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# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 8 March 2002**

**5045/1/02  
REV 1**

**RESTREINT UE**

**EVAL 1  
ELARG 2**

## **REPORT**

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From : the General Secretariat  
To : the Collective Evaluation Working Party  
No. prev. doc. : 7878/3/00 EVAL 16 ELARG 46 REV 3 RESTREINT  
Subject : Revised country report on Slovakia

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### I. INTRODUCTION

In its analyses the Working Party has dealt with the progress made by each acceding country and has examined shortcomings which still have to be eliminated in order to catch up with the EU Acquis in the field of Justice and Home Affairs.

The first series of country reports pointed out the precise areas where the most serious shortcomings existed and where substantial efforts by the candidate country were still needed, while at the same time acknowledging progress already made and refraining from a final judgement, thus helping Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

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The point of departure for the present second series of country reports, whose structure has been refined, is to identify exactly where in the process of alignment the candidate country finds itself and what remains to be done, focussing on operational conclusions. The key elements of this new structure, reflected in each chapter, are:

- adoption of the “acquis”, including shortcomings,
- administrative capacity, including an assessment of structure, staff, resources etc. and
- implementing performance, covering issues such as quality, efficiency and independence.

The conclusions drawn at the end of the report are the result of extensive discussions within the Collective Evaluation Working Group on the basis of the information presented.

In line with this approach, all other relevant background information can be found in the thematic analyses-documents constituting the basis of these reports.

As the process of alignment and the collection of relevant data is a continuously evolving and ongoing process, the findings and conclusions in the present report cannot be considered final or exhaustive. Updates will therefore continue to be presented on a regular basis.

## II. OVERVIEW OF DEVELOPMENT

### A. **Border security**

Given its geographical position, directly on the migration route to the West, the Slovak Republic is very susceptible to illegal immigration, which places special demands on Slovak border authorities. At the moment the level of border security cannot cope with that challenge; it suffers from major shortcomings.

#### 1. *Formal acquis*

The main legal bases for the work of border authorities are the Police Force Act (1993) and its several amendments, the Act on the Stay of Aliens, Act No. 298/1999 Coll. on the Administration of State Borders and the Customs Code. There is no specific border police act.

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According to the Slovaks, the jurisdictional area of the Border and Aliens Police (BAP) covers the whole country and it has the right to carry out controls in the whole territory. Its powers, however, are limited since according to Article 26 of the Police Act, the BAP does not have the power, for example, to search private cars and heavy goods vehicles without the suspicion of a criminal offence, unless in co-operation with customs, nor can it search premises. The BAP does not have real investigative powers.

Current legislation does not give sufficient powers to border authorities to carry out border checks according to the Schengen principles. Without a nation-wide approach and the necessary powers, it is not possible to properly tackle trans-border crime and international criminal networks.

## 2. *Administrative capacity*

There is no independent Border Guard organisation in Slovakia. The central authority is the Department of Border and Aliens Police (BAP) of the Presidium of Police Forces, under the direction of the Ministry of the Interior and the President of the Police Corps. There are eight directorates responsible for regional tasks of the BAP, which are divided into Border Police Unit (green borders) and Aliens Police (crossing points).

One of the most important steps towards a more consistent system is the new command and organisational structure of the BAP which came into force on 1 April 2001, and created a basis for one single organisation having a nation-wide responsibility for border management. The BAP is responsible for the management of all borders in Slovakia since the regional units are also directly managed by the BAP as of 1 April 2001<sup>1</sup>. The reorganisation did not receive a warm welcome from all leading police authorities, and those responsible for this necessary improvement have faced very strong resistance within the police.

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<sup>1</sup> One of the latest improvements was made in 1.1.2002 when the border and aliens police got its own budget.



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The personnel of the BAP forces consists of 3367 employees in total, 1683 of which at crossing points and 1263 along the green border. As the BAP is understaffed, a Division of the Troops of Border Police was established where soldiers pass their basic military service in the BAP. These are the military forces of the Ministry of Interior. Conscripts fulfil supplementary and support tasks only at the so-called "green border" (1200 conscripts<sup>1</sup>). They do not perform any duties at border crossing points. In the new concept being prepared for both these services, a gradual reduction of the number of soldiers in basic military service and full staffing of the Service of Border Police by professionals is foreseen (by 2003). This kind of gradual approach appears reasonable and allows time for recruitment and training.

The efficiency of the Slovak border security system is hampered by the BAP's internal structural deficiencies. The service branches for border crossing points and the green border are de facto separate and operate side by side with no co-ordination of tactical intervention, exchange of information or mutual assistance, thus leaving loopholes which are quickly discovered and easily exploited by groups of facilitators. Even in the so-called joint station, where both units are located, co-operation between the Border Police and the Aliens Police seems to be highly ineffective. Both units are located in the same building but work separately, each having e.g. their own operative centres within the same building. These arrangements are inefficient and far from cost-effective.

Slovakia's border security system has suffered from the lack of a strategic approach and specialisation. In order to improve their system, the BAP has launched a new strategy where border control covers three levels: actions beyond the border, border control at the border and inland control. The concept as such matches Schengen ideology but is not yet functional; especially pre-frontier measures are still modest and green border surveillance capacity and consistent inland operations need to be enhanced.

A co-operation agreement between the BAP and customs exists but the inherited culture of "knowledge is power" hampers co-operation between police units and makes the sharing of information with other institutions, such as customs and immigration, almost impossible. Technical means of communication are not compatible between different authorities and there are no joint databases or radio systems.

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<sup>1</sup> Slovakian authorities 2001

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## 3. *Implementation performance*

Given the fact that the BAP is a result of a merger of two organisations and it has a newly established (not fully in place) commanding and control structure, it is clear that there are also still internal problems within the BAP related to daily work. These problems also affect national co-operation between the BAP, customs and other law enforcement authorities. It is therefore of utmost importance to continue work towards the creation of a uniform and internally coherent border police organisation.

The basic infrastructure at the green borders is still, in many areas, insufficient. The available sources clearly indicate an endemic lack of all equipment. Border guard stations (at the Ukrainian border) are connected to regional headquarters via telephone and fax connections - the internal ADP-network does not cover these stations. Most of the border guard stations are not equipped with PC's. The inadequacy of the operational facilities, dogs and search equipment needed for effective control, is evident. Because most illegal crossings occur in the evening and at night, it is important to have equipment suitable especially for night surveillance. Criminal gangs are much better equipped than border authorities.

Implementation suffers heavily from the fact that the organisation does not really function as one unified system. Units responsible for the border areas between the authorised crossing points do not share resources or intelligence, and situational awareness is poor. Small units with very narrow and small operative areas do not allow flexible usage of patrols and other resources.

Current arrangements related to international co-operation cause some implementation problems. The newly organised BAP is not responsible for direct co-operation with other countries' border guard organisations; this is a task of the Police President (national level) and the Regional Police chiefs (regional level). Co-operation with neighbouring countries' border authorities is therefore sometimes time-consuming and cumbersome, as the organisation responsible for co-operation does not have real and direct powers to proceed with its work. Practical co-operation, especially with the Ukrainian border authorities, is in some areas very limited and the means of communication are also in some cases very poor. Mutual trust, finally, is for several reasons not as good as it should be in order to achieve close co-operation.

## 4. *Summary*

The border management system as well as the whole internal security system in Slovakia is undergoing significant alterations. Some steps in the right direction have been made, one of them being the reorganisation of the organisation responsible for the core tasks of border control. The newly reorganised Border and Alien's Police (BAP) is not yet fully functional and it will take a long time to rid it of the burden of the past. The new organisation does not yet work efficiently, especially at local level, where the units responsible for border surveillance in between the authorised crossing points do not function as one entity. There is also strong resistance towards the reorganisation within the police. The number of professional staff is in some areas too low and staff is in many areas not properly trained. On the one hand, there is a need for modern techniques, and on the other, there is a huge need for basic equipment for the border crossing points and for green border surveillance. The new strategy on border security is a good step towards a broader approach to border security but it is necessary to enhance all elements of this strategy and put them into practice. It is also necessary to improve legislation in order to give border authorities the power to carry out border checks according to Schengen principles and carry out investigations related to their functions.

## **B. Migration**

### *1. Formal acquis*

Visa policy is aligned, except regarding Cuba, South Africa and Seychelles, whose nationals do not need visas to enter Slovakia<sup>1</sup>. The list of countries subject to airport transit visas is cf. the EU's list. However, the visa regime with Ukraine allows for visas free of charge (or with a reduced charge) for citizens living in "Transcarpathian Ukraine"<sup>2</sup>, while the Schengen acquis permits this in individual cases only.

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<sup>1</sup> and with the exception of the "white list": several countries, mainly in Central and Southern America, are still visa required in Slovakia while this is not the case in the EU. Slovakia has planned to abolish these visa requirements in 2003, and to submit Cuba, South Africa and Seychelles to visas "6 months before the accession to the EU at the latest".

<sup>2</sup> "Transcarpathia", Czechoslovakian territory in 1921, was incorporated in the Ukraine in 1945.

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Finally, where holders of diplomatic and official passports are concerned, it is worth noting that, although there is no binding acquis thereon, the abolition visa list is far longer than the common practice of Schengen Member States, as presented in the Common Consular Instruction.<sup>1</sup>

As to admission and expulsion, the Act currently in force will soon be replaced by the new "Act on Stay of Aliens", adopted in December 2001, which will enter into force on 1 April 2002. Following a preliminary analysis, the new Act dramatically reduces the wide discretionary powers of the police in these fields, and deals with all the important shortcomings of the former legislation,<sup>2</sup> with the following exceptions:

- "Slovaks living abroad" are (still) exempted from detention of temporary permits, including work permits, contrary to the principle of "préférence communautaire". Slovakia should either facilitate their access to Slovak citizenship, or subject them to common law.
- One of the conditions for access to first temporary/permanent permit, namely to prove the holding of four times the yearly minimal wage,<sup>3</sup> may be considered very debatable, as far as students, family unification in general, and above all foreigners born in Slovakia and foreign spouses or children of Slovaks are concerned: Slovaks earning two or three times the minimal wage could not live in Slovakia with their family.<sup>4</sup>
- In addition, changing the category of residence permit appears to be merely subject to an application, contrary to the provisions of the acquis recommending the restriction of access by students and independent workers to a work permit. The "degree of integration into society", which the police has to consider before granting a permanent permit, should be further defined. Detention before expulsion is now properly regulated when occurring inland, but not in case of refusal of entry.<sup>5</sup> The appeal against administrative expulsion is deprived of any suspensive effect in case of

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<sup>1</sup> For instance, Slovakia does not require such visas for Algeria, Azerbaijan, North Korea, China, Vietnam...

