

# REPUBLIC OF SLOVENIA

## before the UN Committee against Torture

### Introduction

On 5 and 6 May 2003 the Committee against Torture (Committee) examined Slovenia's second report on measures taken to give effect to the rights enshrined in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture). This briefing summarizes Amnesty International's concerns with regards to Articles 1, 2, 3, 4, 12, 13, 14 and 16 of the Convention against Torture, which the organization believes have either been breached or not fully implemented by Slovenia. In addition it gives an overview of the subjects of concern to the Committee as expressed in the Committee's Conclusions and Recommendations, issued on 14 May 2003.<sup>1</sup>

Slovenia acceded to the Convention against Torture on 15 August 1993. In August 1999 Slovenia submitted its initial report to the Committee against Torture (this had been due since August 1994) which was examined by the Committee in May 2000. The Second Periodic report was submitted one month in advance of its due date, in August 2001.

Amnesty International's concerns focus on the failure of the Slovenian police and judicial authorities to ensure that allegations that persons have been subjected to ill-treatment by police officers and non-state actors are thoroughly and promptly investigated and that the perpetrators of these human rights violations are brought to justice. The organization has repeatedly asked the authorities for detailed and up-to-date information on the current number of complaints made against the police in cases of ill-treatment, as well as the number of disciplinary and criminal proceedings arising from such complaints. However Amnesty International has, to date, not had any comprehensive response to its enquiries which could shed light on whether and in which way the authorities are addressing this issue.

In addition the organization is concerned that the current system dealing with complaints of police misconduct is not fully independent from the police administration.

The organization is also concerned about reports that asylum-seekers and illegal migrants are being arbitrarily detained, sometimes in conditions which are reportedly inhuman and degrading.

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<sup>1</sup> UN reference CAT/C/CR/30/4, unedited version

## **Summary of the subjects of concern to the Committee against Torture**

The full text of the unedited version of the Committee's Conclusions and Recommendations is attached to this report. The Committee against Torture welcomed the self-critical tone of the Slovenian Government Report, which incorporated many of the findings of the Slovenian Ombudsman for human rights, who had similarly expressed concern about allegations of ill-treatment and the failure of the authorities to hold those responsible to account. The Committee similarly welcomed several proposed changes in legislation and regulations, envisaging to bring existing law and practice in line with the principles of the Convention against Torture.

However, the Committee noted that the Slovenian Criminal Code still did not contain torture as a specific criminal offence, as the present reference to torture did not adequately convey the definition of torture under the Convention against Torture. In addition torture is currently subjected the crime to a statute of limitation.

The Committee also expressed concern that there was no independent system to investigate complaints and reports of ill-treatment and that police officers allegedly continued to resort to excessive use of force, many of which concern ethnic minorities. In this regard the Committee also regretted that the State Party had not provided any statistics on the scope of this problem.

With regards to the prevention of torture and ill-treatment the Committee was concerned about the lack of adequate legal guarantees allowing persons in custody right to have access to a doctor of their choice immediately. In this context the lack of a code of conduct for police investigations, to complement the provisions of the Code of Criminal Procedure and the Police Act, was also identified as a problem.

## **Amnesty International's concerns about Slovenia's implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

### **1. Failure to criminalize acts of torture as distinct offences in the Slovenian Penal Code (Articles 1, 2(1) and 4)**

Article 4 of the Convention against Torture requires State Parties "... to ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture." In its Conclusions and Observations, issued after examining Slovenia's Initial Report in May 2000, the Committee against Torture expressed concern that torture had not yet been made a criminal offence in Slovenian domestic criminal law as required by Article 4 of the

Convention.<sup>2</sup> In its Second Periodic Report to the Committee against Torture (Second Periodic Report), the Slovenian government stated that it planned to invite an expert institution to consider possibilities of incorporating torture as a criminal offence in domestic criminal law. The Second Periodic Report noted that experts at the Faculty of Law and the Institute of Criminology of Ljubljana University had examined possible ways of criminalizing torture, including by introducing a “specific integrated crime of torture”, which the Second Periodic Report described as the “severe infliction of pain to a person with the specific and perfidious participation of a state” (at page 5).

Amnesty International raised its concern about the lack of a specific criminal offence of torture in Slovenian criminal legislation in a letter to the Slovenian Interior Ministry in May 2002. The organization requested to be informed whether any progress had been made in the implementation of the recommendation of the Committee issued in May 2000, which Amnesty International considered to be a significant step in combating impunity for acts of torture.<sup>3</sup>

Furthermore, Amnesty International notes that the definition proposed in the Second Periodic Report seems to limit criminal responsibility for torture to perpetrators who are agents of or have close links with the state. The organization is concerned that such a definition would not satisfy the government’s obligation under Article 4,<sup>4</sup> nor does it reflect the definition of torture set out in Article 1 of the Convention against Torture.

## **2. Failure to fully guarantee that no persons will be expelled, returned or extradited to states where they may be subjected to torture (Article 3)**

Amnesty International remains concerned that Article 51 of the Aliens Act and Article 6 of the Asylum Act allow for derogation from the prohibition of non-*refoulement* by the Slovenian authorities, in violation of the provisions contained in Article 3.<sup>5</sup> The Second Periodic Report by the Slovenian Government acknowledges (at page 43) that “the belief prevailing in the Republic of Slovenia is such that, despite the fact that the exception to the non-*refoulement* principle is also laid down by the Convention relating to the Status of Refugees, the latter is not in conformity with international human rights law.” The Second Periodic Report noted that amendments to both Acts were being drafted, but that it was envisaged to retain the exceptions to the non-*refoulement* principle, notwithstanding the provisions of the Convention against Torture and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

## **3. Failure to prevent acts of cruel, inhuman or degrading treatment or**

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<sup>2</sup> Committee against Torture, 24<sup>th</sup> Session, 1-19 May 2000, CAT/C/XXIV/Concl. 8, Paragraph 15.

