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Report on the Activities of the
Public Defender of Rights for 2019

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(abridged version)



PDOR Public Defender
of Rights



Pursuant to § 23(1) of Act No. 564/2001 Coll. on the Public Defender of Rights, as amended: “The Public Defender of Rights shall submit to the Parliament in the first quarter of each year an activity report presenting his or her findings concerning the respect of public authorities for the fundamental rights and freedoms of natural persons and legal persons and his or her proposals and recommendations to remedy the identified shortcomings.”

Mária Patakyová
Public Defender of Rights

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<u>APD</u> Aliens Police Department	<u>HTU</u> higher territorial unit (self-governing region)
<u>BBSK Office</u> Office of the Banská Bystrica self-governing region	<u>Interior Ministry</u> Ministry of the Interior of the Slovak Republic
<u>Central labour office</u> Central Office of Labour, Social Affairs and Family	<u>Justice Ministry</u> Ministry of Justice of the Slovak Republic
<u>Constitution</u> Constitution of the Slovak Republic	<u>Labour Ministry</u> Ministry of Labour, Social Affairs, and Family of the Slovak Republic
<u>Constitutional Court</u> Constitutional Court of the Slovak Republic	<u>Labour office</u> Office of Labour, Social Affairs and Family
<u>CPT Committee</u> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment	<u>LGBTI</u> lesbian, gay, bisexual, transgender and intersex
<u>Defence Ministry</u> Ministry of Defence of the Slovak Republic	<u>Minister of Education</u> Minister of Education, Science, Research and Sports of the Slovak Republic
<u>ECHR</u> European Court of Human Rights	<u>Minister of Justice</u> Minister of Justice of the Slovak Republic
<u>Education Ministry</u> Ministry of Education, Science, Research and Sport of the Slovak Republic	<u>Minister of Labour</u> Minister of Labour, Social Affairs and Family of the Slovak Republic
<u>EU</u> European Union	<u>Minister of the Interior</u> Minister of Interior of the Slovak Republic
<u>Finance Ministry</u> Ministry of Finance of the Slovak Republic	<u>NCHR</u> National Centre for Human Rights
<u>Foreign Affairs Ministry</u> Ministry of Foreign and European Affairs of the Slovak Republic	

OPCAT
Optional Protocol to the UN Convention
against Torture and Other Cruel,
Inhuman or Degrading Treatment
or Punishment

OSCE
Organisation for Security
and Co-operation in Europe

Parliament
the National Council of the
Slovak Republic

PCGC
Prison and Court Guard Corps

PDR
Public Defender of Rights

PDR's Office
Office of the Public Defender of Rights

SBA
Slovak bar Association

SIS
Slovak Intelligence Service

Supreme Court
Supreme Court of the Slovak Republic

Transport Ministry
Ministry of Transport and
Construction of the Slovak Republic

UN
United Nations

And this is the highest statesmanship and the soundest wisdom on the part of a good citizen, not to divide the interests of the citizens but to unite all on the basis of impartial justice.

The PDR was introduced into the constitutional system of the Slovak Republic through Constitutional Act No. 90/2001 Coll., which amended the Constitution.

The PDR is an atypical institution within the Slovak Republic's legal system; it acts to protect the fundamental rights and freedoms of natural and legal persons, strengthen the oversight of public authorities and initiate reforms of law and public authority.¹ The atypical nature of this constitutional institution lies in how it works and what scope of competence it has. Unlike other constitutional institutions, the PDR as an institution is not backed by official authority; instead, it is founded on its informal 'soft power', which means that its success in accomplishing its mission depends on its status and respect from other branches of power.

Mutual respect between official authorities in the performance of their duties is a condition for the functioning of the legal system so that it fulfils one of its main purposes – the protection of the rights and legally protected interests of the citizens of the State. The rule of law as a functional principle is maintained by people's trust or faith in a certain justice that it affords. Justice means the certainty of a consequence if a set of conditions is cumulatively fulfilled. If the expected consequences do not occur, there is an individual injustice, which in itself undermines the idea of the rule of law and puts it at risk by destroying people's trust or faith in the rule of law, which is the essential condition for its functioning.²

If the legal system lets individual injustice happen, it has an inherent error that jeopardises its very existence and leads to its extinction – self-destruction. It is therefore essential for the rule of law to minimise effectively the scope within which individual injustice could occur without the possibility for trust to be restored. The PDR's mission is to take active part in the implementation of the rule of law as a functional principle. By examining the individual complaints, she identifies those violations of the law or principles of the democratic rule of law in the conduct, decision-making or inaction of public authorities, which jeopardise fundamental rights and freedoms. If the conclusions from examination of the complaints or own-initiative surveys concern a larger number of persons or are of a systemic nature, the PDR proposes changes in the relevant legislation or applies to the Constitutional Court.

This report provides information about how and to what extent the above elements were reflected in the PDR's work in 2019.

¹ KROŠLÁK, D.: Constitutional law. Bratislava: Wolters Kluwer, s. r. o., 2016. P. 669.

² See IHERING, R. Boj za právo [The Struggle for Law]. Bratislava: Kalligram, spol. s.r.o., 2009. P. 61 – 90.

For the sake of clarity, better readability and ease of navigation, the 2019 report is divided into several parts covering the individual fundamental rights and freedoms, which are:

- I. Right to life, personal liberty and human dignity
- II. Right to private and family life, rights of children and parents,
- III. Right to social security and social assistance
- IV. Right of ownership, and right of establishment and engagement in other gainful activity
- V. Freedom of expression, right to information, right of petition, electoral matters, assembly and association
- VI. Right to judicial and other legal protection

Each chapter covers several interrelated fundamental rights and freedoms and contains examples of the complaints and PDR's findings, information about extraordinary reports submitted to the Parliament, a brief summary of the analyses conducted and other activities.

The chapters focusing on fundamental rights and freedoms are followed by information about the core activities in relation to international cooperation, collaboration at the national level resulting from the PDR's activities and information about the activities of the PDR's Office in 2019.

In 2019, my activities as the PDR continued to be guided by the effort to perform my duties independently, impartially and in an apolitical and professional manner. My ambition was to strengthen the voice of those natural and legal persons whose problems fell within the scope of my competence so that it resonates throughout the activities of public authorities. I was an advocate of the principle that public authority must be exercised in good faith, fairly, wisely and with due regard to its real purpose.

I. Right to life, personal liberty and human dignity

- 14 1 Special premises
- 14 2 National preventive mechanism in places where personal liberty is restricted
- 15 3 Provision of healthcare in the prison system
- 16 4 Right of convicted persons to express their personal identity
- 17 5 Failure to extradite a requested person to a third country
- 18 6 Forced-return monitoring
- 18 7 Participation in the preparation of the detention act
- 19 8 Security risk as a reason for rejecting a long-term residence application from a foreign national
- 19 9 Non-recognition of Somali travel documents

This part of the report discusses the respect for the fundamental rights of those who are confronted with the coercive power of the State. In every case of restriction of personal liberty, the State is responsible for ensuring that the person is treated in a humane way and that the person's rights and freedoms, not preventing the purpose of the necessary restriction of personal liberty, are preserved to the maximum extent.

Special premises

1

Back in 2016, former PDR JUDr. Jana Dubovcová submitted to the Parliament an extraordinary report on facts indicating a severe violation of fundamental rights and freedoms by the conduct taken by police authorities. In that report, she recommended, among other things, that the Police Force Act be amended so that, in a police building, police officers may restrict personal liberty only in a police detention cell created for that purpose. At the same time, she proposed to ban the handcuffing of detained person to the wall or other firmly anchored objects (such as a radiator). Despite these recommendations from the PDR, the required measures have yet to be adopted.

On several occasions since taking up the PDR office, I myself have concluded that fundamental rights of the persons placed in the 'special premises' were violated. In order to address this problem constructively, I met with the Minister of the Interior in 2019. This meeting resulted in a mutual agreement, on the basis of which the Minister created a working group at the Police Force Presidium with participation of representatives of the PDR's Office. A legislative proposal for amendments is currently being prepared with the aim of creating a legal framework for how police officers should proceed when restricting personal liberty so that their conduct is always lawful and the room for arbitrariness and violations of fundamental rights and freedoms is minimised.

National preventive mechanism in places where personal liberty is restricted

2

An important element of the prevention of ill-treatment are systematic visits to places where persons whose personal

liberty is restricted are or may be present. However, these visits must be made by an independent institution that would also have sufficient capacity to carry out systematic visits and, at the same time, experts in the fields of medicine, psychology, paediatrics and geriatrics.

The Optional Protocol introduced a two-pillar system of control how persons deprived of their personal liberty are treated at the national level. The first pillar is the national preventive mechanism. The second pillar is the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Each State Party to the protocol has undertaken to establish one or more independent national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment at national level.

The Slovak Republic has yet set up a national preventive mechanism, the aim of which would be to ensure regular and systematic inspections of facilities where persons whose personal liberty has been restricted are present. Attention to this situation has also been drawn by the CPT Committee.

3

Provision of healthcare in the prison system

The issue of respect for the fundamental rights and freedoms of persons whose personal liberty has been restricted was also brought to my attention in the context of examining the individual complaints. In one of them, I was approached by a complainant in extradition custody objecting that the custodial and prison facility had failed to provide adequate healthcare for him.

The complainant stated that the custodial and prison facility failed to arrange an eye examination for him for almost eight months after being placed in custody even though he was suffering from severe visual impairment. When the complainant finally received an eye examination, he was issued a voucher for glasses, but he was unable to purchase the glasses as he did not have enough money. Eventually, he was able to acquire the glasses through the Slovak Red Cross. Until the time he was able to acquire the prescribed glasses, he used ones lent to him by the facility's chaplain. I came to the conclusion that the custodial and prison facility interfered with the complainant's right to the protection of

his health, which is protected by the provisions of Article 40 of the Constitution in conjunction with Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. I called upon the head of the custodial and prison facility to take measures to prevent similar cases in the future.

In my opinion, the problems related to the provision of healthcare in custodial and prison facilities also needs to be addressed at the system level. The number of convicts approaching me with complaints related to this issue is relatively high. Therefore, this was one of the topics we discussed at my meeting with the General Director of the PCGC in 2019. The PCGC has long been facing the issue of a lack of medical personnel, in particular with regard to the provision of specialised healthcare. Finding a solution is difficult mainly because similar problems in the provision of healthcare (e.g. long waiting times for specialist examinations) can also be seen in the civilian sector. The PCGC itself can fine-tune the processes for the provision of healthcare so that they are as effective as possible within the limits of the available possibilities, however, a real change is unlikely to occur until a significant improvement in the provision of healthcare is achieved in the entire healthcare system.

Right of convicted persons to express their personal identity

Another issue I dealt with last year related to the permissible extent of restrictions imposed by the State on individuals while they serve their prison sentence.

In the past, I received a number of complaints in which persons serving a prison sentence objected to legislation requiring them to have their hair cut and their faces shaved according to the set standards.

On the basis of a legal analysis, I came to the conclusion that the obligations thus defined are disproportionate to the objective pursued. The right to privacy is a right, which is intended to protect individuals from excessive standardisation on the part of the State. According to the Constitutional Court's case law, one of the purposes of this right is to prevent State authorities and local self-government authorities from interfering with

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the behaviour of individuals beyond the necessary extent and from disproportionately managing their private lives.

In the context of examining this complaint, I found that no across-the-board restrictions relating to personal appearance were in place in the EU members neighbouring the Slovak Republic. I also analysed the relevant rulings of the ECHR. I came to the conclusion that forcing men to have their face shaved and hair cut without reasonable justification or individual assessment of the health or hygiene risk constitutes a disproportionate interference with the private lives of the convicts. This right is protected by Article 19(2) of the Constitution and Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

The Justice Ministry has not endorsed my proposal to amend the legislation and the restrictions related to personal appearance of convicts continue to apply. I will present my recommendations for amending the relevant legislation again to the new Minister of Justice and continue to promote measures in this respect in 2020.

5

Failure to extradite a requested person to a third country

The PDR's role is to be active in any cases where fundamental rights may be, or are being, violated by the public administration and public authorities. I am convinced that the scope of the PDR's competence includes even cases where an individual is not directly threatened by the conduct of a national authority, but his or her fundamental rights may be at risk outside the territory of the Slovak Republic as a result of a decision taken at the national level.

Therefore, on the basis of a complaint from a law firm, I requested that, before taking a decision on the extradition of an individual to the Russian Federation, the Minister of Justice consider its implications for that individual's fundamental rights and freedoms guaranteed by international human rights conventions. In my request, I pointed to, in particular, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and drew his attention to the possibility of inhumane conditions in prisons in the Russian Federation. Eventually, the decision taken by the Minister of Justice on this matter did not allow the extradition of this person to the Russian Federation.

³ Vyhláškou sú dané aj parametre účesu – vlasy na zadnej časti temena hlavy nesmú siahať nižšie ako po golier košele, bočné partie vlasov môžu siahať do polovice ušnic. Odsúdený si môže ponechať fúzy do úrovne kútikov úst a nakrátko prstrihnutú bradu.

Forced-return monitoring

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Monitoring of the expulsion of foreign nationals from the territory of the Slovak Republic is especially important from the standpoint of the protection of their rights because it is very difficult to investigate any subsequent complaints. Therefore, last year, I also focused on this issue and, in several cases, the PDR's Office monitored expulsions. At a meeting with the Minister of the Interior, I subsequently requested that the legislation be amended to allow for independent and effective monitoring of forced returns. At present, the monitoring is carried out by the Interior Ministry in cooperation with a non-governmental organisation, which is not compatible with the requirement of institutional independence within the meaning of the EU Directive on common standards and procedures in Member States for returning third-country nationals staying illegally in their territories. The Minister of the Interior expressed her support for this change, but due to the lack of time before the elections, the change was not implemented. In 2019, the PDR's Office, in cooperation with the International Centre for Migration Policy Development, organised a two-day workshop attended by more than 50 representatives from Member States to exchange experiences in the field of forced returns.

Participation in the preparation of the detention act

7

Representatives of the PDR's Office took active part in the inter-ministerial consultation exercise on the draft detention act. The purpose of detention, as defined under the act, is to protect the society and impart a therapeutic and educational effect on persons placed in detention so that they can return to normal life once they are stabilised. The accepted comments from the PDR's Office related to e.g. the proper documentation of the reason, purpose and time of the use of means of restraint, as well as the notification obligation towards the prosecutor. Also accepted was our comment relating to specification of the requirements for a safe room in the detention facility and for regular walks to be taken by persons placed in the detention facility.

8

Security risk as a reason for rejecting a long-term residence application from a foreign national

In the context of handling complaints relating to the decision-making and conduct of the Aliens Police, I dealt with a case where a long-term residence application from a Ukrainian national was rejected on the grounds that he was identified as a security risk to the State.

After examining the complaint, I found that administrative authorities did not provide the applicant, as a party to the proceedings, with access to the information used as the key basis for rejecting his long-term residence application. In their decisions, the APD and the Border and Alien Police Directorate failed to provide sufficient justification for the conclusion that the legal reasons for rejecting the applicant's application had been fulfilled. An analysis of the legislative status quo and the case law of the Supreme Court and the Constitutional Court led me to the conclusion that the decisions rejecting the application due to the existence of a security risk without providing any details of the fact justifying and explaining this risk were in conflict with Article 46 of the Constitution and the current provisions of the Act on the Residence of Aliens. Parties to the proceedings must know the reasons that led the administrative authority to give a negative decision in order to be able to defend their rights and interests effectively, in particular to respond to evidence used for the decision and present their own proposals.

The Border and Alien Police Directorate accepted the measures I proposed, reviewed the decisions in question and prepared a proposal to supplement the guidelines issued in this respect to include the ruling of the Constitutional Court.

9

Non-recognition of Somali travel documents

The procedure and decision taken by the Embassy of the Slovak Republic in Nairobi (hereinafter the "Embassy"), which failed to issue a national visa to a Somali national for the purposes of applying for permanent residence in the Slovak Republic, was objected to in a complaint. The Embassy first

issued a national visa in the form of a visa sticker, however, subsequently it issued a decision on the same matter not to issue a national visa for the purposes of applying for residence in the Slovak Republic because the applicant's documents were due to the fact that the Slovak Republic does not recognise Somalia's travel documents. Thus, the applicant had two different decisions on the same matter and did not know which one to follow.

After examining the complaint, I concluded that the steps taken by the Embassy when it did not issue a national visa for the purposes of submitting an application for residence in the Slovak Republic was in conflict with Article 46(1) of the Constitution and the principle of good administration, with a reference to the principle of legal certainty and the principle of legitimate expectations.

When examining the complaint, the PDR's Office also focused on the actual reason for not issuing a national visa – the fact that the Slovak Republic did not recognise any travel documents issued in Somalia (passports, diplomatic passports, service passports, special passports, foreigner's travel documents, refugees' and stateless persons' travel documents and temporary travel documents or laissez-passer). The staff of the PDR's Office found that the applicable Slovak legislation in general did not allow any Somali national to apply for permanent residence in the Slovak Republic because, without a valid travel document, any application would be incomplete and would therefore have to be rejected.

I consider such practice of the Slovak Republic as a violation of fundamental rights protected by Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the right to respect for private and family life) and Article 46(1) of the Constitution (the right to a fair trial). Therefore, I requested that the Interior Ministry, as the authority competent to recognise travel documents, create a mechanisms in our legal system, in cooperation with EU Member States that had created such a mechanism and that can be used by the Slovak Republic as an example of good practice, enabling Somalian nationals to apply for permanent residence on the grounds of family reunification. From 1 November 2019, the Slovak Republic recognises Somalia's e-travel documents issued from 1 April 2014 for entry and stay in the territory of the Slovak Republic and for leaving the territory of the Slovak Republic.

II. Right to private and family life, rights of children and parents

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| 24 | 1 Protection of rights of women in obstetric care |
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In this part of the report, I address issues concerning the activities of public authorities falling within the scope of competence of the Labour Ministry.

Complaints related to decision-making and procedures of labour offices and the Social Insurance Agency are among the most common every year. In addition to complaints, I also dealt with a number of systemic issues in 2019. I addressed the issues of domestic adoptions and compensation of the victims of unlawful sterilisations, and I also paid attention to surveys in social service facilities. I opened the topic of women's reproductive rights and a series of round-table discussions on the issue of child victims of violence in criminal proceedings took place under my auspices.

I am convinced that a higher level of protection of the fundamental rights of vulnerable groups – minors, senior citizens, women and minorities – from public authorities needs to be promoted and achieved. However, public authorities are often understaffed and lack material resources, and in some cases, the law fails to clearly define their competence and the rules. My experience from dealing with measures in specific cases shows me that, for the time being, the progress made in this respect has been very slow.