<sup>2</sup> The new Act requires checking the national workforce before granting a work permit. The issuance of visas at the border and inland is strictly regulated. Applications for a first residence permit have to be made at consulates, and no longer inland without prior consular visa. Grounds for access, renewal and refusal of temporary permits and of permanent permits have been defined. Proper provisions on the right to family reunification, on independent workers and students, on judicial appeal against the decision to detain before expulsion, and on "tolerated stay" in case of expulsion is not possible, have notably been introduced.

<sup>3</sup> More precisely, to "prove the financial coverage of the stay in the amount of four times the minimal wage per each month of the stay, at least for one year; an alien younger than 16 years in half the amount of the minimal wage."

<sup>4</sup> In that respect, Slovakian nationals are far less well-treated by Slovakian legislation than EU nationals.

<sup>5</sup> Art 6 (4) of the new Act merely provides that " If an alien was denied entry..., can not, for legal or other material obstacles, leave the venue of border control immediately, the (border guard) may order him/her to stay for *a certain* time at the place determined for it." There is no time limit, nor a defined procedure.

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refusal of entry, which is not unusual in EU practices, but also in case of illegal stay, which is debatable<sup>1</sup>.

Finally, police information systems were exempt from data protection legislation up to the entry into force, on 1 January 2002, of the Amendment to the Police Force Act. However, Slovakia should clarify how police databases are subject to supervision of the (existing) independent authority.<sup>2</sup>

### 2. *Administrative capacity*

At consulates, thanks to the relatively early alignment of visa policy, the number of visas issued has nearly reached "cruising speed".<sup>3</sup> Modern visa stickers were introduced in 2000, and the ongoing online connection to police databases should be completed by 31.03.2003.<sup>4</sup>

Passports issued since 1994 are still easily forgeable. The introduction of a new secure document is expected by the end of 2002.

A second detention centre was established in 2000 and a third establishment is foreseen in 2002.<sup>5</sup> The already existing police databases<sup>6</sup>, available online at border stations and police stations inland, will certainly facilitate the technical preparations for SIS and Eurodac.

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<sup>1</sup> Notably in case the person to be expelled has ties inland, in the meaning of ECHR's case-law.

<sup>2</sup> The independent authority was established in 1998 in a separate Act, which does not apply to the police. The Amendment to the Police Force Act is silent on this issue.

<sup>3</sup> In addition, Slovakia "is prepared to enter into negotiations" leading to the conclusion of an agreement with the Czech Republic, extending to representation in visa issues the already existing consular cooperation for nationals. Discussions are also ongoing with Austria.

<sup>4</sup> The required personal attendance of the visa applicant was rather the exception, but has very recently become common place by the new Act of December 2002. Besides, the wording of the new Act, and of Slovakian negotiating papers, could be interpreted as depriving the consulates of the power to take any decisions on tourist visas (in favour of the Central Visa Office). This would go against the *acquis*.

<sup>5</sup> According to the new Act on Stay of Aliens of 2001, detention before expulsion will last up to 180 days.

<sup>6</sup> including a system of control of fingerprints of illegals caught, connected online to a national database of fingerprints.

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Beyond the problem of means, which is likely to be settled in the near future, the main difficulties lie in the legal framework and the administrative organisation for dealing with illegal immigration. Penalties against illegal work and carriers are very weak.<sup>1</sup> Illegal entry is punishable by mere fines, and here too, the police enjoy discretionary powers, which gives much room for corruption.<sup>2</sup> The new Act of 2001 on Stay of Aliens does not bring much improvement in this field. In addition, there is a clear lack of means for deportation measures. The Border and Aliens Office, which is the appeal body for decisions taken by the police on visas, stays and expulsion, lacks equipment, training, and authority over police, seemingly. (Training is planned for 2002. A central "Unit for the Control of Foreigners' Stay" is planned and expected to "check and balance" the work of local police offices.) An "Illegal Migration Combat National Unit" with a countrywide competence is to be established in April 2002.<sup>3</sup>

### 3. *Implementing performance*

As regards admission and expulsion, the implementation of the whole set of new provisions, established by the new Act due to enter into force on 1st April 2002, will require close monitoring, especially since the Slovak police traditionally had wide discretionary powers in this field.

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<sup>1</sup> Sanctions against employers have an administrative character, not a penal one, even in the new Act of 2001. Air carriers are obliged to return the illegals they brought, but financial sanctions, as well as provisions regarding the other carriers, have only been introduced by the new Act on Stay of aliens due to enter into force in April 2001.

<sup>2</sup> According to Art 24 of the Law of 1995 on Stay of Foreigners, "Delicts according to this Law are negotiated by police sections" and "Fines for delicts could be imposed and collected by police stations". As a result, the provisions of Art 23, stating: "A yield from the collection of fines represents an income of the state budget of the Slovak Republic", are likely to remain symbolic. The new provisions of the Act of 2001 are exactly the same.

<sup>3</sup> Slovakian authorities expect also this unit - independent of the territorial departments of the Border and Alien Police - will "create good conditions for mutual control and prevention in the area of corruption."



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Slovakia is, for geographical reasons, a major transit country for illegal immigration. The authorities are aware of this and act accordingly: figures on entry refusals are not low. A number of readmission agreements have been concluded notably with (all) neighbouring countries and nearly all Balkan states; agreements not including third country citizens have been/are being revised. However, these actions are insufficient: illegal transit, towards Austria for instance, has not decreased. Readmission functions less well *from* Slovakia than *towards* Slovakia, notably from Austria and the Czech Republic.<sup>1</sup> Likewise, more illegals are caught upon leaving Slovakia than upon entry.<sup>2</sup> Of course, readmission is not always easy with Ukraine and Hungary, for various reasons<sup>3</sup>. But the fact is that there are not many controls inside the country, and when they do take place, the police issue mere "notices to leave", even to an alien "who has no valid travel documents" or who has committed "a deliberate criminal offence".<sup>4</sup> The latest available figures on air removals and, to a lesser extent, on escorted expulsions, are not high. Above all, arrest and prosecution of traffickers, although slowly increasing seemingly, do not lead to many sanctions, despite provisions to the contrary in the Penal Code.<sup>5</sup> Illegal transit through Slovakia is mainly organised traffic, aided by Slovak traffickers, e.g. of women.<sup>6</sup> In 1999 the Slovak authorities recognised that "the implementation of controls of foreigners by the Aliens Police in inner territory will need to be intensified"<sup>7</sup> but this commitment has not yet been fulfilled. Slovakia, even though almost surrounded by future "internal borders", is bound to remain a major transit country if nothing more is undertaken.

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<sup>1</sup> In 2000, 2337 foreigners were readmitted to Slovakia, and 1572 from Slovakia.

<sup>2</sup> During ten first months of 2001, 10860 "apprehended illegal border crossings" occurred, including 3486 entries into Slovakia (mainly from Ukraine and Hungary) and 7374 exits (mainly to Austria and Czech Republic.)

<sup>3</sup> Ukrainian reactions after the submission to visa regime, suspected involvement of Ukrainian border guards in criminal activities.... As for Hungary, the existence of a large Hungarian minority living in the border area, is deemed to weaken the willingness, on Hungary's part, to safeguard it strictly. However, the facilitation of movements of Slovaks and Hungarians residing in these areas should not be considered incompatible with the fight against illegal immigration of third country nationals.

<sup>4</sup> In practice the "notice to leave" is replaced by a mere "persona non grata" stamp on the passport.

<sup>5</sup> Corruption may occur at several levels (arrest, preliminary detention, investigation, judgement.)

<sup>6</sup> For instance, in 1997, "criminal prosecutions" had been "conducted" against 69 smugglers/traffickers, 12 of whom having been "arrested". In the following year 94 smugglers had been "prosecuted", 6 of which had been "arrested". There were four prosecuted cases of forced prostitution in 1998 and nine cases in 1999. During the first months of 2001, 191 traffickers were "caught" (mainly Slovak citizens, 176, 92%) and criminal proceedings started in 91 cases.

<sup>7</sup> Screening replies.

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On another subject, it is worth noting that the number of Slovak citizens asking for asylum in the EU, diminished in 2001.<sup>1</sup> Repatriation, notably from Belgium, the Netherlands, or Finland, has not met with major difficulties, and in May 2001 a plan was approved to harden the issuance of new passports to Roma known to have illegally entered the EU. However, these sanctions may be hampered by the still existing practice of allowing the holding of several passports.

## 4. *Summary*

Visa policy is almost aligned. Citizens living in "Transcarpathian Ukraine" benefit from visas free of charge or for a reduced charge.

(Still) current legislation on foreigners lacked a number of important requirements of the *acquis*, concerning notably workers and family unification. The new "Act on Stay of Aliens" of December 2001, due to enter into force on 1 April 2002, will settle these questions (except for issues like exemption of "Slovaks living abroad" from detention of temporary permits, unfounded and debatable financial conditions for access to first permits, and the regime of detention at the border) but its implementation will require monitoring.

Administrative capacity is on the right track concerning consulates on the one hand and preparation for the SIS on the other hand. The introduction of a new secure passport is expected by the end of 2002. The main difficulties lie in weak penalties against all migration-related offences, and the fact that the police enjoy much discretion therein. At central level, the necessary training is planned for 2002, and relations with the police still seem feeble. An "Illegal Migration Combat National Unit" with country-wide competence is planned.

Despite numerous entry refusals and the existence of a number of readmission agreements, Slovakia is still a major transit country. Illegal transits towards Austria have not decreased. More illegals are caught leaving Slovakia than upon entry. There seem not to be many controls inside the country, expulsion is rare and there is no active prosecution or sanctioning of traffickers.

It is also worth noting that the number of Slovak citizens asking for asylum in the EU diminished in 2001.

