

## **OBJECTIVE CRITERIA. COUNTRY REPORT - SLOVAKIA**

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### **1. TRANSPARENCY**

#### **1.1. General Access To Information**

##### **1.1.1 Legal Framework**

#### **A. International Public Law Obligations Of The Slovak Republic**

The Slovak Republic as a member of several international organisations is bound by international documents declaring the freedom of speech and the right to information.

The European convention on human rights is a part of the Slovak legal system and was ratified by the Slovak Republic. The regulations of the European convention on human rights are legally binding upon the Slovak Republic. The right to freedom of speech including freedom of opinion and freedom to gather and share information without interference of the public authorities and regardless of the state frontier is stipulated by the European Convention, Article 10.

The Slovak Republic as a member of the United Nations Organisation is obliged to guarantee the freedom of speech and the right to information stipulated in the Article 19 of the International Agreement On Civil And Political Rights.

#### **B. Constitutional Entrenchment Of The Right To Information**

The right to information is laid down in the Constitution of the SR and in the European chart of basic rights and liberties passed as a constitutional law of the Federal Assembly of the

SFR (*Czecho-Slovak Federal Republic*) No.23/1991 Coll. whereby the Constitution of the SR goes in some regulations concerning the right to information beyond the Chart of basic rights and liberties.

#### **The Constitution of the Slovak Republic:**

Article 26, The Constitution of the Slovak Republic:

- (1) The freedom of expression and **the right to information are guaranteed.**
- (2) **Every person has the right** to express his/her opinions orally, in writing, in pictures, through the press or in other ways as well as **the right to seek, receive and communicate ideas and information regardless of the state frontier.** The issuing of press is not subject to state authority. Business activities in radio and television broadcasting may be subject to state authorisation. The conditions and a way of the application (of this paragraph) will be set by law.
- (3) Censorship is prohibited.
- (4) The freedom of speech and **the right to seek and disseminate information may be restricted by law if such a restriction is, in a democratic society, necessary for the protection of the rights and freedoms of other persons, for the security of the state and public (order) and for public health and morality.**

- (5) The state authorities and territorial self-governing authorities must provide information about their activities in a reasonable manner and in state language. The conditions and a way of the application (of this paragraph) will be set by law.**

Article 45, The Constitution of the Slovak Republic:

**Everyone has the right to timely and complete information on the environment state and on the reasons and consequences of such state.**

Article 34, The Constitution of the Slovak Republic

- (1) The citizens of the Slovak Republic who belong to national minorities or ethnic groups are guaranteed... **...the right to disseminate and receive information in their mother tongue...**

The Constitution of the Slovak Republic and the Chart of basic rights and liberties guarantee the right to information. Conditions and the way of enforcement of this right shall be stipulated by the law.

The legal norm that shall enforce the right to information and solve the complex issue of the access to information shall come into force only on January 1, 2001. Currently valid legislation stipulates the access to information only partially in individual fields of public administration.

### **C. The Right To Information In Individual Laws**

**The law No. 171/1998 Coll. on access to information on the environment** was passed following the Art.45 of the Constitution of the Slovak Republic. It determines the way and conditions of the access to timely and complete information on the environment state and on the reasons and consequences of such state available at competent bodies of the public administration, municipalities and other legal or physical persons determined by this law.

The law on access to information on the environment shall be abolished by the “general” law on free access to information since January 1, 2001. Herewith the legislators try to avoid possible problems that might be caused by a parallel application of both introduced legal norms. The issue of access to information on the environment is solved by the law on free access to information in a separate part. This part of the law stipulates the publishing of information on the environment pollution and the obligation of the Ministry of the Environment of the SR to publish an annual report on the environment state in the Slovak Republic.

**The law No. 81/1996 Coll. on periodical press and other means of information (press law)** in the wording of later amendments lays down the right to information through mass media. In accordance with the constitutionally guaranteed freedom of speech, word and press the citizens shall use the periodic press and other means of information in order to gain information and express their opinion freely.