Protection of rights of women in obstetric care

1

On the occasion of the International Week for Respecting Childbirth, I drew attention to the need to pay attention to women's reproductive rights and the protection of these rights. I highlighted the surveys conducted by non-governmental organisations, according to which the rights of women in obstetric care are being violated in Slovakia and the identified violations are of a systemic nature. I also informed the UN Special Rapporteur on Violence Against Women about these findings in connection with the forthcoming report on the human rights-based approach to mistreatment and violence against women in reproductive health services, with a focus on childbirth and obstetric violence.

I brought her attention to the practice of stitching after birth without adequate anaesthesia or the routine cutting of the perineum (referred to as episiotomy). Stitching without adequate anaesthesia may constitute a violation of the right not to be subjected to violence, torture and other cruel,

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inhuman or degrading treatment. Episiotomy was presented in Slovak university textbooks as protection against rupture; this, however, has been refuted by scientific studies. According to the World Health Organisation, episiotomy should only be used where necessary, for example when the child's life is in danger. If episiotomy is performed without a medically indicated reason, it constitutes violence and other cruel and degrading treatment.

In order to ensure that measures are taken, I addressed the Health Ministry with a letter recommending the adoption of obstetrics care standards that would reflect knowledge of evidence-based medicine and the internationally recognised standards in this field.

The UN Committee on the Elimination of Discrimination against Women has also alerted the Slovak Republic to the absence of procedures and mechanisms to ensure adequate standards of care and respect for women's rights, dignity and autonomy during childbirth.

Given the seriousness and importance of the issue of violations of the human rights of women in obstetric care in Slovakia, I will continue to follow this topic in the context of a survey to be conducted on my own initiative in 2020.

2

Women's reproductive rights

A total of five draft acts aimed at restricting access to abortions were submitted to the Parliament in 2019.

In my statements, I welcomed the fact that these drafts were not adopted by the Parliament. The existing legislation on the protection of human life before birth does not infringe the provisions of the Constitution or the provisions of international conventions by which the Slovak Republic is bound. I also pointed out that repeated proposals aimed at obstructing access to abortions represent an interference with women's privacy and an attempt to restrict the reproductive rights of women in Slovakia.

In the context of the applicable legislation and international human rights obligations, the State has an obligation to create a framework enabling pregnant women to exercise their right of access to abortion. The UN Committee on Economic, Social and Cultural Rights and the Council of Europe Commissioner for Human Rights also expressed deep concerns with the efforts to restrict the reproductive rights of women in Slovakia in connection with the draft acts in question.

Systemic solution to the issue of enforcement proceedings against children for arrears on municipal waste fees

3

My 2018 activity report included information about my findings relating to the recovery of arrears on municipal waste fees from minors in the city of Žilina. In early 2018, I brought the matter to the Constitutional Court so that it reviews compatibility of the Act on Local Taxes and the Local Fee for Municipal Waste and Small Construction Waste with the Constitution and international treaties. Even though this petition was rejected by the Constitutional Court, it agreed with the argument that children must be protected from situations where they would be liable for a debt that they objectively cannot honour. Therefore, the act must be interpreted in the sense that the arrears should be recovered from the child's legal representatives.

Nevertheless, even several months after the Constitutional Court's resolution had been published, the practice in the city of Žilina did not change and the enforcement proceedings against children continued. I alerted the city that, by doing so, they are disrespecting the best interests of the child and I called on the city to take measures to remedy this situation. I also thought it necessary to address this issue at the system level and, in April 2019, I recommended that the Finance Ministry adopt methodological guidelines for the act that would reflect the Constitutional Court's resolution. The Finance Ministry expressed an interest in resolving the issue through a legislative change, which formed part of an amendment to the Waste Act.

The amendment has already been passed by the Parliament and will provide greater legal certainty once it comes into effect. It clearly defines the transfer of the obligation to pay the municipal waste fee from a minor to his or her legal representative. At the same time, by setting a time limit for settling the debt on behalf of the minor, it resolves the problem of the enforcement proceedings against minors that are already underway. After fruitless expiry of this time limit, it becomes their own debt by law.

Right to private and family life, rights of children and parents

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Social and legal protection of children

Last year again saw the PDR's Office handle many complaints related to the social and legal protection of children and social guardianship. These are often exposed and long-lasting family disputes, in which minors become a means and, ultimately, the main victims in the conflict between their parents. The involved parties, pursuing their own goals and their own idea of what is good for the child, overlook the child's real best interest, which is to live in a peaceful and stable family environment with both parents. The involved parties dealing with their broken relationship often neglect the fact that the breakup of the relationship does not mean an end to their parental duties and responsibilities. There should be agreement between the parents on essential questions related to the child's life without their differences in opinion putting an undue burden on State authorities, which include courts, authorities for the social and legal protection of children and social guardianship, or other parties – lawyers, mediators and psychologists. In such cases, courts are confronted with the challenging task of not only deciding the dispute, but also helping to resolve family problems so as to create a suitable and stable environment for the child's development.

In these cases, complainants turn to me objecting, in particular, to the activities of authorities for the social and legal protection of children and social guardianship, which, according to their contentions, make an insufficient effort to know, and advocate for, the child's opinion in the related proceedings, and are inactive or biased against parents.

My findings show that it continues to be a problem to identify the child's in these cases. The method used in these proceedings to identify the child's opinion often fails to respect their age or intellectual maturity and is executed in an inappropriate manner (in an unsuitable environment, using an inappropriate procedure, etc.).

I found that the slow action of authorities for the social and legal protection of children and social guardianship is mostly caused by the fact that the individual labour offices have been entrusted with too many tasks, disproportionately to their current personnel capacity and work environment, the complexity of the work performed by the individual

employees (for example, the conflict guardians), the number of cases and their remuneration. These shortcomings translate into the high staff turnover, which is also linked to problems associated with the procedure followed by these authorities in individual cases. The situation is particularly serious in larger cities (for example, the Bratislava Labour Office). Therefore, I came to the conclusion that the field of social and legal protection of children and social guardianship needs comprehensive reform and substantial improvement in the conditions for the staff of the relevant authorities, because the acceleration of processes and procedures in individual cases also depends on this reform.

In relation to systemic changes, I have long been monitoring and advocating the introduction of the 'Cochem practice' into court decisions on family matters. This practice emphasises as a priority the responsibility of parents and their obligation to decide and, in particular, agree on the future of their children, thereby contributing to the prevention of long-standing family disputes and conflicts that ultimately harm the children. I believe that after the positive results of the pilot projects, as concluded by the courts themselves and by the Justice Ministry, its application will be expanded further. Still, the implementation of Cochem practice is also challenging for authorities for the social and legal protection of children and social guardianship as it significantly changes the current philosophy of their functioning and their role in proceedings involving minors.

Protection of the rights of child victims of violence in criminal proceedings

One of the themes the PDR's Office has been dealing with on a long-term basis is the protection of the rights of the child in criminal proceedings. Under my auspices, a series of round-table discussions on the issue of child victims of violence in criminal proceedings, regularly attended by representatives of the relevant ministries and institutions, as well as practitioners, was organised by Náruč – Pomoc deťom v kríze, a civic association to help children in crisis.

According to the participants of the round-table discussions, it is key to improve cooperation between authorities for the social protection of children and social guardianship and law enforcement authorities. However, the procedure for

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questioning children continues to be a persistent problem. The participants in the discussions agreed on the importance of questioning children sensitively, in a specially equipped interrogation room. It should be equipped so as to allow for questioning the child in a manner appropriate to the child's age. There are currently only four such rooms in Slovakia and experience shows that even these rooms are relatively little used.

Another intensively discussed topic was the position and role of lawyers as, in cases defined by law, they are compulsorily appointed as guardians of minors in criminal proceedings effective from 1 January 2019.

6

Process of domestic child adoptions

Last year, the PDR's Office continued a survey on the system of adoptions in order to identify the extent to which the child's best interests are taken into account in the process of adoption and why it takes so long for a person interested in adoption to actually adopt a child. It seems evident the reason for this is the existing large disparity between the number of children who can be adopted (around 400 children) and the number of people interested in adopting a child (around 1 000). The survey showed that the fear of adopting other than the idealised child is often based on a lack of information or pressure from the environment, or comes from negative experiences being pushed to the forefront and a lack of ongoing and individualised work with the applicants. This is precisely where I see an important role for the State in the future – to influence the thinking in the society. This is also why I proposed to the Central Labour Office to intensify demonstrably awareness-raising on the possibility of adopting children, the need to complete preparation and the content of the preparation.

The survey showed that finding a suitable family for the child is a separate issue. At present, the order of applicants on the list needs to be followed. Even though this approach takes into account their order on the list, some offices still skip single-parent adopters.

I proposed to the Justice Ministry, which is the authority responsible for the Family Act, that the suitability of a family for a child should be decided by a team of experts as is the case in international adoptions or as practised in the Czech Republic.

While examining the issues related to domestic adoptions, I also came across the question of setting an age limit the adoption applicants. However, resolving this issue would require a separate analysis because such a measure could open the question of discrimination on the basis of age.

Kindergartens

7

In the field of education, last year I was confronted, in particular, with the issue of education provided in kindergartens, which has long been associated with the problem of the capacity of kindergartens.

Especially larger cities faced the problem of being unable to provide enough places in kindergartens for their residents or for children with permanent residence in these cities. This situation was exacerbated by a change in legislation introducing compulsory pre-school attendance in the scope defined by law (one year before entering primary school).

In response to the situation that had arisen, some local governments decided to introduce different amount of co-financing for children with permanent residence in the city or municipality that administers the kindergarten and for those whose permanent residence is outside that city or municipality.

In connection with this, I was approached by a number of dissatisfied parents who saw the different co-financing amounts as a form of unacceptable discrimination. My conclusion was that if the local government authority respects the limits set down by law and the Constitution, but, at the same time, gives reasonable privileges to persons with permanent residence in its territory in the exercise of its territorial authority, this is not contrary to the prohibition of discrimination. When determining the contributions to be paid by legal representatives for the child's stay in the kindergarten, the local government authority must always keep in mind that this must be a 'contribution' towards the costs actually incurred and its amount must not render education in kindergartens practically inaccessible. Otherwise, this would constitute a violation of the right to education.

III. Right to social security and social assistance

34	1 Rights of senior citizens
35	2 Social insurance
35	3 'Czechoslovak' pensioners
36	4 Special social security scheme
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40	9 Municipality as the landlord of a social apartment

Rights of senior citizens

1

In the summer of 2019, I presented the results of a questionnaire survey focused on the standard of monitoring in selected social service facilities. This survey showed that the number of inspections was disproportionately low compared to the number of these facilities. At the same time, I found that the individual powers of control authorities are not sufficiently clearly defined in the Social Services Act. This was demonstrated by the fact that even the authorities themselves did not know whether and which facilities they should inspect. Another negative finding was that the inspections often focused on paperwork, not on the actual conditions in the facilities.

I addressed the Labour Ministry with my findings and proposals; it accepted my proposals, but not all of them have been put into practice. What is positive, however, is that self-governing regions have started to realise the importance of the monitoring, strengthened their inspection teams and increased the frequency of inspections.

In 2019, the staff of the PDR's Office conducted an on-site survey in six facilities for senior citizens. The survey focused on mapping the environment in the facilities, how the facilities are equipped, the organisation of the day for the seniors, how their autonomy is respected and how they can participate. In addition, the survey focused on the safety and privacy of the accommodated persons, the care provided and the facility's staff.

On the basis of the investigation conducted, I found that negative manifestations of 'institutional culture' could often be seen in these facilities, such as compulsory bedtime, fixed meal times, locking of premises, automatic withdrawal of identity documents when accommodating in the facility or early-morning hygiene regime. Another manifestation of this 'institutional culture' was a lack of respect for privacy. In several facilities, their residents could not to lock their belongings in a locker or use the toilet with a lock, and the staff entered the rooms without knocking or did not use screens during hygiene procedures.

After conducting the survey, I requested each of the visited facilities to take measures to improve the situation; almost all of the measures were accepted. Based on the survey results, I also proposed that the Labour Ministry implement several measures to improve the situation with regard to respecting

rights, such as the introduction of standards for respecting fundamental rights in social service facilities, a system of interdisciplinary care (the Long-Term Care Act), creation of conditions for palliative care, and publication of inspection reports.

I am aware of the fact that the exchange of experiences and findings from inspection activities is very important, therefore, I organised a working meeting of the inspection bodies last October. The outcome of the meeting was a manual for carrying out inspections in the facilities.

2

Social insurance

Complaints concerning pension benefits traditionally account for the largest part of the complaints against the Social Insurance Agency, which decides on matters of social insurance. Nevertheless, the PDR's Office also examined several complaints concerning other social insurance benefits, or the commencement of insurance and prescription of contributions.

Unnecessary delays in proceedings on matters of social insurance are a regular subject of complaints in this field. Last year, the PDR's Office dealt with a number of complaints in which the complainants objected to the disproportionate length of proceedings on their entitlement to a social insurance benefit. In some cases, the delays could not be attributed to the Social Insurance Agency, but there were cases where we had to conclude violations of the fundamental right to have one's case heard without unreasonable delays. It should be emphasised that proceedings on matters of social insurance have a significant impact on securing the basic necessities by the party to the proceedings, therefore, the state of insecurity has a negative impact on the social and living conditions of any individual who finds him- or herself in that state of insecurity. Hence, violations of the right to have one's case heard without unreasonable delays need to be assessed more strictly in such proceedings.

3

'Czechoslovak' pensioners

In last year's report, I again drew attention to the issue of 'Czechoslovak' pensioners. These are people whose

pension insurance period, completed during the common Czechoslovak state, is assessed by the Czech Republic for the purposes of awarding a pension. Decisive for determining the relevant successor State is, in particular, the place where their employer was established at the time of the dissolution of the common State. Many Slovak citizens, therefore, receive two pensions – a Czech and a Slovak one – even if they worked in the territory of the Slovak Republic their entire life, but were employed by a company established in the territory of the Czech Republic. The ‘partial’ pensions do not always add up to the amount of the pension they would have been receiving if the entire period of their pension insurance were assessed solely in accordance with the Slovak legislation.

The situation of the Czechoslovak pensioners was partially alleviated in 2016 with the introduction of the ‘compensatory extra payment’, but not all Czechoslovak pensioners became entitled to it. In this context, the Minister of Labour informed me back in 2018 that his Ministry was preparing new legislation that would respond to the situation in courts’ application practice.

This new legislation was adopted in 2019, but, again, it does not cover the entire group of the affected pensioners. I find this situation intolerable and unacceptable in terms of respect for their fundamental rights. Therefore, at the time of approval of the new legislation, I submitted my serious reservations and addressed the Minister of Labour and the Parliamentary Committee on Social Affairs; subsequently, I requested the President of the Slovak Republic not to sign the amendment in question. Nevertheless, the legislation was eventually approved without taking my reservations into account.

Special social security scheme

4

Already in last year’s report, I drew attention to many shortcomings related to the special social security scheme for police officers and professional soldiers. The ambiguous legislation often causes confusion as to which public authority is competent to decide on their entitlement to pension benefits for the periods of insurance completed in civilian employment. The case law of the courts is also very important in this regard. However, the cases differ from each other and not every situation can be compared to a case that has already been ruled on. Therefore, the persons concerned

have no other choice but go to court. Still, even courts’ opinions on these issues are not always uniform.

5

Firefighter’s service pensions

Shortly before Christmas 2017, the Interior Ministry started to gradually revoke service pensions of fire-fighters who completed their service in the 2008-2010 period arguing that they had been awarded a pension by the Social Insurance Agency, but only for the period they were insured as civilians. Almost 40 of them addressed a complaint to me. In some cases, the service pension was revoked after they had been receiving it for almost ten years. The Interior Ministry claimed that it had no information to this effect. However, this proved to be untrue in certain cases since the Interior Ministry itself informed the fire-fighters when awarding them the service pension that, in the case of concurrent entitlement to a service pension and a pension from the general scheme, the recipient of such a pension will continue to be entitled to the full service pension.

After their service pension was revoked, many fire-fighters were left with very little income that was below the subsistence minimum. The Interior Ministry did not coordinate its steps with the Social Insurance Agency, it only referred the affected fire-fighters to apply for an increase in their pension so that it covers the periods of insurance completed while in service and to apply for a supplement to their pension. However, the Social Insurance Agency did not agree with the Interior Ministry’s opinion and requested the Supreme Court to issue a unifying opinion. Eventually, during the appeal proceedings, the Interior Ministry annulled its decisions revoking the service pensions, explaining that it would wait for the Supreme Court’s opinion, which, however, has yet to be issued.

As regards this matter, I came to the conclusion that the Minister of the Interior, by incorrect, purely grammatical interpretation of the Act, violated fundamental rights of the affected fire-fighters, of which I informed the Minister of the Interior. The Interior Ministry did not agree with my conclusion, but continued to pay the service pensions. The problem was finally resolved through an amendment to the Act, which entered into force on 1 January 2020.

As part of my activities in 2019, I also paid attention to the rights of people with disabilities with a special focus on the decision-making on financial allowances to compensate severe disability. This was a continuation of my previous activities from 2018, which included, for example, a petition to declare certain age limits for the award of compensation allowances incompatible with the Constitution and international treaties; the petition is the subject of Constitutional Court proceedings ref. no. PL. ÚS 16/2018.

In this regard, too, I identified both formal and material shortcomings in the decision-making of the competent authorities, some of which were of a systemic nature. The most fundamental procedural shortcomings undoubtedly included the insufficient instructions provided to persons with severe disabilities (referred to as disadvantaged persons) about their rights in the proceedings (e.g. the right to request for the possibility to attend the assessment of their health), or failure to allow persons with severe disabilities to respond to the taking of evidence before the substantive decisions are made; these shortcomings are in principle common to all of the examined complaints.

From the standpoint of material shortcomings, it can be stated that in a substantial proportion of the proceedings on awarding compensation allowances, the identification of the factual situation was inadequate or a wrong approach was taken to social assessment activities, which are seen by the competent authorities only as a complement in order for the key decision-making by the medical examiner based on medical grounds to also take into account the social consequences of severe disability. While, as a rule, medical assessment activities are performed thoroughly, using all the relevant medical reports that are subsequently assessed by the medical examiner, in the case of social assessment activities, the effort of social workers is often inadequate as if they believed that social assessment activities could not affect in any way the final decision on the award or non-award of the financial allowance to compensate severe disability.

To a certain extent, this may well be a result of the wording of the actual act, according to which medical assessment activities include the “assessment, with regard to compensations, of the social consequences faced by the individual as a result

of severe disability compared with an individual without disability”. As a result, there is a substantial overlap between medical assessment activities and social assessment activities in this field.