<sup>3</sup> This letter raised a number of questions and cases of concern to Amnesty International, no reply has been received from the Interior Ministry to date.

<sup>4</sup> Article 4(1) explicitly states that *all* acts of torture, as well as complicity and participation by *any* person must be outlawed.

<sup>5</sup> Such concerns were similarly voiced in the recommendations and conclusions of the Committee against Torture, issued after the examination of Slovenia’s Initial Report (as above, at Paragraph 18)

**punishment which do not amount to torture (Article 16)**

Amnesty International continues to receive reports of ill-treatment and use of excessive force by police officers in Slovenia and the organization is concerned that such cases are apparently not investigated promptly and impartially as required by international standards and Slovenian domestic law. The organization notes with concern that many of these allegations concern members of ethnic and racial minorities and that in several cases the victims are children.

Similar concerns have been raised by the Committee against Torture in its conclusions and recommendation of May 2000, and by the European Committee for the Prevention of Torture (CPT).<sup>6</sup> The CPT reportedly received some allegations of physical ill-treatment by police of people in their custody - mostly during the time of arrest, or in the early stages of police detention - as well as allegations of verbal abuse of detainees by guards at the High Security Alien Detention Centre in Poštojna. In addition, the CPT reported some instances of physical ill-treatment of prisoners by prison officers in Dob, Ljubljana and Maribor prisons, as well as instances of inter-prisoner intimidation and violence. In order to combat ill-treatment effectively the CPT recommended a two-pronged approach of adequate training of police in human rights (including systematic and ongoing training of serving police officers) combined with the "diligent examination by the competent authorities of all complaints of such treatment and, when appropriate, the imposition of a suitable penalty".<sup>7</sup>

In addition, the Slovenian Ombudsman for Human Rights stated in his report for 2001 that the largest number of complaints received by his office involves the "exercising of powers the police hold in performing police assignments. The cases dealt with do not back up the assessment of greater violence by the police but this does not mean that in the past year there were not cases of unlawful, disproportionate and consequently excessive use of forcible restraint."<sup>8</sup>

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<sup>6</sup> The CPT is an expert-body that was established by the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, with the aim of protecting people deprived of their liberty. Under the Convention CPT delegations have unlimited access to places where people are deprived of their liberty in States which are parties to the Convention. They may interview persons deprived of their liberty in private. Reports of the Committee's visits contain recommendations aimed at preventing torture and other inhuman or degrading treatment or punishment. States authorize the publication of the CPT's reports and the States' comments on the reports; the Russian Federation is the only one of the 44 states which are party to the Convention which has yet to authorize publication of reports of CPT visits.

<sup>7</sup> *Report to the Slovenian Government on the visit to Slovenia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 16 to 27 September 2001*, CPT/Inf (2002) 36, of 18 December 2002, (hereafter: CPT report), at paragraph 146.

<sup>8</sup> Human Rights Ombudsman of the Republic of Slovenia: *Annual Report 2001*, at section 2.5 "Police procedures", June 2002 page 32. The Slovenian Ombudsman for Human Rights (Ombudsman) is a state-funded non-judicial institution, which aims to protect the human rights of individuals, *inter alia* by investigating complaints of human rights violations by public officials and bodies, including local government administrations, the police and the judiciary. The Ombudsman cannot issue binding decisions but plays an important role advocating change to improve human rights protection and raising public

The Ombudsman has specifically expressed concern about a number of individual cases of police ill-treatment.<sup>9</sup> One such incidents took place in Piran police station in July 2001, when a 20-year-old man, AM<sup>10</sup>, was reportedly ill-treated during questioning by at least two police officers at this police station. AM and a companion had been taken to the police station after they had reportedly illegally crossed a road in Portorož near Piran. When getting out of the police car AM, who was handcuffed, was allegedly punched twice in the chest by a police officer, who subsequently pushed him into the doorframe at the entrance of Piran police station. Once inside the interview room the same officer reportedly punched him on the right side of his face with such force that AM fell on the floor, banging his head. While he lay on the floor the police officer allegedly kicked him in the back. When he asked to call his parent and a lawyer, one of the police officers grabbed a wooden truncheon and threatened to hit him with it. After his release, AM was hospitalized for several days.<sup>11</sup> Upon receiving AM's complaint, the Ombudsman made an unannounced visit to Piran police station in March 2002. He afterwards held a press conference about the incident, stating that while visiting the interrogation room at the police station he noticed a couple of wooden truncheons. When he questioned the head of the station as to their presence, he was reportedly not given a satisfactory explanation.<sup>12</sup>

In most instances which have come to Amnesty International's attention, the ill-treatment appears to occur during routine police actions, apprehensions or during short-time detentions of individuals at police stations. In the latter scenario, the organization has additional concerns that people in police detention are often denied the right to call their family or a lawyer, or have immediate access to medical assistance.<sup>13</sup>

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awareness on the situation of human rights in Slovenia. The Ombudsman publishes a summary of the work of the institution in a report to the Slovenian National Assembly (Parliament) each year.

