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Extract from the IHF report

Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2006 (Events of 2005)

SLOVAKIA¹

IHF FOCUS: rights of persons with mental disabilities; national and ethnic minorities (Roma); equal rights of women and men; rights of sexual minorities; migrants, asylum seekers and refugees.

Discrimination against Roma remained a central human rights concern in Slovakia in 2005. Various forms of discrimination against Roma, often with overt or tacit support of local authorities, lead to their increased isolation in slum settlements lacking minimum modern utilities. Attempts to racially segregate Roma children in schools also continued. It appeared that the 2004 anti-discrimination act had only very limited impact on discrimination against Roma. Moreover, the Constitutional Court ruled that the act's provision on affirmative action breached the Constitution of Slovakia. Roma were disproportionately subjected to police ill-treatment but investigations into many alleged cases of ill-treatment and other police misconduct were not carried out properly and independently.

The prohibition of cage and net beds in social care institutions proved problematic because of a lack of adequate alternative methods. Overcrowding and poor conditions in general remained a problem in social care homes. The use of cage and net beds continued to be legal in health care institutions. As a result of heavy criticism, new methodological guidelines on restraint were issued but they lacked enforcement provisions.

In 2005, only 25 individuals were granted asylum status. A great majority of asylum seekers disappeared – apparently leaving the country – before asylum authorities reached decisions on the merits of their applications. Many of those who remained in the country awaiting the outcome of their application were held in detention despite the fact that the Slovak Supreme Court declared some reasons for administrative detention as unlawful.

The draft treaty between Slovakia and the Holy See on conscientious objection continued to polarize the Slovak public and political parties. Several NGOs pointed out that the treaty might lead to violations of Slovakia's obligations under several international human rights agreements.

¹ This chapter was written by the IHF Secretariat, with contributions from ANNWIN, the League of Human Rights Advocates, Prochoise-Slovakia and the Slovak Helsinki Committee.

Rights of Persons with Mental Disabilities

*Social Care Institutions*²

The use of cage and net beds in social care institutions was prohibited by the amendment to the Law on Social Aid that came into force in January 2004.³ However, the implementation of the amendment turned out to be problematic.⁴ The Ministry of Social Affairs argued that it was not responsible for the implementation since the law itself did not authorize the ministry to issue secondary legislation. Moreover, the ministry failed to inspect all the institutions following the ban in order to ensure application. Its spokesperson admitted that the continued use of cage beds in specific, critical situations could not be ruled out.⁵

While some homes had already voluntarily ceased to use cage beds prior to the legal ban, directors of other homes voiced serious concern about the order. They argued that they saw no alternatives to the use of cage beds as they had not received additional funding to hire more personnel, to buy better equipment, or more medication after the ban to ensure that restless or even dangerous patients can be held under control.⁶

Overcrowding was a serious problem in virtually all social care institutions. Some NGOs pointed out that the conditions in some institutions were so serious that some clients themselves actually opposed the ban. In some institutions up to eleven people were held in one single room despite the fact that they suffered from very different conditions, including mental and behavioral disorders, alcoholism, homelessness, and dependency on social welfare as well as physical and sensory impairment. As a result, some clients felt safer from abuse by other fellow clients before, when they could sleep in the net or cage beds.

Moreover, it proved to be difficult to address physical and sexual violence committed between clients since many of them did not have legal capacity. There were no specialized facilities for violent individuals ensuring adequate surveillance to protect other clients' safety. In the best case a client who fell victim to inter-client violence was transferred to another house while no measures were taken to protect the staff and other clients from possible violence.

Recently, the jurisdiction for social care institutions was transferred from the federal to the regional level, making regional governments responsible for their funding. The number of institutions and their financial situation varied greatly from region to region. Many had to reduce personnel in already understaffed facilities.

Institutionalized and undifferentiated social care services situated in buildings unsuitable for this purpose were still used. Meanwhile, there was pressure to establish bigger facilities, which would be at variance with current trends of providing individual and community based services.

In addition, there were no adequate conditions for community based integration of mentally disabled. Sheltered housing and employment were extremely rare. Staff in care institutions were usually not aware of how important it would be to involve clients in common activities

² Unless otherwise noted, this section is based on a report provided by Viera Simkovicova, ANNWIN. The full report in English and Slovak is available at <http://www.annwin.sk>.