This results in internally contradictory decisions that do not sufficiently reflect the reality, not only in terms of health, but also the social situation and status of persons with severe disabilities. I also found shortcomings in the scoring of the dependence of such persons, which is often incorrect and internally contradictory; however, this scoring is not available to the parties to the proceedings, therefore, it is difficult for them to identify these shortcomings. The above identified shortcomings have led to a number of cases where violations of the fundamental rights of persons with severe disabilities were found. I will also use this as a basis for focusing my attention on this issue in the forthcoming period.

7

Right to housing and right of access to water

Even though the right to housing and the right of access to water are not explicitly governed by the Constitution, the Slovak Republic is bound by the commitment to respect these rights and use the available means to ensure their fulfilment for its citizens under several international conventions (e.g. the International Covenant on Economic, Social and Cultural Rights).

Each State Party to the International Covenant on Economic, Social and Cultural Rights undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant, by all appropriate means, including particularly the adoption of legislative measures.

8

Time restrictions on access to drinking water

The PDR’s Office dealt with a complaint concerning measures taken by the municipality of Blažice with regard to its residents’ access to drinking water. There is still no

functional water supply system in this municipality, even though the municipality has been trying to build it since 2013. The residents are currently supplied with water using mainly two public wells – one at the municipal office and the other in a Roma settlement. However, in 2019, the regional public health authority found that the water from the well in the Roma settlement was not suitable for drinking. The municipality cleaned and disinfected the well, yet, the result of the control analysis was still unsatisfactory. Given the situation that had arisen, it was necessary to find a solution. The residents of the Roma settlement were allowed to take drinking water from the well at the municipal office, but only at defined times (from 7.30 am to 4.00 pm on working days and from 8.00 am to 9.00 am on weekends). At the same time, the municipality made a request to the Interior Ministry to provide it with an extraordinary subsidy to drill a new well in the Roma settlement.

I found the time-restricted access to drinking water at the municipal office to be problematic. Especially the time restriction on weekends (one hour a day) appeared to be disproportionate given the Roma settlement's population (approx. 180). In my opinion, this restriction constituted a breach of the commitment to respect the minimum scope of the right to water guaranteed by Article 11(1) and Article 12(1) of the International Covenant on Economic, Social and Cultural Rights. Therefore, I requested the municipality to take measures ensuring unrestricted access of the Roma settlement's residents to a source of drinking water. However, in the meantime, by cleaning and disinfecting the original well in the Roma settlement, it was brought to a satisfactory condition, which was confirmed by repeated control analyses. Hence, the residents of the settlement were again provided with uninterrupted access to a safe source of drinking water.

Municipality as the landlord of a social apartment

Last year, I also dealt with several complaints relating to the practice of municipalities acting as landlords of rental (social) apartments. In connection with one of the complaints, I dealt with the issue of a rental agreement repeatedly concluded for a definite period (specifically for three months over a period of almost ten years).

9

Given the statutory powers of a municipality relating to providing for its residents' housing needs, the municipality's conduct as a landlord cannot be looked at as a matter that falls exclusively within private law. The rules for assigning municipal rental apartments are generally left to the discretion of the municipalities themselves. The right to housing is one of the second-generation fundamental rights and freedoms, municipalities have a relatively broad room for manoeuvre in specifying how, under what conditions and to what extent they will implement it. On the other hand, they must also respect the commitments arising from international conventions.

The UN Committee on Economic, Social and Cultural Rights has pointed out that the right to housing should not be interpreted in a restrictive sense as a person's right to survive in a certain place, which may provide a roof over one's head, but its other standards do not allow the person to live a full and meaningful life in the society; it should be seen as a right to adequate housing – to life in security, peace and dignity. One of the criteria that need to be taken into account when providing housing is the security of tenure. Regardless of the type of the legal relationship (from rental agreements to life in settlements), it is essential that all persons enjoy a certain degree of legal certainty that guarantees their protection against sudden, forced evictions, or security and other threats.

Repeated extensions of a rental agreement for short terms over a period of several years do not constitute a short-term rental intended to help the tenant to overcome a socially difficult period. It is apparent that such a situation put the tenant in a position of legal uncertainty and was, therefore, in conflict with the right to housing according to Article 11(1) of the International Covenant on Economic, Social and Cultural Rights. In this case, the security of tenure would have been guaranteed if the rental agreement were concluded for a longer or indefinite period of time.

IV. Right of ownership, and right of establishment and engagement in other gainful activity

44

1 Small and medium-sized enterprises

42—43

Based on complaints from individuals, in 2019, I dealt with the issue of protection of the right of ownership in relation to the conduct of public authorities. My conclusion in some cases was that this fundamental right was violated. One example was the non-payment by the Slovak Land Fund of a claim to the complainant based on a final court judgment since 2013. Another example was an erroneous entry by the cadastral department of the district office in the real estate cadastre, as a result of which an owner's property was wrongfully transferred to another person.

Small and medium-sized enterprises

1

With the aim of promoting improvement of the business environment, I included verification of the functioning of business registers and their digital interconnection among the priorities of the PDR's Office.

The aim of this priority was to explore the possibilities for improving the business environment, in particular for small and medium-sized enterprises, with a focus on time efficiency and trouble-free operation of the registry environment. These possibilities were explored by means of a questionnaire survey addressed to registry courts.

The survey revealed several facts that the registry courts found to be problematic and which prevented greater efficiency of the registration proceedings. The key issues included the inadequate interconnection between the business register and the reference registers and the absence of an interconnection between the disqualifications register and the CORWIN software, together with the overall lack of functionality of the CORWIN system. The problem of understaffing concerned, in particular, the Bratislava I District Court, which has long faced a disparity between the high number of cases and the number of senior judicial officers. I presented the identified shortcomings to the Minister of Justice, requesting him to take measures to eliminate the identified technical and operational deficiencies and, as far as possible, the partial staffing problems and obstacles causing the reduced efficiency of work and restricting the functionality of the Business Register of the Slovak Republic.

V. Freedom of expression, right to information, right of petition, electoral matters, assembly and association

- 48 1 Provision of access to information
- 48 2 PDR's opinion in the hearing on compliance of the 50-day moratorium on election polls before the Constitutional Court
- 49 3 Exercise of the right to vote by nationals of the Slovak Republic who are abroad at the time of the elections

Provision of access to information

1

I found violations of the fundamental right to information in several complaint cases I examined over the past year. Violations of this right occur even at the level of central government authorities. One example was a complaint from an individual who requested a review of the Justice Ministry's conduct with regard to providing access to information – a document containing information about progress of hearings (relating to the Slovak Republic) before EU courts. The Justice Ministry did provide part of the required information, however, it refused to provide access to information about ongoing 'live' cases (including their reference numbers) because these, according to the Ministry, related to the decision-making process of courts.

After examining the complaint, the relevant legislation and the corresponding case law, I came to the conclusion that the complainant's fundamental right to information had been violated. In line with established case law, I concluded that, contrary to what was stated by the Justice Ministry, information that has the nature of records, which the requested information contained, does not constitute a factual basis for restricting access to information. Subsequently, I notified the Minister of Justice about my conclusion with regard to the complaint, noted that the complainant's fundamental right to information had been violated and called on the Minister of Justice to take measures to remedy the unlawful situation and make the requested information available to the complainant. Nevertheless, even repeated written communication exchanged with the Minister of Justice did not bring about a change in the Justice Ministry's stance on this issue.

PDR's opinion in the hearing on compliance of the 50-day moratorium on election polls before the Constitutional Court

2

On my own initiative, in 2019, I decided to submit to the Constitutional Court my opinion on a petition from the President of the Slovak Republic to initiate proceedings on compliance of § 17 of the Election Campaign Act with the Constitution (as an *amicus curiae*). An amendment to the

Freedom of expression, right to information, right of petition, electoral matters, assembly and association

Election Campaign Act extended the election poll moratorium from the original 14 days to 50 days.

According to the President of the Slovak Republic, this extension of the election poll moratorium was unconstitutional as it unduly interfered with, above all, the fundamental right to information under Article 26 of the Constitution, freedom of expression under Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the free competition of political forces in a democratic society under Article 31 of the Constitution.

In the opinion, I expressed my agreement with the President's view stating that this disproportionate extension of the election poll moratorium restricted voters' access to some of the relevant information that may be of importance to voters in the exercise of their right to vote. The contested provisions of the Election Campaign Act caused an impermissible expansion of power to the detriment of citizens in a democratic and free society. Therefore, I proposed that the Constitutional Court uphold the proposal of the President of the Slovak Republic to declare § 17 of the Election Campaign Act incompatible with the Constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms and suspend § 17 of the Election Campaign Act until a decision is taken on the matter as such.

3

Exercise of the right to vote by nationals of the Slovak Republic who are abroad at the time of the elections

Since the existing legislation does not allow citizens who have the right to vote in the Slovak Republic and who are staying outside the territory of the country at the time of the elections to exercise fully their constitutional right to participate in the administration of public affairs by voting in the elections, I decided to approach the Minister of the Interior with a request for amendment of the legislation.

At present, voting by post from abroad is possible only in the case of parliamentary elections and in a referendum. In order to eliminate the barriers to voting, it is necessary to enable citizens staying abroad at the time of the elections to vote by post, at embassies of the Slovak Republic or via electronic means of communication, in all elections, not only in parliamentary elections or a referendum.

VI. Right to judicial and other legal protection

- 52 1 Delays in court proceedings
- 52 2 Approval of a proposal for the appointment of a professor
- 52 3 Failure of electronic communication when sending an electronic file to the tax office
- 53 4 Handling possible disciplinary offences committed by judges
- 54 5 Disciplinary proceedings

Delays in court proceedings

1

For a long time, delays in court proceedings have been the most frequent cause of violations of fundamental rights and freedoms dealt with by the PDR. The situation was no different in 2019. In addition to examining the individual complaints, the issue of delays in court proceedings is a subject of systematic attention of the Public Defender of Rights.

Approval of a proposal for the appointment of a professor

2

In 2019, I also examined a complaint in which the complainant objected to inactivity of the Education Ministry with regard to a failure to forward a private university's proposal for appointment of the complainant as a professor.

By withholding the applicant's inaugural dossier since 2014 and not submitting it to the President of the Slovak Republic, the Education Ministry went beyond the scope of its statutory competence, thereby violating the complainant's fundamental right to judicial and other legal protection guaranteed under Article 46(1) of the Constitution.

Failure of electronic communication when sending an electronic file to the tax office

3

In 2019, I also dealt with a complaint in which the complainant objected to the unjustified imposition of a fine by the tax office. The complainant used the financial administration's web portal to submit to the tax office documents with a qualified electronic signature on behalf of his clients. The complainant submitted the documents two days before the end of the set time limit. The documents were not accepted because the qualified electronic signature was not successfully affixed due to an invalid signature certificate. Since the signature was invalid, the complainant missed the set time limit and fines were imposed by the tax office on the taxable entities represented by the complainant. The complainant did not agree with the imposition of the fine

arguing that he had been prepared to fulfil the tax obligations on time, but could not do so due to a failure of the electronic system. The complainant appealed against the decision imposing the fines, but without success.

On the basis of the background documents, I came to the conclusion that the procedure and decision taken by tax office were legal. I also found that the invalidity of the signature certificate was probably caused by a technical issue on the part of the service provider. The signature certificate needed to be removed from the complainant's ID card and uploaded again at the district directorate of the Police Force.

I am of the opinion that it is the role of the relevant Police Force unit to ensure that it is possible to use the signature certificate (without technical issues). Even though this case does not involve special administrative proceeding, it concerns practices of state authorities on the basis of law and within its limits. Therefore, I advised the complainant that he could consider seeking compensation for damage caused in the exercise of official authority as a liability case.

This case is a manifestation of the new material and legal challenges relating to electronic public administration in the relationship between natural/legal persons and state authorities.

4

Handling possible disciplinary offences committed by judges

In 2019, on my own initiative, I turned my attention to the issue of the possible disciplinary offences committed by several judges; the suspicions of these disciplinary offences stemmed from information that had appeared in the media originating from communication of a defendant in the case of the murder of journalist Ján Kuciak obtained from the Threema application. This communication implies that the judges and their decision-making were influenced by criminal circles and that they had close personal ties with persons accused of extremely serious criminal activity. If this information is confirmed, this may represent a serious interference in the independence and impartiality of the judiciary in the Slovak Republic, resulting in decline in its credibility to an unprecedentedly low level.

Even though I have yet to file a proposal for disciplinary proceedings against any of the suspected judges,

I am closely monitoring the action taken by the relevant bodies, in particular the Judicial Council and the Justice Ministry.

When consulting the relevant investigation file, the staff of the PDR's Office found a significant fact – a lawyer who was a member of the Judicial Council represented one of the suspected judges. At the same time, it was the Judicial Council that undertook to investigate the whole case and filed several proposals to initiate disciplinary proceedings against the suspected judges. I drew the attention of the Judicial Council, the Parliament and the Slovak Bar Association to this conflict of interests (the lawyer was a member of the Judicial Council elected by the Parliament). On the basis of the information from the PDR, the Slovak Bar Association initiated disciplinary proceedings against this lawyer and member of the Judicial Council, who simultaneously resigned as a member of the Judicial Council.

5

Disciplinary proceedings

Two disciplinary proceedings held against district court judges on the basis of the PDR's proposal were completed by decisions of disciplinary appeal panels in 2019.

In the first case, a final decision acquitted a judge of the Bratislava I District Court from my petition to initiate disciplinary proceedings because the disciplinary panel concluded that she had not committed a disciplinary offence. The factual basis for the disciplinary offence was the judge's conduct when, in a public court hearing, she made the use of a sound recording conditional on the court's consent and subsequently refused in writing to give her consent to the use of the recording, thereby violating the fundamental right to information guaranteed by the Constitution. The Constitutional Court also ruled that the fundamental right to information was violated in the case in question.

In the second case, the disciplinary proceedings were completed with a similar conclusion – the disciplinary panel decided to acquit the judge. The proceedings were held against a judge of the Košice I District Court. The factual basis for the disciplinary offence was the conduct of the judge who acted towards a party to proceedings in a public court hearing in such a manner that it raised legitimate doubts as to the judge's impartiality. On multiple occasions, the

judge's statements in public hearings implied her bias against a party to the dispute by mentioning (according to the judge) a typical trait of that party's character. The disciplinary panel acquitted the judge from the petition to initiate disciplinary proceedings in 2018 because, in its opinion, in terms of scope and intensity, the judge's statements did not reach the degree of gravity to qualify the judge's conduct as a disciplinary offence. Still, despite this conclusion, under several points of the grounds of its decision, the disciplinary panel stated that the judge's statements were inappropriate and that the position of judge vis-à-vis the parties to the proceedings is such that they must not express emotionally their views on the personality, character or traits of the parties and must avoid expressing stances and opinions that could raise a party's doubts as to the judge's independence, impartiality and fairness. I appealed against this decision; however, the disciplinary appeal panel dismissed my appeal and upheld the disciplinary panel's first-instance decision.

Summary review of the violations of fundamental rights according to the complaints received

Document	Article	
Constitution	17 – personal liberty	1
	19(2) – protection of private and family life	4
	19(3) – protection of personal data	1
	20 – right of ownership	4
	26 – right to information	7
	39(1) – adequate material security in old age and in the event of incapacity for work	3
	40 – protection of health	2
	41(1) – special protection of children and adolescents	3
	41(5) – right to parental education and care	1
	42 – right to education	1
46(1) – protection from unlawful conduct	31	
48(2) – unnecessary delays	58	
Summary		116
ECHR	3 – prohibition of torture, inhuman and degrading treatment	2
	8 – respect for private and family life	2
Summary		4
Convention on the Rights of the Child	3 – best interests of the child	3
	7 and 9 – right to parental care	2
	12 – right to express one's view	1
Summary		6
ICCPR	17 – right to privacy	2
ICESCR	11(1) – right to an adequate standard of living	1
	12(1) – right to the enjoyment of an adequate standard of physical and mental health	1
Summary		4

Abbreviations:

ECHR – Convention for the Protection of Human Rights and Fundamental Freedoms
 ICCPR – International Covenant on Civil and Political Rights
 ICESCR – International Covenant on Economic, Social and Cultural Rights

Cooperation with international and national institutions, lectures and awareness-raising

International and national institutions

Meeting with the President of the Slovak Republic

At our first meeting with President of the Slovak Republic Zuzana Čaputová in August 2019, we presented to the newly elected President selected topics that we deal with, such as the protection of the rights of senior citizens, the protection of the rights of vulnerable minorities or the topic of the judiciary.

Intervention in a hearing before the ECHR

In January 2019, for the first time in history of the PDR's Office, we used the possibility to intervene as a third party (*amicus curiae*) in proceedings before the ECHR. This concerned the case of the disproportionate police intervention in Moldava nad Bodvou in 2013.

European Ombudsman Institute Board Meeting

In March 2019, representatives of more than 20 ombudsman offices and other members of the European Ombudsman Institute (EOI) met on the premises of the PDR's Office. This meeting, among other things, gave us the opportunity to present our activities.

Regular meeting of the V4 ombudsmen

Together with the PDRs from Czechia, Hungary and Poland, in May last year we signed a joint declaration on the occasion of the 30th anniversary of

the Convention on the Rights of the Child. During our meeting in the Slovak Republic, we discussed, above all, the rights of children and, in the joint declaration, we placed particular emphasis on the need for their protection when they are provided substitute family care. At the same time, we compared our experiences and findings related to the issue of desegregation in education, child adoption and foster care, as well as the right to housing in relation to homelessness. We also paid attention to the topic of the possibility of holding the ombudsman's office liable for damage caused by the exercise of official authority. Since the PDRs in the V4 countries are not equally equipped in terms of the scope of their competence or types of agenda, it was very interesting to not only compare the results of our work, but especially the possibilities of how the PDRs can be active in different areas.

International conference on forced returns

In June 2019, the first meeting of representatives of monitoring organisations and authorities carrying out forced returns was held in Bratislava. The main topic of the meeting co-organised by us was the issue of respect for the fundamental rights of individuals in the process of forced returns to their home countries. The most serious problem in Slovakia is the poor effectiveness of the monitoring system.

Meeting with the French Ambassador

In July, we opened the topic of protecting the rights of LGBTI persons with French Ambassador Christophe Léonzi. We

agreed on the need to work towards an appropriate legal framework guaranteeing a free and dignified life to each of us. The Ambassador praised our stance on this topic, which is shared by many other embassies in Slovakia. We also talked about protecting the rights of women, senior citizens and child victims of violence.