<sup>9</sup> In his 2001 report, the Ombudsperson mentions a case of severe ill-treatment of a criminal suspect, after he had been handcuffed and thrown to the ground by several police officers. The incident was reportedly witnessed by fourteen persons present in the Ministry of Education, Science and Sport who had a direct view on Župančičeva street in Ljubljana where the ill-treatment reportedly took place. However, the Ljubljana police administration closed an internal investigation into the case citing the "emphatic denial" of the police officers involved that any disproportionate force was used during the arrest. (*Annual report 2001*, as above, at page 33).

<sup>10</sup> The full name of the victim is known to Amnesty International.

<sup>11</sup> Amnesty International understands that AM sustained serious injury to his kidneys and face which reportedly could result in partial paralysation of his face muscles. Amnesty International wrote to the Interior Minister in May 2002, requesting to be informed about the status of any criminal or disciplinary proceedings opened into the incident. To date the Interior Ministry has not replied to the organization. The victim reportedly filed complaints with the district public prosecutors in Piran and Koper.

<sup>12</sup> *Dnevnik*: "Varuh opozoril na delo in kršitve vlade, policije in problem džamije", 3 April 2002.

<sup>13</sup> Such concerns are echoed in the CPT report which found that in some cases persons in police custody had not had prompt access to their lawyer. The report also recommended that formal legal provisions be adopted guaranteeing access to a doctor (CPT report at paragraphs 40-41).

*Among other cases, the organization is concerned about the alleged ill-treatment of **Carlton Anthony Reid**, a 43-year-old Jamaican who was reportedly beaten by police officers in Ljubljana on 2 December 2002. On that day Carlton Reid, who was attempting to park his car in the centre of Ljubljana, was pulled out of his car by two plain clothes police officers, one of whom showed his identification. According to reports, received by Amnesty International, Carlton Reid's arms were bent behind his back and the officers started searching him. When Carlton Reid tried to straighten up to relieve the pain in his shoulders he was reportedly thrown to the ground and both officers knelt on his back, banged his head against the asphalt and handcuffed him forcibly around the wrist and ankles. The pain caused to Carlton Reid by the restraint was so severe that he urinated and defecated in his trousers. Soon afterwards several police cars and a van arrived, and Carlton Reid was pushed into the van and driven to Trdinovo police station. He was dragged from the van while still handcuffed and chained and put in a cell. His handcuffs were then tightened to the point that they cut into his skin and he started to bleed, and when he complained about this one of the (uniformed) police officers allegedly told him he would loosen the handcuffs if Carlton Reid paid him 30,000 Euros. Carlton Reid's request to be allowed to change his clothes was ignored and he was left in a cell until another officer came in to remove his handcuffs. After about two hours he was again handcuffed and driven to the street where he had left his car, which was searched. After being taken back to the police station, he was briefly questioned and then asked to sign a paper listing some personal belongings which had been taken from him. When he asked why he had been detained he was told that he had resisted arrest.*

*Upon his release, Carlton Reid went to the local medical centre in Kamnik, where the staff sent him on to the clinical centre in Ljubljana. A medical certificate, issued by the Ljubljana clinic states that he sustained bruising and abrasions on the right wrist and knees. His right finger was also dislocated.*

*A complaint, which Carlton Reid lodged with the local police authority was subsequently rejected, stating that the officers' use of force had not been unlawful.*

#### **4. Failure to ensure the initiation of prompt and impartial investigations into allegations of ill-treatment and to ensure the right of victims to make complaints after having been subjected to torture and ill-treatment (Articles 12 and 13, in conjunction with Article 16)**

##### 4.1. Failure to investigate allegations of ill-treatment by law enforcement officials

Amnesty International is concerned that the cases which have come to its attention have apparently not been investigated promptly and impartially as required by Articles 12 and 13 of the Convention against Torture. The

organization notes that, in virtually every case reported to it, the authorities had been made aware of the allegations as victims had lodged complaints with the responsible authorities - mostly the relevant police station or the local public prosecutor.

The organization has repeatedly requested the Slovenian authorities to provide it with up-to-date and concise data on the total number of complaints received by the Slovenian police force by individuals who allege physical ill-treatment by police or other law enforcement officials, and how many of these cases resulted in disciplinary or criminal proceedings against police officers and with what outcome.

Likewise, the CPT requested the Slovenian authorities to supply information on the number of complaints of ill-treatment against police officers and the number of criminal and disciplinary proceedings instituted as a result, as well as information about whether and which sanctions had been imposed subsequently. In response to the CPT request the Slovenian Government replied that during 2001 and in the first half of 2002, a total of 90 complaints were made against police officers in connection with the use of handcuffs and restraints, of which four had been deemed to be justified. During the same period, 110 complaints were made on the use of physical force, of which 12 had been considered justified.<sup>14</sup> Disciplinary proceedings had been opened as a result of two complaints by members of the public for “rough treatment” by police officers. As a result of internal police investigations, eight cases of rough treatment led to disciplinary measures, of which at least three appear to have also led to criminal proceedings. In two cases, based on a complaint by a member of the public, the police officer in question had been dismissed. In an additional eight cases where the rough treatment had come to light as a result of internal investigations, proceedings against six officers were suspended, due to the statute of limitations on the violations of the Law on Employees in State Bodies or the Police Law, and two had not yet been concluded. No information was given on the outcome of any criminal proceedings. Amnesty International considers that it was impossible to conclude from the Government Reply whether the information provided on the number of complaints lodged and investigations opened actually related to the same cases, or whether the statistics on disciplinary proceedings and measures might in fact be referring to the processing of complaints brought in previous years.