³ "When providing care in social care institutions for persons with mental and behavioral disorders, tools of physical and non-physical restraint (even in acute states of illness) are forbidden." Paragraph 18/a of the Law No. 453/2003 of the Collection of Laws on State Administrative Organs in the Field of Social Care, Family and Employment Services and about amending and complementing some laws.

⁴ Information from the Mental Disability Advocacy Center (MDAC) to the IHF, November 2005.

⁵ *SME*, 15 July 2004, as quoted by MDAC.

⁶ Information from the MDAC to the IHF, November 2005

such as decorating common rooms, setting tables or helping with food serving. Lack of activity often resulted in the deterioration of the clients' mental health. On the other hand, some clients refused to participate in the required therapies, partly because they were not properly informed about their benefits enabling an informed decision.

No official body was assigned with the task to monitor the compliance with human rights standards in social care institutions.⁷ Independent monitoring by NGOs was obstructed by the absence of legal regulations foreseeing access for such purposes. As a result, access to institutions was dependent on the good will and cooperation of the directors of these institutions.

Psychiatric Hospitals and Wards

While net beds were banned in social care homes, they were frequently used in health care institutions. According to a report published by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), there were 312 net beds in psychiatric establishments throughout the country.⁸

The Ministry of Health stated that it did not intend to ban cage and net beds in psychiatric establishments, replying to CPT concerns that “the use of net beds in psychiatric wards is justified only where it is necessary to prevent a patient from inflicting self-harm or harm on other people in their vicinity. Where a doctor has a patient confined to a net bed, it is no longer than is necessary and it is recorded in the patient's medical documentation.”⁹ However, the CPT delegation, which visited Slovakia in February and March, noticed that the entries in medical records tended to be rather superficial, often lacking details of the periods of enforcement time and of the name of the staff member who had authorized its use, etc.

Moreover, the use of cage and net beds (and of other means of restraint) was not centrally recorded. The Slovak authorities further argued that in some cases this practice was more humane than other means of restraint used elsewhere.¹⁰

As a result of mounting criticism, methodological guidelines on restraint were issued. However, they were not enforceable¹¹ and the guidelines were not available at many establishments – as found by the CPT's delegation in the institutions it visited. Moreover, staff indicated that no training on the issue had ever been provided.¹²

The Slovak report about the WHO European Ministerial Conference held in January 2005 stated that the existence of net beds was a serious problem with which Slovakia would have to deal with in the near future.¹³

⁷ Ibid.

⁸ CPT, *Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 February to 3 March 2005*, CPT/Inf (2006) 5, 2 February 2006, at <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.htm>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Information from the MDAC to the IHF, November 2005.

¹² CPT, *Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 February to 3 March 2005*, CPT/Inf (2006) 5, 2 February 2006, at <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.htm>.

¹³ Ibid.

National and Ethnic Minorities¹⁴

The Roma minority is the second biggest minority group in Slovakia and represents one of the largest Roma populations in Europe. According to the 2001 census, there were about 90,000 citizens in Slovakia who identified themselves as Roma. However, due to the stigma associated with Roma ethnicity the actual number is assumed to be much higher – some experts cited a number as high as 375,000, or 7% of the population.¹⁵ The largest concentration of Roma population lived in southeastern and eastern Slovakia.

Racial segregation, including depriving Roma from residence permits in a number of Slovak towns and other unofficial measures carried out by local authorities and landlords¹⁶ continued in 2005 and led to the increased isolation of Roma in slum settlements lacking minimum modern utilities. The Roma population was the poorest segment of society and they faced widespread inequality and discrimination especially in areas of education, housing, employment and health care.

The Slovak parliament ratified in May 2004 an anti-discrimination law that is fully in line with the EU directives.¹⁷ This law also included the principle of affirmative action on behalf of marginalized groups to redress inequalities. However, in October 2004 the minister of justice challenged the legality of those provisions at the Constitutional Court. In October 2005 the court ruled with a narrow majority that affirmative action was in breach of the Constitution of Slovakia,¹⁸ which led NGO activists to fear that a number of governmental programs aimed at assisting Roma might be put in jeopardy.