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<sup>1</sup> 4960 in 1999, 4390 in 2000, 1940 in 2001 up to October.



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## C. Asylum

### 1. *Formal acquis*

The Law of 1995, as amended in 2000, regulating asylum, has become more in line with the *acquis* since the abolition in 2000 of the former time limit of 24 hours for filing an application, which - then- legally and practically barred almost nine out of ten potential applications.

One major remaining shortcoming is the appeal procedure, because the first instance appeal body (the Minister of Interior<sup>1</sup>) is clearly neither independent nor specialised and does not deal with the substance of the case (at least in practice), and because the second instance (the Supreme Court) does not deal with the substance of the case either, but only the procedural aspects.

In addition, the 'safe third country' concept is worded (or was interpreted) incorrectly.<sup>2</sup> Finally the accelerated procedure is flawed because the suspensive second instance appeal body normally takes its decision without a specific short time-limit.

There are provisions on temporary protection, but not on subsidiary protection: the EU should be informed on how the principle of subsidiary protection is applied.

The draft new Asylum Act, which addresses notably the issue of the appeal system, was adopted by the government in January and is to be discussed in Parliament in March 2002.

### 2. *Administrative capacity*

The housing capacity (three reception centres with a capacity of 200 persons and one refugee residence centre for 500 persons) was sufficient when, before 2001, applications numbered 500 to 1000 p/year. Following the abolition of the 24h deadline, 8000 applications were filed in 2001, and the centres are currently overcrowded, even though the majority of applicants rapidly leave westwards after some weeks. Authorities encounter difficulties with municipalities when attempting to locate (appoint a location for) new centres.

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<sup>1</sup> after consultation of the "Special Advisory Committee" (consisting of 8 civil servants appointed by him). This advice does not bind the Minister.

<sup>2</sup> In Slovakia, an applicant coming from a safe third country is automatically dealt with in an accelerated procedure. Slovakia in practice included among the safe third countries the country which had readmitted the foreigner to Slovakia. This led to unjustified accelerated procedures.

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Co-operation between the police inland, border guards and the Refugee Office functions well.

The administrative means are insufficient though, notably where thousands of applicants will have to remain in Slovakia during the whole procedure (as will be the case, in principle, after implementation of the Dublin Convention and Eurodac, i.e. upon accession). The number of eligibility officers is insufficient but on the increase. A Department of Documentation and Analyses of Countries of Origin has been established. Its database-system still needs to be enhanced. The staff of the Migration Office also needs to be better trained in asylum law (general principles e.g. the doubt rule; Slovak and EU regulations etc.) and in interviewing techniques. There is an absence of interpreters of some (mainly oriental) languages. The members of the Special Advisory Committee (second administrative instance) lack special knowledge of asylum law and practice. There will be a need to train judges if an appeal court is established, as planned.

Legal assistance and interpretation are in generally entrusted to NGOs, financed by UNHCR for that purpose. Integration of recognised refugees is organised and implemented.

As to preparation for accession to the Dublin Convention, the Law requires amendments, and on a practical level, although databases and even fingerprinting already exist (See Migration), these systems are currently managed separately and are not yet subject to data protection legislation.

### **3. *Implementing performance***

Access to the procedure, which was the main point of criticism when the provision on the 24h deadline was in force, no longer raises concern. From January to November 2001, 7000 applications were registered (compared to 1500 in 2000 and an average of 500 during previous years.) However, the implementation of the safe third country concept (see above, formal acquis) and of the principle of non-refoulement require further monitoring.

There is not much information yet on how the decision-taking process is coping with the sudden outburst in applications. However, the recognition ratio, which was 10% in the past, has seemingly decreased in 2001 to 0.2 %, which is not high. Of course applicants leave Slovakia before the completion of the examination. Nevertheless, this item will require scrutiny. The fact that staff of the Migration Office deals with asylum (first instance body) as well as with Migration issues (appeal of police decisions, mainly) has raised concern, as has the constant approval, by the appeal body, of the decisions taken by the Migration Office.

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## 4. *Summary*

One major shortcoming still existing in legislation is the appeal procedure. The safe third country concept is worded or was interpreted wrongly. The accelerated procedure is flawed. Slovakia plans to enact a new Asylum Act.

Housing capacity is no longer sufficient, since 8000 applications were filed in 2001, 5 times more than the year before, and the centres are currently already overcrowded, even though the majority of applicants rapidly leave westwards. Administrative means are also insufficient, despite some progress.

Access to the procedure no longer raises concern. The implementation of the safe third country concept and of the principle of non-refoulement require further monitoring. There is not much information on how the decision-taking process is coping with the sudden outburst in applications. However, the recognition ratio has seemingly decreased in 2001 to 0.2 %.

### **D. Police and customs**

#### **a) Police**

##### **1. *Formal acquis***

As far as the police force in Slovakia is concerned, the basic regulatory and judicial framework for its functioning is in place. Policing has its main legal bases in the Act of the National Council of the Slovak Republic No.171/1993 Coll. concerning the Police Force (as amended), Act No.347/1990 Coll. on the organisation of ministries and the other central bodies of state administration (Competence Act), the Executive Decree of the Ministry of the Interior on its organisation No. 48/1998 (as amended), and the Code of Criminal Proceedings (1961) as amended. More information is necessary on the implementation of the recently (December 2001) adopted amendments to the Act on the Police Force which entered into force 1/1/2002.

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Concerning data protection, Slovakia ratified the Council of Europe *Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data* (Strasbourg, 1981) in 2000 (entry into force 1/1/01). Intentions to reinforce the function of the Commissioner for the Protection of Personal Data must be monitored and legislation for the strengthening of the independence of the Independent Supervisory Authority must be adopted.

More information is necessary on actual implementation of the amendment<sup>1</sup> to the Act on the Police Force by means of which the use of personal data by the Police Force is covered by domestic legislation on the protection of personal data.

## 2. *Administrative capacity*

### *Organisation*

Within the Ministry of the Interior, there are two sections dealing with police activities, that of Investigation and Criminal Expertise, and the Police Force Presidium. Investigation offices are established at regional level as well as within districts. The division of competences of investigative and non-investigative police/officials in the fields of bringing charges, ordering detention and searching is complicated and tends to lead to overlaps; revisions started 2001 and results must be monitored.

The Police Force Presidium's President is appointed by the Government. The Presidium administers the regional and district directorates, organised in various services. The interposing of this department between the criminal police and the prosecutor allows for a significant degree of political interference by the Interior Minister through his control over the appointment or dismissal of individual investigators.

The Slovak Information Service (SIS), an independent organisation reporting directly to the Prime Minister, is responsible for all civilian security and intelligence activities.

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<sup>1</sup> Amendment N° 171/1993 extends the controlling competencies of state supervision of the protection of personal data in information systems, to police data information systems, with the exception of information linked to criminal proceedings - The amendment **came** into effect 1/1/02.

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Slovakia's intention to simplify the pre-trial procedure and to remove the existing overlap between the functions of police authorities and police investigators, elaborated in the new draft Code of Criminal Procedure scheduled to be presented to parliament early 2002 (which is however entirely dependent on political will in light of coming elections september '02), will reinforce the role of the public prosecutor in pre-trial proceedings and provide clearer competences. It will also entail the creation of a new Bureau of Judicial Information within a newly set up Central Judicial Police Directorate, alongside the already existing specialised police services. This entails that 70% of the handling of offences will be attributed to the public security police, who up to date have never received any training in the field of penal procedure. Its adoption and effects must therefore be closely monitored.

## *Co-ordination, co-operation and exchange of information*

Despite establishment on 1/1/01 of the Office of International Police Co-operation, which aims to cover co-operation in the framework of Interpol, Europol, Schengen and bilateral forms of co-operation<sup>1</sup>, there is only a limited exchange of information between the different police departments. This leads, especially at the central Interpol Office, to a lack of information and the inability to make information available for international co-operation.

The Police Force is however currently in the process of setting up a computerised system for enhancing the efficiency of police work, known as the Automated Information System of the Police (AISP), into which most existing police information systems will be integrated.

## *Training, salaries, career and equipment*

The police total approx. 20,000 staff, i.e. approx. 370 police officers per 100.000 inhabitants. The Slovak police continue to have a high turnover of experienced staff<sup>2</sup> and there is actually no

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<sup>1</sup> Bilateral agreements on police co-operation have been concluded with Belgium, Bulgaria, Croatia, Czech Republic, France, Latvia, Malta, Romania, Russian Fed., Spain and the Ukraine.

<sup>2</sup> In 2001, the following important changes of function were noted: the Chief of the Investigations Department, the Police president, the Vice-president of the Police corps, the Chief of the Organised Crime Dept., the Chief of the Undercover Dept., Chiefs of different districts, the Vice-chief of the Financial police, the Vice-chief of Organised Crime and the Vice-chief of the Border- and Aliens Police.

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concrete strategy to improve the economical situation<sup>1</sup> of police officers and/or to improve career perspectives. The public's confidence in the police is still low, mainly because of allegations of corruption, although this impression is not entirely justified according to the MS embassies (see also Chapter G. Corruption).

The Police Force Academy provides university and specialised police training but scarce budget allocations allow for limited training/education only. Moreover, the two existing police forces presently receive a different type and level of training, which might benefit from standardisation. The police lack modern information technology and means of communication. Technical equipment is, in many areas, insufficient. Without support of the EU and/or individual foreign departments, working conditions would be considerably worse.

### **3. Implementing performance**

#### *Co-ordination, co-operation and exchange of information*

Poor and even the general lack of co-operation (see above 2. Administrative Capacity) appears due to lack of trust in relation to the investigations department and attorneys (assumption of corruption). Operational investigators try to work as long as possible without involvement of the legal department since as soon as work is taken over by the Bureau of Investigation or the prosecuting attorney, the feed-back to the police is generally non-existent. Exchanges of information take place almost exclusively on a personal level. The division of competencies between the various authorities and Ministries involved is unclear and in many cases overlapping, reducing efficiency and leading to conflicts of competence. The new draft Code of Criminal Procedure (scheduled to be presented to parliament early 2002) should resolve a number of these issues; its adoption, and above all, its effects must be closely monitored.