The lack of concise information, specifying the outcome of criminal proceedings in cases of police ill-treatment, reinforces Amnesty International’s concerns about the apparent impunity with which this human rights violation is committed.

*For example, Amnesty International has serious concerns about the apparent failure of the Slovenian authorities to promptly and thoroughly investigate the alleged ill-treatment*

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<sup>14</sup> During 2001 another three complaints had been made about the use of gas sprays, of which one had been considered justified; seven more complaints were made on “other” grounds, none of which had been found justified (Response of the Slovenian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading treatment or Punishment (CPT) on its visit to Slovenia, CPT/Inf (2002) 37, (hereafter: Government Reply), 18 December 2002, pages 16-19).

and ensuing death of **S.P.**<sup>15</sup> during a house search in April 2000. On 3 April 2000, two units of the Ljubljana criminal police department searched the apartment of SP. At the time of the search, SP, his wife and his five-year-old son, and another person were present in the apartment.

The first police unit to enter the premises was reportedly comprised of eight armed special police officers from the criminal department (*mobilna kriminalistična skupina*). It is reported that, upon entering the apartment at around 12 noon, at least four of these officers encountered SP in the hallway, leading to his apartment, and started hitting him with the butts of their handguns and *Maglite* hand torches. They then reportedly pushed him into an enclosed space formed by the door and the corner of the hallway, where he suffered an asthma attack. His repeated requests for his inhaler were reportedly not heeded by the police officers present who also refused his wife – who was handcuffed in another room but who heard SP's cries and gasping for breath - to go over to him. After about 20 minutes SP allegedly lost consciousness; his wife was allegedly permitted to give him heart massage and attempt artificial resuscitation, to which he did not react.<sup>16</sup> Meanwhile, the commanding officer of the unit twice rang the station radio control room asking for back-up, and for an ambulance. After it emerged that SP had died, he requested that a crime scene squad come to the apartment, which it did around 1pm.

An autopsy report, issued by the Institute of Forensic Medicine in Ljubljana (*Institut za sodno medicino*) on 4 April 2000, listed as the cause of death suffocation as a result of the asthma attack. An expert opinion, drawn up subsequently by a forensic expert at the request of the victim's father lists a total of 16 injuries to the head and body of the deceased.<sup>17</sup> According to this expert opinion, it was beyond doubt that the deceased received at least six, and possibly more, heavy blows to the head, by a blunt, sharp object or that he was kicked in the head. A pulmonary expert, consulted during the drafting of the expert opinion, stated that the deceased would have probably survived the attack if he had been given timely medical help (his inhaler). Another specialist in forensic medicine and pathology who was consulted stated that the deceased was suffocating for at least 10 to 15 minutes, maybe even longer. Given that he received many blows to the head the specialist also allowed for the possibility that he suffered a concussion, although this was no longer possible to prove.

*The police and the Ljubljana District Court's investigative judge reportedly attended a scene of crime*

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<sup>15</sup> The full name of the victim is known to Amnesty International but has been withheld at the request of his family.

<sup>16</sup> Later reports, notably the decision by the Ljubljana District Court of September 2002 (see below), state that it was another police officer, who attempted to resuscitate SP. A member of the rescue squad reportedly also attempted resuscitation.

<sup>17</sup> Expert opinion by forensic expert Franek Dolšek, dr. med. of 16 February 2002. The injuries include scratches and stained swellings to the face, chest and back and bleeding in the intercostal ribs region.



*inspection on the day SP died. The records of this inspection mention the presence of multiple blood stains and splatters on the wall, floors and pieces of furniture in the ante room where SP died.*<sup>18</sup>

*SP's father lodged complaints with the Ljubljana police department and with the district public prosecutor, both of which were rejected. The police department stated that a commission of enquiry had found that the extent of force used by the officers had been justifiable and that medical help had been provided correctly and expeditiously. The version of events remains disputed between the wife of the deceased and the police account. In particular Amnesty International has noted that the police version of events states that SP, who was reportedly offering resistance when police entered his hallway, was only handcuffed at 12.33pm.<sup>19</sup> At 12.38pm a police officer reportedly called the radio room asking for a rescue squad – which arrived at 1pm.<sup>20</sup> Meanwhile, SP's wife maintains that the police unit entered the flat around 12pm, and the doctor who recorded SP's death estimated that he had died about half an hour before, ie at 12.30pm.<sup>21</sup>*

*The Ljubljana District public prosecutor rejected the father's request that he initiate criminal proceedings reportedly as it was impossible to identify the police officers involved. The victim's father subsequently started a private criminal prosecution against eight officers of the special unit. In May 2002 a new judicial investigation was opened by the Ljubljana District investigative judge, on grounds of the police officers' suspected involvement in the criminal offences of interference with the inviolability of the home, complicity in the unlawful deprivation of liberty by a public official abusing his position or privilege, complicity in causing death by negligence, complicity in violation of human dignity through the abuse of one's official position or privilege and abuse of official position or privilege.<sup>22</sup> Subsequently, a counter complaint was lodged by all suspected police officers, which was upheld by the Ljubljana District Court which quashed the order to open an investigation in September 2002.*<sup>23</sup>

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<sup>18</sup> Records of the inspection of the crime scene by the investigative judge of the Ljubljana District Court, the Ljubljana District Public Prosecutor, a doctor, two criminal inspectors of the Ljubljana police administration and two crime scene technicians (*Zapisnik o ogledu kraja smrti P.S, v Ljubljani*, No. 1 Kpd 387/2000 of 3 April 2000).