It seems that the 2004 anti-discrimination law had a very limited impact on reducing discrimination against Roma. This could largely be attributed to the fact that Roma who were discriminated against often came from socially marginalized environment, as result of which their access to adequate legal aid was obstructed, including by inadequate financial means.

Several reports were received about Roma being refused service in restaurants and bars, usually under the pretext of not having membership cards, while non-Roma were served in the very same establishments without any such cards. In some cases complaints were filed and were pending investigation as of year's end.¹⁹

The tendency to refer Roma children to special schools for mentally disabled children without relevant reasons remained the most serious problem.

- In the Spisska Nova Ves district there were seven special primary schools for mentally disabled children. In the school year 2002/2003, around 82% of all pupils were Roma. In six of these schools this number was 99%. In the Presov and Bardejov districts this number ranged from 71 to 81%.²⁰

¹⁴ This section was prepared on the basis of information provided by the League of Human Rights Activists, Slovakia.

¹⁵ League of Human Rights Advocates statistics are available at <http://www.lhra-icpr.org/en/index.htm>.

¹⁶ For examples, see Roma Press Agency, 1 February 2005, and 4 May 2005.

¹⁷ Act No. 365/2004 Coll.

¹⁸ *SME*, "Ustavny sud si musel zratat hlasy," 20 October 2005.

¹⁹ For more details, see People against Racism, at <http://www.rasizmus.sk>, or the League of Human Rights Advocates, at <http://www.lhra-icpr.org>.

²⁰ European Roma Right Center, *Written Comments of the European Rights Center Concerning the Slovak Republic. For the Consideration by the United Nations Committee on the Elimination of all Forms of Racial Discrimination at its 65th Session, August 2-20, 2004*, at <http://www.errc.org>.

Apart from the social stigma, the completion of a special school did not amount to a completed primary education and rendered further education impossible. Some directors openly discriminated against Roma pupils and segregated them into separate classrooms, defended the low quality of instruction and tolerated the behavior of teachers who beat Roma children and resorted to psychological pressure, humiliation, and verbal abuse against them.

- In a primary school in Gorkeho Street in Trebisov the headmaster segregated newly entering Roma children from others in special classes. Their parents later learned that this approach also applied to the higher grades and afternoon extra curricular activities.

There were, however, also positive changes in 2005. The League of Human Rights Activists, with financial support from the EU, launched an experimental project of integrating Roma children from special schools for mentally disabled children into regular classes. Some 90 children from special schools were placed as of September 2005 and more children are expected to be transferred in 2006.

While there was no specific data available on discrimination against Roma in access to employment, polls, complaints and monitoring by NGOs showed that it was indeed widespread, especially in the private sector. In some Roma communities the unemployment rate was 100%. The situation of Roma women was even more serious since they faced the burden of double discrimination in the labor market.

The United Nations Committee on the Elimination of Racial Discrimination (CERD) found in March 2005 that Slovakia had violated several provisions of the International Convention on the Elimination of all forms of Racial Discrimination.²¹

- In March 2002 the counselors of the Dobsina municipality agreed to construct low-cost housing for Romani inhabitants, but they cancelled the plan on the basis of an explicitly racist petition against the construction. Local Roma asked the district prosecutor and subsequently the Constitutional Court to investigate the legality of the municipality's actions, however, the court refused to consider the merits of the claim. The claim was brought before the CERD by a number of Roma, led by the European Roma Rights Center (ERRC) and the Slovak League of Human Rights Advocates. In March 2005 the CERD found Slovakia in breach of its obligations under international law for failing to prevent racial discrimination by public authorities and subsequently providing an effective remedy.

The reform of law on social benefit 599/2003 which came into force in January 2004, has markedly affected the life of Slovak Roma. Even though this law applied to all Slovak citizens receiving social welfare it was beyond any doubt that Roma were the most affected group. The law, for example, significantly reduced family allowances to all families with more than four children – with the number of such large families being disproportionately higher among the Roma population. At the same time this law conditioned housing allowances on proving a legal relation to the house or flat. Only very few Roma were able to prove this legal relation, which resulted in minimal chances to receive housing allowance.²²

²¹ Communication No. 31/2003: Slovakia. 10/03/2005, 10 March 2005, at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/3764f57be14718c6c1256fc400579258?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/3764f57be14718c6c1256fc400579258?Opendocument). See also European Roma Rights Center, "Slovakia Found in Violation of International law for Failing to Remedy Racial Exclusion of Roma," at <http://www.errc.org/cikk.php?cikk=2339&archiv=1>.