The newly adopted amendments to the Police Act allegedly do not entail any improvement and are said to introduce only superficial rather than substantive changes. An important omission is that there is no mention of the (necessary and announced) setting up of the Central Judicial Police (Viz. 2. Administrative capacity, Organisation).

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<sup>1</sup> The average income of a policeman is about 10 000 SKK (± € 238) .



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## *Organised crime*

There has been an increase in violence and in the number of organised criminal offences connected with drugs, economic crime, vehicle theft and trafficking in human beings (source, transit, and destination country) despite a light decrease in the total number of registered offences (notably crimes against property and robbery). Although the Government has, since 1998, been committed to fight organised crime and there is a will and readiness among the police to co-operate, no real improvement has been recorded up to date (MS embassies). Moreover, the fight against economic crime is diminishing under political pressure (not a political priority, inopportune against background of upcoming elections). The main problems in the fight against crime are:

- absence of specialised prosecutors in the field of organised crime, drugs and economic crime
- the continued existence of a two-level investigation system and the inherent loss of time and information and lack of motivation and involvement of the first-line investigators
- limited witness protection measures.

The draft-law implementing the Pre-Accession Pact on Organised Crime is expected beginning 2002. A National Co-ordination Authority for Combating Crime was recently established in the framework of the Slovak Total Programme of Combating Crime. It appears however that its tasks and performance are both unclear and substandard. Both issues must be monitored.

*Drugs:* Slovakia being part of the "Balkan Route", drug-trafficking continues to be dominated by a group of Kosovo Albanians closely co-operating with Turkish and Ukrainian criminals. There is a National Programme on the Fight against Drugs and a National Anti-Drugs Unit. Slovakia should continue preparations for participation in the European Information Network on Drugs and Drug Addiction (Reitox) of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) (application for membership filed 2001), set up a national focal point and prepare and implement effectively, a national drug strategy in line with the EU Drugs Strategy 2000-2004. Co-operation with Member States should be intensified (e.g. through Europol cf. Pre-Accession Pact on Organised Crime) as should institutional capacity and inter-institutional co-operation

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*Money laundering:* Slovakia is vulnerable to money laundering because of its cash-based economy. The new Anti-Money Laundering Act which came into effect in 2001, includes abolition of anonymous bearer passbooks. The obligation to report suspicious transactions (1997) is still only for banks and is considered insufficient (Viz. media allegations regarding undue benefits obtained by politicians at all levels in their business activities).

The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (the Strasbourg Convention) was ratified in May 2001; Slovakia entered a reservation concerning Article 6<sup>1</sup>. The new law, providing the duty to report suspicious financial operations, seems not to provide the desired results as the number of reports is very low (economic investments disguise forms of money laundering: e.g. great number of bars and restaurants opened in recent years disguises money-laundering operations). Especially in economically advanced areas, racketeering (extortion, threats, arson, damage) is widespread.

According to Slovak authorities, the Financial Intelligence Unit of the Financial Police Office (FIU-established 1996), which co-operates inter alia with the Council of Europe and the EU and acts as the national co-ordinator of the horizontal Phare programme for the fight against money laundering, lacks the resources to work effectively and efficiently.

*Terrorism:* Slovakia signed (January 2001, to be ratified end June 2002) the 1999 United Nations Convention for the Suppression of the Funding of Terrorism. It expects to be able to comply with the *acquis* and other international standards on the fight against terrorism and the misuse of the financial system, in particular regarding the financing of terrorism, in the coming months (2002) and has prepared a list of implementing measures and timetables to that end. These cover introduction of the EU definition of terrorism, adaptation of the Criminal (and Procedure) Codes in light of the European Arrest Warrant, freezing of assets and laundering of proceeds of crime.

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<sup>1</sup> According to the Joint Action of 3 December 1998 on money laundering, MS shall ensure that no reservations are upheld as regards Article 6 of the 1990 Convention; this is only applicable upon accession.



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## b) Customs

### 1. *Formal acquis*

The Slovak Customs Administration, created in 1993, has pledged to align its legislation, organisation and working methods to the acquis of the European Union. The work of the customs has its main legal bases in Act No.347/1998 Coll. on organisation of ministries and the other central bodies of state administration (Customs Act), Act No.180/1996 Coll. Customs Law, Code of Criminal Procedure (regulating and determining functions and organisation of customs service and powers of its officers), the new Customs Act (Act No. 238/ 2001 Coll.)<sup>1</sup> (enhancing its powers, entry into force July 2001), the new Act on Customs Administration, regulating the expanded customs officers' executive powers (Act No. 240/2001 Coll.), and the new Law of 1999 on Protection of Personal Data (no. 52/99).

### 2. *Administrative capacity*

#### *Organisation*

The Slovak Customs Directorate is part of the Ministry of Finance. The Slovak Republic is divided into 14 regional districts and has 225 inland branch offices, border posts and border guard stations at local level. The Directorate comprises three departments: Commercial Fraud, Intelligence, and Criminal Investigation. There is also a central anti-drugs service.

Customs authorities can investigate offences sanctioned by maximum 3 years of deprivation of liberty, and take all acts necessary in respect of customs offences. The investigation of criminal offences sanctioned by more than 3 years of imprisonment are performed in collaboration with the authorities of the Police Force. However, it is only an investigator who can institute criminal proceedings against a person for a crime connected to a breach of customs regulations.

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<sup>1</sup> With effect from 1 July 2001, the Ministry of Finance issued Decree No. 251/2001 Coll., implementing certain provisions of the Customs Act.

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## *Staff, training and equipment*

Customs is staffed with 5,400 employees nation-wide, 258 of which at the Customs Directorate. Resources for training are considerably limited. An offer of help has been received from the Czech Customs Administration who will provide operational experts to train the anti-drug service (first course end '01).

Customs-related information technology is progressing with the new information system now in place in the Customs Administration. A customs laboratory was to be set up and equipped to function as an accredited analytical laboratory by the end of 2001. Neither a risk-analysis system nor the appropriate IT system have been developed yet. The complex use of risk analysis will only be possible after introduction of the ASYCUDA information system within the Customs Administration and after the implementation of the so called "selectivity module". Existing information channels are presently used for transfer of risk and current information. The Law enforcement authorities in the Slovak Customs Administration are presently using the knowledge of POFO, FOCUS, and Penal Protocols databases where the information on the illegal activities of persons and companies are collated.

### **3. *Implementing performance***

Slovak customs officers have limited preliminary investigative powers in drug-related crimes, and legislative changes giving enhanced powers to the customs in such investigations are not expected before 2003-04.

Although the Slovak Customs Administration signed agreements on co-operation with all law enforcement agencies in the Slovak Republic, co-operation still needs to be improved (with the Border and Aliens Police, the Police National Drug Service- a problem in the past, etc). Problems regarding access to police databases (e.g. on vehicles) still exist, although negotiations are underway. A national customs information and investigation service that could co-ordinate actions at national level, especially with regard to commercial fraud, does not exist.

An Agreement with the European Communities and their Member States on mutual assistance entered into force 1995. Co-operation with OLAF is generally good. International co-operation has improved, as has mutual assistance (professionalism).

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A co-operation program with organisations and companies specialised in international trade has been established. However only three agreements concluded so far; this area should be given higher priority. The Customs Administration is in the process of preparing, in co-operation with the Police, another Memorandum of Understanding, this time with the Slovak Association of Chemical and Pharmaceutical Industry and chemical and pharmaceutical companies in Slovakia.

#### 4. *Summary (Police and customs)*

The basic regulatory and judicial framework for policing is in place although announced draft amendments<sup>1</sup> concerning i.a. data protection and strengthening of independence must be monitored. The organisation generally suffers from an unclear division of competencies leading to overlaps, as well as from political interference by the Interior Ministry; revisions seem to be underway (e.g. new draft Code of Criminal Procedure, to be presented to Parliament early 2002). The public security police, who as a consequence of the proposed revisions, would be attributed considerable specialised tasks, at present have no knowledge or experience thereof whatsoever; moreover, training in general, although facilities exist, lacks funding and the necessary technical equipment.

Staff turnover continues to be high and no concrete strategies appear to be in the makings to improve the economical situation or career prospects of the police.

International co-operation suffers as a consequence of poor internal communication and co-operation, in turn the consequence of distrust, assumptions of corruption, overlaps and unclear competencies.

Organised crime shows an increase in violence and in the number of offences connected to trafficking in human beings, drugs and vehicles as well as economic crime, although the total number of registered offences decreased slightly in 2000-01. In light of the coming elections (autumn '02), the fight against economic crime does not seem to be a political priority (MS embassies). The new Anti-Money Laundering Act ('01) does not seem to provide the desired results either up to date, the number of reports of suspicious transactions being very low and racketeering being wide-spread. The Financial Intelligence Unit lacks the necessary resources to work effectively and efficiently.

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<sup>1</sup> N.B.: All draft amendments are subject to the political will to push forward, which is however according to MS embassies highly unlikely at the moment in light of the upcoming elections in autumn '02.

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As for Customs, the Slovak Customs Administration has pledged to align its legislation, organisation and working methods to the *acquis*. New draft legislation enhancing i.a. the customs' investigative powers is not expected until '03-'04. Resources for the necessary training are also very limited and neither a risk-analysis system nor an appropriate IT system have been developed, although work is ongoing. Although a number of co-operation agreements have been drawn up, actual practical co-operation with and between other law-enforcement authorities must improve (Border and Aliens Police (BAP), the Police National Drugs Service, access to data bases etc.).

## E. Justice

### 1. *Formal acquis*

The new Criminal Code and Criminal Procedure Code -foreseen to be approved by Parliament in 2002- should bring domestic legislation fully in line with the *acquis*.

Slovakia is party to a large number of the relevant criminal law conventions. It has made several reservations<sup>1</sup> which it will reconsider since they may be incompatible with the newly adopted *acquis*<sup>2</sup>. However, in 2001 Slovakia has amended its Constitution and its Criminal Code to allow for extradition of its own nationals when the obligation to extradite results from a treaty binding on Slovakia. With regard to Data Protection, legislation which should strengthen the independence of the supervisory authority is foreseen to be adopted in the near future. Ratification of the Agreement on Illicit Traffic by Sea, implementing Art. 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances is underway. The 1990 Money Laundering Convention has been ratified in 2001. With regard to the Convention on the Protection of the EC Financial Interests, the current Criminal Code is only partially compatible with Articles 1 and 2. Article 3 (criminal liability of CEOs of the companies) can be applied only partially.

