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REPORT

The Human Rights Protection In Conflict Situations

**by Arne Mavcic
Constitutional Court, Slovenia**

The Human Rights Protection In Conflict Situations

I THE SITUATION IN VIEW OF THE RESPECTING OF FUNDAMENTAL RIGHTS IN THE COUNTRY

Several international observers generally praised the progress achieved by Slovene authorities in the field of reforms since its independence in June 1991, notably the adoption of a democratic *Constitution* in December 1991¹ and its recent amendments to enhance protection of human rights and fundamental freedoms. Generally speaking, the observers also welcomed the fact that the treaties concerning human rights protection are directly enforceable as part of the domestic legal order and that they have been directly enforced by the Supreme Court and the Constitutional Court, and praised several other advances in the area of law and institutional development undertaken by the Slovene Government during the last period.

However, discussing the protection of human rights in Slovenia in details, it is possible to state that various problems continue to recur, and new ones are also appearing. It is about time that we learned that a democratic society means much more than just pluralism – the coexistence of people who come from different cultures or subcultures, or have different lifestyles, who tolerate each other to greater or lesser degree. It means the personal and social choice of two-way relations and cooperation between different social groups and at the same time the rejection of intolerant practices in the everyday and political life of society. It is the striving to achieve an inclusive society which does not marginalise ‘others’, but tries to take advantage of the wealth of differences in order to achieve a new quality of life.

A lifestyle decision, which is based on tolerance, cannot be conceived of as a matter of a benevolent attitude of the majority groups in society towards minorities; the foundations of tolerance come from a respect for human rights. Tolerance does not simply mean passively "putting up with others and people who are different from yourself", but arises from the conviction that one must consistently respect the rights of people exactly as they are: universally accepted (apply to everyone without exception), inalienable (no-one may take them away from anyone for any reason) and indivisible (it is not possible that we would be entitled to some rights and not to others). The relations mutual: advocacy of human rights is a key element of tolerant behaviour; and without the decision to be tolerant it is impossible to achieve a proper level of respect and the exercising of human rights². Unfortunately, even some international observers are extremely concerned about some public manifestations of hate speech and intolerance by some Slovenian politicians. Several observers call for greater responsibility of politicians and media in this regards and for the full respect of the rights and values laid down in *European Convention for the Protection of Human Rights and Fundamental Freedoms* and other international instruments³.

This illustrates a problem which is also common in other areas, where rights which are guaranteed by the *Constitution* or by law can not be exercised in full due to discrepancies between what is declared and what actually exists. Therefore, it is necessary to emphasise that it is not enough for

¹ *Official Gazette* 1991, nr. 33, 1997, nr. 42, 2000, nr. 66, 2003, nr. 24, 2004, nr. 69, 2006, nr. 68.

² HUMAN RIGHTS OMBUDSMAN, Tenth Annual Report 2004, Ljubljana, July 2005; VARUH ČLOVEKOVIH PRAVIC, Enajsto redno poročilo, Ljubljana, junij 2006

³ Follow-up Report on Slovenia (2003-2005), Assessment of the progress made in implementing the recommendations of the Council of Europe Commissioner for Human Rights, Strasbourg, 29 March 2006, CommDH(2006)8, Original version, page 12.

the state only to formally guarantee the special rights of certain group of people, but also that it is their duty to enable them to be exercised effectively in everyday life as well.

II THE USAGE OF THE EUROPEAN STANDARDS

By following the Strasbourg case-law, the framers of the *Constitution* were able to stipulate the necessary safeguards concerning urgent needs of society which allow only for a narrow margin of discretion on the part of State bodies introducing restrictions of human rights and fundamental freedoms.