²² Report by the League of Human Rights Advocates for the Slovak National Centre for Human Rights, at <http://www.snslp.sk>.

During its visit to Slovakia in 2005, the CPT pointed to discrepancies in expert opinions and insufficient investigations in the case of Radoslav Puky, a Roma who disappeared in February 2004 during the large-scale riots to protest the introduction of the new law. He was later found dead in a canal, allegedly after being pursued by the police, and there were allegations that he had been ill-treated.²³

The CPT report further pointed out that it had received significant information indicating ill-treatment of persons at the hands of the police and violations of the right to access to legal counsel and information of third parties upon detention, a “notable proportion” of the alleged victims being Roma.²⁴ Local human rights activists recorded similar concerns during the February 2004 riots.

Coercive Sterilizations

The UN Committee on the Elimination of Discrimination against Women (CEDAW) communicated in August 2005 its decision not to conduct an inquiry into forced or coercive sterilizations and other violations in the field of reproductive health of mainly Romani women in Slovakia.²⁵ The CEDAW reacted to a complaint filed by the ERRC in September 2004. The complaint concerned procedures undertaken by Slovak medical officials with respect to 49 Romani women: 22 cases of sterilization were performed without any form of consent; 23 cases with consent obtained by coercion; and 4 cases following consent without providing information on alternative contraceptive measures.²⁶

The UN committee’s decision appeared to have been primarily motivated by the entry into force, on 1 January 2005, of a new Act on Healthcare, which included provisions on ethical medical practice as well as access to patients’ files.²⁷ It CEDAW committee, however, stated that it remained concerned about the fact that, the “issues of responsibility and redress have so far not been sufficiently addressed” in the cases of alleged past forced sterilizations. CEDAW further advised the Slovak government to pursue an appropriate consideration of these questions.²⁸

CEDAW’s decision, together with the views of other European expert bodies, was grossly misinterpreted by Slovak officials and false information released by Slovak authorities was widely quoted in the Slovak media. Among others, authorities wrongly claimed that the CEDAW had confirmed that coercive sterilizations never occurred in Slovakia.²⁹

²³ CPT, Report to the Government of the Slovak Republic on the visit to Slovakia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 22 February to 3 March 2005, CPT/Inf (2006) 5, 2 February 2006, at <http://www.cpt.coe.int/documents/svk/2006-05-inf-eng.htm>.

²⁴ Ibid.

²⁵ For details, see ERRC et al, *Body and Soul: Forced Sterilization and Other Assaults on Roma Reproductive Freedom in Slovakia*, January 2003, and earlier IHF “Annual Reports.”

²⁶ European Roma Right Center, “Slovak Officials Release False and Misleading Information Concerning Coercive Sterilizations,” at <http://www.errc.org/cikk.php?cikk=2399&archiv=1>.

²⁷ Law No. 576/2004 of the collection of laws on healthcare. This law contains new regulations on sterilizations. According to paragraph 40, sterilization can only be carried out on the basis of written application and informed consent of the person that is competent to give this consent. In case that the person is not competent to give their consent, the court shall decide on the basis of an application filed by this person’s legal guardian. Sterilization cannot be executed earlier than 30 days after giving informed consent. The new law also specifies what information has to be provided to enable patients to make an informed decision. At the same time, Act No. 140/1961 Coll. of Penal Code was amended. It prescribes an illegal sterilization as a crime and criminals can be imprisoned for up to 8 years.

²⁸ ERRC, “Slovak Officials Release False and Misleading Information Concerning Coercive Sterilisation,” 10 May 2005, at <http://www.errc.org/cikk.php?cikk=2399&archiv=1>.