<sup>19</sup> According to the report of the work of a five-person commission of enquiry of the Ljubljana police department, headed by the director of that department, Branko Slak, of 11 October 2000, (No. 2001-02-S-02-26/00), at pages 3 and 4. According to transcripts of recorded phone calls received and made by radio room operators at the Ljubljana police department, another police officer also called requesting an ambulance at around 12.48, however as he did not say where he was calling from, this request was apparently delayed.

<sup>20</sup> Report of the inspection of the scene of crime, of 3 April 2000 (No. I Kpd 387/2000), page 1.

<sup>21</sup> Statement of Dr Andrej Vrabec of the Ljubljana Medical Clinic.

<sup>22</sup> Respectively Articles 152(1)(2) and (3), 143(2), 129, 147(3) and 270 in conjunction with Article 25 and Article 261 of the 1995 Slovenian Penal Code. Decision by the investigative judge of the Ljubljana District Court to open an investigation, 28 May 2002.

<sup>23</sup> Amnesty International notes that the court decision appears to be primarily based upon the version of events as given by the police officers during their interviews with the

*More than three years after the incident a petition on behalf of the victim's father to the Slovenian Supreme Court challenging the decision by the Ljubljana District Court remains pending. In addition, SP's father and his wife filed a new request with the Ljubljana District Court to re-open the judicial investigation in December 2002.*

#### 4.2. Failure to investigate allegations of ill-treatment by non-state actors

The government's obligations under international law<sup>24</sup> are not only to respect the rights of all people within its jurisdiction but also to protect them against human rights abuses. These international standards include the International Covenant on Civil and Political Rights (ICCPR), the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and the Convention against Torture. In particular, Article 16 of the Convention against Torture states that State Parties must prevent acts of cruel, inhuman and degrading treatment or punishment, where these "... are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity".<sup>25</sup>

The government's obligation extends to the duty to investigate alleged abuses by non-state actors and to bring perpetrators of such abuses to justice in fair proceedings. Amnesty International is concerned that the Slovenian authorities have failed to conduct effective investigations into several alleged human rights abuses which have come to the organization's attention.

Statements of the Slovenian Government in the Second Periodic Report indicate that such failures may arise from a misconception on the part of the authorities about such international obligations. The Second Periodic Report, at page 37, states that: "Criticism expressed by the Human Rights Ombudsman of the Republic of Slovenia ... indicate the criminal law relevance of the issues of the UN Convention against Torture concerning the act of omission by responsible state authorities (police or social services' failure to act). Such matters are difficult to prove under criminal law, and clear and specific legal standards are not available in the majority of cases in Slovenia. It has nevertheless been indicated that in the future attention will be focussed on the

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investigative judge, and does not mention the medical information on SP's injuries or his wife's eye witness testimony which contradicts that of the police officers. (Decision of the Ljubljana District Court of 27 September 2002)

<sup>24</sup> The Committee against Torture has held that attacks against persons, committed with the acquiescence of public officials constitute a violation of Article 16(1). (Communication No 161/2000: Yugoslavia 02/12/2002, at Paragraph 9.2. CAT/C/29/D/161/2000. Jurisprudence)).

<sup>25</sup> Furthermore, Article 2 (3) of the ICCPR and Article 13 of the ECHR require that any person whose rights have been violated has redress to a competent authority for an effective and enforceable remedy. Article 13 requires that any individual who alleges he has been subjected to torture has the right to complain to, and to have his case promptly and impartially examined by, competent authorities. In addition, the authorities should take adequate measures to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

responsibility for particularly drastic acts of omission of state aid in the broader sense, also within the UN Convention against Torture.”

*The authorities' conduct in the case of **Miran Petek** exemplifies Amnesty International's concerns on these issues. According to various reports,<sup>26</sup> around 9.30pm on 28 February 2001, Miran Petek was attacked and beaten by two unknown men while on his way home in Mežica. The assault was apparently in connection with Miran Petek's articles in the daily Večer, in which he alleged that a local bank was involved in illegal financial transactions and made further claims concerning other illegal activities by companies in the region of Koroška. During the attack, Miran Petek received multiple injuries, including a broken nose and cheekbone, and a concussion of the brain. He reportedly spent five months in hospital following the attack. There have been further allegations that the chief of Slovenj Gradec police had connections with a local company (as Miran Petek had also previously implied in his articles), and that therefore the police investigation into the attack was compromised.*

*Amnesty International was informed that police failed to secure the crime scene properly, and did not follow up on some of the information on suspected perpetrators provided by the victim. A nine-member Parliamentary commission of enquiry (parlamentarna preiskovalna komisija) was reportedly set up in February 2002.<sup>27</sup> This commission recommended that the Federal police, specifically the criminal investigation department of the Ljubljana police, should take over the investigation. In a letter to the Slovenian Ministry of the Interior, Amnesty International asked to be informed whether the investigation was indeed subsequently transferred, and at what stage the proceedings were. The organization also recommended that, in view of further allegations indicating possible collusion of various officers in the Koroška police force, a separate investigation be opened into the failure of that department to conduct a prompt, impartial and thorough investigation into the ill-treatment of Miran Petek.<sup>28</sup>*

*In late January 2003, it was reported that, two years later, the investigation by the public prosecutor was said to be still “in a preliminary stage”. Police still had not identified any suspected perpetrators who had carried out or ordered the attack on Miran Petek – although a witness who had been testifying before the parliamentary commission of enquiry had reportedly already in November 2002 provided the name of one of the perpetrators.<sup>29</sup>*

Amnesty International has received several reports which indicate in particular that investigations into attacks which appear to have been motivated by the ethnic and racial origins of the victims are not pursued with due diligence by the Slovenian authorities.