The *Statute of the Council of Europe* came into force for Slovenia on 14 May 1993 when Slovenia was surrounded by several conflict zones. However, even in that time the efforts of the State were of positive character: to follow the European standards as much as possible and as faithful as possible. The promotion of the human rights protection was one of the then most important issues. The result of such governmental politics was the accelerated ratification of the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter *Convention*). The *Convention* was ratified on 31 May 1994. *The Ratification of the Convention Act* (in respect of ratification also of Article 25, Article 46, *Protocol No. 1*, and *Protocols Nos. 4, 6, 7, 9, and 11*) was published on 13 June 1994 (*Official Gazette RS*, No 33/94) and came into force on the fifteenth day following publication. On 28 June 1994 Slovenia formally ratified the *Convention* in Strasbourg by depositing the appropriate instruments with the Secretary General of the Council of Europe. When ratifying the *Convention* Slovenia made no reservations because new legislation had been prepared following international standards and the *Convention*. It is also interesting to note another evidence of the then Slovenian enthusiasm – that Slovenia was the first member state to ratify *Protocol No. 11*. Slovenia recognized the competence of the European Commission and the jurisdiction of European Court of Human Rights under former Articles 25 and 46 of the *Convention* for an indeterminate period. In addition, the Slovenian declarations included a restriction *ratione temporis*, to the effect that the competence of the Commission and the jurisdiction of Court are recognized only for facts arising after the entry into force of the *Convention* and its *Protocols* with respect to Slovenia on 28 June 1994.

During the early period of the Slovenian transition some decisions of the Slovenian Constitutional Court directly referred to the *Convention* even before it became formally binding for Slovenia.⁴

⁴ Decision No. U-I-98/91 of 10 December 1992 (*Official Gazette RS*, No. 61/92, OdlUS I, 101) The Constitutional Court decided that statutory provisions which allowed administrative organs not to state the reasons for an individual administrative decision made on the basis of discretion and which decreed discretionary decisions in a bylaw are contrary to the legal system of the Republic of Slovenia and cannot be used according to their intention. As one of the reasons for its decision, the Court recalled that Article 13 of the ECHR ensures to everyone an effective legal remedy following the violation of his or her rights and freedoms specified therein. The Court observed that Slovenia had not yet signed and ratified the *Convention*, but considering its desire to join the Council of Europe it would necessarily have to do so, for which reason it was appropriate that Slovenian legislation be adjusted to meet the criteria of the *Convention* as soon as possible.

Ruling No. U-I-48/92 of 11 February 1993 (*Official Gazette RS*, No 12/93, OdlUS II, 15) The Constitutional Court, taking into consideration the case law of the European Court of Human Rights concerning Article 11 of the *Convention* (freedom of association), decided that obligatory association with a chamber of doctors does not constitute a limitation of the constitutional freedom of association guaranteed under Article 42 of the Slovenian Constitution.

The Constitutional Court based its decision on the case-law of the European Court of Human Rights, which, when considering mandatory membership of the *Ordre des Médecins* (medical association) of Belgium, had taken the position that the *Ordre des Médecins* was an institution of public law exercising public control over medical practice. As such, the *Ordre* could not be considered to be an 'association' in the sense of Article 11 of the *Convention*. Mandatory

There is no doubt that Slovenia has been inspired by the same ideals and traditions of freedom and rule of law principles as the framers of the *Convention*. While Slovenia is reintroducing and developing the legal culture of human rights after almost half a century of arrears, it cannot be said that it has no tradition concerning the protection of human rights and fundamental freedoms.

The Slovenian Constitutional Court and the whole system of ordinary courts have been ensuring the conformity of domestic legal provisions with the provisions of the *Convention*. In addition, the provisions of the *Convention* complement national constitutional provisions. Beyond that, the case-law of the European Court of Human Rights is also directly applicable in the decision making process of the Constitutional and other courts in Slovenia. Thus the jurisdiction of the European Court of Human Rights and Slovenian national courts overlap in several ways.

Additionally, consideration of Strasbourg case-law is explicitly determined by the Slovenian national law: The decisions of the European Court of Human Rights are to be directly executed by the competent ordinary courts of the Republic of Slovenia (Article 113 of the *Court Act*).

It was characteristic of Slovenian practice prior to 1991 concerning human rights protection (especially before the Constitutional Court) that, in comparison with Europe, it largely avoided the use of legal principles, even those explicitly included in the text of the *Constitution*. In common with foreign practice, however, the principle of equality greatly predominated among otherwise rarely used principles. Decisions consistently remained within the framework of legalistic (formalistic) argument and no other value references were ever allowed: the Constitutional Court respected the principle of self-restraint and stuck to the presumption of the constitutionality of statutes.