²⁹“Organizacia spojených narodov nebude vyšetřovať udajnu protizakonnú sterilizáciu romských žien na východnom slovensku” (The UN will not conduct an inquiry into the alleged illegal sterilization of

In his preliminary report on the human rights situation of Roma, Sinti and Travellers in Europe (May 2005), the commissioner for human rights of the Council of Europe concluded that although the issue of sterilization does not appear to exclusively concern one ethnic group, the Roma population the Eastern Slovakia was at a particular risk. He also added that insufficient consideration had been given to the question of responsibility and compensation for past violations.³⁰

Equal Rights of Women and Men³¹

The Slovak Republic has been party to the UN Convention on the Elimination of All Forms of Discrimination against Women since 1993. There has, however, been no evident effort to implement the convention. Particularly the low political participation of women, remaining gender stereotypes in society and education, violence against women and access to reproductive health services remained unsolved problems in 2005. Slovakia's second and third regular reports under the UN convention were due by mid-1998 and mid-2002 respectively – but had not been submitted by the end of 2005.

In 2005 the government did not include a single woman in a ministerial post until October 2005, when Iveta Radicova became minister of labor, social affairs and the family. Despite this change, the Slovak government continued to underestimate the issue of gender equality and the level of institutional support for gender equality in Slovakia was the lowest among the EU countries.

Within the institutional reform at the Ministry of Labor, Social Affairs and the Family in March 2005 the Department of Equal Opportunities and Anti-Discrimination was disbanded and a new Department for Family and Gender policy was established. However, the new department mostly dealt with social aspects and benefits for families; human rights and the anti-discrimination agenda for women remained uncovered.

There was no comprehensive national strategy on gender equality and equal opportunities for women and men. The formulation of the priorities and tasks in policy documents were often very general and abstract and many of them were not transferred into appropriate programs.³² No gender analysis or gender impact assessment of legal changes and social reform has ever been done.

The Parliamentary Commission on Human Rights, Nationalities and the Situation of Women established a subcommittee called the Committee for Equal Opportunities and Situation of Women. However, its comments and proposals were not accepted or reflected in any legal proposals. There was no special women's ombudsperson, no special executive committee dealing with gender equality problems and complaints, and the government did not allocate any resources to achieve equal opportunities between women and men.

Romani women in Eastern Slovakia), article available at the website of the Slovak General Prosecutor's Office, at <http://www.genpro.gov.sk/index/go.php?id=38&prm1=53>. See also the report by the League of Human Rights Advocates for the Slovak National Centre for Human Rights, available at <http://www.snslp.sk>.

³⁰ Office of the Commissioner for Human Rights, Council of Europe, "Preliminary Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on the Human Rights Situation of Roma, Sinti and Travellers in Europe, 4 May 2005.

³¹ This section was provided by Olga Pietruchova, chairwoman of Prochoice Slovakia.

³² Debreceniova J. and Ocnasova Z., "Equal Opportunities for Women and Men: Monitoring law and practice in Slovakia," 2005, Open Society Institute Network Women's Program, Open Society Fund Bratislava.

Slovakia had no separate law on gender equality or on equal opportunities between men and women. The 2004 anti-discrimination act is likely to be only declaratory since affirmative action, which is used in other EU countries, will not be allowed in Slovakia (see the section on Roma).³³

Although the labor code contains a clause prohibiting discrimination on the ground of sex, the average wage of women was around 71- 75 % of that of men, with women reaching lower wages in each of the education category. By tendency the pay gap widens with higher education: women with a university degree earned 35% less than men.³⁴

The questionnaire of the Center for Women's Studies (CWS) on the Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-third Special Session of the United Nations General Assembly (2000) (CWS report) were submitted in 2005.³⁵ Slovakia reported intensified activities on the issue of violence against women and in balancing participation of women in decision-making positions and mentioned the campaign "Fifth women" as "the first media campaign against gender based violence organized for the purpose of public awareness-raising." However, the government failed to mention that the campaign was run by NGOs with no financial or moral support from the state. In fact the entire document was framed so as to present the achievements of unsupported NGOs as the outcome of government activity.