**The law No. 179/1975 Coll. in the wording of the law No. 571/1991 Coll. and the law No. 222/96 on archives** stipulates conditions for use of archive documents. Everyone is authorised to use archive documents saved in archives for own purpose as well as for studying and other purposes.

**The law No. 350/1996 Coll. on the meeting order of the National Council of the Slovak Republic** in the wording of later amendments determines the publicity of the meetings

of the NC. Sessions of the National Council and the committee meetings are public. The participation of the public in the sessions of the National Council is limited by the capacity of places for the public. The sessions dealing with proposals of the state budget, tax issues and fees are always public.

**The law No. 222/1996 Coll. on organisation of the local state administration** and on the amendment to some laws in the wording of later amendments does not lay down conditions and a way of enforcement of the right to information.

**The law No. 347/1990 Coll. on organisation of ministries and other central bodies of the state administration** in the wording of later amendments does not lay down conditions and a way of enforcement of the right to information.

**The law No. 369/1990 Coll. on municipal establishment** in the wording of later regulations shall guarantee to the citizens the right to participate in the meetings of the municipal council and in the public meetings of the municipality and to express their opinion in these meetings. The municipality shall compound and approve the budget of the municipality and the final account and to organise a public discussion on it. The deputy of the municipal council is obliged to inform on request the voters about his/her activity and about the activity of the municipal council.

#### **D. Judicature of the Constitutional Court**

There were two significant decisions of the Constitutional Court of the Slovak Republic, in which the Constitutional Court decided upon the breach of the right to information in the Slovak Republic).

The first case was the activity of a non-governmental organisation *Association for just election*. The goal of this association was to contribute to a transparent course of the elections to the National Council of the Slovak Republic by organising a monitoring of the elections process. The association asked the Central election committee for accrediting the domestic observers, but the Central election committee refused the request and did not respond to a renewed request.

According to the ruling of the Constitutional Court of the SR (II US 10/99) the precondition of a democratic power in a modern society is to inform individual citizens about issues of public interest. There are two ways of providing information. Persons have right to information provided by mass media. At the same time they have right to information from the public authorities.

The right guaranteed by the Art.26 par. 1 and 2 of the Constitution of the SR certainly includes also the right of physical persons to seek, to receive and to disseminate information about the course of the parliamentary elections by being in the polling station in which the election ward committee counts the votes cast (II ÚS 10/99). The right to information is not guaranteed as an absolute right superior to other constitutional rights and liberties. The protection of all basic rights and liberties is limited. Enforcement of one right or liberty can not restrict in an inappropriate way or even deny another right or liberty (PL. ÚS 7/96).

The Central election committee may exercise its powers given by law and decide on refusal of permission only when such procedure is necessary in a democratic society in order to reach at least one of the legitimate goals *expressis verbis* named in the Art.26 par. 4 of Constitution of the SR. The Central election committee did not investigate whether there were any causes of the case circumstances that would restrict the application of the right because of the public interest in the way the mover of the motion intended. By this procedure the

Central election committee neglected its duty. The fulfilment of the duty represent the guarantee of the protection of the right to information according to the Art. 26 of the Constitution of the SR. The right guaranteed to the mover of the motion defined in the Art. 26 par.1 and 2 of the Constitution of the SR was broken.

The second case concerns a physical person who participated in a public trial at the Highest Court of the SR. The person wanted to record the hearing on his/her dictaphone machine. The chairman of the senate of the Highest Court of the SR prohibited any use of recording devices. The Constitutional Court in its ruling claimed the breach of the right to information, the search for information and the dissemination of information. Further claims of the Constitutional Court of the SR:

Everybody has the right to receive, to seek and to disseminate ideas and information and therefore everybody is allowed to receive and gather information for its own purposes, to process information for own needs and for the need of other people.

