In October 2009 a website was established for the judges and the general public (www.sudcovia.sk), on which it is possible to have a public discussion on the status of the judiciary and the possible changes thereof.[66]

In connection with conditions of the application of the right to information there was an important event in 2009 at the international level. On 17th June 2009 the Council of Europe received a submitted for signature a new international Convention – the Council of Europe Convention on Access to Official Documents. It is the first international Convention, which relates specifically to the right to information, and therefore the Centre recommends the Slovak Republic to consider speeding up the process of acceding to this Convention.

As regards the application of the right to information in 2009 in the Slovak Republic there were, just like in the previous year, individual violations observed. The public criticised also some media presented cases, for example the contract on the sale of AAU emission credits between the Ministry of the Environment and the US company Interblue Group, when some information had originally not been with the justification that it be subject of trade secret. The complete wording of the contracts on the sale of CO2 emission quotas was published by the Ministry of the Environment of the Slovak Republic in June 2009.[67]

The Ombudsman for the last year the year activity established violation of the right to information guaranteed under Article 26 par. 1 of the Constitution of the SR in 9 cases.

2.5.1. Press Act in practice

The press and the freedom of press enjoy an extraordinary position in a democratic society. The freedom of press is one of the fundamental political freedoms, without which the functioning of democracy is unthinkable. On 1. May 2008 the new Press Act (Act No. 167/2008 Coll. on Periodical Press and Intelligence Agencies) entered into force in Slovakia.

Along the right of correction, which in other form was valid also under the previous press act, the new Act introduced also the right of reply and the right to additional notification and specified the rights and obligations of persons in the application of these rights, the rights and obligations of publishers of periodical press and press agencies when collecting and

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[65] 2009 Human Rights Report: Slovakia. Available at: http://www.state.gov/g/drl/rls/hrrpt/2009/eur/136057.htm

[66] *Prečo vzniklo Päť viet a Výzva [Five sentences and the Appeal: How did they come into being]*. 16th September 2009. Available at: http://www.sudcovia.sk/index.php?option= com_content&view=article&id=70:preco-vniklo-pat-viet&catid=35:documents&Itemid=27.

[67] The text of the contract is available at: http://www.cas.sk/clanok/120766/emisie-sme-predali-za-5-05-eura-ukazala-zverejnena-zmluva.html. Cited. 11th April 2010.

disseminating information, relations between the public (natural persons and legal entities) and the publishers of periodical press and the press agencies. The right of reply is not a new institute in Europe, and is used in legislation of at least twelve countries, which are members of the EU (in some it is even provided for in the Constitution), as well as in other European countries.

Despite the fact that the Act during the adoption thereof was subjected to criticism expressed by the publishers, political opposition and by some international organizations because of possible threatening of freedom of press, the said concerns have not proven right in practice.

Nevertheless, according to the statement of the Slovak Syndicate of Journalists the shortcomings of the Press Act include the misbalanced rights and obligations, absent definition of censorship, complicated regulation of the right of correction, reply and additional notification. Even according to the statement of the ARPP in Slovakia the press Act fails to safeguard balanced protection, since it provides inappropriately great possibilities to public administration, or as well as to the business sector.

According to the Association of Regional Press Publishers the majority of applications for corrections and reply came in 2009 from politicians. The main reason why the citizens in comparison with politicians and companies take advantage of the right of reply in a minimum extent, the ARPP sees in the fact that the content of the media directly relates to politicians and companies and their interests in a much greater extent compared to regular citizens.

The research into how Slovak dailies use the right of correction and the right of reply since the adoption of the press act[68] was supposed to find out how these rights are used in three opinion-forming Slovak dailies: SME, Pravda and Hospodárske noviny. The research revealed apart from other things also the fact that the concerns, according to which the dailies would be flooded by published corrections and replies have not proven right.

The Press Act brought about also the first decisions in 2009. Most applications for reply which the dailies received were refused and not published, since they failed to meet the formal requirements. The courts introduced precedents which state whether the publishers acted in the right way. A frequently used reasoning behind why the media refuse to publish reply was that the affected person did not defend themselves against claimed facts but only against evaluative judgments, which however, is not allowed under the Act.

After a year and a half of being in effect it may be stated that the press Act on the one hand abides by the international legal regulation of the protection of freedom of speech (within

[68] Carried out by Mgr. Branislav Ondrášik, MA, PhD. Faculty of Mass Media at Bratislava School of Law under the title: The Slovak Press Law: History and Its Impact on Free Media.

the universal system of protection of human rights as well as within the system of protection of human rights represented by the Council of Europe) and is in compliance with the protection freedom of speech (freedom of press) embodied in Article 26 of the Constitution of the SR, but on the other hand, it provides balanced protection of fundamental personality rights – especially the right to preservation of human dignity, of personal honour, good reputation and for the protection of goodwill, under international documents, Article 19 of the Constitution of the SR and recommendations of the Council of Ministers of the Council of Europe.

2.6. Right to petition

The right to petition is guaranteed under Article 27 of the Constitution of the SR and more specifically the conditions of the application thereof are governed under the Act No. 85/1990 Coll. on the Right to Petition, whereby an authorised person is everybody aged 18 years and more. Signatures however, may be collected also by any person aged 16 years.

A petition is a written application, filed by the citizens of the Slovak Republic with the responsible authority, i.e. public administration authorities in public matters or in case of common interest. Every petition must be addressed always to a competent institution, which shall further tackle it. By filing a petition it is possible to ask, except for some exceptions, anything that the petitioner considers substantiated. The filing of a petition is not limited by time, whereby in some cases it may result in the calling of a referendum to the issue in question, situation or status, for example the proposed changes of travel schedules. A petition however, may not be used to violate the fundamental rights and freedoms or interfere with the independence of the court (par. 2 and 3 Article 27 of the Constitution of the SR). A petition must not instigate violation of the Constitution and of legal regulations of the Slovak Republic, denial or restriction of personal, political or other rights of persons on the grounds of their nationality, sex, race, ancestry, political or other opinion, religious belief and social status, or to instigate hate and intolerance due to these reasons, or violence or gross indecency (§ 1 par. 3 of Act on the Right to Petition).

The right to petition acknowledged to citizens imposes the obligation on public administration authorities to accept a petition, if it meets all formal requirements resulting from the Act on the Right to Petition, to examine the petition and submit an opinion thereon within the deadline constituted by law.

Petitions in 2009

In connection with the enforcement of the right to petition public administration authorities recorded numerous activities in 2009.

In Nitra in 2009 most petitions were investigated compared to the last four years. The Municipal Government of the town Nitra assessed 22 petitions as substantiated and 11 as unsubstantiated. The petitions related to for example abolition of a rendering plant, abolition of a restaurant, or the construction of parking lots. In general, last year there was a decrease in the number of complaints made by the citizens of the town of Nitra. (17. March 2009, SITA).

A petition for the broadcasting of radio Patria collected 15 000 signatures already at the beginning of April and the number of signatures was constantly growing. The petition was initiated based on the idea of an equal position of the Hungarian language and the Slovak language in areas inhabited by citizens of Hungarian nationality and the idea of re-establishing the original extent of broadcast of Rádio Patria for national minorities. (11. April 2009, ČTK).

The representatives of the town of Brezno under the pressure piled by the general public supported by petition and changed their decision, which related to the original decision of February 2008 regarding the settlement Hlavina. This issue concerned the construction of flats and improved standard of living for Roma families. The lord mayor has shown effort to help those families, but the representatives subordinated to the pressure piled by the protesting citizens and revoked the original decision related to the expansion of the settlement. The citizens (who filed the petition) complained that this decision will especially aggravate their housing situation, decrease the value of their real estate, or decrease security and jeopardise their property. After revoking the plan the necessity arose to choose another locality to build the flats for the Roma. (15. April 2009, TASR).

There was also a petition trying to call a referendum against the sale of Bardejov forests initiated by a civic initiative, which tried to prevent the sale of 1 300 hectares of forest to a private company fearing that the forests would be devastated. (16. April 2009, SITA).

A petition titled “Stop to Uranium” was initiated by Greenpeace Slovakia and in Slovakia it was promoted withi the campaign titled Ecologic Trace. 100 thousand signatures have been collected so far against the mining of uranium and this issue should be tackled also by the NC SR. (17. April 2009, Mikuláš Jesenský).

A petition titled Red to Štefan Harabin was initiated by the civil activist's alliance Fair-play in connection with other civic associations, who protested against the election of Štefan Harabin into the office of the President of the SC SR. (10. April 2009, SITA).

The Ministry of Interior of the SR registered eight petitions in 2009, whereby nobody objected violation of the right to petition with the Ministry of Interior of the SR.

2.7. Freedom of peaceful assembly and association

The freedom of peaceful assembly and the freedom of association of citizens are rights, which represent the so called first generation rights. These are political rights, which are very closely related with the freedom of speech.

The freedom of assembly and association is in international legal regulations guaranteed under Art. 21 of the International Covenant on Civil and Political Rights, Art. 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 12 of the Charter of Fundamental Rights of the EU.

At the national level this right is guaranteed under Article 28 and 29 of the Constitution of the SR.

The right to assembly is not an absolute right and under certain conditions clearly constituted by law, it may be restricted. The contents of the wording of this right in international as well as national regulations reveal that the right to peaceful assembly is guaranteed, indeed. The requirement of the assembly being "peaceful" is thus the basic constitutional precondition of the exercise of this right, but on the other hand establishes a positive obligation of the state to safeguard a peaceful course of every assembly.

The exercise of the right of assembly should serve the citizens so that they can enjoy the freedom of speech and other constitutional rights and freedoms, exchange information and opinions and participate in the tackling of public and other common matters by expressing their opinions and standpoints.

A detailed regulation of the right of assembly is contained in the Act No. 84/1990 Coll. on the Right of Assembly as amended.

An inseparable part of the freedom of assembly is also the prohibition of preconditioning assemblies by prior permit of a public administration authority.

2.7.1. Dissolution/non-dissolution of the association of citizens "Slovenská pospolitosť"

The SC SR revoked on 1. July 2009 the decision of the Ministry of Interior of the SR on the dissolution of the extremist civic association Slovenská pospolitosť (Slovak Togetherness, ST) and returned it to the MI SR for a repeated proceedings. The proceedings at the SC SR was initiated by the civic association ST – by filing a legal remedy against the decision of the Ministry in compliance with § 12 of the Act on the Association of Citizens, and that due to the following reasons:

Prior to the dissolution of the civic association ST as such the Ministry sent a "notice" of 7. November 2008 to the civic association, in which it stated that the civic association organised activities, the objective of which was to instigate hate and intolerance on the grounds of nationality, race, religious and political beliefs, whereby SP should pursue their objectives in ways, which are contrary to the Constitution and the laws. The Ministry therefore warned and asked ST, to refrain from such activities. The Ministry in the letter in question at the same time pointed out that "in case that civic association continues with the said activity, it will be dissolved by the Ministry of Interior". [69] The notice in question was sent by the Ministry on 11th November 2008. The date of delivery of the notice to the civic association ST was 18th November 2008, i.e. the last day for the civic association to take over the notice sent by the Ministry.

In the meantime however, the Ministry dissolved the association by the decision of 13th November 2008. The reasoning to the decision of the Ministry cited the statute of the civic association adopted in 2003 and their major objective, which was to "support the physical and mental development of every member of the association, deepen the knowledge of the history and customs and the mission of Slovaks and of Slavs, promote the Slavic solidarity, Slavic culture and traditions, cooperate with Matica slovenská (Slovak cultural and scientific institution governed by public law), Štúr Society and other organisations, as well as with Slovak regional associations and organisations abroad, endeavour to the protection of morals and help prevent the spreading of drugs, alcohol, pornography, prostitution and usury, protect and meliorate Slovak nature, help protect the monuments and foster archaeological research, organise and roof cultural and sports events, publish magazines, books and other publications, also audiovisual carriers covering especially the topic of Slavic patriotism. The Ministry generally stated that under the said objectives of the carried out activity by organising marches and disseminating information through websites instigates hate and

[69] Available at: http://pospolitost.wordpress.com/2008/11/20/vyzva-na-rozpustenie-slovenskej-pospolitosti-je-v-rozpore-s-pravom-i-logikou/. Cited on 1st April 2010.

intolerance on the grounds of nationality, race, and political opinion, by which they fulfil their objectives in ways, which are contrary to the Constitution of the SR and laws within which promotes anti-Semitic and anti-human practices of Dr. Jozef Tiso, defames the status of persons of other races and national minorities and thus promotes intolerance and hate in the society. At the end of the justification to the decision the Ministry concluded, that the civic association ST was given notice of the stated proceedings in a written letter of 7th November 2008 and asked to refrain from the said activities (whereby the Ministry being an official authority had clearly proven that such activities were being carried out), however, the civic association ST continued with their activity also after the notice, it was therefore necessary to have it dissolved.

According to of the Ministry the reason behind the dissolution of Slovak Togetherness, was the violation of the provisions of § 4 letter a) and b) Act No. 83/1990 on the association of citizens as amended, according to which "Associations are not allowed:

a) the aim of which is to deny or restrict personal, political or other rights of citizens on the grounds of their nationality, sex, race, background, political or other opinion, religious belief and social status, instigate hate and intolerance from these reasons, support violence or violate the Constitution and law in other ways,
b) which strive to attain their objectives in ways, which are contrary to the Constitution and law."

The Supreme Court of the Slovak Republic in their decisions to revoke the decision of the Ministry, stated,[70] that the decision on the dissolution of the civic association was a serious measure, which may be adopted only based on the law. The Senate further stated that the Ministry in the call addressed to the ST failed to name the activities to be refrained from, and only cited the relevant paragraph of the Act. The said facts were being pointed out already before the issuance of the decision by the SC SR, apart from the representatives of ST, as well as the representatives of some of non-governmental organisations operating in the area of human rights, according to the opinion of whom the dissolution of every civic association by the Ministry of Interior of the SR must be made by a decisions describing specific deeds and activities of the association, which are according to the Ministry contrary to the law and based on which the association was dissolved.

Moreover, the call was delivered after the dissolution of the civic association ST, that means that ST was not given a possibility to remove or redress the facts pointed out therein.

[70] Source: Daily newspaper Pravda on 12th August 2009.

Under § 12 par. 3 letter c) of the Act on the association of citizens, if the Ministry finds out, that the association engages in activities, which are contrary to the § 4 of this Act, they shall without delay notify the association and ask the association to refrain from such activity. If the association continues with such activity, the Ministry will dissolve it. The said legal conditions however, in case of dissolution of the civic association SP (considering the circumstances related to deliveries) have in fact not been fulfilled.

2.7.2. Incident during an assembly organised in connection with the visit of the Chinese president

During the visit of the Chinese president Chu Ťin-tchaa in Slovakia on 18. June 2009 there was an assembly in front of the presidential palace on Hodža Square in Bratislava, which resulted in an incident later widely presented by the media. There was a conflict and physical clashes between a group of persons belonging to Slovak activists (pointing out to the failure to observe human rights in China) and persons of Chinese nationality (welcoming the president of the People's Republic of China), participating in the assembly in front of the presidential palace as well as in the subsequent intervention of the police, at which 9 persons were arrested (3 Chinese and 6 Slovaks), among them as well as civil activist and the head of the Občianska konzervatívna strana (Civic Conservative Party, CCP) Ondrej Dostál.

The incident during the assembly and the subsequent intervention of the police raised several questions, whereby most discussed were the issues of "unauthorised" assembly, inactivity or activity of the Slovak police while Slovak citizens were attacked by men of Chinese nationality and the police intervention against the Slovak activists and their subsequent arrest.

The arrest of Ondrej Dostál and other activists was justified by the police by the Failure to respond to an order of public officer. Ondrej Dostál evaluated their arrest as "rough". According to his statement, however, the police them behaved well to him and he also received a phone call from the Minister of Interior. He was released after approximately 5 hours as an aggrieved person. According to the police director of the regional police corps [71] during the incident Mr. Dostál was protecting his property, since a person from the opposite group was trying to take a banner away from his group. Dostál however, according to the director, did not respect the order of the policeman, therefore he was escorted from the square, and only afterwards it was explained, how the incident was caused.

[71] Source: SITA news of 18th June 2009.

In connection with the organisation of a meeting of Slovak activists it is necessary to point out to the possible mistake made by the Regional Court in Bratislava. The organisation of a meeting, which the attendant Ondrej Dostál announced to the town district Bratislava – Old Town was prohibited by the mayor. Against the prohibition of the assembly therefore the organiser filed a legal remedy with the Regional Court in Bratislava on 15th June 2009, the next working day after he was delivered the decision on the prohibition of the assembly. According to § 11 par. 3 of Act No. 84/1990 Coll. on the Right of Assembly as amended the court should decide on the prohibition of the assembly within three days after filing the legal remedy. The period for the decision of the court therefore expired on 18th June 2009. The court however, failed to decide on the legal remedy filed by Dostál within the deadline of three days determined by law, and decided only on 14th July 2009, i.e. after 29 days. The court revoked the contested decision on the prohibition of the assembly by a judgement of 14th July 2009 as unlawful, affirming that the decision of the mayor of the Old Town on the prohibition of the assembly was contrary to law. The decision of the court in question however, was delivered after the date of the assembly. Due to the reasons mentioned above Ondrej Dostál filed a complaint with the Constitutional Court of the SR, in which he objected that the failure to observe the deadline of three days constituted by law to pass a the decision on a legal remedy against the prohibition of assemblies the Regional Court violated his right to court the protection under Article 46 par. 1 and 2 of the Constitution of the SR, the right to trial without unreasonable delay under Article 48 par. 2 of the Constitution of the SR and the right of peaceful assembly under Article 28 of the Constitution of the SR. The Constitutional Court of the Slovak Republic has not decided yet in the matter in question.

2.8. Right to asylum

Under Article 53 of the Constitution of the SR, the Slovak Republic grants asylum to aliens persecuted for the application of political rights and freedoms. It is the only right, which the Constitution of the SR guarantees only to aliens. The stated right is not absolute. According to the Constitution of the SR asylum may be denied to those persons who acted contrary to the fundamental human rights and freedoms. The right to asylum means for an alien "the right to claim the granting thereof in a way, in proceedings and before authorities governed by law, the existence of which is presumed also under Article 53 of the Constitution".[72] And that is Act No. 480/2002 Coll. on Asylum as amended (Act on Asylum).

[72] Finding of the Constitutional Court of the Slovak Republic No. II. ÚS 7/02-25 of 27th March 2002.

At the level of the European Union the right to asylum is guaranteed under Article 18 of the Charter of Fundamental Rights of the EU, according to which the right to asylum is guaranteed under observance of the rules of Geneva Convention of 28th July 1951 and the Protocol of 31st January 1967 relating to the status of refugees and in compliance with the Treaty on the European Union and with The Treaty on the Functioning of the European Union.

The year 2009 confirmed the decreasing tendency in the number of persons seeking asylum.[73] Asylum was sought by 822 persons, and granted to 14 persons (1,7 %), 98 persons were provided with the so called supplementary protection (11,92 %). The majority of applicants originated from Pakistan (168 persons), Georgia (98 persons), Moldova (73 persons), Russian Federation (72 persons), India, and Vietnam (57 and 56 persons).

2.8.1. Act on Asylum, the possibility to apply for free legal aid; refugees in Humenné

A detailed regulation of the asylum procedure, the conditions of granting asylum, form of provided international protection and other rights and obligations of parties to the asylum procedure are governed under the Act on Asylum. Since the adoption thereof the was Act has been amended several times, the last amendment was made by Act No. 451/2008 Coll. and entered into effect on 1. December 2008. The main objective of the said amendment was to safeguard the transposition of Art. 15 of Council Directive 2005/85/EC (the right to legal aid and representation), which imposes on the EU member states the obligation to ensure legal aid services in an appeal against the dismissing decision in the asylum procedure.

This service is safeguarded by the Legal Aid Centre. Legal aid in asylum related matters is provided by 5 employees of the centre in offices in Bratislava, Košice and Humenné. In the course of the year 2009 the centre received the total of 47 applications, and legal aid was provided to 45 applicants. The result of provided legal aid is one granted asylum, in other cases two times representation didn't take place on the grounds of failure to cooperate and escape of the applicant immediately after complaints the application, four times legal representation was taken over by an advocate or non-governmental organisation. In a number of cases the proceedings was returned for new proceedings with the court of first instance, or the Migration Office of the Slovak Republic. The applicants turn to the LAC in form of written applications for the provision of legal aid.[74] In tackling the asylum agenda the LAC cooperates

[73] The year 2005 – 3549 applicants, year 2006 – 2849 applicants, year 2007 – 2542 applicants, year 2008 – 909 applicants. Source: Migration Office of the Slovak Republic.

[74] Reply of the Legal Aid Centre of 3rd March 2010.

with the Human Rights League, with Central Office of Labour, Social Affairs and Family in Trenčín, with IOM and UNHCR.

In 2009 the Slovak Republic adopted a positive standpoint towards the applications of the UN High Commissioner for refugees António Guterresa for cooperation in the resettlement of Palestinian refugees, stuck in refugee camp Al Waleed in Iraq on the borders with the Syrian Arab Republic. The main idea behind the resettlement was the transport of Palestinian refugees and persons under the protection of UNHCR from Iraq, their temporary placement in the territory of the Slovak Republic and the subsequent resettlement into a third country. Based on what has been stated above, several negotiations were held between the representatives of the to the Office UNHCR, IOM and of the Ministry of Interior of the SR, the result of which was an agreement setting out the conditions of this humanitarian transfer. In the given period we turned to the Migration Office of the Ministry of Interior of the SR with the application for the provision of more detailed information to the whole transfer. According to the gained information the group of Palestinians counting 98 individuals consisted of 37 children, 34 men and 27 women,[75] whereby the oldest member was 77 years and the youngest child was 4 months.

The arrival itself took place on Wednesday, 26. August 2009 shortly before six o clock in the morning, when an aeroplane with Palestinian refugees landed at Košice airport. The refugees were originally placed in a refugee camp Al Waleed in Iraq on the borders with the Syrian Arab Republic, where however, lived in bad conditions. Their stay in the territory of Slovakia was only temporary, set under an agreement for the period of 6 months. According to the gained information expert assistance to Palestinian refugees was provided apart from Slovakia for example also by Romania.

2.8.2. Amendment of the Abode of Aliens Act

Act No. 48/2002 Coll. on the Abode of Aliens as amended (Abode of Aliens Act) was since the adoption thereof amended several times. The last amendment was made by Act No. 594/2009 Coll., adopted 1. December 2009 and in force and effect as from 15. January 2010. According to the explanatory report the objective of the amendment is to transpose the new legal regulations of the European Union and also to tackle some problems, which arose in application practice. Nearly all proposed changes may be divided into three main

[75] Reply of the Migration Office of Ministry of Interior of the Slovak Republic of 20th August 2009.

areas – changes in the granting visas, in the granting particular types of stays and in administrative expulsion and detention of aliens.

Considering the adoption of the so called Visa Code of the Community some provisions on visas have been left out. It has been clearly constituted that aliens are granted two types of visas – Schengen and national. Unlike the Schengen visas, to which the Visa Code sets out the obligation to justify the non-granting of visa, as well as possibility to appeal against the non-granting of visa, as for national visas, there is no such obligation or the possibility to appeal against the non-granting of visa.

According to the explanatory report, the changes in granting the stay were based predominantly around the knowledge gained in application practice. The group of aliens has been specified, who shall be granted temporary stay for the purpose of business making – this type of stay may be granted also to persons acting on behalf of a business company or cooperative. In the case of temporary stay for the purpose of employing a certain groups aliens (predominantly aliens, who were sent to the territory of the Slovak Republic) does not have to apply for a permit for 90 days of stay (they may work immediately upon arrival in our territory and file an application for the granting of a permit to temporary stay for the purpose of employment at a police unit). A similar procedure (no need to apply for a permit for stay of less than 90 days upon entry) is used also with students and aliens engaging performing special activities. The employers have a new obligation now to report to the police unit the termination of an employment relation with aliens, and that within three working days. In practice there were cases, when an alien failed to notify the police of a terminated employment relation and thus the purpose of stay. A temporary stay permit may according to the new regulation be connected wit therapy or voluntary activities.

As regards the administrative expulsion, at present, in the decisions itself the police unit must determine the country into which the alien is to be expelled. If the alien files an application, the police are obliged to provide them with a translation of the relevant parts of the decision on expulsion in writing, in a language that they understand. The reasons behind expulsion now include the submission of someone else's, false or counterfeited documents during the control under the Abode of Aliens Act. Aliens, who submit such document at a border control, already prior to entering the territory of the Slovak Republic, may be banned from entering the Slovak territory for up to 5 years. In practice there were cases where an alien produced for example a counterfeited document, but considering the fact that they did not enter the territory of the Slovak Republic, it was impossible to expel them

administratively or ban them from entering our territory. The entry was refused and such alien could try to cross our external border at another border crossing point.

In relation to the detention of aliens the period of detention of an alien was prolonged by another 12 months (added to the original 6 months), if there is the assumption that their administrative expulsion shall take longer, since the alien does not cooperate with by the police or in case their state of origin is in a delay with the issuance of a substitute travel document. During the detention period the representatives of non-governmental organisations have access to the police detention units for aliens, and that based on the consent of the unit director. The police unit has a new obligation now, to repeat to an alien in regular intervals the information on their rights and obligations.

Considering the short application practice of the said regulation we shall not deal with the evaluation of the influence and the possible problems connected with the said legislation.

2.8.3. Integration process of migrants and asylum seekers

The integration of aliens represented in the past period one of the key ideas behind the EU migration policy. The intense discussion on the issues of mutual interference between migration and integration policy and on the implications thereof on the economic and social objectives of the EU made the EU states elaborate their integration plans.

The concept of integrating aliens in the Slovak Republic was adopted by the Government of the Slovak Republic on 6th May 2009 by Resolution No. 338/2009. From the point of view of the time horizon it represents a long-term vision for the period of approximately ten years, whereby a more significant increase in the number of aliens in the Slovak Republic is expected from the year 2015 on. The document proposed legislative, organisational and practical measures for the integration aliens in the conditions of the Slovak Republic.

The concept foresees the establishment of the Council of the Government of the Slovak Republic for Migration and Integration. In order to improve coordination and cooperation between particular organizations participating in the implementation of migration policy, the time horizon until the year 2010 foresees also the transformation of the present offices dealing with the issues of aliens, migration, asylum and integration into a single authority and thus the establishment of an Immigration and Naturalisation Office of the Slovak Republic.

According to the information provided by the MOMI SR, by Resolution of the Government of the Slovak Republic No. 467/2009 of 24. June 2009 the statute of the Steering

Committee for migration and the integration aliens was adopted, which, as a cross-cutting coordination and interdepartmental authority started carrying out their activities.[76]

The interdepartmental expert committee in the area of labour migration and integration of aliens (MECOMIC)[77] during their meetings identifies the problem areas from the point of view of state administration and self-government, cooperating partners and the academia and draws attention to several problems (for example low level of acceptance of aliens in the territory of the Slovak Republic by the majority society, the overall unpreparedness of the society as to personal capacities and resources, lack of financial resources to implement integration measures etc.). At the last meeting of MECOMIC in November 2009 the representatives of the cooperating ministries were asked to adopt a due and responsible approach to the implementation of single points of the Resolution of the Government of the Slovak Republic No. 338/2009 to the Concept of Integration of Aliens in the Slovak Republic and implementation of integration measures (Concept). It was stated that in order to implement the concept not only political support declared by the Government of the Slovak Republic by having adopted the Concept, but also further harmonisation of the Slovak legal regulations with the laws of the European Communities and right of the EU in the area of migration and integration is required. What is also necessary is further development of the institutional framework necessary for the implementation policies in this area, in the context of particular organizations participating in the implementation of the integration policy. It is also necessary to allocate financial resources in the draft budgets of particular ministries to apply the integration measures, starting with the budget for the year 2010, and also safeguard the transfer of competences in this area from state administration to territorial self-government.[78]

According to the Assessment of integration of asylum seekers and asylum holders in the Slovak Republic with regards to their age, sex and other diversities "in the Slovak Republic an integration programme is being carried out predominantly based on projects financed from the European Refugees Fund (ERF). The projects are being carried out by particular non-governmental organisations and extent integration services, which on their basis provide, depending on the amount of the proposed and passed financial resources at the MI SR. Integration projects are implemented by several non-governmental organisations which apply for financial support of their projects as competitors. A lower level of mutual coordination of these non-governmental organisations, but also the process of passing the

[76] Reply of the Migration Office of Ministry of Interior of the Slovak Republic of 11th March 2010.
[77] Established under Decision of the Minister of Labour, Social Affairs and Family of the SR No. 55/2007.
[78] Reply of the Ministry Labour, Social Affairs and Family of the Slovak Republic of 9th March 2010.

amounts of financial resources itself results in differences in the level and extent of integration assistance provided to particular projects, and thus within particular parts of the territory of the Slovak Republic".[79]

2.8.4. Employment of aliens during economic crisis

The employment of aliens in 2009 (just like the employment rate in general) was marked by the deepened economic crisis, which reflected in a significant decrease in the number of employment permits granted to aliens in the whole European Union. It was reflected especially in the growing number of employment permits withdrawn from aliens on the grounds of employment termination before the passing of the period stated in the employment permit. Based on the notice of the labour offices on the withdrawal of the employment permit from an alien, the Border and Aliens Police Office withdraws from an alien also the permit for temporary stay for the purpose of employment and the alien must leave the Slovak territory.

According to the statement of Central OLSAF most employment permits were withdrawn from aliens in the first quarter of 2009. The ratio between granted and withdrawn employment permits from aliens in the last years was on the level of 5:1, in 2009 it changed to nearly 1:1. As to 31. December 2009 the Offices of Labour, Social Affairs and Family recorded 2656 aliens with valid employment permit in the territory of the Slovak Republic, out of that 2 039 men and 617 women. The number of aliens whose employment permit is not required under § 22 par. 7 Act No. 5/2004 Coll. on Employment Services as amended, and who are recorded by the labour authorities on Information cards, is 1 285, out of that 951 men and 334 women. Thus the total number represents 3 941 registered aliens. As to 31. December 2009 the labour offices recorded 11 323 EU citizens, out of that 9 218 in form of employment relation and 2 105 were sent to work in the territory of the Slovak Republic from another member state. The total number of aliens and citizens recorded in the databases of the offices of Labour, Social Affairs and Family with the aim of their employment to 31. December 2009 is 15 264, out of that 12 254 men and 3 010 women.[80]

[79] Assessment of integration of asylum seekers and asylum holders in the Slovak Republic with regards to their age, sex and other diversities: Joint report on the findings of a multi-functional team for the year 2009. Bratislava: UNHCR, 2010, p. 3.

[80] Reply of the Head Office of Labour, Social Affairs and Family of March 2010.

2.8.5. Assisted voluntary return

In 2009, with the assistance of IOM (International Organisations for Migration) – of the Office IOM in the Slovak Republic - 139 migrants returned from Slovakia into their domestic country. The IOM safeguarded their assisted voluntary return thanks to programme of assisted voluntary returns, which has been implemented in Slovakia based on an agreement with the Ministry of Interior of the SR since 1998.

The programme of voluntary return is meant for unsuccessful asylum seekers and migrants who dwell in the territory of Slovakia illegally. IOM safeguards humane returns into the countries of origin and assistance in the integration into everyday life only to those interested persons, who express their interest to return home voluntarily. In 2009 the IOM launched the first Slovak information campaign on this programme.

The first part of the campaign ran from August to November 2009 in Bratislava, Trnava, Nitra, Trenčín, Topoľčany, Žilina, Zvolen, Košice and in Prešov and will continue as well as in 2010. The campaign of 2009 was successful, which was reflected also in the increased number of calls to the information line 0850 211 262, which is a threefold increase in comparison with the previous period. The number of migrants, who had no residence permit, were not placed in the facilities of the Ministry of Interior of the SR and took advantage of the possibility to return home with the IOM programme, increased from zero in 2008 to 47 in 2009.[81]

[81] Part 2.8.5. was drafted with the prior consent of the IOM – Office in the Slovak Republic, based upon a press release of the IOM published at www.iom.sk.

3. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Economic, social and cultural rights belong to second generation fundamental human rights and freedoms. It is a group of rights, the extent and the application of which at the national level depends predominantly on the economic possibilities of the state.