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<sup>26</sup>Including in *Večer* of 20 December 2001, 14 February 2002 and 28 March 2002, *Dnevnik* of 20, 24 and 29 April 2002, and *Mladina*, nrs. 9 and 12 of 2001, and nr. 8 of 2002.

<sup>27</sup>The exact mandate of this Commission is not known to Amnesty International; however some of the information at the organization's disposal suggests that their brief included establishing whether there had been any involvement of high-ranking state officials in the attack on Miran Petek.

<sup>28</sup> As noted above, no response has been received to this letter to date.

<sup>29</sup> “Prihaja druga obletnica”, *Mladina*, No 3, 20 January 2003.

*For example on 2 July 2001, 33-year-old Ignacio Bintchende, a national of Guinea-Bissau, and a long-term Slovenian resident, was reportedly attacked by a group of skinheads near the entrance to his apartment in the centre of Ljubljana. His apartment is located near the Sodček bar, which is apparently frequented by skinhead groups. Ignacio Bintchende had gone out to buy some food for his guests around 9.30pm when he was reportedly accosted by two skinheads, who started to slap him. When one of them raised a heavy beer glass, making as if to hit him with it, Ignacio Bintchende tried to push the man away. At this point, two other skinheads joined the scuffle and reportedly punched Ignacio Bintchende in the face and back. He managed to reach his front door and rang the doorbell for his friends to let him into the apartment as the entire group of four made to jump upon him. Two of his friends (nationals of Ethiopia and Mali) came outside and got embroiled in the ensuing fight until the police arrived. The police arrested all seven people. Ignacio Bintchende and his two friends, as well as three of the skinheads were brought before a misdemeanour court (sod za prekrške), for disturbing the public order.<sup>30</sup> In addition the passports of Ignacio Bintchende and his two friends, Ibrahim Nouhoum and Tefera Eyechew were confiscated and they were summoned to the police station the next day.*

*The case was still pending as of mid-April 2003 before the misdemeanour court, and a police investigation into the racist attack has reportedly not yet produced any results. Police allegedly failed to interview any eye witnesses to the incident although, according to Ignacio Bintchende, there were at least some 15 people watching the initial attack against him on the street.*

*According to information available to Amnesty International, over the past couple of years only in one case have perpetrators of a racist attack been prosecuted. In May 2002, two members of a skinhead group, UD and MV,<sup>31</sup> who had been tried in connection with a violent attack on Ibrahim Nouhoum and Michael Obeno in February 2000, were respectively given a suspended sentence and acquitted for lack of evidence.<sup>32</sup> The alleged attack had taken place near the same location as the attack on Ignacio Bintchende and both victims sustained physical injuries.*

#### 4.3. Complaints mechanism

According to information available to Amnesty International, victims of ill-treatment or other misconduct by the police, can lodge a complaint with a three-person commission (*senat*).<sup>33</sup> However, the organization notes that such commissions contain at least one serving police officer and that the decision on whether or not to proceed with an investigation against a police officer, suspected of misconduct following such a complaint, rests with the head of the local police department in which the suspected police officer works.

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<sup>30</sup> The name of all these individuals are known to Amnesty International. It was reported that initially the fourth member of the skinhead group would not be prosecuted as he was under age.

<sup>31</sup> The names of these individuals are known to Amnesty International.

<sup>32</sup> However, UD had reportedly been arrested at the scene of the attack.

<sup>33</sup> The Second Periodical Report by the Slovenian Government provides a similar description of the staffing and functioning of the *senati* on pages 53-54.

In this regard the CPT has also noted the establishment of special police units to investigate complaints against the police as well the holding of disciplinary proceedings held before special panels (*senati*) in cases of police misconduct. Both bodies are either situated within the police structure or contain members of the police administration who have a decisive say in the processing of the complaint. The CPT stressed that any mechanism dealing with complaints against the police should be independent and impartial and requested to be updated on any changes that were reportedly being drafted to the existing system by a working group in the Ministry of the Interior.<sup>34</sup>

Amnesty International is concerned that the reported composition and staffing of the *senati*, and in particular their lack of independence from the police force, will not ensure genuine accountability for the actions of law enforcement officials.<sup>35</sup> The organization has recommended that the Slovenian government authorities explore the possibility of establishing a truly independent commission which would be equipped and authorized to investigate allegations of police misconduct. Such a commission could be part of the existing office of the Human Rights Ombudsperson, or could be set up as a separate body.

Draft amendments to the Police Act, which are currently before Parliament, apparently provide for a more independent system which will consist of two stages. However, Amnesty International remains concerned that the first stage – which includes the examination of the complaint of misconduct – will reportedly remain within the exclusive competency of the police administration. Amnesty International fears that this cannot guarantee prompt, impartial and thorough investigations, in particular in cases of police brutality.