The Constitution of the Slovak Republic leaves up to each authorised person the right to decide how to apply the right to receive, to seek and to disseminate information on issues of public interest and whether he/she will use a technical device for making visual, audio-visual or audio record.

The Constitution of the Slovak Republic does not contain a prohibition of disseminating information neither on activities of the authorities of the Slovak Republic nor on activities of judicial bodies. Every citizen has the constitutional right to seek, to receive and to disseminate information gathered in a public meeting of all state authorities of the Slovak Republic.

## **E. Characteristics of the Law on Free Access to Information**

The National Council of the Slovak Republic approved the law on free access to information on May 17, 1999. The law comes into force on January 1, 2001. The law shall stipulate conditions, procedure and the scope of a free access to information.

### ***a) Entities obliged to provide information***

The law goes beyond the constitutional scope in specifying the scope of entities that are obliged to provide information and widens the list of obliged persons. Apart from the state authorities and municipalities, bodies authorised to decide about rights and duties of persons in the public administration and institutions managing public finances and state estate shall also have the obligation to provide information.

### ***b) Active publishing of information***

The law introduces two ways of information access. The following information is compulsory to be actively published by the entities (thus in a way enabling a collective access to information for an unlimited number of requesters, especially via the Internet):

- the way of setting up an obliged person, powers and competencies of that person, description of the organisation structure, place, time and a way of receiving information, information on a place where it is possible to file applications, proposals, incentives, complaints or other filings, compulsory procedure to be kept by a obliged person when handling all requests, proposals and other filings including necessary time periods.
- shall act and decide or which shall regulate rights and duties of physical persons and legal persons in relation to the obliged person

The National Council of the Slovak Republic and adequately municipal councils and councils of higher territorial units shall be obliged to make accessible especially time of the sessions

and committee sittings and proposal for the agenda of the session, schedule public texts of submitted law drafts within 3 days after the submission to the Office of the National Council of the Slovak Republic texts of passed laws within 3 days after their approval in the third reading .

- data on attendance of MPs in the National Council sessions and in the committee sittings within 3 days after each session of the National Council of the Slovak Republic was brought to an end, vote statements of MPs after each session of the National Council of the Slovak Republic except voting by ballot and voting at a non-public meeting.

The Government of the Slovak Republic is obliged to publish especially texts of documents (proposals, reports, analyses) submitted to Government sittings and passed resolutions including their attachments.

Ministries, other central bodies of the state administration and bodies of the local state administration are obliged to publish documents regarding program, concept and strategy and texts on proposed legal norms after their release to the process of inter-ministerial comments.

***c) Restrictions of access to information***

Obligated persons shall not provide the information because of following reasons:

- protection of official secrets
- protection of person and personal data
- protection of business secret
- the bill *expressis verbis* determines further restrictions of information access according to other legal regulations

***d) Passive information access – the access to information on request***

According to the law, the obliged person shall allow everybody without identification of a legal or other reason or interest to view, make excerpts or copies of documents and documentation.

Requests for information access can be filed in writing, orally, by fax or via e-mail or other technical means. The request shall explicitly say, which obliged person it may concern, who is the sender, what information the request concerns and what method of information access was proposed by the requestor. In case the obliged person to whom the request was sent does not have the required information, it will delegate the request within 5 days to the obliged person, which has the required information available. Information are accessible especially orally, by viewing the document including the possibility to make a copy or excerpt, to copy information on a data carrier by accessing copies of masters with required information, by phone or by fax, via mail or e-mail etc.

The obliged person shall handle the request for information access without unnecessary delay, within ten days from the day of filing the application or from the day of removing shortages of the request at latest. The obliged person is allowed to prolong the period maximum ten days because of grave reasons. The reasons for prolonging the term are enumerated in the law.