At the international level they are governed especially under the International Covenant on Economic, Social and Cultural Rights and the European Social Charter, the Revised European Social Charter, as well as relevant Articles of the Charter of Fundamental Rights of the EU and the particular partial conventions of the International Labour Organisation (ILO) or documents of the World Health Organisation (WHO).

At the national level they are declared in Articles 35 to 43 of the Constitution of the SR, but as results as well as from the enumerative definition in Article 51 of the Constitution of the SR, to claim the rights embodied in Art. 35, 36, 37 par. 4, Art. 38 to 42 and Art. 44 to 46 may only within the boundaries of Acts, which enforce the said provision. In practice that means, that these rights are specified in relevant Acts on the grounds of (considering the issue) their inevitable separate legal regulation.

Considering the broad extent of the whole area of economic, social and cultural rights this chapter only deals with those rights, which regulation in 2009 might cause possible problems or were subject to certain changes in legislation or practice.

3.1. Right to just and favourable working conditions and adequate pay for the work performed

The international framework of the legal regulation in question is represented especially by the provisions of Article 7 International Covenant on Economic, Social and Cultural Rights, Articles 2–8 II. part of the Revised European Social Charter and Article 31 of the EU Charter of Fundamental Rights and other international treaties within the system of ILO or WHO.

The right to just and favourable working conditions is at the national level declared in Article 36 of the Constitution of the SR as the right to fair and satisfactory conditions of work, which guarantees to the employees apart from the right to adequate wages for the work performed also the protection from arbitrary dismissal and discrimination at work, protection of security and health at work, the setting of maximum working hours, reasonable rest time

after work, the minimum admissible length of paid vacation and the right to collective bargaining.

The right to fair and satisfactory working conditions is directly related to the existence of an employment relation and is granted to all parties thereto in the position of an employee (regardless of their citizenship). The stated fundamental rights may be claimed only under Acts, which enforce the said provision,[82] for example the Labour Code, Act on Safety and protection of health at work, the Act on Minimum Wages and others.

3.1.1. Employees in the companies owned by foreign investors in the Slovak Republic – their rights and working conditions

The fact that the ways of working in the companies of some foreign employers operating in Slovakia for a short time are often not in line with our legal system, moral and human principles, for example the colour coding of employees, aggressive behaviour shown by managers and superiors towards junior employees was pointed out in the opinion submitted by the National Labour Inspectorate (NLI).[83]

The violation of the LC by the transnational companies operating especially in business and trade, predominantly in the areas of the observance of the length working time (failure to respect the weekly working time of employees working in two or three shifts), overtime work (failure to record and remunerate overtime work), night work, rest (failure to respect the need of continuous rest in every week) was pointed out also by the Confederation of Trade unions of Slovak Republic.[84]

Similar motions from employees working predominantly in production companies from Asia were submitted to the employees of the Centre. The clients complain and claim that the employers fail to abide by the LC in connection with overtime work, lack of time to rest between single shifts, failure to respect working breaks, but also corporal punishment or mocking of employees.

The company KIA Motors Slovakia, s. r. o. in response to the questions asked by the Centre clarified their company culture and the observance of the rights of employees. This company, as regards the management of prophylactic and preventive measures may serve as

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[82] According to Art. 51 par. 1 of the Constitution of the Slovak Republic: *"The rights defined in Arts. 35, 36, 37 para.4, Arts.38 to 42 and 44 to 46 of this Constitution may be claimed only within the restrictions of the laws implementing these provisions."*

[83] Reply of the National Labour Inspectorate of 18th February 2010.

[84] Reply of the Trade Unions Confederation of 5th March 2010.

an example of good practice in issues related to prevention of discrimination and sexual harassment in employment relations. The employees founded a trade union organisation and made a collective agreement with the company. In the company apart from trade union they also established a board titled Harmony as an advisory body composed of elected employee representatives, the objective of which is dealing with working problems directly with the management of the company.

One of the foreign companies, in which employees pointed out to long-term problems in employment relations, is a Korean company YURA Corporation Slovakia s. r. o. with their production plants located in Rimavská Sobota and in Hnúšťa, in a region with the highest unemployment rate in Slovakia in the long run.

After receiving a number of incentives, the regional representatives of the Centre performed an independent investigation in the production plant of said company in Rimavská Sobota, with the aim of monitoring the observance of the rights of employees. The inspection was targeted at the assessment of the overall situation and the situation in the said areas of employment relations, in which employees referred to an alleged violation of human rights and restriction of personal freedom.[85]

The mentioned investigation revealed that the company has so far organised no educational activities, trainings or seminars for their employees, which may be assessed as a shortcoming of this company and one of the possible reasons behind disputes and tense relations between the employees and the company management. Information is provided to employees only on individual basis, only if they require information and make comments. Another shortcoming perceived in this company is also the fact that in comparison with some other foreign companies operating in Slovakia, this company has no Code of Ethics in place. They have elaborated certain "Rules of behaviour towards employees" and "Company principles for the employees of the company YURA Corporation Slovakia, s. r. o.", which only partially, however not fully, the contents of the Code of Ethics.

What may be assessed as positive is the fact that this company also employs persons with disabilities in the production plant in Rimavská Sobota, and employs also significant percentage of people with basic level of education, who, considering the minimum

[85] The inspection was made using standard forms of independent investigation: inspection of working premises, checking of relevant documents relating to employment and interviews with employees and representatives of the employer, as well as in form of a questionnaire. A questionnaire for the employees was aimed at the behaviour and way of communication of the employer with the employees, occurrence of the restricted possibility to discuss the duties and responsibilities and the fulfilment thereof, communication with the employer under pressure (directive or aggressive behaviour from the side of the employer), threats, manifestations of verbal or physical violence, attacks on personal rights of the employees.

opportunities to get employed in this lagging-behind Gemer region, would probably be long-term unemployed.

3.1.2. Workplace mobbing, bossing and bullying

The Centre and the regional office thereof investigated in 2009 more than 260 complaints relating to mobbing, bossing, or bullying at workplace. The number of investigated cases shows a rising tendency year by year. Most incentives come from the area of education. Both male and female employees would point out inappropriate treatment, unacceptable behaviour by superior officers, inconsistent orders given by the employers. Such behaviour of an employer in some cases resulted in job termination by the employer or employee.

Many victims of bullying at workplace are afraid to deal with the issue, if they still are employed, since they fear losing the job. They often start to defend themselves after actually being officially dismissed. Such behaviour of employers often causes health and mental problems to the victims, and diseases, which may sometimes result even in the incapacity to work.

The overall situation is aggravated by the fact that there are no official statistics related to mobbing, bossing and bullying in the Slovak Republic and there are very few researches made into the said area.

According to the information National Labour Inspectorate this institution investigated 20 complaints relating to mobbing and bossing, in none of them labour inspectors stated that there was violation of law. Their statement revealed that it is not clearly possible to prove mobbing, bossing and bullying, and therefore disputes in the employment area may only be solved by the court (however, the majority of complainants allegedly refuse such solution). The labour inspectorates pointed out that the perception discrimination, mobbing and bossing by the employers and employees is not always appropriately interpreted, for example personal disputes between a senior employee and a junior employee are often perceived as bossing just because of the superiority relationship. The experience of work inspectorates shows that many employees do not immediately require compensation in case they have a problem with an employer, but mainly because of fear they do not tackle the situation until it becomes unbearable and insolvable.[86]

[86] Reply of the National Labour Inspectorate of 18th February 2010.

The Central OLSAF received 4 complaints in 2009 related to mobbing and bossing at workplace, out of that 2 complaints were made by state employees referring to mobbing, which were on the grounds of competence forwarded to the Office of the Government of the Slovak Republic, 2 complaints were examined within the competences of the relevant labour offices, in one case it was not possible to either verify or refute, using the methods and forms of controlling activities, defeat the pleas of the complainant regarding mobbing, the second case was forwarded to the NLI due to the competence. In all cases the victims claimed to be bullied by a superior employee. The victims did not state the reasons behind the mobbing/bossing.[87]

In the framework of assessing this issue there is the negative finding that many employers had no system of effective measures against possible bullying in place. There was no Code of Ethics, or working regulations to tackle the issue of discrimination, mobbing and bossing at workplace. No Ethics Committees were established, which could independently assess eventual disputes.

3.1.3. Social enterprises in practice

One of the measures of active labour market policy, aimed especially at the disadvantaged job seekers, is also the establishment of pilot social enterprises. The said enterprises were established especially in regions with a high unemployment rate, such as Gemer, Spiš, and Orava. In a social enterprise there are at least 30 percent of employees during 12 calendar months, who were disadvantaged job seekers before engaging in this employment relationship.

The functioning and substantiality of these measures of active policy labour market was also subjected to certain level of criticism pointing out the problematic functioning of the social enterprise ARVIK in Bardejov. The said social enterprise was later abolished based on the shortcomings determined by the MLSAF SR.

Social enterprises are really needed in Slovakia and will gain significance in regions with high unemployment rate inhabited by people jeopardised by poverty, or those who already live in poverty. It is therefore necessary to continue safeguarding such conditions (including control measures), to fulfil the intent of active labour market policy and to meet the planned objective, which is to help the disadvantaged groups of inhabitants get established on the labour market.

[87] Reply of the Head Office of Labour, Social Affairs and Family of March 2010.

3.2. Right to housing

Despite the general drop in the number of unlawful evictions by the towns and villages there were evictions recorded also in 2009. The reasons for eviction remained the alleged interest of the town or village to repair or reconstruct the object in question. Some predictions, however, point out also to their broader intent, and that by profiteering (by selling the object) and at the same time "get rid" of the dodgers (also to the detriment of persons capable of covering the payments). In practice there are proven cases of abused insufficient legal awareness of the affected persons, usually coming from a socially disadvantaged background. A proof of that is for example the fact that after the legal representation in the case was taken over by a reputable institution in the field of the human rights protection, the solution and conclusion of the case gained a completely different extent and impact - positive for the represented citizens.

An important precedent which appeared in 2009 in the area of the right to housing is the decision of the District Court in Prešov. The said court decided that the town of Sabinov, as well as the MCRD SR, violated the principle of equal treatment. [88]

The tools of safeguarding appropriate standard housing for the socially excluded Roma community are discussed also in the Long-term concept of housing for marginalised groups of inhabitants and model of its financing. At the same time it bans segregation, which may show for example also in form of created and deepened spatial and social segregation.

3.2.1. Eviction of inhabitants from the block of flats in Zvolen - Stráže

Since February 2009 the regional representative of the Centre in Zvolen was dealing intensely with the eviction of inhabitants of the block of flats in Zvolen - Stráže. Due to a planned reconstruction of the whole object 51 tenants, mostly of Roma background, out of them 36 dodgers, should be evicted. Tenancy contracts were made with the inhabitants always only for one month, whereby those were prolonged. The situation changed in April 2009, when the fears of the inhabitants of the block of flats of being evicted became real.

In solving this problem, the Centre cooperated also with the civic association ANNWIN from Banská Bystrica. The representatives of both institutions visited the affected citizens in their flats and in March they initiated a personal meeting with the representatives

[88] For more information see the Special part 4.2. Judicial proceedings concerning violation of the equal treatment principle, p. 167.

of the municipal authority in Zvolen, with the participation of the lord mayor of the town of Zvolen and other employees of the municipal authority in Zvolen.

Proposals and others steps were then consulted in the regional office of the Centre in Zvolen, whereby the affected citizens were directly informed of the possible solutions to this issue. The lord mayor of the town promised to provide temporary substitute housing to the inhabitants of the block of flats Stráže during the reconstruction. Considering the fact that the majority of tenants were dodgers, they had concerns regarding how they situation will or will not be solved. The representative of the Centre therefore discussed this topic not only with the head of the legal department, but also with the head of the department of social affairs, health and family at the municipal authority in Zvolen, whereby the town of Zvolen promised to tackle the situation to the benefit of those who had no financial claims – debts towards the town. However, shortly afterwards some inhabitants were delivered eviction orders, whereby they were made aware of the possible consequences of not responding to this order. This step was perceived by the affected citizens in a very emotional and negative way and they asked the representative of the Centre to write applications for the prolongation of a tenancy contract and file them with the municipal authority in Zvolen. The said applications were not accommodated, since the town of Zvolen had already planned to file proposals with the court for the eviction of the said object. This step was again perceived by the affected citizens very sensitively and with distrust. The citizens again expected to continue to live in the block of flats Stráže. Upon that the representative of the Centre contacted the Office of the Plenipotentiary of the Slovak Government for Roma communities. The Office confirmed that the affected tenants could not be evicted without a judicial decision, which helped the situation cool down. Gradually, however, it would reach a stage when the tenancy relationship with the town of Zvolen terminated also to the last tenant and the tenancy contract has not been prolonged. The representatives of the town of Zvolen then argued that none of the inhabitant was in a legal relation with the town as regards flat rental, and the town thus had no legal obligation to provide substitute housing. Despite that the representative of the Centre repeatedly met with the representatives of the town Zvolen, who promised to find an alternative temporary housing for the so called dodgers, i. e. for approximately 15 citizens. The town of Zvolen provided childless tenants with housing in a shelter for the homeless and to the families with children, however, to one of the parents, the provided housing in crisis centres in Banská Bystrica and Handlová. Some citizens were in the end accommodated also directly in the town of Zvolen.

The letter by the mayor of the town of Zvolen reads that the municipal authority in Zvolen was delivered nine applications for the provision of substitute housing, whereby the applicants were predominantly those who had paid, who had fulfilled their obligations resulting from the tenancy contracts while those were in effect. Gradually however, there would be more and more applications submitted also by the dodgers. 31 cases, or households, and 106 persons in total were being dealing with. 23 applications were handled, out of that in 10 cases housing was provided in a shelter called "Nádej- Hope" in Zvolen and in a Single parent home in Banská Bystrica. In one case was safeguarded housing in Lučenec for the whole family. In 12 cases temporary housing was provided for the whole family in flats in Zvolen.

3.2.2. New tendencies in housing related to Roma inhabitants

Whereas in 2008 evictions of the Roma stirred moods in the media, in 2009 new tendencies were revealed, namely the constructions of walls. The case appearing in the media most often was the construction of a wall in the village of Ostrovany (see the Special part 2.2.1. The construction of fences in the vicinity of Roma settlements, page 132 for more detail). An event which caught the attention of the general public was also a construction in the town Michalovce. Than information appeared that there were more of such constructions in Slovakia (for example in the village of Sečovce), only those were not discussed in public.

Despite the fact that in the localities named above (in Eastern Slovakia) the majority population frequently uses arguments for the construction such walls, claiming these should serve the protection property, prevent theft, prevent environmental pollution, that they are a noise barrier, a squash wall or a wall for some other sports activities, however, the common feature of these constructions may be the crime that had not been tackled by the self-government. An important fact pointed out also by the Centre in their expert opinion on the construction of the wall in Ostrovany, is also the absent communication on the level of self-government between the village and the inhabitants thereof.[89]

Considering the governmental concept of housing of the marginalised groups of inhabitants, it is possible to perceive a wall as a physical barrier to spatially separate the Roma and the Roma inhabitants. Such separation (reflecting the level of social inequality within the society, town or village) must not deepen spatial and social segregation. The towns and villages

[89] For more information see the Opinion of the Centre of 22nd January 2010. Available at: http://www.snslp.sk/.

in this case (regardless of how difficult that might be) are obliged to adhere to the principle of equal treatment, which lies also in adopting measures for protection from discrimination.

In this connection it must be mentioned again, that the Anti-Discrimination Act in the provisions of § 2 sets out that direct discrimination is the way of acting or failure to act in which a person is, was, or would be treated less favourably than another person in a comparable situation. A seemingly neutral regulation, decision, order or practice, which set one person at a disadvantage in comparison with another person may be considered indirect discrimination.

3.2.3 Houses of lower standard in Bánovce nad Bebravou – an opinion poll

The town hall in the town Bánovce nad Bebravou decided to tackle the issue of reconstruction of three blocks of flats on the street "K Nemocnici" in a somewhat peculiar way.

On 14. November 2009, at the time of elections into representations into self-government regions, the citizens of the town were given a possibility to vote about the eviction of approximately 700 citizens predominantly of Roma nationality from the blocks of flats located in the centre of the town in an opinion poll.

Originally, the inhabitants of Bánovce should express their opinion on the issue of the location and construction of new flats for the inhabitants of the blocks of flats in a referendum, but in the end, the representation due to financial reasons opted for a public inquiry, which was used only by 22,2 % of eligible voters of the town, and it was thus not clearly decided, where the flats ought to be constructed. Also despite such results the town called a tender for the reconstruction of the demolished blocks of flats in the centre of the town with the condition that the company to win the competition, would apart from reconstructing the flats have to also safeguard substitute housing for the inhabitants, however, with permanent residence outside the territory of the town. The criticism of non-governmental organisations promoting the observance of human rights of national minorities in this case related to the fact that the town in this way got rid of the responsibility to tackle the critical situation of its inhabitants. The subject of criticism was also the fact that the constructor, while letting the flats, will verify the capability of future tenants to pay rent in the long run and pay for the services in connection with the usage of flats and to respect the statement of the town Bánovce nad Bebravou to tenants, which would mean that the blocks of flats after reconstruction would be only inhabited by the minimum of original tenants. The case is being investigated also by the Office of the Plenipotentiary of the Slovak Government for Roma communities (Office of the Plenipotentiary).

The Centre asked the mayor of Bánovce nad Bebravou for a statement to this case. According to their written statement the municipal council by Resolution No. 21/2009, point B/22 (the original Resolution No. 20/2009 point C/1) is obliged to call a tender for the renovation of apartment houses. The result of the tender was according to his words discussed also at the meeting of the municipal council on 23. February 2010, at which the issue of Roma community was repeatedly and duly discussed in the presence of the citizens. The municipal council noted also the informative report on the condition of the Roma community on the street "K Nemocnici" in Bánovce nad Bebravou.

On the one hand the town with the aim of tackling the issue of marginalisation of Roma community by Resolution No. 22/2010, point B/13 passed the Concept of solution of the problems of Roma community in the years to come, on the other hand the initiative of the town to evict the inhabitants of the said blocks of flats outside the territory of the town according to conditions of the tender is still evident, which according to Resolution No. 21/2009 of 15. December 2009 should be called by the mayor of the town until 31. January 2010 at the latest.

3.3. Right to education

The right to education is governed at the international level under Articles 13 and 14 International Covenant on Economic, Social and Cultural Rights, in Articles 28 and 29 of the Convention on the Rights of the Child, in Article 2 Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as in Article 14 of the Charter of Fundamental Rights of the European Union.

At the national level the right to education is embodied in Article 42 of the Constitution of the SR, according to which the right to education is acknowledged to everybody, whereby citizens have the right to free education provided at primary and secondary schools.

In 2009 complex legislative changes of the school system were further carried out, which started in 2008 the adoption of Act No. 245/2008 Coll. on Upbringing and education (School Act) as amended on Upbringing and Education.[90]

[90] Act No. 568/2009 Coll. on Life Long Education and on amending and supplementing certain other laws
Regulation of the Ministry of Education of the Slovak Republic No. 330/2009 Coll. on the School Boarding Facilities
Regulation of Education of the SR No. 282/2009 Coll. on Secondary Schools
Act No. 496/2009 Coll., amending the Act No. 131/2002 Coll. on Universities and on amending and supplementing certain other laws as amended

3.3.1. Approval of individual study plans within university studies

The basic legal regulation in the area of university education is Act No. 131/2002 Coll. on Universities as amended (Act on Universities). Despite the fact that education is provided at universities in form of credit system, which allows to set up a certain study plan, Act on Universities allows under § 100 especially students with disabilities to study according to an individual study plan.

Considering the fact that the Act does not exactly govern the conditions of passing individual study plans in cases of students with disabilities, the Centre was interested whether this way of studying was used at selected universities. More specifically, whether the internal rules of universities and its departments encompass the possibility to pass individual study plan to students, who ask for this, under what circumstances it is possible to pass such an application and whether the universities recorded any complaints filed by students, concerning to the refusal to pass an individual study plan. We directed our questions to the universities in regional capitals.

The majority of universities answered the question regarding the rules of passing individual study plans in internal regulations, that the rules of the universities did not directly govern this area, since it is governed in study regulations at particular departments. Nearly every university stated that the students studying in a credit system should set up their personal study plan. All universities confirmed that in well-founded cases the deans or vice deans of particular departments may pass individual study plans. Some universities stated also

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Regulation of the Ministry of Education of the SR No. 405/2009 Coll., supplementing No. 319/2008 Coll. on Recognition of an Alternative to School Leaving Examination in a Foreign Language as amended by Regulation No. 269/2009 Coll.

Act No. 317/2009 Coll. on Pedagogical Staff and Professional Staff and on amending and supplementing certain other laws

Regulation of the Ministry of Education of the SR No. 308/2009 Coll., amending the Regulation No. 306/2008 Coll. on Kindergartens

Regulation of the Ministry of Education of the SR No. 306/2009 Coll. on School Children Club, School Centre for Hobbies, Centre for Free Time, School Farm and Centre for Vocational Practice

Regulation of the Ministry of Education of the SR No. 269/2009 Coll., amending the Regulation No. 319/2008 Coll. on Recognition of an Alternative to School Leaving Examination in a Foreign Language

Regulation of the Ministry of Education of the SR No. 236/2009 Coll. on School Dormitory

Regulation of the Ministry of Education of the SR No. 231/2009 Coll. on Details Regarding the Organisation of the School Year at Primary Schools, Secondary Schools, Primary Art Schools, Practical Schools, Vocational and Training Schools and at Language Schools

Act No. 184/2009 Coll. on Vocational Education and Training and on amending and supplementing certain other laws

Regulation of the Ministry of Education of the SR No. 306/2008 Coll. on Kindergarten

Act No. 245/2008 Coll. on Upbringing and Education (School Act) and on amending and supplementing certain other laws

Act No. 37/2009 Coll., amending the Act. No. 245/2008 Coll. on Upbringing and Education (School Act) and on amending and supplementing certain other laws as amended by Act No. 462/2008 Coll.

the examples and citations from study regulations and the reasons for individual study plan for those students who apply. Among the reasons they stated for example pregnancy and maternity of female students, health reasons, sports representation, or participation in study programmes abroad.

Considering the responses it is obvious, that every application is assessed individually. None of the universities has investigated a complaint so far, which would relate to the refusal to pass an individual study plan. Some universities (for example Matej Bel University in Banská Bystrica) stated that there were coordinators working at particular departments for the credit system as well as for students with disabilities, as well as study advisors, who may help students set up their study plans. All universities confirmed that applications filed by students for individual study plan were passed.

Based on what is mentioned above, we may state that universities had no reservations to making it possible for students to study according to individual study plans.

3.3.2. Funding of private centres of special pedagogical consulting

Special pedagogical consulting centres are established under § 130 and 131 Act No. 245/2008 Coll. (School Act). The priority objective of these centres is to provide professional services to children with disabilities and to children with special needs. Private facilities of this type safeguard the process of school integration in kindergartens, primary and secondary schools. They take care of the regular diagnostic and therapeutic process, so that the can attend school. The clients of these centres have safeguarded the services and care of a psychologist, special pedagogue, speech therapist, rehabilitation and social worker. The employees of the said centres also carry out in-field work; and visit children, pupils and students directly in schools.

In April 2009 the National Council of the Slovak Republic passed the amended (Act No. 179/2009 Coll.) Act No. 597/2003 Coll. on the Financing of Primary Schools, Secondary Schools and School Facilities as amended. At the same time with the said law, a motion of the Members of Parliament modifying the original wording, there was amended also Act No. 596/2003 Coll. on State Administration in the School System and Self-Government as amended, in which detailed rules for financing of private art schools, language schools, kindergartens, special kindergartens and school facilities, were determined according to which the municipalities in the period years 2010 and 2011 shall provide for a church primary art school pupil and a church language school student, a child in a church kindergarten and church

school facilities a subsidy amounting to at least 88 % of the subsidy provided for a primary art school pupil, language schools student, child in a kindergarten or a child in similar school facilities in the establishers competence of the municipality.

The Association of private special pedagogical consulting facilities (Association) is of the opinion - which has been reported to a number of responsible institutions including the Centre - that the said content of the provision of § 6 par. 12 letter g) Act on State Administration in the School System and Self-Government in the wording of this amendment violates several legal regulations (the equal treatment principle embodied in the Constitution of the SR, as well as principle of an equal position of schools and school facilities regardless of the establishing authority defined under the School Act). They justified their opinion by stating that such provision fails to guarantee the minimum amount of subsidy for private special pedagogical consulting centres, which self-governance should provide to such facilities and the amount of subsidy is determined by the self-governance solely based on their decision.

The Centre asked selected private centres about the possible impacts of the amendment. More specifically, if the situation has changed in the area of financing personal centre after the entering into effect of the amendment (1. September 2009), how are the private centres financed and or if they have any support by the self-government region or municipality.

All private centres of specialised pedagogical consulting agreed that there is "violation of the equality principle in relation to private centres of specialised pedagogical consulting under Act No. 179/2009 Coll. The stated wording creates the conditions for violation of the principle of equality in financing facilities, since it fails to exactly determine the amount, which the facility must be provided from the amount sent from the state treasury, i. e. it may range from 1 Euro up to 100 % of the provided amount".

The answers we were delivered revealed that in practice the financing of private centres is carried out in form of assistance provided in form of contributions from the municipality based a report on the number of clients aged below 15 years age and by the self-government region based on a report in the number clients aged above 15 years. Private centres stated that after September 2009 they had to come to terms with limitations related with crisis measures.

Private centres in Nitra and Košice, however, stated that in 2010 the subsidies for their activities shall not be restricted and that they shall be provided with a full amount. The private

centre in Levice stated on the contrary, that in 2010 they will only be provided with a subsidy by the town amounting to 40 percent of the necessary finances.

The information stated above clearly shows that the current way of financing of private special pedagogical centres requires definite regulation, or direct financing from the state treasury.

3.4. Right to social services

The right to social services, or to access to social services results from the right to social security, which is at the international level guaranteed under Article 9 International Covenant on Economic, Social and Cultural Rights, under Article 34 of the Charter of Fundamental Rights of the EU and under Article 12 of the European Social Charter and of the Revised European Social Charter. The right to take advantage of social services is separately governed in Article 14 European Social Charter and Revised Charter.

The observance of these international conventions was at the national level reflected in Article 39 of the Constitution of the SR, in which the listed right to appropriate material security in old age and incapacity to work, as well as in case of death of the family provider, must be without doubt perceived as the right to social security. Paragraph 2 Article 39 of the Constitution of the SR thus governs the right to such assistance, which is inevitable to safeguard basic living conditions, and thus social assistance. The means to apply the social rights governed in Article 39 of the Constitution of the SR are the social services.

The social services were during year 2009 specific governed by Act No. 448/2008 Coll. on social services and on the amendment of Act No. 455/1991 Coll. on Trade Licensing as amended.

The MLSAF SR expected from the Act on Social Services, which entered into effect on 1st January 2009, that the adoption thereof shall provide for a greater variability of social services. Using an individual development plan of the provision of social services ("tailor made" services to meet the needs of a client) the client will become more active. The Act introduced new types of social services and expert activities, as well as social services targeted at selected groups of clients, community planning, increasing of quality and professionalism in the provision of social services, accreditation of education programmes. The provision of social services should thus interconnect health care and social care. The Act governs the safeguarding of independent supervision over the provision of social services, increased objectiveness in assessing the dependence on caretaking service and dependence on the assistance other person

(Barthelov index) and guaranteed access of registered subjects to financial contribution at selected social services (based on the decision the self-government unit (region) or municipality on the dependence of the citizen).

Considering the fact that at the beginning of 2009 Slovakia faced a complete reconstruction of the provision of social services,[91] we shall deal briefly with that, as well as with the experience gained in practice after a year effect Act on Social Services.

Considering some negative signals, but also direct experience with the admission of clients to assisted living centres including retirement homes and lodging houses for seniors, the Centre within the application of the right to access to social services focused on this specific issue.

3.4.1. Act on Social Services in practice

The NC SR passed the Act No. 448/2008 Coll. on social services and on the amendment of Act No. 455/1991 Coll. on Trade Licensing (Act on Social Services) on 30th October 2008 with effect from 1st January 2009.

The adoption of the Act on Social Services was accompanied by objections coming from some self-governments as well as non-governmental organisations, which expressed their disapproval of some provisions.

The experience with the law in practice confirmed that some objections, which accompanied the adoption of the Act were substantiated. Private providers of social services object to the introduction of discriminatory elements at the selection of the provider of social services, since the citizen does not choose the social facility himself, but through the SGU and municipality, which, according to their opinion prefer state facilities and for lack of finances potential clients must wait and are entered on waiting lists and are not being placed into private facilities. According to the § 6 par. 1 Act on Social Services a natural person may have the right to select the services, but there is an obligation strictly set by the SGU or municipality to meet certain conditions while safeguarding services.[92]

Despite the fact that according to international standards women's asylum houses (shelters for women escaping torture and pregnant women) should respect their anonymity, safety and should be free of charge, according to the Act on Social Services women in need must report to the SGU and municipalities, which select an asylum facility for them.

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[91] § 111 of Act No. 448/2008 Coll. on Social Services amending and supplementing the Act No. 455/1991 Coll. on Business in Trade abrogates the Act No. 195/1998 Coll. on Social Assistance as amended.

[92] Reply of the self-government unit of Žilina of 8th March 2010.

Self-government units (regions) and municipalities point out to further problems with the implementation of the Act on Social Services. This is an especially long and demanding administrative process for the citizens applying for the assessment of dependence on a social services and later applying for the safeguarding of these services, mainly if those are citizens with severe disabilities, diseased and dependent on the assistance of others, inequality in the covering of payments for social service for the citizens, who are dependant on such service under the new conditions in comparison with citizens, who had been placed according to Act No. 195/1998 Coll. on Social Assistance – the payments are different for the same type of care. The Act on Social Services governs the provision of social services predominantly to adult citizens, Act No. 195/1998 Coll. on Social Assistance, however, dealt also with children under 18 years of age and governed the covering of payments for children (children for example did not pay for housing, etc.), the *supplementary services* include also such activities as cleaning, washing, ironing, maintenance of bedding and cleaning of clothes; this name of the former "maintenance" is problematic for clients of outpatient social services, who spend less than 4 hours in facilities, and the situation is not clear in case of those citizens, who had been provided with social services under the agreement on a yearlong stay according to Act effective until 31st December 2008 in facilities providing social services, established by the municipalities. If the said facilities are in some cases not financed from purpose-bound subsidies from the Ministry of Finance of the SR, the municipalities cannot operate them as facilities providing social services within their budget. The Act on Social Services however, in § 106 par. 6 sets out the legal obligation to continue providing social services to such citizen (natural person).[93]

3.4.2. Conditions in facilities providing social services for the elderly

One of the priorities of the Centre within monitoring and research in 2009 was to monitor the observance of the human rights and of the principle of equal treatment of clients placed in facilities for senior citizens established by the self-governments.

The background for the monitoring were especially experiences with complaints from clients of these facilities concerning the failure to observe fundamental rights and freedoms including discrimination and diverse forms of ill-treatment, delivered to the Centre, as well as the suggestion of the lecturers at the Faculty of Social Studies of the Higher School in

[93] Reply of the self-government unit of Žilina of 8th March 2010.

Sládkovičovo to monitor the selected facilities providing social services from the aspect of the observance of the clients´ s rights.

The aim of the Centre therefore was to monitor the observance and protection of human rights and of the principle of equal treatment including diverse forms of ill-treatment[94] with the clients of the facilities providing social services for seniors established by the self-governments, as well as the monitoring of prevention of these phenomena in selected facilities with regard to the impact of the Act on Social Services.

The monitoring of the facilities took place in form of personal visits of the employees of the Centre. The nationwide coverage was safeguarded by using the personal capacities of the regional offices and the research employees of the headquarters in Bratislava.

16 facilities were visited – two facilities in the territorial competence of every regional office and of the Centre. The establisher thereof was the SGU, village or town. Considering the selected method [95] it was necessary that the visit was paid always by two employees of the Centre. The in-field collection of data was carried out in January and February 2010, after the year since the coming into effect of the Act on Social Services.

Considering the limited scope of the Report we shall only highlight the most important findings. Based on the monitoring it may be stated that no serious violations of human rights of clients by the caretakers were recorded and the provided social services were in compliance with conditions of preserving human dignity.