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<sup>1</sup> It has made a reservation concerning Art. 21 §5 of the Extradition Convention under the terms of which the transit of a person within the meaning of Art. 21 will be granted only on conditions applied in cases of extradition, and to Art. 5 §1 of the Convention on Mutual Legal Assistance, requiring satisfaction of conditions stipulated under a) and c)

<sup>2</sup> viz. Analysis on Justice for other reservations made

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The new Criminal Code and Code of Criminal procedure will make Slovak legislation fully compatible with the Convention and its 2 Additional Protocols. The amendment of Budgetary Rules has already put pre-accession support funds on an equal footing with Slovak budgetary funds. Slovakia does not intend to accede to the 1970 European Convention on the International Validity of Criminal Judgments as not all the Member States have ratified it. It does intend to sign the 1980 Convention on International Access to Justice and expects to have it ratified upon its accession.

With regard to trafficking in human beings, sexual exploitation of children, participating in an organised crime group and racism and xenophobia, Slovakia has recently aligned its legislation fully to the relevant Joint Actions.

As most EU Conventions in the field of judicial co-operation in civil matters changed into regulations, the amendment to the Constitution has introduced precedence of EU legal acts over national legislation. The transposition of legally binding acts which require implementation shall be realised through a statute or a regulation of the Government. Thus, the original plan to modify the Code of Civil Procedure and the Act on Private International Law and Rules of Procedure Relating Thereto -to bring these in line with the *acquis*- is no longer relevant.

## 2. *Administrative capacity*

Judges are currently assisted by court secretaries and clerks, but with the draft Law on Higher Court Officials which is foreseen to enter into force in April 2002, part of the judges' tasks<sup>1</sup> should be taken over. Their introduction -200 in the first stage- is expected to contribute to speeding up court proceedings. According to the Ministry of Justice, the current numbers of judges, prosecutors and other legal professions are sufficient. However, most of the judges complain about the excessive workload. Although the number of judges increased during the last decade from 16-23<sup>2</sup>, the demand for judicial services meanwhile increased fivefold. As a result, the disparity between the capacity to deliver services and the need to adjudicate has increased. Many cases are particularly complex and judges are often distracted by other tasks, having to, deal -at the same time- with civil, criminal and commercial cases.

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<sup>1</sup> The official will carry out independently the acts of the court in civil and criminal proceedings and in other activities of the court to the extent stipulated by law. They will be independent in taking those decisions and bound by law only.

<sup>2</sup> per 100.000 inhabitants

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Further, the generous allowance for the number of appeals -ordinary and extraordinary- makes that the number of cases exceeds the available resources. Judges are responsible for managing basically the entire trial on their own. Another reason for continuous delays in court proceedings is that judges continue to suffer (especially at district level) from absence and/or low quality of technical equipment. This issue should be solved with the supply of new equipment in 2001-2001 and with the introduction in 2002 of the 'Mail Room-Register' information system (viz. Corruption). Prosecutors do not suffer from case overload, but have difficulties as regards access to information and technical equipment. The relatively small number of staff working in the field of judicial co-operation in the Ministry of Justice may be increased.

There has been little progress as regards the operational reform of the judiciary. The Ministry of Justice had proposed to reduce the number of regional and district courts, to simplify the procedural codes and to provide better training of judges. However, at the meeting of the coalition council in April 2001, the proposed reform was postponed due to lack of support.

Currently, training of the judiciary on matters related to the *acquis* is organised through short- and long-term courses organised by the Ministry of Justice and the Association of Judges. Under the Law on the Judicial Council<sup>1</sup>, the Council shall have the competence to determine the content of the training of judges together with the Minister of Justice. The staff of the Ministry of Justice also receives occasional training. Plans to reform the training of the judiciary and establish an Academy for judges exist. Also, a new project of systematic training in EU Law of (candidate) judges and the Ministry of Justice staff is being prepared and shall start in spring 2002. Indeed, more consistent, continuous but also more specialised training and training on domestic legislation of the judiciary is needed. The numbers of laws is unusually high and changes frequently, and they are introduced without judges being informed and/or trained on them. Also, a growing gap between laws and sub-laws make their interpretation increasingly difficult.

The lack of specialisation of police officers and investigators is widely felt by the judiciary as another reason for the ineffectiveness of the entire system. The recruitment system of police officers and investigators, the low qualifications, the low remuneration, the lack of complete training and the consequently high turnover are constant sources of grief.

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<sup>1</sup> viz. Implementing performance



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With regard to salaries, although a judge's salary equals that of a Member of Parliament and is said to be among the highest in the country, bribery -including of court personnel- is not uncommon<sup>1</sup>.

### 3. *Implementing performance*

With regard to independence of the judiciary, from a legislative point of view relevant progress was achieved by the adoption of the Constitutional Amendment which entered into force on 1 July 2001<sup>2</sup> and which foresees the creation of a Judicial Council<sup>3</sup>. The Amendment has strengthened the principles of the rule of law and separation of powers in the constitutional system through expanding and clarifying the definition of decision-making competencies of the Constitutional Court, abolishing the 4-year 'probation' period for judges, and changing the procedure of judicial appointment and recall. The Judicial Council should strengthen the independence of the judiciary on legislative and executive powers.

Also, the Judicial Council will not have the competence to appoint and remove presidents and vice-presidents of regional and district courts. These will remain appointed by the Minister while the President of the Supreme Court will be designated by the President of the Republic. Both judges and their Association consider this procedure too political. Further, the Association of Judges believes that presidents and vice-presidents of regional and district courts should not represent exclusively the state administration of courts, but instead should be part of the self-governing system of the judiciary and its supreme representatives.

A new law of 1 January 2001 provides for an evaluation of the judges every 5 years or when they apply to a higher function. Previously, promotions depended exclusively on the decision of the Minister of Justice. However, even if the new system seems to objectify the promotion of the judges, the Judicial Council -required to come to a conclusion about the candidates- only delivers an advisory opinion.

The Act on the Public Prosecution Service and the Act on Prosecutors and Candidate Prosecutors

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<sup>1</sup> viz. Corruption

<sup>2</sup> apart from some provisions which should enter into force only at the beginning of 2002

<sup>3</sup> In August 2001, the Government approved a draft Act on the Judicial Council on Amendments to Some Acts - currently still in the legislative process- which will implement the Amendment and will define the position, mandate and functioning of the Council, its term of office, the procedure for appointing its members as well as the termination of their mandate.

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entered into force on 1 May 2001<sup>1</sup>. It introduced a more transparent promotion procedure and establishes a permanent disciplinary commission of prosecutors (3-year term) for handling misconduct cases. It preserves the irrevocability of prosecutors unless they -on the basis of objectively ascertained facts- lose their capacity to perform the office or are recalled as a result of disciplinary proceedings. It also lays down the duty to refuse to fulfil unlawful instructions of superior prosecutors.

Various surveys and studies show that overall, there is a widespread perception in Slovakia that the judiciary is slow, corrupt, bribable and servile to the state and politicians<sup>2</sup>. Serious efforts are needed to guarantee professional impartiality and political neutrality and more transparency of all decisions. Although the standards of judicial performance are broadly formulated by law, there are no specific transparent criteria and procedures which could be used in measuring the performance of judges; a situation which fuels allegations of partiality and political patronage. It would be in the interest of Slovakia to introduce a system which evaluates the efficiency and trustworthiness of the judicial system, including an efficient system of statistics which is currently lacking. The legal community sees the lack of personal accountability on the part of the judges primarily as the cause of their underperformance and of low productivity of the courts.

In addition, the system of disciplining judges seems to be relatively cumbersome. Compared with the public perception, the number of disciplinary and criminal proceedings against judges appears too low and the disciplinary courts appear toothless. From 1992-1999, 71 disciplinary and criminal proceedings were initiated. Less than half of these resulted in punishment<sup>3</sup>. Three judges received prison sentences. Although the National Council has the authority to remove judges who commit a crime or fail seriously, this, so far, has never happened.

The practical functioning of the Slovak judiciary continues to leave much to be desired.

The information available -through surveys and judicial statistics- indicates that the main problem is case backlogs and delays which, in addition to undermining the quality of judicial services, foster corruption. Other dimensions of poor performance are insufficient accessibility of judicial services, poor service delivery as well as questioned fairness and unpredictability of judicial decisions. Access is *inter alia* impeded by the high costs. As one report states: 'in fact, justice is often a

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<sup>1</sup> apart from some provisions which should enter into force respectively in January 2002 and 2003

<sup>2</sup> It should however be noted that public confidence in the Constitutional Court is relatively high.

<sup>3</sup> mostly reprimand/salary cut



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privilege of the rich'. Moreover, there is a huge information gap between lawyers and their clients. All these facts damage the reliability of and public confidence in the judicial system and judiciary.

In addition to recognising delays and case backlog, lawyers perceive the professionalism and competence of judges as declining over the last 10 years. According to them, the weakest are those who specialise in commercial matters<sup>1</sup>. In the field of organised crime, professionalism of judges, prosecutors and police is also still insufficient.

As to the shortcomings of the criminal procedure, Slovakia has elaborated a project which will soon be submitted by the government to Parliament with the aim to have it adopted in September 2002. If implemented, the project will adjust the previously noted shortcomings, namely the overlapping of procedures which cause a waste of time and efficiency and the late intervention of the prosecutor in the procedures. The project foresees on the one hand the suppression of the preliminary police investigation and, on the other, the creation of a common structure between the investigative services and the services responsible for the criminal procedure. Moreover, the project will be completed by an amendment to the Criminal Code which will establish a new classification of offences into three categories: fine, offence and crime. This amendment is foreseen to be made in March 2003.