The obliged person shall issue a decision on accessing the required information, or on not accessing the required information or on partial accessing of required information. The requestor can appeal against the decision to the obliged person who issued the decision within a period of 15 days since the delivery date of the decision. The decision on appealing is made by the superior of the obliged person. The appellate body shall decide about the appeal within 15 days.

e) ***Reimbursement of expenditures***

Information access is free of charge except costs that exceed the material costs for making copies, acquiring the data carriers and sending the information to the requester.

f) ***Sanctions***

The law on free access to information does not contain sanctions for breach of the mentioned duties. However, the law on offences was amended. It introduces a new offence in the field of the right to information access. A person who breaks duties stipulated in the law on free access to information or who issues a decision, order, measurement shall commit an offence and break the right to access to information. The fine for such an offence can reach up to 50 000 SKK and prohibition of the activity up to for two years.

### **1.1.2 Real State Of Providing Information**

In practice it is common that bodies of public power are not willing to access required information. Their justification is that the required information is an internal document or regulation that in some cases may, however, concern the public interest or the requester himself, while there is no legal regulation according to which the required documents should not be accessible. In spite of this, the bodies of the public power misappropriate the right to decide based on own consideration whether the interest of the requestor is legitimate or not. Such an approach of the bodies of public power allows a wide space for misuse of their position.

The law on free access to information shall come into force January 1, 2001 and apply the principle of absolute transparency and openness of the public administration by means of precise criteria definition for determination of information, which must not or need not be published. All other information is public and therefore open to citizens according the new legal norm.

## **1.2 Access To Information Available At The Public Authorities**

### **1.2.1. Legal framework:**

Note: the legal framework is defined in the first part of the document

### **1.2.2. Information available on the Internet:**

#### **Central authorities of the state administration**

Note: The table was elaborated as of September 7, 2000.

	Address, phone, fax., e-mail	Contact to subordinated organisations	Org. structure	Contact to units / contact to employees of the office	Internal regulations	Ministerial legal regulations	Information about activity and ministry and its domain
MC RD	Y	Y	N	Y / M	N / Y	Y	Y
MFA	Y	P	Y	Y / P	N / N	Y	Y
MTPT	Y	Y	Y	N / N	N / N	N	Y
MF	Y	N	Y	N / N	N / Y	N	Y
MEco	Y	Y	Y	N / N	N / Y	Y	Y
MEnv	Y	Y	Y	Y / Y	S+OO / Y	Y	Y
MEdu	Y	Y	Y	Y / P	S / Y	Y	Y
MCul	Y	Y	P	Y / P	N / N	Y	Y
MD	Y	P	N	N / N	N / P	N	Y
MA	Y	Y	Y	Y / M	S	Y	Y
MLSAF	Y	Y	Y	Y / Y	N / Y	Y	Y
MAPNM	Y	Y	Y	Y / Y	N / Y	Y	Y
MI	Y	Y	Y - SVS	YSVS / N	N / Y	Y	Y
MH	Y	Y	Y	Y / Y	N / N	Y	P
MJ	Y	P	Y	N / N	OO / P	P	Y
AMO	Y	No subordinated organisations	Y	Y / Y	N / Y	Y	Y
ASMR	No webpage						
OGCC	Y	A	Y / Y	Y / Y	Y	Y	Y
ONMT	Y	A	Y	Y / Y	N / Y	Y	Y
SO	Y	Y	Y	N / P	S+OO / Y	P	Y
BIP (PO)	Y	No subordinated organisations	Y	P / N	S / Y	Y	Y
OPP	Established 1.1.2000	No webpage so far.					
ONO	Y	No subordinated organisations	Y	Y / Y	N / Y	Y	Y
GO	Y	N	Y	N / N	S+OO / Y	P	P
OSA	Established 1.1.2000	No webpage so far.					