The National Strategy for the Prevention and Elimination of Violence Committed against Women and in Families and the subsequent Action Plan were adopted in 2005. However, both documents lack a gender sensitive approach and fail to recognize that violence against women is a structural problem based on gender inequality. Furthermore, both documents do not reflect the UN definition of violence against women and the approach taken in the Declaration on the Elimination of Violence against Women. Most of the comments and proposals presented by NGOs on the issue were not accepted and NGOs were not involved in the preparation and implementation of the Action Plan either. No special budgetary allocation was made for the implementation of the foreseen tasks.

Several amendments to the penal and civil code adopted in the past three years aiming at ensuring protection and respect for human rights of victims of domestic violence³⁶ have not improved the situation at all. This failure could be primarily attributed to prevailing attitudes of police officers and members of the judiciary towards domestic violence: a significant number of judges and prosecutors still believed that domestic violence should not be criminally prosecuted.³⁷

³³ Ibid.

³⁴ "The Quest For Equitable Growth in the Slovak Republic," A World Bank Living Standards Assessment: Policy Note 1, 19 September 2005, Poverty Reduction and Economic Management Unit, Europe and Central Asia Region, at <http://www.worldbank.sk>

³⁵ *Slovakia: Implementation of the Beijing Platform for Action (1995) and the Outcome of the Twenty-third Special Session of the United Nations General Assembly (2000)*.

³⁶ Offences against close relatives are to be punished more severely and the consent of the victim is no longer necessary for the criminal prosecution of crimes taking place in the context of close personal relationships. Offences against close relatives have been newly defined, since the old definition contained expression such as inadequate and unjustified punishment and repeated beating, which in practice often resulted in inquiring whether violence was justified and adequate or not. Also, the term "close relative" was expanded to include ex-spouses, partners, ex-partners, as well as persons who share or have shared their household with the offender. In addition, the amended civil code now contains provisions which allow the courts to take preventive measures against domestic violence and which also allow for granting barring orders, preventively or permanently. Source: Iveta Rajtakova, Pro Familia Slovakia.

³⁷ Information provided by Dr. Iveta Rajtakova, Pro Familia Slovakia.

The above-mentioned CWS report also refers to a draft National Programme of Sexual and Reproductive Health for the years 2004 – 2010 but fails to mention that the strategy has never been adopted due to resistance from the Christian Democratic Party and the Catholic Church.

It was feared that the draft treaty between the Slovak Republic and the Holy See on the right to conscientious objection, if adopted, would represent a major backlash in sexual and reproductive rights and health (SRHR).³⁸ It provides for “conscientious objection” that permits anyone to refuse to act in a way that is in conflict with his or her conscience according to the teaching of faith and morals of the Catholic Church. This would most probably lead to restrictions on access to counseling in the field of reproductive health and access to certain medical services, including in particular abortion and contraception.³⁹

The access to reproductive health services and the respect for women’s human rights within the services was already a major problem in 2005, with some hospitals refusing access to contraceptives and abortion (which were legal), with lack of sexual education and information, and with prejudiced and stereotyped information on the role of women in the family and society provided in schools.

The Slovak legislation did not acknowledge sexual harassment as a criminal offence. The police assisted victims only in case of sexual assault, rape, blackmailing, and coercion. The anti-discrimination law defines only harassment and it was up to the court to decide whether the harassment was severe enough to compensate the victim.⁴⁰

Rights of Sexual Minorities

The 2004 anti-discrimination act prohibits discrimination – including indirect discrimination – on various grounds. However, sexual orientation was not among the explicitly mentioned grounds in the part dealing with the principle of equal treatment in social welfare, health care, providing goods and services, and education. It was only included as an explicit ground of discrimination in all employment and occupation relations. As a result, employment and occupation relations were the only areas providing legal protection against discrimination on the basis of sexual orientation – despite the fact that a member of the Slovak delegation told the UN Committee on the Elimination of Racial Discrimination at its 65th August 2004 session that the law prohibits discrimination on the grounds of sexual orientation also in the area of health care and access to goods and services.⁴¹

There was no legislation in force in 2005 that would directly discriminate against people with sexual orientation other than heterosexual: homosexual relations were not criminalized and the age of consent for sex was the same for heterosexuals and homosexuals. However, article 14 of the law on protection of classified matters stated that involvement in any form of sexual behavior that could lead to the person being black mailed or pressurized, is a risk factor for

³⁸ Draft Treaty between the Slovak Republic and the Holy See on the Right to Conscientious Objection, at <http://www.justice.gov.sk>.