International conference of the European Ombudsman Institute (EOI)

At the international conference on human rights organised by the European Ombudsman Institute, we presented our work and the status of our office in Slovakia. We focused on the position of the PDR in proceedings before the Constitutional Court and on the functioning of the Office, in particular from the standpoint of its transparency in relation to the public.

Meeting with representatives of the European Commission against Racism and Intolerance (ECRI)

At a working meeting in November 2019, we informed representatives of the European Commission against Racism and Intolerance about our findings relating to violations or ignorance of minority rights, which we have been drawing attention to for a long time.

Reception of a Turkmen delegation through an OSCE programme

At the end of the year, we received a delegation from the Turkmen ombudswoman's office. We talked about the constitutional foundation of the PDR in Slovakia, the scope of the PDR's competence and the work on individual complaints and

selected surveys. Many questions related to our experience with the submission of annual and extraordinary reports to the Parliament and the attitude of the MPs to the measures we proposed.

Awareness-raising and other activities to support human rights

Ombudsman's thank you for 2019

We marked the occasion of the International Human Rights Day (10 December) by expressing our thanks to personalities and organisations protecting human rights. The awarded personalities included Slávka Mačáková, who helps people at risk of generational poverty; the civic association Cesta von [Way Out], for its innovative approach to the Omama project; Emma Zajačková, Jakub Hrbáň and Jakub Andacký, who organised the Fridays for Future climate strikes in Slovakia. Peter Štaffen was also awarded for his contribution to the fight against prejudices through activities showing that a handicap is not an obstacle to employment. Thanks were also given to Eva Mosnáková, who survived the Holocaust and dedicated her life to the fight for justice and truth. At the end of the evening, Ján Langoš was awarded in memoriam for his lifelong contribution to the struggle to unveil the truth and defend democratic values.

Meeting with the new head of the Constitutional Court

At our first meeting with Ivan Fiačan, the new head of the Constitutional Court, we discussed the topic of protection of

the fundamental rights and freedoms of the most vulnerable groups, in particular children, senior citizens and persons deprived of personal liberty. We also informed him about the petitions submitted by the PDR to the Constitutional Court.

At the same time, the election of new constitutional judges took place in 2019. The PDR used her right to nominate personalities with a high moral and professional credit as candidates for constitutional judges. Two to four candidates were nominated by her in the first four rounds of the election. She made no nominations in the fifth round of the election as the potential candidates were so demotivated by the attitude of the parliamentary representative to the election process that they refused to run.

Climate strike for the future

In September, the employees of the PDR's Office attended the climate strike in Bratislava to express their support for protecting the planet and finding solutions how to save it. The Fridays for Future student initiative spurs the public to action and calls on legislators to take a responsible approach to proposing and adopting measures to protect the nature, forests and our fundamental human right to a favourable environment.

Series of round table meetings on children's rights

In 2019, together with the association Náruč – Pomoc deťom v kríze, which helps children in crisis, we organised a total of four specialised thematic meetings, the aim of which was to define the specific problems in criminal

proceedings involving child victims of violence and propose solutions how to maximise the involvement of authorities for the social and legal protection of children in these proceedings. Another important topic was the need to build and put into use special interrogation rooms.

Participation in the committee to select candidates for the chairperson of the Office for the Protection of Whistleblowers

At the beginning of 2019, the Parliament passed a law on the basis of which an independent official authority with national competence was established to protect the rights and legitimate interests of whistleblowers when reporting wrongdoings. The chairperson of this Office is elected by the Parliament from among candidates proposed by the Government. A five-member committee conducts the process of hearing and evaluating the candidates for the Government. The members of the committee include a representative of the PDR's Office. Two rounds of hearings of the candidates took place last year, yet, after the Government submitted its proposal, the Parliament did not elect any of them to the position of the chairperson of the Office for the Protection of Whistleblowers.

Lectures and awareness-raising

Throughout the year, we gave lectures at a total of 16 primary and secondary schools, and higher education institutions. The objective was to convey to children and young people the

fundamental rights and freedoms guaranteed by national and international law. The lectures always included examples of how the specific cases that we encounter in our work or cases heard by the ECHR in Strasbourg were resolved.

Human Rights Olympics

Our lawyers gave lectures to students participating in this competition and prepared one of the topics for the competition essays: “An ‘educational slap’ never hurt anyone”. Almost every child has experienced a pat on the butt or an ‘educational slap’ from their parents. “Where is the line between human rights and the parents’ discretion to raise their children as they see fit?” The authors of the winning essays in the 21st edition of the Olympics, which took place under the PDR’s auspices, had the opportunity to meet the PDR in person and experience the working atmosphere in the PDR’s Office.

Open School project under the PDR’s auspices

The PDR underlined the invaluable contribution of the principals from the participating schools to raising awareness about the protection of human rights in Slovakia. The project brings together younger pupils with passionate young people who educate them about democratic values and spread awareness about how the rule of law functions.

Conference on child victims of violence

Lawyers from the PDR’s Office presented our findings and recommendations in

this field at an international conference on the protection of children’s rights. It was repeatedly stated that, in criminal proceedings, children should be questioned in special interrogation rooms designed and equipped so that the interrogation can take place in a manner appropriate to the child’s age.

Purple heart

For the third year in a row, we took part in the Purple Heart awarding ceremony at a charity evening on the occasion of the World Prematurity Day. Every year, the Malíček [Little Finger] association awards personalities who have contributed to improving the situation of premature babies.

Discussion on segregation in education on the occasion of the International Roma Day

“We know our paths we just need to start taking them.” At a discussion on segregation in Bratislava’s Berlinka, we again draw attention to certain problems in our education system. Discrimination, and especially segregation, is not disappearing from our schools, even though it is prohibited by the Schools Act. It persists because it is not sanctioned. At the discussion, we pointed out possible solutions – for example, a change in how school districts are delineated.

Opening of the exhibition Roma in the Resistance

We accepted an invitation to the opening of the exhibition Roma in the Resistance, revealing the lesser-known fact that the Roma were not only victims of war, but

also actively fought and worked to save our identity and our ancestors. The exhibition was symbolically opened on the occasion of the 75th anniversary of the Slovak National Uprising in Banská Bystrica.

Meeting with the Minister of Education

At my October meeting with Martina Lubyová, the Minister of Education, we tried to identify the most serious obstacles to the adoption of effective measures leading to desegregation of the education system. Both the PDR’s Office and the European Commission have long been dealing with the issue of discrimination against Roma children in access to education. We drew the attention of the Minister of Education to the fact that even though discrimination, and especially segregation, are prohibited under the Schools Act, the practical implementation of this prohibition is inadequate. There is no effective sanctioning mechanism in place. At the same time, we informed her that a well-thought-out delineation of school districts could help in desegregation.

Discussion on rainbow families

The lawyers from the PDR’s Office took part in a discussion on rainbow families in Nová Cvernovka. We are convinced that children cannot be harmed by loving parents and a family environment providing a sense of coherence, respect and help. If a legal framework for same-sex couples to have equal rights has not been created to date, we, as a State, have failed to fulfil our obligation to ensure respect for their private and family life.

Rainbow Pride

This year we again attended the Rainbow Pride. Today, the question no longer is whether, but how we will concretely seek legal solutions for a dignified life of same-sex couples. Only if we create an appropriate legal framework by which we will recognise their right to have their own identity and build relationships within the deepest human dimension, we will be able to truly guarantee equality and dignity to every human being.

Helpfest festival

For the first time, we attended the fifth edition of Helpfest, a festival whose objective is to “break down the barriers between two worlds – the world of the healthy and that of people with disabilities”. It is extremely important to understand the ‘otherness’ of people with disabilities, help them and, at the same time, treat them as equal and full members of our society. We used this opportunity to raise awareness about how the PDR can help people with disabilities.

Meeting with presidents of self-governing regions

At our June meeting with the presidents of the eight self-governing regions, we focused on the issue of social service facilities for senior citizens and monitoring of these facilities by self-governing regions and municipalities. Their control competences often overlap, due to which the system lacks transparency. After we alerted the Labour Ministry to this situation, it promised that the

legislation would be amended and the control competences refined.

Senior friendly

October is the Month of the Elderly. At the conference Senior Friendly, which took place under our auspices, we talked with senior citizens about respect for the rights of the elderly living in facilities for senior citizens and about our survey on the standard of monitoring of these facilities in Slovakia.

Workshop on the methods of monitoring facilities for senior citizens

In the autumn, we prepared a workshop for authorities that monitor respect for the rights of the elderly in facilities for senior citizens. The key objective was to exchange information about the methods of the monitoring. Our survey showed that the authorities often focus on paperwork and files and do not examine the actual situation and standard of the provision of social services. Therefore, we decided to create a platform for the exchange of experiences and provision of information about the approach taken by the individual authorities to the monitoring.

Meeting with Holocaust survivors

We met with the precious people who survived the Holocaust and the terrifying period of World War II, which were full of horror and suffering. The members of the club were interested in our work related to the care for the elderly in social facilities, the protection of the rights of children who experienced violence

or the developments in the case of the police raid in Moldava nad Bodvou.

Half-term of office

In the autumn, the PDR took a retrospective look at the first half of her five-year term of office. We had managed to present two annual reports and one extraordinary report (on delays in restitution proceedings) before the Parliament. We had conducted surveys aimed at auditing the measures adopted in relation to the right to education and the protection of the rights of senior citizens and children in the process of adoption. We had brought two petitions to the Constitutional Court to assess the compatibility of legislation. For the first time in the Office's history, the PDR had intervened in proceedings before the ECHR in Strasbourg as a third party.

At the beginning of the term of office, we included the protection of the rights of patients, senior citizens, people in the shadows, self-employed persons, small and medium-sized enterprises, and pupils and students, or the future generations, among our priorities. We followed up on the work of the previous PDR, Jana Dubovcová, both as regards the issue of segregation and discrimination in the educational process and the case of the disproportionate police raid in Moldava nad Bodvou. We also opened many new topics, such as the issue of obstetric care, the possibility of voting from abroad or the issue of unlawful sterilisation of Roma women.

Discussion on the boundaries of the freedom of speech

On the occasion of the 30th anniversary of the Velvet Revolution, we held

a discussion in Nová Cvernovka on the topic of: What should still be allowed and what should be forbidden to say? Where does the boundary of the freedom of expression start and end for me? Why are some manifestations of the freedom punished while others are tolerated?

Regional trips

Košice and Prešov

In March, we attended as members of the public the court hearings in Košice, in which the victims of the police raid in Moldava nad Bodvou stand as defendants. As their lawyer pointed out, he was of the opinion that several violations of their right to a fair trial had occurred. We have been monitoring the case since the actual raid in 2013 and regularly participate in the court hearings.

As part of this regional trip, we also met with Roma activists, with whom the Poradňa pre občianske a ľudské práva (Centre for Civil and Human Rights) is working. We discussed a number of issues faced by this community, including the issue of the unlawful sterilisations of Roma women, which still has not been resolved.

Žilina

At our March meeting, we sought information from the new management of the city of Žilina, the staff of the city administration, the community centre, the city police, representatives of non-governmental organisations and the Roma community about the current situation of the people living on Bratislavská

street. The city informed us about the plan to create a comprehensive concept of solutions and welcomed our advice. What the city sees as a key topic is the issue of housing. To this date, this issue has not been resolved as the residents of Bratislavská street have been living in temporary accommodation – portable shelters – for several years since their homes burnt down and were demolished. The city stated that it was aware of the seriousness of the problem and intended to find appropriate solutions.

In addition to housing, we inquired about education at the meeting. We also opened the question of inclusion in connection with employment and found that the problem with employment of young Roma was also present in Žilina.

We took another trip to the Žilina self-governing region in September 2019. At the meeting with the self-governing region's president Erika Jurinová, we talked about the results of our survey on the standard of monitoring in facilities for senior citizens. We pointed out that, besides the low frequency of the inspections, the method of carrying them out was also problematic as they often only looked at formal administrative matters. We agreed that it was essential to also conduct unannounced inspections. We are glad that unlike in the past, the self-governing region's new team is carrying out such inspections. Nevertheless, as we learned at the meeting, they often face the problem of how to assess the standard of the nursing care provided since they do not have the relevant expert on their team. This could be resolved by engaging the chief regional nurses or part-time

collaborators, or by transferring matters to the Healthcare Surveillance Authority.

Žilina and Púchov

As part of our November regional trip to Žilina and Púchov, we took part in the discussion called “The quiet after an angel or why we should remember Daniel Tupý”. Cases where the perpetrators are not punished, especially due to a failure of state authorities, are a huge trauma and injustice not only for their loved ones, but for the society as a whole.

The trip’s programme included a meeting with the leadership and residents of the town of Púchov. We discussed our activities and the PDR’s competences. The questions were directed, in particular, at the payment of various allowances and pensions and also concerned access to healthcare.

Banská Bystrica

At our November trip to Banská Bystrica, we discussed human rights with students of the Faculty of Political Science and International Relations at Matej Bel University. We also attended the international human rights event Human Forum. The sixth edition was dedicated to the theme of elections as the basic instrument of a democratic state. We focused on interventions in the electoral system shortly before the elections, which could seriously threaten free political competition.

!nternship programme

This year, students of law, international relations, mass media communication, journalism and other fields had the opportunity to intern at the PDR’s Office. During their internships, law students were given the opportunity to prepare legal analyses on topics such as education of children from socially disadvantaged backgrounds or police conduct. At the same time, they could verify the theory directly in practice during on-site visits to social service homes or schools, where, for example, segregation and discrimination is monitored by our lawyers. At the communication and protocol department, interns helped organise regional trips and events, prepare media monitoring or create press releases. A total of 17 students interned at the PDR’s Office in 2019.

Public Defender of Rights Office in 2019

Activities of the PDR's Office

Headquartered in Bratislava, the PDR's Office is a publicly-funded organisation, which, in accordance with the PDR Act, performs tasks related to professional, organisational and technical support for the PDR's activities.

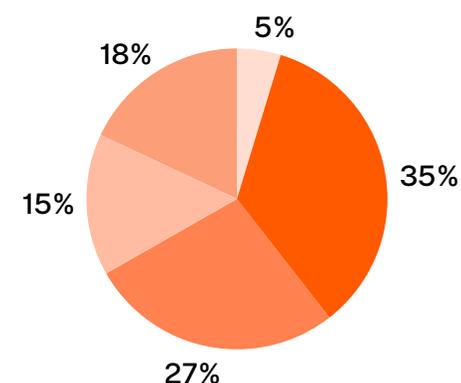
Under § 17 of the PDR Act, the PDR or the staff of the PDR's Office authorised by the PDR may request public authorities to provide documents and information that she needs in order to carry out her roles. The roles of the PDR's Office are performed by civil servants and employees performing work in the public interest, whose number is subject to approval by the PDR.

Summary data on the activities of the PDR's Office

In 2019, the PDR's Office handled a total of 2 825 working documents and dealt with 10 proceedings initiated on its own initiative. Of the above number of official documents, 2 102 were complaints³ delivered either in person, by mail, by electronic mail or via electronic mailbox no. E0005579891; this includes documents put forward from 2018.

After examining the complaints, the PDR identified 130 violations of fundamental rights and freedoms in 104 complaints. No violations of fundamental rights and freedoms were identified in 753 complaints and 593 complaints fell outside the scope of the PDR's competence. There were 652 complaints that were put forward to 2020.

³ Compared with 2018, the number of submitted complaints rose by 44 %. In our view, this rapid increase was a result of both our new visual identity and the new communication strategy of the PDR's Office, where we partially substitute the role of the NCHR and proactively comment on topics that have an impact on violations of human rights by public authorities

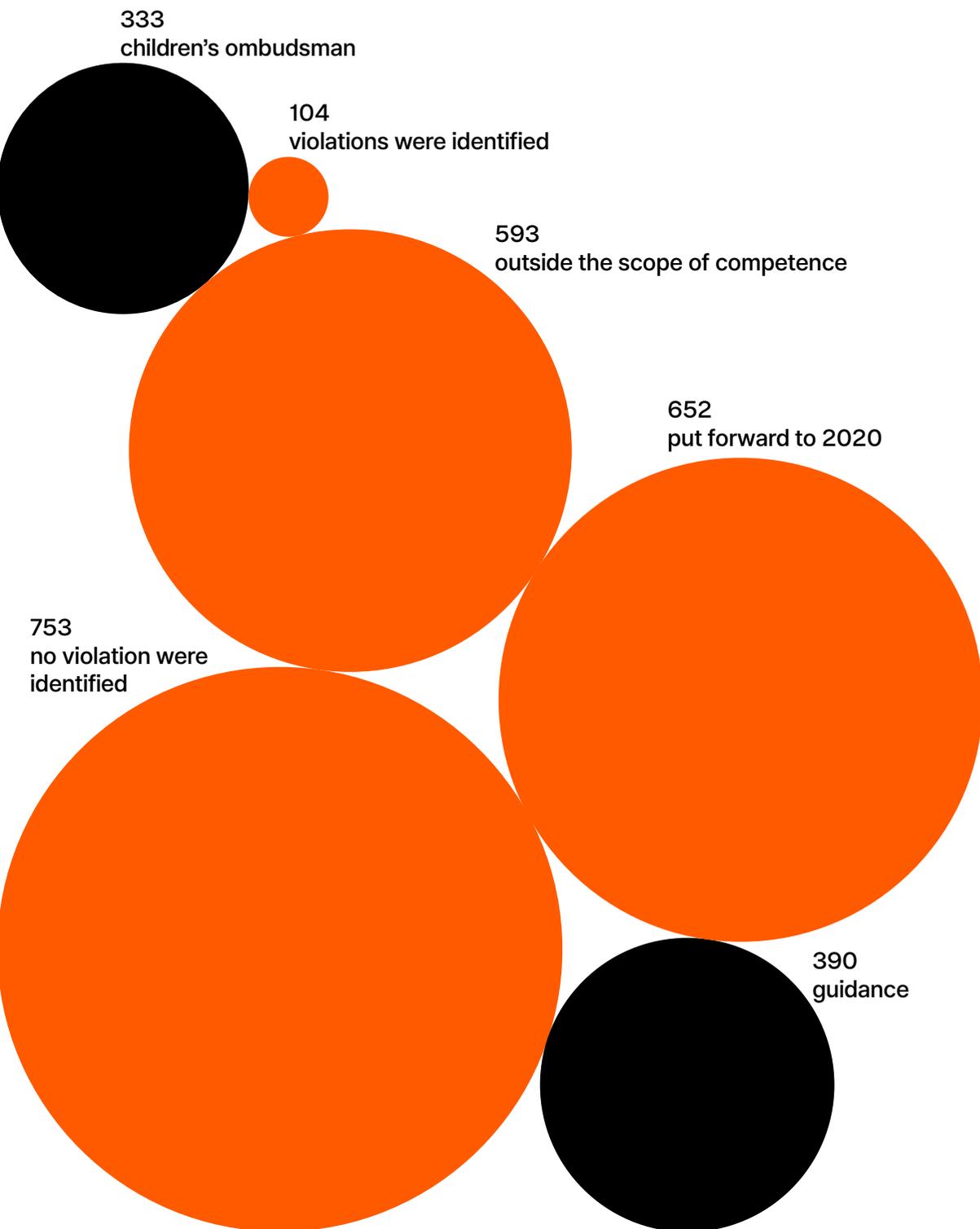


Tab.: Graphic representation of the share of working documents closed in 2019

2 825 documents on agenda in 2019

● 2 102 complaints

● 723 submissions



4 The PDR's office uses the www.detskyombudsman.sk website to raise the awareness of children and young people about the issue of fundamental rights and freedoms, their rights at school, in the family and in interpersonal relations, and how they can exercise these rights. We consider this to be essential especially because, unless they have enough information, children and young people find it more difficult to exercise their rights than adults. On this website, young users can find information processed in an accessible form about the scope of the PDR's competence, her activities relating to children and protection of their rights, and about the Convention on the Rights of the Child.