The visited facilities for senior citizens are mostly located in a nice environment with a garden, park, or other space suitable walks and nice to sit down in and relax. Although the accessibility of some facilities is slightly problematic, since they are located in the suburban areas, the inhabitants and clients actually prefer the calm and quiet environment. The barrier-free access is solved in form of lifts, considering the fact those buildings are usually older.

The majority of facilities however, provides care to more than 100 clients, in some cases even 240, which, despite the provided high quality services, may at the beginning make

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[94] Ill-treatment means behaviour without respect for human dignity. It may adopt the form of torture, cruel, inhuman or degrading treatment or punishment, however, also the form of lacking respect for human rights, ones autonomy, privacy or right to participate in the decisions made about a person´s life, or the abuse of being dependent on the provided care or deepen the dependency.

[95] In the course of the visit the couple made a standardised interview with the director of the facility or other responsible employee and if possible, two short standardised interviews with randomly selected clients, observed the conditions in the facility and shortly inspected the internal regulations of the facility and client documentation. Notes were taken and records made of the interviews with the managing staff and the clients and of the observances. The facilities were selected on the recommendations of the Centre and the Elderly Assistance Forum.

an impersonal and stressful impression on the clients in comparison with their home environment. In the rooms there were usually on, two or three beds.

The facilities had well elaborated organisational, operational, working and home rules as well as a rules for storing of personal belongings in place. The Code of Ethics was not elaborated and in place in some facilities, but was part of the home regulations. The records of corporal and non-corporal forms of preventing clients from directly threatening the life or health of other clients or other persons in some facilities were not kept. In case corporal and non-corporal forms of prevention were needed, that would usually include restraints installed at beds and tranquilisers prescribed by a physician. In one facility in part of the assisted living centre they would use straps, because the client was aggressive and threatened his environment.

Another shortcoming determined in some facilities was the missing signalling equipment at the beds, by which the clients could call the caretakers when needed.

The directors of the said facilities welcomed the interest of the Centre to examine the impacts of legislative changes in the area social services for senior citizens a year after the entering into effect of the Act on Social Services in practice. They drew the attention to possible pitfalls, which the Act brought about and pointed out especially the complicated and lengthy system of reassessing the condition of clients according to their level of dependence, which in the majority of cases fails to reflect the current condition of the client, since assessment physicians reassess clients only according to submitted documents, without seeing or examining the clients in person. Repeated assessment of the clients according to the new system shall require, apart from other measures, also an increase in personal capacities and at the same time in financial costs in the facility. What proved rather unhelpful to the clients was § 8 par. 4 of the Act on Social Services, which states that if a natural person has a valid decision on dependence on a social service, the provision of which he/she applies for, the municipality or SGU in the extent of their competences shall provide or safeguard the provision of social services stated in § 34 to 41 (including facilities for senior citizens) at the latest within 60 days from the delivery of the application for concluding a contract on the provision of social services to a municipality, SGU or legal entity established or founded by a municipality or SGU. This would in the end mean that the client could be placed in facilities, which are located far away from their former home or the home of their family, whereby the tendency today is to allow an elderly person to stay in their natural environment as long as possible.

The directors would welcome improved cooperation and communication with the departments of social affairs at self-government units (regions) and towns, as well as a

clarification of their respective competences. The directors also pointed out the absence of in-field social work with the aim of selecting clients, who should be provided with care in facilities for senior citizens. The staff of these facilities specialising in clients with mental disorders expressed certain concerns that the security in the said facilities might be threatened.

The clients in a semi-formal interview expressed mostly satisfaction with the provided care and observance of human dignity and appreciated especially that the staff was willing and helpful.

3.5. Right to health protection

The international legal regulation of the right to health relates to Article 13 of the European Social Charter and the Revised Social Charter, whereby this topic is governed also in a number of conventions of the WHO. In Article 12 International Covenant on Economic, Social and Cultural Rights this right states that "states recognise the right of every person to achieve the highest achievable level of physical and mental health".[96]

The right to the protection of health is at the national level embodied in Article 40 of the Constitution of the SR. However, based on Article 51 of the Constitution of the SR, all relations under Article 40 of the Constitution must be governed by law.

3.5.1. The rights of the patient

The rights of patients are embodied in many international documents, predominantly in European Charter of Patients' Rights.

The most important rights of patients in the Slovak Republic are declared in the Charter of the Rights of Patients in the Slovak Republic (Charter) from the year 2001. The objective of the Charter is to help citizens understand their fundamental human rights and freedoms in the area of health care. The rights of patients in the Slovak Republic are embodied and specified in of a number of Acts, whereby the right to health care is defined as the right to take advantage of the health care system of and health care services, which are in a state available.

In the matter of the patients´ rights enforcement the Centre turned to the Health Care Supervisory Authority (the Authority).

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[96] Kráľ, J.: Ľudské práva v Slovenskej republike [Human Rights in the Slovak Republic]. [Bratislava : Bonus Real], 2004, p. 112.

In 2009 the authority handled the total of 1 846 complaints and until the end of the year 1 581 of them were finalised, which is 85.6 %. Compared to the year 2008 there was an increase in the number of received complaints by 182. As regards their structure, 1 836 complaints were qualified as motion, 9 complaints were qualified as complaint and 1 motion was a petition.[97]

As regards the subject, the most incentives dealt with a proper provision of medical treatment – 66.8 %. To this end the authority carried out 1 049 supervisions, out of that 803 on the spot supervisions – in the health care providing facility. In the framework of the supervision it was verified that 19.6 % of incentives were substantiated and 80.4 % (843) of incentives were unsubstantiated. As regards the structure of the incentives and complaints received by the Authority in 2009 there was predominantly: dissatisfaction with the therapy procedure, whereby most incentives related to death, unethical approach of the health care provider to patients, shortcomings in the organisation of work.

The Authority in 2009 imposed in the area of the health care provision 119 fines directly to the providers of health care and 78 measures to eliminate the determined shortcomings. In 45 cases the Authority filed a proposal to impose sanction measures to self-government units (regions). The Authority filed 3 criminal information: in connection with the proper provision of medical treatment there was 1 criminal information and 2 criminal information regarding suspected unlawful practices used by a physician. In the framework of the activity of an expert committee of the head of the Authority established to assess serious and unclear cases, which arose in connection with the examination into the provided health care, in 2009 4 expert committees discussed 9 cases. Out of those 2 were discrepancies (contradiction between the finding of the autopsy and the clinical diagnosis) and 7 complicated cases in connection with the examination into the provided health care.[98]

According to the statement of the Authority in 2009 the right to properly provided health care in comparison with the previous period, according to statistical indicators of the Authority, improved.

The Centre also asked the Ministry of Health of the Slovak Republic (MH SR) to produce a statement. According to the response of the MH SR, department of control, governmental audit and complaints, it recorded no increase in 2009 complaints objecting

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[97] Source: https://lt.justice.gov.sk/Document/DocumentDetails.aspx?instEID=1&matEID=2675&docEID=112476&docFormEID=-1&docTypeEID=1&langEID=1&AspxAutoDetectCookieSupport=1. Cited on 13th April 2010.

[98] Reply of the Health Care Supervisory Authority of 3rd March 2010.

discrimination in the area of the health care provision or of access to medical records in comparison with the year 2008.

3.5.2. Access to medical records – judgement of the European Court of Human Rights

The European Court of Human Rights in of the decision in the case K. H. and others against the Slovak Republic of 28th April 2009 stated that there was violation of the right of the female claimants to respect for private and family life under Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) and the right to access to court under Article 6 par. 1 of the European Convention, as the female claimants were not allowed to make photocopies of their medical records, which impeded their situation while filing an action for damages.[99]

The Roma women required access to their medical records, since they believed to be unlawfully sterilised. Eight Roma women, who could not conceive after a cesarean section, since the summer of 2002 in the hospitals in Krompachy and Prešov required access to their medical records. The hospitals refused to provide them and their female legal representatives with full access to medical records (including the making of photocopies) and the women turned to relevant national courts and later also to the Constitutional Court of the SR. The Slovak courts their complaints were rejected with the reasoning that they only have the right to inspect the medical records and take notes, however, not to make photocopies. The Roma women in August 2004 turned with a complaint to the European Court of Human Rights (the European Court). In their complaint they claimed that refused access to medical records in form photocopies caused violation of their rights according to of the European Convention, specific Article 8 (guaranteeing the right to private and family life) and Article 6 par. 1 (guaranteeing the right to access to court). The Roma women claimed that access to their medical records in form making photocopies was inevitable with regard to security of evidence in eventual judicial proceedings, which they planned to initiate against the hospitals. They requested the photocopies of their medical records because they wanted prevent the loss or damage thereof. The medical records of some Roma women allegedly got lost in the meantime. The Slovak Government in response objected that the refused access to medical records was necessary, since the hospitals wanted to prevent the abuse thereof. The European Court stated that access to medical records represents part of the right to the respect of personal and family life. The European Court remarked that there was no relevant reason to refuse their making photocopies

[99] Judgement of the European Court of Human Rights in the case K.H. and others vs. the Slovak Republic (Complaint No. 32881/04).

of the medical records, which could under the then valid Act inspected and notes could be taken. They also saw no reason why and how the patients could abuse data from their own medical records. The European Court also recognised the argument of the claimants that without the photocopies of their medical records they did not have sufficient information on their health condition, which impeded their position when filing claims for damage compensation. Due to this reason the European Court decided on the violation of rights guaranteed under Article 8 and 6 par. 1 of the European Convention and adjudged every claimant a just satisfaction as well as compensation of expenses.

Although the Slovak Republic filed an application with the European Court for a repeated review of investigation of this case by the Grand Chamber, the senate of five judges of the Grand Chamber of the European Court on 6th November 2009 did not satisfy this application and, consequently, the judgement entered into force.

3.5.3. Providing first aid medical services in regions of Slovakia

According to the Act No. 576/2004 Coll. on Health Care, services related to the provision of health care and on amending and supplementing certain other laws, one of the forms of health care is the first aid medical service.

The medical service of first aid is in § 2 par. 20 of the mentioned Act defined as health care to safeguard continual accessibility to general outpatient care and outpatient care in the specialist branch of dentistry. In the framework of the general outpatient care the medical service of first aid is provided at least in the extent minimum public network of providers.

Act No. 578/2004 Coll. on Health Care Providers, health care staff, professional organisations in healthcare sets out and defines the minimum public network of providers, a firm network of providers, final network of providers and public network of providers (§ 5 to § 6a).

The minimum public network of providers is since 1st January 2009 governed under regulation of the Government No. 640/2008 Coll. on Minimum public network of health care providers, which directly stipulates the operation of first aid medical services according to the number of inhabitants of the Slovak Republic.

In connection with that in 2009 the society and in the media discussed the issue of first aid provision. Also the Centre received motions, in which was objected especially the accessibility of this health care for the disadvantaged groups of inhabitants.

Based on the applications, the Committee of the NC SR for Health Care in March 2009 submitted to the Ministry of Health of the Slovak Republic an analysis of first aid provision in Slovakia. The Ministry stated in this analysis 3 possible model solutions of first aid provision. The first model presumed the abolishment of first aid provision, whereby the accessibility of non-stop health care be safeguarded by a specific provider, with has a contract made with a citizen on the provision of health care. The second model presumed that the competence to establish and manage a system of first aid provision will remain with the SGU of with small modifications, as it is today, and the last model expected such definition of geographic accessibility and healthcare district, on the basis of which a stabile network of first aid medical services with an exactly determined location is created.

Based on the facts mentioned above, the Centre addressed the MH SR and all self-government regions. To the question in what stage was the proposed regulation of first aid provision the Ministry replied that at present it has not been decided so far which of the stated models shall be implemented and applied. The provision of first aid has not changed and is managed by self-government regions. The Ministry is of the opinion, that "first aid provision is relatively over-dimensioned, which relates to local pressures to provide such services without a real understanding of the functioning of this system, and leads to dissatisfaction of physicians at first aid provision due to higher work load and lower income of the office of first aid provision and thus to lower remuneration". The Ministry of Health of the SR initiated a working meeting of all those engaged in first aid provision, and the representatives of self-government units (regions), Slovak Medical Chamber, Chamber of Dentists, Association of First Aid Providers in the Slovak Republic as well as the Association of Private Practitioners in the Slovak Republic, aimed at finding a common solution to the functioning of first aid provision acceptable for all stakeholders.

The Centre was also interested in how the prepared regulation of first aid provision will cover the issue of accessibility for the disadvantaged groups of inhabitants. The MH SR is of the opinion, that accessibility is adequate in relation to the disadvantaged groups of inhabitants.

In self-government units (regions) the Centre required information regarding the accessibility of first aid provision in the given self-government region and on the number of complaints received by the self-government region concerning the provision of the first aid.

In the SGU of Banská Bystrica the accessibility of first aid provision was assessed as optimal. The Self-government region cooperates with all relevant entities. They suggested that the present network of first aid provision should be maintained while respecting the geographical and demographical structure of the region. The SGU received 3 complaints on the

unlawful practice of a female physician, operation of first aid provision and the failure to adhere to the roster in first aid provision.

The Bratislava self-government region refuses an overall discontinuation of first aid provision. The reasons given by the region: there is a high migration, high density of inhabitants and a lot of students. They pointed out the fact that "from the point of view of particular regions it is thus obvious that it is impossible to propose a uniform solution of first aid provision in the whole republic and thus the organisation thereof cannot be uniform". The response of the self-government region of Bratislava includes a detailed description of first aid provision, as well as conclusion, that first aid provision in the region of Bratislava is slightly under-dimensioned, which causes worse accessibility in part Bratislava (the district of Bratislava IV and part of the district of Bratislava III) and inhabitants of the district of Senec. Inappropriate provision of first aid was objected in 14 complaints.

The reply of the SGU of Košice stated that the accessibility of first aid provision meets the needs of all groups of inhabitants. The self-government region received 5 complaints, dealing with first aid provision itself and also the failure to meet the obligations of the provider of first aid and the failure to enter the service.

In the SGU of Prešov first aid provision is safeguarded in every district town, which is also reflected in its proposal, which the Ministry of Health of the SR submitted as a comment to the regulation of first aid provision. The Prešov Self-government region did not register any complaint concerning the provision of first aid.

The accessibility of first aid provision for all inhabitants of the SGU of Trenčín is safeguarded at least in every the district by one provider of medical service of first aid for adults, medical service of first aid for children and youth and in four districts of the region have a specialised dental service first aid. The self-government region of Trenčín was addressed one complaint on provider of first aid.

The accessibility of first aid provision in the field of general medicine in the SGU of Trnava is not problematic even for the disadvantaged groups of inhabitants. The SGU of Trnava further noted in its reply that the "department of health care and human pharmacy of in the self-government region of Trnava firmly believes that the first aid provision with the simultaneously existing network of first aid stations reflects the efflux financial resources from public health insurance and is abused by the patients, who pay no attention to their health condition". In the course of the year 2009 the SGU of Trnava received 3 complaints relating to the methods of first aid provision.

The SGU of Žilina participated in the analysis of the provided first aid for the MH SR, part of which were also proposals to solve the first aid provision issues in the region of Žilina, which took into consideration the demographic and geographic conditions of the region while maintaining accessibility of the provided health care. The accessibility of first aid provision in the region of Žilina is based around the needs of inhabitants and is assessed as appropriate. The analysis performed by the SGU in 2009 revealed that first aid provision after 22.00 p.m. is used minimally and first aid nearly not taken advantage of after midnight. The self-government region of Žilina received 3 complaint related especially to the fees paid for first aid provision.

From the facts mentioned above it results that regulation of the first aid provision requires broad engagement of all stakeholders, whereby the decisive competences would remain with the self-government region, which is aware of all specific features of the region in question, which may be taken onto consideration in proposing the regulation of first aid provision and the operation thereof.

3.5.4. National programme of sexual health in the Slovak Republic

Already in December 2008 the Ministry of Health of the Slovak Republic proposed to cancel the task to elaborate a "National programme of sexual and reproductive health protection", assigned by the Government of the Slovak Republic in 2003.[100] This issue was definitely decided on by the Government of the SR on 21st January 2009. Instead of a cardinal document, the MH SR was proposed to tackle the issue of sexual and reproductive health within the so called "National programme of woman and mother care". The said programme was supposed to be submitted to be discussed by the Government until 30. June 2009.[101]

A number of non-governmental organisations sent shortly after the publishing of the intention of the Ministry of Health of the SR a joint suggestion to the proposal and asked the Slovak Government to come back to the tackling of the issue of protection of sexual and reproductive health through a complex programme document. The elaboration of a

[100] The Ministry of Health of the Slovak Republic decided to do so after it had unsuccessfully submitted the draft in March 2008 (after 4 years) to the government negotiations. Already in the course of the comment procedure (29. 11. - 14. 12. 2007) there were many essential comments raised to the material, coming from the obligatorily commenting entities, but also from a number of civic associations and church organisations. The crucial controversies of the original material included the areas as planned parenthood, safe abortion and the related services, sexual and reproductive health of the youth, sexual education to promote sexual and reproductive health, prevention and management of infertility or reservations concerning the funding of the National programme realization and reservations as to the ambiguity and inaccuracy of the terminology and of the proposed solutions.

[101] Resolution of the Government of the SR No. 56/2009. Available at: http://www.rokovania.sk/appl/material.nsf/0/5C55F931E86939C8C125754C00446888/$FILE/Source.html and http://aktualne.centrum.sk/domov/zdravie-skolstvo-spolocnos t/clanek.phtml?id=1173702. Cited on 13th April 2010.

"substitute" document aimed "only" at the protection of reproductive health, would, according to their opinion only represent an instable solution contrary to the fundamental principles of legal protection of human and women's rights, since efficient protection of sexual and reproductive health requires a complex and systematic approach.[102]

The draft "National programme of women´s health care, safe maternity and reproductive health in the Slovak Republic" was submitted by the MH SR on 14th May 2009 to intradepartmental commenting procedure.[103] As stated in submission report to the material, the purpose and reason of the submitted draft national programme was to further elaborate the strategy of the World Health Organisations in the area of reproductive health.[104] The contents of the draft national programme covered three areas: the area of care provided to women from childhood through adolescence until old age, the area of safe motherhood and the area of reproductive health. The priority objectives of the national programme included: i) improvement of the quality and accessibility of health care services in the area of reproductive health, ii) monitoring and control of sexually transmitted diseases (STDs) including HIV/AIDS, iii) prevention of cancer and the screening thereof and iiii) prevention and management of domestic violence and sexual exploitation, as well as prevention of trafficking in women in compliance with the valid legislation and international documents, which are binding on the Slovak Republic in order to achieve maximum potential of health and quality life for all Slovak inhabitants.

To the submitted proposal non-governmental organisations submitted a "Joint suggestion of the group of non-governmental organisations to the draft National Programme of women´s health care, safe maternity and reproductive health, submitted to the Ministry of Health of the SR (material No. 12568/2009-OZS)",[105] which included 4 general comments and

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[102] See the text including the public comment at: http://www.oad.sk/?q=sk/node/246 or http://www.sme.sk/c/4230771/mimovladky-nesuhlasia-s-nevypracovanim-programu-sexualneho-zdravia. html. Cited on 13th April 2010.

[103] Source: https://lt.justice.gov.sk/Material/MaterialWorkflow.aspx?instEID=1&matEID=1487&langEID=1& Aspx AutoDetectCookieSupport=1.

[104] The explanatory report further justifies : "The principles included in the World Health Declaration amended in May 1998 at the 51st General Assembly 'Health for all in the 21st century', which form the framework of healthcare provision policy of the Regional WHO Office in Europe (WHO Copenhagen, 1999) and are of fundamental importance for the creation of the strategy. The remaining documents, which were used as a background for drawing up the strategy include a Report on the United Nations International Conference on Population and Development (Cairo 1994) and the Global Assessment of the Implementation of the Action Plan of the Conference on Population and Development, presented at the Extraordinary UN General Assembly in New York (1999)." Available at: https://lt.justice.gov.sk/Document/DocumentDetails.aspx?instEID=1&matEID =1487&doc EID=57281&docFormEID=13&docTypeEID=4&langEID=1&tStamp=20090528085501810. Cited on 13th April 2010.

[105] Source: http://www.poradna-prava.sk/dok/HP%20MVO%20Nar%20program%20reprozdravie_MV_OaD_ Poradna_QLF_270509.pdf. Cited on. 13th April 2010.

18 comments to the single parts of the material - all comments were essential - as well as a number of incentive proposals.

Despite the fact that according to the opinion of the MH SR the elaboration of the material was aimed at a sensitive approach to all groups of the society and the submitted draft was in compliance with international conventions signed by the Slovak Republic, it was impossible to come to an agreement with the churches and other religious institutions. The majority of them repeatedly refused the said material as a whole and proposed the withdrawal thereof.

The MH SR realised that under these circumstances consensus will not be achieved within a reasonable time within the discussion in the whole society and therefore asked for a postponement of submitting the draft "National programme of women´s health care, safe maternity and reproductive health in the Slovak Republic" to be discussed by the Government until 30. October 2010.

One of the problems, which should be tackled within the national programme, is also the accessibility of contraception to all groups of inhabitants. The problem is accentuated in connection with the disadvantaged (less economically and socially affluent) groups of inhabitants. What is pointed out is their poor informedness, lack of financial resources etc., which prevent access to contraception. Based on the proposed national programme, the issue of contraception and the accessibility thereof should be tackled through the planned "Strategy of accessibility of parenthood planning services and all contraceptive methods for the broadest groups of inhabitants with special attention paid to the marginalised and threatened groups of female and male inhabitants until the year 2011". The long-term programmes of accessibility of contraceptive methods for various groups of inhabitants should be elaborated by the Ministry of Health of the SR gradually until the year 2014 (if the "National programme" is adopted this year).[106]

The MH SR in connection with the efforts to improve the health of the Roma population has since 2007 via selected regional offices carried out the public health care "Programme to support the health condition of the disadvantaged Roma community", coordinated by the Office of Public Health Care of the Slovak Republic. In the framework of the solutions of the mentioned programme there are (in the segregated and separated Roma settlements and localities) 30 community workers working in the areas of health education, who are responsible for the communication between the target group – the inhabitants of the

[106] Ibidem.

segregated and separated Roma settlements and localities - and practitioners, nurses, midwifes, public healthcare staff and improve the level of awareness across the community. The influencing of the community through community workers in the area of health education is aimed at several problem areas, such as of infectious diseases prevention (including vaccination), or protection of sexual and reproductive health, education towards responsible parenthood, etc. The positive results gained in connection with the implementation of the programme will only be maintained in cooperation with the target group – the inhabitants of the segregated and separated Roma settlements, and to observance of principles healthy life style and active cooperation in the changing of their health and life situation.[107]

In this connection the Centre believes that the accessibility of contraception for the disadvantaged groups of inhabitants could possibly be solved also through the adoption of departmental temporary compensatory measures.

3.6. Right to environmental protection

The right to environmental protection is the fundamental right guaranteed under Articles 44 and 45 of the Constitution of the SR. According to these provisions everybody has the right to favourable environment, everybody is obliged to protect and improve the condition of the environment, o one shall imperil or damage the environment, natural resources; the State shall care for economical exploitation of natural resources, for ecological balance and on effective environmental policy, and shall secure protection of determined sorts of wild plants and wild animals. Details of the said rights and obligations are constituted by law.[108] Under Article 55 of the Constitution of the SR everybody also has the right to timely and exhaustive information on the condition the environment and about the causes and consequences of this condition.

The fundamental and determining constitutional and legal framework to specify the relationship between the protection of nature, or the environment in general and the use and enjoyment of property, is the provision of Article 20 par. 3 of the Constitution of the SR, according to which: “The ownership is binding. It shall not be misused causing injury to others or in contradiction with the public interests protected by law. The exercise of the property right must not be detrimental to human health, nature, cultural sites or the environment beyond the

[107] Ibidem.

[108] Act No. 543/2002 Coll. on the Protection of Nature and Landscape as amended (together with the Regulation of the ME SR No. 24/2003 Coll., implementing the Act No. 543/2002 Coll.), Act No. 24/ 2006 Coll. on the Assessment of Influences on the Environment and on amending and supplementing certain other laws as amended and a number of separate decrees.

scope laid down by law" along with par. 3 of Article 44 of the Constitution of the SR, according to which "No one shall imperil or damage the environment, natural resources and cultural heritage beyond the limits laid down by a law.". The relation between the usage of property and the protection of nature is tackled also by the Constitutional Court of the SR in its finding Ref. PL.ÚS 22/06, which reads that: *"measures resulting from bans and other conditions of the protection of nature limit, apart from the affected group of owners, also other legal persons, following the legitimate objective of protecting ecological stability and sustainability, renewal and rational exploitation of natural resources, since they, via their property directly or indirectly participate in the exploitation of the said natural resources, or have possibility to participate in the exploitation thereof, whereby the protection and preservation of these resources fosters the protection and preservation of the value of the property of the affected owners".*[109]

In the course of the year 2009 the society was dealing with a number of cases relating to the right to the protection of the environment. Among them there were also the shortcomings pointed out by the European Commission (in connection with "the endangering of Euro Funds") and the following legislative changes, cases pointing out the insufficient possibility of the public to participate in passing projects with a considerable impact on health and the environment, as well as problematic relations between the protection of the environment and the property rights, or the use of property.

3.6.1. Legislative changes

After the criticism expressed by the European Union (EU) regarding the insufficient transposition of European directives into the legal order of the Slovak Republic, Act No. 24/2006 Coll. on the Assessment of Influences on the Environment, effective from 1st September 2009, has been amended to comply with the relevant EU directives.

Amended provisions embody a new way to determine the proposed activities and especially their changes, which shall be subject to compulsory assessment, investigation proceedings or the issuance of opinions, whether the proposed activities/changes may have a considerably negative impact on the environment. In this connection, the Act was attached a new Annex No. 8a titled "Notification of the change of a proposed activity", which the complainant will be obliged to deliver to the responsible authority. Based on the filled in notification the responsible authority will decide, if that is a change which will be subject to

[109] Finding of the Constitutional Court of the Slovak Republic available at www.concourt.sk.

the assessment of the impact on the environment, or not. The issue of the criticised exclusion of citizens from proceedings to permit such activities regarding the protection of nature remains unsolved.

Other important changes in legal regulation of the environment include the new Act No. 286/2009 Coll. on fluorinated greenhouse gases and on amendment and supplementing certain other laws and the Regulation of the ME SR No. 314/2009 Coll., which applies the Act on fluorinated greenhouse gases. This Act was adopted in connection with the application of the Regulation of the European Parliament and of the Council (EC) No. 842/2006 on certain fluorinated greenhouse gases and the Regulation of the Commission, which were adopted for the enforcement thereof. The subject of the said regulation are the obligations of natural persons and legal entities that handle fluorinated greenhouse gases,[110] products and devices, the field of competences of state administration authorities and responsibility for the violation of the obligations imposed under the said law or a special regulation (mostly a Commission Regulation). It also sets out the conditions for preventing the leakage of fluorinated greenhouse gases, imposes an obligation to keep records and submit reports, governs the conditions to gain professional competences to handle certain fluorinated greenhouse gases. In connection with the adoption of this Act there were amendments also of other regulations, more specifically of Act No. 401/1998 Coll. on the Charges for Air Pollution, Act No. 478/2002 Coll. Act on Air[111] and Act No. 587/2004 Coll. on the Environmental Fund on amendment and supplementing certain other laws.

3.6.2. Waste dump in Pezinok

In the course of the year 2009 the society continued dealing with the case of the waste dump in Pezinok. The waste dump is located approximately 280 metres away from houses and 400 metres away from of the centre of the town. In the past, demonstrations and protest marches from Pezinok to Bratislava were organised against the dump. According to the activists the waste dump is in contrary to the zoning plan of the town. Those against the waste dump point out to the health consequences of such dumps and state that they are not willing to live on a regional landfill.

[110] Art. 2 point 1 of the Regulation of the European Parliament and of the Council (EC) No. 842/2006 of 17. May 2006 on certain fluorinated greenhouse gases (OJ EU L 161, 14. 6. 2006) as amended.

[111] Act No. 478/2002 Coll. on Air Protection amending and supplementing the Act No. 401/1998 Coll. on Charges for Air Pollution as amended (Act on Air)

On 22nd January 2009 the Ministry of the Environment of the Slovak Republic (ME SR) decided that the waste dump in Pezinok is constructed in line with law. The objective of proceedings outside the scope of appellate procedure was to inspect into lawfulness of the practice of the Slovak Environmental Inspection. The Ministry found no breach in the methods used and the decision passed by the Slovak Environmental Agency. The ME SR simultaneously revoked the interim measure, which they issued to the case on 25. November 2008 to the company Westminster Brothers. On 27. January 2009 the town of Pezinok and civic activists asked the Supreme Court of the Slovak Republic to change the decision of the Regional Court in Bratislava, revoke the integrated permit issued by the Slovak Environmental Inspection for the construction of the waste dump and returned the case to new proceedings. At the same time they asked for a delay in the enforceability of the permit to construct the waste dump, which would maintain the situation until a decision is passed on the lawfulness of the said permit.[112] On 25th February 2009 the director of the Slovak Environmental Inspection in Bratislava after a verbal proceedings connected with an inspection of the construction within the occupancy permit procedure stated that the waste dump in Pezinok was being constructed in compliance with project documents. The town of Pezinok did not take part in the verbal occupancy permit procedure connected with an inspection of the waste dump, since, according to deputy mayor of Pezinok it was not allowed to enter the land. On 17th April 2009 the SC SR suspended the operation of the waste dump in the vicinity of the town of Pezinok. The Resolution of the Supreme Court of the Slovak Republic reads as follows: *"The purpose of postponed enforceability is not a temporary regulation of the relation between the participants thereto until a final decision on the merits is made, but on the contrary, the extraordinary protection of some participants in proceedings from the effects of the contested and at the same time valid decision of the administrative body."* According to the SC SR in order to postpone the enforceability of the decision it is enough to state the reasonable concerns, that the complainant might suffer a serious damage. The SC SR thus safeguarded that it was not possible to dump waste on the dump in Pezinok and that despite the fact that it had been approved. On 28th May 2009 The SC SR revoked all permits related to the new waste dump, which were issued by the state authorities, and qualified them unlawful. The court decided that the whole licensing procedure must be started anew and in compliance with law.

[112] Source: http://www.vyvlastnenie.sk/kauzy/pezinok-skladka/.

On 28th October 2009 the Constitutional Court of the Slovak Republic postponed the enforceability of the judgement of the SC SR of 28th May 2009, until the complaint of "EKOLOGICKÁ SKLÁDKA" is decided. The company objected violation of its constitutional rights. The decision of the Constitutional Court of the SR was understood by the "EKOLOGICKÁ SKLÁDKA" in a way that made them believe they could dump waste on the rubbish dump, what they really did from 29th October 2009. On 12th November 2009 the inhabitants of Pezinok asked the CC SR to grant them access to the decision, based on which "EKOLOGICKÁ SKLÁDKA" was dumping waste on the rubbish dump. The Constitutional Court of the SR on 4. December 2009 did not satisfy this application.

The inhabitants of Pezinok fighting against the waste dump turned also to the European Parliament with a petition, which was signed by more than 8000 people, pointing out to the violation of their rights resulting from the Aarhus Convention.

According to the statement of the ME SR, the Slovak Environmental Agency in granting integrated approvals performs their activities according to their competences, which are governed under GBR of the Slovak Republic, especially Act No. 245/2003 Coll., and they only followed those when approving the waste dump "Waste dump– Pezinok". Even in the proceedings outside the scope of appellate procedure the ME SR has not found deviation of the practice of the Slovak Environmental Agency. According to the statement of the Ministry of the Environment of the SR the waste dump in Pezinok is at present being operated in compliance with the adopted resolutions, as well as with conditions of the integrated permit. On 2nd December 2009 the Slovak Environmental Inspectorate (EI) in Bratislava based on the fact that the Constitutional Court of the Slovak Republic started acting in the matter earlier, stopped the proceedings, and at present the Slovak EI waits for the decision of the CC SR.[113]

The town Pezinok reacted also to the request of the Centre relating to the waste dump by issuing an opinion: "According to the opinion of the town Pezinok the operation of the waste dump is unlawful, since there is no legal permit for such activities. The original permit for the operation of the waste dump, which was issued by the Slovak Environmental Inspectorate and which was then affirmed by the Slovak EI – the Headquarters in second instance proceedings, was quashed by the decision of the of the SC SR of 28th May 2009. Based on the constitutional complaints filed by the company "EKOLOGICKÁ SKLÁDKA, a.s." the Constitutional Court of the SR postponed only the enforceability of this decision, whereby the validity thereof remained untouched. Consequently, the judgement of the SC SR

[113] Reply of the Ministry of the Environment of the Slovak Republic of 8th March 2010.

is still in force, and thus the permit mentioned above for operation of the waste dump in Nová jama is quashed. Since the operation of the dump (by dumping waste) without a valid permit by the operator – BRICORP DEVELPOMENT, s. r. o. constitutes a tort, the town pointed out this fact to the responsible administrative authority – the Slovak Inspection of the Environment, Bratislava. At the same time other proceedings are held in this case before relevant courts and legal authorities."[114]

In respect of the fact that the town of Pezinok considers the waste dump and the operation thereof illegal, it plans to use all statutory alternatives and take legal steps to terminate the waste site, the existence of which is, according to its opinion, contrary to the valid zoning plan of the town.