Note:

Y – information is published

N – information is not published

P – information is partially published

S – statute

OO – organisational order

SVS – Public Administration Section of the Ministry of the Interior of the SR

M – managers

MCRD – the Ministry of Construction and Regional Development

MFA – the Ministry of Foreign Affairs

MTPT – the Ministry of Transport, Post and Telecommunications

MF – the Ministry of Finance

MEco - the Ministry of Economy

MEnv - the Ministry of Environment

MEdu - the Ministry of Education

MCul - the Ministry of Culture

MD - the Ministry of Defense

MA - the Ministry of Agriculture

MLSAF - the Ministry of Labour, Social Affairs and Family

MAPNM - the Ministry for Administration and Privatisation of the National Property

MI - the Ministry of Interior

MH - the Ministry of Health

MJ - the Ministry of Justice

AMO – the Anti-Monopoly Office  
ASMR – the Administration of State Material Reserves  
OGCC - the Office of Geodesy, Cartography and the Cadastre  
ONMT - the Office of Normalization, Measurements and Testing  
SO - the Statistical Office  
BIP (PO) - the Bureau of Industrial Property (Patent Office)  
OPP - the Office of Public Procurement  
ONO - the Office of Nuclear Oversight  
GO – the Government Office  
OSA – the Office for State Aid

### **The National Council of the Slovak Republic**

The webpage of the National Council of the Slovak Republic (NCSR) provides basic information about the NCSR regarding its legal status, overview of the legislative activity of the NCSR and the wording of significant proclamations and declarations of the NCSR.

A brief CV and an e-mail address of each MP, contact to individual MPs clubs, list of names of individual MPs, telephone contact and fax to committees of the NCSR, their competencies and name list of the members are available on the Internet.

Information about the parliament session includes the time schedule and the session programme, publishing of conclusions of daily debates, record on voting of individual MPs, a complete copy of parliamentary questions as well as a copy of some speeches in the NCSR meetings. The wording of law drafts that passed to the second reading are also available.

Comments and questions can be sent to the e-mail address of the Press and Information Department of the Office of the NCSR.

### **The Government Office (as a service centre for the Government)**

Information about the members of the government, contact and an e-mail address to most of them, legal status of the Government, Programme Declarations of the Government, statutes of advisory bodies of the government and their member list are available on the webpage of the Government Office of the SR.

The Information Service of the Government Office provides information about activities of the Prime Minister and the Deputy Prime Minister, about activities of the Government abroad, programme of Government sittings, copy of the press conferences and programme of Government debates.

A list and the wording of Government resolutions, Government declarations and standpoints, copies of public speeches of the Government members, press reports issued by the Government Office and the wording of important documents issued by the Government of the SR as well as the wording of Government programmes and reform concepts are published on the webpage.

### **The Office of the President of the SR**

On the webpage the address of the Presidential Office, the phone number and office hours, the CV of the president, his legal position and the general program of activities of the President are published.

### **The Constitutional Court of the SR**

The Constitutional Court of the Slovak Republic publishes names and CVs of the constitutional judges, their e-mail addresses as well as the address, the phone number and the fax number and the e-mail address of the Constitutional Court on the webpage.

On the webpage the following is published: a collection of decisions and resolutions of the Constitutional Court, a list of pending filings, a list of broken Articles of the Constitution of the SR and of the international documents, important legal sentences in decisions of the Constitutional Court as well as in the proceedings on the law interpretation, wording of international documents on protection of human rights by which the Slovak Republic is bound, contact to international legal institutions and legal institutions of other states with the function of constitutional investigation.

### **1.3. Contacting public authorities over the phone**

Telephone contacts to bodies of the public power are published in telephone directories available to all citizens. Directories are updated on regular basis.

### **1.4. Organisational structures of public authorities**

Most of the public authorities publish their organisational structures on the Internet. Starting January 1, 2001 this shall directly result from the law on free access to information. Based on this law, the organisational structure must be available on a large scale. The bodies of public power shall be obliged to provide the organisational structure in their work places and all their offices at a public place and also other ways, e.g. via the Internet.

## **2. RESPONSIBILITY**

### **2.1. Accessibility**

Currently there is no ombudsman institute embodied in the legal order of the SR. However, this institute is included in a prepared new Constitution amendment that should be approved in the near future.