5 The PDR's Office is frequently contacted by people seeking help in dealing with problems that do not fall within the scope of the PDR's competence. These are, for example, civil law issues, such as enforcement proceedings, neighbourhood disputes or disputes with banks; these people also often seek legal advice. We try to give them guidance and advice as to how the problem at hand can be resolved, or we refer them to the relevant authority or institution that can help them.

There were 333 submissions received via the form on the detskyombudsman.sk website⁴ and 390 requests for guidance received via e-mail.⁵ All these documents were closed in 2019.

Handling of requests under the Freedom of Information Act

The right to information is enshrined in the Constitution and follows from several standards of international law, such as the European Convention for the Protection of Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights and Freedoms, or the International Covenant on Civil and Political Rights.

According to the Free Access to Information Act, there are two ways in which information can be made available – compulsorily, i.e. active disclosure of information, and at the applicant's request, i.e. passive disclosure of information. Information compulsorily disclosed by the PDR's Office is made available on its website, where all such information is posted, including contracts and orders. Information requested by individual applicants is made available on a continuous basis.

In 2019, the PDR's Office received and handled 91 individual requests for access to information from natural and legal persons. In 19 cases, a decision was issued by the PDR's Office. Of these, in 16 cases, a decision not to disclose the information was issued and, in three cases, these were decisions of the appeal panel, two of which related to cases from 2018. Of the 16 decisions not to disclose the information, only in three cases the Office did not disclose any information at all; in the other cases, it issued a decision on partial non-disclosure of information. In three cases, the requests, or parts thereof, were forwarded to another responsible person.

The requests handled by providing access to the required information related, in particular, to information about progress in the handling of the submitted complaints, paper copies of various opinions and documents from public authorities and the PDR's decisions on complaints, statistical information in relation to complaints, internal standards of the PDR's Office, information about the computer resources and information systems used in the PDR's Office, the PDR's Office budget and the amount of individual expenditures, the number of staff, the income of senior

employees and information about the scope of competence of the PDR's Office.

Decisions on non-disclosure related, in particular, to information, access to which is restricted by law (especially on the grounds of the protection of personal data) and information not available to the PDR's Office.

Organisational arrangements and financial management of the PDR's Office

Organisational and personnel capacities

The PDR's Office was established through the PDR Act to perform tasks related to professional, organisational and technical support for the PDR's activities. According to § 27(2) of the PDR Act, the PDR's Office is a legal person headquartered in Bratislava. The PDR's Office is a publicly-funded organisation.

According to § 27a(1) of the PDR Act, the tasks of the PDR's Office are performed by civil servants and employees.

The number of employees of the PDR's Office is subject to approval by the Public Defender of Rights.

By Resolution of the Government of the Slovak Republic No. 453/2018, the staff headcount threshold of 57 employees was retained for the PDR's Office for 2019 comprising: one constitutional official, 42 civil servant positions and 14 positions for employees performing work in the public interest. The remuneration budget of the PDR's Office was set at EUR 970 955, including the rise related to the indexation of salaries in 2019. Yet, it repeatedly turned out that this amount was not sufficient to cover the eligible salary components for the planned number of 57 employees. Nevertheless, the PDR's right to decide on the number of employees has not been fully accepted in terms of the budget since the office was established, hence, the PDR's Office cannot fill all the positions identified by her as necessary to perform this constitutional office properly.

As of 31 December 2019, the roles of the PDR's Office were performed by 41 employees (excluding the PDR), of which 21 were specialist staff carrying out activities related to the scope of the PDR's competence and 20 took care of the organisation and operation of the Office.

As of 31 December 2019, the employee structure was as follows:

	Number of employees / of which women	Average age	Maternity leave, parental leave, employees on leave	Educational attained /of which women			Number of managerial staff / of which women
				secondary	university undergraduate	university graduate	
Civil servants	29/23	35	5	-	-	29/23	6/3
Employees performing work in the public interest	12/9	46	1	6/3	2/2	4/4	1/1
Total	41/32	40,5	6	6/3	2/2	33/7	7/4

A total of 17 selection procedures for 13 civil servant positions and two selection procedures for employees performing work in the public interest were held in 2019.

The PDR's Office is pleased by the public's ongoing interest in working in the field of the protection of human rights. In 2019, a total of 156 candidates applied for the 13 civil servant positions in what we referred to as the 'competence organisational unit', 141 of whom were included in the selection procedures after their compliance with the conditions and requirements has been evaluated. Approximately 63 % of the invited candidates took part in the selection procedures and, due to the demanding selection process was, their success rate was around 42 %. All external selection procedures were successful.

One of the prerequisites for the proper performance of the assigned tasks is effectively designed continuous training. With the aim of extending the specialised staff's possibilities for specialisation, in 2019 the PDR's Office underwent a relatively extensive organisational change. This had a practical impact, in particular, on the aforementioned 'competence'

organisational unit, which ensures the performance of tasks for the PDR within the meaning of the PDR's competence granted by the Constitution and the law. The competence of the departments in the section for the protection of fundamental rights and freedoms started to specialise above all in the protection of rights and freedoms, broken down by the individual sections of the second title of the Constitution. The specialised training activities were also adapted to this. A total of 155 employees, of which 127 were civil servants, received training in 36 specialist training activities.

Contact with the public, in particular complainants, is an integral part of work in the PDR's Office. The very fact that the PDR is contacted by complainants in a situation where they believe that their rights or freedoms have been violated requires a higher degree of sensitivity and empathy, as well as communication skills from the staff. In 2019, eight educational activities attended by a total of 45 participants were focused on personal development. Soft skill training is essential for the quality of the assistance provided by the PDR and her teams. Communication skill training was therefore given most space in an internal training event for the staff, namely on the issue of communication in a conflict situation.

New visual identity of the PDR's Office

By introducing our new visual identity, we took our first step on the way to modernising the visual presentation of the PDR's Office. We received a total of 23 bids in our market survey for the low-value contract "Visual style of the PDR's Office".

The competition of new visual identity designs, overseen by the Slovak Design Centre, was won by the Andrej and Andrej design studio. The authors' concept is based on giving as much strength as possible to the alerts from the PDR. Make the voice louder! Give the alerts emphasis! Emphasise what is important! This was inspired, among other things, by the objective presented by the PDR upon taking the office. Her ambition is to strengthen the citizens' voice so that it resonates throughout the activities of public authorities and thus helps restore people's confidence in public power in Slovakia.

The exclamation mark, which is the main and key symbol in the new identity, is a punctuation mark used to put across emphasis in a sentence. According to the authors of the new visual style, this element is commonly known as a warning and alert sign. However, when used in a position other than at

the end of a sentence and implanted in letters of the alphabet, the words are given a new visual emphasis. The exclamation mark as a symbol signifies that the mission of our institution is to alert the competent authorities to violations of rights and seek redress.

Information technology management

In the context of modernising the PDR's Office, we partially replaced obsolete IT equipment, such as notebooks (three units), computer monitors (two units), multifunctional devices (two units) or mobile phones (three units). We purchased a server to be used for the new registry and file system. Due to the introduction of a new visual identity, we started working with a new graphics software.

Property management

The PDR's Office owns no immovable property; it is headquartered and works from rented non-residential premises in the building at 35 Grösslingova street in Bratislava, the sole owner of which is the diplomatic corps services administration company Správa služieb diplomatickému zboru, a.s., Bratislava. Within the meaning of the applicable rental agreement no. NZ/31/2014, this company is also the administrator of the non-residential premises in question. The landlord is a 100 % state-owned joint-stock company, therefore, the rent we pay goes back to the state budget through dividends.

Most of the movable property owned by the PDR's Office was acquired in the 2002-2003 period. This is being gradually replaced as necessary after the end of its service life or after it becomes obsolete. In 2019, in addition to the partial technological modernisation of our information technology equipment, we mostly purchased small furniture and electrical appliances. Maintenance of the vehicle fleet, repairs of computer equipment, inspections of electrical equipment and mobile archive shelves, as well as insurance of vehicles and property, is ensured by the PDR's Office.

Registry management and the filing office

During the period under review, a total of 7 889 records, delivered via mail, e-mail, the electronic mailbox or in person,

were registered by the filing office of the PDR's Office. The number of records that have been sent out reached 3 844. A total of 2 312 internal records were created by the staff of the PDR's Office. The records received and sent out are included in electronic form in the registry.

Use of the allocated budgetary resources by the PDR's Office/funding

The PDR's Office is a publicly-funded organisation, which is classified under the General Treasury Administration budget chapter and uses solely funding from the state budget. In the 2019 budgetary period, our approved budget to cover current and capital expenditures amounted to EUR 1 704 759. The budget approved for 2019 was EUR 169 110 higher than that approved for 2018. In addition to the funds intended to cover salary indexation from 2018 and the related social contributions (EUR 37 073 in total), the increase of the limit covered the plan to acquire a new information system – "Electronic registry management system" (EUR 130 000 euros), which corresponds to the requirements of Interior Ministry Order No. 525/2011 Coll. on the standards for electronic information systems for the administration of registries and, at the same time, will be used as the filing system for the specific needs of handling complaints under the PDR Act. The electronic registry management system was not eventually acquired in 2019 and the capital funding intended for purchasing it was not used. For this reason, we used the possibility given by law to use this funding for the same purpose in 2020.

In the course of the budgetary period, the approved budget was revised in connection with the indexation of salaries for 2019, increased to include the capital funding from previous periods and decreased to account for the capital funding from 2019 carried over to subsequent budget periods. The revised budget amounted to EUR 1 735 638.

Budget as of 31 December 2019 in euros

in euros	approved	revised
remuneration	857 513	970 955
social contributions	303 100	321 886
goods and services	387 896	400 783
current transfers	11 250	17 073
capital expenditure	145 000	24 941
Total	1 704 759	1 735 638

We spent EUR 1 708 054 from the revised budget, which represents 98.41 % of the total revised budget. A more detailed overview of how the funding was used in the period under review is provided in the table below.

Expenditure 2019	Revised budget in euros	Spending in euros	
remuneration	970 955	958 014,56	98,67 %
social contributions	321 886	321 765,83	99,96 %
goods and services	400 783	390 839,02	97,52 %
current transfers	17 073	16 823,77	98,54 %
capital expenditure	24 941	20 610,80	82,64 %
Total	1 735 638	1 708 053,98	98,41 %

Expenditure on goods and services (operating costs) 2019 in euros

rent and related services, including utilities	179 526
representation expenditure, including expenditure for the PDR's meeting with the Visegrad Group and the award ceremony evening on the occasion of the International Human Rights Day	24 900
employee catering as required under the labour law	23 077
services in the field of information and communication technology and software maintenance	14 705
operation of company fleet vehicles, including fuel, and liability and accident insurance	13 320
domestic and foreign trips	13 246
staff training	10 599
social fund transfers	8 142
fixed and mobile phone costs	5 154
computer technology	5 118
postal services	4 243
other operating expenses (e.g. material and small inventory, minor repairs, translations and interpretation necessary for handling complaints, security services, etc.)	88 809
Total	390 839

Draft recommendations from the Public Defender of Rights to the National Council of the Slovak Republic put forward in the reports in the 2016 – 2019 period

- | | |
|-----|--|
| 82 | 1 Children's rights |
| 89 | 2 Rights of persons with disabilities |
| 90 | 3 Rights of senior citizens |
| 91 | 4 Women's rights |
| 93 | 5 Rights of same-sex couples |
| 94 | 6 Exercise of the right to vote by nationals of the Slovak Republic who are abroad at the time of the elections |
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| 98 | 10 Forced removal of reproductive organs of transgender persons |
| 99 | 11 Conflict of interests in the decision-making of a building authority |
| 100 | 12 Protection of privacy, secrecy of correspondence and opening of postal items in the Parliament |
| 101 | 13 Inadequate legislation in respect of displaying dead bodies and conclusions of an analysis relating to "Body the Exhibition" |
| 102 | 14 Shortcomings in the protection of fundamental rights in the Slovak Republic arising from European Union law |
| 103 | 15 Shortcomings in the protection of fundamental rights arising from international treaties and the commitments of the Slovak Republic's |

The Public Defender of Rights (hereinafter the “PDR”) submits annual reports on her activities to the National Council of the Slovak Republic (hereinafter the “Parliament”), which not only list the activities undertaken by the PDR, but also contain proposals and recommendations of a legislative nature aimed at remedying the identified shortcomings. The PDR is explicitly authorised to do so under the provisions of § 23(1) of Act No. 564/2001 Coll. on the Public Defender of Rights, as amended. Despite the fact that the proposals for legislative changes are of a recommendatory nature (i.e. are not binding), given that the findings are often based on systematic violations of fundamental rights and freedoms, they should be considered as relevant and receive due attention from the Parliament. The PDR’s experience indicates that the importance ascribed to the findings related to the problem areas within the legal system of the Slovak Republic is not quite sufficient, even though their application is directed at making use of the elements of open government in the day-to-day exercise of public authority.

One way to shift the perception of the PDR’s activities is to provide a comprehensive overview of the measures put forward during the entire Parliament’s term. Since, after the parliamentary elections, the law-making body’s eighth term begins in 2020, such an overview also creates an opportunity for the Slovak Republic’s new cabinet and newly elected Parliament to rethink how to deal the PDR’s recommendations systematically.

The recommendations contained in this summary were included in the annual reports and an extraordinary report that the PDR submitted to the Parliament in the 2016-2019 period.⁶ The proposed measures are based on findings made in the context of handling complaints, the analyses carried out and the reports from surveys conducted by the PDR’s Office on its own initiative. This summary includes legislative proposals based on the PDR’s activities in 2019, which form part of her annual report for 2019.

⁶ PDR Mária Patakyová was sworn into office on 29 March 2017. Her activities followed from the work of JUDr. Jana Dubovcová and she conducted an audit in the PDR’s office of the measures taken in the priority areas. For this reason, this summary of recommendations also partially reflects the recommendations from previous years.

Children’s rights

1

Protection of the rights of the child in criminal proceedings

In most cases, the conditions provided for children who come into contact with law enforcement authorities or courts are

not appropriate and adapted to their needs. The PDR’s Office has long been dealing with the issue of the protection of children’s rights in proceedings that concern them. In this respect, its attention is currently focused on the protection of child victims of violence in criminal proceedings.

One of the most serious problems with regard to the issue of child victims in criminal proceedings is the lack of special interrogation rooms. There are currently only four such rooms in Slovakia, which are available to non-governmental organisations (the crisis centres Náruč – Pomoc deťom v kríze and Centrum Slniečko) and one training room owned by the State. Nevertheless, experience shows that even these rooms are relatively little used. Hence, most interrogations in pre-trial proceedings continue to take place at police stations in premises not suitable for interrogating children, which ultimately reduces the effectiveness of the interrogation.

The way it works in practice is that all persons required to take part in the interrogation are present and grouped around the child in the investigator’s office. A camera is placed in front of the child and the child has to speak before everyone present about their worst, often extremely intimate, experiences. It is alarming if, after multiple traumatising interrogations, a child says that they would have been better off keeping quiet about their problem.

In the context of creating conditions for interrogating minors, it is apparent that, to a large extent, institutional interests are put above the interests of the child as a victim of a criminal act. Therefore, the system needs to be modified to prevent the secondary victimisation of child victims.

Another serious problem is the lack of coordination and multidisciplinary cooperation between the relevant authorities. Most important in this context is the exchange of information between law enforcement authorities and authorities for the social protection of children and social guardianship from the outset of criminal proceedings.

Therefore, the PDR recommends that the Parliament adopt an amendment to criminal law legislation making interrogations of child victims in a special interrogation room mandatory if such a room is set up within the jurisdiction of the competent law enforcement authorities or if interrogation in such a room set up outside the jurisdiction of the competent law enforcement authorities is in the best interest of the child, provided that there are no objective reasons preventing this.

At the same time, the PDR recommends that the Parliament adopt an amendment to criminal law legislation placing an obligation on law enforcement authorities to inform immediately the relevant authority for the social protection of children and social guardianship in cases where violent criminal acts committed against children have been identified.

Discrimination and segregation of Roma children in the Slovak school system

In the context of the issue of children's rights, the PDR's Office regularly deals with violations of the Roma children's right to education in the Slovak Republic.

The findings from surveys conducted by the PDR's Office in 2013,⁷ 2014,⁸ 2015⁹ and 2018,¹⁰ as well as the work results of multiple non-governmental organisations dealing with this topic, have repeatedly shown the unjustified enrolment of Roma children in schools and classes intended for children with mild mental disabilities and the illegal practice of setting up ethnically homogeneous classes or ethnically homogeneous mainstream schools for Roma children.

The alarming over-representation of Roma children in special classes and schools for pupils with mild mental disabilities has a significant impact on how they later succeed on the labour market. After completing special schools, these children have no possibility to continue their education at higher-level schools and obtain, for example, full secondary vocational education, full secondary general education or a university degree. By violating the right to receive education without discrimination and segregation, we are closing entire generations of children from marginalised Roma communities in a vicious circle of poverty. Education is the important tool to improve equality and reduce poverty.

According to survey findings, the likelihood that, just like their parents, children from marginalised Roma communities in Slovakia will become unemployed or work for less than the minimum wage in an irregular job is as much as 70%.¹¹

The Slovak Republic has also been criticised by international organisations, including the Council of Europe, the United Nations and the European Union, for the ongoing practice of discrimination and segregation of Roma children in the Slovak school system.¹²

In 2015, the European Commission initiated proceedings against the Slovak Republic for suspected violation of Council

⁷ Report of the Public Defender of Rights on the exercise of the right to education for Roma children/pupils with special educational needs, Office of the Public Defender of Rights, Bratislava, July 2013.