The Centre considers (as well as in this connection) it important to mention again that in the interest of protection of right the environment must govern the competence self-governments so that they could in a greater extent then until now decide on waste dumps in their territory.

3.6.3. The "Tichá" and "Kôprová" Valleys

The two mentioned national nature reserves are closely monitored especially by environmental protection associations and activists since 2004, when after windstorm more than 12 000 hectares of forest were devastated in the Tatras. Since then there have been disputes between the representatives of the environmental protection associations on the one hand, and by the state forests company "Štátne lesy, a.s". and the ME SR on the other hand, related to possibility/impossibility to harvest calamity timber in the forests there. Among the most important events of the year 2009 related to this issue it is possible to include the following.

In January 2009 the Constitutional Court of the SR by its finding[115] decided, that the General Prosecutor's Office of the Slovak Republic acted contrary to law when tackling the complaint filed by the Forest Protection Society VLK (WOLF), which related to the timber harvesting in the National Natural Reserve (NPR) Tichá and Kôprová Valley. WOLF filed a complaint in April 2007, according to which the timber harvesting in constitutes the national park constitutes the crime of environmental damage. The Constitutional Court of the SR decided, that the General Prosecutor's Office of the Slovak Republic acted contrary to law and violated the constitutional right of the complainant under Article 46 par. 1 of the Constitution of the SR, namely to claim right by procedures laid down by a law at an independent and impartial

[114] Reply of the town of Pezinok of 12th March 2010.
[115] Finding of the Constitutional Court of the Slovak Republic ref. II ÚS 232/08-54.

court or, in cases provided by a law, at other public authority of the Slovak Republic. The CC SR in its decision banned the General Prosecutor's Office of the Slovak Republic to violate the right of the association WOLF and ordered to repeatedly deal with their motion and express their opinion on the practices of prosecutor's offices of lower instance.

The European Commission concluded on 14. April 2009 the proceedings against the Slovak Republic in the case Tichá and Kôprová Valleys, which commenced in June 2007 for the violation of EU directives in the proposed territories Natura 2000 in the High and the Low Tatras. The reason for the commencement of the proceedings were allegedly the interventions in Tichá and Kôprová Valleys in the processing of calamity timber without consulting the directive on habitats.[116]

The Ministry of the Environment of the SR at the end of October 2009 made the affected parties of the proceedings acquainted with the underlying documents for the decision heading towards the issuance of consent to the activities and to approve the exceptions for the applicant in the national nature reserves in Tichá and Kôprová Valleys required by the applicants (TANAP State Forests).[117]

[116] Council Directive 92/43/EEC of 21. May 1992 on the conservation of natural habitats and of wild fauna and flora.

[117] Reply of the Ministry of the Environment of the SR No. 8957/2009-2.2 of 29th October 2009. Available at: http://www.wolf.sk/sk/clanky/ticha-dolina-je-opaet-ohrozena-tazbou-aktualizovane. Cited on 12rh April 2010.

4. THE RIGHTS OF NATIONAL AND OTHER MINORITIES

The Protection of rights witnessed from the point of view of international regulation show a very interesting development. The universal system of protection of human rights has always connected the protection of the rights of minorities with the protection fundamental human rights and freedoms.[118] Later "from the original generally accepted understanding of fundamental human rights and freedoms it is gradually being separated the prohibition of discrimination on various grounds, protection of the rights of minorities..."[119] and international conventions were adopted to govern the said specific areas.[120] Also within the European system of protection of human rights the special regulation of the protection of minorities gradually developed along with the so called universal conventions (Convention for the Protection of Human Rights and Fundamental Freedoms, the European Social Charter and the Revised European Social Charter, Charter of Fundamental Rights of the European Union).[121] It results from the facts mentioned above, that the rights of minorities are an inseparable part of fundamental human rights and freedoms.

Therefore the assessment of human rights of the members of minorities living in the Slovak Republic will be discussed (just like in previous years) also the Report for the year 2009.

In this chapter we shall concentrate on the rights of the national minorities and the rights of persons with disabilities. Other equally important groups in the society, such as for example people with different sexual orientation and from a certain point of view also the migrants, are discussed elsewhere in the general part of the report, or in a special part dealing with the principle of equal treatment.

4.1. The rights of national minorities and ethnic groups

The observance of human rights of national minorities and ethnic groups, as well as individuals who are members of minorities is discussed across the whole report for the year

[118] Strážnická, V. - Šebesta, Š.: Človek a jeho práva : Medzinárodná úprava ochrany ľudských práv [The man and his rights: International regulation of human rights protection]. Bratislava : JUGA, 1994.

[119] Ibidem, p. 81.

[120] Such as the International Convention on the Elimination of All Forms of Racial Discrimination (1966), Convention on the Elimination of all Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989), Convention relating to the Status of Refugees (1951) in the wording of the Protocol relating to the Status of Refugees (1967), United Nations Convention on the Rights of Persons with Disabilities (2007) and others.

[121] Such as the European Charter for Regional or Minority Languages (1992), Council of Europe Framework Convention for the Protection of National Minorities (1995) and other regulations within the EU and OBSE.

2009 and therefore in this part we shall only point out to some facts, which have influence on their development and status. While evaluating the respect for human rights of minorities it is necessary to highlight that in compliance with the obligation to respect the natural human rights and human dignity, the dominant majority must not deepen, in relation to the members of minorities, their handicap (discrimination). The people in a minority position, as stated in the Constitution of the SR and other international documents, need to be guaranteed also certain special rights not required by the dominant majority population.

In 2009 the rights of national minorities were influenced especially by the amendment of the so called Language Act, which caused not only a political, but also a society-wide discussion.

The status of national minorities in Slovakia was also in 2009 being dealt with by the Council of the Government for National Minorities and Ethnic Groups.

4.1.1. Programme of the Decade of Roma Inclusion 2005 - 2015

The Decade of Roma Inclusion 2005 – 2015 is an international incentive of 12 countries of Europe, which is a joint activity with the participation of the Government, international institutions and the Roma Civic Society. The Decade represents the first joint effort aimed at changing the life of the Roma in Europe.

The Decade was joined by the following countries: Albania, Bosnia and Herzegovina, Bulgaria, Czech Republic, Montenegro, Croatia, Macedonia, Hungary, Romania, Slovakia, Serbia, and Spain. Slovenia has until now acted in the position of an observer. The main objective of the Decade is to support activities to strengthen the social inclusion of the Roma in Europe including the enhancement of their economic status.

The programme of the Decade is aimed at the four priority areas: education, employment, health and housing and on three interrelated issues: poverty, discrimination and gender equality. Every country has created their own action plan, which is based on the existing governmental policies and strategies.

The Slovak National Action Plan was elaborated by the working groups for single priorities composed of representatives of the Office of the Plenipotentiary, the Ministry of Education of the Slovak Republic, the Ministry of Construction and Regional Development of the Slovak Republic, the Ministry of Labour, Social Affairs and Family of the Slovak Republic, the Ministry of Health of the Slovak Republic, the Statistical Office of the Slovak Republic, non-governmental organisations, as well as representatives of the Roma Youth

Forum, and set out the objectives in 4 priority areas, which should be achieved until the year 2015.

"EDUCATION

- all Roma boys and girls shall finish primary school
- all Roma boys and girls shall attend pre-school facilities to prepare them for primary school,
- 15 % of Roma pupils who finish primary education shall continue at secondary grammar school,
- 50 % Roma pupils who pupils who finish primary education shall continue at vocational and training schools,
- 0 % of Roma pupils wrongly diagnosed to be placed in special primary schools and special education facilities,
- a 15 % decrease in the number of Roma children placed in special primary schools and special education facilities,
- decrease the percentage of the Roma having not completed the basic education by 50 %,
- create an offer system (legislative and educational conditions) for finishing certain education grades.

EMPLOYMENT

- education of the state administration employees - sector of labour, social affairs and family - in the area of preventing all forms of discrimination,
- increase in the employment rate and prevention of long-term unemployment rate through supported access or return to employment of registered job seekers, with focus on the disadvantaged groups on the labour market,
- increase in the employment rate of the disabled citizens through their integration in the labour market,
- improved access to and return on the labour market to job seekers through programmes for the education and preparation for the labour market in relevant job requirements and individual needs of job seekers,
- support of working habits of job seekers as a means to increase employment rate, especially among the disadvantaged job seekers and persons dependent on a allowance in material hardship,
- strengthened role of prophylactic and preventive measures with the aim of preventing the occurrence of unemployment rate and long-term unemployment rate,
- allow job seekers to gain primary education and gain basic skills (reading, writing, numbers), social skills, education and access to the labour market and access to secondary education,
- decrease in the long-term unemployment rate and increased motivation of employers in long-term unemployed including the identification of work demand barriers in the employment of long-term unemployed job seekers,
- help tackle problems individuals and groups living in communities jeopardised by social exclusion through community social work and influence their social situation so that they are able to get integrated in the society and at the same time to improve their possibilities to take advantage of tools active measures on the labour market,
- creation of new jobs; increase motivation, stimulation and the level of education of Roma population; development and realisation of the need to participate in the tackling of their social situation; enlightenment in the area of hygiene, upbringing, education, employment rate,
- teach Roma clients the fundamental social and communication skills; development of working incubators and support self-employment.

HEALTH

- create a verified database of data on the health and differences in the health condition between the Roma community and the majority population and between particular Roma communities as the base of efficient health care interventions,
- improve access of the Roma to health care and increase the level of awareness among the Roma on the health care provided,
- improve the level of awareness and apply the principles of planned parenthood, measures to prevent sexually transmitted diseases,
- achieve a better vaccination pattern in the Roma population to approximate to the average among the majority population.

HOUSING

- building up technical facilities in Roma settlements,
- the construction of flats in Roma settlements,
- the construction of flats for the Roma,
- reconstruction of the existing flats,
- settlement and distribution of the property (land)."

The Slovak Republic took over the presidency of the Decade on 1st July 2009 and shall hold it till 30th June 2010.[122]

During the presidency of the Slovak Republic the 17th meeting of the international steering committee of the Decade took place from 22. – 23. September 2009 in Spišská Nová Ves and within the Slovak presidency there was an international expert seminar held from 19. – 20. November 2009 in Poprad titled Creativity and innovation in the education of children from socially disadvantaged background. The seminar participants acceded to the final document of the conference The right to education for every child: removing barriers and promotion of inclusion of Roma children, which was held from 2. – 3. June 2009 in Beograd. Along with general recommendations, the participants also adopted some recommendations in the area of special schools for Slovakia:

- unify the consulting system within the Slovak school system (The centres of pedagogical and psychological consulting and prevention and the centres of special pedagogical consulting),
- actively assess and control the working of consulting centres (especially private) through the control mechanism of school inspection,
- take advantage of tools for the inclusion of Roma population, predominantly:

[122] Source: Romano nevo ľil (Rómsky nový list).
Available at: http://rnl.sk/modules.php?name=News&file=article&sid=16771.

- by mobilising community resources to develop the potential of the Roma community and create an adequate education environment. The mobilisation must include especially the Roma community,
- by using the existing technical (existing buildings and technical equipment), personal (existing trained professionals) and financial (multisource financing) resources especially at the local level,
- by cooperation of state and private institutions to solve the issue of Roma inclusion.[123]

4.1.2. Amendment of the State Language Act[124]

The NC SR adopted on 30th June 2009 the amended Act on the State Language. According to the explanatory report thereto, the reason behind the amendment was the need to prepare an amended, which would safeguard better efficacy and enforceability of the said Act, and thus contribute to the improved use of the official state language and strengthen the position of the Slovak language as the official language of the Slovak Republic, and also the fact that it was "required predominantly by the unfavourable situation in the use of the Slovak language in the public area".[125]

The adoption of the amendment caused the following changes in the Act:

a) explicit definition of persons, to which the provisions of the Act on the Official Language relate,
b) providing for obligations of all state authorities, authorities self-government and public reports to protect the official language and active approach towards controlled observance of the language law,
c) the role of the Ministry of Culture to adopt and to publish the codified version of the official language on their website,
d) specified and amended regulation of using the official language in the public,
e) specified use of the official language in geographic names,

[123] Source: Romano nevo l'il (Rómsky nový list). Available at: http://rnl.sk/modules.php?name=News&file=article&sid=16954.
[124] Act No. 318/2009 Coll. amending and supplementing the Act No. 270/1995 Coll. on the State Language of the Slovak Republic as amende and on amending and supplementing certain other laws.
[125] Explanatory Report – General Part of the Act No. 318/2009 Coll.

f) amended regulation of using of the official language in public areas – mass media, books, broadcast of audiovisual materials for children, information for the public, public events and assemblies,

g) amended regulation of using the official language in the so called "other public areas" (economy, services, healthcare, etc.),

h) specified conditions of supervision over the observance of the Act including rights and obligations of persons performing supervision over the obligations of controlled entities,

i) embodied possibilities of imposing fines and

j) submitting reports (by the Ministry of Culture) on the use of the official language to the Government.

The changes in the Act on the state language resulted in criticism expressed predominantly by the representatives of the Hungarian national minority, of some non-governmental organisations or business entities, which managed to stir moods not only on the domestic scene, but also for example in OSCE or of the European Parliament. According to their statements, the regulation of the act targeted against the members of the Hungarian minority who were restricted under the Act in the use of the Hungarian language and (often in connection with the missing Act on Minorities) violate the rights of minorities.

The Act was opposed also by Hungarian politicians including the representatives of the Hungarian Parliament, who in a joint declaration (of 20th July 2009) asked Slovakia to revoke the adopted Language Act. Some (predominantly Hungarian) representatives in EU structures protracted the Act also in the EP. The EU Commissioner for Multilingualism Leonard Orban recommended Slovakia to pay close attention to how this legislation is applied in practice. The adopted Act was followed also by the OSCE High Commissioner on National Minorities Knut Vollebaek. In his opinion of[126] July 2009 he confirmed the compliance of the amendment with international documents. Simultaneously, he expressed doubts related to unclear terminology and the introduction of the Act in practice. He presented his opinion on the matter also in September 2009 during his visit in Bratislava at the meeting of the Council of the Government of the Slovak Republic for National Minorities and Ethnic Groups.[127]

The ambiguities around the Act on the state language should be solved by the "Rules of the Government of the Slovak Republic to the Act of the NC SR No. 270/1995 Coll. on the

[126] Source: http://www.sme.sk/c/4944441/vollebaek-s-jazykovymi-pokutami-narabajte-opatrne.html.
[127] The minutes available at: http://mensiny.vlada.gov.sk/data/files/4939.pdf.

state language of the Slovak Republic as amended" adopted by the Government in December 2009.[128] In the elaboration of "principles" the Ministry of Culture of the Slovak Republic cooperated with the Office of OSCE High Commissioner on National Minorities issues, whereby the majority of recommendations was included in their wording. The objective of the principles is to unify the interpretation of the provisions of the Act on the state language including the supervisory procedure over the observance of those provisions of the Act on the state language, which fall under the supervision by the Ministry of Culture under § 9 of the mentioned Act, in imposing sanctions by the Ministry of Culture under § 9a of this Act, as well as in cooperation with expert Slovakistic institutions in connection with the negotiation and adoption of the codified version of the official language.

4.2. Rights of persons with disabilities

"People with disabilities have the same right as full-fledged citizens and have the right to dignity, equal treatment, independent life and full inclusion into the society", reads the website of the European Union.[129] Such persons must be allowed to take advantage of equal opportunities; this is the basic principle as well as long-term EU strategy to safeguard their active participation in the society. The major element of the European strategy in the area of disability (2004 – 2010) is the action plan for persons with disabilities. The section of the European Parliament dealing with persons with disabilities highlights that until the year 2010 the European Commission like to improve their employment possibilities, and accessibility of jobs and independent life. The European Parliament and others EU institutions adopted the following approach to persons with disabilities: "Persons with disabilities are included in the decision making process based on the European principle: ‚Nothing about persons with disabilities without their participation'."

Within the efforts to safeguard full inclusion and full participation persons with disabilities persons in the society in compliance with international principles of the protection of human rights the Slovak Republic also adopted the UN Convention o rights persons with disabilities and became a party thereto by ratifying it.

[128] Adopted by Resolution of the Government of the Slovak Republic No. 933/2009, in force since 1st January 2010.
[129] More information at http://ec.europa.eu/social/main.jsp?catId=429&langId.

4.2.1. UN Convention on the Rights of Persons with Disabilities – the ratification process in the Slovak Republic

Every year since the adoption of the UN Convention on the Rights of Persons with Disabilities the Centre highlights in its reports the necessity of the ratification and implementation thereof.

Considering the fact that on 9th March 2010 the NC SR by its Resolution ratified the Convention adopted and also the Optional Protocol thereto, we shall summarise in this chapter the whole process of its creation and ratification with an emphasis placed on its main principles.

The text of the Convention along with the Optional Protocol thereto was passed by the General Assembly of the UN on 13th December 2006. The Convention was opened to signatures on 30. March 2007.[130]

The Government of the Slovak Republic at the meeting on 5th September 2007 adopted a resolution granting consent to the signing of the Convention and recommended the President of the Slovak Republic to sign it without ratification. The President of the Slovak Republic signed the Convention on 26. September 2007, whereby the Slovak Republic expressed the willingness to become Party to the Convention and ratify it.

The ratification and implementation of the Convention is carried out under the charges of the MLSAF SR. The ratification process was actively followed also by the Centre, as they produced their opinion to react to the process of ratification and commented on the translation of the wording of the Convention and to the optional protocol. The Convention falls within the category of international treaties, which under Article 7 par. 4 of the Constitution of the SR require the consent of the National Council of the Slovak Republic before ratification. The NC SR granted their consent to the ratification of the Convention and the Optional Protocol thereto by the Resolution of 9th March 2010. After the signing of the ratification deed by the President of the Slovak Republic the ratification stage will be finalised. The Convention is an international treaty, which directly enshrines rights or obligations of natural persons and legal entities. Under Article 7 par. 5 of the Constitution of the SR the Convention takes precedence over laws, since it is an international treaty on human rights and fundamental freedoms.

The Convention is the first international legal binding document in relation to persons with disabilities. It is perceived as an important and significant moment (initiative) in the history

[130] In force since 3rd May 2008.

of the international, but also of the national policy in relation to health disabilities. For those states, which decide to become parties to the Convention and abide by the rules contained therein, it represents not only legal document in relation to persons with disabilities, but also a vision and guideline to show them how to create and implement policies related also to the issue of health disabilities. The objective of having such a Convention in place was not to create new specific rights in relation to persons with disabilities, but to highlight that the barriers which the disabled people have to face and overcome in the society, must be abolished. The purpose of the Convention is to provide support in safeguarding a fully fledged, equal and efficient enforcement and enjoyment of human rights by persons with disabilities, without discrimination, on the same grounds as other people in the society and to support their dignity. The Convention is perceived and labelled as a strong tool (signal) of active participation persons with disabilities for the protection of their rights. The Convention is also labelled as the start of reform of policies dealing with health disabilities. It brings about a new modern view of disability; the so called shift from the medicinal model of disability towards the social. It highlights the necessity of adopting appropriate measures, and considers the failure to adopt them a form of discrimination, and sees the necessity of implementing positive measures) in various areas of societal life. It deals with the "mainstreaming" disability and the universal design of the provision of services, whereby it is necessary to take into consideration the accessibility not only of the physical environment, but also of information.

The adoption and ratification of the Optional Protocol to the Convention allows individuals and groups of persons with disabilities to submit complaints to the established Committee on the Rights of Persons with Disabilities. The Optional Protocol allows the states and individuals to better understand the content of the standards embodied in the Convention in their application in a specific life situation. It may help prevent the creation of discriminatory situations and violation of human rights, stimulate changes in creation legislation dealing with disability, and raise awareness of the general public of this issue.

Special significance is attached to the application and implementation of the Convention as such. The articles of the Convention contain a monitoring mechanism and set out conditions to be met by a national monitoring institution. One of them is active cooperation and consultations with organisations associating persons with disabilities, which is of the main principles of the Convention.

4.2.2. Deprivation and limitation of legal capacity to people with mental disorders and people with mental disabilities

Article 12 of the UN Convention on the Rights of Persons with Disabilities, which relates to the legal capacity of persons with disabilities, highlights that every person has the legal capacity and support in decision making shall be provided to a person with disabilities if necessary.

The deprivation of legal capacity is now substituted by the institute of supported access to justice. The said issue is being dealt with in the Slovak Republic by various civic associations. The Association to assist persons with mental impairment in the Slovak Republic by carrying out the project "Together against the discrimination of persons with mental impairment" strives to promote changes and reform the assessment and legal recognition of acts of persons with mental impairment. To support their activities, the Association initiated the establishment of a coalition against discrimination, as well as three round tables dealing with the reform of caretaking, which closely relates to the said issue.

The objective of incentives is introduction mechanisms of supported decision making into the Slovak legal order, especially into the provisions of the Civil Code. The engagement of the said mechanisms has to respect the principles of autonomy, freedom, proportionality and subsidiarity in relation to persons with mental impairment and mental disorders. The basis of the proposal is that the Act does not contain the possibility to deprive a person of their legal capacity, as well as the requirement that the restriction of legal capacity is the means of last resort in the protection of a person with disability. The Civil Code and other relevant legal regulations should introduce the legal protection of adults with mental impairment and mental disorders. The introduction of these mechanisms has already been supported and acceded by several European countries including the Czech Republic and Hungary.

4.2.3. Act on allowances to compensate for severe disabilities after one year of being effective

On 1st January 2009 Act No. 447/2008 Coll. on Allowances to Compensate for Severe Disabilities and on amending and supplementing certain laws entered into effect.

Considering the fact that the implementation of the newly adopted legal regulation was supposed to be monitored during the year 2009 by the MLSAF SR, the Ministry turned to the Centre with a request for an opinion relating to the application of the cited Act.

The Ministry in its response stated that the cited Act governs the conditions of providing monetary allowances to compensate severe disability in a new way. It

predominantly governs legal relations in compensating the social consequences of severe disability so as to create comparable opportunities for the natural persons with severe disability in everyday life and to eliminate barriers, which they have to face. The objective thereof is to protect this group of natural persons from social exclusion while preserving their human dignity. The system of medical assessment and welfare assessment has been improved, and new rules now apply to the issuance of identification cards of natural person with severe health disabilities, identification cards of a natural person with severe disability with an accompanying person and a parking card issued for a natural person with disabilities. Moreover, the field of competences of state authorities in the area of providing compensations, the proceedings, and regime personal data processing and sanctions in case of abuse of the provided monetary allowance for the compensation. With the aim of increasing objectiveness of assessing the level of handicap and the provision of monetary allowances for the compensation a new way is applied now of assessing the dependence of a natural person with severe disability on compensations and especially the dependence of a natural person with severe disability on the compensation of increased expenditures related to body hygiene. The conditions of the provision of a new monetary allowance to the purchase of lifting facilities and monetary allowance to purchase aids based on a list of aids is now governed in a new way, as well as the list of construction works, materials and facilities for the purpose of monetary allowance for the reconstruction of a flat, family house or garage, which increased the objectiveness of providing this form of assistance.

The Measures issued by the Ministry of Labour, Social Affairs and Family of the Slovak Republic, include apart from the list of aids, construction works, construction materials and facilities also the maximum considered amounts for the prices of aids, construction works, construction materials and facilities. The amount for one hour of personal assistance was increased. A new valorisation mechanism of repeated monetary allowances to compensate for disability was introduced. The Act now governs also one of the conditions of providing monetary allowance for caretaking, which is meant for natural persons taking care of natural person with severe disability in their household. This monetary allowance is provided in a uniform amount to persons who take care of other persons and at the same time receive some of the selected type of pension. The group of natural persons eligible to receive monetary allowance for caretaking is now extended and at the same time is this monetary allowance may be provided also to another natural person who takes care of a another person with severe disability and lives together with them (joint permanent or temporary stay). A possibility was introduced to provide this monetary allowance also to external students.

However, the Ministry simultaneously pointed out that "the previous application of the Act however, allowed for various interpretations of selected provisions of the said Act by particular offices of labour, social affairs and family". The Ministry based on what has been mentioned above and in the interest of safeguarding a uniform application of the Act prepared an amendment of Act No. 447/2008 Coll. on monetary benefits for the compensation severe disability as amended.

The result is that the application mentioned Act in practice and the eventual amendments thereof will have to be followed in order to monitor possible application problems.

4.2.4. Removal of information barriers in relation to persons with disabilities

Information barriers are one of the known types of barriers to be faced and overcome by persons with disabilities. The Centre in their previous reports pointed out especially to the current situation in removing barriers by various public institutions and state administration authorities.

At present we see it necessary to point out the fact that apart from architectonic barriers, thus barriers of the physical environment, the persons with disabilities of various kinds often have to overcome information and communication barriers in the society, although there are various international and national documents and plans including the obligation to abolish the said barriers gradually.

Despite the fact that there are principles and standards relating to websites in place which respect the requirement of accessibility for persons with disabilities, also at present on various websites we face barriers of various kinds (for example in form of pictures without sound, etc.), which do not allow the disabled to gain the necessary information. Organisations of persons with disabilities, as well as specialised institutions (for example Centre support students with specific needs at Comenius University) organise various seminars to make the general public as well as the experts acquainted with information and communication barriers, mechanisms and procedures, which should be used for their removal. The basic idea of abolishing the said barriers is the right to access of persons with disabilities to information in a form which is accessible and comprehensible for them, for example in sign language, Braille alphabet and a simple form comprehensible to people with mental impairment. This right is embodied in the most important document in relation to persons with disabilities, which is the UN Convention on the Rights of Persons with Disabilities. It will therefore be necessary to continuously follow and monitor, how the

information barriers are abolished, especially by public institutions operating on various levels, from local to national.

4.2.5. Regulation of the European Parliament and of the Council No. 1371/2007/EC on rail passengers' rights and obligations

On 3rd December 2009 the Regulation of the European Parliament and of the Council on rail passengers' rights and obligations No. 1371/2007/EC entered into force. The basis of the new legal regulation of the EU are the binding rules declared by the Convention Concerning International Carriage by Rail (COTIF), Supplement A – CIV to COTIF and the General Conditions of Carriage for Rail Passengers (GCC-CIV/PRR). The objective of the Regulation is to strengthen the protection of passengers in personal railway transport, improve the quality and efficacy of railway services.

The Regulation shows significance in relation to persons with disabilities, the protection of rights of whose is also strengthened under the Regulation. The Railway Company Slovakia, a. s. welcomed this incentive of the EU, since it significantly helps increase the competitiveness of railway transport.

A due application and fulfilment of the objectives of the Regulation in the national as well as international transport however, shall require long-term and system measures and resources. The Regulation is therefore until now fully applicable only in the area of international railway personal transportation. For interstate long-distance traffic exceptions were made on 4th September 2009 to the Railway Company Slovakia, by the MTPT SR, from some provisions of the Regulation for the period of five years. Apart from the exceptions, the articles governing the assistance at a railway station and on the train as well as access to the railways station apply. As regards domestic and public transport and regional railway personal transport, the MTPT SR granted permanent exceptions to the Railway Company Slovakia from the application all provisions of the Regulation except for some articles. The rights and obligations of passengers in the national railway of personal carriage in the territory of the Slovak Republic are governed in the cited regulation, in relevant generally binding regulations of the Slovak legal order and in the Transport Rules of the Railway Company Slovakia, a. s.

5. THE RIGHTS CONCERNING THE ENFORCEMENT OF HUMAN RIGHTS

The enshrinement of particular rights and freedoms of persons in the Constitution, laws or international documents would not solely provide their sufficient and efficient guarantee. As stated in the literature, "democratic state respecting the rule of law is characterized by providing its citizens with legal measures to protect them against encroachment upon the right of an individual from the side of the state or other legal persons, against denial of their rights and to enforce the observance of their rights. It is predominantly the role of the courts to safeguard the enforceability of rights and freedoms",[131] or: "Without the right to court protection the definition of the rights as such would have no meaning. This relates to human rights embodied in the European Convention, as well as the whole national legal order."[132]

From the starting points mentioned above as the fundamental preconditions of the functioning of legal state, we may clearly deduce the necessity of a due functioning of the judiciary.

5.1. Right to effective legal remedy

The basic international legal framework to govern "access to justice" is to be considered the right to a fair trial expressed in Article. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), or Article 14 of the International Covenant on Civil and Political Rights, along with the right to effective legal remedy, which is guaranteed under Article 13 of the European Convention.

An important change in the system of protection of human rights within EU perceived by all member states (exceptions negotiated for Great Britain and Poland, the application of the Charter was especially negotiated also by the Czech Republic[133]) was the entering into effect of the Treaty of Lisbon on 1st December 2009. Through the adoption of the Treaty of Lisbon the *Charter of Fundamental Rights of the European Union* has become part of the primary law of the EU with the power of a treaty. The Treaty of Lisbon has not embodied the

[131] Repík, B.: Ľudské práva v súdnom konaní [Human Rights in Judicial Proceedings]. Bratislava : MANZ, 1999, p. 9.

[132] Svák, J.: Ochrana ľudských práv (z pohľadu judikatúry a doktríny štrasburských orgánov ochrany práv) [Protection of Human Rights (from the point of the case law and doctrine of Strasbourg human rights protection authorities)]. 2nd extended and suppl. ed.. Žilina : Poradca podnikateľa, 2006, p. 337.

[133] Declaration of the Czech Republic to the Charter of the Fundamental Rights of the EU. Available at: http://eur-lex.europa.eu/LexUriServ/LexUri Serv.do?uri=OJ:C:2010:083:0001:0012:SK:PDF.

whole wording thereof, and is only limited to references to the wording of the Charter in Art. 6 of the Treaty on European Union, which is as follows:

"1. The Union therefore recognises the rights, freedoms and principles stated in the Charter of Fundamental Rights of the European Union of 7. December 2000 amended on 12. December 2007 in Strasburg, which has the same validity as a treaty. Provisions of the Charter by no means extend the powers of the Union provided for in the Treaties. The rights, freedoms and principles stated in the Charter are interpreted in compliance with the general provisions of Chapter VII of the Charter, governing the interpretation and the application thereof, while duly considering the explanations referred to in the Charter and which refer to sources of these provisions.

2. The Union shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms. By acceding thereto the powers of the Union provided for in the Treaties remain untouched.

3. Fundamental rights as they are guaranteed under the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to all member states, represent the general principles right of the Union."

Specific provisions of the rights related to the application of human rights are embraced in the Charter in Chapter VI "Justice" (Art. 47 – 50). Under Art. 47 the Charter - *Right to an effective remedy and to a fair trial*:

"Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law.

Everyone shall have the possibility of being advised, defended and represented.

Legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice."

The explanation [134] to the cited provision stated that the first paragraph may be based on Article 13 of the European Convention, however, the protection thereof is extended under the law of the Union. The whole Article 47 relates to institutions of the Union and member

[134] See Official Journal of the EU C 303/02, 14. December 2007 (Explanatory notes to the Charter).

states, if they enforce the laws of the Union, and that with regard to all rights guaranteed under the law of the Union.

The rights relating to the observance of fundamental rights and freedoms at the national level are governed under Articles 46 – 50 of the Constitution of the SR enshrining "the right to court and other legal protection."