The new *Constitution of the Republic of Slovenia of 1991*, along with the catalogue of classical fundamental rights in combination with the newly defined powers of the Constitutional Court, paved the way for the intensification of its role in this domain. It is considered that the Constitutional Court now has more space for such activity. The Slovenian Constitution contains adequate definitions of rights having the nature of legal principles and thus being sufficiently open to interpretation that they require significant further construction and implementation,⁵ also taking into account the provisions of the *Convention* and the practice of the European Court of Human Rights.

Slovenian constitutional case-law from the period after the introduction of the 1991 *Constitution* comes particularly close to foreign case-law in its approach to fundamental rights. It is necessary to bear in mind that the frequency with which individual rights are invoked before the Constitutional Court mainly depends on what kind of problems appellants place before it.

membership of the *Ordre des Médecins* does not entail any restrictions of the right ensured by Article 11 of the said Convention.

Ruling No. U-I-60/92 of 17 June 1993 (OdlUS II, 54) The Constitutional Court, taking into consideration the case-law of the European Court of Human Rights concerning Article 6 of the Convention (the right to a fair trial), Article 2 of Protocol No. 7 (the right of appeal in criminal matters) and Article 13 of the Convention (the right to an effective remedy) decided that the regulation of legal remedies before the courts of associated labour was not contrary to Article 14 (equality before law), Article 15 (the exercise and restriction of rights) Article 22 (the equal protection of rights), nor Article 25 (the right to a legal remedy).

□ Citation from Pavčnik Marijan, 'Verfassungsauslegung am Beispiel der Grundrechte in der neuen slowenischen Verfassung', WGO Monatshefte für Osteuropäisches Recht, 1993 no. 6, pp. 345-356.

The Constitutional Court now appears to act as the guardian of constitutionality in that it decides not only on the conformity of general legal acts with constitutional provisions (in the sense of the abstract and specific review of general legal acts), but also on constitutional complaints of the violation of human rights and fundamental freedoms by individual acts.⁶ However, it must be admitted that the new *Constitution* slightly limited the still broad possibilities for individuals to challenge general acts. In accordance with this principle, every individual is entitled to file a petition if he or she can prove standing. On the other hand taking into consideration the general compatibility of the Slovenian legal system with the international law on human rights, and in terms of membership in the United Nations and in the Council of Europe, the Republic of Slovenia must permanently comply with the control mechanisms of the applicable international human rights instruments.

Consequently, Slovenia adopted standards of contemporary European legal culture in which it has become normal that national courts are influenced by the case-law of the European Court of Human Rights, thus raising the level of human rights protection.⁷ However, a legal rule and its implementation in everyday practice are two different things. Real, half-real, and often only apparent general interests of society may be extraordinarily strong, especially if they incite national socialist, ideological, or political emotions. At such a time people may forget principles which they had followed until recently, but they still demand an efficient functioning of ordinary courts. Judicial and political independence are almost the sole guarantees against the transformation of law into a tool of some or other ideological and political movement based on impatience.

III SOME TRENDS IN REGARD TO THE WILLINGNESS TO RESPECT AND TO LIMIT THE FUNDAMENTAL RIGHTS IN CONFLICT SITUATIONS

Under Article 63 of the *Constitution* any incitement to national, racial, religious or other discrimination, incitement to violence and war and the inflaming of national, racial, religious or other hatred and intolerance are unconstitutional. The *Constitution* further provides in Article 32 that the right to freedom of movement may be limited by law, but only where this is necessary to ensure the course of criminal proceedings, to prevent the spread of infectious diseases, to protect public order or if the defense of the state so demands, and that entry into the country by aliens, and the duration of their stay in the country, may be limited on the basis of law.

The *Resolution on Strategy of National Security of the Republic of Slovenia* was adopted⁸ as a basic document dealing with the national security issues. The Resolution determines national interests, security risks and sources of threatening of the State, its institutions and citizens as well as guidance, measures and mechanisms in favor of national security.