³⁹ E.U. Network of Independent Experts on Fundamental Rights Opinion N° 4-2005: The Right to Conscientious Objection and the Conclusion by EU Member States of Concordats with the Holy See, 14 December 2005.

⁴⁰ *SME*, “Sexualne obtazovanie nase zakony velmi nepoznaju,” 20 October 2005.

⁴¹ Summary record of the 1655th meeting held at the Palais des Nations, Geneva on Tuesday, 10 August 2004, at 10 a.m. Content: Consideration of reports, comments and information submitted by states parties under article 9 of the Convention. Fourth and fifth periodic reports of Slovakia.

this person's liability.⁴² This wording could potentially be misused in the case of persons with homosexual orientation.⁴³

Slovak law did not recognize same sex relationships, neither by registration nor by marriage. Homosexual partners were thus institutionally discriminated against in many areas such as inheritance, common rental, tax allowances, the right to refuse to stand witness against one's partner, right to asylum or residence, right to information about the partner's health, etc. No proposal for a registered partnership law was made at the political level either. On the contrary, Slovakia made use of its right to object and would not accept the status of homosexual partnerships registered in other EU member states.⁴⁴

Gay rights activists appeared to agree that the public was more open towards people with other than heterosexual orientation than the institutions or public officials.⁴⁵ No political party had registered partnership on its agenda. Several politicians made homophobic statements in national media or in parliament. For instance the chairman of the Slovak National Assembly, Vladimir Palko repeatedly stated that homosexuality is a problem and it is not a solution to pretend otherwise.⁴⁶ Or, the director of the public television channel refused to show parts of the official campaign against discrimination since it also addressed gay and lesbian issues. He argued that as a religious person he could not possibly approve the airing of a campaign showing gay couples.⁴⁷

Furthermore, sexual minorities had no access to the media in order to promote their rights. For instance, the political and social magazine *Atribut*, designed for sexual minorities, ceased to be published because of lack of money. The Ministry of Culture refused to grant them any financial means from the fund for supporting minorities' literature and periodicals on the grounds of not representing a national minority.

It was difficult to assess to what extent homosexuals were targets of violent attacks since such acts were not registered by the police. According to the only existing study carried out in 2002, 15% of respondents had been physically attacked at least once. Forty-two percent of them had been attacked at least three times.⁴⁸

Also the fact that in nine cases victims were assaulted by police could explain the lack of available data. Only three of the physically attacked respondents called the police and two of them experienced a hostile reaction. Most respondents stated that they did not contact the

⁴² Act No. 215/2004 Coll.

⁴³ Mariana Siposova, "Sprava o stave ludskych prav gejov, lesbickych zien a bisexualov na Slovensku (Report on the state of human rights of gay, lesbian and bisexual people in Slovakia), at http://www.snslp.sk/rs/snslp_rs.nsf/06ed12eba76268efc1256b1300596643/241a56e15b04626ac125707700429a58?OpenDocument.

⁴⁴ Joint press release by the initiative Otherness, at <http://www.ganymedes.info/rp/vyhlasenie.html>.

⁴⁵ Brano Ondrus, "Nevidim to ruzovo," GANYMEDES, at <http://www.ganymedes.info/archiv2005/rok2005.asp?intClanek=7>.

⁴⁶ Slovak Press Agency SITA, 25 August 2004. For more homophobic statements by Slovak politicians, see black box at http://www.ganymedes.info/qarchiv_2002/blackbox/vyroky.html.

⁴⁷ *Pravda*, 9 September 2003.

⁴⁸ In 2002, a research about discrimination against lesbians, gays and bisexuals in Slovakia was carried out as a part of the larger European project of the International Lesbian and Gay Associations (ILGA). This participatory research (done by the lesbian, gay and bisexual community itself) interviewed 251 respondents. Source: Mariana Siposova, "Sprava o stave ludskych prav gejov, lesbickych zien a bisexualov na Slovensku" (Report on the state of human rights of gay, lesbian and bisexual people in Slovakia), at http://www.snslp.sk/rs/snslp_rs.nsf/06ed12eba76268efc1256b1300596643/241a56e15b04626ac125707700429a58?OpenDocument.

police because they had little trust in police' ability to investigate the assault properly and fear of further humiliation at the hands of the police.