5.1.1. Special Court and Special Criminal Court

Among the very discussed topics in 2009 was also the development of events around the Special Court and to the Special Prosecutors Office, the existence and operation of which (especially of the Special Court) have set apart politicians, experts as well as general public since the establishment thereof in 2004. The then called "Special Court" now called the "Special Criminal Court" with the seat in Pezinok falls under the system of courts in the Slovak Republic. It decides in criminal cases and in other issues governed under the Code of Criminal Procedure. The position and competences thereof represent an effective tool in combating corruption and organised crime. It is the court of first instance and enjoys the position of the regional court.[135]

In February 2008 a group of 46 representatives of the NC SR filed the proposal with the Constitutional Court of the Slovak Republic to commence proceedings on the compliance legal regulations under Art. 125 par. 1 letter a) of the Constitution, in which they required, that the Constitutional Court decides in their finding of the contrast of a number of provisions of Act No. 458/2003 Coll. on the Establishment of the Special Court and the Special Prosecutors Office as amended (and the affected provisions of the related standards) with the Constitution, the Convention on the Protection of Human rights and Fundamental Freedoms and with the United Nations Convention against Corruption.[136]

In the finding of 20th May 2009[137] the Constitutional Court of the Slovak Republic declared incompatibility of the legal regulation with a number of provisions of the Constitution of the Slovak Republic and the United Nations Convention against Corruption.

The said decision of the Constitutional Court of the SR was perceived relatively inconsistently, which is reflected in the result of voting of the judges the Constitutional Court of the SR of 7:6 (differing opinions were expressed by 6 judges of the Constitutional Court).

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[135] For more information go to: http://www.specialnysud.sk/.
[136] Declared in the Collection of Laws by Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 434/2006 Coll.
[137] PL. ÚS 17/08.

The concerns relating to the abolishment of the Special Court were expressed also by non-governmental organisations, which started a campaign to keep the said Court.

A situation, which arose after the declaration of the finding of the Constitutional Court of the SR, stirred moods also in the majority of members of the Government of the Slovak Republic, who therefore decided in form of legislative changes to prevent the complete abolishment of the Special Court. It was however, necessary to solve the problem before the entering into effect of the finding of the Constitutional Court of the SR (by the publishing thereof in the Collection of Acts), since the entering into effect of the finding would result in loss of effect of many provisions of the Act on the Establishment of the Special Court and after the next 6 months as well as to the loss of validity (and thus to the abolishment of the Special Court) and at the same time to a number of problems, out of which greatest concerns were caused predominantly by: the possibility of accused persons in serious cases to be released, the possibility that the right arises to some part of the sentenced to reopening of the proceedings, transfer of unsolved cases to district courts, etc. The unclear situation after the publishing of the finding the Constitutional Court of the SR was quickly used by a number of persons accused in cases tried before the Special Court, the hearing of which had to be postponed due to obstructions in the further course of the processes.

Therefore, during the Government deliberations on 27. May 2009 the draft Act on Special Criminal Court was passed. The objective thereof was to establish the Special Criminal Court within the judiciary of the Slovak Republic, so that it continues with the activities of the Special Court. As stated in the explanatory report, “the crucial provision was defining the transfer of exercising the jurisdiction, i. e. authorisation of the Special Criminal Court established according to this Act to act in undecided cases, which are part of the agenda of the Special Court established according to previous regulations”.

The new draft Act reacted to the finding of the Constitutional Court predominantly by passing the following changes: the field of activity of the Special Criminal Court was extended by some new qualified facts of crimes, the provisions relating to the obligations of judges of the previous Special Court to absolve security checks were amended and the amount of the bonus for exercising the judicial function has been changed too. The Special Criminal Court was established as a separate court with a specialised agenda in the area of criminal law, the field of activity of which should be aimed at the protection from corruption, organised crime and the consequences of extremely dangerous crime.

The NC SR passed this bill on 18. June 2009 as Act No. 291/2009 Coll. on Special Criminal Court as amended, with effect from 17. July 2009. The adoption thereof was passed by 119 out of 135 representatives.

5.2. Right to fair and impartial trial

The basic legal framework of this right is Article 46 par. 1 of the Constitution of the Slovak Republic, according to which: *"Everyone may claim his or her right by procedures laid down by a law at an independent and impartial court or, in cases provided by a law, at other public authority of the Slovak Republic" and* Article 6 par.1 sentence one of the Convention: *"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law."*

Independence and impartiality of the courts is guaranteed also under Article 141 of the Constitution of the SR as the basic characteristics of the judiciary – one of the fundamental pillars of a democratic legal the state.

In connection with the independence of the judiciary certain circumstances appeared in 2009 indicating problems in the judiciary.

5.2.1. Disciplinary procedure against the judges

The questioning of independence and impartiality of the judiciary in Slovakia was fuelled in the course of the year 2009 also by a number of cases of male and female judges, who were, according to their statements, subjected to various non-standard practices, for example coercion in their deciding on specific matters, relegation, abuse of disciplinary recourses and others. As regards disciplinary recourses, part of them related to judges, who in a certain way got into a conflict with the ways of acting of the former Minister of Justice.[138] The majority of the said disciplinary proceedings are still running. The Prime Minister of the Slovak Republic declared, that in the Slovak Republic "it is not possible, not even in theory, to prosecute somebody for expressing their opinion".[139]

These issues were reflected in the statement of October 2009 also by the national council of the Association of Judges of Slovakia, the major professional organisation of

[138] Disciplinary responsibility of judges is governed under the third part of Act No. 385/2000 Coll. on judges and lay judges and on amending and supplementing certain other laws as amended.
[139] Source: www.sudcovia.sk.

judges in the Slovak Republic, according to which the judges should not be subjected to disciplinary proceedings for expressing their opinion.

5.3. Right to compensation of damages caused by an unlawful decision of a court, or a public administration authority or by maladministration

Under Article 46 par. 3 of the Constitution of the SR everyone shall have the right to compensation of a damage caused by an unlawful decision of a court, of other government body or public administration authority or by maladministration. Through this provision the Slovak Republic provides constitutional guarantee, that public power authorities shall decide on the rights of entitled persons in compliance with the law and that the steps taken on behalf of a public power authorities will be appropriate. In case this guarantee is not appropriately provided, the Slovak Republic shall take over the responsibility for the violation of the right acknowledged to the person.[140]

A more detailed regulation is contained in Act No. 514/2003 Coll. on the Responsibility for Damage Caused in the Enforcement of Public Power as amended, which governs the responsibility of the state for damage caused by public power authorities in the execution of public power, responsibility of the municipality and SGU for damage caused by self-governing authorities in the execution of self-government, and pre-trial hearing of the claim for damage compensation and the right to regression compensation. According to the Act it is necessary to have a preliminary negotiation of a claim based on a written application of the person aggrieved with the responsible authority, and only in case the responsible authority fails to satisfy the claim to damage compensation or part thereof within six months, the person aggrieved may claim damage compensation before the court.

The central record of all applications and paid damages according to Act is kept at the Ministry of Finance of the Slovak Republic; the records are accessible also on the website. The Centre especially turned to the Ministry of Justice of the Slovak Republic and the Ministry of Interior of the Slovak Republic in connection with the situation in 2009, considering the fact that the said 2 ministries appear in the record most often.

According to the reply of the MI SR in 2009 the Ministry was delivered 122 applications on the pre-trial hearing of the claim for damage compensation, 6 claims were

[140] Drgonec J.: Ústava Slovenskej republiky , Komentár [Constitution of the Slovak Republic: Commentary]. Šamorín : HEURÉKA, 2007.

satisfied. Out of the remaining applicants, who were not satisfied, 36 started legal action against the Ministry. In 2009 the sum paid amounted to 1.927,7 €.[141]

The Ministry of Justice of the Slovak Republic (MJ SR) could not provide the Centre with any data, since they keep no separate records of applications or satisfied claims, which, however, the Centre considers a missing statistical indicator, which the institution should evaluate.

5.4. Right to effective execution of a judicial decision

The subject-matter of the right is governed under Article 46 of the Constitution of the SR. A number of institutions, including the Constitutional Court of the SR also this year in communication with the Centre pointed out in connection with the observance of human rights in the Slovak Republic to the fact that the most serious problem remains to safeguard the enforceability of the right, thus to safeguard the effectiveness of judicial or other legal protection.

5.4.1. Delays in proceedings

According to the information provided by the Constitutional Court of the SR the right to proceedings within reasonable period (trial without unreasonable delay) is the most often appearing right, the violation of which is argued against by the participants in the judicial proceedings before the Constitutional Court of the SR. In the overall assessment the increase in these complaints culminated in 2005 (913 constitutional complaints). In 2009 688 constitutional complaints were lodged, whereby in 2009 the CC SR stated that there was violation of Article 48 par. 2 of the Constitution of the SR in 271 cases. In 258 cases the Constitutional Court of the SR awarded the complainants in the mentioned cases financial satisfaction due to other than proprietary loss connected with the violation of their fundamental right to proceedings within reasonable period, in the amount of 863.740,07 €.

The Head of the Constitutional Court of the SR initiated on 7th December 2009 an expert session to this topic. The participants in the negotiation adopted a resume, in which they agreed on some problems, which cause delay, and also proposed some possible solutions. According to them, the slow enforcement of justice is also influenced by the insufficient professional level of the responsible subjects in the decision making process, insufficient level of court decisions and the enforcement thereof, decreased quality of the administration

[141] Reply of the Deputy Prime Minister and the Minister of Interior of the Slovak Republic of 18th March 2010.

apparatus, reserves in the system of education. It is necessary to duly tackle the obstructions in proceedings, which may be attributed to advocates. From this point of view they proposed to tackle also the eventual changes of advocacy fees. They also suggested repeated assessment of the creation of the institute of the four-year period for judges. Consent with the appointment of a judge without a time limitation granted by the President of the Slovak Republic would be granted by Court Council of the Slovak Republic. The Head of the Supreme Court of the Slovak Republic suggested introducing disciplinary responsibility for judges, who fail to respect the opinion of higher instance courts, or the Constitutional Court of the SR. Great importance was attached also to the analysis of knowledge from inspection authorities and the following trainings and handbooks for all judicial branches of government.

Delays in judicial proceedings (violation of the right to a fair trial) are also among the most often rights disputed before the European Court.

Out of 42 cases, which were officially reported to the Government of the Slovak Republic by the European Court in 2009, 39 cases related to delays in proceedings. The European Court declared the total number of 39 decisions against the Slovak Republic. Out of the number mentioned above, in 29 cases it was decided on the violation of Article 6 of the Convention in the part guaranteeing the right to hearing without undue delay (some from these decisions were, however, only related to the violation of other rights). Just compensation was granted to complainants in the total amount of 139.798,- € (however, we remind that some of these cases related to also to other violations and in the said cases is not possible especially to calculate an adequate redress granted for the violation of the right to hearing of a case without undue delay and other rights).

5.4.2. Human rights and distraint

The constitutional right to judicial and other legal protection relates also to forced execution of judicial decisions. The activity of a distrainor, being an authorised person appointed by the state to engage in forced execution of judicial and other decisions, in a serious way affect the fundamental human rights and freedoms of citizens, for example the property right or the inviolability of home. Therefore the distrainor in performing his function must act in compliance with the law, impartially and independently.

Also in 2009 the Centre came across a number of cases of objected unlawful practice in connection with distraint. The “victims” were mostly elderly people and people coming from a disadvantaged social background.

For example, the regional office of the Centre in Kežmarok recorded cases, where a nonbank company provided a credit to a number of Roma families in such a way that the employee of the nonbank company visited the Roma settlements in person and persuaded them about a great advantage of such loan and at the same time provided them with cash. There was a specific case where the complainant borrowed from the said nonbank company an amount of 10.000,- SKK and was supposed to pay off the loan by money orders, which she received right there and then, in the amounts of 820,- SKK a month, during 24 months (820 x 24 = 19.600,- SKK according to the contract). From the documented and covered payments it was found out that the amount, which she undertook to pay, was long paid and this amount along with the fines for getting into arrays amounted to 27.000,- SKK. Despite that, the distrainor without requesting information or proofs also from this complainant ordered a distraint, with the obligation to pay other 26.900,- SKK. Thus for having borrowed the amount of 10.000,- SKK the complainant was in the end required to pay 53.900,- SKK under the assistance of a distrainor.

Similarly, another complainant took a nonbank loan, which she paid, although being back in some payments. This was enough for the nonbank company and the distrainor to require that the real estate be mortgaged and entered in the real estate registry. This however, was revoked by the court thanks to the assistance of the regional office of the Centre.

Also the said experience of the Centre shows, that such cases are not rare, and continue to grow in number. Various institutions make contracts which are clearly against good morals, with the aim of making inadequate profit and require such interest rates and payments, which may be considered immoral and may be seen as usury. The citizens sometimes lose their whole property, have to evict their houses and lose all of their property.

It is shocking that this often happens with the assistance of distrainors, that is persons, who are obliged by law to adhere in their activities to observe the fundamental rights and freedoms of citizens. The citizens cannot protect themselves, being in a disadvantaged position, in a life situation which pushes them to make disadvantageous and risk contracts, often without the right to claim just trial. It is the rights of the so called nonbank subjects which are preferred, despite the fat that they clearly violate good morals and are not even persecuted.

The distraint proceedings show the low legal awareness of citizens, predominantly those from a socially weak environment. Very often it happens that the citizens refrain from using even the most fundamental possibility given to them by the Distraint Order to make objections against the distraint.

5.5. Provision of legal aid by institutions promoting human rights enforcement and protection

The promotion and protection of human rights, as an obligation resulting not only from the documents on international human rights law, but also from the national system of the human rights protection, are fulfilled by particular states, also by establishing authorities and institutions to safeguard the protection of individuals from violation of human rights and fundamental freedoms, and to provide legal aid and services and engaged in monitoring and education in this area.

The institutional framework of legal aid and services provided in the area of protection of and promotion of human rights, which is represented in the Slovak Republic by several entities, has not changed in 2009.

The issue of human rights, national minorities and ethnic groups is at the government level of the Government complexly treated by the section on human rights and minorities at the Office of the Government of the Slovak Republic, which also tackles motions from persons pointing out to violation of fundamental rights and freedoms. Irreplaceable roles were played also in 2009 by the Slovak National Centre for Human Rights.[142]

5.5.1. The Ombudsman

An important institution for the protection of fundamental human rights and freedoms is the Ombudsman seated in Bratislava. The Ombudsman has been operating since 2002 in the area of protection of fundamental rights and freedoms of natural persons and legal entities in finding solutions to the violation thereof by public administration authorities and other public power authorities, if their proceedings, decision making or failures to act are contrary to the legal order. Every year, the Ombudsman submits to the NC SR an Activity Report, in which he states findings on the observance of fundamental rights and freedoms of natural persons and legal entities by public administration authorities for the previous period, and proposals and recommendations to remedy the determined shortcomings.

By a letter sent to the Office of the Ombudsman the Centre every year requires information on the number of settled complaints relating to discrimination and on the procedure in case of proven discrimination. For the year 2009 the Centre required information also about the application of the competences of the Ombudsman under § 21 par. 3 Act on the

[142] For more information on the activities of the Centre see the Annual Final Report on the Activities for the year 2009 disclosed at the website www.snslp.sk.

Ombudsman, regarding the possibilities to claim that the legal regulations are contrary to international treaties. The Office of the Ombudsman informed the Centre, that they keep exact statistical data on proven violations of fundamental rights and freedoms of natural persons and legal entities under the Constitution and by the field of competence of the Ombudsman constituted by law. In the course of the year 2009 not a single violation of human rights and freedoms was proven under Article 12 of the Constitution of the SR. The Office of the Ombudsman may not keep exact statistical data if that relates to complaints outside their field of competence; they however, provided us with information that during year 2009 the Ombudsman was addressed by more than 100 complainants pointing out to discrimination. More than a half of the said suggestions has been beyond of the scope of the Anti-Discrimination Act. Suggestions falling under the Anti-Discrimination Act covered the field of employment relations and social security.

The Ombudsman deals with every complaint, and acts in compliance with the Act on the Ombudsman. He is entitled to transfer the complaint to the Prosecutors Office – such procedure was chosen in two cases claiming discrimination. If discrimination legislation was objected to, he turned also to the relevant committees of the NC SR. On his own initiative and beyond his responsibilities the Ombudsman provides also basic legal advice also in cases, which do not fall into the scope of his competences, in the extent of the valid legal regulation, possibilities of solving the problem, or he refers the plaintiffs to relevant authorities and institutions.

The power stated in provisions of § 21 par. 3 of the Act on the Ombudsman, according to which the Ombudsman in cases of compliance with legal regulations under Art. 125 par. 1 of the Constitution, if their further application may threaten fundamental rights or freedoms, or human rights and fundamental freedom resulting from an international treaty ratified by the Slovak Republic and declared in a way constituted by law, may file a motion to commence proceedings before the Constitutional Court of the SR, was not used by the Ombudsman in 2009. In connection with the previous motion to commence proceedings before the Constitutional Court of the SR – filed in 2007, the Ombudsman in 2009 partially withdrew his motion in the matter and at the same time asked the CC SR to admit alteration of the motion. This was done upon an application of a group of citizens, which initiated the filing of the first motion and due to the change in the relevant legal regulation, too.

5.5.2. Legal Aid Centre

Every year, the Centre addresses also the Legal Aid Centre which provides legal aid to persons in material hardship. In 2009 the Centre was interested in failures to meet some of the legal conditions for the provision of free legal aid and representation as the most common reason behind dismissed applications filed by the applicants, how many applications for the provision of legal aid were dismissed in the course of the year 2009 due to failure to meet the legal conditions under § 6 par. 1 letter a) Act No. 327/2005 Coll., i. e., that person was not in material hardship and what kind of actions the LAC recommended to the applicants in case they failed to meet the said conditions.

In its reply, the Centre for Legal Aid stated the following information:

The most common reasons for not granting free legal aid were failure to prove to be in material hardship and the unsuccessfulness of the lawsuit due to the default of time or other legal reasons. In minimum cases legal aid was not provided due to the fact that the value of the dispute did not exceed the minimum wage. The condition to prove that a person is in material hardship, was not met in case of 117 applications. The Centre for Legal Aid also in such cases notifies the clients in writing about how to proceed in the said issue and provides them with examples of legal complaints, and if interested, the centre revise, or amends the filled in forms before they are filed with the court.

The Centre for Legal Aid in 2009 dealt with complaints related to discrimination in the area of employment relations. In the framework of improving access to justice the Centre for Legal Aid also provides mediation services; 18 mediations were carried out in total, out of that 14 in the area of civil law, 2 in the area of family law and 2 in the area of employment law.

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From what has been mentioned above it is clear that the institutions promoting the enforcement and protection of human rights are of great significance and have an irreplaceable position in the mechanism of protection of human rights and freedoms.

5.6. Amendment of the Mediation Act[143]

In the area of provision of mediation as the out-of-court ways of solving disputes, the most important event in 2009 was the preparation of the amendment to Act No. 420/2004 Coll. on Mediation as amended. The amendment was also supposed to govern the provisions

[143] Act No. 141/2010 Coll., amending Act No. 420/2004 Coll. on Mediation.

of the Notarial Rules of the Act No. 323/1992 Coll. on Notaries and on the Notarial Activity. The amended Mediation Act was also transposed into the legal order of the Slovak Republic the Directive of the European Parliament and of the Council No. 2008/52/EC of 21st May 2008 on certain aspects of mediation in civil and commercial matters, the objective of which is to improve access to alternative ways of settling disputes and support to settle the disputes in amicable ways by promoting mediation and safeguarding a balanced relation between mediation and judicial proceedings. The amendment should also introduce several changes in the process of mediation; the most important of them being the fact that during mediation the period of limitation and the period of preclusion lapse.

The proposed amendment of the Mediation Act was commented on by several civic associations of mediators in Slovakia and objections thereto were expressed also by the Centre. The comments related predominantly to the fact that the proposed changes have financial and administrative impact on the parties to the agreement on mediation, which in practice may have a negative influence on taking advantage of mediation in Slovakia.

The proposed amendment however, was submitted to the NC SR for negotiation without incorporating these comments. The amendment shall enter into effect on 1. July 2010. The transposed Directive was supposed to bring advantages to all those who want to settle their disputes out of court, but considering some provisions of the amendment, the Centre fears the effect will be quite opposite. The mediation procedure will get even more complicated, since at the beginning, all participants will have to have their signatures on the mediation agreement verified by a notary. The agreement on the commencement of mediation will then have to be registered in the Notarial Central Registry of Deeds, and only after the registration mediation will be commenced. The obligatory registration of every agreement on the commencement of mediation by a notary will not only make the mediation procedure longer, but also more expensive, moreover, it fails to comply with the requirement to observe confidentiality.

Considering the mentioned facts the Centre states that the said changes will have a negative impact on the clients of institutions providing mediation as a public service, thus for free. The accessibility of mediation for applicants of the Centre o legal aid will be decreased, if they feel to be discriminated against, as well as for clients of the Centre of Legal aid, who are in material hardship.

The Centre fears that the introduction of the obligation to register in the Notarial Central Registry and that the necessity to have the signatures certified may have a discouraging effect on the clients of the said institutions.

6. EXTREMISM

Considering the alarming increase in the manifestations of intolerance motivated by hate towards members of other races, nations, national or ethnic groups, or religions or only looking different or thinking in a different way, the Centre already in 2008 started mapping this issue by monitoring the media aimed especially at the manifestations of racism, xenophobia and anti-Semitism. Simultaneously, this topic was included in a separate chapter of the Report, although from the point of view of human rights it is a cross-cutting topic touching a broad spectrum of rights and freedoms starting with the right to preservation of human dignity, the freedom of speech, right of assembly and association, and other rights.

Within the monitoring of the media the Centre in 2009 recorded 899 reports, which in comparison with the previous year is an increase by 392 reports. This increase is extremely worrying, since it reflects the current situation in the society. The Report for the previous year informed especially on the events in connection with the anti-Roma assemblies in Šarišské Michaľany, Krompachy and Hnúšťa and also in connection with the construction of the wall in Ostrovany.

Also in 2009 the media were dealing with events from the previous period, for example the case of Hedviga Malinová, about whom 5 news were recorded within the monitoring. The media followed in 2009, i. e. four years after this tragic event, investigation into judicial proceedings in the case of the murdered boy Daniel Tupý. The monitoring noted 8 news to the murder of Karol Sendrei from eight years ago at the police station in Revúca, with respect to the fact that the SC SR on 17th September 2009 by passing its decision affirmed the judgement of the District Court of February 2008, according to which two policemen were sentenced to 8.5 years and other two for 7 and 4 years in prison. In the case of the attack on the American dark skinned basketball player of 6th April 2008, the District Court in Košice in May 2009 released on parole one of the two attackers and the other was placed on probation. One of the attackers had committed a number of racially motivated crimes and still faces the accusation of a racial attack of September 2008, when he, together with another four men attacked five Roma in "Sídlisko nad jazerom" (a suburban town in Košice), whereby they were also using racially motivated swearwords.

The issue of dissolution of the civic association ST is being dealt with in a separate chapter (see General part 2.7.1. Dissolution/non-dissolution of the civic association Slovak Togetherness, p. 51).

According to data provided by the General Prosecutor's Office of the Slovak Republic in comparison with the previous years there was only a slight increase in the number of perpetrators criminally prosecuted for having committed a racially motivated crime. The perpetrators of this type of crimes were verbally expressing their support of fascism and movements suppressing fundamental rights and freedoms. Then there were verbal, but also physical manifestations humiliating a certain ethnic group or race, whereby the greatest number of recorded attacks concerned the Jewish community, as well as the Roma ethnicity. In the previous year the number of youth perpetrators of racially motivated crime did not change, either. The composition of perpetrators of racially motivated crimes in the previous period remained practically unchanged compared to the previous years. The perpetrators are mainly young people, whereby the most numerous group counts accused adults from 20 to 24 years (25 persons) and youth (35 persons).

In 2009 according to the statistics of the Presidium Police Corps in the Slovak Republic there were 132 crimes with a racial motive registered. Most of them, i. e. 93 crimes, were on the grounds of public manifestation of supporting - especially by using flags, badges, uniforms or slogans - groups or movements, which by using violence, violence threat or other severe damage threat are aimed at the suppression of human rights and fundamental freedoms of persons, 14 cases of supporting and promotion of groups aimed at the suppression of fundamental rights and freedoms, 9 crimes of incitement to national, racial and ethnic hatred, 7 crimes of defamation of a nation, race and belief, 2 crimes of producing extremism-related materials, 2 cases of disseminating extremism-related materials, 1 crime of storing extremism-related materials.

6.1. Criminal Code and Extremism

In November 2008 the Ministry of Justice of the SR submitted to the legislative process a bill, amending Act No. 300/2005 Coll. Criminal Code as amended. The reason behind submitting the draft Act according to the Explanatory Report [144] was the recorded *"increase in acts of violence connected also with delinquency, which at present occur more often and under circumstances, which in previous periods had not occurred or occurred less frequently"*. The Ministry of Justice of the SR thus reacted to the cases of hooliganism of some groups of viewers at sports events, connected with the expressing of opinions or with the promotion of movements suppressing fundamental rights and freedoms of persons.

[144] Explanatory report available at: http://www.rokovanie.sk/appl/material.nsf/0/8068F2951D323B6C41257500004E8934/$FILE/Source.html. Cited on 13th April 2010.

Other reasons included cases of instigation of violence or hate on the grounds of race, colour of skin or nation, public justification of genocide, crimes against humanity or war crimes, or their public denial or the trivialisation thereof. Simultaneously, the Ministry of Justice of the SR proposed to punish stricter some offences, which had previously been considered crimes.

The bill was adopted on 16th June 2009 with effect from 1st September 2009 as Act No. 257/2009 Coll., amending Act No. 300/2005 Coll. (Criminal Code) as amended.

The Act No. 257/2009 Coll. states the definition of an extremist group (§ 129 par. 2), an extremist material (§ 130 par. 8 and 9), a special extremist motive (§ 140 letter d/ and f/), definition of extremism-related crimes - each crime is listed and defined in relation to an extremist motive (§ 140a). It governs the facts of the crimes of violence against a group of inhabitants under § 359 and hooliganism under § 364 and in some of the facts of Chapter twelve of the separate part (§ 421 to § 424) and governs the new facts of crime in this chapter – § 422a to § 422c and § 424a.

Although several terms were introduced to the Criminal Code, such as Extremism and the derived adjectives thereof, the amendment fails to clearly define the term "Extremism". If for example in § 129 par. 3 under the term "an extremist group" for the purpose of Criminal Code we shall understand at least three persons associated for the purpose of committing a crime of extremism, it is not clear under the Act, what the legislators meant when using the term "extremism". A certain justifiable interpretation of the term, however, may be found in § 140a, in which the crime of extremism is defined as *"crime of supporting and promotion of groups which are aimed at the suppression of fundamental human rights and freedoms under § 421 and 422, production of extremism-related materials under § 422a, dissemination of extremism-related materials under § 422b, storing of extremism-related materials according to § 422c, defamation of a nation, race and belief under § 423, incitement to national, racial and ethnic hatred under § 424, incitement, defamation, and threatening persons on the grounds that they belong to different race, nation, nationality, ethnic group, colour of skin, or ancestry under § 424a and crime committed with a special motive under § 140 letter d) and f)".*

Act No. 257/2009 Coll. changed the title of the separate section 12 of the Criminal Code, to "Crimes against peace, against humanity, the crime of terrorism, extremism and war crime" and also the title of the first part to "Crimes against peace and humanity, the crime of terrorism and extremism". In crimes stated in section 12 of the separate part of the Criminal Code (except the crime of supporting and promotion of groups aimed at the suppression of fundamental human rights and freedoms under § 421 and § 422, the crime of defamation of a nation, race and belief under § 423 and the crime of incitement to national, racial and ethnic

hatred under § 424) the punishability of these acts and enforceability of the imposed punishment are not subject to the statute of limitation.

The adoption of Act No. 257/2009 Coll. left out the term "holocaust" of the Criminal Code. The original punishability of public denial, contesting, approving and justification of holocaust is, in addition to the present extended punishability of such manifestations also in relation to other similar crimes (thus not only holocaust, but also genocides and crimes against humanity etc.) and the aggravated punishment, replaced by a new provision of § 424a (and supplements the provision of § 138 par. 8 and 9 and adds new facts under § 422a to 422c), which punish public justification, denial or trivialisation not only of holocaust, but all genocides, crimes against humanity and war crimes committed against a group of persons or an individual determinable according to his/her race, colour of skin, ancestry, nation, nationality, ethnic group or religion, if it is based on the previously mentioned identification criteria, if the offender threatens with violence or defames such group of persons or an individual.[145]

It could be stated that even though Act No. 257/2009 Coll. on the one hand extended and amended the Criminal Code to correspond with current forms and the content of extremist crime, on the other hand, however, the need is still perceived to more precisely govern and modify some provisions and controversies.

6.2. Manifestations of violence with a presumable racial motive

In this area, the Centre recorded in the media, apart from the mentioned case of ill-treatment of the Roma boys at the police station in Košice (see General part 1.2.1. Ill-treatment of the Roma boys at the police station in Košice, page 16) the following assault and battery cases:

5. 4. 2009 in Bratislava at Panónska cesta on the bus line No. 91 four attackers aged 19 – 27 years attacked ten men of Roma nationality. The perpetrators would kick the passengers and beat them up with a shovel, and would swear at them. After calling the police the attacker was detained within a short time.

26. 4. 2009 close to the town of Košice, early in the morning a member of a private security company tried to enter a house with Roma inhabitants by force. He tried to kick out the door, smashed in the windows and shot in the air. The inhabitants called the police who arrested the perpetrator.

[145] Explanatory Report available at: http://www.rokovanie.sk/appl/material.nsf/0/FC90CC57DD62DE26C125750D002E27A0/$FILE/Source.html. Cited on 13th 2010.

9. 5. 2009 in Devínska Nová Ves after the dissolution of an illegal punk concert two members of a Flying squad of the District Police Directorate in Bratislava grossly assaulted one of four young men, who didn't follow their order. Both members were punished.

20. 5. 2009 during a school trip a 16 year old boy attacked another 16 year old boy and caused him bodily harm. The reason behind the attack was allegedly longer hair.

31. 5. 2009 in Bratislava Mlynská Dolina (student dorm city) a student from Kenya was attacked, who was on his way back to the dorm. The attackers threw stones at him, causing him a wound on the head. He was hospitalised for 4 days and he lodged a criminal information against the attackers with the police.

7. 6. 2009 in the village of Zohor in the evening a young man of 20 years shot at a 61 year-old man of Romany nationality in the head, who at that time was having a walk with his partner.

18. 6. 2009 in one of the pubs in Košice a group of men assaulted two students from Chad, who were leaving for the dorm. At the beginning, they insulted them, and later they battered and kicked them. The attack was recorded by a security camera.

9. 8. 2009 in Rimavská Sobota in the evening there was a fight between the members of the skinhead movement and the Roma. A similar incident occurred approximately in the first half of August in the village Močenok between a group of young people and the inhabitants of Roma nationality coming from Horná Kráľová after the Roma allegedly attacked a young man of 21 years.

22. 8. 2009 in the Kollár Square in Bratislava, there was a fight at a bus stop which ended in bodily harm, between three neo-Nazis and two young Roma men. It was, however, not clear who attacked first.

28. 12. 2009 an unknown man, by phone, threatened with violence Roma inhabitants coming from Klenovec by burning down their settlement. He also announced his intention to the police. He is prosecuted at liberty.

6.3. Manifestations of extremism and manifestations of defamation of a nation, race and belief

Among the very serious manifestations of defamation of a nation, race and belief, instigation of national, racial and ethnic hatred in 2009 there was the anti-Roma statement of Marián Kotleba in the pre-election leaflets and on the billboards within the elections for the head of the Self-government Unit of Banská Bystrica. The Roma Parliament lodged a criminal information against him. Marián Kotleba gained a 10 % support of the inhabitants of the Self-government Unit of Banská Bystrica and ended fourth out of nine candidates. The

efforts of extremism-related movements to get established and succeed in the political system in elections in 2010 was manifested also by the establishment of the political party "Ľudová strana Naše Slovensko" (National Party Our Slovakia), the leader of which is the former leader of Slovak Togetherness Marián Kotleba. On the other hand, the effort of the civic association "Južanská rada" (Southern Council) for self- determination is to establish a party to fight for the autonomy of the southern part of Slovakia under the name Hungarian Civil Party for Equality. Both extremes mentioned are considered very dangerous by the Centre on the Slovak political scene.

An increase in racist moods in the society caused great concern for the European Commission against Racism and Intolerance, which was pointed out also in its fourth Regular Report published on 26th May 2009.