The National Assembly also adopted the *Declaration on the Joint Fight against Terrorism*⁹, adding its voice to the decision of the international community in a united fight against terrorism and calling for the implementation of concrete measures in this fight. The Government adopted the relevant decisions, imposing on individual government sectors specific activities in the fight against terrorism.

⁶ Paragraph 1 of Article 160 and Article 162 of the Constitution.

⁷ Bavcon, L., 1997, note 7 above, pp. 436-437.

⁸ *Official Gazette* 2001, nr. 56.

⁹ *Official Gazette* 2001, nr. 81.

The *Declaration on Support to the Resolution on Terrorism – Danger for Democracy, Human Rights and the Civil Society; Contribution of National Parliaments to Combating International Terrorism and Abolition of Its Roots with a View to Preserving International Peace and Security* was adopted¹⁰ with the aim to present a support to the *Resolution of the Inter-Parliamentary Union*, adopted at the Marrakech Conference.¹¹ The National Assembly expressed with this declaration the will to join the common efforts, as are determined by the *Resolution*, and will take them into consideration at their work.

Slovenia is a signatory to a number of bilateral and multilateral agreements and conventions relating to the fight against terrorism¹². These legally binding agreements include obligations that Slovenia is implementing with adequate legislative and practical measures. As a member of the United Nations and other international organizations, Slovenia has, in compliance with the obligations derived from its membership in international organizations, the duty to adopt or to cancel restrictive measures against countries, territorial entities, movements, international organizations and persons, if it is required in relation to the implementation of sanctions imposed by the United Nations or associations binding upon the Republic of Slovenia or if they must be adopted as counter-measures in compliance with the international law. Three major conventions are still in the process of ratification.

The *Act amending the Restrictive Measures Act of 2001*¹³) provided for the establishment of the interdepartmental working group for the implementation of restrictive measures and for the monitoring of activities relating to the fight against terrorism. The decision by the Government¹⁴

¹⁰ *Official Gazette* 2002, nr. 50.

¹¹ <http://www.ipu.org/conf-e/107spl.htm>

¹² The list of international instruments in the fight against terrorism, binding upon the Republic of Slovenia:

1. European convention on suppression of terrorism (14 September 2000, *Official Gazette RS-MP* 2000, nr. 27) and the Protocol amending the European Convention on the suppression of terrorism (9 April 2004, *Official Gazette RS-MP* 2004, nr. 14)
2. International Convention for the Suppression of the Financing of Terrorism (15 July 2004, *Official Gazette RS-MP* 2004, nr. 21)
3. International Convention for the Suppression of Terrorist Bombings (18 December 2002, *Official Gazette RS-MP* 2003, nr. 1). Slovenia also concluded a number of bilateral agreements concerning terrorist acts.
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (New York, 14 December 1973), <http://www.untreaty.un.org/English/Terrorism.asp>
5. International Convention Against the Taking of Hostages (New York, 17 December 1979), <http://www.untreaty.un.org/English/Terrorism.asp>
6. International Convention for the Suppression of Terrorist Bombing (New York, 15 December 1997), <http://www.untreaty.un.org/English/Terrorism.asp>
7. Convention on Offences and Certain Other Acts Committed on Board Aircraft (Tokyo, 14 September 1963), <http://www.icao.int/en/leb/>
8. Convention for the Suppression of Unlawful Seizure of Aircraft (the Hague, 16 December 1970), <http://www.icao.int/icao/en/leb/>
9. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (Montreal, 23 September 1971), <http://www.icao.int/en/leb/>
10. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971 (Montreal, 24 February 1988), <http://www.icao.int/en/leb/>
11. Convention on the Marking of Plastic Explosives for the Purpose of Detection (Montreal, 1 March 1991), <http://www.icao.int/en/leb/>
12. Convention on the Physical Protection of Nuclear Material (Vienna, 3 March 1980), <http://www.iaea.org/worldatom/Documents/Legal/cppn.shtml>
13. European Convention on the Suppression of Terrorism (Strasbourg, 27 January 1977), <http://www.conventions.coe.int>

¹³ http://zakonodaja.gov.si/rpsi/r07/predpis_ZAKON3117.html

¹⁴ Nr. 026-49/2003-1 of 23 January 2003.

specifies in detail its composition and tasks. The activity of the interdepartmental working group is coordinated by the Ministry of Foreign Affairs. For its performance, the provisions of the *Governmental Rules of Procedure* are applied *mutatis mutandis*.