In the last decade, jurisdictional changes have paid little attention to matching the weight and importance of the cases with the level of courts, costs and procedures. As a result, too much jurisdiction has been concentrated in the Supreme Court and the Regional Courts where costs are higher and the procedures more complex. However, with the adoption of the amendment of the Code of Civil Procedure in December 2001, this situation should change. More cases will now be brought to the District Courts and Regional Courts will take on the function of appellate court (a function which so far was taken on by the Supreme Court instead of it being a court of extraordinary appeal and which unifies case law). The amendment to the Code has further modified the appeal procedure which should speed up proceedings<sup>2</sup>

There is no information available on how judicial co-operation in criminal matters with Member States works in practice. Judicial co-operation in civil matters works well. Judicial co-operation

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<sup>1</sup> not only because of the relative novelty of the issues but also because most of the commercial judges have been recruited from the State Arbitrazh and their old working habits allegedly do not allow them to fully appreciate the importance of procedural rules

<sup>2</sup> It is no longer possible to raise new reasons for appeal, save in some exceptional cases.

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under Schengen will not pose major problems though Slovakia has indicated that it needs clarification of some the provisions. Also, there is no information yet on how Slovakia intends to ensure future direct contact between the competent judicial authorities.

More information is needed on the quality of enforcement of judgments/performance of bailiffs.

## 4. Summary

The new Criminal Code and Code of Procedure should bring domestic legislation fully in line with the *acquis*, including the field of protection of EC Financial Interests. Some reservations made under the Convention on Mutual Legal Assistance need reconsideration because of incompatibility with new *acquis*. More information is needed on how judicial co-operation in criminal matters works in practice<sup>1</sup> and on the preparation of judicial bodies under Schengen. Legislation to strengthen independence of the data protection authority remains to be adopted and the Convention on International Access to Justice remains to be signed.

Judges are overloaded, a situation which should change with the introduction of higher court officials. At present, the number of cases exceeds the available resources and equipment has so far been insufficient. The reform proposal to reduce the number of regional and district courts has not been adopted. (Specialised) training of the judiciary -both in (interpretation of) national and EU legislation- needs to be continued in a consistent manner. The lack of specialisation of police officers and investigators, their recruitment system and high turnover remains another concern of the judiciary.

Although judges' salaries are equal to that of a MP, bribery of judges and court personnel is not uncommon.

The recent Constitutional Amendment has strengthened the independence of the judiciary. However, improvements could be added as regards procedures on the mobility of judges and the role of the Judicial Council in the appointment procedure (today, it only has an advisory role).

Implementing performance continues to be characterised by weaknesses. The different courts do not

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<sup>1</sup> Judicial co-operation in civil matters is reported to work smoothly. Good direct contacts between the ministries of justice of a Member State and Slovakia allow to clarify any questions that may arise. There are no problems with the recognition of foreign judgements.

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share the burden of cases on the basis of their jurisdiction, and there is no efficient system of statistics. The -however- clear case backlogs and delays undermine the quality of judicial services and foster -widely perceived- corruption. Other dimensions of poor performance are insufficient access to justice, poor service delivery as well as questioned fairness and unpredictability of judicial decisions. Professionalism is low in some fields, and the procedural system is characterised by overlapping procedures causing waste of time and efficiency and late intervention of the prosecutor in the procedure.

The project which is foreseen to be adopted in 2002 should correct this situation, by suppressing preliminary police investigation and creating a common structure of the services responsible for investigation and criminal procedure. The project is to be completed by an amendment to the Criminal Code which will establish a new classification of offences. The amendment of the Civil Code of Procedure aims to speed up civil proceedings, improve their effectiveness and deal with practical problems.

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## F. Human rights

### 1. *Formal acquis*

Slovakia has ratified all the relevant human rights related instruments. Slovakia ratified in 2000 Protocol N° 12 of the ECHR and in 2001 the Charter on Regional and Minority Languages. In domestic legislation, several new initiatives have been launched in 2001, such as the new police law and the law on the Ombudsman (both were expected to be adopted by the end of 2001). The new police law foresees *inter alia* in stricter rules to observe in riot control, which should contribute to more legal certainty and protection of human rights.

Several reports confirm that implementation of laws by (local) authorities is more a bottleneck than the legal framework. At present, there seems to be no urgent need to modify the current legislation, except in the field of aliens, notably concerning family unification and expulsion.

### 2. *Administrative capacity*

Several bodies, offices and NGOs play an important role in the judicial system, by providing social and legal counselling in the field of social aid -free of charge- and by guaranteeing socially weaker strata of the population access to the courts. These organisations act independently within the limits of their staff and financial resources.

The future institution of the human rights Ombudsman is expected to help to protect fundamental rights and freedoms of natural persons and legal entities. The Ombudsman should be an independent organ, to be appointed by Parliament in the beginning of 2002. Its creation should be monitored.

### 3. *Implementing performance*

Slovakia has made further progress in the field of respect of human rights but the actual situation still needs careful attention. As regards the right to have a fair trial without unreasonable delay, from 1 January 2002, the Constitutional Court will be able to award 'just pecuniary satisfaction' to the person whose fundamental rights and freedoms have been violated. This is expected to reduce

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the number of cases being brought to the European Court of Human Rights<sup>1</sup>. As a remedy will now also be available for cases of 'failure to act', the number of unreasonable delays in legal proceedings is expected to decrease.

With regard to detention before expulsion, the police can keep aliens in detention during 30 days without possible intervention of any judicial authority. This is clearly against the *acquis* (ECHR Art 5 §4.)<sup>2</sup>. The Law doesn't define the expulsion procedure itself, merely saying that "Deportation of a foreigner is performed by a police section." There is no suspensive appeal, and therefore the principle of non-refoulement is implemented by police alone.

Several reports mention ill-treatment by police. The Roma-minority is not always be effectively protected by the police and there are cases of police discrimination. The situation may improve now that a commissioner for Roma-affairs has been appointed; one of the Commissioners key priorities is to improve communication with the concerned state administrative and regional bodies. The government has publicly condemned incidents of police brutality. However, it remains a question whether the government can effectively monitor the situation, especially in regions outside the capital. In the summer of 2001, the government started for the first time criminal proceedings against police involved in incidents against Roma. Also, the new Interior Minister has made it clear to the police that they should take a tougher attitude against (often racially motivated) violence from skinheads. Further, attention must be given to the increasing flow of asylum seekers, often of Afghan origin, particularly after the events of 11 September.

## *Summary*

Slovakia has ratified all the relevant human rights related instruments and has launched several initiatives in 2001 which should improve further legal protection of human rights. Problems in the field of human rights are not related to the current legal framework, but to its implementation in practice.

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<sup>1</sup> Between September 1999 and December 2001, the Court in Strasbourg has passed judgments on 18 cases in relation to the Slovak Republic. 10 of these were sentences on violation of Art. 5 and 6 and 7 were amicable settlements.

<sup>2</sup> Before effective deportation, illegal foreigners may be detained up to 30 days, in the Police Center in Medved'ov, by police order. An Amendment of 1997 has provided for an appeal, which however remains an administrative one. Slovaks reply that prosecutors, in the framework of their normal work, check the premises, but this is insufficient : ECHR Art 5 par 4 reads: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

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There are various bodies and organisations helping the socially weaker to receive the necessary legal aid free of charge and the future institution of the Ombudsman should further play its role in guaranteeing effective implementation of the principles of the rule of law.

As to detention before expulsion, the police can keep aliens in detention during 30 days without possible intervention of any judicial authority. This is clearly against the *acquis*. There are several reports on ill-treatment and lack of effective protection and even discrimination by the police. This concerns in particular Roma-members and other ethnic minorities. The behaviour of police might improve after the appointment in 2001 of the Commissioner for Roma issues, the increased monitoring by the government and the efforts undertaken by the new Minister of Interior. Both these developments, as well as the growing group of vulnerable asylum seekers, needs further attention.

## G. Corruption

### 1. *Legislation and relevant international instruments*

Slovakia has ratified the Criminal Law Convention on Corruption and signed the Civil Law Convention on Corruption. Its ratification is expected only after re-codification of the Civil Code.

Slovakia has ratified the OECD Convention. Amendment No. 253/2001 Coll. to the Criminal Code, which came into effect on 1 August 2001, specifies the criminal offences of bribery in conformity with the requirements of the OECD working group for bribery. Under the amendment, also giving a bribe earmarked for a third person is a criminal offence. The amendment unified and tightened penalties for domestic and foreign public officials.



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Corruption in the civilian sector, passive and active, is punishable since 1999 as a criminal offence. Unlike under the Joint Action of 22/12/1998 on Corruption in the Private Sector or the Criminal Law Convention on Corruption, the relevant provisions of the Criminal Code<sup>1</sup> do not apply solely to business activities. However, they do not sanction the request for or promise of an undue advantage and only provide protection against the breach of some duties. The current law will, therefore, be further amended in the process of re-codification of the Criminal Code, which will include specific provisions on the criminal liability of legal persons for this type of crime<sup>2</sup>. The recodification is due to enter into force in 2003.

As to domestic legislation, the Freedom of Information Act which entered into force on 1 January 2001 is one of the core elements of the National Program for the Fight against Corruption and enables access to 'all information that is not confidential'. According to several organisations<sup>3</sup>, the Government and other state administration bodies had not prepared themselves sufficiently to carry out the tasks included in the law. Shortly before it came into effect, local authorities were given a guide on how to keep various kinds of information secret. This guide -prepared by a member of the Legislative Council of the Government- is said by legal experts to breach the Constitution in several of its recommendations (e.g. on concealing statistical and registration data about the community, including reports and data on its financial accounts).

The Law on Conflicts of Interest sets limits on the public and private sector activities of public officials and higher-level civil servants. However, according to experts, the law does not actually prevent conflicts of interest because public figures can relatively easily circumvent it by transferring business interests to their closest relatives. The law also requires constitutional officials and higher civil servants to submit annual disclosures to the parliamentary Conflict of Interest Committee. However, public control over enforcement of the law is hindered because the disclosures are not available to the public. Another problem is that its applicability is limited to higher-level civil servants. The lack of possibilities to prosecute also low ranking officials has been recognised as one of the main deficiencies in the fight against corruption.