6.4. Abuse of the freedom of assembly and association and of the freedom of speech

Although according to information provided by the Presidium of the Police Corps of the SR, assemblies held during the year 2009 may not be labelled as assemblies of extremists, since their organisers and the participants have not been sentenced for the crime of extremism, it is necessary to point out to a significant increase in the number of meetings, what may be considered abuse of the freedom of assembly and the freedom of speech.

6.4.1. Assemblies of the members of ultra-right movements and anti-Roma assemblies

In 2009 in comparison with the previous years there was a significant increase in the number of assemblies of members of extreme right wing movements in Slovakia. The survey of the held meetings, which, however, was not quite exhaustive, records activities in this area in the SR and in the neighbouring countries, in which participated also sympathizers of similar movements from Slovakia:

14. 2. 2009 in the centre of Budapest, on the occasion of the anniversary of the fight of German and Hungarian fascist troops in the town, there was a meeting of approximately two thousand neo-Nazis from a number of European countries. Among them there were also two members of neo-Nazi movements from Slovakia. On the same day there was a similar meeting organised in Dresden, at which the police arrested also two Slovaks, who were later released.

14. 3. 2009 in connection with the 70th anniversary of the establishment of the Slovak State met in the Hodža Square in Bratislava approximately 200 sympathizers of right wing

movements, who marched from the square to the Martin Cemetery to the grave of Jozef Tiso to commemorate him. Due to security reasons and the fear of an encounter with the participants in other meetings showing their disapproval of such march, the police in cooperation with the City Council of the Old Town dissolved the meeting of neo-Nazi after Marián Kotleba, the leader of ST, yelled the guard salute.

23. 4. 2009 in the village of Dolné Zahorany in Southern Slovakia the members and supporters of the Hungarian extremist movement "64 žúp" (64 counties) with the aim of recruiting new members. The meeting was originally planned for 22. 4. in the village of Fiľakovo. Similar events were held in Dunajská Streda and in Šamorín. Such events were also planned in Moldava nad Bodvou and in Košice.

20. 4. 2009, on the occasion of the 120th birthday of Adolf Hitler, in Ústí nad Labem (Czech Republic) a march of Czech and Slovak neo-Nazis was held.

25. 7. 2009 in the Hungarian town of Györ a concert of skinhead groups was organised, supported by the bands from Slovakia.

8. 8. 2009 in Šarišské Michaľany there was a protest assembly of approximately two hundred supporters of extreme right wing movements, supported also by the local inhabitants, as a reaction to the attack of two juvenile inhabitants of the settlement in Ostrovany on a 65-year-old pensioner. Despite the fact that initiator of the protest was the civic association ST, the meeting was not officially reported by anyone. The mayor of the village dissolved the unreported protest, which was held on a football playground. The protesting citizens did not obey the order and the police started to push them out of the playground. After arrest of Marián Kotleba they started to throw stones and pyrotechnics at the policemen.

14. 8. 2009 in Prešov a march was organised to express a protest against the police intervention in Šarišské Michaľany.

15. 8. 2009: a planned march, which was supposed to be held in the centre of Budapest on the occasion of the 22nd anniversary of the death of Rudolf Hess, was prohibited by the Hungarian police together with other nine related events. The meetings were supposed to be attended by approximately 200 000 sympathizers of right wing movements in Europe.

22. 8. 2009 in Krompachy another protest assembly was organised by ST with the same objective as in Šarišské Michaľany. The protest was supported by approximately 500 persons as well as by local inhabitants.

On the same day several members of extreme right wing movements supported a protest event against the allegedly unjust imprisonment of a skinhead movement member for the murder of a Roma citizen in Svitavy.

25. 8. 2009 a march of the members of extremism-related movements in Nové Zámky.

29. 8. 2009 an anti-Roma meeting was organized in Turzovka, attended also by the members of extremism-related movements from the Czech Republic. On the same day the members of the association "Nové slobodné Slovensko" (New Free Slovakia) marched across the village of Ostrovany to the village of Ražňany and then moved to Spišské Podhradie.

5. 9. 2009 another meeting of ST in Krompachy. The protest took place under the supervision of policemen and lasted approximately 4 hours.

18. 9. 2009 meeting in Košice of approximately 150 supporters of extreme right wing movements. It lasted approximately 3 hours without greater support of the inhabitants of Košice.

26. 9. 2009 Marián Kotleba on another meeting in Hnúšťa introduced a new political party "Naše Slovensko" (Our Slovakia).

17. 11. 2009 in Lipany, the Sabinov district, approximately 300 people took part in a meeting organised by the association "Nové slobodné Slovensko" (New Free Slovakia). The purpose of the assembly was especially to criticise the police, politics, the media, and the Roma.

21. 11. 2009 Slovak "Slovenské hnutie obrody"(Slovak Revival Movement) organised a march in Poprad from the railway station to the memorial of Jozef Bonk. Matica Slovenská provided the movement with premises and participated in the organisation of lectures.

5. 12. 2009 the police had to intervene during a non-reported meeting in the centre of the town Bánovce nad Bebravou.

6.4.2. Extremism at sports events

On 1st November 2009 provision of § 10 of Act No. 479/2008 Coll. on Organizing Public Athletic, Sporting and Tourist Events came into effect, which imposes an obligation on an organiser of football and hockey events within the two national leagues, with the capacity of the stadium above 2 000 viewers or when organising events, which are described by the organiser, municipality or the police as risky, to install at the entrances, exits and premises for the visitors a working security camera system, which will identify the face of a natural person. According to the statement of the Judicial and Criminal Police Office of the Presidium of the Police Corps of the Slovak Republic camera systems have only been installed at three stadiums. The events on the stadiums in the course of year 2009 do not suggest that the adoption of the said Act could improve the situation in the area of fan violence. While

monitoring the media, the Centre in 2009 recorded the following sporting events accompanied by fan hooliganism:

8. 4. 2009 in a football match between Spartak Trnava and Slovan Bratislava (football clubs) the fans of Slovan assaulted the Senegalese football player of Trnava. The assaults mocked the colour of his skin.

11. 4. 2009 in a football match between the clubs DAC Dunajská Streda and Spartak Trnava there was a fight between the fans, which incited interest of national political parties in Hungary and Slovakia.

2. 6. 2009 in connection with the celebration of the 90th anniversary of the founding of the club ŠK Slovan Bratislava the management of the club organised a friendly match with football club FC Naples. The match however, ended with disturbances of the fans of Slovan. Right after the match the fans ran on the playground and attacked the members of the security service and of the fire brigade.

30. 7. 2009 in Žilina a football match of the third pre-round of the European UEFA League between the clubs MŠK Žilina and the Croatian Hajduk Split took place. The event was accompanied by disturbances of Croatian fans already before the match. They could not get on the stadium, so they assaulted policemen in the centre of the town and invaded restaurants, causing material damage to the restaurants and the public transport company.

6. 8. 2009 during the football match between MFK Košice and MŠK Žilina, the fans of Košice club assaulted two players of Žilina (shouting at them on the basis of their skin).

22. 8. 2009 before the football stadium during a match between Trnava and Ružomberok the police arrested a 29 year-old male who openly used a Nazi salute "Hail" and other fascist battle-cry.

28. 10. 2009 during a match between the clubs DAC Dunajská Streda and ŠK Slovan Bratislava, which was declared as high risky, the referee had to interrupt the match for 10 minutes because the inappropriate behaviour of the fans, who were throwing flares and coins on the playground, whereby one coin hit the head of one player.

6.5. Abuse of freedom of speech and the manifestations of extremism; dissemination of extremism via internet

In 2009 the monitoring of the media revealed 15 news relating to the threat of dissemination of extremism on the internet. Their content revealed that the last year there was a significant increase in the attempts of the members of neo-Nazi groups to gather and share personal data, pictures and other detailed information on the opponents of right wing

extremist movements via the Internet, under the heading "remember the faces and names of the traitors of our race, all of them will pay for their crimes". Since the said websites are registered on foreign internet servers, predominantly in the US, the creation thereof outside of the Slovak Republic is not in violation of the Criminal Code. The Centre however, considered the fact clearly as the freedom of speech abuse.

According to the response of the Presidium of the Police Corps of the SR, in 2009 the public internet network was being monitored on a regular basis. All public manifestations displayed and presented on the internet were evaluated, and in case of suspected fulfilment of the facts of some crimes, the information was transferred to investigative, prosecuting and adjudicating bodies. [146]

Anti-Roma tendencies appeared also on Facebook, which hosted a number of such groups. The biggest of them, counting nearly 70 000 members titled "Žiadne výhody Cigánom" (No advantages to the Gypsies) was removed from the portal by the Facebook administrator on the incentive of the civic association People Against Racism. The internet television of the Slovak National Party issued a report of their representative from Brezno, in which he in a defaming manner commented on the Roma ethnic group, and according to the opinions of experts his comments were almost unlawful.

[146] Reply of the Judicial and Criminal Police Office of the Police Corps Presidium of 8th March 2010.

Special Part

THE PRINCIPLE OF EQUAL TREATMENT AND THE PROHIBITION OF DISCRIMINATION

1. APPLICATION OF THE ANTI-DISCRIMINATION ACT

The year 2009 was the fifth year since the Act No. 365/2004 Coll. on Equal Treatment in some areas and on the protection from discrimination as amended (Anti-Discrimination Act) has come into force and effect. This Act governs the application of the principle of equal treatment, which consists in the prohibition of discrimination on the grounds of sex, religion or belief, race, belonging to a nationality or ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other conviction, national or social background, property, ancestry or other status. It provides protection from discrimination in some areas of social life, such as employment relations and similar legal relations, social security, health care, supply of goods and services and education, and imposes the obligation to adopt measures for the protection from discrimination and have a respect to good morals. In case of violation of the principle of equal treatment this Act sets out the resources of legal protection.

Compared to 2008, in which 2 amendments of this Act were adopted (Act No. 85/2008 Coll. effective from 1st April 2008 and later Act No. 384/2008 Coll. in effect from 15th October 2008), in the evaluated period no amendment was adopted. The said amendments of the Anti-Discrimination Act were described in details in the Report on the Observance of Human Rights in the Slovak Republic for the year 2008.

It can be stated that the amended version of the Act has already a second year become a sufficient legal tool for the promotion of equality among and between individuals and groups, capable to safeguard their protection from discrimination in practice.

Also in 2009 our society was confronted with cases of discriminatory behaviour and violation of the principle of equal treatment, which were being handled also by the Centre.

From the point of view of areas protected under the Anti-Discrimination Act, employment ranked first. Other areas with comparable representation included education, health care and the supply of goods and services. The most frequently occurring protected reasons of discrimination included nationality or ethnic group, gender/sex, age, disability, sexual orientation, race and colour of skin.

According to the monitoring processed by the Centre, in 2009 media brought 152 news informing on discrimination in certain areas of life of our society and concerning various reasons. The Centre itself handled 1571 complaints objecting violation of human rights and discrimination, whereby 912 of them were settled by the 7 regional offices.

The economic crisis has a negative impact especially on employment relations. There was a clear increase in discrimination of persons (men and women) of higher age, pregnant women and mothers taking care of children, not only in job seeking, but also in their discharging, especially due to organisational reasons. Age, gender and family status were the most common reasons behind discrimination. Decreased possibilities to get a job worsened the loss of working habits of the long-term unemployed, who continued having problems to get established on the labour market, were they usually did not succeed at all.

A new phenomenon in evaluated period was the ways in which some employers investigated the complaints of male and female employees, who objected violation of the principle of equal treatment by their bosses or male or female colleagues. Instead of meeting their obligation to respond to a complaint objecting discrimination and fulfilling the obligation to prevent the phenomenon and to adopt measures to protect the victims from discrimination, the employers would often evade the issue and shift the responsibility to the victims of discrimination, applying the provisions of the Act on Complaints, despite the fact that the complaint on the violation of the equal treatment principle and discrimination is not assessed according to Act on complaints. Such behaviour was identified by the Centre in state administration authorities, in territorial self-government, but also in some manufacturing companies.

In 2009 the Slovak society discussed also the racially motivated attacks on the Roma and segregation tendencies of some towns and villages towards the Roma, which were manifested also in the construction of walls to separate the dwellings of Roma and non-Roma inhabitants.

In 2009 however, there was no significant change in deliberation of courts for the benefit of victims of discrimination enforcing their right to equal treatment and to the elimination of discrimination. Scepticism of persons who faced discrimination to judicial decisions in discrimination cases, fear of having to pay the costs and of delays in judicial proceedings, directed the victims of discrimination to use mediation in a broader extent as a convenient tool for out-of-court settlement of disputes.

In 2009 were also clear efforts of gays and lesbians for self-determination in the society and the legalisation of registered partnership.

1.1. Assessment of affirmative action (temporary compensatory measures)

The Centre is under § 8a of the Anti-Discrimination Act the institution, to which state authorities are obliged, after continuous monitoring and assessment, to submit reports on the justification of further duration of the adopted affirmative action (temporary compensatory measures, TCM).

In 2009, however, the Centre recorded no increase in the number of state authorities, which would on behalf of the disadvantaged groups, under the conditions determined by the Anti-Discrimination Act, take advantage of the possibility to adopt TCM.

The Centre received replies to issues related to TCM from the Ministry of Health of the Slovak Republic, the Ministry of Culture of the SR, the Ministry of the Environment of the SR, the Ministry of Transport, Posts and Telecommunication of the SR and the Ministry of Labour, Social Affairs and Family of the SR and from the Office of the Plenipotentiary.
The Ministry of Education of the Slovak Republic did not react to the questions related inter alia to the TCM.

The Ministry of Health of the Slovak Republic with the aim of improving the health of the Roma population continued with the implementation of the Programme to support the health of the disadvantaged Roma community. The programme is being carried out by the selected regional public health care authorities and coordinated by the Office public health care of the Slovak Republic. The target group of the community social workers as regards health education are the inhabitants of the segregated Roma settlements and localities. The health education is aimed at several problem areas, such as body hygiene; prevention of infectious diseases and the protection of sexual and reproductive health.

The Ministry of Culture of the Slovak Republic creates room to support temporary compensatory measures within grant programmes Culture of National Minorities and Culture of the Disadvantaged Groups of Inhabitants, which are aimed especially on equal opportunities in the area of minority cultures, and also the prevention of discrimination and on multicultural incentives. Priority and criteria of these programmes are updated every year. Also in 2009 the Ministry supported the creation of tools aimed at balancing out chances, removing stereotypes and prejudices, information barriers in the access to culture for the disadvantaged groups of inhabitants and also at the elimination of all forms of violence. More specifically, within the grant programme Culture of National Minorities the priorities of the programme were targeted at children and youth with disabilities. In this connection in 2009 cultural activities were carried out, such as art workshops and summer camps for Roma

children and youth and enlightenment and educational activities to abolish information barriers for person with disabilities (educational project "Okná múzeí dokorán" - Museum Windows Open Wide in cooperation with the Slovak Disability Council).

The answers provided by the Ministry of the Environment of the SR and the MTPT SR revealed that in 2009 no TCM were adopted.

The MLSAF SR has not defined the category of special temporary compensatory measures. It implements, however, several activities and measures to abolish diverse forms of socio-economic disadvantage and handicap resulting from belonging to a group of inhabitants, aimed at safeguarding equal opportunities in practice.

Within the framework of the subsidy policy in the area of upbringing and education, it provides subsidies to support access to education, support of the regular school attendance and to prevent social exclusion. The objective of providing subsidies is to motivate pupils from low income families to achieve good study results, which should improve their chances to further education at secondary schools and later at universities, and their placement in the labour market. Also in 2009 the adopted national projects continued, titled "Employment support of the unemployed with emphasis placed on the long-term unemployed and the disadvantaged groups in the labour market"; "Self-employment support of job seekers"; "Employment support of the disabled citizens"; "Employment support of citizens threatened by mass dismissal as a result of a global financial crisis", the final beneficiary of which was the Central Office of Labour, Social Affairs and Family. The objective of these projects is to improve the employment rate and prevent long-term unemployment rate by helping to enter/re-enter the job of the registered unemployed with accent laid on the disadvantaged groups in the labour market.

Under the System of coordination of the horizontal priority implementation – priority *Marginalised Roma communities* - for the years 2007 – 2013, the coordination thereof is safeguarded by the Office of the Plenipotentiary of the Slovak Government for Roma Communities. The implementation of the said measures is the responsibility of the mediatory authorities under the steering authority – Social Implementation Agency and the Social Development Fund.

Based on the statement of the Plenipotentiary of the Slovak Government for Roma Communities the application of TCM in the Slovak Republic is mentioned especially in connection with the Roma population. In the great majority of the Roma there is long-term monitored high level of social and economic disadvantage.

The application of TCM seems, according to many experts, to be the only way to balance out the permanent disadvantage of the Roma on the labour market, in housing and in education. For adequate and efficient implementation of TCM, available data on the situation of Roma inhabitants in the Slovak Republic have key significance. Based on the mentioned facts, the Office of the Plenipotentiary in 2009 carried out, in cooperation with lord mayors of towns and mayors of municipalities, monitoring of the situation of Roma inhabitants in Slovakia. The results shall serve to formulate proposals of possible TCM under active participation of the Centre.

In the evaluated period the Centre was not addressed by a single state authority, which would provide the Centre with a report on the monitoring and assessment of the adopted temporary compensatory measures with the aim of reassessment of the further application thereof. The reason might be the unclearly formulated provision of § 8a par. 4 of the Anti-Discrimination Act on submitting reports to the Centre, as well as in an ambiguous opinions among the experts and the affected authorities on the application of TCM in practice.

Since in 2009 no amendment to the Anti-Discrimination Act was adopted, which would increase the number of subjects eligible to receive TCM, the Centre repeatedly points out that the inclusion of municipalities, self-government units (regions) and employers into eligible entities to adopt TCM could help safeguard equal opportunities in practice and meet the expectations in connection with the removal of socio-economic disadvantage, as well as handicap on the grounds of age and disability.

In the evaluated period there was no broader discussion about TCM among the engaged state institutions and therefore the Centre has the ambition in 2010 to promote this topic.

2. GROUNDS OF DISCRIMINATION

2.1. Discrimination on the grounds of sex

Discrimination on the grounds of sex is difficult to identify and practically has a negative affect on one of the sexes. Stereotypes, which determine the unequal position of women and men, are however, in general perceived as natural and are thus tolerated by the society.

Last year the Centre investigated dozens of cases objecting gender inequality. Most often maternity was given as a reason of unequal treatment, cases of sexual harassment, cases of dismissals on the grounds of pregnancy, etc.. The majority of these cases were examples of unequal treatment in employment relations or similar legal relations.

From the reports on the inspection performed by the Labour Inspectorates [147] results, that the employers have always defined the same criteria for payment of wages to men and women. Two failures were revealed – in one case it was discrimination on the grounds of sex. The second one related to the failure to comply with the principle of equal pay for equal work to two female employees, thus failure to observe the principle of equality in remuneration (regardless of the sex aspect). However, it must be mentioned that in many cases there are employers, who appoint men in the management and the regular employees are predominantly women, or the differences in remuneration are justified by a different work load which, however, is not actually performed by the better paid employees (mostly men).

Also the advertisements and written job offers refer to one grammatical gender, which makes the impression that people are sought according to sex. Nevertheless, the employers told the labour inspectors, that they were not interested in an employee according to his/her sex, but were looking for an employee who could do the job properly.

While comparing equal pay for equal work the Labour Inspectorate compared basic salaries, that is the starting salaries/wages, minimum wages, as well as other benefits, which the employer is obliged to pay the employee. During the inspection, no failures were found out in the majority of inspected entities, which were in direct connection with a discriminatory approach in remuneration of employees on the grounds of sex. Despite the general belief, that men in the same position have higher wages than women, none of the addressed institutions, except for the Confederation of Trade Unions, has confirmed that, and neither it has been proved by judicial proceedings.

[147] Záverečná správa Národného inšpektorátu práce z previerok zameraných na kontrolu dodržiavania ustanovení Zákonníka práce týkajúcich sa diskriminácie (úloha č.B/49/09) [Final Report of the National Labour Inspectorate on inspections aimed at control over the observance of the Labour Code provisions concerning discrimination (task No. B/49/09)].

The Confederation of Trade Unions of the Slovak Republic in their letter[148] pointed out to problems, which relate to different remuneration of men and women. These were determined during the analysis of collective agreements, which stated that women in the same position at work are disadvantaged compared to men, as regards the wages.

In April 2009[149] the National strategy for Gender Equality for the years 2009 – 2013 was adopted. The purpose of the Strategy is, in the following 5 years, to react appropriately to processes affecting the whole society with the objective of safeguarding the implementation of equality between women and men *de iure* and *de facto*.

What may be considered a challenge within the implementation of the CEDAW (UN Convention on the Elimination of All Forms of Discrimination Against Women) in Slovakia is also the issue of gender segregation in education, which results in gender segregation on the labour market. In the area of education, as well as further education and requalification in Slovakia there still are relatively strong gender stereotypes present. The women´ s level of education in Slovakia is approximately the same as the men´ s level (as well as in the area of higher education), however, it is gender segregated, as women studying humanities prevail. Competent institutions in their documents plan to intensify the introduction of measures, which would raise the interest of women in education in those professions dominated by men and which would balance out the disproportions in this area, but the results are not visible enough so far. One of the main barriers, which prevent the meeting of the said objective, is the stereotypical perception of the roles of men and women in society. Despite the fact that boys and girls are educated together, the education content is not the same. Gender segregation in the area of education is reflected also on the labour market. The ratio of women and men on the labour market is relatively balanced, gender segregation, however, manifests as the wage gap. Despite the satisfactory legislation, equality in remuneration of women and men has not been reached so far. The wage gap between men and women in the Slovak Republic still persists.[150]

In practice we often face indirect discrimination of women (female employees, who were prevented from working because they had to take care of an ill family member, are not

[148] Reply of the Confederation of Trade Unions of 5th March 2010.

[149] Resolution of the Government of the Slovak Republic No. 272/2009 of 8th April 2009.

[150] Comparison of gross monthly wages of men and women in the entrepreneurial field and outside the entrepreneurial field, III. Quarter of 2009:

Entrepreneurial field			Non-entrepreneurial field		
EUROS/month.			EUROS/month		
Whole Slovak Republic	men	women	Whole Slovak Republic	men	women
809, 60	896, 52	685, 62	659, 05	749, 49	624, 17

Source: TREXIMA

awarded bonuses, female part time employees get a remuneration disproportional to full time employees, etc.).

2.1.1. Pregnancy as a reason for the termination of an employment relationship in a trial period

Discrimination on the grounds of gender (sex) is considered by the Anti-Discrimination Act (§ 2a par. 11 letter a), Directives of the European Union, as well as the case law of the European Court also pregnancy and motherhood. Pregnancy and biological maternity is a phase of parenthood, in which it is necessary to protect the unique relationship between mother and child. In proving discrimination based on this reason the existence of a comparable person (comparator) is not required. Thus, if in case of a pregnant women it is proven that she is treated less favourably, such acting is perceived as direct discrimination. Directive of the European Union No. 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (rewritten wording) in Article 2, item 2, letter c) reads that discrimination includes any less favourable treatment of a woman, related to pregnancy or maternity leave within the meaning of Directive No. 92/85/EEC. Directive of the EU 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding stipulates, apart from other issues, in Article 10 the prohibition of dismissal of a pregnant women. The prohibition of dismissal relates to the whole period if pregnancy and maternity leave except for special cases, which do not relate to pregnancy or motherhood, and are allowed under national rules and practice. Moreover, the Directive contains the precondition that if an employer dismisses a female employee in the mentioned period, he must give a duly reason in writing for her dismissal. In order to prevent unlawful dismissals, the member states have the obligation to adopt measures to improve the protection of pregnant employees and those who have recently given birth or are breastfeeding.

In the framework of deliberation of the European Court the following opinion has been adopted: “There is no doubt that it is impossible to compare the situation of a woman who, due to her pregnancy finds out to be incapable to perform tasks she was hired for, with the situation of a man, who is similarly incapable due to his health condition or other reasons.” The European Court also highlights that as stated in the preamble of Directive 2006/54/EC: “The Court of Justice has consistently recognised the legitimacy, as regards the principle of equal treatment, of protecting a woman's biological condition during pregnancy

and maternity and of introducing maternity protection measures as a means to achieve substantive equality."

Also during the year 2009 the Centre dealt with cases objecting discrimination on the grounds of pregnancy. Although the Labour Code as well as other employment regulations stipulate the protection, apart from other groups of employees also of pregnant women, the Centre received several complaints related especially to dismissals of female employees in the trial period. One of the complainants faced this experience also despite the fact or even because of the fact that she had acted under employment regulations, which require that pregnancy be notified in writing. Shortly after having reported her pregnancy her employer used his right to terminate the employment relationship in a trial period without stating the reason, which was done in form of written notice.

Pregnancy still seems to be a phenomenon, which the employers refuse to deal with, and often solve the issue by terminating the employment relationship with a pregnant female employee. Although there is no exact statistics of dismissed pregnant women in a trial period, it can be stated, that this trend shows a rising tendency in the labour market. The trial period, where both parties, the employer as well as the female employee can decide to terminate the employment relationship without further formalities, seems to be the period, in which this right is often abused by the employers.

From the facts mentioned above results, that it will be necessary to strengthen the protection of pregnant women, but also to provide employers with assistance in form of tools which will be useful for them as well as for their pregnant employees, what should be one of the tasks of the responsible institutions.

2.2. Discrimination on the grounds of belonging to a national minority or ethnicity

The basic tool of the Government of the Slovak Republic in the area of prevention and reduction of discrimination, racism, xenophobia or intolerance is the Action Plan to Prevent All Forms of Discrimination, Racism, Xenophobia, anti-Semitism and other Manifestations of Intolerance. The already fifth Action Plan is for the period of years 2009 – 2011.

Despite the measures of the Government of the Slovak Republic we can state that ethnic discrimination is still a persisting phenomenon in Slovakia. The Roma have for a long time been excluded from the labour market and because of bad health condition, insufficient education and social status they have restricted possibilities to participate in social life.

Discrimination shows in the majority of cases the form of indirect discrimination, harassment, instruction to discriminate and incitement to discrimination.

This is also proven by the results of Eurobarometer 2009. What Slovaks consider the second most widespread form of discrimination is discrimination on the grounds of ethnic background (49 %).[151]

The Centre and the regional offices thereof provided legal aid in 15 cases, in which the applicants objected discrimination on the grounds of belonging to Roma ethnic group. One of these cases related to discrimination in access to goods and services, 6 cases related to discrimination in access to employment, 1 case related to discrimination in access to education and 7 cases to discrimination in access to housing. Out of these cases two were well-founded, others are still in process. At the turn of 2008 and 2009 the Centre carried out successful mediation in the case of objected discrimination of a female employee by her employer on the grounds of ethnicity. The case was solved by mediation under an agreement and the female employee was also provided financial compensation.

The Centre provided legal consultancy also to the Roma, in 26 cases, which did not relate to discrimination.

The Regional Office of the Centre in Humenné investigated in 2009 a complaint of a female Roma citizen objecting discrimination in the access to goods and services, as she was not served in a pharmacy. In this case independent testing was performed in cooperation with the Trade Inspection and the civic association Centre for Civil and Human Rights in Košice, which did not confirm discrimination on the grounds of race and ethnicity in the access to goods and services.

In 2009 the Slovak Trade Inspection accomplished two checks aimed at the discrimination of Roma citizens in restaurants and pubs, one in cooperation with the civic association Centre for Civil and Human Rights. In both cases the subject-matter of the complaint was confirmed.

The State School Inspection in particular regions investigated one complaint objecting discrimination of a Roma pupil; Roma pupils were excluded from participation in an excursion by a primary school teachers. The complaint was examined and declared unsubstantiated.

[151] More information at: http://ec.europa.eu/slovensko/documents/news/archive/eb-diskriminacia.pdf.

From the letter of the NLI it is not possible clearly determine, whether among the suggestions objecting discrimination there was a suggestion objecting discrimination on the grounds of race or ethnicity, and if it was declared substantiated.

Also the Ombudsman was tackling motions, which objected discrimination also on the grounds of ethnicity; their number however, was not specified by the Centre.

The civic association Centre for Civil and Human Rights was only summarising its cases at the time when the Report on the Observance of Human Rights in the Slovak Republic for the year 2009 was being elaborated. In 2009 the Centre represented 10 clients in the proceedings, who objected violation of the principle of equal treatment in the access to goods and services, social security and employment. Out of these, three cases ended in an out-of-court settlement, in one case the court of appeal changed the decision of the first instance by revoking the claim and an application for appellate review was filed with the SC SR; other proceedings have not been finalised so far. The Civic Association provided also legal representation to 16 male and female clients in 5 criminal proceedings (due to suspected crime of instigation to racial hate or defamation of race, or abuse of powers of a public official with a racial motive).[152]

2.2.1. Construction of walls near Roma settlements

Based on the media news about the construction of a wall in the village of Ostrovany the Centre under § 1 par. 2 letter g) of the Act on the Centre performed an independent investigation in the village. At the same time the Centre was addressed also by the Office of the Plenipotentiary, which asked for an expert opinion, whether the equal treatment principle in the matter in question, by virtue of the Anti-Discrimination Act, has been violated.

The independent investigation included the evaluation of the matter from the legal aspect as well as the visit of the employees of the Centre in the village of Ostrovany. The objective of the visit was to observe the atmosphere in the village, make informal interviews with the Roma and the non-Roma inhabitants. An important part of the inspection was also the inspection of the concrete wall in order to adopt an opinion to crucial matters, for example if the constructed wall prevents the local Roma to make use of publicly accessible areas or if the use of local communications has changed or if the constructed wall segregates the Roma, etc. The finding of the said facts should help us assess if the construction of the concrete wall caused violation of the principle of equal treatment under Anti-Discrimination Act. The

[152] Letter from the Centre for Civil and Human Rights of 18th February 2010.

Centre then turned to the mayor of the village of Ostrovany, to express his opinion on the issue. We inspected the zoning plan of the village, the financing of the construction, the process of passing the construction, the reasons, which led to the construction, the preventive measures adopted by the village, etc.

The answers of the mayor revealed that the declared objective of the construction of the wall on private land or on the border thereof was to protect the affected inhabitants of the village from their land being repeatedly entered and their fruit, vegetables and fuel being stolen. The village abided by Act No. 369/1990 Coll. on Municipal Government as amended, predominantly § 3 par. 2 letter f) and § 4. According to the explanation provided by the mayor of the village, the affected owners of the land had first reported theft of steel posts and the damaging of the existing fence, as well as repeated theft of their crops to the police. Because the perpetrators had not been identified, the complaints were postponed. The Centre asked about the number of and the nature of complaints registered by responsible authorities. Thee village mayor stated that "since the year 1991 the affected citizens would report thefts to the police. According to the statement of the mayor the perpetrator was always unknown in those cases. Lately, the damaged person tackled the issue by complaining to the municipal office and asked the mayor for cooperation in solving the disputes. State police keeps records of the complaints." Despite the fact that the submission of statistical data on the thefts would in this case be considered an underlying supportive and credible material of his words, the mayor did not submit such statistics, which leaves the extent of damage caused by the perpetrators unidentified.

The other part of the reply revealed that the construction of the wall was financed from the municipal budget, the intent to build such wall was agreed on by the Local Council. To this opinion, the mayor sent the minutes from the meeting of the Local Council, the Resolution of the Local Council to the construction of the wall, the voting to the Local Council on the resolutions, the selection of the contractor, the calling of a tender and the statement to the reporting of a minor construction.

From the point of view of prophylactic and preventive measures the mayor in his response described the supportive development programmes from the past. According to the statistics stated in the letter, the community social work in the village based on the partnership between ETP Slovakia and the village of Ostrovany managed to employ 86 Roma citizens, help 18 citizens finish education and 4 start their own small business. He also pointed out the fact that more than 29 poor families have managed to reconstruct their flats and houses using the said micro loans and 15 families were engaged in a saving programme, whereby 8 of them successfully finished the

programme and are preparing for the reconstruction of their flats and houses. The village has the ambition to start in 2010 with the construction of lower standard flats, and at present it finalises the transfer of suitable land to its possession.