According to Article 15 of the *Constitution*, human rights and fundamental freedoms may exceptionally be temporarily suspended or restricted during a war and state of emergency. Human rights and fundamental freedoms may be suspended or restricted only for the duration of the war or state of emergency (Article 16 of the *Constitution*), but only to the extent required by such circumstances and inasmuch as the measures adopted do not create inequality based solely on race, national origin, sex, language, religion, political or other conviction, material standing, birth, education, social status or any other personal circumstance. However, temporary suspension or restriction of the following rights is never allowed: inviolability of human life, prohibition of torture, protection of human personality and dignity, presumption of innocence, principle of legality in criminal law, legal guarantees in criminal proceedings and the freedom of conscience (Articles 17, 18, 21, 27, 28, 29 and 41 of the *Constitution*).

The provision of Article 63 of the *Constitution*, described in the answer to question No. 1, regulates a specific viewpoint of the freedom of expression¹⁵. Such explicit and *a priori* prohibition of only specific contents of expression – namely the incitement to discrimination, the inflaming of hatred and intolerance and the incitement to violence and war – shows that from all possible contents, these are considered to be the most harmful. The contents, which are forbidden by Article 63, are indirectly forbidden in Article 17 of the *Convention*.

Apart from the *Declarations*, adopted by the National Assembly, there is no general approach. Rather, certain existing laws¹⁶ were amended in the recent years¹⁷.

There are also several relevant provisions of the *Aliens Act*¹⁸, e.g. Article 9 (Refusal of Entry into the Republic of Slovenia): Irrespective of the fulfillment of the general conditions stipulated by this law, an alien shall be refused entry into the country if:

- there are reasonable grounds to suspect that he/she may pose a threat to public order and security or international relations of the Republic of Slovenia, or if there is a suspicion that his/her presence in the country is associated with the carrying-out of terrorist or other violent activities, illegal intelligence activities, drug possession and trafficking, or the carrying-out of other criminal activities;
- The arrival of the alien in the Republic of Slovenia is in conflict with the international commitments undertaken by the Republic of Slovenia.

(2) The decision to refuse entry shall be taken by the border control authority on the basis of an instruction which, with respect to the existence of the reasons specified in Paragraph 1 of this Article, shall be issued by the minister responsible for internal affairs.

¹⁵ Article 39 of the Constitution determines that the freedom of expression of thought, freedom of speech and public appearance, of the press and other forms of public communication and expression shall be guaranteed. Everyone may freely collect, receive and disseminate information and opinions.

¹⁶ Such as the Criminal Code of the Republic of Slovenia, Official Gazette nr. 63/94.

¹⁷ E.g. In the Chapter on the Criminal Offences Against the Security of the Republic of Slovenia and its Constitutional Order: Armed Rebellion (Article 354); terrorism (Article 355); Diversion (Article 356); Incitement to Violent Change of the Constitutional Order (Article 360); Criminal Association for Purposes of Perpetrating Criminal Offences Against the Constitutional Order and Security of the Republic of Slovenia (Article 361). In the Chapter on the Criminal Offences against Humanity and International Law: International Terrorism (Article 388); Funding of Terrorist Acts (Article 389); Endangering Persons under International Protection (Article 389); Taking of Hostages (Article 390).

¹⁸ *Official Gazette* 1999, nr. 61.

According to Article 43 (Refusal to Issue a Residence Permit) a permit for residence in the Republic of Slovenia shall not be issued to an alien if there are reasonable grounds to suspect that the alien may pose a threat to public order and security, or to the international relations of the Republic of Slovenia, or if it is suspected that his/her residence in the country will be linked to the execution of terrorist or other violent activities, illegal intelligence activities, drug trafficking or the performance of other criminal activity. In such case, the competent authority shall not be obliged to explain the reasons for the refusal.