⁸ Report of the Public Defender of Rights: Impact of the practice of school ability tests on the basic rights of children from non-stimulating environments suffering from cultural, social and language barriers, especially children from the Roma minority, Office of the Public Defender of Rights, Bratislava, July 2014.

⁹ Report of the Public Defender of Rights on the results of the survey on obtaining informed consent from parents of primary school pupils (with special focus on how the informed consent is obtained from Roma parents of pupils suffering from cultural, social and linguistic barriers, and pupils with special educational needs), Office of the Public Defender of Rights, Bratislava, December 2015.

¹⁰ Report of the Public Defender of Rights on progress in the implementation of the measures proposed in relation to the educational process in Slovakia in 2013, 2014 and 2015 with the aim of improving the protection of and respect for individuals' fundamental rights and freedoms, Office of the Public Defender of Rights, Bratislava, May 2018.

¹¹ Slovak Republic Economic Snapshot, Organisation for Economic Co-operation and Development (OECD), February 2019.

¹² Most recently, this topic attracted the attention of the UN Committee on Economic, Social and Cultural Rights in its concluding observations on the third periodic report of Slovakia from November 2019, Article 50.

Directive 2000/43/EC, which concerns racial equality, by discriminating against Roma children in education.

In 2018, based on the results of an analysis, the PDR concluded that, after the European Commission initiated the proceedings against the Slovak Republic for violation of anti-discrimination legislation, the changes adopted at the level of the Ministry of Education, Science, Research and Sports of the Slovak Republic failed to bring noticeable progress in relation to eliminating discrimination and segregation in the education system.

Therefore, the PDR recommended that the Parliament adopt legislation implementing the prohibition of discrimination, and especially segregation, in education and creating an effective monitoring and sanctioning system.

The PDR also recommended that the Parliament adopt legislation ensuring that the children are diagnosed on the basis of longer-term monitoring and evaluation of their development through diagnostic examinations that take into account the abilities of children from the socially disadvantaged environment of marginalised Roma communities and are based on the recognition of the strengths and weaknesses of each child for the purposes of inclusive education.

At the same time, the PDR drew attention to the need to ensure adequate support measures for pupils from the socially disadvantaged environment of marginalised Roma communities aimed at reducing the impact of their socio-cultural background on their success at school.

Absence of a facility for children in institutional care who suffer from serious mental disorders

The Slovak Republic lacks a suitable facility for children in institutional care who suffer from psychiatric diagnoses in combination with serious behavioural disorders that could provide them with adequate healthcare. Instead of safety and security that are essential for children with such medical history, they face uncertainty stemming from being constantly relocated from facility to facility. This situation constitutes institutionalised abuse of the children without reflecting on their needs.

In 2018, the PDR's Office dealt with a complaint against the relocation of a boy with moderate mental disability and a

behavioural disorder from a children's home to a re-education centre.

For a prolonged period of time, the boy's parents were unable to provide him with care due to his severe disability, therefore, institutional care was ordered for him.

Over the course of five years, the boy was placed in several facilities of various types, in which the system for social protection of children and social guardianship, as currently set up, could not offer adequate assistance, precisely due to the absence of a suitable facility for children who require maximum individualised, professional and special care.

However, this case is no exception and the number of such children in the system is increasing every year.

Therefore, the PDR recommended that the Parliament adopt legislation creating conditions for the establishment of such a type of facility, in which children with mental disorders and behavioural disorders that require adequate healthcare (corresponding to the child's health or disability) can be placed and which will, at the same time, enable the profiling and specialisation of a professional team at the facility so that the needs of these children suffering from disabilities are taken into account.

Domestic child adoptions in the Slovak Republic

The existing approach to the adoption process, which favours the protection of the rights of those interested in becoming adoptive parents, needs to be changed – greater focus needs to be placed on the children's rights and the whole system needs to be developed so that the best interests of the child come first.

Given the growing number of cases where doubts have arisen as to whether the children do not happen to be trapped in the institutional system for too long and whether all efforts are really being made to find new families for them, in 2018 the PDR decided to examine the legislative arrangements for the adoption process and how this system is applied by labour offices in practice.

The survey¹³ by the PDR's Office showed that the number of children who could be adopted is considerably lower than the number of those who wish to provide the children with a new home through adoption. However, a deeper examination of the adoption process revealed a set of reasons why many

13
Report of the Public Defender of Rights on adherence to the protection of fundamental rights and freedoms in Slovakia, Office of the Public Defender of Rights, Bratislava, 2019.

children do not make it to the list of children suitable for adoption; at the same time, an important fact emerged that the relatively low number of children suitable for adoption includes only a minimum of those who meet the applicants' idea of an 'ideal type of child'.

Prospective adoptive parents have a very specific idea of the child. They most often want a child from the majority population, without any health complications and as young as possible, ideally a newborn. It needs to be stated openly that there are many children who spend a significant part of their lives in centres for children and families, because they are not 'good enough' for someone to want to create a new home for them.

Yet, the fear of adopting other than the idealised child is often based on a lack of information, pressure from the social environment arising from deep-rooted prejudices and a lack of ongoing and individualised work with prospective adoptive parents.

The survey showed that finding a suitable family for the child is a separate issue. At present, the order on the list of applicants must be followed, which means that the selection of a suitable family for the child takes into account only the fact that a particular applicant underwent preparation earlier and, if applicable, whether the child meets the requirements of the applicant next on the list. This means that there is no individualised assessment of the suitability of the particular applicants for the actual child.

Therefore, the PDR recommended that the Parliament adopt legislation ensuring that the suitability of a family for a child is decided by a team of experts, a practice supported by experience from, for example, international adoptions or the Czech Republic. This measure will help make the system in the Slovak Republic better suited to finding a suitable family for the child, not the other way round.

Legislation on children's names and surnames in relation to their right to free movement within the territory of the Member States of the European Union

Slovak children with a name or surname according to the applicable Slovak legislation, who, however, live with their parents abroad on a long-term basis and use a different form of their name or surname in foreign official documents,

face several complications when travelling, proving their identity in offices or banks, or when undergoing the required examination and documenting the education they have received.

The reason is that the current legislation governing names and surnames of natural persons who are nationals of the Slovak Republic constitutes an obstacle to the exercise of the right to move and reside freely within the territory of the Member States.

In 2018, the PDR's Office was approached by a mother of two minor children who had requested the Slovak registrar offices to change the surname of her children on the Slovak birth certificates to the form she had decided to register for the children in the country where they reside on a long-term basis together with their biological father.

The family had lived together, on a long-term basis, in Great Britain, a country whose legislation allows minor children of unmarried parents with different surnames to have a surname combining both the mother's and the father's surname.

When changing the surname according to the legislation in the Slovak Republic, such a change is allowed if it is the surname of a national of the Slovak Republic who is simultaneously a national of another State.

However, the applicable legislation governing names and surnames of natural persons who are nationals of the Slovak Republic does not make it possible for minor children of unmarried parents with different surnames to have a surname combining the mother's and the father's surname.

The case law of the Court of Justice of the European Union makes it clear that obliging a natural person to use a surname, in the Member State of which he or she is a national, which is different from that already conferred and registered in the Member State of birth and residence hampers the exercise of the right to move and reside freely within the territory of the Member States.

Therefore, the PDR recommended that the Parliament adopt amendments to the legislation, namely the Name and Surname Act, which would allow for recognition of the surnames of the child's father and mother who are nationals of the Slovak Republic in a form permitted by another Member State of the European Union, if the child was born there and resides there on a long-term basis, regardless of whether the child has become a national of that State.

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Equal access for citizens with disabilities to services provided by public administration

Barrier-free access to public offices is essential for citizens with disabilities to have equal access to public administration services. However, surveys¹⁴ conducted by the PDR's Office show an alarming situation, in particular in primary and secondary schools, where a barrier-free environment is perceived to be above standard and the necessary adjustments are often implemented in a partial, non-systematic fashion.

Another survey¹⁵ conducted by the PDR's Office also showed a very bad situation in relation to accessibility in health institutions. It concluded that the right of persons with disabilities to have access to healthcare and to have obstacles and barriers to accessibility to health institutions removed is implemented and respected inadequately in the Slovak Republic.

In the case of school facilities, the main reason for this issue is the fact that schools insufficiently identify themselves with their roles related to creating a barrier-free environment. It is likely that, against the background of all other problems in the school sector, neither the current management nor the administrators of schools consider barrier-free access to be an important enough problem to pay focused and regular attention to it.

According to the results of a survey on accessibility of hospitals, the most frequent argument preventing improvement of the conditions for disabled persons was the lack of funding. The last, very important cause of the identified situation is the fragmented responsibility for practical implementation of the Convention on the Rights of Persons with Disabilities in the fields of education and healthcare.

Therefore, the PDR recommended that the Parliament adopt, as soon as possible, legislation addressing the fragmented responsibility for practical implementation of the Convention on the Rights of Persons with Disabilities in the fields of education and healthcare and provide for sufficient funding earmarked for ensuring barrier-free access to public spaces and public buildings.

¹⁴ Report on the results of a survey on barrier-free access to and barrier-free environment in school buildings, Office of the Public Defender of Rights, Bratislava, October 2016.

¹⁵ Barrier-free access in public hospitals and other health institutions, Office of the Public Defender of Rights, Office of the Public Defender of Rights, Bratislava, September 2016.

Social service facilities focusing on senior citizens

As regards the issue of the rights of senior citizens, the PDR's Office focused on respect for their autonomy and privacy and on the standard of healthcare in facilities providing social services to senior citizens.

The results of the survey¹⁶ conducted in 2019 showed that the number of inspections in individual facilities was inadequate and the powers of individual inspection authorities were defined ambiguously. It turned out that even the public authorities themselves did not know which social service facilities fell under their control jurisdiction. The inspections that did take place focused on administrative matters and did not pay any attention to the standard of respect for the senior citizens' fundamental rights in these facilities.

Surveys in selected social service facilities for senior citizens¹⁷ also revealed that negative manifestations of 'institutional culture' can often be seen in these facilities, such as compulsory bedtime, fixed meal times, locking of premises, automatic withdrawal of identity documents when accommodating in the facility or early-morning hygiene regime.

This 'institutional culture' also includes a lack of respect for the privacy of the senior citizens. For example, in several facilities, the seniors were unable to lock their personal belongings in lockers intended for this purpose or lock themselves in the toilet, and the staff of the facility entered their rooms without knocking or failed to use screens during hygiene procedures performed on individual senior citizens.

The facilities should also provide for or ensure nursing care for the senior citizens (e.g. administering of medicines, treatment of bedsores). In practice, however, several facilities do not directly provide nursing care, but only use home nursing agencies for this purpose. The reason is a lack of funding and high staff costs.

Therefore, the PDR recommended that the Parliament adopt legislation that will require such facilities to provide social services and healthcare directly. The PDR also recommended that the Parliament clearly define in the legislation the powers of public control authorities in facilities providing social services to senior citizens.

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¹⁶ Survey of the Public Defender of Rights: System of control in social service facilities focusing on senior citizens, Office of the Public Defender of Rights, Bratislava, 2019.

¹⁷ Public defender of rights: Facilities for senior citizens – Report from fact-finding visits, Office of the Public Defender of Rights, Bratislava, 2020.

Issue of 'Czechoslovak' pensioners

The PDR's Office has been drawing attention to the issue of 'Czechoslovak' pensioners for a long time. These are people whose pension insurance period completed during the common Czechoslovak state is assessed by the Czech Republic for the purposes of awarding a pension.

Thus, a group of pensioners found themselves in an unacceptable situation as they became entitled to a pension benefit in Slovakia, however, they did not become entitled to a pension benefit during the pension insurance period completed until 31 December 1992, which is assessed according to the legislation of the Czech Republic.

The PDR's office is aware of several cases of people in such a situation who only receive a very low Slovak pension below than the subsistence minimum.

The PDR finds their situation intolerable and unacceptable in terms of respect for their fundamental rights. It should be emphasised that this does not only concern recipients of old-age pensions, but also recipients of disability pensions and early retirement pensions.

Therefore, the PDR called on the Parliament to adopt, at the earliest possible date, legislation eliminating this unfavourable situation and resolving the situation of persons who did not become entitled to a pension benefit in the Czech Republic due to an insufficient number of years of pension insurance or because they did not reach the retirement age, even though they became entitled to a pension in the Slovak Republic.

4

Women's rights

Unlawful sterilisations of Roma women

Since 2018, the PDR's Office has also been paying attention to the issue of involuntary sterilisations of Roma women in the Slovak Republic. This is because involuntary sterilisation is a gross interference with bodily integrity and dignity of a woman that also leaves irreversible consequences in the sphere of private and family life of the affected woman.

The Slovak Republic has been the subject of repeated criticism by international organisations for this unlawful practice

for 15 years.¹⁸ Most recently, in October 2019, the UN Committee on Economic, Social and Cultural Rights called on the Slovak Republic to provide proportionate, effective and timely remedies to all victims of forced sterilisation.¹⁹

The encouragement of sterilisation as a means of regulating the birth rate in underprivileged segments of the population dates back to the 70s and 80s in socialist Czechoslovakia. However, these practices did not disappear with the change of the regime and after the establishment of an independent Slovak Republic.

The practice of unlawful sterilisation of mostly Roma women in eastern Slovakia was for the first time relatively comprehensively documented in a report by non-governmental organisations in 2003.²⁰

The affected women had been sterilised either without their informed consent or their informed consent was obtained on the basis of misleading and intimidating information or given in a situation where the woman was unable to recognise the consequences of her decision.

After losing before the domestic courts, some of the unlawfully sterilised Roma women lodged individual complaints with the European Court of Human Rights. In all cases, the ECHR found that the applicants' rights had been violated and granted them financial compensation.

Nevertheless, as confirmed by the ongoing reservations of international organisations and the case law of the European Court of Human Rights, it remains a fact that the current national legal framework does not allow the affected women to seek effective redress.

The only way to seek reparation under the current legislation is to initiate a civil action. However, in many cases, this appears to be ineffective as the chances of success in court are minimal.

It seems that the best solution that would provide the affected women with access to effective redress and adequate compensation would be the adoption of special legislation.

Therefore, the PDR recommended that the Parliament adopt special legislation that would make it possible to take into account all the specific aspects of the cases of unlawful sterilisation and provide its victims with access to effective redress and adequate compensation.

18
Concluding observations of the UN Human Rights Committee for Slovakia from 2003, 2011 and 2016; Concluding observations of the UN Committee on the Elimination of Racial Discrimination for Slovakia from 2004, 2010, 2013 and 2018; Concluding observations of the UN Committee on the Elimination of Discrimination against Women for Slovakia from 2008 and 2015; Concluding observations of the UN Committee against Torture for Slovakia from 2009 and 2015; Concluding observations of the UN Committee on the Rights of Persons with Disabilities for Slovakia from 2016 and Reports of the Council of Europe Commissioner for Human Rights CommDH(2003)12, CommDH(2011)42, CommDH(2015)21.

19
Concluding observations of the UN Committee for Economic, Social and Cultural Rights for the Slovak Republic from 2019.

20
Telo i duša [Body and soul]: Násilné sterilizácie a ďalšie útoky na reprodukčnú slobodu Rómov na Slovensku [Forced Sterilisation and Other Assaults on Roma Reproductive Freedom in Slovakia], Centre for Reproductive Rights and Poradiňa pre občianske a ľudské práva (Centre for Civil and Human Rights – POLP), 2003.

Right of same-sex couples to recognition of their relationship within the legal system of the Slovak Republic

Legal recognition of the cohabitation of same-sex couples is an important part of respect for fundamental rights and freedoms as it has a significant impact on private and family life. The smaller scope of rights granted to these couples is in clear conflict at least with the principle of equality defined in Article 12 of the Constitution of the Slovak Republic. At the same time, the degree of protection granted to such cohabitation in the member states of the Council of Europe is gradually increasing.

It can be derived from the case law of the European Court of Human Rights and, simultaneously, from the social parameters important for there to be a positive commitment to recognising such relationships (e.g. public opinion polls showing the need to provide for a certain level of recognition and protection) that the absence of legal recognition of same-sex couples also fails to respect the Slovak Republic's human right commitments.

Therefore, the PDR recommended that the Parliament create a legal framework for a 'minimum standard' of recognition of the cohabitation of same-sex couples in accordance with the relevant case law of the European Court of Human Rights.

Right of same-sex couples to be granted a residence permit on family grounds

Another issue affecting the rights of same-sex couples is discrimination when granting permanent residence permits to third-country nationals on the basis of sexual orientation.

In 2018, the PDR's Office examined a complaint from a married same-sex couple who had legally entered into marriage in a third country. One of the spouses was a national of the Slovak Republic and the other was a national of New Zealand. The couple objected to the fact that the spouse from New Zealand could not be granted a permit to reside within the territory of the Slovak Republic on the grounds of being a family member of a national of the Slovak Republic.

Having analysed the complaint, the PDR concluded that the failure to grant the right of permanent residence to a third-country national (who is the spouse of a national of the Slovak Republic of the same sex) interferes with the fundamental rights and freedoms of both spouses. This conclusion is in no way altered by the fact that, according to the Slovak Republic's legal system, persons of the same sex cannot enter into marriages.

The legal systems of several States currently allow same-sex couples to enter into marriages. The fact that the Slovak Republic refuses to consider the persons in this union as family members for the purposes of granting permanent residence constitutes an interference with the fundamental rights and freedoms of such couples.

If Slovak authorities accept permanent residence permit applications from spouses of Slovak nationals of the opposite sex, but, at the same time, refuse to grant permanent residence permits to spouses of Slovak nationals of the same sex (on the basis of a valid marital relationship entered into under the law of a third country), this has to be classified as discrimination on the grounds of sexual orientation.

Therefore, the PDR recommended that the Parliament adopt an amendment to the legislation that will allow undisturbed exercise of the right to family life of applicants for permanent residence on family grounds (valid marital relationship) regardless of their sexual orientation.

Exercise of the right to vote by nationals of the Slovak Republic who are abroad at the time of the elections

6

The existing legislation does not allow citizens who have the right to vote in the Slovak Republic and who are staying outside the territory of the country at the time of the elections to exercise fully their constitutional right to participate in the administration of public affairs by voting in the elections.

Voting by post from abroad is currently possible only in the case of parliamentary elections and in a referendum.

The possibility to participate in the administration of public affairs by electing one's representatives is one of the basic pillars of democracy. Despite the more challenging

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organisational requirements that voting by post entails, it is necessary to enable citizens to vote abroad by post or electronic means of communication in all elections, not only in parliamentary elections or a referendum.