The financing of political parties remains one of Slovakia's most serious corruption-related problems. In October 2000, the Parliament passed an amendment to the Law on Political Parties

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<sup>1</sup> Sections 160-161

<sup>2</sup> non-criminal liability of legal persons for active bribery in relation to unfair competition is regulated by the Commercial Code

<sup>3</sup> Citizen and Democracy Foundation, Transparency International, the Open Society Foundation and two other NGOs

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which, on the one hand, improved public control over party financing but on the other failed to increase the insufficient and ineffective sanctions for violating the law.

## 2. *National anti-corruption programmes and strategies*

Corruption continues to be a major problem in Slovakia. In June 2000 the National Program for the Fight against Corruption was approved and on 22 November, the Government approved the Action Plans elaborated by the Ministries whilst at the same time stipulating that certain activities be pursued by NGO's; this led to establishment of the Steering Committee on Combating Corruption. On 14 June 2001 however, its co-ordinator, the head of the Justice Ministry Office, resigned out of protest against intransparent and unethical behaviour of public authorities.<sup>1</sup>

On 15 August 2001, a first assessment of the Action Plans was presented, according to which, although half of the tasks had been fulfilled, only 2/3 of total tasks would contribute to the fight against corruption, while the remaining 1/3 would not. And although a second Action Plan is currently under preparation, according to experts, bureaucrats have already hijacked implementation of the national program (e.g. by stalling).

The (Governmental) Central Co-ordinating Unit for the Fight against Corruption (established December 2000), responsible for planning and coordinating measures and general oversight, provided the following statistics: 116 corruption cases were prosecuted as criminal offences in 2000, which is more than double the figure recorded in 1999 (50 cases). According to surveys, two thirds of the population have personal experience with corruption

In the Audit of Central State Administration, problems of conflict of interest, "politicisation" of economic life, insufficient internal and external control mechanisms and limited law enforcement are magnified by insufficient transparency with regard to the activities of state organs. Most of these resist a clear division of roles and responsibilities. The current system also does not contain any incentive to use public funds sparingly but efficiently.

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<sup>1</sup> PM Dzurinda and dep. PM Miklos did not take any action against the DG of the state-owned gas distribution company Slovensky Plynarensky Priemysel (SPP), who acquired a luxury apartment in Bratislava under unclear circumstances for just 1647 SKK (1 Euro is around 42 SKK).



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## 3. *Current trends*

### a) Border Management

*Corruption* is a serious problem also inside the Border and Aliens Police. Several directors were fired or transferred in 1998 because of "irregularities". In 2000, some border police officers were found guilty of taking bribes. Small scale bribery is said to be very common at the border crossing points, where Aliens Police and customs are said to be easy to bribe. The susceptibility to bribery of the Aliens and Border Police is a well known fact in Slovak police circles. Discipline among personnel is not the best possible. The current local recruiting system also encourage nepotism.

### b) Immigration/Visa

The whole matter of migration is in the hands of police, which enjoys wide discretionary powers. There is not much information on corruption in the field of admission: in fact, currently Slovakia is rather a transit country, but this is likely to change. Police bodies in charge of issuing (national) documents have better reputation than others, according to the World Bank study. Corruption seems rather widespread when it comes to the fight against illegal immigration. Low wages (members of the police force have 90€/ month and no social security, because they only get short term contracts.) may help for that, as well as legislation which provides that "Delicts according to this Law (on the Stay of foreigners) are negotiated by police stations" and "Fines for delicts are imposed and collected by police stations", which leaves much room for corruption. The fact is also that judgements against traffickers are weak and rare.

### c) Police and customs

The Slovak authorities are aware of the fact that the police are one of the public institutions most seriously affected by corruption, and the "Section for Control and Inspection Services", composed of 166 officers -law graduates, was established 1.12.2000 within the Ministry of the Interior. It includes a department of organised crime and corruption as part of an internal control system of the services within the ministry. It has the power to initiate disciplinary proceedings against police officers and criminal prosecutions. A Project of Suppressing Corruption in the Police Force has been adopted in relation to the programme. Since its creation, the Service has investigated 270 suspected officers, formulating 230 proposals for disciplinary or criminal action (56 on corruption, 25 conc."top-level" officers, 113 cases of abuse of power, 21 of taking bribes, 7 thefts, 27 frauds, 7 extortions and 12 cases of money laundering).

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Public opinion is buttressed by actual experience: both visitors and Slovaks report paying bribes to police officers or suffering from attempts to extort bribes.

The most important cases of corruption among public officials currently under investigation are related to the previous Meciar administration. These cases include privatization scandals between 1994 to 1998. Among the most high-profile suspects of alleged corruption are former interior minister Gustav Krajci, former head of the National Property Fund Stefan Gavornik, former privatisation minister Peter Bisak, and former intelligence chief Ivan Lexa.<sup>1</sup>

Regarding customs, the Customs Administration adopted its „Action Plan of Fight Against Corruption in Slovak Customs Administration“, which identifies a number of measures which have in part already been taken (e.g. new Customs Act, strengthening of position and powers customs authorities, regulation of relationship customs administration - declarants, transparency of decision-making proces, no more exceptions to general rules, less personal influence on the decision-making process, publication of efficiency of expenditure of funds for public procurement, enhancing of controls designed to ascertain the correctness and accuracy of customs proceedings, severe penalties for violation of work discipline etc.). Further implementation and actual effects of this Action Plan will be monitored.

## d) Justice

Corruption and bribery<sup>2</sup> within the judiciary remains a serious problem (viz. Ch. Justice). The legal community openly admits that to process the cases, 'informal incentives' are needed for both judges and court staff<sup>3</sup>. They see primarily the lack of personal accountability on the part of the judges as the cause of their underperformance and low productivity of the courts. In addition, the system of disciplining judges seems to be relatively cumbersome.

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<sup>1</sup> Krajci was accused of abuse of office, falsifying documents and taking bribes, but legal proceedings against him were lifted in September 2000 on the grounds that the amnesty he had received from former Prime Minister Meciar could not be overturned. Gavornik was accused of taking a SKK 15 million (\$326,000) bribe from Magnatech in order to conclude the purchase of a Slovak chernical company. Bisak was charged with irregularities in connection with the privatisation of Bratislava's electrical system. And Lexa, prosecuted for his alleged involvement in the 1995 kidnapping of former President Kovac's son, has disappeared. The Lexa case drew attention to the existence of a transnational crime ring led by Jozef Rohac, a Slovak who has been linked to the murder of several witnesses to the killing.

<sup>2</sup> viz. Analysis Corruption for numbers

<sup>3</sup> either to be registered in the Commercial Register within the regular time period, to have an 'approachable trustee appointed or to speed up or get the 'right' decision in a litigation (divorce, property etc.)

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According to the Association of Judges, corruption can be overcome only through 'systemic' reform. Further, simplification of procedures and the introduction of automatic mechanisms for the assignment of cases in courts are necessary. Indeed since 2000, the 'Mail Room-Registers' system ensuring random computer allocation of cases to judges as well as electronic circulation of documents in civil and commercial matters has been tried out. As it proved to be highly efficient and an effective measure in the fight against corruption, it will be established in all courts in 2002. The system is further expected to speed up the procedure as such, thereby reducing the risk of bribes being paid. Another step in the right direction is the obligation for all judges to present -each year- a written statement of their compliance with the condition of incompatibility of functions, plus a property statement.

#### 4. *International organisations*

In the 2001 Transparency International Corruption Perception Index, Slovakia ranks 51 (with a score of 3.7), well behind its partners in the Visegrad group: Hungary (31), Czech Republic (47) and Poland (44). TIS (Transparency International Slovakia) further considers the issuing of lucrative, non-transparent privatisation decisions to the benefit of officials' relatives the possibly most harmful form of corruption, since such practices institutionalise corruption.

According to the survey of Integra/ USAID, ("The problem of corruption in SME's in Slovakia"), it is evident that SME's are struggling with the many faces that corruption takes in the region e.g. requests for bribes by public officials for licenses, kick-backs on contracts, extortion by organised crime, tax evasion, non-payment by large companies favoured by the government, and uneven treatment by tax officials, etc. 80.4 % of those inquired declared that the problem of corruption is very serious in Slovakia. In response to the question „What , in your opinion, is the greatest problem in doing business?“, most respondents answered „lobbying and protectionism“.

An analysis of the reasons for the presence of corruption in society has shown that the majority of those surveyed put in the first place excessive administration and the related need for many approvals and permits. Most respondents see the core of the problem in system insufficiency and not in a decline in morality. Respondents identified the reasons for corrupt conduct, according to priority, as follows:

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-Known cases of corruption of high state officials that are not solved or punished; thus giving a bad example for others

- Suspicion of corruption of politicians, investigators and judges does not give any guarantee to the person lodging a complaint that the criminal act will be punished. There is a fear that perhaps the only person that will have problems because of it will be the one making the complaint

- Vague and ambiguous rules in decisions by officials, arbitrary decisions delays for approvals and allocation of subsidies, grants and orders.

The highest incidence of bad experience is with vehicle registration and the (State Technical Inspection) STK. The most common experience is the necessity to use the influence of friends and relatives in processing administrative procedures. The survey shows that penetration of corruption in many spheres of business in the Slovak Republic represents a great problem for most businessmen.

## III. CONCLUSIONS

### A. Border security

The border management system as well as the whole internal security system in Slovakia is under preparation and in transition. The Border security system suffers from a lack of legal powers in some areas, deficient administrative structures and poor implementation. Current legal powers do not fully allow border authorities to carry out border checks according to Schengen requirements and the border police has no real role in investigations. The newly reorganised Border and Aliens police (BAP) has acquired a better position but still does not have all necessary resources at its disposal whilst being strongly dependent on the general police. At local level, co-operation between different units is difficult or at least highly inefficient. Lack of both sophisticated and basic equipment, of a proper commanding and control system and of specially trained staff, has a clear impact on implementation. The Slovak - Czech border is still very porous and is therefore used as a transit road towards Austria and Germany and other EU countries.

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Slovakia started to improve its border security system relatively late and, at first, without a clear strategy and point of gravity. There was no specialised organisation responsible for border security and therefore this area was not highly prioritised in any plans - border control was just a secondary task of the general police. The real change occurred only last year (2001) when some important structural changes were made and a more unified and independent border and aliens police were created. This work has been very difficult due to strong resistance inside the general police forces. Now, for the first time, there is one organisation, fledgling and still part of the general police forces, in principle able to concentrate on improving the border security system and whose main task is border management.