On the one hand is therefore necessary to highlight the incentive of the village to join project activities and also considering the achieved results – employment of a part of the Roma, reconstruction of flats for some of the Roma and to evaluate them positively, but on the other hand the village should pay greater attention to the selection of such projects, which would, considering the specific features of the village, be of greatest contribution. The quantity of project activities is not an automatic guarantee of improving the coexistence of the Roma and the non Roma inhabitants and the creation of a non-discriminatory environment.

The mayor was asked by the Centre to provide information to the previous activities, which they carried out since 1991 to solve the problem of thefts. Apart from the measures such as admonishing the Roma inhabitants, who would enter the land of their neighbours by the in-field social workers of the village, and by other employees of the village and representatives of the Local Council mentioned, the mayor mentioned no other measures that would lead to improvement and prevention. The mayor of the village has not mentioned if he himself tried to communicate with the inhabitants of the village, or if he delegated that on the community workers. The question is, if the stated measures may qualify as sufficient and exhaustive.

The wall should, according to the information provided by the mayor, form a part of a social and educational centre, which the village allegedly plans to construct in the Roma settlement. To this point the mayor also added the information that the centre is included in the zoning plan of the village, which was passed by the LC by Resolution No. 4/1999-B/1 on 9th June 1999 and that the resources for the zoning development were used for the whole village. From the information provided by the mayor it was not obvious if the construction of wall should serve as the base for the construction of the said centre, or what role this wall should play in connection with the planned centre.

The conclusions of the Centre are as follows:

While assessing if the construction of the wall in Ostrovany may be considered discriminatory according to the provisions of the Anti-Discrimination Act, the Centre stated that this specific case may not be subsumed under any of the areas protected under the Anti-Discrimination Act**.** Despite the fact that the assessed problem falls under none of the areas protected under the Anti-Discrimination Act, it is not possible to limit the principle of

prevention, explicitly stated in § 2 par. 3 of the Anti-Discrimination Act, only to certain areas. Therefore the Centre stated that prevention from discrimination was not applied in a sufficient way by the village. The Centre admitted possible breach or violation of rights protected by other regulations and pointed out to the negative impact of such handling on the formation of public opinion. The recommendations which the Centre proposed to particular subjects, as well as more detailed information about the whole case are displayed on the website of the Centre.[153]

The relevant concept materials of the Government of the Slovak Republic, oriented at those groups of Slovak inhabitants in a marginalised/disadvantaged position (National Action Plan of the Slovak Republic to the Decade of Inclusion of the Roma population 2005 – 2015; Long-term concept of housing for marginalised groups of inhabitants) state that the placement of constructions must not deepen the spatial and social segregation, but must be a tool to integrate the inhabitants of the affected Roma community. A measurable value is the distance of the constructions from the villages, but also the access of both groups of inhabitants to public services.

In case of proven need the centre is entitled to use strict, efficient and temporary measures in close cooperation with the responsible state institutions.

The villages and towns should therefore adopt effective measures to prevent segregation. Among the most important areas, where the said measures of local authorities to tackle problems with the Roma inhabitants should be implemented are zoning, housing and social policy and local economic development.

The walls which in 2009 were built in Ostrovany, but also in other Slovak towns, become symbols of separation of people. It is a phenomenon, the aim of which is to separate the ethnic settlements of the Roma from the houses of the non Roma. Such handling results in social separation. The current situation does not contribute to the improvement of relations between the non-Roma and Roma inhabitants and forms no basis for the integration of the Roma into the majority society. Quite the opposite, it decreases social cohesion between people.

In our society there still is the need to have a public discussion on the existing social discrepancies, their tolerable extent, on the separation and starting segregation of some groups of inhabitants, on the tolerance level to such phenomena and on the conditions of acceptance of such inhabitants.

[153] Expert opinion of the Centre of 22th January 2010. Available at: http://www.snslp.sk.

The evaluation of the formed situation should gradually be stripped of negative emotions, prejudice and stereotypical opinions, with accent laid on the observance of values such as responsibility for one´ s behaviour and respect to other people´ s property.

The forming and sensitising of public opinion to the inclusion of the Roma community in the society, the provision of sufficiently objective information may significantly influence also the balanced presentation of this topic in the media.

2.3. Discrimination on the grounds of disability

The quality of life of disabled citizens depends apart from other factors especially on possibilities for economic and social participation in the life of the society. Most obvious discrimination of this group of persons is reflected on the labour market. Although the experience with discrimination on the labour market is shared by the majority of adult population Slovakia, persons with disabilities perceive the discrimination in a more sensitive way.

The job possibilities for persons with disabilities in 2009 got even more complicated by the economic crisis, during which the number of job vacancies was significantly decreased. Considering the fact that at present the situation on the labour market is problematic in a number of regions of Slovakia, the possibilities of this group of people to get a job were small also in 2009. On the labour market, the health condition remained the very common reason of unequal treatment. Although the amended Law Act on employment services, which entered into force in 2008, brought several possibilities to increase the competitiveness of this group of people in getting established on the labour market, this group of economically active inhabitants also in 2009 had to face prejudice and artificially created barriers by the employers.

The chances of persons with disabilities while seeking jobs are smaller by approximately one half in comparison with other job seekers. Assistance during the process of getting established on the labour market provided to job seekers with disabilities is provided by the Offices of Labour, Social Affairs and Family and some non-governmental organisations, associations and agencies of supported employment. For this group of job seekers the Central OLSAF carried out various pilot regional and national projects within active measures on the labour market. Labour agents, who work within the OLSAF, find out about the requirements employers have on employees, employers´ s working conditions in employers and monitor the situation in the labour market.

Among the most vulnerable groups on the labour market are people with combined

impairment of being deaf-blind and the mentally challenged. The mentally challenged get education on the level of special fundamental schools and practical schools and mostly work in protected workshops. The mentally challenged are a group of citizens, who, considering their impairment, need constant assistance and support to develop skills and abilities. Deaf-blindness causes extreme problems in the area of upbringing and education, in social life, in mobility and in the access to information, which at the same time complicates the possibilities for the people with such impairment to get established in certain areas of work.

Under the amended Act on employment services the Central OLSAF offers the employers, who have interest in creating jobs for the disabled, several possibilities of their support. Among them there are contributions oriented at protected workshops or protected workplaces. The Slovak Association of the Physically Disabled (Association) however, draws attention to the fact that in 2009 many of the protected workshops were terminated and the conditions for the inclusion of persons with disabilities in society aggravated in 2009. This was influenced by the persisting economic crisis. The Association perceived differences in discrimination of persons with disabilities between men and women on the labour market as well as in 2009, and according to their opinion, compared to 2008, the said differences were even more prominent. From the point of view of citizens with severe disability there are barriers (physical as well as communication barriers). One of the ways of improving the situation of persons with disabilities in this area, is according to the Association, it is necessary to provide better material as well as financial support of non-governmental organisations, which represent this group of citizens.

The issues relating to persons with disabilities are tackled also by the Slovak Disability Council. It associates citizens with various types of disability: deaf-blind, chronically ill, mentally ill, with impaired hearing or sight, physical disabilities, and others. The Council strives to foster mutual cooperation in promoting better living conditions for disabled citizens at national, regional, and international level.

We can give an example of good practice - a service for citizens with disabilities provided in job seeking which was introduced by the internet job portal www.profesia.sk. The service allows such citizens to give information on their health impairment in the CV created on the website. In establishing this service the portal cooperated with the SDC. With its expert assistance a section was formed to deal with the employment of persons with disabilities, which provides the necessary information not only for this handicapped group of people, but also for employers, who have interest in employing such persons.

Another example of good practice is the creation of specialised protected workshops, and the provision of services to drivers within the whole Slovak Republic.

The Centre in 2009 dealt with a number of cases objecting discrimination against citizens with disabilities. Most often these occurred in the area of employment relations. Employers continued using practices to treat employees with disabilities in form of various working restrictions, terminated their employment relationship, etc.

There was a case of a woman with a severe disability who worked in state organisation on an expert position, and turned to the Centre claiming that her employer dismissed her due to organisational reasons (whereby according to her opinion that was discrimination), the Centre based on an examination into the issue expressed suspected violation of the principle of non-discrimination. Therefore the Centre initiated an informal meeting of an employer and the female employee, the aim of which was to get more details, but especially to get answers to questions related to the objected discrimination. This meeting resulted in an agreement of both parties to solve the problem out of court by mediation. The mediation carried out by the Centre was successful. An agreement was signed and the female client with severe disability was employed again in the same organisation.

Based on the facts mentioned above as well as on the experience of the Centre, it can be stated that in the opinion of some employers in Slovakia there is no need to employ also persons with disabilities. This group of citizens is often perceived as a burden at work. The disabled must also in the context of employment relations be perceived in a complex manner, from the point of view of their education, social, psychological as well as ethical qualities and based on their needs, they should have conditions created to integrate into the working and social life. The adoption and implementation of reasonable accommodation for persons with disabilities shall help them gain an equal position in many working areas and thus make the concerns of their employer unsubstantiated.

2.4. Discrimination on the Grounds of Age

Age as a criterion of recognising diverse rights or imposing obligations is considered daily in various areas of social life. Such distinction is generally considered natural and useful. The problem however, arises if persons are evaluated on the grounds of their age in areas, where there is no reason for such considerations and where it is even explicitly prohibited by law.

Within the framework of the European Union law discrimination on the grounds of age is prohibited in the area of employment and occupation. The Council Directive 2000/78/EC at the same time allows the member states to determine that the difference of treatment on the grounds of age shall not be considered discrimination, if in the context of national legal regulations they are objectively and appropriately justified by a legitimate goal and if the resources to meet this goal are reasonable and necessary. The Directive also specifies the examples of what such differences in treatment may include.

The amended Anti-Discrimination Act (ADA), in effect since April 1st 2008, beyond the framework of this directive embodied the prohibition of discrimination on the grounds of age in all protected areas, i. e. besides employment and other of legal relations also in the area social security, health care, education and supply of goods and services. The ADA at the same time admits different treatment on the grounds of age in case, if this is objectively justified by a legitimate goal to meet which it is necessary and reasonable, and if this is provided for in a separate regulation. Therefore it is not considered discrimination on the grounds of age setting the minimum or maximum age limits as a condition for entering the job, special conditions for access to employment or vocational education and special conditions for employment including remuneration and dismissal, if that concerns a person of certain age or person with caretaking obligations and if the purpose of these special conditions is to support inclusion of such persons in labour market or their protection, and setting the minimum age limit, professional experience, or the years of employment for access to employment or to certain employment benefits.

Age is, not only according to research, but also according to the experience of the Centre among most often occurring reasons behind discrimination on the labour market. This is also supported by the results of Eurobarometer 2009,[154] according to which the type of discrimination Slovaks consider the most common is exactly discrimination on the grounds of age (64 % of respondents). The opinion poll revealed that in comparison with the citizens of the EU the Slovaks more often face discrimination on the grounds of age during job interviews (69 % of the addressed Slovaks compared to 48 % of EU citizens).

In 2009 in comparison with the year 2008 the situation on the labour market in connection with the discrimination on the grounds of age has not changed significantly, and due to the suffered economic crisis it even showed a rising tendency. The information provided for example by the Offices of Labour, Social Affairs and Family in Kežmarok revealed that the

[154] Source: http://ec.europa.eu/slovensko/documents/news/archive/eb-diskriminacia.pdf.

office was reported one mass dismissal, within which the employer in 2010 should dismiss 69 employees, whereby 50 of them were aged 50 years and more.[155] The Office Labour, Social Affairs and Family in Poprad was in 2009 reported 6 mass dismissals, out of which were 4 were carried our. The structure of the dismissed employees within the reported mass dismissals shows that out of the total the number of 176 dismissed persons 78 were older than 50 years.[156] Although based on the given data it is not possible to clearly state discrimination on the grounds of age, since we do not have sufficient information on the age structure of all employees in a specific company, the data mentioned only confirm the experience of the Centre, that age is a reason due to which the said persons subsequently turn to the Centre.

The survey performed in 2009 by the representative of the regional office of the Centre in Nové Zámky with a sample of 296 respondents, which mapped the attitudes, stereotypes and experience of employers with discrimination on the grounds of age in the area of employment relations revealed that the majority of the addressed employers (79.73 %) admit discrimination on the Slovak labour market. Whereby most often it occurs on the grounds of age (30.29 %).

The poll also surveyed the preferences among employers in employing persons and wanted to find out if prejudice and stereotypes played a role in the selection of employees. According to their statements, employers prefer the criterion of qualification (47.95 %) and length of service (35,62 %) when employing new staff. The age requirement ranked third (4.11 %). Despite fact that discriminatory requirements were only admitted by a small percentage of employers, in reality, on the labour market discrimination affects also the relatively young age groups (people aged 40 to 45 years), but also graduates and young people aged below 25 years.[157]

The survey also dealt with the question of what advantages and disadvantages result to the employers from employing older persons in comparison to younger age groups. What was perceived by the employers as the greatest lack in older employees (81.08 %) was the fact that they do not speak foreign languages, followed by insufficient computer literacy (74.32 %). On the other hand, what they appreciated was their rich working experience (93.24 %), responsibility (79.73 %) and loyalty (78.83 %). The majority of employers evaluated older employees more positively in comparison with younger people. Higher age as a feature to determine working skills of employees was not considered important by the employers.

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[155] Reply of the Office of Labour, Social Affairs and Family in Kežmarok of 2nd March 2010.
[156] Reply of the Office of Labour, Social Affairs and Family in Poprad of 2nd March 2010.
[157] Zozuľáková, M.: Agizmus a veková dskriminácia : Rigorózna práca [Ageism and age discrimination: A PhD thesis]. Bratislava: Vysoká škola zdravotníctva a sociálnej práce sv Alžbety, 2009.

The subject-matter of the investigation was also attractiveness and the labour market chances of various job seekers and also gender and age perception of the employers. This perception was clearly refused by 14.86 % employers, others decided based on sex and age. The chances of women on the labour market are clearly smaller compared to men, women would be preferred only by 20,27 % employers. The highest chances to get a job are given by the employers to middle-aged men (31.08 %), and quite paradoxically, smallest chances are given to young women (1,35 %). We suppose that this attitude is into a great extent influenced by maternal and parental duties of younger women.[158]

2.5. Discrimination on the grounds of sexual orientation

In 2009 Slovakia reintroduced the topic of registered partnership of persons of the same sex and the incorporation thereof within the legislative framework.

In Europe, registered partnership is possible in Norway, Sweden, Denmark, Finland, Island, the United Kingdom, Germany, Czech Republic, Slovenia, Luxemburg, Switzerland, France, and Portugal as well as in Austria. The possibilities for homosexuals to get married exist in the Netherlands, Belgium, and in Spain. Outside Europe, marriage of homosexual couples is allowed in Canada, some states of the US and Argentina.

The European Parliament (EP) asked the states to change their legislation in same sex couples. Although the fact that this proposal was supported also by the representatives of the European Parliament for the Slovak Republic, this requirement is currently not a priority within the legislative process.

Homosexual couples in Slovakia do not have the right to enter into a registered partnership, and therefore feel to be discriminated against. Registered partnership should help this minority to approach the majority and achieve more rights in the area of mutual informing on the health condition, inheritance issues, duty to support and maintain in case the partners separate, or in case of loans, which they could take under more favourable conditions as a registered couple. In everyday life, homosexuals face harassment, mobbing, and hostility. As employees they often cannot take advantage of various benefits, since they do not meet family standards.

In 2009 "Iniciatíva Inakost" (a voluntary civic initiative of Slovak gays and lesbians *Otherness*) turned to the Ombudsman and asked for assistance in implementing the content of the call of the European Parliament. The Ombudsman admitted that this topic opens room for

[158] Zozuľáková, M.: Agizmus a veková diskriminácia : Rigorózna práca [Ageism and age discrimination: A PhD thesis]. Bratislava: Vysoká škola zdravotníctva a sociálnej práce sv. Alžbety, 2009.

discussion on understanding equality guaranteed under the Constitution of the SR. This incentive was the first ever regarding the topic of discrimination for sexual orientation the Ombudsman dealt with since opening his office (SITA news of 21st January 2009).

According to the opinion polls the Slovak public has no problem with the adoption of Act on partnership between persons of same sex. The majority of people in the poll gave their support to the right to information on the health condition of the other partner, a one day leave in case of death of the partner to arrange a funeral and the related matters. More than a half of respondents agreed also with the duty to support and maintain between the partners, estate by the entireties and inheritance in case of death of one of the partners. This opinion poll revealed that there is the need of real communication between the interested parties and there is no reason why this effort should not be successful (SITA news of 7th October 2009).

2.6. Alternative and other reasons, which occur in practice as discriminatory

The understanding of the term discrimination is very different in the society and even at present ambiguous. The term and the concept of discrimination remain unclear for the majority of inhabitants and very often it happens, that intense inner feeling of unfairness and injustice is perceived by the people as what they understand under the term discrimination. The majority of people perceive discrimination beyond the framework determined by the Anti-Discrimination Act.[159] Also due to this reason people from socially disadvantaged groups, for various alternative reasons, which are not stated in the ADA, complained against discrimination at the Centre.

One of the most common reasons relates to persons, who have a criminal record. In 2009 the Centre was addressed by several persons, who objected discrimination in job seeking on the grounds of a criminal record. Former prisoners are approached by the society with a significant social distance. This is perceived as injustice especially by released prisoners, since it is very improbable that they will find a job because of their criminal record. Nearly every employer today requires integrity. Released prisoners who cannot find a job in the long run, often commit another crime to get imprisoned for the "housing and food" provided in a jail.

Another problem occurring in practice is the discrimination against groups of inhabitants, who are different from the majority due to social dependence or serious social

[159] Act No. 365/2004 Coll. on equal treatment in certain areas and protection against discrimination, and on amending and supplementing certain other laws (Anti-Discrimination Act) as amended, prohibits discrimination on the grounds of sex, religion or belief, race, belonging to a particular nationality or ethnic group, disability, age, sexual orientation, marital status and family status, colour of skin, language, political and other opinion, national or social background, property, ancestry or other status.

problems. The application of the right to work in their case is very limited depending on which social group they are. One of the examples are the homeless, since many of them have no identification card, and therefore cannot get any, not even part time or seasonal jobs.

Long term unemployment of a job seeker is a very common and topical problem. Despite the fact that unemployment is according to the Slovak anti-discrimination legislation not considered a reason of discrimination and unequal treatment, in practice it exists. The employer with a stereotyped behaviour expects from a long-term unemployed poor personal or work qualities and usually attributes unfounded characteristics to such job seekers. These artificially created negative images influence also the efforts of those who have no poor work habits and try to get a job.

The Centre in 2009 recorded also cases, where the complainants objected the so called "language discrimination". Many persons felt "language discriminated" in seeking jobs in international companies, which required foreign language speaking in everyday practice. Predominantly however, these were positions where the duties and responsibilities did not require everyday (or sporadic) communication in a foreign language. Many felt discriminated against at work, if they had to communicate in a foreign language, if they worked in the territory of the Slovak Republic.

The attitudes of many inhabitants, especially in the position of employers and providers of goods to individuals or groups of persons, who do not fall within what is perceived as "standard", hold prejudices against "being diverse". In order to change these attitudes it is extremely important to raise the informedness and legal awareness of the public about human rights and discrimination.

3. PROHIBITION OF DISCRIMINATION IN AREAS PROTECTED UNDER THE ANTI-DISCRIMINATION ACT

3.1. Workplaces and the labour market

As has already been stated, in comparison with 2008 the situation on the labour market in connection with the discrimination in 2009 has not changed significantly, even though due to the economic crisis it had a rising tendency.

In 2009 Labour Inspectorates investigated 74 complaints objecting discrimination, out of that 17 were substantiated. More than 50 % of claimants were recommended by the Inspectorates to take the case before the court, or recommended to turn to the Centre. In the inspected organizations in which shortcomings in the area of discrimination were determined, the Inspectorates imposed no fines, but ordered to remove the determined shortcomings. According to the statement of the NLI the number of motions objecting discrimination decreased and out of the number of motions, the area of discrimination only took a small part, which is a long term trend. It was pointed out that the employees are not well aware of their rights and obligations, and thus create conditions for discrimination. Employers are mentioned, who have a well elaborated Code of Ethics, which may be a preventive element.[160] Unfortunately, experience of the Centre show, that the presence of the Code of Ethics does not necessarily mean that the company observes the principle of equal treatment; often it only meets the formal criteria and is not used efficiently in practice.

The NLI in this connection repeatedly pointed out the fact that it is problematic to prove discrimination employee, and therefore the motions objecting discrimination should be brought before the court. However, only a small percentage of those discriminated against do turn to the court, which is proven by reports from courts, which record a minimum amount of such complaints. On the other hand, however, it is necessary to state that also the number of court decisions in favour of the victims of discrimination is very small.

The only exception are the so called anti-discrimination claims of judges, who in 2009 filed approximately 150 such claims. The Centre however, expressed the opinion in this regard, that in this case it was the unequal position of judges governed by law, not discrimination governed under the Anti-Discrimination Act. The valid legal regulation as such should not represent violation of the principle of equal treatment according to the Anti-Discrimination Act. Failure to observe the principle of equal treatment in remuneration would

[160] Reply of the National Labour Inspectorate of 18th February 2010.

be determined for example, if for equal work and work of equal value, under comparable working performance and results, the judges were provided with different remuneration with the same employer. Discrimination would occur also if at the same workplace of the court male judges would receive a higher bonus for exercising the judicial function than female judges.

In connection with the complicated proving discrimination many trade unions and trade union associations share the same opinion. The majority of addressed organizations and unions believe that the valid legislation creates real preconditions for preventing discrimination and creates appropriate legal conditions for equal treatment.

Z competences offices Labour, Social Affairs and Family results as well as control activities, which in 2009 were carried out in 14 cases. The checks were aimed at the observance of § 14 and § 62 par. 2 and par. 3 Act on services employment rate, whereby shortcomings were not found. The Central OLSAF 3 motions from citizens, who objected violation of the principle of equal treatment in access to employment (job offers, job advertisements), but an examination revealed they were not substantiated.[161]

What results from the mentioned legal provision are also the obligation of employers and job agencies to publish job offers in form of advertisements, which are in compliance with the principle of equal treatment. The Centre addressed by letter as well as in person also job agencies, which, like some employers publish discriminatory advertisements, some of which may be evaluated as advertisements directly or indirectly discriminating against some job seekers, but also as advertisements with the so called latent discriminatory contents, which may have discriminatory impact on job seekers of both sexes.

According to the statement of the employment agency "Index Nosluš", their agency observes the principle of equal treatment and non-discrimination in the area of access to employment, for example also by not requesting photographs to be sent with job applications, the selection criteria are not of discriminatory nature, such as sex, nationality, religion, etc.[162] The said statements, however, are contrary to the reality, since the agency often publishes discriminatory advertisements, and requires pictures to be sent also when applying for various work positions, even manual work jobs.

In 2009 the Centre investigated an increased number of motions in employment areas, for example unlawful termination of employment, inadequate working conditions, problems

[161] Reply of the Central Office of Labour, Social Affairs and the Family of the Slovak Republic of 9th March 2010.
[162] Reply of the of the job agency Index Nosluš of 19. April 2010.

in proving occupational diseases, forced termination of employment without reasoning, so that the employer didn't have to pay any compensation, work tasks were intentionally not assigned to a female employee, failure to provide sufficient information to the job, sanctioning for the violation of work discipline for not obeying orders, which was contrary to law. Mobbing and bossing from the side of a broad spectrum of employers (state administration, self-governance, public institutions and private entrepreneurs) were objected very often in the motions

There were more cases of objected discrimination on the grounds of sex (predominantly pregnancy and motherhood), disability, and ethnicity. A number of Roma women with a university degree with a specialisation in special education for special schools objected, that despite the fact that they met the qualification criteria and spoke the Roma language, whereby in special schools there are predominantly Roma children, non-Romany applicants were preferred, even without the said specialisation. However, predominantly due to the reason that eventual judicial proceedings would only weaken their position on the labour market, they refused to further tackle the problem. In another case it was not possible to prove discrimination on the grounds of the ethnicity of a female applicant, since the school had already employed another Roma teacher.

Last year the Centre identified an increase in discrimination cases, which had to be investigated very carefully, because the affected persons feared victimisation.

Unfortunately, we must state that the said concerns in connection with difficulties in proving discrimination were often substantiated. At present for example a judicial proceedings is running in a case of a claim relating to the protection of personality, filed by a senior employee against his female colleague, who accused him of sexual harassment. This fact was proven also by an independent investigation carried out by the Centre. Since the claim had been filed, all hearings have been postponed due to the absence of the complainant and their legal representative, which however, subjects the victim of discrimination intentionally to even more stress and longer victimisation.

In examining cases the Centre faces assaults and threats from employers. There were cases where based on an order by the employer the employees had to sign a petition claiming that that nobody has ever been discriminated against at the workplace, which is contra-productive considering what may be considered and perceived as discrimination.

Although in 2009 the Centre recorded a decrease in the number of motions relating to the unequal treatment in employment of the most threatened groups, it may not necessarily mean, that

the situation has changed, but may only mean that after the previous experience the said groups resigned and seek jobs of lower status or have given up completely.

In their work the representatives of the Centre often witness the lacking understanding of discriminatory behaviour and the identification thereof in specific cases, and that not only in laymen, but also in experts. The way out of this unfavourable situation may be cooperation of the engaged institutions in form of education activities, round tables, workshops and common proceedings in cases of objected discrimination, which in practice would eliminate discrimination.

3.1.1. Problems with the prohibition of discrimination in recruitment and dismissal

Economic problems in the society relating to the world economic crisis, which started at the end of the year 2008, reflected especially in the period from January 2009 in lower numbers of delivered and investigated motions at the Labour Inspectorates on the violation of employment related regulations by employers. In the evaluated period 2009 the number of investigated motions amounted to 6 289 which, in comparison with years 2006, 2007 and 2008, when the number of incentives was quite the same, represents an increase by 1 693 motions. The situation in particular regions of Slovakia is influenced by the unemployment rate and insufficient number of suitable jobs. At present the situation in employment is aggravating. This condition influences the behaviour of employees in using resources for the protection from discrimination and from this point of view it is necessary to assess also the statistical evaluation of the year 2009, which in comparison with 2008 shows a decrease in the number of motions objecting discrimination by 10 %. It is natural that employees, trying to keep the job, try not to object violation of legal regulations as long as they have a job, let alone unequal treatment.

According to verified information obtained by the Centre, some mass dismissals included the dismissal of elderly people and women – mothers. Also the reports from some of the addressed Offices of Labour, Social Affairs and Family prove, it was predominantly the women who were dismissed, which, however, was in connection with the with the structure of the employer companies, who announced layoffs. A high percentage of dismissed were people aged 45 – 60 years, many of them were disabled.

Some authorities confirmed the results of the surveys, that the average age of the dismissed women was 45.5 years. No office however, considered the structure of the dismissed employees discriminatory due to the absence of possibilities to identify the

protected reason. The offices didn't have data on the ethnicity and nationality of citizens, and data on dismissed Roma or other national minorities does not exist.

Despite the fact that in practice organisational changes should affect less productive employees, many employers acted with prejudice and dismissed also employees with good qualities from the protected groups, which, however, may ultimately aggravate the financial problems of some employers. Other forms of employment, such as working at home, teleworking, etc. are not being utilized enough.

3.1.2. Personnel agencies as an important partner in the labour market

The obligation to observe the principle of equal treatment and prohibition of discrimination due to reasons protected under the Anti-Discrimination Act and reasons stated in the Act on Employment Services [163] relates also to the area of access to employment.

The Act on Employment Services in § 14 par. 2 states that a citizen has the right to access to employment without any restrictions, in compliance with the principle of equal treatment in employment relations and similar legal relations constituted by a special law, which is the Anti-Discrimination Act. In the area of employment services, including job mediation, personnel agencies play an important role. Personnel agencies carry out their activities based on permit to mediate employment for a fee, which is issued by the Central OLSAF for an indefinite period. Exact conditions related to job mediation are stated in the Act on Employment Services in § 25 to 28.

Despite the fact that personnel agencies not are directly one of the subjects of employment relation, they play an important role on the labour market also in promoting the principle of equal treatment and non-discrimination, especially in the area of the right to access to employment and occupation.

In this connection the Centre was interested in how the said role is played by the selected personnel agencies, if they organised educational activities in this area for their employees, managers and clients, or if the agencies elaborated their own Code of Ethics and rules including the obligation to adhere to the principle of equal treatment and prohibition of discrimination. The Centre wanted to know if the staff of those agencies engaged in supporting diversity management, or if their clients in mediating jobs violated, or could violate the principle of equal treatment. The questions asked by the Centre related to the

[163] Act No. 5/2004 Coll. as amended.

possible existence of special programmes for job seekers from socially disadvantaged groups of inhabitants.

Two personnel agencies reacted to the questions. They pointed out in their answer that every job seeker was interviewed. Discriminatory questions and photos were not used as criteria at the job interviews. As regards the support of diversity management, one of the personnel agencies pointed out to the fact they employed a number of women comparable with the number of men in the long run. According to the answers, personnel agencies have a Code of Ethics in place and use it when solving practical matters. The trainings of future employees of personnel agencies also cover the area of non-discriminatory selection procedure. Special attention is paid by one of the agencies to the employee profile, which must not be in contrary to the Anti-Discrimination Act. The candidate´ s profile contains no photo, name or contacts. The answers provided by personnel agencies show that one of them directly supports diversity management, although it failed to provide more details, and the other pays no special attention to it, but applies it in practice by employing employees of diverse nationalities, religions and ethnicities. Both agencies stated that a client refusing any group of job seekers based on discrimination reason, is not an appropriate partner for them. One of the agencies highlighted that they make their clients aware of such issues, especially if the violation of the principle of equal treatment refers to the Roma. Personnel agencies do not pay special attention to job seekers from disadvantaged groups of inhabitants, they allegedly treat all the same way, and not in a discriminatory manner. It is however, necessary to state that the gained information provide no complex answer as to how personnel agencies have adapted to the role of an important "player" on the labour market in the area of promotion of the equal treatment principle and non-discrimination.

In the future it will therefore be necessary to cooperate with personnel agencies and target educational activities in the said area on those important subjects. Even though their position is into great extent influenced by the employment rate and job offers, since they were one of those subjects affected by the economic and financial crisis.

3.2. The observance of the equal treatment principle in social security, health care, supply of goods and services and in education

The observance of the principle of equal treatment in the area of social security, health care, in education and supply of goods and services including housing is regulated at the European level under the Council Directive 2000/43/EC only with regard to racial or ethnic background.

The Slovak Anti-Discrimination Act goes beyond the framework the European regulation and prohibits discrimination in the said areas not only on the grounds of race and ethnicity, but also on the grounds of sex, religion or belief, nationality, disability, age, sexual orientation, marital status and family status, colour of skin, language, political or other belief, national or social background, property, ancestry or other status. It is, however, necessary to mention again, that the principle of equal treatment is under § 5 of the Anti-Discrimination Act enforced only in connection with the rights of persons constituted by special laws governing a special area of legal relations.

Social security

The principle of equal treatment is in the area of social security enforced in connection with the rights of persons constituted by special laws, as regards access to and the provision of social aid, social insurance, pension savings, supplementary pension savings, state social support and social benefits.

The Centre is often contacted by persons, who from various reasons feel to be discriminated against in the area of social security. After examining all facts it is often necessary to state that the problem lies in insufficient awareness of those persons of their rights and obligations in relation to the Social Security Company. The reasons included a failure to meet the deadline, or failure to submit all relevant documents.

Often, however, the problem lies with the Social Security Company, in the competences and in personalities of the employees of the Social Security Company, since most complaints object lengthy proceedings, failure to provide sufficient information, problems in personal communication etc. Despite numerous motions addressed to the Centre, in the course of year 2009 discrimination was proven in none of the cases in the area of social security. The Centre asked the self-government units (regions) about the number and the content of complaints objecting discrimination in the provision of social services. 7 regions reacted, however, allegedly none of them investigated a complaint regarding the principle of equal treatment.[164]

[164] The self-government unit of Žilina reported 12 motions and claims, these, however, allegedly related to dissatisfaction of clients of assisted living centres with the services provided, or with the work of a certain staff member.

Health care

The prohibition of discrimination in the area of health care provision is governed under the Anti-Discrimination Act as well as under Act No. 576/2004 Coll. on Health Care, services relating to the provision of Health Care or the Charter of Patients Rights.

According to the information provided by the Health Care Supervisory Authority in the course of year 2009 they investigated only one complaint objecting discrimination on the grounds of Roma nationality. This motion was assessed as unsubstantiated.