The Council of Europe also drew attention to the elimination of obstacles to the exercise of the right to vote in its Parliamentary Assembly Resolution 1459/2005, according to which the member countries should enable their citizens living abroad to vote during national elections.

In 2019, representatives of the Srdcom doma [Heart at Home] initiative, which represents citizens who often reside abroad, but still want to be able to vote in all elections, approached the PDR with a request for support for the implementation of the respective changes.

Therefore, the PDR recommends that the Parliament adopt legislation enabling citizens with the right to vote in the Slovak Republic to fulfil their constitutional right to participate in the administration of public affairs by voting in elections and referenda even if they are abroad at the time the elections or referenda are held.

7

Right to an independent review of police conduct

21
Extraordinary report of the Public Defender of Rights on facts indicating a severe violation of fundamental rights and freedoms by the conduct of the police authorities, Office of the Public Defender of Rights, Bratislava, October 2016, p. 9.

In her extraordinary report from 2016,²¹ PDR JUDr. Dubovcová drew attention to the absence of an independent body to investigate police conduct and conduct of other state authorities vis-à-vis natural persons. In her report, she stated that the Slovak Republic had yet to create conditions for an independent and effective investigation of police conduct and conduct of other state authorities involving the use of physical violence. Therefore, the PDR recommended that the Parliament establish by law an independent body to investigate police conduct and conduct of other state authorities vis-à-vis natural persons where there is a suspicion of unauthorised use of force, torture, or cruel and inhuman treatment. Such a body should not be subordinated to the Government of the Slovak Republic and should not be part of the Ministry of the Interior of the Slovak Republic, the police and the prosecutor's office.

In 2016, the Parliament discussed the extraordinary report, but refused to take note of the report's contents.

The recommended measure was later partially implemented through an amendment to Act No. 171/1993 Coll. on the Police Force, as amended (effective from 1 February 2019), which established the Inspection Service Office as a special unit of the Police Force, the head of which is responsible to the Government of the Slovak Republic.

Even though the head of the Inspection Service Office is no longer directly responsible to the Minister of the Interior and the Inspection Service Office has been formally removed from the organisational structure of the Ministry of the Interior of the Slovak Republic, the status quo cannot be considered satisfactory. In the case of *Kummer v. the Czech Republic*, the European Court of Human Rights noted that even though the fact that the head of the Inspectorate was now responsible to the Government and not to the Minister of the Interior increased the independence of the Inspectorate vis-à-vis the police, the members of the Inspectorate remained police officers, which considerably undermined the independence of the Inspectorate vis-à-vis the police.

Therefore, the PDR still recommends that the Parliament adopt an amendment to the legislation and reinforce the independence of the Inspection Service Office so that it complies with the standard defined by the European Court of Human Rights in its decision-making process.

Right of access to drinking water

8

According to surveys and strategic documents, as well as according to the PDR's findings from previous surveys and closed complaints, Roma are among those who are most at risk of social exclusion in the Slovak Republic. In 2016, the PDR's Office conducted a survey²² focused on respect for fundamental rights and freedoms in connection with access to drinking water in Roma settlements.

In 2010, the United Nations called upon States to provide financial resources, build capacity and introduce technology in order to provide safe, clean, accessible and affordable drinking water and conditions for sanitation for all.

The implementation of the right of access to drinking water as a fundamental right is a positive commitment of the State. The State has undertaken to create suitable conditions for

22 Report on a survey on respect for fundamental human rights and freedoms – Access to drinking water and information on ensuring fire safety in Roma settlements, Office of the Public Defender of Rights, Bratislava, 2016.

23 In the case of restitution claims made under Act No. 229/1991 Coll. on the arrangement of ownership relations to land and other agricultural property; in the case of restitution claims made under Act No. 503/2003 Coll. on restitution of land ownership and on amendment to National Council of the Slovak Republic Act No. 180/1995 Coll. on certain measures for the arrangement of land ownership, as amended there are unfinished administrative proceedings taking around 15 years.

24 Report on undue delays in restitution proceedings involving farming and forest land, Office of the Public Defender of Rights, Bratislava, September 2015.

25 2nd Report on undue delays in restitution proceedings involving farming and forest land, Office of the Public Defender of Rights, Bratislava, September 2017.

everyone to have access to drinking water and for it to be affordable. This is not just a declarative commitment of the State – it requires a concrete outcome to be achieved.

The survey results showed that several municipalities in the territory of the Slovak Republic still have not been able to provide, by their own action and means, for safe, clean, accessible and affordable drinking water and sanitation for all. The survey confirmed that drinking water is not available to everyone even in municipalities with a water supply system. Its accessibility is hindered by the cost of water supply. The progress made by the Slovak Republic in the implementation of the right of access to drinking water in Roma settlements has been very slow and small. In the case of settlements whose residents depend on unsafe water, the Slovak Republic currently fails to meet even the minimum scope of the right of access to drinking water.

Therefore, the PDR recommended that the Parliament adopt such legislative amendments that would identify the entities responsible for access to drinking water, the rights and obligations of these entities, and the actual entitlement to access to drinking water. She also recommended that this entitlement be included in the system of assistance in material need.

9

Delays in restitution proceedings

Not all restitution proceedings have been completed with a final decision. Thousands of citizens are still waiting for the results, despite the fact that a long time has passed since they made their restitution claims. In some cases, the administrative authorities have been deciding on restitution claims for almost 27 years.²³

The PDR's Office has been dealing with this issue systematically since 2015, when the first survey on this matter was conducted.²⁴ Based on the survey findings and the fact that not all restitution proceedings had been completed with a final decision, the PDR's Office conducted another survey in 2017.²⁵ In the survey report, the PDR imposed specific measures on the authorities concerned, which should help complete the restitution proceedings faster.

The report revealed, in particular, the need to reinforce the staff of land and forestry departments at district offices. There is a critical situation, for example, at the Land and Forestry

Department of the Košice District Office. The survey of the PDR's Office showed that this department would need a further 40 years to decide on the restitution claims.

Due to the serious nature of the issue, which concerns a considerable number of individuals, the identified disproportionate length of the proceedings and the fact that the claims had been made mostly by older citizens, in March 2018 the PDR presented an extraordinary report²⁶ on this issue in the Parliament. The PDR recommended that, when approving the budget, the Parliament take into account, in particular, the provision of the necessary funding to reinforce the land and forestry departments at district offices.

²⁶ Extraordinary report of the Public Defender of Rights on facts indicating a severe violation of fundamental rights and freedoms, Office of the Public Defender of Rights, Bratislava, February 2018.

Examples of the number of outstanding restitution claims:

Land and forestry departments at district offices	June 2015	June 2017	June 2019
Kežmarok	1029	2089	2123
Bratislava	2007	2170	2051
Košice	1595	1523	1434

10

Forced removal of reproductive organs of transgender persons

The existing legislation governing the provision of healthcare to transgender persons in connection with the process of gender reassignment²⁷ is not compatible with the requirement for respect of human freedom and the right to private life.

The complaints that the PDR's Office dealt with in 2018 included complaints concerning the process of gender reassignment of transgender persons in Slovakia. This process is subject to a surgical intervention in the body of transgender persons in order to remove their reproductive organs or render them infertile.

This practice was put into effect through a Communication of the Ministry of Health of the Slovak Socialist Republic from 1981, which, however, is no longer valid and effective. The application of this invalid legislation is currently in conflict with the Constitution of the Slovak Republic, according to which obligations may only be imposed by law or on the basis of law, within its limits, while respecting fundamental rights and freedoms.

²⁷ Slovak legislation uses the term "zmena pohlavia" [change of sex] and does not recognise the internationally used terms "tranzícia" [transition] or "prepis rodu" [gender reassignment]. From the standpoint of human rights, the PDR considers it appropriate to use the term "gender reassignment" instead of "change of sex" and the term "transgender persons" instead of "transsexuals", as these represent a non-pathologising view of persons undergoing transition.

According to the existing legislation, sterilisation may be performed at the person's request as a means of contraception or for medical purposes – i.e. in cases where the medical necessity of the procedure has been convincingly established.

In the opinion of the European Court of Human Rights, the situation where mentally fit, adult patients are required to undergo sterilisation, without convincingly establishing the medical need for the procedure and without a request from the patients themselves, is different. According to the European Court of Human Rights, such a practice is contrary to respect for human freedom and dignity, which is one of the fundamental principles of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Therefore, the PDR recommended that the Parliament adopt, as soon as possible, legislation governing the provision of healthcare to transgender persons in connection with the gender reassignment process, which will comply with the Slovak Republic's positive commitment to respect the right of transgender persons to human dignity and private life within the meaning of Article 3 and Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

11

Conflict of interests in the decision-making of a building authority

In the context of a complaint, the PDR's Office examined a situation where a city borough acted as the special building authority and, at the same time, as the construction client. This means that it was the subject of its own decisions. The Bratislava – Staré mesto borough abolished 20 parking spaces used by the residents of Židovská street, fenced off the street with iron poles and made it significantly more complicated for them to use their apartments. In addition, the street was reconstructed without a building permit, the city carried it out only on the basis of a notice.

Pursuant to the provisions of § 119(3) of the Building Act, if the municipality is competent to act as the building authority and it is, at the same time, the party that proposes construction, acts as the construction client or owns the structure, or applies for the authorisation of earthmoving, landscaping or installations that are the subject of proceedings, the building

authority to hold the proceedings and issue the decision is to be determined by the regional building authority.

The decision-making practice of courts when considering whether the above provisions of the Building Act also apply to special building authorities is not uniform. Therefore, it is not only important to provide a constitutionally conforming interpretation of the provisions of § 119(3) of the Building Act, but also amend the Building Act to provide explicit provisions as to how to manage the conflict of interests when the party that proposes/owns the construction and the relevant special building authority are the same entity because the situation where an entity decides on its own rights and obligations is contrary to the fundamental principle of fairness of proceedings and protection of the fundamental rights and freedoms of the parties to proceedings.

The PDR drew the attention of the Ministry of Transport and Construction of the Slovak Republic not only to the need for a constitutionally conforming interpretation and application of laws, but also to the need to initiate a Building Act amendment so that the local jurisdiction of the special building authority is changed in the event of a conflict of interests.

The Ministry of Transport and Construction of the Slovak Republic incorporated the request into the forthcoming new building act, which included amendments to Act No. 135/1961 Coll. on roads (Road Act). Since the new building act was not eventually adopted, the provisions still have not been changed.

Protection of privacy, secrecy of correspondence and opening of postal items in the Parliament

12

The Slovak Republic lacks legislation that would designate a person authorised to interfere with the secrecy of correspondence in the case of postal items delivered to the address of a legal person/institution that can be considered as items posing a security risk or dangerous items.

In 2017, the PDR's Office dealt with this issue at the initiative of a group of Members of Parliament who objected to a breach of the secrecy of correspondence when postal items intended for Members of Parliament were checked on the basis of a decision by the head of the Office of the Parliament.

Draft recommendations
from the Public Defender of Rights

When examining this complaint, the PDR came to the conclusion that recent social developments and the multitude of security risks (caused by physical, chemical and biological factors) related to the delivery of postal items had brought about the need to adopt new comprehensive legislation.

The rules on how to proceed in similar situations were incomplete and fragmented in several laws, including secondary legislation or internal regulations of institutions (registry procedures, guidelines, opinions, rules and procedures proposed by technical security services).

Since, according to Article 22(2) of the Constitution of the Slovak Republic, any breaches of the secrecy of correspondence must be defined by law, the PDR recommended that the Parliament adopt legislation governing the procedure for a constitutionally conforming interference with the secrecy of correspondence in the case of items posing a security risk or dangerous items delivered to the address of a legal person.

13

Inadequate legislation in respect of displaying dead bodies and conclusions of an analysis relating to “Body the Exhibition”

In 2017, the PDR's Office dealt with this issue on the basis of a complaint related to the organisation of the “Body the Exhibition” event. In its effort, it examined whether it interfered with human rights and freedoms and whether such practice complied with the international treaties by which the Slovak Republic is bound.

“Body the Exhibition” provoked a broad public debate both in Slovakia and abroad. The objective of the exhibition is to show how the individual organs of the human body function. All exhibits originate from real human bodies that underwent a special process called ‘plastination’, which preserves human tissues in their original state.

After a comprehensive analysis, the PDR's Office came to the conclusion that the International Convention on Human Rights and Biomedicine does not oblige the Slovak Republic to ban the exhibition in question or adopt legislation prohibiting the exhibition.

In addition, the PDR's Office pointed out the fact that the legislation on embalming or preserving human remains is incomplete as there are no clear provisions requiring consent to potential embalming or preservation granted by the person during his or her lifetime.

As in the case of embalming and preservation, there is no legislation explicitly specifying whether the use of human remains for scientific or educational purposes requires the person's consent, granted during his or her lifetime, to the handling of the person's body in such a manner after death.

On the basis of the above conclusions, the PDR recommended that the Parliament adopt legislation eliminating the shortcomings both in relation to the display of dead bodies and in relation to the person's consent granted during his or her lifetime to the handling of the person's body in such a manner after death.

Shortcomings in the protection of fundamental rights in the Slovak Republic arising from European Union law

14

Independent forced-return monitoring system

The independence and effectiveness of the system to monitor forced returns of third-country nationals staying illegally within the territory of the Slovak Republic is not sufficiently ensured in Slovakia.

Forced return is the process of returning a third-country national staying illegally within the territory of a Member State of the European Union to his or her country of origin, country of transit or another third country.

The implementation of the returns carries with it significant risks relating to the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union, including the right to life, the prohibition of torture, inhuman or degrading treatment or punishment, the right to an effective remedy and the principle of non-refoulement.

Forced returns are governed by the European Union Return Directive (2008/115/EC),²⁸ according to which all Member States should set up an effective return monitoring system.

²⁸ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

Draft recommendations from the Public Defender of Rights

If this system works well, it will make it possible to monitor whether the rights and freedoms of third-country nationals are being violated in the course of the return process.

According to the European Union Agency for Fundamental Rights, the forced-return monitoring system in Slovakia is not sufficiently effective. The Ministry of the Interior of the Slovak Republic, which carries the returns, is controlled by itself while doing so. Even though the Ministry works together with non-governmental organisations, the European Union Agency for Fundamental Rights does not consider this system of cooperation to be sufficiently efficient and independent.

Therefore, the PDR recommended that the Parliament adopt legislation that will ensure the creation of an independent and effective forced-return monitoring system.

15

Shortcomings in the protection of fundamental rights arising from international treaties and the commitments of the Slovak Republic's

Legislation on granting citizenship to stateless persons

Despite the commitments undertaken under the European Convention on Nationality, the current legislation of the Slovak Republic does not prevent situations where former nationals of the Slovak Republic may become stateless persons.

The PDR's Office dealt with this issue on the basis of a complaint submitted by a former national of the Slovak Republic. He himself had requested renunciation of citizenship as he had been promised to be granted citizenship abroad. However, that citizenship was not eventually granted to him, as a result of which he became a stateless person.

Under the European Convention on Nationality, the Slovak Republic committed itself to preventing statelessness as far as possible. Specifically, according to Article 8 of the Convention, a State Party may permit the renunciation of its nationality provided the persons concerned do not thereby become stateless.

According to the European Convention on Nationality, each State Party should facilitate the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory.

Based on an analysis of the complaint, the PDR singled out as problematic those provisions of the Citizenship Act that make it possible for persons to become stateless and the provisions that fail to address the accelerated process of granting citizenship to our former nationals.

Therefore, the PDR recommended that the Parliament adopt an amendment to the Citizenship Act, which would prevent situations where former nationals of the Slovak Republic can become stateless persons and provide for the possibility of an accelerated and simplified procedure for recovery of citizenship by imposing a time limit for decision by the administrative authority of less than 24 months.

Legislation on verification of Slovak language proficiency under the Citizenship Act²⁹

²⁹ Act No. 40/1993 Coll. on citizenship of the Slovak Republic, as amended.

The legislation on verification of Slovak language proficiency under the Citizenship Act is at variance with the principles of good administration defined in Recommendation CM/Rec (2007) of the Committee of Ministers to member states of the Council of Europe on good administration.

In 2019, a complaint was submitted to the PDR's Office by an asylum-seeker objecting to a decision of the Ministry of the Interior of the Slovak Republic not to grant him the citizenship of the Slovak Republic because he did not meet a condition under the Citizenship Act as he failed to demonstrate spoken and written command of the Slovak language.

The complainant also objected to the proceedings that preceded the decision, in particular the repeated request from the citizenship department for verification of his Slovak language proficiency after all members of the district office committee at the regional seat had already resolved that the applicant had demonstrated spoken and written command of the Slovak language and general knowledge of the Slovak Republic as required under the Citizenship Act. For this reason, the PDR's Office decided to review the legislation governing the process and evaluation of language examination in the proceedings for granting citizenship.

This led to the PDR's conclusion that the legislation on verification of Slovak language proficiency under the Citizenship Act is at variance with the principles of good administration as defined in Recommendation CM/Rec (2007) of the Committee of Ministers to member states of

the Council of Europe on good administration, in particular the principle of equality, the principle of impartiality and the principle of legal certainty.

Therefore, the PDR recommends that the Parliament adopt provisions in the Act on Citizenship of the Slovak Republic (Act No. 40/1993 Coll.) on verification of Slovak language proficiency in the proceedings for granting citizenship of the Slovak Republic, which would contain specific requirements for professional qualifications of the members of the evaluation committee, thereby ensuring that Slovak language proficiency is always verified by professionally qualified persons.

At the same time, the PDR recommends that, as part of the legislation, the Parliament make the evaluation Slovak language proficiency strictly point-based to end the practice of verbal evaluation, the objectivity of which cannot be checked ex post. The legislation should also make it clear what level of Slovak language proficiency according to the Common European Framework of Reference for Languages should be demonstrated by an applicant for citizenship of the Slovak Republic.

Excerpts from the Constitution of the Slovak Republic

Chapter Two, Basic Rights and Freedoms

Part One General Provisions

Article 11

Repealed since 1 July 2001.

Article 12

- (1) People are free and equal in dignity and in their rights. Basic rights and freedoms are inviolable, inalienable, imprescriptible, and infeasible.
- (2) Basic rights and freedoms on the territory of the Slovak Republic are guaranteed to everyone regardless of sex, race, colour of skin, language, faith and religion, political, or other thoughts, national or social origin, affiliation to a nation, or ethnic group, property, descent, or any other status. No one may be harmed, preferred, or discriminated against on these grounds.
- (3) Everyone has the right to freely decide on their nationality. Any influence on this decision and any form of pressure aimed at suppressing of anyone's nationality are forbidden.
- (4) No one may be harmed in their rights for exercising of their basic rights and freedoms.