There are several non-governmental organisations dealing with the protection of human rights and basic liberties that provide citizens with legal consultancy in the field of human right free of charge. Activity of such organisations together with the existence of the institute of complaints embodied in the law on complaints (see part 3.2.) at least partially substitute the missing Ombudsman Office .

### **2.2. Responsiveness**

On August 7, 2000 letters containing request for delivery of final report or material containing the summary of activities of institutions in 1999 were sent to heads of press sections of the central bodies of the state administration.

Answers from the central bodies of the state administration were coded as following:

5 points = report or other written material presenting the activities undertaken in 1999;

4 points = brief presentation of the activities in 1999 and a presentation of the department in charge with public relations activities;

3 points = provision of information only on the department in charge with public relations activities;

2 points = indicating only sources of information;

1 point = loose information provided in more than 30 days or requirement of additional data on the project with no follow up in due time;

0 points = poorest performance when there is no reply at all.

<b>Central body of the state administration</b>	<b>Assigned code</b>
Ministry of Transport, Post and Telecommunications	2
Ministry of Education	1
Ministry of Foreign Affairs	1
Ministry of Defense	0
Ministry of Culture	1
Ministry of Health	0
Ministry of Justice	1
Ministry for Administration and Privatisation of the National Property	4
Ministry of Labour, Social Affairs and Family	5
Ministry of Environment	0
Ministry of Interior	1
Ministry of Finance	0
Ministry of Economy	0
Ministry of Construction and Regional Development	0
Ministry of Agriculture	4
Anti-Monopoly Office	5
Government Office	2
Administration of State Material Reserves	1
Office of Geodesy, Cartography and the Cadastre	1
Office of Normalization, Measurements and Testing	5
Statistical Office	0
Bureau of Industrial Property (Patent Office)	5
Office of Public Procurement	1
<b>OVERALL MEAN</b>	<b>1,51</b>

### **3. ACCOUNTABILITY**

#### **3.1. Self - accountability: Control**

##### **3.1.1 Legal Framework: Control System In The State Administration**

Control of fulfilling state administration tasks is carried out by the control authorities. The control system in the state administration (based on the law no. 10/1996 Coll. on control in the state administration) comprises internal and external control.

Internal control is a system, in which a control authority carries out control toward a subordinated body as a part of fulfilling tasks in individual area of state administration. Internal control is carried out at all management levels.

A control authority controls within its domain especially

- fulfilling state administration tasks
- administration of the means of the state budget
- handling petitions, complaints, notifications and incentives
- adhering to generally binding legal regulations
- fulfilling measures to eliminate shortages, which were found-out

The head of controlled entity is obliged, on the basis of control, within certain period of time

- to take measures to eliminate shortages, which were found-out
- to submit a report on fulfilment of taken measures to the control authority
- to enforce legal responsibility for shortages, which were found-out, towards the responsible employees

The law on control in the state administration does not define the procedure of a control authority nor enforcement of responsibility and imposing sanctions towards the head of controlled authority in the case he/she does not fulfil the mentioned duties.

External control is a system, in which the controlled authority is not subordinated to the control authority nor is managed by it. The body of external control is the Government Office and other state administration authorities, which carry out external control according to separate regulations. The system of external control includes also the National Council of the SR, the Government SR and the Supreme Audit Office SR.

### **The Government Office SR**

The Government Office SR is a central authority of the state administration for control of fulfilling state administration tasks and administration of the budgetary means allocated for their fulfilment as well as handling petitions, complaints, notifications and incentives. The head of the Government Office SR is at the head of the office, he is appointed and recalled by the Government of the Slovak Republic. The head of the Government Office is responsible to the Prime Minister.

In the framework of control the Government Office has no right to change or cancel decisions of controlled authorities nor the decisions of courts of laws and other competent bodies in criminal proceedings.