According to Article 24 of the *Intelligence and Security Agency Act*¹⁹ at the request of the Director of the Agency, the interception of letters and other mail, and the interception and recording of telecommunications in the Republic of Slovenia, shall be authorized by written order issued for each individual case by the President of the District Court in which area are located Agency's headquarters, if it is very likely that the security of the state is at risk, which shall be evident from:

- covert action against the sovereignty, independence, territorial integrity and strategic interests of the Republic of Slovenia;
- covert action, plans and preparations to carry out international terrorist operations against the Republic of Slovenia and other acts of violence against a state body and public officials in the Republic of Slovenia and abroad;
- the communication of data and documents classified in the Republic of Slovenia as a state secret to an unauthorized person abroad;
- preparations for armed aggression against the Republic of Slovenia;
- The intelligence activities of individuals, organizations and groups to the advantage of foreign states and entities.

According to Article 51c of the *Police Act*²⁰ to reinstate the public order, when it is severely or massively violated, the police may, besides the coercive measures determined in Article 51b use gas agents and other assibilation measures, water jet, cavalry and special motorized vehicles. Gas agents and other pacification measures may also be used in cases of terrorist acts and hijacks or for the arrest of a person who resists attacks or otherwise obstructs the fulfillment of the task or directly endangers the life of the policeman or someone else.

The *European Arrest Warrant Act*²¹ has a relevant provision in Article 11: Surrender is admissible, when a warrant was issued due to an offence, for which in the country where the warrant was issued, a prison sentence of at least one year or, in case of execution of prison sentence, four months is prescribed and the act, for which surrender is sought, is also punishable under domestic criminal law (double criminal liability). Surrender is also admissible, when the requirement of double criminal liability is not fulfilled, when the issuing judicial authority issued the warrant due to an offence, for which a prison sentence of at least 3 years is prescribed and according to the law of the issuing Member State is determined as one of the types of offences, listed in Article 11, which include terrorism.

The *Act on Public Assembly*²² stipulates in Article 6 (Limitations) as follows: It is prohibited to organize gatherings or events with the intention to commit criminal offences or promote the commission of criminal offences or with the intention to cause violence, disturb the public order or obstruct public traffic. It is prohibited to organize gatherings or events in the open air in the immediate vicinity of buildings which are protected according to special regulations if the gathering

¹⁹ *Official Gazette* 1999, nr. 23 and 2003, nr. 126.

²⁰ *Official Gazette* 1998, nr. 49.

²¹ *Official Gazette* 2004, nr. 37.

²² *Official Gazette* 2002, nr. 59.

or event could interfere with the protection of such buildings. The competent body shall prohibit a gathering or event also in the event that the organizer has not demonstrated sufficient measures for ensuring order, the protection of the lives and health of participants and other persons, the protection of property, public traffic safety, the protection of the environment, the proper condition of equipment or the safe usage of objects which could threaten the life, health or property of people, if the usage of the place of an event is prohibited by the decision of a state body or if the minister responsible for health within the limits of the statutorily determined authority prohibits the assembly of people in particular public places.

According to Article 156 of the *Code of Obligations*²³ the state or the person that should have prevented such according to regulations shall be liable for damage caused by death or physical injury as a result of acts of terrorism or during public demonstrations and events.

With the *Act Regulating the Guarantee of the Republic of Slovenia for Liabilities of the National Air Carrier to Cover Damages Resulting from War and Terrorist Actions and on Terms of the Guarantee for Foreign Air Carriers*²⁴, the Republic of Slovenia assumed to guarantee for the obligations of the national air carrier in respect of the liabilities to cover damages to third persons in case of war or terrorism and also determined the conditions on the coverage of such damages for foreign air carriers, who use Slovenian air space.

The *War Disabled Act*²⁵ includes among the war disabled also civilian persons, who are citizens of the Republic of Slovenia and suffered an impairment of health in a terrorist attack on the Republic of Slovenia on its territory or abroad.

The *Compulsory Motor Third-Party Liability Act*²⁶ provides that there is no right to compensation from the motor third-party liability, when the damages arose due to terrorist Acts.