Reorganisation of the BAP is a good step towards a more efficient and consistent border security system. The creation of the specialised border police within the general police will not have any added value if this organisation does not have full competence and its own resources to carry out its work. There is a need to clarify the relationship between the Police Presidium and the BAP and between the regional police and regional BAP units. The BAP should have all necessary resources at its disposal and bureaucratic barriers should be diminished. Within the BAP, there is an urgent need to improve co-operation between the units responsible for border checks and those carrying out border surveillance. It is also evident that all elements of the chosen strategy should be put into force, meaning that the border security system should cover pre-frontier actions, wider co-operation between other border services and immigration control inside the country. Many of these elements exist but they are not yet actually functional and effective and therefore it is of utmost importance to continue towards establishing comprehensive border security system and to ensure that all decisions are carried out in everyday practice.

## **B. Migration**

Visa policy is practically aligned - even though the regime for "Transcarpathian Ukraine" will need to be scrutinised when the time comes-, consulates have reached their "cruising speed" and the furnishing of equipment is ongoing. Legislation on aliens, which lacked a number of major acquisition requirements, has been aligned with the Acquis in December 2001, with several

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exceptions concerning notably the regime of foreign "Slovaks living abroad", the financial conditions for access to first permits, and the regime of detention at the border. Its implementation after entry into force on 1 April 2002, will require all the more monitoring since legislation and practice left much discretion to the police in these fields.

Inside this major transit country, the fight against illegal immigration suffers from a lack of means and training, from lack of or weak penalties for basic migration-related crimes, from loose practice engaged in by police and justice and from sometimes weak co-operation with Ukraine and even Hungary.

Beyond the existence of a real willingness to make progress in these areas, as demonstrated by the issuing of visas and the plans for new passports, the late updating of the ancient Law on Stay of Foreigners is the main reason for these shortcomings, as well as, maybe, collective indulgence with/leniency towards illegal immigration. Slovakia will however, even though almost surrounded by future "internal borders", remain a major transit country towards western countries if nothing more is undertaken.

Slovakia should adjust its newly adopted legislation and implement it. The newly created national headquarters should receive more means, and should command and control the actions of the local police. All authorities involved should punish the (generally Slovak) traffickers with deterrent measures. Close co-operation must be maintained with Hungary and Ukraine, with the help of the EU if necessary, in order to facilitate readmission to these countries of origin.

Finally, the number of Slovak citizens asking for asylum in the EU diminished in 2001.

## C. Asylum

The still existing shortcomings in legislation on asylum (notably the appeal procedure) are well-known by Slovak authorities who have planned a new Law, to be adopted end 2002. The abolition in 2000 of the major former deficiency (the time-limit for applying) has already lead to an immediate outburst in applications, the trend now being 8000 a year.



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This outburst has led to overcrowded centres and has revealed the insufficiency of means. It has also led to a very low recognition ratio, even when taking into account the massive departure of applicants before the end of the procedure. Yet Slovakia will be a "responsible state" after implementation of the Dublin Convention upon accession, and therefore has to adapt its means to receive and process such numbers of cases and recognise as refugees those who deserve it.

Slovakia should modify its legislation as planned, continue to treat applicants as well as recognised refugees properly -as it did in the past-, hence adjust its means of housing and staffing, and implement the accelerated procedures it has established, efficiently.

## **D. Police and customs**

The basic regulatory and judicial framework for policing is more or less in place but its actual implementation and above all the effects of the announced amendments must be monitored. The main problem here lies in the fact that all present draft amendments, subject as they are to the political will to push forward, are presently, according to MS embassies, in danger of being suspended: their scheduled treatment and/or adoption appears highly unlikely in light of the upcoming elections in autumn '02.

There is an unclear division of competencies leading to overlaps thanks to mistrust, poor co-operation etc. and political interference occurs thanks to the fact that the Police Force Presidium (whose president is appointed by Government) is organisationally positioned between the criminal police and the prosecutor, allowing for a significant degree of interference by the Interior Minister through his control over the appointment or dismissal of individual investigators. The new draft Code of Criminal Procedure should deal with these problems but its timing/adoption is unclear for the same reasons as stated above.

Both the police and the Customs, who as a consequence of various proposed legislative revisions, would be attributed additional and specialised tasks, at present lack the necessary knowledge and experience. Training in general, despite formally existing facilities, is not allocated funding or technical equipment.

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Staff turnover within the police continues to be high and salaries low; there is no concrete strategy (planned) to improve the economical situation or career prospects of the police.

International co-operation suffers as a consequence of poor internal communication and co-operation, in turn the consequence of distrust, assumptions of corruption, overlaps and unclear competencies, although here too the newly established (January '01) Office of International Police Co-operation may bring improvement.

(Violent) organised crime is on the increase (trafficking in human beings, drugs and vehicles as well as economic crime, racketeering), although the total number of registered offences decreased. Main problems encountered in the fight against organised crime are the absence of specialised prosecutors, the continued existence of a two-level investigation system (overlaps) and the limited witness-protection measures. Here again, although draft legislation is underway to remedy a number of these problems, the upcoming elections endanger its treatment / adoption as the fight against economic crime appears not to be a political priority at present (MS embassies). Monitoring of these drafts, implementation of the Pre-Accession Pact on Organised Crime and the envisaged establishment of a National Co-ordination Authority for Combating Crime must be closely monitored.

Customs' alignment to the acquis, encountering problems similar to that within the police, must be monitored (treatment/adoption of new draft legislation, training, absence of a risk-analysis- and of an appropriate IT system, practical co-operation with other law-enforcement authorities, etc.).

## E. Justice

Slovakia has not yet fully aligned its legislation to the *acquis*. The administrative capacity of the judiciary is currently insufficient -overloaded judges, lack of personnel to take over their tasks, case backlogs, inconsistent and insufficient specialised training and bribability of judges and court personnel are the main visible weaknesses. Its functioning is characterised by long delays, unpredictability of outcomes/unfair decisions, complex procedures, overlap of functions and insufficient access to justice of the citizen. More information is needed on the quality of enforcement of judgments/performance of bailiffs and on judicial co-operation in criminal matters with Member States in practice.

Over the last ten years, Slovakia has made significant efforts to align its legislation, to ratify the relevant conventions and adopt the necessary implementing legislation. However, efforts have not been concentrated enough on keeping the judiciary informed about the latest changes of the legislation or its interpretation, on how to bring justice closer to the public or on sound management and constant strengthening of the judiciary's independence. As the latter has taken place only recently but legislation has been changing constantly, a disparity seems to have developed between alignment of legislation on the one hand, and its implementation in practice on the other. Also, as problems such as the poor judicial performance and existence of corruption within the judicial system have become more obvious under international attention, only lately the reform of the system, the fight against corruption and better access to justice have become main policy goals.

Slovakia should continue alignment of its legislation to the (new) *acquis*. Legislation strengthening the independence of the data protection authority and of the judiciary should be adopted as planned. Independence of the judiciary in various fields, as well as the role and functioning of the Judicial Council should be monitored. It should further be checked if and how the administrative capacity of the judiciary improves with the -planned- introduction of higher court officials, provision of new equipment and systematic training. As to the implementing performance, the necessary recodification of the different Codes should be stepped up in order to ensure simplification of procedures, speedy resolution of cases and increased quality of court decisions and outcomes. Serious efforts are further needed to improve access to justice, fight corruption and bribery within the judiciary in order to improve public confidence in the system.

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## F. Human rights

Slovakia has ratified all the relevant acquis and is in the process of adopting new legislation on the protection of human rights domestically. Ill-treatment and poor protection/discrimination by police of ethnic minorities remains a source of concern. However, several organisations do exist to guarantee access to (free) legal aid to the socially poor. Moreover, as from 1 January 2002, the situation regarding the right to a fair trial without unreasonable delay should improve.

As to ill-treatment and poor protection by the police, the reasons for the current situation seem to be the lack over the last decade of communication between the police and the government on the issue of Roma and the lack of monitoring and measures taken by both the government and the Ministry of the Interior.

By its ratification of the relevant acquis and continuous preparation of new domestic legislation, Slovakia recognises the need improve protection of human rights and fundamental freedoms in practice and the need to set up related institutions. With undelayed adoption and implementation of the new laws on police and the Ombudsman, Slovakia will take a positive step forward in improving the practical protection of rights and freedom of its citizens. The right to family unification, currently lacking, is likely to be established in 2002 with the adoption of the new Aliens Act. A possible judicial intervention in the detention procedure before expulsion should be created, in accordance with the ECHR Article 5 §4. Further, attention (by media, the government but also the EU) should focus on the behaviour by and the role of the police in general as well as towards Roma and other ethnic minorities and against (racially motivated) attacks by skinheads. The growing group of vulnerable asylum seekers -particularly after 11 September 2001- also needs attention.

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## G. Corruption

According to Key Findings of the World Bank/USAID's survey of corruption in Slovakia, corruption in Slovakia is perceived (and actually experienced) as widespread and especially problematic in health, justice, the National Property Fund (real estate), customs, police and ministries. Overall, corruption is more widespread than ten years ago; it remains a significant problem (across the board, at all levels of society and administration), that must be addressed.

The aim of the National Programme for Combating Corruption was to establish a concept of combating corruption and to define methods that might assist in this fight. The resulting Action Plan for Combating Corruption was expected to be finalised in the second half of 2000. Without the proper legislative and judicial framework however, both ordinary citizens and SME's etc. remain helpless in the face of corruption; both bottom up and top down approaches are necessary.

In the first place, repressive mechanisms (i.e. police, courts, public prosecutors, various audits and controls etc.), however limited, are necessary to react to the existing problem. The problem here is however that confidence in these institutions is very low (precisely as they are considered most corrupt).

Proactive methods on the other hand could include active influencing of the economic situation. SME's however appear to have little/no experience of effective strategies to deal with corruption-related problems.

It has been suggested that realisation of the following aims would help tackle the problem of corruption effectively: organisation of collective initiatives, creation of a transparent corporate culture, implementation of regular audits, media-sation of the anti-corruption struggle. Moreover, a comprehensive follow-up to the Audit of Central State Administration would also be essential in the fight against corruption.