The Government Office submits to the Government of the SR information on focus of its control activities and reports on important control findings. On the request it submits to the National Council SR and the Supreme Audit Office SR reports on the findings on control activity.

### **The Government SR**

It controls fulfilling tasks in individual areas of state administration through individual state authorities and the Government Office SR. The economy with the means of the state budget and property of the state is controlled by the Government especially through the Ministry of Finance SR.

### **Supreme Audit Office (SAO) SR**

SAO SR is an independent state authority, which is bound only by law when performing control activity. The SAO controls especially administration of the means of the state budget, administration and use of the state property, use of property rights and receivables of the state. It carries out control from the viewpoint of observing generally binding legal regulations, economy and purposefulness. At the head of the SAO is a chairman. The National Council of the SR elects and recalls the chairman and vice-chairmen by a secret ballot for the period of time 5 years.

At least twice a year the SAO submits to the National Council a report on control activity and it may carry out control within its domain for the need of the National Council.

The Supreme Audit Office has no right to impose sanctions. On the basis of control it orders a controlled entity to take measures within a certain deadline to eliminate shortages, which were found-out and defines a period of time, in which the controlled entity is obliged to send to the SAO a report in writing on taken measures. When there is a suspicion of a criminal act, the NKU shall submit the case to authorities competent in criminal proceedings.

### **3.1.2. Situation In The Area Of Control Activity For The Year 1999**

According to a report of the SAO SR for the year 1999, the controlled entities broke laws in 10 471 cases.

The report points out also bad use of property in the state enterprises. On the basis of shortages, which were found-out, the SAO took 1791 measures. Out of that, 416 were taken in the central authorities of state administration and 1375 in subordinated organisations.

The SAO collaborates with the authorities competent in criminal proceedings through fulfilling an „announcement“ duty to these authorities in case there is a suspicion of criminal act. In the year 1999 the SAO sent 4 notifications on suspicion of criminal acts to the Ministry of Interior SR, 1 motion to the President of the Presidium of the Police Corps of the SR and 4 notifications to the Office of General Prosecutor of the SR.

### **Information on the state of handling notifications of the SAO SR from the year 1995 as of 31.3.2000:**

Office of General Prosecutor of the SR (altogether 11 filings):

- completed cases 1
- pending cases 4
- postponed „ad acta“ cases 3
- postponed ad acta cases, in which it was not found out there was a suspicion from a criminal act nor there was a reason to handle the case in other way 3

The Ministry of Interior SR (altogether 14 notifications)

- at present there is ongoing investigation 4
- at present there is ongoing documentation 1
- investigator returned the case for completion to a competent department of the Criminal Police 1
- criminal proceedings were stopped 1
- transferred to the Military Police 1
- investigator postponed the case ad acta since facts justifying to start the criminal proceedings have not been found out or he/she cancelled an unlawful resolution of investigator or the examination has not confirmed committing a criminal act 6

## **3.2. Self - accountability: Complaint**

### **3.2.1. Legal Framework – Institute Of Complaint, Review Of Decisions Of Public Administration Bodies, Accountability In The Public Administration**

#### **3.2.1.1. Institute of Complaint:**

According to the law no. 152/1998 Coll. on complaints, everyone shall be entitled to protect their rights and interests protected by law by lodging a complaint in case they were broken or endangered by an activity or non-activity of a public administration authority.

He/she may point out concrete shortages by a complaint, especially breach of legal regulations, which elimination requires an intervention of a public administration authority. To handle a complaint, the respective head of a public administration authority is basically competent.

All authorities of public administration are obliged to accept complaints and keep their evidence in a way that it is separated from the evidence of other documents in writing and it is clear, among others, what the result of handling was, which measures were taken and what the deadlines of its fulfilling are. The public administration authority is obliged to inform a complainer on the results of handling the case.

The competent public administration authority is obliged to investigate the complaint and handle it within 30 days from the delivery date. In special cases it is possible to put the period of time forward.