There are no special researches made on the national level, however it was the 4th Regional Ministerial Conference on Illegal Migrations and Related Crime hosted by Slovenia, in Brdo near Kranj²⁷. The purpose of the conference was to enhance and upgrade regional cooperation in managing migration flows and to prevent various forms of related crime and potential new sources of risk emerging in countries on the so-called Balkan Route. A key element that made such upgrading possible was, beside an awareness of responsibility on the part of participating countries, also the ability of countries of South-Eastern Europe to take on the EU acquis and to put into effect the common standards of the European security policy. Regional forms of security cooperation and association represent an effective mechanism for accelerating this process. Ministers and Heads of Delegations were of the opinion that the mechanism of coordination and data exchange may also serve to efficiently reduce the danger of new sources and forms of risks such as international terrorism, whose financial sources may be found in different forms of organised crime. Ministers and Heads of Delegations expressed their expectations to see the establishment of the early-warning system at the bilateral and regional levels in cases of detected developments in the region that have bearing on the prevention of illegal migrations and related crime.

²³ *Official Gazette* 2001, nr. 83.

²⁴ *Official Gazette* 2001, nr. 79.

²⁵ *Official Gazette* 1995, nr. 63.

²⁶ *Official Gazette* 1994, nr. 17.

²⁷ On 14th September 2004.

On the basis of the *Defense Act*²⁸ the *Resolution on the General Long-term Program of the Development and Equipment of the Slovenian Army*²⁹ was adopted by the National Assembly. Among others, the mission of the Slovenian Army shall be operations of so-called crisis response (the preventive diplomacy, the prevention of conflicts and keeping of peace) as well as the fight against the international terrorism and other forms of a treat to peace.

Additionally, a support to the system of protection, rescue and help in order to provide for security and welfare of citizens of the Republic of Slovenia includes also the cooperation with the police along with the prevention of the fight against terrorism. Among some preferential topics regarding developmental and research activities until 2015, the following topic shall also be explored: Defense against terrorism, protection of people and environment. The respective preferential issues involve of different forms of terrorism and analysis of the consequences of chemical, biological and Radiological terrorism.

Everything has been becoming to easily understandable: if one wants to prevent terrorist attacks, the police should have more powers. Therefore we will have probably a reservation only in a form of fear of a state established under the veil of antiterrorism which may get an insight into our privacy³⁰. It has been emphasized that the citizens shall be protected from the terrorism – the State has an opportunity to commit this by abolition, limitation and/or restriction of citizen's rights. However, such measures can be also oriented to anyone who resists a *status quo*. There are some ideas that the citizen's rights should be adjusted to the threatening of the national security. With other words: from now on, the citizen's rights should be in inverse ration with the national security. The national security will be everything – the citizen's rights will be nothing. Until very recently, the citizen's rights were everything.

Forms of a traditional democracy are simply not able anymore to command new global processes – *the migration of people, the anti-globalization movement and the internet revolution*. Therefore it is not a surprise that in reality the "Anti-terrorism Laws" are repressive laws that aim at immigrants, anti-globalization and internet. "Anti-terrorism Laws" are going to protect the political establishment of the new world order from more and more anxious nation that is being cut piece by piece, corrode and broken up by growing social polarization. And all that will be left to it is allergy to freedom.³¹

In the Slovenian system as well in case of violation of human rights only legal remedies can be the only effective mean to fight against violations, which originate first of all from the position of power, and against tendencies towards the abuse of such power. If legal remedies that are used to exercise this fight were everything, that is possible to use for the protection of human rights, this existent means would be effective enough. The field of human rights protection would resemble an ideal condition that would be led exclusively by the purposes of the protection of human rights and not by any others, above all political purposes. But we are rather slowly getting ourselves out of vice of power that is still stronger than (legal) truth. With every change of power we move couple of steps back from where we are and are left at the tender mercy of power again for some time.

²⁸ *Official Gazette* 1994, nr. 82, 1997, nr. 44, 1997, nr. 87, 1998, nr. 13, 2001, nr. 87, 2002, nr. 47, 2002, nr. 67, 2002, nr. 110, 2004, nr. 40.

²⁹ *Official Gazette*, 2004, nr. 89.