Migrants, Asylum Seekers, and Refugees⁴⁹

In 2005, 3,549 foreigners applied for asylum in Slovakia, a significant decrease from 2004 with 11,359 applicants and 2003 with 10,358 applicants. In only 25 cases asylum status was granted. Compared to the number of asylum applications, the number of rejected asylum applications (816) and number of asylums granted in neighboring countries, the Slovak number of asylums granted seems to be very low.

The year 2005 was the third with a functioning asylum procedure system with two independent appeals bodies, in which the Migration Office's decision not to grant asylum could be appealed in regional courts in the first instance, and the Supreme Court in the second instance. The courts, however, were able to only either uphold or overturn the decision of the Migration Office – not to grant asylum, which remained the decision of the Migration Office. Several dismissals were overturned by the courts and were then again dismissed by the Migration Office.

A great majority of asylum seekers “disappeared” before the decision on the merits in the asylum procedure was taken (2,923 procedures were terminated due to the absence of the applicant). According to Slovak officials, these applicants decided to seek asylum in other EU countries because of the lower average income in Slovakia compared to other EU countries and the high rate of unemployment. NGOs dealing with asylum issues pointed out, however, that the low acceptance quote in Slovakia was also an important factor.

It was assumed that the “disappeared” asylum seekers ended up in the Czech Republic, Austria, or other western European countries. As the fate of most of them remained unaccountable, however, questions were raised if this was the only explanation for their fate, which gave rise to questions of possible misuse of their situation, especially in case of minors.

Asylum seekers were usually accommodated in asylum centers during the asylum procedure. Everyone, who applied for asylum had to undergo a medical examination. During this time, which was not limited by law, asylum applicant had to stay in a closed asylum center, which was, despite the absence of armed guards, reminiscent of a detention facility. It was surrounded by a fence, the gate was locked, and there was a legal obligation for asylum seekers to remain in the center. After completion of the medical examination (normally after two to four weeks), asylum seekers were usually transferred to an open asylum center.

If a foreigner applied for asylum after being detained for illegal entry or stay in Slovakia, he or she was held in detention also after such an application and remained there for the maximum limit for administrative detention, which was 180 days. After that the asylum seekers were sent to asylum centers.

Some reasons for administrative detention of foreigners stipulated in the Foreigners Act seemed to be incompatible with the European Convention on Human Rights (ECHR), especially those, which state that foreigners may be detained if they are, after their unlawful departure, returned by the authorities of a neighboring country and if they attempt to enter unlawfully a territory of another country. Detention of an asylum seeker on the above-mentioned grounds was declared unlawful by the Slovak Supreme Court.

⁴⁹ This section was provided by Martin Skamla, Slovak Helsinki Committee.

It was possible to challenge a decision on administrative detention in court, however, there was no time limit for the court to decide such an appeal. In practice, the time courts took to decide (on average two to four months) was not necessarily in compliance with the promptness requirement of article 5 (4) of the ECHR. In some cases court decisions were issued only when the person concerned was already released.

If a foreigner fulfilled one of the criteria for expulsion laid down by the Foreigners Act, he or she was expelled automatically. According to the act, his or her family ties in Slovakia were taken into consideration and the “necessity in the democratic society” (as prescribed by article 8(2) – right to privacy - of the ECHR) was weighted only if the person concerned had permanent residence in Slovakia.

The Foreigners Act comprises a provision on obstacles of administrative expulsion, when the life of the concerned person would be threatened, or he or she could be subjected to torture, inhuman or degrading treatment or punishment. However, the police authorities when deciding on expulsion did not take such obstacles into consideration on their own initiative.

Subsidiary protection was regulated by the status of “tolerated stay,” however only few aliens applied for this status. Persons granted “tolerated stay” were not allowed to work and they were entitled to very basic social benefits only. The act virtually forced these people either to make their living illegally, or to leave the country as soon as possible, most probably illegally too.