Whichever option is chosen, Amnesty International considers it to be crucial for the commission to be independent and to be seen as acting independently of the police force in order to be perceived as legitimate and credible by the public at large. Furthermore, Amnesty International believes that such a commission should be explicitly empowered to launch independent investigations into allegations of ill-treatment, harassment and cruel, inhuman or degrading treatment, as well as into patterns of alleged police misconduct and criminal activity, whether or not complaints have been lodged. It should be set up in compliance with international human rights standards, notably the Convention against Torture, the ICCPR, the ECHR, as well as provisions contained in the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement

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<sup>34</sup> In response to the CPT report, the government stated that changes were envisaged in the procedures appointing members to the *senati*, which would in future include recommendations (on civilian representatives to the *senati*) not just from the head of police but also from civil society actors. The final decision on appointment remained with the Minister of the Interior. Furthermore the new procedure would also guarantee that panel members had an equal vote in deciding whether a complaint was justified (a decision which in the current procedure is taken by the head of the panel who is also the head of the local police administration).

<sup>35</sup> Similar concerns about the *senati* have been raised by the Ombudsperson for Human Rights in his 2001 report, cited above at page 33.

Officials and the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The commission should make every effort to apply the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol)<sup>36</sup>, which represents a consensus among individuals and organizations having expertise in the investigation of torture.

*Amnesty International's concerns about the shortcomings of the current complaints system are illustrated by another case, concerning the reported ill-treatment by police officers of 23-year-old **Klemen Berglez** and his 19-year-old girlfriend **Nataša Veršič** in Šentjur-pri-Celju. It is reported that around 2.30am on 2 November 2002, they were ill-treated by two police officers driving a van which they stopped near the parked car in which Klemen Berglez, Nataša Veršič and her brother Mitja were sitting. Klemen Berglez, who had been ordered to produce the car registration documents, was searching for these papers inside the car when he was dragged out by one of the police officers. This officer reportedly kicked Klemen Berglez in the stomach and chest with so much force that he fell to the ground. The police officer then reportedly jumped on him, and was at this point joined by his colleague who also kicked Klemen Berglez in the side before handcuffing him and dragging him off to the police van. Klemen Berglez's repeated requests to see a doctor, as he was by then in great pain, went unanswered. Meanwhile, Nataša Veršič, who had been trying to call the emergency services from her mobile phone, was also pulled from the car by another police officer. This officer reportedly hit her twice in the face, causing her glasses and her phone to fall to the ground. Nataša Veršič was then handcuffed very tightly and pushed into the same police van.*

*When they arrived at Šentjur police station Klemen Berglez and Nataša Veršič were left handcuffed in the van for 45 minutes, despite their requests to see a doctor and to be informed of the reason of their arrest. Both were taken inside the police station and questioned separately, Klemen Berglez was reportedly told that he had been driving dangerously. He denied this accusation and was then asked to sign a statement. Subsequently, while still in his handcuffs, he was taken to the local medical centre. Here blood and urine samples were taken and he was then transferred to Celje General Hospital. Nataša Veršič, who had also been taken to the medical centre for an examination, was afterwards handcuffed again and driven to the Celje police station, where she was detained for another hour. Two police officers, who entered the room where a third police officer was questioning her, allegedly threatened to strip her naked and detain her for another three days at the police station if she would not do as she was told. She underwent a breathalyser test, which turned out negative, and was then driven back to Šentjur where she was released from custody around 9.30am.*

*According to medical reports, issued by the Celje General Hospital, Klemen Berglez sustained a broken collar bone, scratches to his left shoulder and to right finger and hand, as well as bruising to the right side of his chest. He underwent medical treatment for the broken collar*

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<sup>36</sup>This manual, which sets out a comprehensive strategy and detailed guidelines for investigating and documenting allegations of torture and ill-treatment, was submitted to the United Nations on 9 August 1999.

*bone for over two months. Nataša Veršič sustained bruising to her cheekbone and face and swelling and bruising to her wrists and fingers.*

*Klemen Berglez and Nataša Veršič both lodged complaints with the Celje police administration and with the local public prosecutor. On 8 January 2003 they were informed by the Celje head of police that the complaint commission (senat) had decided on that day to reject their complaints as there was no evidence that the force used had been irregular or unlawful. At the same time the decision noted that the local court of misdemeanour had ordered proceedings against both of them. The criminal complaint which they lodged with the local public prosecutor reportedly remains pending.*

*Amnesty International has been informed recently that, apparently as a result of her complaints against the police, Nataša Veršič was threatened by one of the police officers who allegedly ill-treated her.<sup>37</sup>*

## **5. Failure to ensure that victims of torture and ill-treatment obtain redress and have the right to fair and adequate compensation (Article 14 in conjunction with Article 16)**

As stated above, Amnesty International is concerned that victims of ill-treatment in Slovenia are denied redress. While in all cases which have been brought to the organization's attention, the victims of police ill-treatment have complained in writing to the relevant police and judicial authorities and have provided medical evidence describing their injuries, the majority of these complaints were rejected after what appear to have been only summary investigations.

*Amnesty International is aware of only one case in which an allegation of police ill-treatment has led to criminal prosecution. Two police officers tried on charges of violating human dignity and abuse of office (Art 270 of the Slovenian Criminal Code) in the District Court of Šentjur pri Celju on 10 February 2000 received suspended sentences of three months' imprisonment. The victim, Dr. **Blaženko Segmanovič**, a German national, was reportedly beaten and kicked by two police officers during a routine speed control operation on a motorway on 24 September 1994. As a result of the ill-treatment he suffered multiple bruising to his nose, jaw, left shoulder and kidneys. Dr Segmanovič was awarded compensation for his injuries, after he appealed against the judgment of the District Court in separate proceedings in 2001.*

*In one other case, another German national **Ernst Rehbock** who had reportedly been ill-treated by border police in Dolic in September 1995, brought an application before the European Court of Human Rights. The Court ruled his application admissible on 28 November 2000 and concluded that his rights under Article 3 (prohibition of torture and inhuman or degrading treatment or punishment), Article 5(4) (right of persons deprived of their liberty to have the lawfulness of their detention decided speedily by a court and their release ordered if the detention is not lawful), and Article 8 (right to respect for private and family life, home and correspondence) had been violated. Slovenia was ordered to pay Ernst Rehbock DM 32,000.*

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<sup>37</sup> Amnesty International has the name of this police officer.