³⁰ Bernard Nežmah, Modrost antiterorizma, O izbrisanih teroristih, Mladina, 25. julij 2005, <http://www.mladina.si/tehdnik/>

³¹ Štefančič Marcel, Under the pretext of war against terrorism, Mladina, 8/10/2001, <http://www.mladina.si/tehdnik/200140/clanek/teror>. ŠTEFANČIČ, Marcel, Pod pretvezo vojne proti terorizmu, Mladina, 8. oktober 2001, <http://www.mladina.si/tehdnik/200140/clanek/teror>

The fact is, that only the threat of returning into the world in which the power was not only unlimited but also without a competition, provoke fear and opposition that is in the same way common to all than desire on power. To obviate the opposition to that power, when it shows its real face, it is held back by those who stand up for it with an ideology that is harmonized with requests of morality and justice. However this ideology is called. Therefore the legal content that merely reflects in an ideology of the present politics has to be found in normative definitions of morality and laws. For that the basic function of normative legal acts is to hold a tendency on power within limits that are acceptable to public. Such combat is being present in Slovenia, too.

General presence of striving after power is so big, that it should be paid more attention to, since until now the systems that were based solely upon power turned out to be impossible to realize and self-destructive. At this point laws are necessary, since only they can offer a protection to an individual, supplement the politics of power with legal rules of behavior and protect an individual from destructive influence of power. Alone normative acts are therefore limitations that can raise rules of behavior above struggling for power, although they represent to a great extent the result of public forces that are fighting among each other by influencing decisions of the legislative and of the courts to prevail over the society.

Yet establishment of the new Slovenian constitutional order in 1991 and modernized system of the constitutional review promise a stable factor that can significantly influence limitation of state power in relation to citizens to assure legal protection of human rights. Of course this does not mean that the violations of those rights will be reduced over the night. The efficiency of legal remedies as arms of an individual against state depends on changed attitude of the society towards human rights that did not exist before 1991 and has not started to develop until the independence. To gain tradition regarding to that and thereby positively change the way of thinking remains a future ideal.

A state respectively a state power will respect human rights, if it is entirely aware of their existence and their inalienability. As far as we did not follow this principle in practice, we are being warned from time to time by international institutions that we are members to and which take care to assure (at least) minimum standards in this field, such as happened in the practice of the European Court of Human Rights regarding successfully resolved applications of the Slovenian citizens before this court that could be understood as a warning to Slovenia to establish order in this field. With proper action at home and proper political will we could avoid such warning from the outside.

IV SOME VIEWS ON THE FUTURE – ADOPTION OF THE JUST ESTABLISHED EUROPEAN STANDARDS

The Slovenian National Assembly on 1 February 2005 ratified the *Treaty Establishing a Constitution for Europe and the Final Act*³² (hereinafter *Treaty*). Furthermore, Slovenia considers the development of the common European constitutionalism through the *Treaty*, especially the promotion of common European standards (based on extended catalogue of human rights) of human rights protection. Despite some current objections made from several member states, for Slovenia, the *Treaty* itself is an important milestone for the European Union as a whole, since it represents a further step in the development of the European Union and underscores the unity of the Member States. It is clear as well that the signatory country is responsible of the respect and strengthening of the values that the *Treaty* assets, not only in the signatory country but also across

³² E.g. Zakon o ratifikaciji Pogodbe o Ustavi za Evropo s Sklepno listino, Act Ratifying the Treaty Establishing a Constitution for Europe and the Final Act, *Official Gazette* 2005, nr. 15, Mednarodne pogodbe (Treaties) 2005, nr. 1.

the entire Union and even beyond since this is about assuming Europe's responsibility in the future of humanity³³.

Accordingly, the human rights protection should be expected in any case. Therefore, a special European Union's body dealing with these issues should be urgently established, however having an independent position (not to be influenced by pragmatic politics). This would be a basis for the promotion of the achieved European standards of this field. The *Treaty* is namely the first comprehensive document adopted by the European Union which brought complete provisions as well as a modern catalog of human rights and fundamental freedoms, based on the so far created European experiences and standards. Such level of human rights protection determined by the European Union, when reached should be intensively expanded and developed.

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³³ <http://constitution-europeenne.info/special/slovenia.pdf>

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