Article 13

- (1) Duties may be imposed
 - a) by law or on the basis of a law, within its limits, and while complying with basic rights and freedoms,
 - b) by international treaty pursuant to Article 7, paragraph 4 which directly establishes rights and obligations of natural persons or legal persons, or
 - c) by government ordinance pursuant to Article 120, paragraph 2
- (2) Limits to basic rights and freedoms

may be set only by law under conditions laid down in this Constitution.

- (3) Legal restrictions of basic rights and freedoms must apply equally to all cases which meet prescribed conditions.
- (4) When restricting basic rights and freedoms, attention must be paid to their essence and meaning. These restrictions may only be used for the prescribed purpose.

Part Two Basic Human Rights and Freedoms

Article 14

Everyone can have rights.

Article 15

- (1) Everyone has the right to life. Human life is worthy of protection already before birth.
- (2) No one may be deprived of life.
- (3) Capital punishment is not permitted.
- (4) It is not a violation of rights under this article, if someone is deprived of life as a result of an action that is not deemed criminal under the law.

Article 16

- (1) The inviolability of the person and its privacy is guaranteed. It may be limited only in cases laid down by law.
- (2) No one may be tortured, or subjected to cruel, inhuman, or humiliating treatment or punishment.

Article 17

- (1) Personal freedom is guaranteed.
- (2) No one may be prosecuted or

deprived of liberty other than for reasons and in a manner which shall be laid down by law. No one may be deprived of freedom solely because of their inability to fulfil a contractual obligation.

- (3) A person accused or suspected of a criminal act may be detained only in the cases specified by the law. The detained person must be immediately informed of the reasons for detention, questioned and either freed or handed over for trial within 48 hours, in cases of criminal offences of terrorism within 96 hours. The judge must interrogate the detained person within 48 hours and in cases of particularly serious criminal acts within 72 hours, and must decide whether to detain or free the person.
- (4) An accused person may be arrested only on the basis of a written, substantiated order of a judge. The arrested person must be handed over to the court within 24 hours. The judge must question the arrested person and decide on their custody or release within 48 hours and in particularly serious crimes within 72 hours from the hand over.
- (5) A person may be taken into custody only for reasons and for a period laid down by law and on the basis of a court ruling.
- (6) The law shall lay down in which cases a person can be admitted to, or kept in, institutional health care without their consent. Such a measure must be reported within 24 hours to the court which will then decide on this placement within five days.

- (7) The mental state of a person accused of a criminal act may be examined only on the basis of a written court order.

Article 18

- (1) No one may be subjected to forced labour, or services.
- (2) The provision of paragraph 1 does not apply to
- work assigned according to law to persons serving a prison sentence or persons serving other sentence substituting a prison sentence,
 - military service or other service laid down by law in lieu of compulsory military service,
 - services required on the basis of the law in the event of natural disasters, accidents, or other dangers posing a threat to life, health, or property of great value,
 - activities prescribed by law to protect life, health, or the rights of others,
 - small community services on the basis of the law.

Article 19

- (1) Everyone has the right to the preservation of human dignity, personal honour, reputation and the protection of good name.
- (2) Everyone has the right to protection against unauthorized interference in private and family life.
- (3) Everyone has the right to protection against unauthorized collection, publication, or other misuse of personal data.

Article 20

- (1) Everyone has the right to own property. The ownership right of all

owners has the same legal content and protection. Property acquired in any way which is contrary to the legal order shall not enjoy such protection. Inheritance is guaranteed.

- (2) The law shall lay down which property, other than property specified in Article 4 of this Constitution, necessary to ensure the needs of society, national food self-sufficiency, the development of the national economy and public interest, may be owned only by the state, municipality, or designated individuals or legal persons. The law may also lay down that certain things may be owned only by citizens or legal persons resident in the Slovak Republic.
- (3) Ownership is binding. It may not be misused to the detriment of the rights of others, or in contravention with general interests protected by law. The exercising of the ownership right may not harm human health, nature, cultural monuments and the environment beyond limits laid down by law.
- (4) Expropriation or enforced restriction of the ownership right is possible only to the necessary extent and in the public interest, on the basis of law and for adequate compensation.
- (5) Other interference with property rights may be permitted only in the case of property acquired in an illegal manner or from illegal earnings, and if it is necessary in a democratic society in the interests of national security, preservation of public order, good morals or the rights and freedoms of others. Conditions shall be stipulated by law.

Article 21

- (1) A person's home is inviolable. It may not be entered without the resident's consent.
- (2) A house search is admissible only in connection with criminal proceedings and only on the basis of a written, substantiated order of the judge. The method of carrying out a house search shall be laid down by law.
- (3) Other infringements upon the inviolability of one's home may be permitted by law only if it is necessary in a democratic society in order to protect people's lives, health, or property, to protect the rights and freedoms of others, or to prevent a serious threat to public order. If the home is used also for business, or to perform other economic activity, such infringements may be permitted by law also when this is necessary in the discharge of the tasks of public administration.

Article 22

- (1) The privacy of letters and secrecy of mailed messages and other written documents and the protection of personal data is guaranteed.
- (2) No one may violate the privacy of letters and the secrecy of other written documents and records, whether they are kept in privacy, or sent by mail or in any other way, with the exception of cases which shall be laid down by law. Equally guaranteed is the secrecy of messages conveyed by telephone, telegraph, or other similar means.

Article 23

- (1) Freedom of movement and right of abode are guaranteed.

- (2) Everyone who is rightfully staying on the territory of the Slovak Republic has the right to freely leave this territory.
- (3) Freedoms under paragraphs 1 and 2 may be restricted by law, if it is necessary for the security of the state, to maintain public order, protect the health and the rights and freedoms of others, and, in designated areas, also in the interest of environmental protection.
- (4) Every citizen has the right to freely enter the territory of the Slovak Republic. A citizen may not be forced to leave the homeland and may not be deported.
- (5) A foreign national may be deported only in cases laid down by law.

Article 24

- (1) The freedoms of thought, conscience, religious creed and faith are guaranteed. This right also encompasses the possibility to change one's religious creed, or faith. Everyone has the right to be without religious creed. Everyone has the right to publicly express their thoughts.
- (2) Everyone has the right to freely express religion, or faith alone or together with others, privately or publicly, by means of religious services, religious acts, by observing religious rites, or to participate in the teachings thereof.
- (3) Churches and religious communities administer their own affairs, in particular, they constitute their own bodies, appoint their clergymen, organize the teaching of religion, and establish religious orders and other church institutions independently of state bodies.

- (4) Conditions for exercising of rights under paragraphs 1 to 3 may be limited only by law, if such a measure is necessary in a democratic society to protect public order, health, morals, or the rights and freedoms of others.

Article 25

- (1) The defence of the Slovak Republic is a duty and a matter of honour for citizens. The law shall lay down the scope of the compulsory military service.
- (2) No one may be forced to perform military service if it is against their conscience or religious creed. Details will be laid down by law.

Part Three Political Rights

Article 26

- (1) The freedom of speech and the right to information are guaranteed.
- (2) Everyone has the right to express their views in word, writing, print, picture, or other means as well as the right to freely seek out, receive, and spread ideas and information without regard for state borders. The issuing of press is not subject to approval procedures. Enterprise in the fields of radio and television may be subject to the awarding of an approval from the state. The conditions shall be laid down by law.
- (3) Censorship is banned.
- (4) The freedom of speech and the right to seek out and disseminate information may be restricted by law, if such a measure is necessary in a democratic society to protect

the rights and freedoms of others, state security, public order, or public health and morals.

- (5) Public authority bodies are obliged to provide information on their activities in an appropriate manner and in the state language. The conditions and manner of execution shall be laid down by law.

Article 27

- (1) The right of petition is guaranteed. Everyone has the right, alone or with others, to address requests, proposals, and complaints to state bodies and territorial self-administration bodies in matters of public or other common interest.
- (2) A petition may not call for the violation of basic rights and freedoms.
- (3) A petition must not interfere with the independence of a court.

Article 28

- (1) The right to peacefully assemble is guaranteed.
- (2) Conditions for exercising this right shall be laid down by law in the event of assemblies in public places, if such a measure is necessary in a democratic society to protect the rights and freedoms of others, public order, health and morals, property, or the security of the state. An assembly may not be made conditional on the issuance of an authorization by a state administration body.

Article 29

- (1) The right to freely associate is guaranteed. Everyone has the right to associate with others in clubs, societies, or other associations.

- (2) Citizens have the right to establish political parties and political movements and to associate in them.
- (3) The exercising of rights under paragraphs 1 and 2 may be restricted only in cases laid down by law, if it is necessary in a democratic society for reasons of state security, to protect public order, to prevent criminal acts, or to protect the rights and freedoms of others.
- (4) Political parties and political movements, as well as clubs, societies, or other associations are separated from the state.

Article 30

- (1) Citizens have the right to participate in the administration of public affairs either directly or through the free election of their representatives. Foreigners with a permanent residence on the territory of the Slovak Republic have the right to vote and be elected in the self-administration bodies of municipalities and self-administration bodies of superior territorial units.
- (2) Elections must be held within deadlines not exceeding the regular electoral period as laid down by law.
- (3) The right to vote is universal, equal, and direct and is exercised by means of secret ballot. Conditions for exercising the right to vote shall be laid down by law.
- (4) Citizens have access to elected and other public posts under equal conditions.

Article 31

The legal regulation of all political rights and freedoms and their

interpretation and use must enable and protect a free competition of political forces in a democratic society.

Article 32

Citizens have the right to put up resistance against anyone who would eliminate the democratic order of basic human rights and freedoms listed in this Constitution, if the activity of constitutional bodies and the effective use of legal means are rendered impossible.

Part Four The Rights of National Minorities and Ethnic Groups

Article 33

Membership in any national minority, or ethnic group, must not be to anyone's detriment.

Article 34

- (1) The comprehensive development of citizens belonging to national minorities or ethnic groups in the Slovak Republic is guaranteed, particularly the right to develop their own culture together with other members of the minority or ethnic group, the right to disseminate and receive information in their mother tongue, the right to associate in national minority associations, and the right to establish and maintain educational and cultural institutions. Details shall be laid down by law.
- (2) In addition to the right to master the state language, citizens belonging to

national minorities, or ethnic groups, also have, under conditions defined by law, a guaranteed

- a) right to education in their own language,
 - b) right to use their language in official communications,
 - c) right to participate in the decisions on affairs concerning national minorities and ethnic groups.
- (3) The exercise of the rights of citizens belonging to national minorities and ethnic groups that are guaranteed in this Constitution may not lead to jeopardizing of the sovereignty and territorial integrity of the Slovak Republic, and to discrimination against its other inhabitants.

Part Five Economic, Social and Cultural Rights

Article 35

- (1) Everyone has the right to a free choice of profession and to training for it, as well as the right to engage in entrepreneurial or other gainful activity.
- (2) Conditions and restrictions with regard to the execution of certain professions or activities may be laid down by law.
- (3) Citizens have the right to work. The state shall materially and to an appropriate extent provide for citizens who are unable to exercise this right through no fault of their own. The conditions shall be laid down by law.
- (4) A different regulation of rights listed

under paragraphs 1 to 3 may be laid down by law for foreign nationals.

Article 36

Employees have the right to just and satisfying working conditions. The law guarantees, above all

- a) the right to remuneration for work done, sufficient to ensure them a dignified standard of living,
- b) protection against arbitrary dismissal and discrimination at the work place,
- c) labour safety and the protection of health at work,
- d) the longest admissible working time,
- e) adequate rest after work,
- f) the shortest admissible period of paid leave,
- g) the right to collective bargaining.

Article 37

- (1) Everyone has the right to freely associate with others in order to protect their economic and social interests.
- (2) Trade union organizations are established independently of the state. It is inadmissible to limit the number of trade union organizations, as well as to give some of them a preferential status in an enterprise or a branch of the economy.
- (3) The activity of trade union organizations and the founding and operation of other associations protecting economic and social interests can be restricted by law, if such measure is necessary in a democratic society to protect the security of the state, public order, or the rights and freedoms of others.
- (4) The right to strike is guaranteed.

The conditions shall be laid down by law. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of the fire and rescue brigades do not have this right.

Article 38

- (1) Women, minors, and persons with impaired health are entitled to an enhanced protection of their health at work, as well as to special working conditions.
- (2) Minors and persons with impaired health are entitled to special protection in labour relations as well as to assistance in professional training.
- (3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

Article 39

- (1) Citizens have the right to adequate material provision in old age, in the event of work disability, as well as after losing their provider.
- (2) Everyone who is in material need is entitled to assistance necessary to ensure basic living conditions.
- (3) Details concerning rights listed in paragraphs 1 and 2 shall be laid down by law.

Article 40

Everyone has a right to the protection of health. Based on public insurance, citizens have the right to free health care and to medical supplies under conditions which shall be laid down by law.

Article 41

- (1) Marriage is a unique union between

a man and a woman. The Slovak Republic comprehensively protects and cherishes marriage for its own good. Marriage, parenthood and family are protected by law. Separate protection of children and juveniles is guaranteed.

- (2) Special care, protection in labour relations, and adequate working conditions are guaranteed to a woman during the period of pregnancy.
- (3) Children born in and out of wedlock enjoy equal rights.
- (4) Child care and upbringing are the rights of parents; children have the right to parental care and upbringing. Parents' rights can be restricted and minors can be separated from their parents against their will only by a court ruling on the basis of law.
- (5) Parents caring for children are entitled to assistance from the state.
- (6) Details concerning rights under paragraphs 1 to 5 shall be laid down by law.

Article 42

- (1) Everyone has the right to education. School attendance is compulsory. Its period and age limit shall be laid down by law.
- (2) Citizens have the right to free education at primary and secondary schools and, depending on their abilities and society's resources, also at higher educational establishments.
- (3) Schools other than state schools may be established, and teaching in them provided, only under conditions laid down by law; education in such schools may be provided for a payment.

- (4) A law shall lay down conditions under which citizens are entitled to assistance from the state in their studies.

Article 43

- (1) Freedom of scientific research and in art is guaranteed. The rights to the results of creative intellectual activity are protected by law.
- (2) The right of access to the cultural heritage is guaranteed under conditions laid down by law.

Part Six The Right to The Protection of The Environment and The Cultural Heritage

Article 44

- (1) Everyone has the right to a favourable environment.
- (2) Everyone is obliged to protect and enhance the environment and the cultural heritage.
- (3) No one may endanger, or damage the environment, natural resources, and the cultural heritage beyond the extent laid down by law.
- (4) The state looks after a cautious use of natural resources, protection of agricultural and forest land, ecological balance, and effective environmental care, and provides for the protection of specified species of wild plants and animals.
- (5) Agricultural and forest land are non-renewable natural resources and enjoy special protection by the state and society.

- (6) The details of the rights and obligations according to paragraphs 1 to 5 shall be laid down by law.

Article 45

Everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of its condition.

Part Seven The Right to Judicial and Other Legal Protection

Article 46

- (1) Everyone may claim their right in a manner laid down by law in an independent and impartial court and, in cases laid down by law, at another body of the Slovak Republic.
- (2) Anyone who claims to have been deprived of their rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision re-examined, unless laid down otherwise by law. The re-examination of decisions concerning basic rights and freedoms may not, however, be excluded from the court's authority.
- (3) Everyone is entitled to compensation for damage incurred as a result of an unlawful decision by a court, or another state or public administration body, or as a result of an incorrect official procedure.
- (4) Conditions and details concerning judicial and other legal protection shall be laid down by law.

Article 47

- (1) Everyone has the right to refuse to testify if, by doing so, he might bring on the risk of criminal prosecution of himself or a close person.
- (2) Everyone has the right to legal assistance in court proceedings, or proceedings before other state or public administration bodies from the start of the proceedings, under conditions laid down by law.
- (3) All participants are equal in proceedings according to paragraph 2.
- (4) Anyone who declares that he does not have a command of the language in which the proceedings under paragraph 2 are conducted has the right to an interpreter.

Article 48

- (1) No one must be removed from their assigned judge. The jurisdiction of the court shall be laid down by law.
- (2) Everyone has the right to have their case tried in public, without undue delay, and in their presence and to deliver their opinion on all pieces of evidence. The public can be excluded only in cases laid down by law.

Article 49

Only the law shall lay down which conduct constitutes a criminal act, and what punishment, or other forms of deprivation of rights, or property, may be imposed for its commitment.

Article 50

- (1) Only the court decides on guilt and punishment for criminal acts.
- (2) Everyone against whom a criminal proceeding is conducted is considered innocent until the court

establishes their guilt by a legally valid verdict.

- (3) The accused has the right to be granted the time and opportunity to prepare their defence, and to defend himself either alone or through a defence counsel.
- (4) The accused has the right to refuse to testify; this right may not be denied in any way.
- (5) No one may be criminally prosecuted for an act for which he has already been sentenced, or of which he has already been acquitted. This principle does not rule out the application of extraordinary remedies in compliance with the law.
- (6) Whether any act is criminal is assessed, and punishment is determined, in accordance with the law valid at the time when the act was committed. A more recent law is applied, if it is more favourable for the perpetrator.

Part Eight Common Provisions for Chapters One and Two

Article 51

- (1) The rights listed under Article 35, Article 36, Article 37, paragraph 4, Articles 38 to 42, and Articles 44 to 46 of this Constitution can be claimed only within the limits of the laws that execute those provisions.
- (2) The conditions and scope of limitations of the basic rights and freedoms during war, under the state of war, martial state and state of emergency shall be laid down by the constitutional law.

Article 52

- (1) Wherever the term "citizen" is used in Chapters One and Two of this Constitution, this is understood to mean a citizen of the Slovak Republic.
- (2) Foreign nationals enjoy in the Slovak Republic basic human rights and freedoms guaranteed by this Constitution, unless these are expressly granted only to citizens.
- (3) Wherever the term "citizen" is used in previous legal regulations, this is understood to mean every person, wherever this concerns the rights and freedoms that this Constitution extends regardless of citizenship.

Article 53

The Slovak Republic grants asylum to foreign nationals persecuted for upholding political rights and freedoms. Asylum may be denied to those who acted in violation of basic human rights and freedoms. Details shall be laid down by law.

Article 54

The law may restrict the right of judges and prosecutors to engage in entrepreneurial and other business activity and the right listed under Article 29, paragraph 2; the right of employees of state administration bodies and territorial self-administration bodies in designated functions listed also under Article 37, paragraph 4; and the rights of members of armed forces and armed corps listed also under Articles 27 and 28, if these are related to the execution of their duties. The law may restrict the right to strike for persons in professions that are vital for the protection of life and health.

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