*Amnesty International notes that the Rehbock case is referred to in the Second Periodic Report by the Slovenian Government, and that information about the case has been included in training materials used in the police academy and the College of Police and Security Studies. The report also states that "Criminal police whose officers conducted the ill-treatment against the applicant, Ernst Rehbock, presented the content at expert meetings of high-ranking officers of the criminal police units at the state and regional levels."(Second Periodic Report, at page 28) Amnesty International would like clarification on the meaning of this sentence.*



**UNEDITED VERSION**

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and Recommendations of the Committee against Torture

**SLOVENIA**

1. The Committee considered the second periodic report of Slovenia (CAT/C/43/Add. 4) at its 356<sup>th</sup> and 359<sup>th</sup> meetings, held on 5 and 6 May 2003 (CAT/C/SR. 356 and 359<sup>th</sup>), and adopted the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the timely submission of the second periodic report of Slovenia in accordance with the Committees request, and the opportunity to continue its dialogue with the State party.

3. While noting that the report covers the period from May 2000 to March 2001, the Committee appreciates the update provided by the delegation of Slovenia during the consideration of the report and the detailed answers to the questions raised by the Committee.

B. Positive Aspects

4. The Committee welcomes the ongoing efforts by the State party to reform its legal system and revise its legislation so as to strengthen human rights in Slovenia. In particular, the Committee welcomes:

a) the inclusion in the State party report of findings of the Human Rights Ombudsman of Slovenia which were often critical of the Government and notes the important role this institution has in the protection and promotion of human rights in the State party;

b) the decision of the Supreme Court adopted in December 2000, which limits the duration of remand in custody to two years;

c) the Rules on Police Powers introduced in June 2000 providing detailed regulations of the limits of police powers in official contacts with individuals;

d) the amendments to the Aliens Act and the Asylum Act, bringing domestic legislation into conformity with article 3 of the Convention, as recommended by the Committee during the consideration of the initial report;

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e) the Decision of the Government, adopted in 2003 according to which all Government ministries should closely co-operate with NGOs in preparation of legislation and by-laws that touch upon human rights and freedoms in any respect;

f) the “Hercules” special programme, conducted by the Supreme Court of Slovenia, introduced in 2001, aimed at reduction and elimination of court backlogs;

g) efforts undertaken by the State party in the sphere of educational and training activities to familiarize policemen and recruits engaged in in-service training with international human rights standards, including the prevention of torture.

### C. Subjects of Concern

5. The Committee expresses concern about the following:

a) substantive criminal law does not contain a specific crime of torture, which, although referred to in the Criminal Code, remains undefined;

b) torture is subject to a statute of limitation. The period of limitation pertaining to acts of ill-treatment other than torture is too short;

c) the lack of an independent system to investigate complaints and reports that allegations of ill-treatment are not investigated promptly and impartially;

d) continuing allegations of excessive use of force by the police, many of which concern members of ethnic minorities. The Committee regrets the fact that disaggregated statistical data in this respect are not available from the State party;

e) the lack of adequate legal guarantees of the rights of persons deprived of liberty to have access to doctors of their choice from the outset of their custody. The Committee notes article 74 of the Regulation of Police Powers making provision for medical assistance, but considers that this is not sufficient to provide safeguards against ill-treatment and torture;

f) the lack of a code of conduct for police interrogations to supplement the provisions of the Criminal Procedural Code and the Police Act, with a view to preventing cases of torture and ill-treatment, in accordance with article 11 of the Convention;

g) the continued overcrowding in prisons and other places of detention, despite the slight decrease noted in 2002.

### D. Recommendations

6. The Committee recommends that the State party should:

a) proceed promptly with plans to adopt a definition of torture which covers all elements of that contained in article 1 of the Convention and amend domestic penal law accordingly;

b) repeal the statute of limitation for torture and increase the limitation period for other types of ill-treatment;

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c) take measures to establish an effective, reliable and independent complaints system to undertake prompt and impartial investigations into allegations of ill-treatment or torture by police and other public officials, and to punish the offenders;

d) strengthen existing efforts to reduce occurrences of ill-treatment by police and other public officials, in particular that which is ethnically motivated, and, while ensuring protection of individual privacy, devise modalities of collecting data and monitoring the occurrence of such acts in order to address the issue more effectively. The State party is encouraged to include such information in its third periodic report;

e) strengthen safeguards provided in the Code of Criminal Procedure against ill-treatment and torture, and ensure that, in law as well as in practice, all persons deprived of their liberty be guaranteed the right to have access to an independent doctor. Privacy of medical examinations should be ensured;

f) continue efforts to address overcrowding in prisons and other places of detention, in accordance with, *inter alia*, the recommendation made by the European Committee for the Prevention of Torture in its report on Slovenia in this respect (CPT/Inf(2002)36);

g) widely disseminate the reports submitted by Slovenia to the Committee and the conclusions and recommendations, in appropriate languages through official websites, the media and non-governmental organizations.