The investigation of a complaint is not limited only to consideration of a contradiction between the activity of public administration body and legal regulations, but also a contradiction between the real state and purposefulness and economy when fulfilling authority's tasks, a person responsible for investigated shortages as well as reasons for their creation and harmful consequences. The Government Office is a central authority of the state administration for handling petitions, complaints, notifications and incentives. The head of an authority is obliged to draw consequences toward responsible employees or enforce legal responsibility for breaches of a duty according to the Law on Complaints for wrong examination of the petition or wrong settlement. On the basis of this law he/she can impose fines to the employees.

The sanction for shortages in activity of public administration authority, against which a complaint was lodged – **i.e. sanction for breaking and endangering rights and interests protected by law** – is not stipulated in the law. The law does not even stipulate a possibility to pass the results of investigation to other authority, which should be entitled to draw responsibility.

### **3.2.1.2. Review Of Decisions Of Public Administration Authorities**

The Constitution of the SR guarantees to every person the right to judicial protection and other legal protection. Every person who claims that their rights were violated by a decision of a public administration authority, may turn to a court of law to review legality of such a decision. The legality of decisions of public administration authorities are reviewed by the **general courts of law** in administrative judiciary. The courts decide upon:

- a) actions against decisions of administrative authorities
- b) appeals against decisions of administrative authorities

Ad a: The court reviews legality of a decision of an administrative body if the plaintiff claims that his/her rights were violated by this decision. If the court concludes that the given decision is in accordance with the law, it will decide by a judgement that the action is dismissed. If it concludes that the decision is wrong, it shall cancel the given decision and return the case to the sued administrative authority. Administrative authorities shall be bound by the legal opinion of the court.

Ad b: In cases defined by the law the court decides on appeals against those decisions of the administrative authorities, which do not have legal force. By a judgement it shall either confirm the reviewed decision or cancel it and return it for further proceedings. If the court

cancels the decision, the administrative authority shall be bound by the legal opinion of the court.

**The Constitutional Court of the SR** decides upon complaints against lawful decisions of the central authorities of the state administration, bodies of local state administration and local self-governing authorities, which violated basic rights and freedoms of the citizens unless a separate court of law decides upon the protection of these rights and freedoms.

### **3.2.1.3. Accountability in the Public Administration**

#### **- Responsibility For Damages Caused By an Unlawful Decision of State Administration Authorities Or Their Wrong Official Procedure.**

According to the Constitution, everyone has right to compensation for damages caused by an unlawful decision of the court, state authority or other public administration authority or by a wrong official procedure. The state is responsible for damages caused by a public administration authority. The state is also responsible for damages caused by a wrong official procedure in the framework of fulfilling state administration tasks, which can be either activity or non-activity. The courts decide upon claims for the compensation for damages.

#### **- Criminal law responsibility**

The criminal law responsibility of officials and employees of the public administration is increased in comparison with other citizens, which should prevent the misuse of power they have at disposal when executing public power.

The criminal law responsibility is drawn by the courts on the basis of the Criminal Code, which stipulates the criminal acts of misuse of public official's, marring of tasks of public official, taking or offering bribes or other inappropriate advantage and indirect corruption.

#### **- Disciplinary responsibility**

It arises by breaking service duties flowing from the generally binding legal regulations and internal normative acts. There is lacking complex legal regulations defining Public (Civil) service and responsibility of the employees of the public administration. It is possible to draw responsibility against the public administration employees only on the basis of the Labour Code. The Labour Code broadens the scope of work duties for the employees of the state administration. Apart from the basic duties of employees applicable for everyone, they contain also a duty to act and decide impartially, to keep confidentiality on the facts they might have known when working, not to accept gifts or other advantages in relation to their work, to refrain from activities that might lead to the conflict of the public and personal interest.

According to the Labour Code, the employer is entitled to cancel immediately the labour legal relation only exceptionally, in the case an employee broke the work discipline in grave manner.