The employees of the Centre at their work face motions and complaints on the work of physicians filed by persons, who feel "discriminated against", for example in case they have to pay for medicines, or the physician does not pay sufficient attention to them. In the course of the year 2009 the Centre proved no discrimination in the area of health care provision.

In 2009 the Centre was delivered a motion by the chairman of the Slovak Blind and Weak-Eyed People Union, an organisation associating people with impaired vision in Slovakia, which monitors the situation in the area of categorisation of medical aids fully or partially covered from public health insurance. The Centre was informed of unequal treatment in the area of health care in relation to persons – diabetic patients with impaired vision. The content of the Measures issued by the Ministry of Health of the Slovak Republic, issuing the List of medical aids fully or partially covered from public health insurance was considered as unequal access. In group D of the list of medical aids there are those for diabetic patients. The list includes a basic type of glucose meter, which is provided to policy holders based on a medical document without surcharge. It is a glucose meter without a voice record or other special adjustments. It is a type of aid, which cannot be used by the blind or weak-eyed persons, who cannot read data on the display, or can only read them with great difficulties. The list of medical aids for diabetic patients includes a glucose meter with a voice record. The record makes it possible to understand the displayed data. It is necessary to add, that this is the only, and a relatively cheap glucose meter, which the said group of persons with disabilities is able to use independently. The insured may get this type of glucose meter only after paying a surcharge amounting to 75 % of the price. There is possible violation of the principle of equal treatment - while the policy holder without impaired vision has the possibility to get from their health insurance a glucose meter without any surcharge, a policy holder with impaired vision may get the device after paying a high surcharge.

In this connection the Centre turned to the MH SR with questions relating to the inclusion of medical aids on the categorisation list, and wanted to know what criteria are considered while including medical aids on these lists, which are fully or partially covered from public health insurance and what specific criteria must a medical aid meet to be included as the basic functional type on the said list.

The Ministry of Health of the SR in its response stated that categorisation criteria are embodied in § 21 of the Act 577/2004 Coll. on the scope of health care covered by public health insurance and on the payments for services relating to the provision of health care (in the wording of Act No. 720/2004 Coll.), further it stated, that a basic type of medical aid provides the insured with certain disability or disease with satisfactory functional effect equal or comparable to other types or variants, it has the requested design, service-life and price.

The question about whether the MH SR received any complaint related to the prices of medical aids in 2009 and whether their price objections were considered when including aids on categorisation lists, was responded by the MH SR, too. It stated that under § 22 of the Act 577/2004 Coll. the application for including a medical aid on the list of medical aids and for the official pricing is filed by the producer or their authorised representative with the Ministry. While elaborating the lists, the MH SR considers the price of the aid in the country of the producer or importer or in a state, in which producers of the medical aid have their registered offices, if the medical aid is registered there, or in all member states of the European Union, in which it is registered.

According to the facts mentioned above, it may be stated that a glucose meter without a voice record listed as a basic functional type of fails to meet the criterion of having the required effect for the group of diabetic patients with impaired vision, but also for elderly people, who are thereby set at a disadvantage.

Non-inclusion of a glucose meter with a voice record is perceived by the Centre as indirect discrimination, since it is a seemingly neutral regulation following a legitimate objective; however, the conditions under which the objective is met go beyond what is considered reasonable and inevitable.

Education

In the area of education in connection with the prohibition of discrimination there are, apart from the Anti-Discrimination Act, other important acts governing the legal relations in the provision of particular education levels, such as Act No. 245/2008 Coll. on

Upbringing and Education (School Act) or Act No. 131/2002 Coll. on Universities. Both laws contain, in connection with the observance of the principle of equal treatment, a direct reference to the Anti-Discrimination Act. The School Act in force and in effect contains an explicit prohibition of all forms of discrimination and especially segregation, however, no definition of segregation is provided therein. The information provided by the state school inspectorates revealed that only state school inspection in Bratislava and Košice investigated complaints objecting discrimination. The inspection in Bratislava investigated 5 motions, which related to the placing of pupils in classrooms (for example classrooms with extended tuition of some subjects), sports groups, excursions, trips, etc., whereby there was one case of objected discrimination on the grounds of the ethnic (Roma) background pupils primary school. According to the information from the inspection all objections were assessed as unsubstantiated, thus no further measures were imposed. The inspection in Košice dealt with a motion objecting discrimination in the case of Roma pupils excluded from an excursion by primary school teachers, the anonymous complaint was examined and assessed by the inspection as unsubstantiated.

In special schools there are predominantly Roma children. Their placement in regular classrooms in primary schools, where they would get education together with children from the majority, would, however, create better conditions for their better inclusion into active life and on the labour market.

In relation to the observance of the principle of equal treatment of pupils and students with disabilities there is an important requirement stated in § 2 par. 3 of the Anti-Discrimination Act, according to which the observance of equal treatment lies also in adopting measures for protection from discrimination. The Act on Universities in connection with the support of students with disabilities in § 100 enshrines, that the university shall create favourable study conditions for students with disabilities, considering their special ne study needs, without decreasing the requirements as regards their performance. The conditions include an individual study plan, in justifiable cases the prolonged course of studies without additional tuition fees and security conditions related to schools attended by students with disabilities. Individual study plans are discussed in detail in section 3.3.1. of the general part of the Report.

Supply of goods and services

Act 250/2007 Coll. on Consumer Protection embodies, in connection with the prohibition of discrimination in § 4, only a brief reference to the Anti-Discrimination Act, under which the seller is obliged in relation to the consumer to comply with the principle of equal treatment in supply of goods and services stipulated by a separate law. The seller at the same time must not refuse to sell the consumer a product put on display and ready for sale, or refuse to provide services, which fall within his operation.

In 2009 the Slovak Trade Inspection recorded 47 motions relating to the violation of the principle of equal treatment, out of which 11 were substantiated, 27 unsubstantiated and 9 motions are being investigated. According to the provided information unequal treatment of consumers was determined in 33 premises, namely double pricing when selling the same product, or providing the same service of the same quality, refusal to sell goods to consumers, which were displayed or prepared for sale and and refusal to provide services to Roma citizens. The information provided by the Slovak Trade Inspection also revealed that in 2009 2 controls were carried out aimed at discrimination the Roma in restaurants and similar facilities, whereby in both cases the motion was substantiated.

The fact that discrimination in the area of supply of goods and services is for some groups of citizens an everyday reality, was proven also by the information provided by the Advice Bureau for Civic and Human Rights in Košice, which in 2009 represented 23 clients in 10 proceedings, whereby cases related to objected violation of the principle of equal treatment in the access to goods and services, social security and employment.

Upon a notice the Centre in 2009 was dealing with the experience of many parents, who are not allowed to enter various shops or market places with a baby tram. The said practice was assessed by the Centre in an opinion[165] as discrimination on the grounds of sex and family status.

[165] Opinion of 6th July 2009.

4. MEANS OF LEGAL PROTECTION – PROCEEDINGS CONCERNING VIOLATION OF THE PRINCIPLE OF EQUAL TREATMENT

The unwillingness of discrimination victims to go to the court is preconditioned by the mistrust in the justice system, the fact that judicial proceedings are money and time consuming, but also in the lack of information and unfamiliarity with the means of legal protection. Therefore the number of final and conclusive decisions has been low in the long run, which is caused by a few lawsuits.

The Centre turned to particular courts asking about the number of motions concerning violation of the principle of equal treatment. Many courts recorded or investigated no such motion in the course of the year 2009 (for example the District Court (DC) in Žilina, Pezinok, Piešťany, Košice 1, Košice 2, Senica). Some courts investigated few motions (Bratislava 4 – one claim, New Zámky – one, Rimavská Sobota – three). It was therefore surprising that the DC in Bratislava 1, which in the course of year 2009 recorded 106 motions. This, however, relates to cases of the so called wage discrimination of judges of ordinary courts compared to the judges of the former Special Court. Another "record holder" in the number of motions for the year 2009 was, based on the information we gained, the DC in Bratislava 5 with 24 proposals and the DC in Martin with 16 motions.[166]

Despite the effort of the Centre from previous years to achieve that the courts include in their statistics the identification of "filed and decided cases related to violation of the principle of equal treatment according to grounds and areas of the Anti-Discrimination Act", no record is kept of such cases; therefore the information stated herein is only informative.

The Centre repeatedly calls attention to the necessity to add the said indicator to the statistics processed by particular courts as well as to do statistical summaries. The said data is considered by the Centre as necessary to fulfil tasks resulting from the Act on the Centre, such as the monitoring and evaluation of the observance of the equal treatment principle or the competence to elaborate and publish reports and recommendations on the issues concerning discrimination.

Considering the reasons stated in the introduction to this part of the Report mediation is an important tool of protection of the rights of discrimination victims, which is handled in a separate chapter. Considering the special significance thereof, it is necessary continuously raise

[166] For more details see part 4.2. Judicial proceedings concerning violation of the equal treatment principle.

the awareness of the engaged subjects on the possibilities to take advantage of mediation in disputes under the Anti-Discrimination Act.

4.1. Mediation as out-of-court settlement of disputes in discrimination cases

The strategies of resolving discrimination are various and represent tools of different intensity ranging from out-of-court settlement by mediation, filing motions with control authorities, publishing the facts in the media and using the pressure of the media, to judicial protection. Victims of discrimination may simultaneously use several methods, or choose to use one after another.

The Centre in 2009, like in previous years, provided assistance to the victims of discrimination including mediation, now required by more and more applicants for assistance. Increased interest relates also to the raising of awareness of this means of discrimination disputes solution and its advantages. Mediation was chosen in 13 cases, out of that in 3 cases mediation did not prove desirable to resolve the dispute, in 3 cases the initiator withdrew from mediation, in 6 cases the respondent disagreed with mediation. In two cases both parties agreed to solve their dispute by mediation and the mediators of the Centre helped them come to an agreement.

As regards the structure of mediation cases resolved by the Centre, these were disputes that arose in employment relations, or in employment. The reasons in the said cases included predominantly family status (7) and pregnancy (1), mobbing and bossing (3). In other cases was the reason age and disability. Mediation was chosen by an absolute majority of women (12:1).

The effectiveness of using the forms of out-of-court settlements including mediation was proven also by the case, which was investigated last year by the Advice Bureau for Human and Civil Rights in Košice.[167] It was a case of discrimination in the area of supply of goods and services on the grounds of ethnicity. This case ended successfully in out-of-court settlement.

4.2. Judicial proceedings concerning violation of the equal treatment principle

According to § 9 par. 1 and 2 of the Anti-Discrimination Act everyone has the right to equal treatment and the protection from discrimination. Everyone may claim his/her rights before the court, if he/she believes that his/her rights, protected interests or freedoms are or were violated by the failure to observe the principle of equal treatment. He/she may especially

[167] Source: http://www.poradna-prava.sk/go.php?p=5.

claim that those who breached the principle of equal treatment, refrained from such acts and, if possible, remedied the unlawful status or provided adequate satisfaction.

Already in previous reports on the observance of human rights the Centre pointed out to the persisting problem in effective promotion of the principle of equal treatment, which lied in the lack of national case law, that could possibly be consulted while considering the cases of violation of the equal treatment principle under the Anti-Discrimination Act and relevant special legislation.

Like in previous years, the Centre therefore tried to find out the situation in this area in the course of the year 2009. The Centre addressed the Ministry of Justice of the Slovak Republic (MJ SR) and all regional and district courts with questions related to filed motions/claims concerning violation of the principle of equal treatment and to the number of (decided) cases.

The MJ SR informed the Centre,[168] that its records provide data on the phase of court agendas (petition, resolved, pending, etc.) only in numbers without detailed specification. The Ministry at the same time stated that the system of court statistics records only finalised cases. New petitions and running proceedings are not monitored. The Ministry therefore has no information on final and conclusive decisions for the years 2005 – 2009 relating exclusively to the right to equal treatment and the protection of from discrimination according to Act No. 365/2004 Coll. as amended (or to relevant special legislation).

Information provided to the Centre by particular regional courts were of various content and nature, or in some cases no information was provided (Regional Court in Prešov). As we were for example informed by the Regional Court in Košice, it was impossible to satisfy the request of the Centre, since the Regional Court keeps no records of such data on judicial proceedings.

Regional Court in Bratislava recorded in 2009 no motion to commence proceedings due to violation of the principle of equal treatment according to Act No. 365/2004 Coll. and no case was decided in 2009. As regards the results in particular district courts operating in the district of the Regional Court in Bratislava, the following results were recorded:

- in 2009 the District court Bratislava I received 106 motions with subject of dispute being violation of the principle of equal treatment according to Act No. 365/2004

[168] Reply of the Ministry of Justice of the Slovak Republic of 5th March 2010.

Coll., whereby one dispute was decided, however, decision neither effective nor enforceable due to an appeal,

- The DC Bratislava II –two motions were filed, none of them decided,
- The DC Bratislava III – proceedings related to violation of the principle of equal treatment are not recorded,
- The DC Bratislava IV – one claim was filed, which relates to violation of the principle of equal treatment according to Act No. 365/2004 Coll., which has not been decided so far,
- The DC Bratislava V – 24 motions were filed by judges, relating to the violation of the principle of equal treatment,
- The DC in Malacky in 2009 registered no motion related to the principle of equal treatment, and no case was decided,
- The DC in Pezinok in 2009 registered no motion related to the violation of the principle of equal treatment and no case was decided in 2009.

The Regional Court in Banská Bystrica provided the following information received from the district courts in its region:

- in 2009 the District Court in Banská Bystrica was submitted eight motions, which related to violation of the principle of equal treatment under the Anti-Discrimination Act. One case was decided, the case has not been concluded so far.
- in 2009 the DC in Veľký Krtíš received 2 motions under the ADA, which were filed by the judges of the District court in Zvolen, and which related to compensation of non-pecuniary damage in money (the cases were ordered to the DC by the Regional Court in Banská Bystrica). Two cases were decided, (it was not specified if that were claims or if they had been decided or not).
- in 2009 the DC in Brezno received no motion under the Anti-Discrimination Act. One case is running, and has not been decided so far.
- in 2009 the DC in Rimavská Sobota received three motions related to the violation of the principle of equal treatment according to the ADA (all cases were filed by the judges of district courts in the territory of the Regional Court in Banská Bystrica and related to compensation of non-pecuniary damage). None of the cases were decided in 2009. In 2009 two cases were decided relating to the violation of the principle of equal treatment under the Anti-Discrimination Act. One ended in settlement, another was

solved by decision of the DC dismissing the motion filed, in connection with the decision of the regional court, which affirmed the decision of the district court.

According to the information of the Regional Court in Nitra in the course of the year 2009 1 motion to commence proceedings due to violation of the principle of equal treatment according to Act No. 365/2004 was filed, which is heard by the District Court in Nové Zámky. The Regional Court in Nitra or its district courts did not decide in cases related to the ADA.

The Regional Court in Trenčín informed, that in 2009 1 motion was filed concerning violation of the principle of equal treatment under the Anti-Discrimination Act. The proceedings related to the declaration of inconsistency of the GBR of the self-government region of Trenčín No. 10/2009 on the provision of social services. A decision was passed in the case on 10. February 2010, which partially satisfied the motion, in the remaining part relating to violation of § 9 of Act No. 365/2004 Coll. the motion was dismissed. The case is not concluded. No case concerning violation of the principle of equal treatment according to the ADA was decided in 2009 before this court. In one proceedings the judgement of the District court in Trenčín of 14. November 2008, No. 11C/259/2005-162 on the financial compensation of non-pecuniary damage was quashed, where the complainant being an employee of the defendant claimed compensation of non-pecuniary damage on the grounds of his discrimination in employment (violation of the principle of equal treatment under § 13 of the LC). The case was cancelled by Resolution of the court of 21. April 2009 and referred in the contested part to the court of first instance.

The Regional Court in Trnava stated that in the territory of this court no claims were filed related to violation of the principle of equal treatment according to the Anti-Discrimination Act and no cases were decided.

The Regional Court in Žilina stated that neither the Regional Court and - according to the information from district courts – nor the particular district courts (in Žilina, Čadca, Námestovo, Ružomberok, Liptovský Mikuláš and Dolný Kubín) recorded in 2009 a motion related to the violation of the principle of equal treatment under the ADA, or a valid decision in a case concerning the violation of the equal treatment principle under the ADA.

The DC in Martin received in 2009 16 motions concerning the violation of the principle of equal treatment according to the mentioned Act, none of them however, were decided in 2009.

The Centre was provided with information also by district courts, out of which we name:

- the District Court in Košice I, the District Court in Košice II and the District Court in Košice and the suburbs, the District Court in Piešťany and the District Court in Senica stated that in 2009 no claim was filed which would relate to the violation of the principle of equal treatment under the Anti-Discrimination Act. In 2009 no case related to the violation of the principle of equal treatment under the ADA was decided.
- in 2009 the District Court in Kežmarok received no motion to commence proceedings related to the violation of the principle of equal treatment according to Act No. 365/2004 Coll. In 2009 the DC in Kežmarok concluded 1 case related to the violation of the principle of equal treatment under the ADA..

We also asked if the courts received or decided in the so called public claims. None of the courts, which provided the Centre with the requested information, neither recorded nor decided on such claim.

In June 2009 there was the judgement of the District Court in Prešov of 17. June 2009 discussed in the media, in which the DC in Prešov decided, that the town of Sabinov and the MCRD SR acted in a discriminatory way when they moved the Roma inhabitants from the centre of the town to flats of lower standard outside the town.[169] The civic association "Občan, demokracia a zodpovednosť"- The citizen, democracy, and responsibility, which in this case mediated legal aid, and filed an action objecting violation of the principle of equal treatment on the grounds of Roma ethnicity, on its website www.oad.sk stated that the indictment was based also around the fact that housing must not under our legal order and international conventions deepen spatial, social and ethnic segregation. The court decided, that the town had violated the principle of equal treatment by inappropriately selecting the locality, which deepens segregation, and at the same time by the fact that only the Roma were moved in this locality, although other citizens living in the centre of the town were in the same situation. The court also decided, that also the Ministry of Construction in providing a subsidy for the construction of flats of lower standard acted in a discriminatory way; the court added that if the Ministry examined, for what group of inhabitants the construction will be made, and where it will be located, it would meet the positive obligation of the state to adopt measures for the protection from discrimination. It would also find out what impact may the provided subsidy have on those

[169] Source: http://korzar.sme.sk/c/4894237/sud-romov-v-sabinove-segregovali.html. Cited on 9th April 2010.

inhabitants, and would not provide or should not provide the subsidy. Regarding the financial situation of the town of Sabinov the construction would not have been realized.

According to available information, the town of Sabinov used a legal remedy against the decision of the court. Despite the fact that the court of appeal may change the decision of the district court, the Centre considered important to inform about this judgement regarding the precedent nature thereof in this area. While deciding in the case the District Court in Prešov considered carefully the national and international anti-discrimination legislation as well as the relations resulting thereof.

The Centre in 2009 filed actions and represented a client in court in 3 cases concerning violation of the principle of equal treatment. In two of them the Centre represents female employees in the action for unlawful dismissal and to compel the employer to refrain from violation of the principle of equal treatment in employment relation against the employer established by the Self-government Unit of Prešov. In the third case the Centre represents the client in the proceedings to compensate non-pecuniary damage for the violation of the principle of equal treatment in her previous employment. The cases are heard before the District Court in Humenné and the District Court in Martin, none of them have been decided so far.

* * *

Despite the fact that the topic of discrimination is discussed and presented in the media in Slovakia, the content and the significance of this term is not clear for a great part of the population (in some cases unfortunately also for the experts).

Therefore, similarly to the previous reports, the Centre accentuates the necessity to improve the knowledge about the European and national anti-discrimination legislation of persons directly engaged at the regional and local level, who are labelled as discriminating person, as well as victims of discrimination or multiple discrimination in employment, education, supply of goods and services, healthcare and in social security. The willingness of state authorities and self-governments to create and promote preventive anti-discrimination policies in close cooperation with human rights institutions and non-governmental organisations (also by temporary compensatory measures), as well as to increase the participation rate of groups threatened with discrimination in the life of the society may contribute to positive social attitudes and moods and gradual elimination of diverse forms of discrimination and barriers in promotion equality in our society.

CONCLUSION

Although the annual evaluation of the observance of human rights in the Slovak Republic is a topic of a number of reports published by Slovak as well as international institutions and non-governmental organisations, we would like to highlight here that only the Centre has the legal obligation and authorisation to elaborate and publish annually the Report on the Observance of Human Rights Including the Principle of Equal Treatment. Such authorisation results to the Centre, as the NHRI and Equality Body in the Slovak Republic, also from the mentioned international documents.[170]

Therefore, it is every year the ambition of the Slovak National Centre for Human Rights, to elaborate a Report on the Observance of Human Rights Including the Principle of Equal Treatment in the SR, that would provide the Slovak and foreign public with a comprehensive view of the current status quo in human rights in Slovakia, their enforcement and observance, as well as of legislative and non-legislative measures at the level of state administration and territorial self-government, adopted in the Slovak Republic in the course of year, or entered into force.

This ambition, during the elaboration of the Report for the year 2009, could not be fulfilled without effective cooperation with all public administration authorities (starting with the central state administration authorities and ending with authorities of municipal self-government), bodies governed by public law, the academic community, and non-governmental organisations operating in the area of the human rights protection. We would therefore like to thank all cooperating authorities, organisations and institutions for sending us specific, exhaustive and above all, objective and usable background papers. We are really sorry for not being able to use and incorporate all the background papers and opinions in the Report, due to limited scope thereof. For the Centre however, also the unused documents and information represent an important source of knowledge and shall be used in elaborating expert opinions and partial reports, independent investigation or research and publishing activities. The list of cooperating authorities, organizations and institutions is attached hereto as Annex No. 1.

The year 2009 can be, from the point of view of the development of the human rights protection system, characterised also as the year of obtaining experience with the application of a number of important laws affecting this system in practice (for example Act on Social Services, Press Act, School Act etc.). Although the creation of certain laws and the laws

[170] See the Introduction.

already effective (predominantly in social areas) caused criticism, generally it can be stated that the legislative, but also other steps, which state authorities and other engaged entities accomplished in Slovakia in 2009, in strengthening the protection and the application of human rights, and in preventing the violation thereof aimed at elimination of discrimination, were perceived in a positive way by the Slovak public.

Based on the facts of this Report it can be stated in general that in the Slovak Republic in 2009 there was no violation of the system of the protection of human rights and fundamental freedoms, or a blanket violation of human rights, or significant violation of human rights within a certain area.

The Slovak Republic as a standard democratic country recognises and respects the general rules of international law, international treaties, which are binding, and the obligations resulting from the membership in international organisations for the protection of human rights and from the accession to international conventions on human rights. A proof of that is also the membership of the Slovak Republic in the UN Council for Human Rights seated in Geneva, from June 2008 till June 2011, and its internationally respected activities in this area.[171] This was recognised by the international forum in October 2009 when the Slovak Republic was elected a member of the Executive Board of UNESCO[172] for four years.

Nevertheless, the Report points out to certain problems and shortcomings relating to the protection and application of some human rights and fundamental freedoms in 2009. Some of them, for example unreasonable delays in judicial proceedings, are, unfortunately, chronic, and this term, according to the opinion of the Centre, may refer also to the failure to establish a detention facility and the disunity of electoral legislation. What is also really alarming is the trend of certain benevolence (in part of the society) towards manifestations of intolerance motivated by hate against other races, nations, national or ethnic groups, or religions, to extreme right movements or even to racially motivated violence.

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[171] For example on the 13th meeting held on 24th March 2010 the UN Council for Human Rights adopted the Resolution on the prolongation and strengthening of the mandate of the working group on a new Optional Protocol to the Convention on the Rights of the Child created in June 2009. Slovakia, within the said working group has become a leader and contributed greatly to the preparation of the resolution and the negotiations in this respect. The head of the working group is the representative of the Slovak Republic Mr. Drahoslav Štefánek.

[172] The Executive Board counts 58 members and is the decision-making authority of UNESCO, representing the 193 member states of UNESCO between the meetings of the General Conference. Among the priorities of UNESCO being a universal specialised UN organisation for education, culture and science, is also the support and protection of human rights and fundamental freedoms including the freedom of press and the right to information.

Based on the extended tasks and competences the Centre in 2009 paid increased attention especially to the findings and problems, which are the contents of the Special Part hereof. By monitoring, research, education or information activities it will reflect the said sensitive fields of violation of the equal treatment principle also in 2010, try to prevent such violations and seek positive solutions.

Annex No. 1

List of Cooperating Authorities and Institutions

1. Association of Faculty Hospitals of the Slovak Republic
2. Association of Slovak Spas
3. Association of Regional Press Publishers
4. Centre of Legal Assistance
5. The daily newspaper “Pravda” – Perex, joint–stock comp.
6. ELVOD, joint–stock comp..
7. Faculty of Social Studies of the College in Sládkovičovo
8. General Prosecutors Office of the Slovak Republic
9. General Directorate of the Corps of Prison and Court Guard
10. INDEX NOSLUŠ, Ltd. (a personnel agency)
11. The Slovak Information Office of the Council of Europe
12. Office of the Slovak Ombudsman
13. Kia Motors Slovakia, Ltd..
14. Trade Unions Confederation
15. Regional Building Authority in Banská Bystrica
16. Regional Building Authority in Košice
17. Regional Building Authority in Nitra
18. Regional Building Authority in Prešov
19. Regional Building Authority in Trenčín
20. Regional Building Authority in Žilina
21. Regional Court in Banská Bystrica
22. Regional Court in Bratislava
23. Regional Court in Košice
24. Regional Court in Nitra
25. Regional Court in Trenčín
26. Regional Court in Trnava
27. Regional Court in Žilina
28. Lugera & Maklér, Ltd. (a personnel agency)
29. Bratislava Metropolitan Authority

30. Municipal authority in Bánovce nad Bebravou
31. Municipal authority in Banská Bystrica
32. Municipal authority in Michalovce
33. Municipal authority in Pezinok
34. Municipal authority in Prešov
35. Municipal authority in Sečovce
36. Municipal authority in Trenčín
37. Municipal authority in Trnava
38. Municipal authority in Zvolen
39. Municipal authority in Žilina
40. District Authority of Bratislava – Old Town
41. District Authority of Košice – Old Town
42. Migration Office of the Ministry of Interior or the SR
43. Ministry of Transport, Posts and Telecommunications of the Slovak Republic
44. Ministry of Culture of the SR
45. Ministry of Labour, Social Affairs and Family of the SR
46. Ministry of Justice of the SR
47. Ministry of Justice of the SR – Office of the Slovak Agent before the European Court for Human Rights
48. Ministry of Justice of the SR – Department of International and European Law
49. Ministry of Interior of the Slovak Republic
50. Ministry of Health of the SR
51. Ministry of the Environment of the SR
52. Open Society Foundation
53. Supreme Court of the Slovak Republic – Documentation, Analytics and Foreign Relations Unit
54. National Highway Company
55. National Centre of Health Information
56. National Labour Inspectorate
57. District Court in Bratislava I
58. District Court in Bratislava II
59. District Court in Kežmarok
60. District Court in Košice – neighbourhood
61. District Court in Košice I

62. District Court in Malacky
63. District Court in Nové Zámky
64. District Court in Piešťany
65. District Court in Prievidza
66. District Court in Senica
67. District Court in Žilina
68. Trade Union of Communications
69. Prešov University in Prešov
70. Slovak Television Council
71. Administrative Unit of the Slovak Government Council for Elderly and the Government Council for Disabled
72. Slovak Democratic and Christian Union (a political party)
73. Slovak Chamber of Nurses and Midwifes
74. Trade Union of Employees in Armed Forces
75. Slovak Journalists Syndicate
76. Slovak Association of Housing Co–operatives
77. Slovak Association of Disabled
78. Trade Union of Glass Industry
79. Trade Union of Public Administration
80. Hungarian Coalition Party – Magyar Koalíció Pártja (a political party)
81. Private Centre of Special Pedagogical Consulting for Learning and Behavioral Disabilities
82. School Inspection Centre in Košice
83. School Inspection Centre in Nitra
84. School Inspection Centre in Trnava
85. School Inspection Centre in Žilina
86. State School Inspection Authority
87. Trnava University in Trnave
88. Constantinus the Philosopher University in Nitra
89. Matej Bel University in Banská Bystrica
90. Pavol Jozef Šafárik University in Košice
91. Office of Banská Bystrica Self–government Unit
92. Office of the Police Corps Presidium to Combat Organized Crime

93. Office of Bratislava Self–government Unit
94. Border and Aliens Police Office of the Ministry of Interior of the Slovak Republic
95. Judicial and Criminal Police Office of the Police Corps Presidium
96. Office of Košice Self–government Unit
97. Office for Personal Data Protection
98. Office of Labour, Social Affairs and Family in Kežmarok
99. Office of Labour, Social Affairs and Family in Michalovce
100. Office of Labour, Social Affairs and Family in Nové Zámky
101. Office of Labour, Social Affairs and Family in Poprad
102. Office of Labour, Social Affairs and Family in Rimavská Sobota
103. Office of Labour, Social Affairs and Family in Spišská Nová Ves
104. Office of Labour, Social Affairs and Family in Zvolen
105. Office of Labour, Social Affairs and Family in Žilina
106. Health Care Supervisory Authority
107. Office of Prešov Self–government Unit
108. Office of the Plenipotentiary of the Slovak Government for Roma Communities
109. Office of Trenčín Self–government Unit
110. Office of Trnava Self–government Unit
111. Office of Žilina Self–government Unit
112. Institute for State–Church Relations
113. Constitutional Court of the Slovak Republic
114. Head Office of Labour, Social Affairs and Family of the SR
115. Central Inspectorate of the Slovak Trade Inspection
116. VIA IURIS – Civil Rights Centre
117. Trade Union of Employees in Nuclear Power
118. Slovak Consumer Association
119. Žilina University in Žilina

Annex No. 2

Acronyms

A

ADA – Anti–Discrimination Act, Act No. 365/2004 Coll. on Equal Treatment in Certain Areas and Protection against Discrimination, and on Amending and Supplementing Certain Other Laws as amended …

ARPP – Association of Regional Press Publishers

Association – Slovak Association of Physically Disabled

C

Centre – Slovak National Centre for Human Rights

CC – Criminal Code

CC SR – Constitutional Court of the Slovak Republic

CCP – Civic Conservative Party

Constitution – The Constitution of the Slovak Republic

COTIF – Convention Internationale sur le transport international ferroviaire (***Convention*** Concerning ***International*** Carriage by ***Rail)***

Council – Council of the Government of the SR for National Minorities and Ethnic Groups

CPT – ***European Committee*** for the Prevention of Torture and ***Inhuman*** or Degrading ***Treatment*** or Punishment

D

DC – District Court

E

EP – European Parliament

EU – European Union

European Court – European Court of Human Rights

European Convention – Convention for the Protection of Human Rights and Fundamental Freedoms

EI – Environmental Inspectorate

G

GBR – Generally Binding Regulation

I

IOM – International Organisation for Migration

L

LAC – Legal Aid Centre

LC – Labour Code

M

MECOMIC – Interdepartmental Expert Commission for Labour Migration and Aliens Integration

MTPT SR – Ministry of Transport, Posts and Telecommunications of the Slovak Republic

MOMI SR – Migration Office of the Ministry of Interior or the SR

MLSAF SR – Ministry of Labour, Social Affairs and Family of the SR

MI SR – Ministry of Interior or the SR

MJ SR – Ministry of Justice of the SR

MCRD SR – Ministry of Construction and Regional Development of the SR

ME SR – Ministry of the Environment of the SR

MH SR – Ministry of Health of the SR

N

NHC – National Highway Company

NHRI – National Human Rights Institution

NLI – National Labour Inspectorate

NC SR – National Council of the Slovak Republic

O

OLSAF – Office of Labour, Social Affairs and Family

Office of the Plenipotentiary **– *Office*** of the ***Plenipotentiary*** of the Slovak Government for Roma Communities

R

RBA – Regional Building Authority

Report – Report on the Observance of Human Rights Including the Observance of the Principle of Equal Treatment in the SR for the Year 2009

S

SC SR – Supreme Court of the Slovak Republic

SGU – Self–government Unit (region)

SR – Slovak Republic

ST – Slovak Togetherness

T

TCM – Temporary Compensatory Measures

W

Wolf – Forest Protection Society

WHO – World Health Organisation